

VINDICATING THE COMMERCIAL REPUBLIC

THE FEDERALIST ON
UNION, ENTERPRISE, AND WAR



ANTHONY A. PEACOCK

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To Leon Craig and Barry Cooper
For setting me on that longer (and far more interesting) way

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Introduction

The Need to Vindicate the American Commercial Republic

Scholars have rightly referred to *The Federalist* as the most comprehensive and cogent defense of the theory and practice of the founders' Constitution ever written.¹ Few other authorities explain the original articles of the Constitution with the scope or incisiveness that *The Federalist* does.² Yet as familiar as many may be with isolated parts or particular numbers of the work, even today *The Federalist* as a whole remains a largely unstudied and misunderstood text.³ This book is about that larger whole. Explaining *The Federalist's* defense of the Constitution as a defense of the modern commercial republic, specifically the American commercial republic, this book seeks a vindication of that republic by placing an emphasis on its higher-toned politics that scholarship on *The Federalist* too often overlooks. There is a need today to vindicate the commercial republic described in *The Federalist* not only because many commentators on the work criticize its advocacy for such a republic as a debasement of American politics, but because many academics today, like other liberal elites, disdain commercial society. That society is often blamed for America's social and economic inequalities, its putative consumption with purely material pursuits, its environmental degradation; even America's alleged "imperialism" in foreign affairs has been attributed to its avaricious appetite for capturing more and more international markets.

Moreover, at the same time that there has been antipathy toward *The Federalist's* commercial republican theory, there has been open hostility among America's intellectuals toward the natural rights philosophy on which it, as well as the Declaration of Independence and the Constitution, is based. A strong case can be made that American social science has carried the torch of German historicism and its American offspring, Pragmatism and Progressivism, since the turn of the twentieth century.⁴ As Leo Strauss observed in 1953, according to modern social science, there are no such things as natural

rights. Since all truth is relative, all rights accordingly are positive in nature, predicated one way or another on the preferences, prejudices, or historically contingent circumstances of the day. The principles of natural right may have been accepted by American elites at some point in the distant past but today they are considered by those same elites to be mere “ideals” or mysticism or ideology. They are certainly not considered to be true—and certainly not self-evidently so.⁵

In the discipline of American political science there has been a similar contempt for the philosophy of natural rights. In professional political science the teachings of the Declaration of Independence and America’s founders are frequently denigrated as affectations or idiosyncrasies of a bygone era—historical anachronisms that, along with the founders’ Constitution, need to be eclipsed if a more rational, progressive, and egalitarian state capable of addressing today’s technological and social problems is to flourish. As one study of the discipline recently concluded: “Rejection of the Declaration of Independence, of its teachings, and of its applicability to our own times, was a necessary part of the foundation of a new American political science.”⁶ Rejection of the founders’ Constitution, and especially the political science of *The Federalist*, has been critical to the establishment and the subsequent growth of the modern programmatic liberal state.

It would seem then that this might be an especially auspicious time to reconsider the teaching of *The Federalist*. With its commercial republican theory and limited government constitutionalism, moored in the natural rights philosophy of the Declaration, what better antidote to modern progressivism and modern political science might there be? In addition, if, as the British historian A. J. P. Taylor remarked in 1945, “Nobody in Europe believes in the American way of life—that is, private enterprise”⁷—I propose that *The Federalist* provides us the consummate seminal exposition of this American way of life. Indeed, the entirety of the work can be interpreted as a gloss on the natural rights constitutionalism it defends and its early discussion of the spiritedness and enterprise of commercial republics it contends is the necessary extension of that constitutionalism.

I develop these arguments in more detail below. There are four principal themes to the book. The first is that contrary to much academic commentary on *The Federalist* the most significant teachings of the work did not have to do with the institutions of government so much as with the noninstitutional features of American constitutionalism, specifically its advocacy for greater union, the development of enterprise understood capaciously as the freedom to develop one’s faculties as one sees fit, and provision for war.⁸

Second, to understand why these features were so important to *The Federalist*, it is necessary to understand not only the Lockean-like natural rights constitutionalism of the book but that the most critical transition in *The*

Federalist's republican theory, one that occurs early in the work and that represents the most significant way in which *The Federalist* turns the tables on traditional republican theory, consists of *Federalists* 5–7's rejection of classical liberalism's orthodoxy that commercial republics were moderate or pacific in nature rather than spirited, enterprising, and warlike.

Third, accordingly, it is not merely John Locke, Montesquieu, Adam Smith, David Hume, and other modern defenders of commercial life whom we should look to for guidance regarding *The Federalist's* republican theory, as important as these theorists might otherwise be. An equally important source that *The Federalist* itself points us to, at least on the question of *The Federalist's* noninstitutional teaching, is the ancient historian Thucydides. The Peloponnesian War is explicitly referred to three times in *The Federalist* and the themes from Thucydides' history many times more. Yet no scholarship has ever considered the significance of Thucydides to the work. I propose that Thucydides' sociology of commerce and politics of "movement" outlined in *The Peloponnesian War*, itself a lamentation on the failure of Greek political union, more closely approximates the understanding of commercial republicanism and war we find in *The Federalist* than the classical liberal accounts.⁹

Finally, if we embrace this theory of interpretation we can more fully appreciate how *The Federalist* gave substance to a more principled understanding of liberty initially articulated in the natural rights of the Declaration of Independence and that *The Federalist* used both to jettison the Articles of Confederation as inadequate to those rights and to contend that the Constitution would embody a spirited culture of enterprise that would serve not only to provide greater individual opportunity and the possibility for unparalleled civilizational excellence but that might also underwrite a military instrument and spirit able and willing, with some qualification, to prosecute war not only for reasons of national interest but for republican causes as well.

These aspects of *The Federalist's* teaching have been largely overlooked in scholarship. To the extent that they have academic commentary has neglected to account for how *The Federalist* anticipated as well as any other work the Constitution's shaping of what many consider to be one of the most definitive features of American character today: its spirit of enterprise and its qualified willingness to engage in war for both reasons of national interest and republican principle. Such an interpretation also helps explain *The Federalist's* defense of the structural attributes and specific powers of the Constitution, most of which addressed questions of commerce and war that were critical to promoting the noninstitutional teaching of the work. Let me elaborate on each of the four themes outlined above, why they are important, and how they contrast with scholarship on *The Federalist* and the American founding.

NEGLECT OF *THE FEDERALIST'S* NONINSTITUTIONAL TEACHING

The Federalist is widely credited with having introduced the institutional approach to American government, the idea that to understand the American political process one needed above all to understand how the Constitution's institutional structure would direct America's political actors toward the public good. It was this institutional structure that represented the Constitution's real novelty. So we are told. Accordingly commentary on *The Federalist* has tended to focus on those structural features of the Constitution found in basic American government courses: federalism, separation of powers, checks and balances, republicanism or the nature of representation in Congress, the role of the Senate and the Executive, and the significance of the federal judicial power.¹⁰

All of these institutional features are no doubt important. They define in large part what constitutes American government. In addition, they consume roughly half of the discussion in *The Federalist*, particularly in Volume II of the work (*Federalists* 37–85). It is natural therefore for scholarship to have focused on these structural or institutional aspects of *The Federalist's* constitutionalism. But this has also led to a significant disregard of Volume I of the work (*Federalists* 1–36) and particularly its most important section, Numbers 2–14 on the “utility of the UNION to your political prosperity” (1:6). In those numbers the ends that the institutions and powers of government were to serve are set out in seminal terms. The remainder of *The Federalist* is devoted to explaining precisely how those ends will be vindicated by the Constitution's novel republican theory. The most important questions *The Federalist* had to answer were what were those ends and why would they be best realized through the vehicle of the Constitution?

On the first question, *Federalist* 10 suggests that the two principal ends the Constitution was to fulfill were to “secure the public good and private rights,” particularly against majority faction (10:57).¹¹ The Declaration of Independence had famously proclaimed the self-evident truths that all men were created equal and that they had inalienable rights, among which were life, liberty, and the pursuit of happiness. The Constitution's ends of promoting the public good and protecting private or individual rights can be seen as a species of these proclamations of the Declaration; the public good being an extension of the equality principle and the protection of private rights being a concomitant not merely of the Declaration's recognition of pre-political, inalienable rights but of its further proclamation that it was the very purpose of government—the very reason “Governments are Instituted among Men”—“to secure these Rights.” *The Federalist's* natural rights constitutionalism thus implied limited government; government limited to the protection of

rights and the promotion of a public good that would assist in that protection through provision for national security and commercial prosperity, those most distinctive ends the new Constitution's enumerated powers would provide for. This much of *The Federalist's* natural rights constitutionalism seemed straightforward enough.

What was not straightforward was the full, substantive political teaching that emerged from that constitutionalism and the details of its defense of a principled liberty anchored in the new conditions of political legitimacy the Declaration set out and that were intended to define American character. How precisely the Constitution would protect individual rights and provide for the general welfare was tied perhaps above all to the specific manner in which the Constitution would improve American union, facilitate enterprise in the broadest sense of the term, and provide for war in a manner accommodating both its permanent features, as reflected in human nature, and its transitory features, as embodied in ever-changing historical and technological conditions.¹² The phrase "spirit of enterprise" first appears in *Federalist* 7, a term that "characterizes the commercial part of America" and which that number contends "has left no occasion of displaying itself unimproved" (7:37). The concept of enterprise, as this passage suggests, is at the heart of *The Federalist's* commercial republican theory and the constitutional reforms *The Federalist* defends that are devoted to improving America's enterprising spirit. Given the meaning of the term "enterprise" in our current American lexicon it is perhaps the best concept to use to convey what *The Federalist* understands will be the dominant feature of American character under the Constitution. The standard dictionary definition of "enterprise" is adequate for our purposes here: referring to projects or undertakings, especially those "requiring originality, boldness, or energy," or an "adventurous spirit or ingenuity."¹³ This is very much how *The Federalist* seems to understand the concept of enterprise in those instances in which it refers to the term. Equally important, such a concept captures as well as any other the understanding of American character that *The Federalist* suggests will benefit from the specific manner in which the Constitution will protect and enhance Americans' rights.

Perhaps a clue to the importance the culture of enterprise will play in *The Federalist's* commercial republican theory is provided by *Federalist* 10 when it refers to "the first object of government" being the protection of the "diversity in the faculties of men, from which the rights of property originate" (10:55). As I explain in chapter 6, *Federalist* 10's first object is broader than the mere protection of property since the acquisition of property or the acquisition of a *right* to property is a mere *subset* of the protection of individual faculties. Men enter political society, *Federalist* 10 suggests, to protect their faculties writ large, not simply their faculties of acquiring property.¹⁴ *The Federalist* suggests that the exercise of individual rights will be synonymous

with protection of the diversity in the faculties of men. And this will require an unmitigated opening up of the channels of commerce and enterprise. Without this the faculties of men will remain idle and the development of a new professional military instrument and military science *The Federalist* contemplates will be impossible. These were the most important objects of the Constitution and they had significant consequences for *The Federalist's* constitutional theory, as we will see.

Yet for at least a century now there has been a vigorous debate over what the real objects of the Constitution actually were on *The Federalist's* reading. What was its true noninstitutional teaching and what were the implications of this? As I indicated earlier, constitutional scholars may have some familiarity with *The Federalist's* institutional doctrines about federalism or the separation of powers. Or they may have a certain acquaintance with isolated parts or particular numbers of *The Federalist*, such as *Federalists* 10, 51, and 78. However, *The Federalist* as a whole remains a largely unstudied and misunderstood work primarily because of its length and its unsystematic treatment of the Constitution. There are of course those who have examined *The Federalist* closely and who have lauded it as the most compelling defense of the founders' Constitution ever written. There are yet others who, while recognizing the importance of *The Federalist*, have been equally critical of the work, particularly as it has been assumed to originate from fundamental or juridical first principles, as this book proposes. One such critic was Charles Beard.

Scholars of *The Federalist* have highlighted the irony that it took a book by Beard, a Progressive historian, to resurrect interest in the theory of *The Federalist* in the early decades of the twentieth century.¹⁵ In *An Economic Interpretation of the Constitution of the United States* (1913), Beard had described *The Federalist* as "the finest study in the economic interpretation of politics which exists in any language." Anyone who sought to "understand the Constitution as an economic document need hardly go beyond it."¹⁶ The significance of Beard's work on *The Federalist* originated in its rejection of what he called the "juristic theory" of constitutional interpretation, one that understood the Constitution to emanate from nonpartisan "general principles of liberty and government."¹⁷ For Beard the juristic theory was exceedingly facile and ignored the obvious economic or class interests that had shaped the Constitution. As a partisan document, the Constitution was designed to insulate commercial interests—the interests of merchants, manufacturers, money lenders, security holders, financiers, and the like—against agrarian interests, the interests of farmers and debtors. For support of his interpretation Beard cited none other than *Federalist* 10, what he contended was the most theoretical number of *The Federalist*. That number affirmed that the political science of the work, like Beard's own, understood the chief business of government

to consist in controlling and adjusting conflicting economic interests. In Beard's words *Federalist* 10 provided "a masterly statement of the theory of economic determinism in politics," a determinism that applied to all of the federal government's powers and not only those dealing with commerce and finance.¹⁸ Beard concluded that since on *The Federalist*'s reading trade and commerce were such prodigious sources of war between nations as well as of domestic insurrections originating in class conflict, even the army and navy could be understood "as genuine economic instrumentalities."¹⁹

The irony of Beard's assertion that *The Federalist* adopted a theory of economic determinism was of course that in doing so it effectively stripped *The Federalist* and the Constitution of any theoretical basis whatsoever. As later critics such as Douglass Adair and Herman Belz would observe, if the Constitution were simply a catalogue of vested class interests anchored in property relations, there could hardly be any room left for theory or ideas in the construction of the new Union. In fact Beard's thesis contradicted the central premise of *The Federalist* offered up in the work's opening paragraph: that government could be constructed on the basis of "reflection and choice" as opposed to "accident and force" (1:3), specifically the accidents and forces of prerational or subrational interest.²⁰ Adair highlighted that Beard's book presented an additional irony insofar as it used *The Federalist* not to fortify the Constitution but to denigrate it. Beard sought to undermine reverence for the founders and to pave the way for a new intellectual movement that would ultimately reject the political science of *The Federalist* and the natural rights constitutionalism on which it was based. Writing in 1951, Adair described *An Economic Interpretation of the Constitution* as "the most significant piece of modern scholarship on the Constitution" and "the most important party tract of the Progressive era that used scholarship as a weapon for twentieth-century politics."²¹

In a 1959 article Martin Diamond had asserted that to understand the theory of *The Federalist*, and especially the theory of *Federalist* 10, as a function of interest-based determinism, as "modern relativistic or positivistic theories" had, was to get the teaching of *The Federalist* perfectly backwards. Defending *The Federalist* as a fully democratic treatise against its progressive critics in history and political science, Diamond highlighted that *Federalist* 10 itself had defined faction as actuated by passion or interest, not reason.²² Madison put a premium on reason or ideas as the guiding light for both the Constitution and the government it would create. As Madison affirmed in *Federalist* 49: "it is the reason, alone, of the public, that ought to control and regulate the government" (49:325). Not passion. Not interest. And certainly not partisan, class-based interests. That was the ideal in any event. Diamond did not deny that *The Federalist* recognized a significant role for interest in politics but to the extent that its partisan variety governed it was inconsistent

with the public good. That said, Diamond did agree with Beard on the importance of *Federalist* 10 and the role that the conflict between “the rich and the poor, the few and the many,” played in *The Federalist*’s political science. This was “[t]he problem for the friend of popular government.”²³ But what Madison proposed in *Federalist* 10 was a *solution* to the problem, *not*—as Beard had suggested—a devious ruse to *perpetuate* the problem; to insulate the rich from the many and to constitutionally freeze such inequality in perpetuity. The “multiplicity of interests” argument made famous in *Federalist* 10, emphasizing how the Constitution would create a large commercial society in which differences over *kinds* of property would prevail over differences in *amounts* of property, was actually intended to overcome those class conflicts that had been the bane of republics from time immemorial. As Diamond puts it, “Madison gave a beforehand answer to Marx,” effectively rejecting the inevitability of domestic convulsion based on economic class conflict.²⁴ The Constitution would in fact resolve this problem. This is what its ratification portended.²⁵

Yet eliminating economic class division was possible only if the republic the Constitution created was not only large but *commercial*. In Diamond’s words, the Constitution had to facilitate “the right kind of political divisions”; everyone had to be permitted, indeed even encouraged, to pursue “the ceaseless striving after immediate private gains; the commercial life,” in a word, had to “be made honorable and universally practiced.”²⁶ Only if it was, would there be a sufficiently diverse array of economic interests and refined enough division of labor for citizens to think of themselves as members of discrete interests rather than of classes or sects.²⁷ But to commit society to commerce, on Diamond’s reading, meant lowering America’s political sights. The “new science of politics” on which *The Federalist* was based had been bequeathed to the founders from political philosophers such as Machiavelli, Bacon, Hobbes, and Locke. These “moderns” had successfully critiqued classical and Christian political philosophy, which had, under the guise of promoting virtue or piety, in reality licensed greed and vainglory. The result was the blood-soaked religious tyrannies of the sixteenth and seventeenth centuries, themselves the climax of two millennia of misguided, utopian political science. The founders’ political science, following the classical liberalism of Hobbes, Locke, Montesquieu, Hume, and others, would change this. Rather than seek to “high-tone” human character, as ancient political science had proposed, it would reduce the scope of the political, effectively “depoliticiz[ing] political life” by focusing politics on what we would today call political economy or economic management. This Diamond labeled the “American way.” Just as “the moderns substituted a lowered political end, human comfort and security,” for “the utopian end postulated by the ancients, the forced elevation of human character,” so too would the Constitution.²⁸ At least this is what the

political science of *The Federalist* proposed. Compared to “the premodern perspective” the Madisonian system—the American way—was “solid but low.”²⁹

Diamond’s portrayal of the Constitution’s founding and the American way generated a powerful response from scholars of alternative schools. On the one hand were those who contested the modern liberal origins of American constitutional thinking by Diamond, Adair, Louis Hartz,³⁰ and others. Scholars such as Gordon Wood, Bernard Bailyn, J. G. A. Pocock, and Drew McCoy proposed that the American founders were equally influenced by a classical republican tradition beginning in Greek and Roman antiquity, and receiving a resurrection of sorts in the thought of Niccolò Machiavelli and later thinkers.³¹ At the heart of this republican thesis was an emphasis on the importance of virtue and the public good, which the advocates of the thesis contended were crucial to the founders and took precedence over individualism or liberalism in their eyes and the excessive commercial development that liberalism implied.³²

In response to this, proponents of the liberalism thesis redoubled their efforts, suggesting that although Diamond’s account of the founders may have been a little too circumspect he was nonetheless correct to emphasize the dominance of the modern liberal strain of influence. As Colleen Sheehan has observed, historians such as Pocock and Wood attacked Diamond’s thesis about the Madisonian system “with weapons stockpiled in the historians’ arsenal.”³³ In turn political theorists responded by critiquing these same historians for failing to understand the texts they indiscriminately lumped together as part of the classical republican synthesis and for failing to comprehend just how different modern understandings of virtue—especially Machiavelli’s virtù—were from ancient understandings of virtue.³⁴ To the extent Machiavelli’s novel republicanism could be coherently tied to any forms of earlier republicanism—a dubious proposition—it was not only not opposed to Lockean liberalism or the spirit of capitalism but in many respects had set the stage for these as well as for the republicanizing of executive power that would take place under the Constitution.³⁵

Nathan Tarcov and Michael Zuckert have further qualified that the classical republican school too often adopted a Rousseauan-like caricature of Lockean liberalism and the commercial society it engendered; they assumed (like Rousseau) that such a society facilitated inequality, avarice, vanity, atomism, and a narcissistic, enervating consumption with luxury. If such a narrow view of Locke and the founders’ liberalism was abandoned for a more generous reading, the Lockean natural rights philosophy of the Declaration could be understood to incorporate many of the elements of traditional republicanism, Whig political science, the British common law, and Protestant Christianity, all of which factored significantly into the political thinking of the founding.³⁶

Isaac Kramnick, Rogers Smith, Carl Richard, and Max Edling have made similar arguments, contending that the historiography of the Revolutionary Era has been oversimplified into dichotomous ideological categories when the reality of the period was much more complex, something that scholars today are increasingly prepared to recognize.³⁷

I agree with Thomas West that the consensus approach to the founders' constitutionalism that sees it as an amalgam of liberalism, republicanism, and additional political traditions is overstated. The founders embraced a fundamentally natural rights constitutionalism. This is evident, as West demonstrates, in those public documents endorsed by elected bodies and by politicians acting in an official capacity. That is equally true for *The Federalist* as we will see. West maintains that the elements of liberalism, republicanism, and those other political traditions that have been discussed in the scholarly literature can often be reconciled with the founders' natural rights constitutionalism as aspects of its natural rights theory. Liberalism and republicanism, for instance, can be understood as complementary terms—liberalism capturing the protection of rights obligation of government, republicanism the duties component that government fosters by facilitating devotion to the general welfare and by maintaining a healthy moral consensus. Too often the founders' constitutionalism is presented as a dyspeptic collection of incoherent theories. But as West demonstrates through study of those public documents embraced by both national and local public officials, the founders' constitutionalism is remarkably consistent in its moral, economic, and political message, certainly much more so than previous scholarship has been prepared to acknowledge.³⁸

The text of *The Federalist* generally speaks for itself and we do not need to look behind the authors' words to see some hidden meaning from thinkers of an earlier or contemporary era. Nevertheless, *The Federalist* was not conceived in isolation. There are intellectual pedigrees that assist us in understanding elements of its teaching. In this book I propose not only a potential Lockean liberal influence on *The Federalist*, as well as the influence of Montesquieu and Hume, but also a distinctly classical tenor to its constitutionalism. Specifically I propose that themes from Thucydides' history of the Peloponnesian War may be found in *The Federalist*, particularly in its account of the need for firm political union, its sociology of commercial republics, and the problems that war presents to all political regimes. I will say more about Thucydides and *The Federalist* later in this chapter. For now, it is important to stress that all of these elements of classical and modern political thought that we find in *The Federalist* contribute to its unique understanding of the natural rights constitutionalism it embraces.

I also agree, with some qualification, with recent scholarship on *The Federalist* that has stressed the importance of public opinion in the work. David

Epstein's *The Political Theory of The Federalist* (1984), one of the most comprehensive and influential books on *The Federalist* written over the last generation, has urged that Publius, the pseudonym under which the book was written, sought to make republicanism honorable by focusing, in Epstein's words, on "the specifically political, rather than economic, impulses of men." A response to scholars who had asserted the modern liberal origins of American constitutional thinking as well as the republican thesis proponents of founding commentary, Epstein concluded: "Both the economic view of self-interest which has come to be associated with liberalism, and the political hopes for self-abnegation which were once associated with republicanism, obstruct an appreciation of [that] important aspect of man's nature, which is neither economic nor altruistic but is selfish and political."³⁹ Epstein's book focused on *The Federalist's* treatment of man's political impulses and how they might be actualized through the Constitution's political architecture and schemes of representation. Later scholars such as Charles Kesler, W. B. Allen, and Colleen Sheehan similarly concentrated their scholarly attention on *The Federalist's* teachings regarding republican self-rule, deliberative democracy, and public opinion.⁴⁰ Sheehan's *James Madison and the Spirit of Republican Self-Government* (2009) examined Madison's "theory of public opinion and his advocacy of the commerce of ideas" in order to illustrate "the nonmechanistic and human face of Madison's political vision."⁴¹ Sheehan's concepts of the "commerce of ideas" and her focusing on Madison's "non-mechanistic" teachings were both novel and interesting.

However, an underlying theme throughout much of her work, like Epstein's, is that commercial life, with its focus on economic impulses and interests, is ultimately inadequate, if it is not opposed, to the world of ideas, developed public opinion, a life of virtue, or other high-toned understandings of American constitutionalism. *Federalist* 28 admonished that an electorate ill-informed about the principles on which American constitutionalism was based would likely not possess the understanding, vigilance, or fortitude necessary to preserve that constitutionalism. Citizens needed to "understand their rights" and be "disposed to defend them" (28:171).⁴² But *The Federalist* was a defense of a constitution for government, not a platform for American education. Accordingly, it did not have much to say about the latter. It did however suggest that a reformed commercial order and a rejuvenated spirit of enterprise under the Constitution might have its own pedagogical value. As the principal vehicle to the vindication of Americans' natural rights, commerce would help shape public opinion and the America spirit through a more developed and integrated political economy, domestication of the more unruly passions of human collectivities, and progress in the arts and sciences.⁴³ The problem with scholars of the founding who focus on public opinion and the virtue that attaches to participation in government is that the

issues that they address generally involve only a handful of elites who actually participate in government or who retail ideas. The majority of Americans under the Constitution will be no such participants or retailers. They will vote and then return to their private lives.⁴⁴ Where in a constitutional regime of limited government will their opinions be formed?

The Federalist suggests that beyond any formal education or exposure to the political retailing of ideas citizens might experience, they will likely have their opinions shaped through participation in what we today call the “market.” “[T]heoretic reasoning” must be qualified with “the lessons of practice” (43:279) *Federalist* 43 informs us. “Experience is the oracle of truth” (20:123). Intellectuals, including those of today, as *The Federalist* emphasized, too often overlook the fact that the world of ideas is dependent on the world of experience, which Publius proposes in America’s case will likely be expanded and refined through commercial development. It is only *after* new truths are discovered through practice or experience that they can make their way into the world of opinion. As the Austrian economist Friedrich Hayek proposed, in commercial society new ideas most often arise through the efforts of enterprising individuals confronting ever-new practical circumstances and discovering, through trial and error in concrete situations, new solutions to problems and new forms of action.⁴⁵

This *The Federalist* similarly suggests would be the origin of most new ideas not only in the world of economics but in the world of politics too. Indeed, one of the purposes of the spontaneous, self-equilibrating market economy that a regime of limited government constitutionalism was to protect was to *reduce* the role of the political and intellectual classes guiding or controlling the masses. In a market economy the world of enterprising individuals would generate a host of ever-refining interests, themselves a reflection of an ever-increasing division of labor and refinement of knowledge, through development of the arts and sciences that all members of humanity, not just political or intellectual elites, could contribute to.⁴⁶ Too often scholarship has overlooked this critical element of *The Federalist*’s teaching.

Implicated in the Constitution’s novel commercial order and its development of ever-refining interests were important questions of justice, which the Constitution would help address. As *Federalist* 10 highlights, the regulation of the “various and interfering interests” that make up the increasingly differentiated world of commerce will form “the principal task of modern legislation” (10:56). Under the Constitution legislators will be consumed with assessing laws, for instance, in which “creditors are parties on one side and debtors on the other.” Justice, we are told, “ought to hold the balance between them.” Or legislators will have to ask: “Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures?” Or what is the appropriate “apportionment of taxes on the various descriptions

of property”? These issues make clear that the focus of both politics and many questions of justice under the Constitution will center on matters of commerce or political economy. Obviously these will not be the only issues the federal government will have to consider but they will form its “principle task.” Without an extensive commerce, the world of opinion—in politics, economics, the arts and sciences, and in every other domain—would be an exceedingly stale world. Civilization itself would be arrested (as *Federalist* 10, we will see shortly, contends).

But this implies that *The Federalist*’s commercial republican theory has a much broader sociology to it than some commentary has proposed, one best understood as facilitating an enterprising culture of which the strictly “commercial” aspect was just a part. As *Federalist* 12 makes clear, not only were manufacturers and merchants part of America’s commercial republican order, so too were farmers and others in agriculture whose livelihood depended on selling their wares in broader national and international markets. Virtually everyone in the United States would fall under the ambit of *The Federalist*’s commercial republican theory. Moreover, as we will see beginning in chapter 2, *The Federalist*’s proposals for constitutional and commercial reform were also proposals for moral and civic reform. These were arguably the most important features of *The Federalist*’s constitutionalism, making clear that its commercial republican theory was not merely about impulses or interests or simply limited to the pre-political or subrational elements of human nature. With the intention of resurrecting public confidence and public spiritedness in both American government and the American commercial order, *The Federalist* suggests that the Constitution’s political and commercial reforms were preconditions for republican self-actualization. Reaffirming principles of justice, resurrecting industry, and morality in America, and promoting a higher, if not high, toned American character and constitutionalism, *The Federalist*’s commercial republican theory here provides us a clue about what American greatness will consist of in the new constitutional order.

This speaks to a more general issue. A pervasive assumption in much literature on the founding is that ancient and modern political thought viewed commercial life as debasing human character. The standard version one gets in scholarship about the distinction between the ancients and the moderns is that the classics placed harsh restrictions on the life of acquisition whereas modern political thought was distinguished by its jettisoning of these harsh restrictions, recognizing for instance as Diamond noted that politics could not aspire to the unattainably high ideals of the ancients.⁴⁷ The result was that by adopting modern liberalism the contemporary world, including America’s under the Constitution, was made freer but baser than the ancient models’ ideals. The commercial life, with its sanctifying of greed, material pursuits, and an excessive consumption with private well-being, was not only inconsistent

with the virtuous life but antithetical to it. As Michael Chan has written: “The rise of industrial capitalism in America (combined with the institutional approach to politics that emerges from *The Federalist*)” has been seen by those who ascribe to the standard version of ancient versus modern “as heralding the final demise of classical republicanism (*zōon politikon*) and the triumph of liberalism (*homo economicus*).” But as Chan adds, many of these same scholars “seem to have only a casual acquaintance with the texts of classical political science” and “claim that the founders themselves believed that commerce is simply opposed to public virtue, arguing that some founders like Jefferson and Madison decried commerce in the name of virtue and tried to retard its development while others like Hamilton exalted commerce and cheerfully tossed classical politics into the dustbin of history.” Chan’s book on Aristotle and Hamilton contested both of these orthodoxies, claiming that “the virtue-commerce antinomy” was a misleading half-truth and misrepresented Aristotle’s teaching, which preferred commercial Carthage to harsh and simple Sparta, as well as Hamilton’s, which “endeavored to harness commerce not only for the narrower ends of prosperity and national defense, but also for the wider—indeed classical—ends of forming the character of citizens, especially harmony and justice, and pursuing national greatness.”⁴⁸

This book contends that many of the same type of misrepresentations apply to *The Federalist*. The Constitution’s ends were not only modern or liberal insofar as they sought to protect on *The Federalist*’s reading private or individual rights but classical to the extent the Constitution (as the Preamble affirms) sought to “establish justice” and “promote the general welfare.”⁴⁹ Yet contrary to what Diamond, many in the republican thesis school, and numerous others have suggested, commerce, enterprise, and their increasing development were not only not opposed to justice, the general welfare, or virtue but were in fact their preconditions. Both were critical to the moral and civic reforms that were the predicates for long-term constitutional reform. This in any event is how Publius framed the matter. As union was essential to American enterprise, enterprise defined broadly as the freedom to exercise one’s faculties as one sees best was the atom of self-government the constitutional order sought to protect. And this in turn was critical to national security. These elements constituted the fundamental aspects of *The Federalist*’s noninstitutional teaching.

THE FEDERALIST’S HETERODOXY: COMMERCIAL REPUBLICS ARE SPIRITED AND WARLIKE

As I indicated earlier, the second theme of this book is that to understand the primacy of *The Federalist*’s teaching regarding the importance of the

issues of union, enterprise, and war, it is necessary to understand not only its natural rights constitutionalism but its rejection of classical liberalism's orthodoxy that commercial republics are moderate or pacific in nature rather than spirited, enterprising, and warlike. In the next chapter I explain that *The Federalist's* natural rights constitutionalism provides the foundations in fundamental principles for the Constitution. That constitutionalism also helps clarify why the framers had a duty to abandon the Articles of Confederation as inadequate to those fundamental principles and Americans' natural rights. But the specific manner in which the Constitution would safeguard those rights was a more complicated matter and related to the novel republican theory *The Federalist* developed early in the work. Consider *Federalists* 3–8.

Although on their surface *Federalists* 3–5 address security threats from outside the United States and *Federalists* 6–8 warn about internal divisions between the states themselves, these early *Federalist* numbers also introduce a deeper theme regarding the spiritedness and martial character of commercial republics. Rejecting the convictions of modern defenders of commercial life who contend (as many globalization theorists do today) that extensive commercial development will produce not only wealth but freedom, peace, moderation, and toleration, *Federalist* 5, for instance, warns how disunion might cause the more industrial “*Northern Hive*” to threaten the South; that the Hive’s “young swarms might often be tempted to gather honey in the more blooming fields and milder air of their luxurious and more delicate neighbors” (5:25, emphasis in original).⁵⁰ *Federalist* 6 similarly admonishes that commercial republics, dating back to those of ancient Athens and Carthage, have been warlike. That includes the American variants whose impatience and potential willingness to go to war over the undue restrictions of the Articles of Confederation as well as on other grounds are documented at length in *The Federalist*. The modern empires of the day, Spain, France, and especially Britain, the most commercial of them, were also the most militant. Indeed America needed a federal navy, as *Federalist* 11 highlights, precisely to protect itself against other commercial empires. As *Federalist* 7 adds, “the spirit of enterprise, which characterizes the commercial part of America,” would not “pay much respect to those regulations of trade by which particular states might endeavor to secure exclusive benefits to their own citizens. Infractions of these regulations, on one side, the efforts to prevent and repel them, on the other, would naturally lead to outrages, and these to reprisals and wars” (7:37).⁵¹

The critical question then that *The Federalist* had to answer here was how to temper this animated, potentially warlike spirit of enterprise and harness it for salutary constitutional purposes. This is what *Federalists* 9–14 respond to, at least in a preliminary way. By focusing on the ends the Constitution will serve and how those intangible elements of state, America’s public spirit and

enterprising character, will facilitate those ends when appropriately tempered and directed by the new constitutional union, we are presented a vision that informs much of the rest of *The Federalist's* constitutional theory.

This is an important element of *The Federalist's* noninstitutional teaching. While there has been significant scholarship regarding *The Federalist's* account of how the Constitution would promote greater “energy” in government through such tangible instruments of state as a unitary executive and expanded congressional power over commerce, taxation, and war,⁵² there has been significantly less on how those intangible elements of state, including what we today call the “private sector,” would provide equal if not greater *social* energy in the new constitutional order. It was this energy, the energy generated in civil society, that would allow individual faculties to flourish while assisting the institutional forms of energy themselves in what would constitute that most dynamic part of the new constitutional order the formal institutions of government were intended to vouchsafe: the world of enterprise. Although this world was small in the America of 1787, the authors of *The Federalist* understood its full potential in a world of growing and diversifying commerce, where goods produced were now available in an ever-expanding global marketplace and were no longer restricted to direct consumption by families or those small communities typical of premodern, preindustrial economies.⁵³

The emerging role of enterprise in American constitutionalism, and its consequences for social and political transformation, is a lesson scholarship on *The Federalist* has largely ignored. *The Federalist* emphasized how the Constitution would mobilize private sector economic resources for purposes of individual development, national security, and ultimately American greatness. The growth of civilization itself was identified with the greater utilization of knowledge a private economy would facilitate and with the refinement of commerce: “A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up *of necessity* in civilized nations,” *Federalist* 10 proclaimed (10:56, emphasis added). Civilized nations were *necessarily* commercial nations. The new constitutional union would bring about domestic peace through free trade among the states but the integration of the national economy that union would bring about would not only facilitate peace and prosperity but elevate American character and serve political, intellectual, and moral ends far beyond those connected solely with the generation of wealth.⁵⁴ This is why *Federalist* 10 is succeeded by *Federalist* 11 where Publius proclaims that Americans must “aim at an ascendant in the system of American affairs” and “vindicate the honor of the human race” by disdaining “to be the instruments of European greatness” (11:68–69). “An active commerce, an extensive navigation, a flourishing marine would,” under the Constitution, “be the offspring of moral

and physical necessity. We might defy the little arts of the little politicians to control or vary the irresistible and unchangeable course of nature” (11:65).

The irresistible and unchangeable course of nature was to be found in the large commercial republic the Constitution would create, both an historical first and an engine of *moral* and *political*, as well as economic, growth. Critics of the Constitution who supported small, agrarian republics did not adequately appreciate that the faculties of men were more a less idle instruments unless provided avenues through which they could be developed. This was especially true of the most talented and ambitious who needed the more advanced, complex, and large economy the Constitution would provide to flourish. America’s economic progress and its military wherewithal depended on individuals of superior talent who in the absence of the Constitution’s vast new economic regime might languish because of boredom or worse become—as *Federalist 7* intimated—quarrelsome and contentious. Material progress was certainly not synonymous with moral or political progress but as a “prosperous commerce” would “vivify and invigorate *all* the channels of industry” (12:70, emphasis added), so Publius saw the energy from this enterprising activity bleeding over into the liberal, philosophical, and even martial arts.⁵⁵

Moreover, small republic advocacy was suicidal in an era of modern nation-states and imperial empires, whose total warfare, as *Federalist 41* made clear, had demonstrated the extent to which city-states and small republics had been historically eclipsed since the time of Charles VII of France (41:258). The daring, restlessness, and innovation of commercial republics, as well as the invigoration of the mind and body that *The Federalist* proposes comes from enterprise, appropriately directed and tempered by the Constitution’s novel powers over commerce and war and the principled form of liberty it represents, will shape a new American character over time. This is at the heart of the *Federalist*’s theory and this vision informs the entirety of the work. So I propose.

The second theme of this book both complements, and contrasts with, a new strain of literature on the founding referred to variably as “the Unionist Paradigm”⁵⁶ or “New Look revisionism.”⁵⁷ As these names suggest, this scholarship has emphasized the importance of union and national security to the framing of the Constitution. It has also been revisionist in nature. While earlier scholarship on the founding has obviously placed some emphasis on the topics of union and national security, this new literature places primacy on them—that these were the *key* concerns shaping the Constitution. It also brings international relations to bear on the founding. Scholars such as Patrick Garrity, Walter McDougall, Robert Kagan, Walter Russell Mead, Karl Walling, Max Boot, Henry Nau, John Yoo, Max Edling, David Hendrickson, Cathy Matson, Peter Onuf, and Nicholas Onuf have all contributed to this

new literature from a wide variety of ideological perspectives.⁵⁸ Multiple themes have emerged from this revisionist genre, which I do not propose to summarize here—that has been done elsewhere.⁵⁹ I also wish to emphasize that, as this book will reveal, I agree with many of the themes from this rich and innovative scholarship. *The Federalist* makes it clear, for instance, that an interventionist foreign policy was always within the contemplation of the Constitution's framers and that American foreign policy would be largely shaped by the guiding principles of domestic policy and America's growing military capabilities. Accordingly what I say in this book will supplement what McDougall, Kagan, Mead, Boot, Nau, and Yoo have all suggested, namely that the idea that America was by design intended to be isolationist or insular until, say, World War I or World War II is a myth. It was always intended to be at least to some extent interventionist. I will in fact explicitly propose that *The Federalist* rejects an "insularity doctrine" as the grand strategy for America under the Constitution. Finally, American foreign policy should not be seen merely as a function of external events, as progressives and realists have suggested, but rather is perhaps best understood as an extension of American domestic policy, constitutional principle, and commercial enterprise.⁶⁰

Walling, Edling, Hendrickson, Yoo, Matson, and Peter and Nicholas Onuf have also brought to the fore the primacy of union and national security during the founding period and later constitutional history. Edling, for instance, stresses that concentrating on "Madison's writings has made analysis of the Federalist argument focus on the institutional makeup, or structure, of the new national government."⁶¹ This has been a mistake. By privileging the Madisonian over the Hamiltonian interpretations of the constitutional order, scholars have overlooked Hamilton's emphasis on enhancing the strength, stability, and vigor of the federal government. Of particular concern to Hamilton and the Federalists was developing an effective military instrument and paying for this through taxes and other public financing. As the ratification debates in particular reveal, the primary constitutional question that had to be addressed concerned the "fiscal-military state" that European nations, and in 1787 the United States, had to address following the military revolution of the late 1400s. Military historians agree that this revolution precipitated the formation of early modern states.⁶² For this reason, Edling writes, "the Constitution signifies a 'Europeanization' of America rather than the beginning of a truly distinct political system." Although this "is not the whole story," it is the most significant part of the story.⁶³ "The best way to make sense of the ideological differences expressed in the debate over ratification," Edling emphasizes, is "to regard it neither as a debate about democracy or liberalism, but as a debate about *state formation*."⁶⁴

David Hendrickson similarly sees the debate about whether the Constitution's founding was more liberal or classical republican as *passé*.⁶⁵ While not denying the importance of these concepts during the founding, Hendrickson suggests that a better term of reference is "the unionist paradigm," a constellation of ideas that both Federalists and Antifederalists employed and that consisted of "two competing fears—of the anarchy of states and the despotism of consolidated empire—and two mutually interdependent values: independence and union."⁶⁶ The fears of anarchy and oppression of empire dominated other issues during the early decades of American nationhood. What are generally considered to be the defining political questions of the time—what constituted the best forms of representation, the sharing of burdens between states, the appropriate division of sovereignty, how power should be allocated between the branches of government, what distribution of military power was appropriate, and so on—were all framed in the context of these broader concerns. The Constitution, in Hendrickson's words, was a "peace pact," "an experiment in international cooperation."⁶⁷ Above all the founders sought independence or freedom from foreign domination and Europe's internecine wars as well as union, defined as a federative system in which the American states cooperated peacefully and were protected from foreign powers.⁶⁸ Scholars have too often assumed that American nationhood was a given following independence. This was not the case. Saddled by conflict and sectional rivalry, early America more closely resembled an "international society."⁶⁹ Like Matson and Peter Onuf, Hendrickson contends that the question of federalism was profoundly shaped by problems of union and sectional strife.⁷⁰ Similar to Edling, who saw the founders attempting to emulate European, and particularly British, models of fiscal-military relations, Hendrickson describes the founders' queries about representation, the rule of law, bicameralism, independent judiciaries, and the idea of government safeguarding individual rights as issues long embedded in English constitutionalism. The constitutional questions involving these issues were really just matters of adaptation. Things were very different in the case of union, the real novelty the founders had to grapple with.⁷¹ Hendrickson adds that the founders' view of "the world of states was 'internationalist' or 'Grotian' in character." Recognizing "the binding character of the 'law of nature and of nations,'" the Constitution was framed in the context of conventions and principles defined by modern international law.⁷²

Hendrickson's argument about the importance of union to the founders and Edling's about the centrality of the fiscal-military question are both compelling. As this book will demonstrate, there is abundant support for these novel elements of constitutional reform in *The Federalist*. Similarly the founders, including Publius, were very much aware of the role of international law and the relationship of the United States to it as well as the nature of the modern

European state system and the military revolution that transformed it. I will discuss these topics in later chapters. However, a few qualifications are in order.

First, the uniformity of intent that *The Federalist* proposes through its use of a single pseudonym suggests that on the authors' view *The Federalist* forms a coherent whole. This book respects that proposition and defends it. Contrary to what Edling and many others have suggested, at least in the case of *The Federalist* the Hamiltonian and Madisonian teachings are the same. That includes the institutional and noninstitutional teachings. If these are not perfectly identical they are certainly complementary. Too often in scholarship that proposes a "split personality"⁷³ to *The Federalist* either writings extraneous to the work are introduced to "clarify" its meaning or isolated passages from it are cherry-picked to suit the commentator's narrative—to the disregard of others passages that might undermine that narrative. In either case the meaning of *The Federalist*—and by implication the theory of the Constitution—is transformed and ultimately rendered incoherent. Perhaps the worst consequence of the split-personality thesis is that apparent tensions and seeming contradictions found in *The Federalist* are erroneously attributed to differences in principle or theory between distinct authors rather than as manifestations of those underlying paradoxes inherent to constitutional and republican government.⁷⁴ These paradoxes may largely explain the rhetorical complexity of *The Federalist*, a work by three authors who may have had to alter their own independent views to make them comport with the coherent constitutional philosophy *The Federalist* purports to provide.

What we get in *The Federalist* is not the views of Hamilton, Madison, or Jay but of a single author, Publius, who attempts to make the Constitution coherent from the point of view of those who framed it. Publius is like an advocate or lawyer acting on behalf of a client, the Convention or its offspring, the Constitution. Of course we may get elements of Hamilton's, Madison's, and Jay's own views in that defense but just as likely we may get opinions that do not comport with their personal views but that they felt obligated to give the Constitution because that was the sense of it that they understood from Philadelphia; what they provide is what made the Constitution most defensible vis-à-vis other potential constitutional arrangements, such as the Articles of Confederation. Commentators have noted that not only are Madison's post-*Federalist* views difficult to reconcile with his writings in *The Federalist*, so too are Hamilton's. This may have less to do with inconsistencies in either Madison's or Hamilton's approach to the Constitution or with the practical realities that confronted each after ratification and to which each responded differently as with the fact that the defense of the Constitution provided by Madison and Hamilton in *The Federalist* represents something independent from their own specific interpretation of it.⁷⁵ Scholars

have noted that neither Hamilton nor Madison were happy with the final text of the Constitution, yet they defended in *The Federalist* the very provisions they personally disputed in Philadelphia.⁷⁶ Why should we not assume that they did this for *every* provision of the Constitution throughout the work?

For all of these reasons then we should view commentary extraneous to the text of *The Federalist* written by either Hamilton, Madison, or Jay as inappropriate guides to the work. My point here is not merely to highlight the consistency of *The Federalist* but to emphasize that the theory it enucleates is both coherent and comprehensive.

The second qualification to the above scholarship relates to this issue of comprehensiveness. As Peter McNamara has proposed in his review of Hendrickson's *Peace Pact: The Lost World of the American Founding*, the Unionist Paradigm may not be all that original. It could, for instance, be explained as a neglected aspect of Lockean liberalism. As McNamara highlights, Locke's philosophy was well versed in both international law and diplomacy, alternating its gaze between the abyss of a Hobbesian state of nature in international relations while at the same time cautioning against the rise of a despot who might plunge civil society itself back into that state of nature. Moreover, if we accept the idea that the founding was a mere "chapter in the evolution of a state system rather than the story of a critical moment when a new nation was born," the significance of the founding is diminished. Madison himself recognized the Constitution as "a 'system without precedent.'" Why? Because it was "founded on popular rights." This distinguished "it from all previous confederations" and would seem to make "the Founding something more than a peace pact."⁷⁷

Whether we agree with McNamara's assessment or not, he raises an important point. Scholarship on the Constitution too often narrows the theoretical pedigree from which it was derived. The Unionist Paradigm scholarship, comprehensive and incisive as it is, frames the problem of union and national security in overwhelmingly modern terms. *The Federalist* certainly accommodates the problems of the modern nation-state, modern warfare, and international law but it addresses the issues of union, enterprise, and war from a broader perspective, extending its analysis, as was indicated earlier, to antiquity. It not only uses both ancient examples as well modern examples when discussing problems of union but suggests that the former may actually be a *better* guide to America's problems than the latter. In *Federalist* 18, for instance, Publius writes of the ancient Greek Achaean League whose members were all democratic and equally represented in a federal council: "It is much to be regretted that the monuments which remain of this curious political fabric are so imperfect. Could its interior structure and regular operation be ascertained, it is probable that more light would be thrown by it on the science of federal government, than by *any of the like experiments* with which

we are acquainted” (18:109, emphasis added). The problem of union—how to properly construct one that was both stable and democratic—was as much an ancient problem as it was a modern one. Indeed, the ancient examples may have been more instructive due to the dearth of modern ones available in 1787.⁷⁸

This is not to say that modern authorities such as Locke, Montesquieu, Grotius, or Vattel, were not utilized by *The Federalist* to guide the work in its defense of the institutional designs of the Constitution or in its considerations of matters affecting international law and national security. Locke and Montesquieu, for instance, are certainly the source for *The Federalist*’s separation of powers doctrine and other institutional remedies and even the idea of the extended sphere, which *Federalist* 9 attributes at least in part to Montesquieu. In addition, as the next chapter highlights, Locke would appear to be the primary source of both the substance and methodology of *The Federalist*’s natural rights constitutionalism anchored in fundamental principles. And *The Federalist* can be understood, like Montesquieu’s *Spirit of the Laws*, cited multiple times in the work, to have focused its primary attention not on the letter of the law so much as on its animating spirit, on those principles that moved specific types of political regimes.

THUCYDIDES AND *THE FEDERALIST*

But here I suggest *The Federalist* parts company with Montesquieu’s assessment, particularly regarding the nature of commercial republics and their relationship to human nature and the problem of war. As my third theme for this book contends, an alternative source we might look to for instruction on *The Federalist*’s constitutional theory is Thucydides’ history of the Peloponnesian War. As I indicated, *The Federalist* directs us to Thucydides not merely in its three explicit references to the Peloponnesian War but in the many other themes from Thucydides’ history that we find in *The Federalist*. The distinct sociology of commerce and politics of “movement,” especially as it informs Thucydides’ understanding of war, outlined in that history may provide us some additional guidance to *The Federalist*.

Unlike Montesquieu and Hume, for instance, who understood commercial republics to be more pacific in character, Thucydides understood commercial societies exactly as *Federalist* 6 did: that their spiritedness and audacity inclined them as much toward imperialism, domination, and war as it did toward liberty and peace. How to untangle that dynamism or the “movement” component of free, commercial cities like Periclean Athens from their unnecessarily warlike propensities and to marry that dynamism with the stability or “rest” of more ostensibly moderate cities, like Sparta, seemed to

be at the core of Thucydides' concerns regarding the cataclysmic failure of Greek political union. Why could the Greek city-states not combine more effectively than they did and this so soon after the Persian Wars when they seemed to coalesce so well?

Although there is no way to know with certainty what influence Thucydides' history might have had on the authors of *The Federalist* absent explicit testimony to this effect, the leading authority on the classics' influence on the founders, Carl Richard, has suggested that Hamilton, Madison, and Jay likely had an intimate familiarity with Thucydides' work. All three had an extensive knowledge of ancient Greek and its related canonical writings and had probably studied Thucydides at the very least as part of their formal education when they were young.⁷⁹ Moreover, *The Federalist* itself points us to Thucydides' work. *Federalist* 18, for instance, not only refers to the Amphictyonic Council and the Achaean League but to the Peloponnesian War by name. There Publius admonishes, following Abbé Milet, that "the Greeks" would have been wise, in the wake of "their success against the Persian arms," to form "a closer union. . . . Instead of this obvious policy, Athens and Sparta, inflated with the victories and the glory they had acquired, became first rivals and then enemies; and did each other infinitely more mischief than they had suffered from Xerxes. Their mutual jealousies, fears, hatreds, and injuries ended in the celebrated Peloponnesian war; which itself ended in the ruin and slavery of the Athenians who had begun it" (18:107). Ancient Athens is explicitly defined in *Federalist* 6 as a republic "of the commercial kind" (6:31). There Publius outlines the causes of war which, as Karl Walling has written, were "as old as old as Thucydides and . . . as recent as yesterday."⁸⁰ If the authors of *The Federalist* were familiar with the details of the Peloponnesian War, as the three explicit references to the conflict in *The Federalist* suggest, they were no doubt equally aware of Thucydides' depiction of the spirited and warlike nature of commercial Athens and the contrast this presented to the likes of Montesquieu and other modern defenders of the commercial life who had portrayed commercial republics as moderate and pacific in nature.

Chan has clarified that "Montesquieu's complete argument . . . was not that commercial nations are peaceful, but that commercial *republics* are: 'The spirit of monarchy is war and expansion; the spirit of republics is peace and moderation.'"⁸¹ Chan here directly quotes from Book 9 of *The Spirit of the Laws* on the relationship of laws to defensive force. Yet *Federalist* 6 seemed to want to explicitly refute Montesquieu's assertion here. That number highlights not merely that the ancient republics of Athens and Carthage were republics "of the commercial kind," but that they were "as often engaged in wars, offensive and defensive, as the neighboring *monarchies* of the same times" (6:31, emphasis added). It was not Athens becoming a monarchy, as Montesquieu had proposed only a few pages earlier in Book 8 of *The Spirit of*

the *Laws* that had caused it to become imperialist.⁸² It was rather the very fact that it was a *commercial republic*, governed presumably by that same restless, daring spirit of enterprise that Thucydides had so well recounted animated the spirit of the laws, offensive and defensive, in Periclean Athens.

It is this animated spirit that was at the center of attention in the early *Federalist*, just as it was in Thucydides' history. That history, as *Federalist* 18 indicates, may have offered a solution or at least some helpful guidance in *The Federalist's* view to America's constitutional woes. Having documented how war was a permanent feature of the human condition, a distinctly *political* phenomenon engaged not only on behalf of discrete political regimes but also inherent to man's political nature, Thucydides' history may have offered up a potential solution to the problems of political disunion and faction that *The Federalist* suggests both ancient Greece and modern America suffered from. Thucydides' commentary, his *Archaeology* (the first twenty-three chapters of his history), as well as numerous of the speeches in his text, revealed that the foundations of enduring liberty (*eleutherōs*) lay in a properly constructed political union, commercial development that was largely unfettered and that allowed for the flourishing of human faculties, and adequate provision for war, which commercial democracies such as Periclean Athens had the potential to provide better than any other extant regimes.⁸³ In canvassing the failures of political confederations such as the Amphictyonic Council, the Achaean League, and those contestants of the Peloponnesian War, *The Federalist* suggests that the Constitution may have finally cut the Gordian knot of what we might call the "Thucydidean trinity"—union, enterprise, and provision for war—by creating a coherent political order that successfully integrated all three of these critical elements in the new American union.

The Greek experiment with this trinity failed—as *Federalist* 18's discussion of the Amphictyonic Council, the Peloponnesian War, and the Achaean League, all make clear. America's novel constitutional experiment might succeed where the ancient Greeks did not. But that constitutional experiment assumed, as Thucydides' history did, that high civilization and the cultivation of human excellence required individual freedom, an advanced level of commercial development, and those increasingly expanding economic markets and relevant security necessary to the development of men's faculties.

Thucydides' characterization of Athenian society as restless and potentially martial also offers us an antidote to those modern critics who have contended that the commercial life or the life of enterprise undermines citizen character and martial virtue. Arguably the most famous critic of modern commercial life, Jean-Jacques Rousseau, had expressed disdain for how commerce, and the arts and sciences that flourished in commercial regimes, undermined virtue, specifically martial virtue. "Ancient Politics," Rousseau declared, "spoke ceaselessly about morality and virtue; ours speak only of commerce and

money.”⁸⁴ Moreover, while in commercial society “the conveniences of life multiply, the arts are perfected and luxury spreads, true courage is enervated, military virtues disappear, and this again is the work of the sciences and of all those arts that are exercised in the shade of the study.”⁸⁵ Rousseau was not the only one who expressed concern about how modern commercial life might undermine the military virtues. Adam Smith, in *The Wealth of Nations*, had similarly remarked that the division of labor, which limits workers to very few simple operations, might so dull the mind of “the labouring poor” who make up “the great body of the people” that they would be “incapable of defending [their] country in war.” The worker’s “dexterity at his own particular trade seems . . . to be acquired at the expense of his intellectual, social, and martial virtues.”⁸⁶ Like Rousseau and many eighteenth-century opponents of the Constitution, Smith believed that simpler, preindustrial societies of hunters, shepherds, and husbandmen were more suited to martial pursuits.⁸⁷

Both Thucydides and *The Federalist* disagreed. As the Corinthians in Book One of Thucydides’ history make very clear to the Spartans, Athens was much better at warfare than Sparta because it was much more daring, dynamic, and innovative. The Athenians, the Corinthians proclaimed, devote their bodies “ungrudgingly” to “their country’s cause; their intellect they jealously husband to be employed in her service. . . . To describe their character in a word, one might truly say that they were born into the world to take no rest themselves and to give none to others.”⁸⁸ In their failure to take the Piraeus after the Athenians’ loss of Euboea in 411 BC, Thucydides’ in his own voice denigrates the Spartans for their “slowness and want of energy,” as contrasted with the “dash and enterprise” of the Athenians: “here, as on so many other occasions, the Spartans proved to be the most convenient people in the world for the Athenians to be at war with.”⁸⁹

Thucydides’ candid conclusion here about the enterprise and martial superiority of the Athenians and the doltishness of the Spartans provides a contrast in ancient political thought to many modern critics of commercial republics. As I elaborate in chapter 5, Thucydides expressed a preference for the free, commercial life of Athens, despite the Athenians’ propensity to imperial overreach, to Sparta’s more austere militarism.⁹⁰ Thucydides’ history was not simply part of a monolithic “classical political science” that, like Plato’s and Xenophon’s philosophy later, preferred “agrarian” Sparta to “commercial” Athens. Rather it had a distinctly modern tenor, one not inconsistent with the teaching of *The Federalist*. As Thucydides mocked the faux martial virtue of the Spartans, so too *Federalist* 6 mocked those utopian understandings of virtue that underlay classical republicanism—“Sparta was little better than a well-regulated camp” *Federalist* 6 demurred (6:31).⁹¹ The high level of political understanding as well as the austere and militant virtue demanded by most classical political science and many republican theorists of the founding era

(and today) was exceedingly utopian. Such high understanding and virtue never existed and never will exist.

A NEW UNDERSTANDING OF AMERICAN CONSTITUTIONALISM

But this was not tantamount to saying that Americans could not aspire to some form of political wisdom and virtuous conduct. Republican government, as *Federalist* 55 proclaimed, presupposes those “qualities in human nature which justify a certain portion of esteem and confidence” in “a higher degree than *any other form*”; it requires at least “sufficient virtue among men for self-government” (55:359, emphasis added). The virtue I contend *The Federalist* has in mind is that provided by the self-governing discipline of enterprise: industry, innovation, economy, self-restraint, honesty, prudence, temperance, firmness, vigilance, and perhaps above all a spiritedness tempered by principles respectful of limited government constitutionalism, liberty, and republicanism. As Victor Davis Hanson and Carl Richard have suggested those, including the founders, familiar with classical writers such as Herodotus, Thucydides, and Plutarch knew that the ancient Greeks, like all free citizens, were generally better warriors than non-free citizens or citizens from nondemocratic regimes precisely because they fought for themselves, their families, and their property rather than for kings, aristocrats, or priests. Free and enterprising citizens were also more innovative in warfare,⁹² something Thucydides alludes to throughout his history. What I contend in this book is that far from enervating the martial qualities of soul, as so many critics of commercial republicanism have proposed, *The Federalist* suggests that although the commercial republic the Constitution will beget might lessen the ferocity of men, the free, commercial life it promotes, with its cultivation of the arts and sciences, including the new military sciences, will invigorate men’s minds and bodies and incline them even more to defend the principled liberty the Constitution represents with a rejuvenated honor and patriotism.

While certainly not suggesting the absurdity that the character of Americans under the Constitution would resemble a “Christian Sparta”⁹³ or the ancient Sparta Rousseau waxed so idolatrous for,⁹⁴ Publius suggests that Americans under the new constitutional order would be capable of a more moderate, more effective, and professional military virtue anchored in political principle. This would be a key to shaping American character under the Constitution. Cervantes’ satirical *Don Quixote* had anticipated, better than any other work in the genre, the eclipse of traditional understandings of martial valor and honor. The American civil-military relations expert, Samuel Huntington, in *The Soldier and the State* (1957), similarly pointed out just

how quaint older understandings of war and its conduct were before the rise of the modern military profession, with its accompanying military science, in the late eighteenth-century West.⁹⁵ Publius was fully cognizant of this transformation and defended the Constitution in terms consistent with it. But he went further to suggest that America's peculiar brand of martial excellence, in 1787 only potential, might over time present something unique to this modern military transformation through proper statesmanship and a renewed confidence in government and public spiritedness under the Constitution. America's martial virtue would be tied to American patriotism and American enterprise, which themselves were linked to the principles of the Declaration of Independence. As I propose in the conclusion, this would define the American way of war over time and especially in the modern era. Such an approach to war however implied—contrary to what even Chan above suggests—that the so-called “*narrower* ends of prosperity and national defense” were in fact tied to “the *wider*—indeed *classical*—ends of forming the character of citizens, establishing harmony and justice, and pursuing national greatness.”

Federalist 11 proclaimed that “the adventurous spirit, which distinguishes the commercial character of America, has already excited uneasy sensations in several of the maritime powers of Europe” (11:62). The reason was because Americans’ were pursuing the civilizational dynamism the Europeans had begun with an even greater fervor and prospect, all of which would mean not only more wealth and liberty but greater military wherewithal over time as well. This mortified the Europeans then as it still does today.⁹⁶ This book is about that dynamism. Looking at *The Federalist*’s overall design, it attempts to link the work’s early discussion of America’s enterprising spirit to the military instrument discussed later in the book. It also attempts to connect *The Federalist* not only to Locke, Montesquieu, and Hume in ways that previous scholarship has not but to Thucydides’ seminal history as well, which no academic commentary to date has attempted.

Hanson asserted that the superiority of the Western or scientific way of war did not originate with the technological revolution of the modern era, as many scholars have suggested. Rather it formed a continuum going back to Greek antiquity, which shared with America an interest in liberty and the organization of politics and war through reason and science.⁹⁷ The modern liberalism of Locke, Montesquieu, and others and the conventions of modern international law certainly offer insights into the constitutional theory of *The Federalist*, as the chapters below will demonstrate. But if the thinking members of political science are correct and we have to understand Hobbes to understand Locke and Montesquieu, it is worth remembering that Hobbes himself had Thucydides (whom he translated) as his guide.⁹⁸

It is also important to note that the Constitution was not just the product of an economic, social, or political determinism or merely a response to a

series of historical necessities, as much of the Unionist Paradigm literature suggests. It was also a response to necessities of a moral variety, as we will see in the next chapter. Too often contemporary students of international relations and war view national power as a function of tangible instruments of state. *The Federalist* was as concerned with the intangible instruments of state—America’s public spirit and moral character—as much as with these other elements of American constitutionalism.⁹⁹ These were as necessary to sustaining America over time as any concrete institutions of government. They were also necessary to vindicating the commercial republic that *The Federalist* defended as a republic of high-toned politics under the auspices of the Constitution. The next chapter begins with an assessment of *The Federalist*’s discussion of the problem of necessity in both its political and moral dimensions.

NOTES

1. It is not hard to find superlatives for *The Federalist*. Thomas Jefferson famously described it as “the best commentary on the principles of government, which ever was written.” Andrew A. Lipscomb, ed. *The Writings of Thomas Jefferson*, Vol. 7 (Washington, DC: Thomas Jefferson Memorial Association, 1903), 183. In his introduction to the papers, Clinton Rossiter writes:

The Federalist is the most important work in political science that has ever been written, or is likely ever to be written, in the United States. It is, indeed, the one product of the American mind that is rightly counted among the classics of political theory.

... It would not be stretching the truth more than a few inches to say that *The Federalist* stands third only to the Declaration of Independence and the Constitution itself among all the sacred writings of American political history. It has a quality of legitimacy, of authority and authenticity, that gives it the high status of a public document, one to which, as Thomas Jefferson put it, “appeal is habitually made by all, and rarely declined or denied by any” as to the “genuine meaning” of the Constitution. (Clinton Rossiter, “Introduction,” in *The Federalist Papers*, eds. Alexander Hamilton, James Madison, and John Jay. [New York: New American Library, 1961], vii)

Gottfried Dietze has similarly written that *The Federalist* has “demonstrated a continuous validity that is matched only by the Declaration of Independence and the Constitution.” Gottfried Dietze, *The Federalist: A Classic on Federalism and Free Government* (Baltimore: Johns Hopkins University Press, 1960), 7. For a survey of just how influential *The Federalist* has been both nationally and internationally, see Dietze’s extensive catalogue of this, *ibid.*, 3–29. Jack Rakove has similarly said of *The Federalist*: “Nothing equals it in analytical breadth and conceptual power.” Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Vintage Books, 1997), xv. Even the Antifederalist Brutus referred to the pseudonymous author of *The Federalist*, Publius, as “the boast of the advocates of this

new constitution.” Brutus XI, in *The Anti-Federalist: Writings by the Opponents of the Constitution*, ed. Herbert J. Storing, selected by Murray Dry (Chicago: The University of Chicago Press, 1985), 156. A more skeptical interpretation is to be found in Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), 32:

It seems that the majority of Federalist statements do not have anything important to tell us either about the meaning of the Constitution or about the polity the Federalist [*sic*] wished to create. This, of course, is the reason why historians and political scientists tend to rely so heavily on *The Federalist* for information on the political ideas held by those who backed the Constitution. Of all the statements in support of the Constitution, only the collective effort of Hamilton, Jay, and Madison seems to contain anything worth close study.

2. The text of *The Federalist* used in this book is Alexander Hamilton, John Jay, and James Madison, *The Federalist: A Commentary on the Constitution of the United States*, ed. and intro. Robert Scigliano (New York: Modern Library, 2001). All subsequent references to *The Federalist* are to this edition. Citations from *The Federalist* are provided in brackets within the text of the book. For example, (43:279) refers to *Federalist* 43 at page 279.

3. I provide a more detailed explanation for why *The Federalist* remains unstudied and misunderstood later in this introduction as well as in chapter 4.

4. Harvey Mansfield contrasts the “old rights” of classical liberalism and *The Federalist* with the “new,” self-expressive rights of the New Deal and the 1960s. He says this of the latter: “As theory the new rights were born in Friedrich Nietzsche’s doctrine of the creative self. How that doctrine came from Nietzsche’s books of the late 1880s to American politics in the 1960s is a story that has not yet been fully told. One essential in the course of events is the historicism taken from German philosophy that was decisive in American pragmatism, for the pragmatists influenced the progressives and the progressives were predecessors of the New Deal.” Harvey C. Mansfield, Jr., “Responsibility Versus Self-Expression,” in *Old Rights and New*, ed. Robert A. Licht (Washington, DC: AEI Press, 1993), 103. See, also, note 21 below.

5. Leo Strauss, *Natural Right and History* (Chicago: The University of Chicago Press, 1953), 1–8 and 35–80. See also Harry V. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, MD: Rowman & Littlefield, 2000), esp. ch. 2, “The Declaration of Independence, the Gettysburg Address, and the Historians,” 73–152.

6. Dennis J. Mahoney, *Politics and Progress: The Emergence of American Political Science* (Lanham, MD: Lexington Books, 2004), 75.

7. Quoted in Henry R. Nau, *Conservative Internationalism: Armed Diplomacy Under Jefferson, Polk, Truman, and Reagan* (Princeton, NJ: Princeton University Press, 2015), 250n28.

8. Edling, as I note later, maintains that the focus on the institutional makeup or structure of the new constitutional order in *Federalist* scholarship is the result of an undue emphasis on Madison’s writings rather than Hamilton’s. Edling, *A Revolution in Favor of Government*, 5. See also, n57 below. Isaac Kramnick has made much the same argument about scholarship on *The Federalist*. See Isaac Kramnick, “The ‘Great National Discussion’: The Discourse of Politics in 1787,” *The William and Mary*

Quarterly 45, no. 1 (1988): 3–32, esp. 23. See also, Edling, *A Revolution in Favor of Government*, 10–11.

9. The text of Thucydides' history used in this book is *The Landmark Thucydides: A Comprehensive Guide to The Peloponnesian War*, ed. Robert B. Strassler, intro. Victor Davis Hanson, trans. Richard Crawley (New York: Touchstone, 1996), hereinafter *The Peloponnesian War*. References to Thucydides that appear below are to the book, chapter, and, where appropriate, section within that chapter from the Strassler edition. For instance (1.75.4) refers to Book I, Chapter 75, Section 4 of *The Peloponnesian War*. Thucydides' history did not cover the entire war, 431–404 BC. It ends abruptly in 411 BC. I explain the substance of this third theme in detail in chapter 5. Obviously, Thucydides was not describing modern commercial republics in his account of the Greek city-states that occupy his history. However, the features, particularly of democratic Athens during the time of Pericles, bear many similarities to the characterization of the American commercial republics we find in *The Federalist* for reasons I explain later in this book. Also, *The Federalist* itself refers to ancient Athens as a republic "of the commercial kind" (6:31).

10. I should qualify that although most scholarship on *The Federalist* has tended to focus on its teachings regarding the institutions of government, recent work has started to pay more attention to the noninstitutional and even classical aspects of *The Federalist's* political theory as well as that of its principal authors, Alexander Hamilton and James Madison. See, for instance, Michael P. Federici, *The Political Philosophy of Alexander Hamilton* (Baltimore: Johns Hopkins University Press, 2012). As Federici observes regarding Hamilton, most commentators

do not acknowledge the degree to which his constitutional theory depends on quality of character, and some place him squarely outside the Classical and Christian traditions that center politics on virtue and moral character. . . . Some historians, among them Bernard Bailyn and Gordon Wood, tend to overstate Hamilton's and the American Framers' emphasis on lower human motives and the necessity of political institutions in their establishment of constitutional government and understate their reliance on virtue and moral character; they likewise overestimate the influence of liberalism on the formation of the American Constitution and underestimate the importance of Classical and especially Christian influences. (At 89–90)

See also, Michael D. Chan, *Aristotle and Hamilton On Commerce and Statesmanship* (Columbia: University of Missouri Press, 2006). I discuss this book later in this chapter. For recent scholarship on James Madison emphasizing the noninstitutional features of his teaching, see Colleen A. Sheehan, *James Madison and the Spirit of Republican Self-Government* (New York: Cambridge University Press, 2009); and Colleen A. Sheehan, *The Mind of James Madison: The Legacy of Classical Republicanism* (New York: Cambridge University Press, 2015).

11. As David Epstein notes, "*Federalist* 10's formulation, 'the public good and private rights,' appears to be a comprehensive statement of the political prosperity which good government should secure. The 'public good and private rights' are the central concerns of, respectively, republican and liberal political thought." David F. Epstein, *The Political Theory of The Federalist* (Chicago: The University of Chicago Press, 1984), 9.

12. On the distinction between those permanent features of war that are a function of human nature and what military theorists refer to as a “revolution in military affairs” or transformations in war, see Frederick W. Kagan, *Finding the Target: The Transformation of American Military Policy* (New York: Encounter Books, 2006), x–xix.

13. Random House, *Webster’s Concise Dictionary*, 2nd ed. (New York: Random House, 1998), 218.

14. “To the extent that the Constitution secures more than the diverse faculties that give rise to property,” Charles Kesler has written, “insofar as it secures the people’s ‘safety and happiness,’ it exists for the sake of more than a merely commercial nation.” Charles R. Kesler, “*Federalist 10 and American Republicanism*,” in *Saving the Revolution: The Federalist Papers and The American Founding*, ed. Charles R. Kesler (New York: The Free Press, 1987), 30. That is certainly the case in a strict sense. However, the notion of commercial republic, as I develop it in this book, has a more capacious meaning than this in *The Federalist*.

15. On the influence of Beard see, for instance, Douglass Adair, *Fame and the Founding Fathers*, ed. Trevor Colbourn (Indianapolis: Liberty Fund, 1974), 107–108 and 117; Kesler, “*Federalist 10 and American Republicanism*,” 16; and Martin Diamond, *As Far as Republican Principles Will Admit*, ed. William A. Schambra (Washington, DC: AEI Press, 1992), 70–71. For a lengthy critique of Beard’s economic interpretation of the Constitution, see Forrest McDonald, *We the People: The Economic Origins of the Constitution* (New Brunswick, NJ: Transaction Publishers, 1991).

16. Charles A. Beard, *An Economic Interpretation of the Constitution of the United States*, intro. Forrest McDonald (New York: The Free Press, 1986), 153. Beard’s book was originally published in 1913 and then again in 1935 by Macmillan Publishing Co., Inc.

17. *Ibid.*, 10.

18. *Ibid.*, 15. See also, *ibid.*, 17, 156.

19. *Ibid.*, 171–172.

20. See Herman Belz, “Selling the Framers Short,” *Claremont Review of Books* XIII, no. 4 (Fall 2013): 32. As Belz notes, “The ‘Beard Thesis’ argues that the Constitution, which contains no property qualifications, recognition of economic groups, or special privileges conferred on any class, is nevertheless a document grounded in the overpowering sway of economic interests.” *Ibid.*

21. Douglass Adair, *Fame and the Founding Fathers*, ed. Trevor Colbourn (Indianapolis: Liberty Fund, 1974), 107–108. See also, 117, 120–121, and 124–125; and Kesler, “*Federalist 10 and American Republicanism*,” 27. Beard’s treatise was of a piece with other Progressive era scholarship such as that of Frank J. Goodnow, Woodrow Wilson, J. Allen Smith, Vernon Parrington, Henry Jones Ford, Herbert D. Croly, Westel H. Willoughby, Raymond G. Gettell, and others. What these scholars shared was a preference for, if not explicit adoption of, German historicism, a school of political thinking that tied moral and political truth to history, thus making it relative, while giving history a direction or specific meaning. The idea that history progressed or evolved over time was key to theories of history such as Karl Marx’s

historical materialism, which Beard's theory closely shadowed, as well as the evolutionary concept of social and political development advanced by Charles Darwin and his disciples ("social Darwinism").

With the adoption by the Progressives of historicism as their theoretical framework the stage was set for what was arguably the most significant conflict in American political thought over the next century, that between proponents of an organic or "living" Constitution, where the Constitution was portrayed as requiring adaptation to changing social and political circumstances, and that of the natural right constitutionalists, who presumed a fixed constitutional order and standards beyond mere convention or history by which knowledge regarding political things could be distinguished from mere opinions regarding such things. The conflict between Progressive historicists and the natural right constitutionalists would form the subject matter of seminal works by Leo Strauss, Allan Bloom, Harry Jaffa, and others. See, for instance, Leo Strauss, *Natural Right and History*; Allan Bloom, *The Closing of the American Mind* (New York: Touchstone, 1987); Harry V. Jaffa, *Crisis of the House Divided: An Interpretation of the Issues in the Lincoln-Douglas Debates* (Chicago: The University of Chicago Press, 1959); and Harry V. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, MD: Rowman & Littlefield, 2000), esp. 73–152. The classic account of the conflict between the founders' Constitution and Darwinism, as well as the idea of the Constitution as a living organism, is to be found in Woodrow Wilson, *Constitutional Government of the United States* (New York: Columbia University Press, 1908), 54–81. See also, Dennis J. Mahoney, *Politics and Progress*, 19–32, 61–87, 90, and 146–150; Ronald J. Pestritto, *Woodrow Wilson and the Roots of Modern Liberalism* (Lanham, MD: Rowman & Littlefield, 2005); and Anthony A. Peacock, *Deconstructing the Republic: Voting Rights, the Supreme Court, and the Founders' Republicanism Reconsidered* (Washington, DC: AEI Press, 2008), 26–35.

22. Diamond, *As Far as Republican Principles Will Admit*, 22–23.

23. *Ibid.*, 54, emphasis in original. See also, *ibid.*, 31.

24. *Ibid.*, 32. See also, Kesler, "Federalist 10 and American Republicanism," 17.

25. As W. B. Allen notes, *Federalist* 35 seems to corroborate Diamond's thesis about *Federalist* 10 by suggesting that "merchants," "landholders," and those of "the learned professions," who "truly form no distinct interest in society," will be the dominant forms of representation in Congress. (35:210–211) "[T]he struggle between commerce and agriculture will essentially replace (or mute) that between the haves and have-nots." In addition, "the effects of that struggle—an interested struggle—will be mitigated by [the] non-interested intervention" of the representatives from the learned professions. W. B. Allen with Kevin A. Cloonan, *The Federalist Papers: A Commentary* (New York: Peter Lang, 2000), 174.

26. Diamond, *As Far as Republican Principles Will Admit*, 55, 57, respectively.

27. *Ibid.*, 351–352.

28. *Ibid.*, 343–345, 353.

29. *Ibid.*, 355.

30. Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, Brace & World, 1955).

31. See, for instance, Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (New York: W. W. Norton & Company, 1972); Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Alfred A. Knopf, 1992); Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789–1815* (New York: Oxford University Press, 2009); Bernard Bailyn, *The Ideological Origins of the American Revolution*, expanded ed. (Cambridge, MA: Belknap Press, 1992); J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975); and Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill: The University of North Carolina Press, 1980).

32. As Wood writes in *The Creation of the American Republic*, 53: “The sacrifice of individual interests to the greater good of the whole formed the essence of republicanism and comprehended for Americans the idealistic goal of their Revolution. From this goal flowed all of the Americans’ exhortatory literature and all that made their ideology truly revolutionary.” See also, McCoy, *The Elusive Republic*, 69–70:

The classical republican heritage embraced by the Revolutionaries stressed the close relationship between public virtue—the austere and unselfish devotion to the common good that was on the lips of every patriot in 1776—and private virtue, which was exemplified by the character traits of frugality, temperance, and rigorous self-control. . . . In the flush years of 1775 and 1776, when thousands were swept up in the spirit of a “rage militaire,” many of the Revolutionaries were inspired to hope that the American people might indeed conform to the classical notion of virtue and thus become the special kind of simple, austere, egalitarian, civic-minded people that intellectuals had dreamed about for centuries. To these enthusiasts, the ancient republic of Sparta was an appropriate model for a new America, a rude but virtuous society of independent citizen-warriors who demonstrated an unselfish devotion to the collective good because they were shielded from the corrupting intrusion of commerce and luxury. This vision of America, in Samuel Adams’s revealing words, as a “Christian Sparta,” permeated the apocalyptic rhetoric that gave public expression to the spirit of the Revolution.

33. Colleen A. Sheehan, *James Madison and the Spirit of Republican Self-Government* (New York: Cambridge University Press, 2009), 4.

34. W. B. Allen also notes that the historical scholarship of Bailyn, Wood, and Michael Kammen “focuses almost exclusively on something called Whig theory.” The history on which that theory was based “found the origins of English liberty far in the past, before the emergence of a monarchical order and before the emergence of the feudal order.” But Allen contends: “When we look at Publius’s analogy of feudal history to confederacies, the one thing that becomes most evident is his rejection of Whig History. He instead follows the line of the British philosopher-historian, David Hume. Publius uses what we might call Tory history rather than Whig history. . . . For Publius, liberty emerges as a limitation on the power and prerogative of the monarch. The monarch comes first, the liberty comes second. That’s Hume’s version of [English] history. Liberty is nothing more than concessions extorted from the monarch by powerful barons. The monarch was not created by the exercise of liberty that the people already enjoyed. For Publius, English liberty was recent rather than ancient.”

Allen, *The Federalist Papers*, 136–137. As Allen makes clear, to the extent those in the republican thesis school embrace Whig theory and Whig history this is not the theory and history on which *The Federalist* is based.

35. Thomas Pangle has described the classical republican school as “captivated by a romantic longing to discover, somewhere in the past, the roots of a prebourgeois and non-Lockean American ‘soul.’” According to this school, “eighteenth-century American thought is seen as epitomizing a ‘classical’ or ‘civic’ humanism taken over from the ‘Country’ opposition in England and traceable, in a pretty straight line, back through *Cato’s Letters*, Bolingbroke, Sidney, and Harrington to Machiavelli and thence—hold on to your hats—to Savonarola, Aristotle, and the Spartan as well as the Roman and Venetian ideals of citizenship.” Referring specifically to Wood’s *Creation of the American Republic* and Pocock’s *Machiavellian Moment*, Pangle observes:

In attempting to assess the merits of this contemporary infatuation with “classical republicanism,” one cannot avoid being struck by the ignorance its proponents display as regards the original texts of the “classical republican” philosophers to which they constantly refer. The contemporary scholars of early American history appear to know these texts only casually, or on the basis of secondhand reports. . . . Contemporary scholars read the classic and early modern texts of political philosophy in a spirit which is not only alien, but also inferior in seriousness, to the spirit of the eighteenth-century readers.

Above all, the scholars of our days tend to misunderstand the thought, and hence the nature of the influence, of Machiavelli. And this error is decisive. . . . [Machiavelli’s] new republicanism, this new interpretation of the experience of the classical cities, was not at all as opposed to the spirit of Locke’s teaching, or to the “capitalist” spirit, as has been recently claimed. On the contrary, Machiavelli’s conception of “virtue” and Locke’s conception of the moral legitimacy of unlimited acquisition are bound together by strong ties of kinship. (Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* [Chicago: The University of Chicago Press, 1988], 28–31, emphasis in original)

Pangle is also critical of McCoy’s *Elusive Republic*: “this book, which in later sections is often excellent, opens with a thirty-four page account of eighteenth-century social thought which does not refer to Locke or the idea of natural rights.” *Ibid.*, 285n3. For a further critique of Wood’s *Creation of the American Republic* and its failure to account for the natural rights liberalism of the founders, see Gary J. Schmitt and Robert H. Webking, “Revolutionaries, Antifederalists, and Federalists: Comments on Gordon Wood’s Understanding of The American Founding,” *The Political Science Reviewer* 9: 195–229 (1979). On how Machiavelli paved the way for the republicanizing of executive power under the Constitution, see Harvey C. Mansfield, Jr., *Taming the Prince: The Ambivalence of Modern Executive Power* (Baltimore: Johns Hopkins University Press, 1993), esp. 247–278.

36. Nathan Tarcov, “A ‘Non-Lockean’ Locke and the Character of Liberalism” in *Liberalism Reconsidered*, ed. Douglas MacLean and Claudia Mills (Totowa, NJ: Rowman and Allanheld, 1983), 130. Tarcov notes that “Locke teaches not a narrowly calculating selfishness but a set of decent moral virtues. Nor is his fundamental concern with property the justification of money-grubbing,” 131. Tarcov adds: “Locke’s liberalism departs from the atomistic model . . . in the important roles he gives to families and churches. . . . The education he recommends in *Some Thoughts*

Concerning Education is emphatically a domestic education performed by and within the family,” 135–136. Tarcov develops this theme at greater length in Nathan Tarcov, *Locke's Education for Liberty* (Chicago: The University of Chicago Press, 1984). Tarcov concludes “A ‘Non-Lockean’ Locke,” 138:

Both contemporary political dissatisfaction with liberalism and the historical search for non-Lockean elements in the American tradition rest in part on the dominant interpretations of the moral vision of Lockean liberalism, which attribute to Locke a mean-spirited selfish materialism. Finding nothing decent or inspiring in the interpretations of Locke, students of our political culture have gone off seeking after “non-Lockean” elements in our heritage. We may begin instead with the “non-Lockean” elements in Locke.

Michael Zuckert has similarly observed:

The natural rights philosophy has been remarkably able to assimilate and reshape premodern elements into a more or less coherent whole. So far as the American political tradition has been unique, it is just in this amalgamation—an amalgamation in which the natural rights commitment has remained senior partner but has brought into its political orbit English Whig historical commitments, Protestant political theology, and premodern political republicanism. It is tempting to say America has had such a remarkable political history precisely because it has developed a political culture that integrates so well politics, religion, history, and philosophy. (Michael P. Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* [Notre Dame, IN: University of Notre Dame Press, 1996], 240–241)

See also James T. Kloppenberg, “The Virtues of Liberalism: Christianity, Republicanism, and Ethics in Early American Political Discourse,” 74, *J. Am. Hist.* 9 (1987); and Alan Gibson, *Interpreting the Founding: Guide to the Enduring Debates Over the Origins and Foundations of the American Republic*, 2nd ed. (Lawrence: University Press of Kansas, 2009), 55–57, 126–128.

37. See Kramnick, “The ‘Great National Discussion’”; Rogers M. Smith, “Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America,” *The American Political Science Review* 87, no. 3 (1993): 549–566. See also, Carl J. Richard, *The Founders and the Classics: Greece, Rome, and the American Enlightenment* (Cambridge, MA: Harvard University Press, 1994), 5:

The strict dichotomy between classical republicanism and liberalism which has dominated Revolutionary and early republican historiography for the past generation undervalues the complexity of the relationship between the two intellectual constructs, underestimates the human propensity for inconsistency, and ignores the contribution of Christianity to the founders’ thought. Although classical republicanism and liberalism are two distinct constructs, the former ideology provided the latter’s intellectual foundation. The Stoic theory of natural law and the optimistic view of human nature from which it derived gave birth to the modern doctrines of natural rights and social progress which undergird liberalism.

Edling, in *A Revolution in Favor of Government*, remarks:

Today, the historiographical controversy over the character of the revolutionary era’s rhetorical universe has ended in an agreement that neither the notion of a sharp distinction between a liberal and classical republican tradition, nor the idea that the former replaced

the hegemony of the latter in a clear-cut shift in political thought, have stood up in the light of conflicting evidence. (At 38)

38. Thomas G. West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom* (New York: Cambridge University Press, 2017), esp. 1–5, 19–58, 77–111, and 393–410. As West emphasizes, prior to the Revolution,

Educated Americans in every colony, including the clergy, adopted the natural rights theory in their own thinking and writing.

In the 1760s, Americans applied these ideas with increasing boldness to the colonial political order. The British constitution was interpreted everywhere as informed by the political theory of natural rights. As the Massachusetts Assembly put it in 1765, the people “have a just value for those inestimable rights, which are derived to all men from nature, and are happily interwoven in the British constitution. When it became clear that the British government totally rejected that interpretation—that is, when Parliament insisted on a right to absolute rule over the colonists “in all cases whatsoever” and began to act on that claim—the Americans declared independence with the natural rights theory as their justification. (Ibid., 22–23)

39. Epstein, *The Political Theory of The Federalist*, 6. See also, *ibid.*, 108, 110, and 119.

40. See Charles R. Kesler, “*Federalist* 10 and American Republicanism,” and Kesler, “Introduction,” in *Saving the Revolution*, ed. Charles R. Kesler, 1; and Allen, *The Federalist Papers*.

41. Sheehan, *James Madison and the Spirit of Republican Self-Government*, 13.

42. *Federalist* 33 makes much the same point: “If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify” (33:198).

43. Hiram Catton, *The Politics of Progress: The Origins and Development of the Commercial Republic, 1600–1835* (Gainesville: University of Florida Press, 1988), 471–472.

44. Sanford Levinson maintains that Publius resolutely rejected “any genuine role for unmediated rule by ‘We the People.’ The Constitution might proclaim popular sovereignty as its basis, but it should be absolutely clear that the sovereign people, having spoken once through elected conventions and not, for example, through direct referenda, should in effect slip into a coma.” For Publius “the ‘true distinction’ of the proposed constitutional order lies [quoting *Federalist* 63] ‘IN THE TOTAL EXCLUSION OF THE PEOPLE IN THEIR COLLECTIVE CAPACITY from any share’ in actual policy making, except insofar as representatives are attentive to public opinion.” Sanford Levinson, *An Argument Open to All: Reading The Federalist in the Twenty-First Century* (New Haven, CT: Yale University Press, 2015), 240.

45. See F. A. Hayek, *The Constitution of Liberty*, in *The Collected Works of F.A. Hayek*, Vol. 17, ed. Ronald Hamowy (Chicago: The University of Chicago Press, 2011), 85.

46. Thomas Sowell, *Basic Economics: A Common Sense Guide to the Economy, Fifth Edition* (New York: Basic Books, 2015), 601. See also, Robert Curry, *Common Sense Nation: Unlocking the Forgotten Power of the American Idea* (New York: Encounter, 2015), 113–114.

47. See, for instance, Alan Levine, “The Idea of Commerce in Enlightenment Political Thought,” in *Rediscovering Political Economy*, eds. Joseph Postell and Bradley C. S. Watson (Lanham, MD: Lexington Books, 2011), 55–56:

No major ancient or medieval philosopher celebrated commerce as a choice worthy or laudable of [*sic*] human endeavor. Ancient philosophers were either hostile toward commerce or accepted it merely as necessary. For example, in Plato’s *Republic* tradesmen and traders are relegated to the lowest of the city’s three classes. According to Plato’s Socrates, craftsmen who make and traders who move products do so for wealth and money in order to attain pleasure. Anyone who lives merely or even primarily for riches and pleasure, he avers, has a soul dominated by desires.

Similarly, in Aristotle’s *Politics*, economics and commerce are viewed as activities for supplying necessities and luxuries for the body but not the most important things. Economics is for life—mere material life—not the good life. The good life, according to Aristotle, is found in the higher activities of soul, politics and philosophy, which he deems higher because only by participating in these activities does one reach the highest human potential of reflection on the good and the just.

Christianity similarly aims to turn people away from the material concerns of this life and toward a spiritual concern for the next.

See also, Jerry Z. Muller, *The Mind and the Market: Capitalism in Western Thought* (New York: Anchor Books, 2003), 4–5:

The moral disparagement of commerce reached back to the classical roots of western thought. In the city-states of ancient Greece, virtue meant devotion to the well-being of the city and above all to its military defense, in a society in which preparation for war or actual combat was a near constant of political life. “The more men value money-making, the less they value virtue,” Socrates tells his interlocutor in Plato’s *Republic*. Aristotle articulated a widespread Greek conception of freedom, according to which the well-governed city was one in which participation was shared among free men, who were each the head of an economically self-sufficient household. . . . For Aristotle it is desirable to be rich, but morally hazardous to engage in the active pursuit of riches through trade. Thus, those who engaged in trade for their livelihood were to play no political role in the best possible regime, one which was ruled by its best citizens and rewarded virtue.

48. Michael D. Chan, *Aristotle and Hamilton: On Commerce and Statesmanship* (Columbia: University of Missouri Press, 2006), 8. See also, *ibid.*, 7–8 and 43–54.

49. Of course the “public good” is also a central part of modern liberal philosophy, including that of John Locke. It is not the preserve of classical philosophy alone. See Tarcov, “A ‘Non-Lockean’ Locke,” 134–135.

50. The economic power and spiritedness of the Northern Hive, vis-à-vis the South, would of course be a persistent feature of American politics through to the Civil War. In his assessment of the political economy of that war, Paul Koistinen concludes: “The economic strength of the North was key to subduing the South by any measure. Comparative statistics show that the Union was far ahead of the Confederacy

in every category of economic power. Effective mobilization and the will to win, maintained by resourceful political leadership at the local, state, and federal levels, allowed the North to use its economic superiority to grind down and ultimately defeat the South.” Paul A. C. Koistinen, *Beating Plowshares into Swords: The Political Economy of Warfare, 1606–1865* (Lawrence: University of Kansas Press, 1996), 194.

51. *Federalist* 42 again says much the same thing: In the absence of the federal power to regulate commerce among the states under the Constitution “future contrivances” by states will “nourish unceasing animosities” between the traders and consumers of different states that would “not improbably terminate in serious interruptions to the public tranquility” (42:270).

52. See, for example, Karl-Friedrich Walling, *Republican Empire: Alexander Hamilton on War and Free Government* (Lawrence: University Press of Kansas, 1999), and Edling, *A Revolution in Favor of Government*.

53. Azar Gat, *Victorious and Vulnerable: Why Democracy Won in the 20th Century and How It Is Still Imperiled* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2010), 45.

54. See Walling, *Republican Empire*, 180, and Muller, *The Mind and the Market*, 52.

55. See Chan, *Aristotle and Hamilton*, 152–153; Walling, *Republican Empire*, 193; and Allen, *The Federalist*, 73.

56. This is the term David Hendrickson proposes to add to the “liberal” and “republican paradigm” scholarship that he maintains has dominated “[t]he historiography of early American political thought.” Hendrickson proposes that “the unionist paradigm . . . seems to me to better characterize the architecture of American political thought during the founding period.” David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence: University Press of Kansas, 2003), 266. See also, *ibid.*, xii and 14–23; and Peter McNamara, “The Unionist Paradigm,” Review of *Peace Pact: The Lost World of the American Founding*, by David C. Hendrickson, *Review of Politics* 66, no. 2 (Spring 2004): 313.

57. Walter Russell Mead, “A New Look at U.S. Foreign Policy,” Review of *Union, Nation, or Empire: The American Debate over International Relations, 1789–1941*, by David C. Hendrickson, and *Arsenal of Democracy: The Politics of National Security—From World War II to the War on Terrorism*, by Julian E. Zelizer. *Claremont Review of Books* X, no. 1 (Winter 2009/10): 36.

58. See, for instance, Patrick J. Garrity, “Foreign Policy and *The Federalist*,” in *Saving the Revolution: The Federalist Papers and The American Founding*, ed. Charles R. Kesler (New York: The Free Press, 1987), 83; Walter A. McDougall, *Promised Land, Crusader State: The American Encounter with the World Since 1776* (New York: Houghton Mifflin, 1997); Robert Kagan, *Dangerous Nation: America’s Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century* (New York: Vintage Books, 2007); Walter Russell Mead, *Special Providence: American Foreign Policy and How It Changed the World* (New York: Routledge, 2002); Walling, *Republican Empire*; Max Boot, *The Savage Wars of Peace: Small Wars and the Rise of American Power* (New York: Basic Books, 2002); Henry R. Nau, *Conservative Internationalism: Armed Diplomacy under Jefferson, Polk, Truman, and Reagan*

(Princeton, NJ: Princeton University Press, 2013); John Yoo, *The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11* (Chicago: The University of Chicago Press, 2005); Edling, *A Revolution in Favor of Government*; Hendrickson, *Peace Pact*; David C. Hendrickson, *Union, Nation, or Empire: The American Debate over International Relations, 1789–1941* (Lawrence: University Press of Kansas, 2009); Cathy D. Matson and Peter S. Onuf, *A Union of Interests: Political and Economic Thought in Revolutionary America* (Lawrence: University Press of Kansas, 1990); Nicholas Onuf and Peter Onuf, *Nations, Markets, and War: Modern History and the American Civil War* (Charlottesville: University of Virginia Press, 2006).

59. See Mead, “A New Look at U.S. Foreign Policy”; Gibson, *Interpreting the Founding*, 86–122, 130–140; and Alan Gibson, *Understanding the Founding: The Crucial Questions*, 2nd ed. (Lawrence: University Press of Kansas, 2010), 240–274.

60. See Garrity, “Foreign Policy and *The Federalist*,” 93–94; Mead, “A New Look at U.S. Foreign Policy,” 36; Nau, *Conservative Internationalism*, 12–13 and 50–60; and Kagan, *Dangerous Nation*, 4, 39–103, and 262–264.

61. Edling, *A Revolution in Favor of Government*, 5.

62. *Ibid.*, 59. See also, Bruce D. Porter, *War and the Rise of the State: The Military Foundations of Modern Politics* (New York: The Free Press, 1994), 39–40; and Max Boot, *War Made New: Technology, Warfare, and the Course of History, 1500 to Today* (New York: Gotham Books, 2002), 7.

63. Edling, *A Revolution in Favor of Government*, 8.

64. *Ibid.*, 45, emphasis in original. See also, *ibid.*, 39.

65. Hendrickson, *Peace Pact*, 16–18, 28, and 266–267.

66. *Ibid.*, 14.

67. *Ibid.*, xi, 28, respectively. See also, Matson and Onuf, *A Union of Interests*, 54–55: “The protracted struggle over the large states’ western claims” during the Revolutionary era “reinforced a prevailing tendency to apply European ideas about international relations to the American state system. Small-state spokesmen suggested that the large states were, in their determination to gain the upper hand over their neighbors, no different from European nations. Republican government, however inestimable its benefits for the citizens within the various states, apparently did not have any significant positive impact on relations *among* the states” (Emphasis in original.). This made the question of peace central in the years leading up to 1787 and made federalism an obvious solution to the protracted problems of union suffered under the Articles of Confederation.

68. Hendrickson, *Peace Pact*, 271.

69. *Ibid.*, 268.

70. Matson and Onuf contend specifically that the discourse about American federalism “was grounded in a history of debate over the role of government in the regulation of the economy, a debate that was particularly complex and confusing in revolutionary America because of jurisdictional confusion under the Articles of Confederation. Thus, just as the crisis of the union was defined in economic terms, discussion about the future of the nation’s economy was shaped and limited by the division of political authority in the federal union.” *A Union of Interests*, 2.

71. Hendrickson, *Peace Pact*, 28–29.

72. Ibid., xii. See also Ibid., 169–176.

73. The idea of *The Federalist* having a “split personality” was originally developed by Douglass Adair in 1944, in “The Authorship of the Disputed Federalist Papers,” reproduced in Douglass Adair, *Fame and the Founding Fathers*, 37–105; see esp. 77. The theme was further developed by Alpheus T. Mason in “*The Federalist—A Split Personality*,” *American Historical Review* 57 (1952): 625–643, and five years after that by Ralph L. Ketchum, “Notes on James Madison’s Sources for the Tenth Federalist Paper,” *Midwest Journal of Political Science* 1 (May 1957). Dietze himself adopted the split-personality approach in *The Federalist*, going so far as to analyze the contributions of Jay, Madison, and Hamilton on free government in separate chapters. For a more recent adoption of the split-personality thesis, see Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Ithaca, NY: Cornell University Press, 1995), esp. 195–233, and Sheehan, *James Madison and the Spirit of Republican Self-Government*, esp. 121–123. For a critique of the split-personality thesis and the consequences of it for the theory of *The Federalist*, see George W. Carey, *In Defense of the Constitution* (Indianapolis: Liberty Fund, 1995), 18–33.

74. Carey, *In Defense of the Constitution*, 20 and 33.

75. Federici, in *The Political Philosophy of Alexander Hamilton*, writes that because Hamilton

had to navigate the politics of constitution making, he was not always at liberty to speak his mind or to advocate his most heartfelt ideas. After his June 18, 1787, proposal for a new constitution was largely ignored by the delegates to the convention, he was compelled to move within the boundaries of the emerging consensus. Compromise and consensus had much to do with Hamilton’s subsequent arguments. That he felt compelled to deviate from his pure theory does not depreciate the authenticity of his political ideas. An examination of the existing circumstances reveals that Hamilton was not an uncompromising idealist and that he took politics to be the art of the possible. (At 99. See also, *ibid.*, 23)

76. According to Albert Furtwangler, *The Authority of Publius: A Reading of the Federalist Papers* (Ithaca, NY: Cornell University Press, 1984), 32:

It is difficult to see how the *Federalist* or any part of it can be used as a fair sample of Hamilton’s or Madison’s way of thinking. Each of them wrote contrary to his convictions, avoided revealing his hand, expressed his dissatisfaction about the work as a whole, and contributed a share that merged indistinguishably with writings he would later disclaim. Disguise, silence, distance, and disavowal do not add up to warm authorial approval. Consistencies between sections of these papers and portions of either man’s other writings do not prove that these are typical, let alone specially canonical. What they indicate instead is that this work is special, that it represents a temporary, strong, and intricate collaboration—one that drew upon strengths from both partners but altered and sometimes compounded them to suit the needs of a unique public debate.

77. McNamara, “Unionist Paradigm,” 314–315, citing Madison’s *Notes on the Debates in the Federal Convention*.

78. As Carl Richard remarks:

Madison had spent three years prior to the Constitutional Convention studying ancient confederacies, especially the Achaean League, for the very purpose of learning lessons concerning federalism in anticipation of drafting a federal constitution for the United

States. The founders had no choice but to turn to the ancient confederacies (and to the modern Dutch and Swiss confederacies) for such lessons, since England lacked any tradition of federalism. (Carl J. Richard, *Greeks and Romans Bearing Gifts: How the Ancients Inspired the Founding Fathers* [Lanham, MD: Rowman & Littlefield, 2009], 92. See also, *ibid.*, 93–95)

See also, Michael I. Meyerson, *Liberty's Blueprint: How Madison and Hamilton Wrote the Federalist Papers, Defined the Constitution, and Made Democracy Safe for the World* (New York: Basic Books, 2008), 52: “By the time of the Annapolis convention, Madison had written a forty-three page exposition which he titled ‘Ancient & Modern Confederacies.’ In this document, Madison methodically reviewed the history of confederated governments, from the amphictyonic confederacies, which had been formed around 300 BCE, to the German empire, which was then still in existence.”

79. Richard, *The Founders and the Classics*, 18–20. See also, Richard, *Greeks and Romans Bearing Gifts*, 49–96.

80. Walling, *Republican Empire*, 179.

81. Chan, *Aristotle and Hamilton*, 110, emphasis in original.

82. Montesquieu, *De l'esprit des lois*, in *Oeuvres Complètes* (Paris: Gallimard, Pléiade, 1951), Vol. II, VIII, 16, 362–363. All translations from the French in this book are my own. Hereinafter this work is referred to as *The Spirit of the Laws*. Unless otherwise indicated, citations from *The Spirit of the Laws* refer to the book, chapter, and page number, respectively, from Volume II of the Pléiade edition of Montesquieu's collected works.

83. Victor Davis Hanson has noted:

The freedom of the Greek city-states was not the de facto freedom of tribal nomads who seek only to roam unchecked. . . . Rather, the Greeks' discovery of *eleutheria* turned out to be a concept that could transcend the vagaries of time and space—urban and rural, a dense or a sparse landscape, consensual government that was narrowly defined as in oligarchies, or broadly practiced as in democracies. It ensured the individual citizen freedom of association, freedom to elect representatives, freedom to own property and acquire wealth without fear of confiscation, and freedom from arbitrary punishment and coercion. (Victor Davis Hanson, *Carnage and Culture: Landmark Battles in the Rise of Western Power* [New York: Anchor Books, 2002], 49–50)

Mary Nichols has also observed that in his funeral oration Pericles had extolled the distinct morality of the Athenians that had come from their freedom and commercial worldliness, how they possessed a virtue that as Nichols put it came from “within,” unlike the Spartans' virtue that was derived from “without,” from harsh discipline and training. Mary P. Nichols, *Thucydides and the Pursuit of Freedom* (Ithaca, NY: Cornell University Press, 2015), 4.

84. Jean-Jacques Rousseau, *Discours sur les sciences et les arts*, in *Oeuvres Complètes* (Paris: Gallimard, 1964), III, 19, hereinafter *Discourse on the Sciences and the Arts*. Rousseau is apparently following Montesquieu's lead here: “The political men of Greece, who lived under popular government, recognized only virtue as the force that could maintain them. Those of today speak only of manufactures, of commerce, of finance, of riches and of luxury itself.” Montesquieu, *The Spirit of the Laws*, III, 3, 252. Montesquieu of course did not take as pessimistic a view of commercial life's effects on character as Rousseau.

85. Rousseau, *Discourse on the Sciences and the Arts*, 22. See also Chan, *Aristotle and Hamilton*, 81: “Jefferson concurred with much of Rousseau’s analysis, for he too believed that ‘corruption’ was the ‘natural progress and consequence of the arts.’”

86. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Vol. 2 (Indianapolis: Liberty Fund, 1981), 782.

87. *Ibid.*, 782–783.

88. Thucydides, *The Peloponnesian War*, 1.70.

89. *Ibid.*, 8.96.5.

90. Chan writes in *Aristotle and Hamilton*, 193: “Just as Athens was the great commercial republic of ancient Greece, so Hamilton hoped America would become the great commercial republic of the New World. The crucial difference between the two was that America’s splendor was to be both durable and just.” See also Walling, *Republican Empire*, 242–243.

91. See Richard, *Greeks and Romans Bearing Gifts*, 30–32; and Richard, *The Founders and the Classics*, 124.

92. Hanson, *Carnage and Culture*, 47; Richard, *Greeks and Romans Bearing Gifts*, 47.

93. See note 32. See also Wood, *Creation of the American Republic*, 421–425, and Richard, *Greeks and Romans Bearing Gifts*, 31–32.

94. See, for instance, Rousseau’s *Discourse on the Sciences and the Arts*, 12:

Could I forget that it was in the in the very heart of Greece that one saw arise that City as celebrated for its happy ignorance as for the wisdom of its Laws, that Republic of demi-Gods rather than of men? So much superior to humanity did their virtues appear. O Sparta! Eternal opprobrium to a vain doctrine! While the vices led by the fine Arts were introduced together in Athens, while there a Tyrant had assembled with so much care the works of the Prince of Poets, you chased from your walls the Arts and Artists, the Sciences and the Scientists.

95. Samuel P. Huntington, *The Soldier and the State* (Cambridge, MA: Belknap/Harvard University Press, 1957), see esp. chapter 2, 19–58, where Huntington discusses “The Rise of the Military Profession in Western Society” and in particular “[t]he emergence of a professional officer corps” which introduces “the modern problem of civil-military relations in Europe and North America.” *Ibid.*, 19. Huntington observes: “Knowledge of the manners and outlook of that aristocratic, individualistic amateur, the medieval knight, is of little help in understanding the professional values and attitudes which constitute the contemporary military mind. The activities of the Praetorian Guard offer few useful lessons for civilian control: the problem in the modern state is not armed revolt but the relation of the expert to the politician.” *Ibid.*, 20.

96. For a succinct discussion of European uneasiness with American military strength through the present, see Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order* (New York: Vintage, 2004).

97. On the idea of a Western way of war dating back to the Battle of Salamis (480 BC), see Hanson, *Carnage and Culture*, 54. As Hanson remarks elsewhere:

Western warfare in general over two and a half millennia has shown a dynamism in its exercise of military power abroad that is not explained by the rather small population and territory of Europe, much less its natural resources. Why is this so?

To generalize broadly: Reliance on group discipline, confidence in a greater degree of personal freedom and individualism, a faith in rationalism more likely to be divorced from cultural or religious stricture, open markets, civic militarism arising out of consensual government, and civic audit of military operations—sometimes in piecemeal—filtered down to the battlefield, embodying both the contradictions and unique achievements of Western civilization. Such advantages—sometimes nearly lost or vastly altered over 2,500 years—allowed Western armies, from Alexander the Great and the Crusaders to colonists and present-day European and American militaries, to trump the usual criteria that explained tactical victory or defeat: weather, geography, numbers, location, individual genius and bravery, and simple chance. (Victor Davis Hanson, *The Father of Us All: War and History, Ancient and Modern* [New York: Bloomsbury Press, 2010], 138–139)

See also, *ibid.*, 140:

The United States has taken preexisting Western notions of political and economic freedom, the culture of individualism, and the commitment to constant self-critique and change, and advanced these practices nearly to their theoretical limits—certainly in a manner unlike what is found in contemporary Britain, France, or Germany. While there is much to say about the divide between America’s military and civilian cultures, the shared dynamism of both is far more significant for understanding the future of American military power.

98. See in particular Hobbes’ note “To the Readers” and “Of the Life and History of Thucydides” in his translation of Thucydides’ history, *Hobbes’s Thucydides*, ed. Richard Schlatter (New Brunswick, NJ: Rutgers University Press, 1975), 6–27. See also, Laurie M. Johnson, *Thucydides, Hobbes, and the Interpretation of Realism* (DeKalb: Northern Illinois University Press, 1991).

99. On the distinction between tangible and intangible elements of state in the work of Hamilton, see Walling, *Republican Empire*, 25–26, 42–70, 85–86, and 95–122.

Chapter 1

The Foundations in Principle of *The Federalist's* Constitutionalism

Assessing the problem of necessity in politics and morality is a good place to begin our review of *The Federalist* because *The Federalist* itself begins with this problem. The opening paragraph of the work introduces the dichotomy facing Americans over the question of ratification. In Publius' words Americans had the option "of establishing good government from reflection and choice" or being "forever destined to depend for their political constitutions on accident and force." Ratification of the Constitution would implicate the former, rejecting it the latter. Retention of the Articles of Confederation would subject Americans to the vicissitudes of accident and force because of the instability and almost certain political dissolution they would portend in addition to the foreign intrigue and outright violence they would invite from abroad and within. Publius further qualifies that the stakes that Americans are asked "to deliberate upon" involve not merely "the existence of the UNION" but "the fate of an empire in many respects the most interesting in the world." A wrong election on the part of Americans would inure to "the general misfortune of mankind" (1:3).

We might speculate that the most significant element that makes America the most interesting empire in the world and its potential political failure a misfortune for all mankind has to do with its principled origins. Those origins *The Federalist* indicates are in the Declaration of Independence, specifically the natural rights enunciated there.¹ As we will see below, these rights provide the moral foundations for the Constitution. The very juxtaposition of "reflection and choice" and "accident and force" in *Federalist* 1 reminds us of the Declaration's opening appeal to "a decent respect to the opinions of mankind" requiring Americans to "declare the causes which impel them to the separation." Contrary to sophisticated "realists" who think that only force governs in politics, the signatories to the Declaration believed otherwise.

They sought to provide morally justifiable grounds for dissolving America's political bonds with Great Britain.² Those grounds, which *The Federalist* seemed to accept, were anchored in a philosophy of natural rights.

This chapter is about those rights and how we might understand them to provide the principled foundations for the Constitution but in the new light *The Federalist* proposes. The chapter begins by briefly acknowledging the qualified identity between the political philosophy of John Locke and *The Federalist*. Immediately after that however the next section transitions to *Federalist* 9, which introduces us not only to how the new constitutional union will serve “as a barrier against domestic faction and insurrection” but to the long-standing criticism against republican forms of government dating back to Greek antiquity (9:47). *Federalist* 9 is an appropriate place to begin the analysis of this book because in responding to these foundational criticisms, Publius indicates what precisely it is the Constitution is ultimately going to preserve—the principles of civil liberty—and how it might do so. The solution here, as I indicate, will be based, as other *Federalist* numbers indicate, on *The Federalist*'s political anthropology. That anthropology is not merely pessimistic. It also optimistic, suggesting that Americans can aspire to self-governance and to a certain form of virtue related to the freedom and enterprise they will be provided under the Constitution to exercise their individual faculties as they see fit. It is this that lies at the heart of *The Federalist*'s natural rights constitutionalism. As we will see, there are significant consequences to this.

Locke's relevance, revisited again at the end of the next section, is two-fold. First, he defends the very possibility of democratic self-governance. Second, he advocates for the necessity of founding such self-governance on first principles. *The Federalist* follows both the substance and methodology of Locke's political philosophy but with some qualification. The Constitution as we will see is not only a political but a moral necessity. As section two of the chapter explains, this is why the Constitution's framers had a moral duty to abandon the Articles of Confederation for the Constitution. This argument is set out explicitly in *Federalists* 40 and 43, both of which invoke language from the Declaration of Independence to dispatch the Articles.

As the third section of the chapter implores, the role of theory in *The Federalist* is critical because it underwrites those principles on which both the Declaration and the Constitution are based. From these principles the remainder of *The Federalist*'s commercial republican theory develops. In addition, theory is important to *The Federalist* because it relates to the important issue of public opinion, specifically how it gets shaped. The fourth section further develops this theme. As that section emphasizes, *Federalist* 84 makes explicit that public opinion and “the general spirit of the people and of the government,” provide the “only solid basis of all our rights” (84:551,

emphasis added). The Constitution's institutional arrangements and other structural protections are important but not as important as public opinion and America's general spirit in preserving American liberty.

If *The Federalist's* natural rights constitutionalism ultimately depends more on public opinion and America's general spirit, the obvious next question is: How is that opinion and spirit going to be shaped in the new constitutional order? As the final section in this chapter proposes, this depends as much on *The Federalist's* distinct sociology of commercial republics, which seeks to forge an improved political and economic culture in the United States, as it does on any other aspects of the new constitutionalism. This is made clear in additional numbers of the introductory section of *Federalists* 2–8, examined in more detail in chapters 2–4.

NATURAL RIGHTS, LOCKE, AND THE CONSTITUTION AS A MORAL NECESSITY

The phrase “natural rights” appears only once in *The Federalist* but its appearance is significant. In *Federalist* 2 Publius speaks of “the indispensable necessity of government” and how “the people must cede to it some of their natural rights, in order to vest it with the requisite powers” (2:8). On its face this passage may appear to conflict with *Federalist* 84's statement that the Constitution did not need a bill of rights because in popular constitutions like America's, “in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations” (84:549). But *Federalist* 2 merely recognizes that the Constitution, as the ratification formula in Article VII makes clear, is a social contract anchored in a philosophy of individual natural rights.³ Both the Constitution and *Federalist* 2 remind us of Locke's *Second Treatise of Government*. There Locke, like *Federalist* 2, speaks of the same necessity for government and how individuals, seeking to leave the state of nature for political society, must cede to that society some of their natural powers in order to vest the political community with the necessary power to preserve property and to punish offenses.⁴ *Federalist* 2 suggests the same thing.⁵

At this point we need not worry about how far the cession of natural rights or powers on Publius' reading goes.⁶ What is important is his recognition, first, of the necessity for government; second, that the Constitution's provisions for government originate in the natural rights tradition of modern liberalism, specifically something approximating Locke's liberalism.⁷ Since these assumptions form the basis of the Constitution as well as the theory of *The Federalist*, they are worth elaborating. However, my review here of the relationship between Locke and *The Federalist* will be brief as the scholarship on

this relationship is significant and does not need to be repeated here at length.⁸ In addition, let me qualify that there are some important distinctions between Locke's political philosophy and that of both the Declaration of Independence and *The Federalist* as we will see later. Here however I emphasize that evidence that *The Federalist* is modeled to a large extent upon Locke's political philosophy can be found in both its substance and methodology.

Let me begin with the substance. If government is a necessity, as both Publius and Locke affirm, then it must be established either one of two ways as *Federalist* 1 suggests: by choice or by force or accident. A long tradition in modern political thought, perhaps most notably the work of Machiavelli, Algernon Sidney, David Hume, and Montesquieu had denied the possibility of founding government on grounds other than violence, fraud, or circumstances dictated by fortune. An even longer tradition of political thought had suggested that even if accidents of circumstance could be overcome, the people themselves were incapable of self-government. Plato's Socrates, for instance, ranks democracy fourth among the five regime types examined in Book VIII of *The Republic*. Democracy inclines toward the worst regime, tyranny, precisely because of its freedom, which invites disorder and licentiousness and exposes the regime to demagogues.⁹

Federalist 9 seems to respond to something like the Socratic vision when, following its denunciation "of the petty republics of Greece and Italy" that perpetually vibrated "between the extremes of tyranny and anarchy," it concludes: "From the disorders that disfigure the annals of those republics the advocates of despotism have drawn arguments not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government as inconsistent with the order of society." We have here a preliminary defense of what we would today call a free-market society; a society where a vast private world—a world defined not merely by the *forms* of republican government but more importantly by the *principles* of civil liberty—exists unfettered by government. It is worth emphasizing that it seems even more crucial for Publius here that the advocates of despotism argue against the very principles of civil liberty than they do against the forms of republican government. Free government is not necessarily commensurate with republican government as *Federalist* 9 makes clear. "[T]he portraits" the critics "have sketched of republican government were too just copies of the originals from which they were taken" (9:47–48). The critics of democracy and republics old and new have been largely correct in their denunciations of these regimes. But they have thrown the baby out with the bathwater to the extent that they have identified failed republican forms with the failure of the principles of civil liberty per se. The consequence of this confusion has been a demand for strict controls on individual and political freedom in the name of political order. *The Federalist* suggests that the irony of such political

prescriptions is that they would destroy the very species of human excellence that have served as the polestars for political philosophy since its birth and that many of these same critics of republican and free government also seek.

The Constitution, Publius avers, will offer Americans the best hope of resolving the paradox of how to marry free government to republican government. Key to this resolution will be those principles anchored in what we would today call free-market liberalism. *Federalist* 9 introduces us to those faction-moderating mechanisms of the improved “science of politics” most students of American government are familiar with: institutional modifications such as the separation of powers, checks and balances, judges holding office during good behavior, and popular representation. In addition there is the critical noninstitutional remedy of the “enlargement of the orbit” or the expanded republican union (9:48). *Federalist* 10 informs us that it is this that will be the *principal* circumstance rendering faction less to be dreaded in the Constitution’s large republic than in smaller democracies (10:60).

What is typically left out of accounts of *Federalist* 9 is its introduction of the concepts of “free government” and an open “order of society.” These hint at the ends the number’s institutional and noninstitutional remedies are intended to facilitate. The Constitution’s remedies to faction adumbrated in *Federalist* 9 are intended to maintain the principles of civil liberty. At their height they might even provide the conditions for the flourishing of individual, political, and martial excellence of the sort the Socratic account of justice sought in its high-toned politics but that Publius suggests is only possible under free government and an unfettered, enterprising order of society.¹⁰ It is certainly true that *The Federalist* warns us against “the deceitful dream of a golden age” and that Americans are “yet remote from the happy empire of perfect wisdom and perfect virtue” (6:33). Publius was no Pollyanna or utopian dreamer and his account of human nature is generally a pessimistic one. We are warned early in *The Federalist*, for instance, that it is necessary for America to inoculate against giving foreign powers not only just causes of war against the United States but also unjust or pretended causes of war because it was “too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting any thing by it” (4:18). Later *The Federalist* proclaims “that men are ambitious, vindictive, and rapacious” (6:27). History has demonstrated “that momentary passions, and immediate interests, have a more active and imperious control over human conduct than general or remote considerations of policy, utility, or justice” (6:30). *Federalist* 15 makes clear that government is a necessity because of the permanency of wickedness as a feature of human nature: “Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint” (15:91).¹¹ And *Federalist* 34 further corroborates the natural belligerence

of men and of nations. It warns that America will have to be vigilant and prepare militarily both for what can, and more importantly what cannot, be anticipated:

Let us recollect that peace or war will not always be left to our option; that however moderate or unambitious we may be, we cannot count upon the moderation, or hope to extinguish the ambition of others. . . . To judge from the history of mankind, we shall be compelled to conclude that the fiery and destructive passions of war reign in the human breast with much more powerful sway than the mild and beneficent sentiments of peace; and that to model our political systems upon speculations of lasting tranquility, would be to calculate on the weaker springs of the human character. (34:203)¹²

Even the separation of powers doctrine, outlined in *Federalist* 51, seems to presume the worst about the nature of man: “what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary” (51:331). Both government and the governed have to be restrained. This is a fact of nature for which any form of government preservative of liberty will have to account.

These are all fairly pessimistic statements about human nature, suggesting that the foundations of the Constitution are grounded upon a very low estimate of human intelligence and capabilities. But it is important to emphasize that this is not all *The Federalist* has to say about man and his political anthropology. As I propose below *The Federalist* also offers us a less skeptical account of human nature that suggests that the American constitutional order might create the conditions for the emergence of something approximating the “natural aristocracy” that John Adams and Thomas Jefferson had discussed in their writings.¹³ Publius of course never used the term natural aristocracy and he sought a prudent politics devoid of idealism. *The Federalist* was notoriously critical of “projectors in politics” (6:30), “[t]heoretic politicians” (10:58), and it warned of the necessity of qualifying “theoretic reasoning” with “the lessons of practice” (43:279).

Yet there are other passages in the work that speak of America’s honor and its potential for greatness. There are even occasions where Publius challenges the orthodoxy of the ages that has ranked democracy and republicanism so low on the order of regimes. *Federalist* 55, for instance, counters against *The Federalist*’s otherwise pessimistic account of human nature that as much as there may be

a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes

the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us faithful likenesses of the human character, the inference would be, that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another. (55:359)

Contrary to the gloomy prognostications of those who look at American republicanism's ends as "solid but low" Publius demurs that as far as those elevated qualities of human nature are concerned, republican government presupposes them "in a higher degree than *any other form*." Presupposition here is the key. Many political thinkers, even those in the modern liberal tradition, did *not* presuppose "sufficient virtue among men for self-government."¹⁴ Discussing the confusion in the ratification debate over the distinction between democracies, where "the people meet and exercise the government in person" and republics, where the people "assemble and administer [government] by their representatives and agents," *Federalist* 14 observes:

To this accidental source of error may be added the artifice of some celebrated authors, whose writings have had a great share in forming the modern standard of political opinions. Being subjects either of an absolute or limited monarchy, they have endeavored to heighten the advantages, or palliate the evils of those forms, by placing in comparison the vices and defects of the republican, and by citing as specimens of the latter the turbulent democracies of ancient Greece and modern Italy. (14:79–80)

It has been suggested that the principal celebrated author forming the *modern* standard referred to here is Hobbes. Hobbes is said to have discouraged political liberty or freedom of expression because the people's passionately opining was simply too politically destabilizing to be permitted.¹⁵ Accordingly, Hobbes advocated censorship and strict controls on political freedoms.¹⁶

Whether Hobbes required "chains of despotism" or something approximating these in his blueprints for government, *Federalist* 55 assumes a Lockean counterpoise to the presumption "that there is not sufficient virtue among men for self-government." Apparently there is indeed sufficient virtue among men for self-government. At least *Federalist* 55 leads us to believe this. But such virtue seems to need adequate constitutional instruments to be enabled. *Federalist* 9 concedes that even those forms of republicanism that *did* presuppose sufficient virtue for self-government and that have served as models of republicanism in the past have succumbed not only to the fatal vices of faction but, perhaps more importantly, have been based on *principles* that too often inhibited the development of human faculties, particularly those that might lead to the highest forms of human excellence. The petty republics of

Greece and Italy that served as exemplars to earlier political philosophers as well as to Antifederalists and others during the ratification debates, as *Federalist* 9 highlights, were inevitably sunk by “the tempestuous waves of sedition and party rage.” What was worse, they were plagued by those “vices of government” that served to “pervert the direction and tarnish the lustre of those bright talents and exalted endowments for which the favored soils that produced them have been so justly celebrated” (9:47). Publius’ message here seems clear: The Platos, Aristotles, and Ciceros of Greek and Roman antiquity and the Dantes of modern Italy flourished not *because of* but *in spite of* the regimes of which they were a part. America’s new constitutional order will correct this millennial-old defect by avoiding the vices of government that too often crushed civil freedom in the past, inhibiting the conditions in which the most talented and highly endowed could flourish.

Federalist 9 introduces then not only the theme of how the Constitution will inoculate against incidences of faction, one for which it is well known. It also introduces the less-known theme, developed further in *Federalist* 10 and later numbers, of how the proposed constitutional union will contribute to Americans’ political prosperity understood as the identification of men’s freedom to choose how to exercise their faculties as they see fit. But first Americans must choose the Constitution. *The Federalist* portrays this choice as a political necessity because only the Constitution provides sufficient energy in government to preserve Americans’ freedom—and specifically their freedom to choose—in future. This is how the Constitution will overcome “accident and force” in favor of “reflection and choice.” Too many earlier and smaller forms of republican government had overlooked, or simply tried to wish away, those necessities that restricted individual and political choice and that inevitably resulted in the ruin of those republics.¹⁷ *Federalist* 9 provides a brief catalogue of the diseases that have ruined earlier republics and suggests that the Constitution will address these problems of political necessity. But it also suggests that the Constitution is a moral necessity too. This argument is succinct and derives primarily from Locke’s political philosophy, although obviously not from this alone.¹⁸

Like Algernon Sidney’s *Discourses Concerning Government*, which had less influence on the founders,¹⁹ Locke’s *First Treatise of Government* provided a critical response to Sir Robert Filmer’s defense of divine or kingly rule in *Patriarcha*. Locke’s critique in the *First Treatise* focused largely on Filmer’s biblical exegesis, rejecting his assertion of a natural right of dominion over men originating from Adam or his heirs.²⁰ Locke’s introduction to the *Second Treatise* reminds us again of the dichotomy we find at the opening of *The Federalist*: reflection and choice versus accident and force. Summarizing his findings against Filmer, Locke writes that in response to those who “think that all Government in the World is the product of Force and Violence, and that Men live together by no other Rules than that of Beasts,” we “must

of necessity find out another rise of Government, another Original of Political Power, and another way of designing and knowing the Persons that have it, then what Sir *Robert F.* hath taught us.”²¹ Locke’s well-known formulation here is consensual government, which both he and the Declaration proclaim to be the only legitimate or just form of government.²²

The Federalist agrees, referring to the consent of the people as that “pure, original fountain of all legitimate authority” from which “[t]he streams of national power ought to flow” (22:139). *Federalist* 39 further highlights that Publius identifies the political and moral foundations of the Constitution with the principles of the Declaration. The form of government under the Constitution must be “strictly republican” because “no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government” (39:239). If we identify the “fundamental principles of the Revolution” with the natural right principles of the Declaration (and what else, we might ask, should they be identified with?), this points us, as the Introduction highlighted, to the ends of the Constitution which both the Declaration and *The Federalist* contend all free government must respect: the promotion of public happiness or the public good and the protection of private or individual rights. Since Locke defined political power as “a *Right* of making Laws . . . only for the Publick Good,”²³ we can understand the ends of the Constitution—promotion of the public good and protection of individual rights—as singularly liberal or as republican and liberal.

However we define *The Federalist*’s constitutionalism, what runs throughout it is the role played by principles anchored in nature that form the basis of the Constitution. Principles are what give the Constitution its foundation in justice and makes the “capacity of mankind for self-government” such an “honorable determination.” We might speculate that it is also what marks the “genius of the people of America.” Locke referred to principles as the foundations of the human and nonhuman sciences, “the beginnings from which we must set out, and look no farther backwards in our Enquiries.”²⁴ *The Federalist* adopts a similar methodology: “In disquisitions of every kind, there are certain primary truths, or first principles, upon which all subsequent reasonings must depend. These contain an internal evidence which, antecedent to all reflection or combination, commands the assent of the mind” (31:186). In *An Essay Concerning Human Understanding* Locke defined knowledge as consisting “in the perception of the agreement or disagreement of *Ideas*: Now where that agreement or disagreement is perceived immediately by it self, without the intervention or help of any other, there our *Knowledge* is *self-evident*.”²⁵ Self-evident truth involves, as Publius’ language above suggests, simple, internally evident ideas, ideas that are not combined with others to

make up our knowledge—in Locke’s terms ideas that do not require the help of any others for us to comprehend their truth. In the *Essay* Locke proposes that the laws of morality may be raised to the level of a demonstrable science; “from self-evident Propositions, by necessary Consequences, as incontestable as those in Mathematicks, the measures of right and wrong might be made out.”²⁶ In similar language Publius declares that “maxims in ethics and politics” are “[o]f the same nature” as “the maxims of geometry,” even if “the principles of moral and political knowledge” do not in general admit of “the same degree of certainty” as “those of mathematics.” Nevertheless, they admit of much more certainty than many are “disposed to allow” (31:187).

It is because *The Federalist* is built upon fundamental first principles that the necessity of government by reflection and choice is both a *moral* as well as a *political* imperative. Nothing short of this could respect the natural right principles of the Declaration, which are also the principles of the Constitution. Whether the Declaration’s truths are *actually* self-evident or simply *held* to be self-evident, as the Declaration proclaims, and whether Locke’s philosophy admits of any politically self-evident truths or instead insists that there are “no innate practical principles”—a rejection of Thomistic natural law—has been disputed in scholarly literature.²⁷ What is not disputed in *The Federalist* is the anchoring of American constitutionalism in fundamental principles—“the principles of moral and political knowledge.” This means, among other things, that the Constitution is a moral as well as a political instrument and that the reasoning that emanates from it something common to all mankind.

In a preliminary way then the substance and methodology of *The Federalist* mirror Locke’s political philosophy. *The Federalist* founds the Constitution *substantively* on the consent of the people. Government’s objects are defined as the protection of men’s private or individual rights as well as the promotion of the public good or happiness. In addition *The Federalist* justifies its natural rights constitutionalism on the basis of first principles, again following Locke’s political *methodology*. Founding government on principles that will provide the basis of legitimacy for the federal government, *The Federalist* seeks to distinguish America’s form of government under the Constitution from other forms of government founded on “accident or force” (to use *Federalist* 1’s language) or “Force and Violence” (to use Locke’s language). There are significant consequences to this, as *The Federalist* demonstrates.

THE DUTY TO ABANDON THE ARTICLES OF CONFEDERATION

The natural rights constitutionalism of *The Federalist*, derivative of the Declaration and that *The Federalist* suggests the Constitution will embody,

understands men's natural rights not merely as pre-political or antedating government but as a permanent measure for the justice or injustice of political regimes. *The Federalist's* political science provides an antidote to what has been described as the modern progressive or positivistic view of rights. This latter disposition, presuming that rights emanate from the positive law or from government, rather than from nature or God, allows rights both to expand and to transform in meaning over time. Accordingly, what constitutes the justice or injustice of political regimes may be similarly transformed. There are important implications to this of course but for present purposes I want to focus on a single, related question: If we assume that the Declaration and *The Federalist* do indeed reject a mutable or relativistic understanding of justice, rights, and correlative duties, what then are the specific duties that can be said to derive on the Declaration's reading from the necessity of protecting natural rights? And how do these duties contribute, if at all, to *The Federalist's* defense of the Constitution; what are their theoretical and practical consequences for American constitutionalism?

The Declaration implores—again apparently mirroring Locke on this score²⁸—“that Governments long established should not be changed for light and transient Causes.” Nevertheless, “when a long Train of Abuses and Usurpations . . . evinces a Design to reduce [men] under absolute Despotism” it is not only “their Right” but “their *Duty*, to throw off such Government, and to provide new Guards for their future Security” (emphasis added). Men have a duty then to throw off despotic government, particularly where their security warrants it. But the Declaration establishes a yet lower threshold for legitimately changing the political order. In addition to the language above, it also proclaims “that *whenever* any Form of Government becomes destructive of these Ends [that is, the governmental ends of securing rights] it is the Right of the People to alter or abolish it” (emphasis added). The language here of *whenever* seems to be a significantly lower burden of proof for changing the forms of government than waiting for a state of “absolute Despotism.” When that specific burden of proof is met is left opaque in the Declaration. However, whatever the answer here, we might ask how far again does *The Federalist* follow these invocations from the Declaration? Do the people have a right or even a duty to revolution or a right “to alter or to abolish” the national government whenever it becomes destructive of the ends of securing inalienable rights? Answering these questions is important from the point of view of establishing what limitations, if any, there are on legitimate government from *The Federalist's* perspective. The answers to the questions are also important, as we will see, for fleshing out the content of *The Federalist's* commercial republican theory. What specific ends were that theory to serve and how did the new commercial regime the Constitution would create facilitate those ends?

Federalist 28 seems to acknowledge something approximating a right to revolution when responding to critics of military establishments in peacetime. The Constitution will of course allow for such establishments. Publius reassures Americans that control of the federal army and navy under the Constitution will remain in the hands of the people's representatives, "the only efficacious security for the rights and privileges of the people, which is attainable in civil society." But *Federalist* 28 immediately qualifies: "If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defense which is paramount to all positive forms of government" (28:170–171).²⁹ Although the right of self-defense may not necessarily be tantamount to a right to revolution, it seems to be a close cousin. Publius affirms that under the Constitution the balance between the strength of the people and that of the government will generally find the people strong enough to prevail in a contest over issues like military establishments. This is especially so given the Constitution's federalism, where the people can throw their support behind either level of government, federal or state, and virtually guarantee that that level of government will prevail in any contest.³⁰

Publius however goes significantly further than this. If there is an "original right of self-defense" that "is paramount to *all* positive forms of government" then the right of self-defense stands *beyond* the Constitution and obviously takes *priority* over it. Moreover, the right may be invoked anytime "the representatives of the people betray their constituents." Presumably such a right to self-defense would not be invoked "for light and transient Causes," as the Declaration proclaims. It would only be invoked after the people had suffered "a long Train of Abuses and Usurpations."³¹ Nevertheless, extrapolating from something like the invocations in both the Declaration and Locke's political thought, *The Federalist* contends that the framers had a duty to abandon the Articles of Confederation for the Constitution. When discussing the Congress' administration of the "Western territory," for instance, all of which had been "done without the least color of constitutional authority," *Federalist* 38 proclaims that it was "[t]he public interest" and "the necessity of the case" that had imposed on Congress "the task of overleaping their constitutional limits" (38:238). It was not just expediency or necessity that the framers were compelled to follow. It was also the public interest.

Federalist 40 will go further than this when responding to the specific allegation that the convention was not authorized to propose the Constitution. It again provides us some guidance regarding the ends the Constitution was to fulfill, specifically with respect to *The Federalist's* commercial republican theory. *Federalist* 40 begins by examining the language of the authorizing resolution for the Convention, in particular that the convention was to revise "*the articles of Confederation*, and . . . render the federal Constitution

adequate to the exigencies of government and the preservation of the Union.” Publius’ rejoinder here was that the rules of construction “dictated by plain reason” and “founded on legal axioms” was to give meaning to each part of the legal text. Where there was a conflict between parts of the text the less important should give way to the more important; “the means should be sacrificed to the end, rather than the end to the means” (40:247–248, emphasis in original). The ends of the resolution—the exigencies of government and preservation of the union (italicized by Publius)—required adequate means. Since the Articles could not provide for these they had to be sacrificed to the Constitution, whose means *were* adequate to the exigencies of government and preservation of the union. This explanation is not that much different from what we find at the conclusion of *Federalist* 38 quoted above.

The second argument in *Federalist* 40 addressed the objection that the convention should have required unanimity for ratification of the Constitution, as the Articles of Confederation required. Publius described this objection as an “absurdity” because it would have subjected twelve states making up “fifty-nine sixtieths of the people” to the whims of one state, Rhode Island, which had held out against the Convention. The case of Rhode Island provided “an example still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country” (40:251). The appeal to honor and prosperity here seemed to imply that there was a duty beyond the merely conventional or legal that the convention was obliged to follow; that made it politically and morally acceptable to disregard the Confederation’s formal requirement of unanimity among the states for ratification of the Constitution.

Federalist 40’s third argument advanced in defense of the legitimacy of the Constitution is closely related to this, making an even more explicit appeal to the question of a higher obligation. Asking “how far considerations of duty arising out of the case itself could have supplied any defect of regular authority,” *Federalist* 40 informs us that the Articles of Confederation had created a “crisis” in America of which the convention delegates were fully aware. It could not have been “unknown to them that the hopes and expectations of the great body of citizens, throughout this great empire, were turned with the keenest anxiety to the event of their deliberation” (40:252). The hopes and expectations of Americans were apparently for greater liberty and prosperity than what could be achieved under the Articles or under anything the Constitution’s opponents were prepared to accept as alternative constitutional arrangements.

Meeting the hopes and expectations of Americans and maintaining America as a great empire was possible only with commercial reform. *Federalist* 40 maintains that the initiative for constitutional reform had begun in “a single State (Virginia)” (40:252). Although *The Federalist* is silent on

details here, it does indicate that Virginia had proposed “a partial amendment to the Confederation.” That amendment had to do with granting the federal government greater control over questions of commerce. A Virginia commission tasked with working with other states to draft changes to the Articles that would give Congress greater powers over the regulation of trade had proposed that a meeting of states be held in Annapolis in September of 1786. That meeting had generated the resolution for the Constitutional convention in dispute in *Federalist* 40. According to *The Federalist* the convention delegates at Philadelphia “had seen the *liberty assumed* by a *very few* deputies from *very few* States, convened at Annapolis, of recommending a great and critical object, wholly foreign to their commission, not only justified by the public opinion, but actually carried into effect by twelve out of the thirteen States” (40:253, emphasis in original). Public opinion and its guidance assume centrality here. In proposing the resolution for the Philadelphia Convention, the Annapolis convention may have exceeded its legal jurisdiction but *Federalist* 40 proposes that this was either warranted by public opinion or that public opinion was unconcerned with the technicalities of the Annapolis Convention’s commission or its small size: only Pennsylvania, New York, New Jersey, Delaware, and Virginia were represented at the convention, and only the latter three were represented by a quorum sufficient to allow them to vote officially on behalf of their states.³²

Nevertheless, the resolution for the convention in Philadelphia in May 1787 was supported by public opinion and embraced by twelve states. Although its meaning here is ambiguous, *Federalist* 40 suggests that what was decisive both for public opinion and for the twelve states that agreed to attend the convention was not the formalities of the Annapolis Convention’s commission but the compelling nature of what the convention had deemed necessary to further improving Americans’ security and happiness. In other words, the conventional or merely formal was superseded by something that was more transcendent in nature. This is what was compelling both to public opinion and to twelve of thirteen states. And this apparently is what moved the delegates in support of the Constitution to exercise their *duty* in exceeding any legal barriers either the Articles of Confederation or the resolution from Annapolis imposed on their deliberations.

Following this explanation *Federalist* 40 then proceeds to invoke the Declaration of Independence to dispatch the Articles of Confederation. The delegates to the Constitutional Convention

must have reflected, that in all great changes of established governments, forms ought to give way to substance; that a rigid adherence in such cases to the former, would render nominal and nugatory the transcendent and precious right of the people to “abolish or alter their governments as to them shall seem most

likely to effect their safety and happiness,” since it is impossible for the people spontaneously and universally to move in concert towards their object; and it is therefore essential that such changes be instituted by some *informal and unauthorized propositions*, made by some patriotic and respectable citizen or number of citizens. (40:253, emphasis in original)

Patriotic and respectable citizens guided public opinion to the higher elevations of constitutional thought. Duty, and specifically duty directed by the substance of the Declaration (which *The Federalist* explicitly cites here), is what apparently moved them. The emphasis on defending the Constitution through some informal *and* unauthorized propositions suggests that some sort of public reason that transcended the merely formal or conventional and that was compelling both to public opinion and to those delegates in Philadelphia who supported the Constitution is what led to the forms—the Articles—needing to give way to substance—the protection of those transcendent or unalienable rights essential to Americans’ safety and happiness.

Addressing the question of how the Articles of Confederation could be superseded by the Constitution without the required unanimous consent of those parties to the Articles *Federalist* 43 responds in a manner similar to *Federalist* 40: that this “question is answered at once by recurring to the absolute necessity of the case; to the great principle of self-preservation; to the transcendent law of nature and of nature’s God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed” (43:283; see also 78:500–501).³³ This compact statement makes clear not only that the measure of justice for the Articles, the Constitution, and all other economic, social, or political configurations is the transcendent law of nature and of nature’s God but, like *Federalist* 40, that both the *content* of man’s natural rights and the *procedures* for their vindication are provided for in the Declaration.

This seems to comport with recent scholarship on the Declaration. Michael Zuckert, for instance, has proposed that there are six self-evident truths in the Declaration. The first two are *pre-political*: that all men are created equal and that they have inalienable rights. The next two are distinctively *political*, involving the institution of government: that governments are established to protect man’s inalienable rights and that they derive their just powers from the consent of those governed. The last two of the self-evident truths are *post-political*: that if government becomes destructive of its ends it is the right of the people to alter or to abolish it and to institute new forms of government as they see fit. As Zuckert notes, the sequence of self-evident truths in the Declaration provides us with a temporal or mini-historical narrative of man’s political experience. Yet contrary to those critics of liberal individualism who denounce the Declaration’s history as exceedingly facile because human

beings have never lived in a pre-political state of nature or other similar state but have always been born into some sort of political society subject to authority, the Declaration's narrative of self-evident truths is not intended as "literal or empirical history." It is presented rather as "moral history." It speaks "of rightful or 'just power,' not power simpliciter."³⁴ The Declaration presents a series of theoretical or abstract truths that begin with the assertion of the moral sovereignty of the individual; the individual who predates political society and for whom political society is established.³⁵

CONSTITUTIONAL REASONING AND PUBLIC OPINION

But if political society is established for the individual, beyond providing for that individual's security what exactly does it provide for? The idea of individual moral sovereignty that predates political society implies self-government. But what will that consist of under the Constitution? These are the sort of questions *The Federalist* wants us to ask. Its invocation in *Federalist* 1 to reflect thoughtfully about the merits of the Constitution and later (in *Federalist* 14) to challenge the conventionality of the "celebrated authors" who formed "the modern standard of political opinions" gives us a hint of just how radically Publius proposes to alter the landscape of republican theory. *Federalist* 43 may declare that it is "the transcendent law of nature and of nature's God" that makes "the safety and happiness of society" the aim of all political institutions. But as we saw in the Introduction, the "irresistible and unchangeable course of nature," according to *Federalist* 11, was to be found in "an active commerce, an extensive navigation" and "a flourishing marine." These new economic, political, and military instrumentalities were not only to be means by which "the little arts of the little politicians" who sought to impede America's potential dynamism and greatness might be denied. They were also "the offspring of moral and physical necessity" (11:65).

What exactly this means will be addressed in more detail in chapter 7 when we examine *Federalists* 11–14 more closely. However we get a hint here at just how the Constitution might assist Americans in their self-governance by improving commercial traffic and providing a navy that will protect American shipping interests along the Atlantic seaboard and elsewhere. Protecting commercial interests and facilitating the spirit of enterprise were not the only ends the Constitution would assist with but they were certainly among the most significant ones emphasized early in *The Federalist* along with concerns over national security. As we will see, both the commercial dynamism and spirit of enterprise that loom large in *Federalists* 2–14's defense of the utility of union to Americans "political prosperity" are closely linked to the issue of

national defense. The fact that the political prosperity of Americans is connected to instrumentalities described as the offspring of a *moral* and *physical* necessity should make clear to us that the commercial reforms *The Federalist* proposes implicate something more than material prosperity; they are in fact an extension of the Constitution's natural rights philosophy. The large commercial republic that *Federalist* 9 introduces us to was not just a vehicle for economic growth, as important as this no doubt was. It was equally one of potential *moral*, *political*, and *spiritual* growth as well. *Federalist* 11 and a host of other numbers that we will discuss in the next chapter confirm this. What I want to emphasize in the remainder of this chapter is the closely related issue regarding the role that theory and commercial development will play in shaping public opinion on *The Federalist's* reading.

As the last two sections of this chapter have demonstrated, the theory underlying both the Declaration and *The Federalist* is important because it provides the basis on *The Federalist's* reading for why the framers had a duty to abandon the Articles of Confederation for the Constitution. Theory provided the foundations in principle for the Constitution. It also informed us of what rights the people had to alter or abolish their governments when they become destructive of the ends of government. But the question of theory as Publius develops this is also important because it relates to public opinion and its role in the new constitutional union.

The significance of public opinion in late eighteenth-century America was due in part to a *practical* development, namely, the emergence of the new technology of the printing press. This seminal technology had revolutionized politics in those countries of the West, like the United States, in which it was prevalent.³⁶ If it was "the reason, alone, of the public, that ought to control and regulate the government" (49:325), as Publius affirmed, then the public or political development of that reason would necessarily be transacted not only through the traditional medium of speech but through the new medium of broadly disseminated printed discourse. This *The Federalist* recognized. And it was not only the American electorate but their representatives too who would get their information by means of the printed word.³⁷

This however raised an obvious further *theoretical* question: what precisely was to guide public reason, especially in political debate; what was to demarcate the reasonable from the unreasonable, right from wrong, better from worse? Could the standard of justice here be fixed and how was it to guide public opinion, which presumably would form the basis of republican governance in the new constitutional union? As the analysis of *Federalist* 40 and 43 above indicate, *The Federalist* seems to accept the primacy of the Declaration's theoretical truths as well as the procedures stipulated for securing Americans' inalienable rights. Those truths provide the standard of justice that will be the measure of good and bad governance in America. This

includes governance under the Constitution. But what would that standard consist of in its *particulars* and how would the public be educated about these particulars?

These are all important questions that *The Federalist* needs to answer. It is not enough that Publius outlines the Constitution's architectonic principles. If the Constitution forms a rational whole that will provide "a republican remedy for the diseases most incident to republican government" (10:61), *The Federalist* needs to descend to the particular details that will give effect to those principles. We will examine those details, from the Constitution's need to open up commercial channels to specific governmental institutions and powers, in subsequent chapters. However, it is important to emphasize that *The Federalist* does not rely principally on these institutions and powers to defend American liberties. Although these will provide an important bulwark to American freedom, more crucial than the mechanical features of the Constitution's political institutions or powers are their supplementation by an appropriate level of a relatively sophisticated public opinion or constitutional understanding—what the Introduction referred to as the *intangible* instruments of state. Absent these, maintenance of the American constitutional order will fail. In the Introduction, I briefly discussed *Federalist* 28's Declaration that Americans need to understand their rights and be disposed to defend them, particularly if they are to accurately assess the justice or injustice of government. *Federalists* 40 and 43 made much the same point about the need to understand the transcendent principles of the Declaration and the higher duties that warranted the convention embracing the Constitution over the Articles of Confederation. *Federalist* 84 reiterates this message, providing the most explicit statement in *The Federalist* about the nature of constitutional reasoning when addressing the issue of why the Constitution did not need a bill of rights. The absence of a bill of rights, Publius avers, was the "most considerable" objection to the Constitution that *The Federalist* had yet to address (84:546).

Federalist 84's central theme might be put in these terms: by neglecting the foundation of the Constitution in principles of natural justice, principles that laid beyond the Constitution but informed it, advocates for the necessity of a constitutional bill of rights overlooked—as lawyers and civil libertarians still do today—that simply providing for a catalogue of rights in a constitution will not protect Americans any better than no catalogue of rights whatsoever. In fact in a republican form of government a bill of rights is actually dangerous to the people's rights. *Federalist* 84 supports this proposition by citing the Preamble to the Constitution, specifically its language ordaining and establishing the Constitution: "This is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise

of ethics than in a constitution of government.” Bills of rights were inappropriate in republican government because, among other things, they were “in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince” (84:549). Magna Charta, the Petition of Right, and the 1688 Declaration of Right, which Publius cites as examples here, were all restraints upon monarchs. As these examples suggest, bills of rights were predicated upon the assumption that political authority emanated from the sovereign, who was independent of, and prior to, the people.³⁸ Rights accordingly were (in modern parlance) positive, granted by the government—“reservations” in Publius’ words “not surrendered to the prince.”

American republicanism was based on the opposite proposition, as we have seen: political authority originated with the people and rights were founded in nature, not government, nature serving as the measure of justice beyond mere convention or the positive law. Hobbes had declared in the *Leviathan* (1651) that “Where there is no common Power, there is no Law; where no Law, no Injustice.”³⁹ The *Leviathan* may have provided the quintessential classical liberal defense of unqualified sovereign power but the Constitution, based as it was upon the Declaration—which was Lockean, not Hobbesian, in nature—offered up an antidote to such a vision. “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit” (51:334). The fact that on *The Federalist*’s reading justice is not merely the end of government but of civil society and will always be pursued until liberty be lost suggests that its meaning is significantly broader and more permanent, if perhaps more elusive, than anything the positive law of any single nation could offer.⁴⁰ Rooted in something beyond mere convention, Publius points us to nature to find the meaning of justice. Locke identified the law of nature with the law of reason, this being the source of its justice.⁴¹ Publius reminds us that there is a “natural course of things” and that “our reasonings will be likely to be just, in proportion as they are accommodated to this standard” (8:44). As the meaning of justice in the Declaration is anchored in what is right by nature, men’s natural rights being pre-political, antedating government, and governments being instituted “to secure these Rights . . . deriving their just Powers from the consent of the Governed,” *Federalist* 84 could reasonably conclude: “Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations” (84:549). Bills of rights accordingly were inappropriate in republics like America’s.

But they were unnecessary for a second, arguably more significant reason. This had to do with the form of constitutional reasoning they entailed, a form of reasoning we see in full bloom today. This problem had two components. The first had to do with the nature of statutory or constitutional construction.

As Publius observed, bills of rights were “not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do?” (84:550). This argument was straight forward enough. In a constitution of limited government why claim that the government could not do things, such as restrict the liberty of the press, which it never had the power to do in the first place? From the point of view of constitutional construction the implication of placing a limited number of restrictions on federal power would be that the federal government retained all those powers not so limited in a bill of rights. Even if the Constitution stipulated, as today’s Ninth Amendment does, that “[t]he enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people,” the very *nature* of a bill of rights might lead lawyers and courts to think otherwise.⁴²

Hadley Arkes has noted that Herbert Storing, a leading modern defender of the Antifederalists had responded to the Federalists’ opposition to a constitutional bill of rights by pointing out that the founders had already incorporated into the original Constitution’s text prohibitions against bills of attainder and ex post facto laws. In addition, they had guaranteed habeas corpus rights save only in rare cases of rebellion and insurrection. If the framers provided for these specific rights guarantees in the text of the original Constitution, what was the problem with elaborating on this list and providing a few more guarantees in a bill of rights as the Antifederalists proposed? Did this not render the Federalist argument against a bill of rights “sophistical”? Moreover, providing a catalogue of rights in the Constitution might actually serve an important educational function. As one Antifederalist put it, declarations of rights do not “change the nature of things, or create new truths” but they can “at least establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot.”⁴³

Arkes highlighted that no one disputed the potential pedagogical function a bill of rights might serve. The problem according to *Federalist* 84 was that it would teach the *wrong* lesson. It would in fact *narrow* rather than *expand* the scope of rights and the foundational principles upon which American republicanism was founded. This was the most intractable long-term danger a bill of rights posed to constitutional reasoning.⁴⁴ By contracting the scope of the understanding on which American constitutionalism was based, constitutional thinking would be reduced to the sort of clever academic gamesmanship or legal puzzle-solving that we so often see today where complex legal precedents and popular slogans get applied to rights cases independently of any consideration for the broader constitutional, political, or moral principles these disputes implicate. American law accordingly is reduced to a caricature

of what is today taught in the case-law intensive method of progressive legal education. There law students, as Steven Hayward has remarked, are schooled to be “mere constitutional technicians rather than *constitutionalists*.” They are taught to memorize by rote narrow legal precedents and positivistic doctrines rather than being educated on the broader theory on which the Constitution is based.⁴⁵ In the progressive legal academy the Constitution’s meaning is presented as consistently “evolving” over time in order to accommodate what amounts to little more than passing progressive fads.⁴⁶ In the 1990s Mary Ann Glendon popularized the term “rights talk,” using it to describe what she maintained was a narcissistic legal culture that had emerged in the late twentieth century to impoverish American political discourse. That discourse was one in which political disputes were increasingly reduced to an ever-multiplying kaleidoscope of rights claims typically presented in inflexible and absolute terms and abstracted from any broader concerns with social or political responsibilities.⁴⁷ Glendon concluded that rights talk had undermined the public justification, communication, and deliberative processes vital to democracy. It had also eroded those “habits, practices, and attitudes of respect for others that are the ultimate and surest guarantors of human rights.”⁴⁸

Federalist 84 seemed to have something along the lines of what Arkes, Hayward, and Glendon admonished against when intoning that state bills of rights were little more than volumes of “aphorisms” that “would sound much better in a treatise of ethics than in a constitution of government.” Bills of rights were not self-defining. Only something like a treatise of ethics could provide the context for a bill of rights or make sense of the otherwise inchoate catalogue of rights that typically make up a charter or bill of rights. A treatise of ethics might provide the moral and political reasoning necessary to guide our judgment in determining what the content of rights should be and which rights should prevail over others in specific fact scenarios. What happens, for instance, when the First Amendment’s freedom of the press, allowing the media to disclose the proceedings of criminal trials open to the public, conflicts with a criminal defendant’s Sixth Amendment right to a fair trial before an impartial jury? Nothing in the Bill of Rights answers this question. One can appeal to precedent or judicial doctrine but even these will not resolve what *should* be done. On a similar note the First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press,” yet courts have approved restrictions in the name of libel, obscenity, and other restraints on speech and publications. These restraints, like the presumption of innocence in criminal law, are not provided for in the Constitution. Yet there is no threat, as Arkes points out, that the presumption of innocence is going to be abandoned in American law any time soon. The reason is because it is has become a first principle of that law.⁴⁹ Yet other first

principles or fundamental freedoms have not been recognized in American law because they are not formally recognized in the Constitution. The fears of *Federalist* 84 appear largely to have been borne out. Despite “the avowals in the Ninth Amendment,” Arkes concludes, “we have seen, in a number of signal cases, the casual denial of freedom and the cavalier destruction of certain rights precisely because these freedoms and rights were not apparently mentioned in the Bill of Rights or its sequelae.”⁵⁰ Arkes’ book, *Beyond the Constitution*, provides a compendium of such cases.⁵¹

The theme of *Federalist* 84 is not merely that the key protections to our freedoms and rights will be secured through the structural features of the Constitution rather than through anything like a bill of rights, as many interpreters of *The Federalist* have proposed.⁵² The Constitution’s structural features, to be sure, are certainly important and were designed to foment a more deliberative and responsible republicanism. But it was something beyond institutional remedies or a simple mechanistic politics that Publius sought to inculcate in *Federalist* 84, as he had done in *Federalists* 28, 40, and 43.⁵³ Responding to the complaint that the liberty of the press would be threatened without guarantees in a bill of rights, Publius demurred “that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government. And here, after all, as is intimated upon another occasion, must we seek for the only solid basis of all our rights” (84:550–551). Recent scholarship has emphasized the importance of public opinion in the political thinking of James Madison—and the other “occasion” referred to here is likely to Madison’s remark in *Federalist* 49 suggesting that all governments rest on opinion.⁵⁴ But as *Federalist* 84 and *Federalist* 28, as well as the Preface to *The Federalist*, all authored by Hamilton, illustrate public opinion was as critical to Hamilton as it was to Madison.⁵⁵ Those opinions held by a majority of Americans as well as American character—the general spirit of the people and of the government—were arguably the most critical elements necessary to maintaining American republicanism.⁵⁶ The structural or institutional features of American constitutionalism were certainly crucial to that republicanism but it could not work on autopilot.⁵⁷ Hamilton emphasizes that the *only* solid basis of all our rights is public opinion and America’s general spirit. This theme is consistent throughout *The Federalist* and the two elements—public opinion and America’s general spirit—are linked.

COMMERCE AND THE SPIRIT OF THE LAWS

The natural rights constitutionalism outlined in this chapter that *The Federalist* maintains underwrites the Constitution and whose full potential had failed

to be realized under the Articles of Confederation is the starting point for a more full-blown constitutional theory that *The Federalist* seeks to develop. *Federalist* 9 informs us that the Constitution's novel structural features such as separation of powers, checks and balances, and an independent judiciary, will contribute to safeguarding the principles of civil liberty. Yet later *Federalist* numbers that we examined, including the discussion of the danger of a bill of rights in *Federalist* 84, suggested that it is more America's general spirit or what we might call the spirit of the laws that the Constitution may foment that *The Federalist* seems to rely on for the preservation of private rights than the actual letter of the law or any particular rights guarantees.

This of course reminds us of Montesquieu's work by that same title—*The Spirit of the Laws*—cited multiple times in *The Federalist*. As its title suggests, *The Spirit of the Laws* was concerned not so much with the letter of the law as with its animating spirit. Montesquieu prefaced his seminal work on the spirit of the laws with the remark that he “has not taken [his] principles from his prejudices, but from the nature of things.” The more “one reflects on the details, the more one will sense the certainty of the principles.”⁵⁸ Montesquieu's teaching was about nature and about principles. Perhaps more precisely it was about the principles that derive from the “nature of things.” The spirit of the laws consisted of the “diverse relationships that the laws can have with diverse things,” including themselves.⁵⁹ But the laws originated in nature and in principles. It is only once he found his principles, Montesquieu tells us, that “everything I was looking for came to me.”⁶⁰

The Federalist operates on similar assumptions. The Constitution is based on the principles of the Declaration, which themselves purport to be founded in nature. The role of law, including the law of the Constitution, was similar to Montesquieu's, who was less interested in law defined as a series of rules and regulations moderating human action as what actually *moved* that action. Montesquieu defined laws in their “broadest meaning” as “necessary relations” that derived “from the nature of things.”⁶¹ He also distinguished between those “laws relative to the nature of each government” and those “relative to its principle.” It is particularly the latter that Montesquieu was most interested in since it was this that formed the animating spirit of the law. The “difference between the nature of the government and its principle,” Montesquieu wrote, is that “its nature is that which makes it what it is, and its principle that which makes it act. The one is its particular structure, and the other is the human passions that make it move.”⁶²

The Federalist follows the substance and methodology of Locke's political philosophy insofar as it anchors all legitimate government in consent and is based on “first principles, from which all subsequent reasonings must depend.” It also advances a Lockean-style limited government constitutionalism that understands the very purpose of government to be the protection of individual

liberties and the promotion of the public happiness. However, Montesquieu's distinct approach to constitutional law or the law that constitutes regimes is also evident in *The Federalist* and not just with respect to *The Federalist's* discussion of the Constitution's separation of powers and other structural features. How the Constitution might shape public opinion and the American spirit, and how commerce and the spirit of enterprise will contribute to this in a salutary way by redirecting the passions that move the constitutional order, also suggests the influence of Montesquieu's teaching on Publius.⁶³

Montesquieu's defense of commercial life and its shaping of civil and political mores are well known. Montesquieu preferred commercial republics or mixed regimes that separated legislative, executive, and judicial powers to other forms of government. On his reading commercial republics were stable and provided security.⁶⁴ The republican component of commercial republicanism ensured a broad popular base for government, diffusing power, and maintaining a concern for the common good. The commercial component of such republics had the salutary effect of softening manners and fighting destructive prejudices. Linking nations to one another in ways that rendered them reciprocally dependent, commerce tended to moderate national character in such a way that nations would negotiate with other nations in ways amicable to both. Being more concerned with wealth than with dominion, commercial republics would be less inclined to war and to imperialism. They might become powerful but they would not be disposed to use their power for conquest and other nations would look to them for friendship.⁶⁵

Much of this sociology of commerce *The Federalist* would agree with, especially *Federalists* 9–14, which sought to demonstrate how commerce, as directed and tempered by the Constitution, might promote comity, union, and American greatness. But there was another side to commerce as well, one that revealed its Janus-faced character. *Federalists* 9–14 were preceded by *Federalists* 5–8, which by contrast were an exposé on the violence that could result from dueling commercial interests not only in foreign affairs but perhaps most dangerously in domestic affairs. Commercial nations might be moderate if properly constructed but history had demonstrated that they were typically dynamic, imperialistic, and inclined to war. Indeed the most imperialistic and warlike of modern empires were all commercial. The contrast between these competing characterizations of commercial republicanism found in *Federalists* 5–14 constitutes arguably the most important transition in *The Federalist's* constitutional theory on which the rest of the work turns.

The reason is because it speaks to the most significant way in which the Constitution might transform or at least redirect the political and economic culture of the United States and shape both public opinion and the American spirit in the process. We have already seen how, in the final analysis, it is public opinion and America's general spirit that provide the only "solid

basis” for Americans’ rights. If these rights are to be protected under the new Constitution then that opinion and spirit will have to be shaped in such a way that Americans understand the content of those rights, what liberties are necessary to exercise them, and how they are best protected both by and from government. How is this broad level of understanding to come about? Will the Constitution’s new political or judicial institutions provide the requisite education here—the judiciary acting for instance as a “republican schoolmaster”?⁶⁶ Perhaps. But *Federalist* 2 and the remaining numbers in the introductory section of *The Federalist*, Nos. 2–14, suggest something more fundamental might have a more significant influence on public opinion and the American spirit. And the answer here, as we will see, depends very much on *The Federalist*’s rejection of Montesquieu’s sociology of commercial republics as much as on its acceptance of many of those features.

NOTES

1. *Federalist* 39 in fact distinguishes the United States from other governments incorrectly named “republics” by “political writers” because the United States is based on genuine republican principles.

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be . . . a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it. . . . It is *sufficient* for such a government that persons administering it be appointed, either directly or indirectly, by the people. (39:239–240, emphasis in original)

2. Michael P. Zuckert, *Launching Liberalism: On Lockean Political Philosophy* (Lawrence: University Press of Kansas, 2002), 208.

3. For Aristotle politics, as the opening sentence of the treatise devoted to the subject indicates, is about community (*koinonia*). It is not about individuals or rather it does not attempt to construct politics from individuals conceived in isolation from the communities that form them. As Aristotle quickly points out, individuals conceived in isolation from the communities that form them are anathema to his political science; they are like hands and feet conceived in isolation from the whole individual who uses them. In Aristotle’s words, the city or complete political community is “prior by nature to the household and to each of us. For the whole must of necessity be prior to the part.” *Aristotle’s Politics*, 2nd ed., trans. Carnes Lord (Chicago: The University of Chicago Press, 2013) I.2.1253a20–23. *The Federalist*’s theory, in the spirit of classical liberalism, works from largely opposed assumptions, assuming individuals exist independently of their political communities and formally establish those communities through contract, the weak as well as the strong seeking to protect themselves, their faculties, and their property by leaving pre-political society or

something approximating the state of nature for political society. This in any event is what *Federalist* 51 contemplates:

In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. (51:334–335)

None of this is to say of course that civil societies making up communities, such as the United States, cannot exist independently of social contracts—*Federalist* 51 implies as much. It is only to say that those contracts define the nature of the *political* or *legal* relations within the communities. That said, as *Federalist* 10 will suggest and as the argument below proposes, social contracts, like the Constitution, may significantly redefine the nature of civil society.

4. John Locke, “Second Treatise of Government,” in *Two Treatises of Government*, ed. Peter Laslett (New York: Cambridge University Press, 1988), hereafter *Second Treatise*, § 87, 324. References here are to the section and page numbers respectively from the Laslett edition of the *Two Treatises of Government*. Publius’ doctrine here is obviously not Hobbesian since it does not require the ceding of all natural rights to the sovereign but only some. See Thomas Hobbes, *Leviathan*, ed. C. B. MacPherson (New York: Penguin Classics, 1985), chs. 17–18, 223–239. Locke requires the cession of the natural right or power to judge and execute punishments upon the entering of civil society. See *Second Treatise*, § 87, 323–24. For a contrary interpretation of *The Federalist* asserting that its origins are Hobbesian, not Lockean, see George Mace, *Locke, Hobbes, and the Federalist Papers: An Essay on the Genesis of the American Political Heritage* (Carbondale: Southern Illinois University Press, 1979).

5. See Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: The University of Chicago Press, 1988), 119: “it would seem that reflection on the ‘State of Nature’ reveals what the *Federalist* calls the ‘natural rights’ from which the laws of nature are deduced; ‘some’ of these rights ‘the people must cede’ when they enter into the social compact, but others, it would appear, remain inalienable and as such constitute the anchor of the *Federalist Papers*’ moral thought.” See also, *ibid.*, 127.

6. There is of course a significant dispute about whether *any* natural rights are ceded to government in social contract theory. See, for instance, Hadley Arkes, *Beyond the Constitution* (Princeton, NJ: Princeton University Press, 1990), 62–65.

7. As I indicate below, *The Federalist* follows Lockean methodology because it anchors politics, specifically the rights to the pursuit of happiness and to property, in first principles. Unlike Locke, Montesquieu, who certainly had a strong influence on the authors of *The Federalist*, did not make a case for property on the basis of first principles. For a good discussion of this, see Alan Levine, “The Idea of Commerce in Enlightenment Political Thought,” in *Rediscovering Political Economy*, ed. Joseph Postell and Bradley C. S. Watson (Lanham, MD: Lexington Books, 2011), 53, esp. 57–66. For an alternative interpretation that the founders constitutionalism was

anchored more in the Scottish Enlightenment than in Locke, see Robert Curry, *Common Sense Nation: Unlocking the Forgotten Power of the American Idea* (New York: Encounter Books, 2015); see also, Gary Wills, *Explaining America: The Federalist* (New York: Penguin Books, 2001). I do not deny the influence of the Scottish Enlightenment on the authors of *The Federalist* but see the likes of David Hume and Adam Smith as extending or modifying Locke's political philosophy rather than repudiating it. For a good discussion of precisely how Hume and Smith reflect the "utilitarian tradition" of Lockean liberalism, see Mark F. Plattner, "Capitalism," in *Confronting the Constitution: The Challenge to Locke, Montesquieu, Jefferson, and the Federalists from Utilitarianism, Historicism, Marxism, Freudianism, Pragmatism, Existentialism...*, ed. Allan Bloom (Washington, DC: The AEI Press, 1990), 325. I will have more to say about these issues in later chapters.

8. See Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 1–8, 57–96, 144–145, and 280–281; David F. Epstein, *The Political Theory of The Federalist* (Chicago: The University of Chicago Press, 1984), 6–8, 11–36, 73–88, 113–114, 128–130, 152, 174, 186, 203, and 213; Pangle, *Spirit of Modern Republicanism*, 129–279; W. B. Allen, with Kevin A. Cloonan, *The Federalist Papers: A Commentary* (New York: Peter Lang, 2000), 33–56; Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton, NJ: Princeton University Press, 1994), esp. 187–319; Michael P. Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* (Notre Dame, IN: University of Notre Dame Press, 1996); Michael P. Zuckert, *Launching Liberalism*, 203–296. The impact of Locke's political philosophy during the founding era was broad. For Locke's influence on the founders and prerevolutionary America dating back to 1717, see Thomas G. West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom* (New York: Cambridge University Press, 2017), 21 and following. Bradley Watson has also observed: "The influence of Lockean ideas is quite evident not only in the Declaration of Independence and Jeffersonian thought, but also in the thinking of most other prominent founders, representing a wide spectrum of views in the founding era. It is also evident in some sermons of the period, in various ratification debates leading up to state constitutions, and in various state constitutional documents," such as the Delaware, Maryland, and Virginia Declarations of Rights (1776), the Pennsylvania constitution (1776), the New Hampshire constitutions of 1776 and 1784, and the Massachusetts constitution of 1780. Bradley C. S. Watson, "Creed & Culture in the American Founding," *The Intercollegiate Review* 41, no. 2 (Fall 2006): 33n3. On the relationship of Locke to the Declaration and the American Revolution, see Stephen Dworetz, *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution* (Durham, NC: Duke University Press, 1988). On the early emergence of natural right theory in colonial America, see Craig Yurish, *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675–1775* (New York: Cambridge University Press, 2011).

9. Christopher Lynch observes: "Up to Machiavelli's time, political philosophers had kept at arm's length the force and fraud endemic to political rule and especially to its founding moments. They did so by censuring or beautifying that force or fraud, or by placing its precepts in the mouths of unsavory characters; otherwise they

simply maintained a prudent silence concerning it.” Christopher Lynch, “Introduction,” in Niccolò Machiavelli, *Art of War*, trans., ed., with commentary by Christopher Lynch (Chicago: The University of Chicago Press, 2003), xxv. See also Karl-Friedrich Walling, *Republican Empire: Alexander Hamilton on War and Free Government* (Lawrence: University Press of Kansas, 1999), 15–16, and Michael D. Chan, *Aristotle and Hamilton: On Commerce and Statesmanship* (Columbia: University of Missouri Press, 2006), 66. Algernon Sidney similarly observed: “[P]rivate families may by several arts increase their wealth, as they increase in number; but when a people multiplies (as they will always do in a good climate under a good government) such an enlargement of territory as is necessary for their subsistence can be acquired only by war.” Algernon Sidney, *Discourses Concerning Government*, ed. Thomas G. West (Indianapolis: Liberty Fund, 1996), 210. See also, Montesquieu, *The Spirit of the Laws*, 1.3, 236–238. Responding to Locke’s proposition that legitimate government requires popular consent, Hume not only appears to agree with Machiavelli, Sidney, and Montesquieu as to the origins of government but contends that in the unlikely event the people actually get the opportunity to rule themselves, they will prove too incompetent to the task and require a military “master.” Hume’s theme, that Locke’s doctrine of consent is utopian, is precisely what *The Federalist* seeks to refute in proposing ratification of the Constitution. See David Hume, *Essays: Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Classics, 1985), 471–472:

Almost all the governments, which exist at present, or of which there remains any record in story, have been founded originally, either on usurpation or conquest, or both, without any pretence of a fair consent, or voluntary subjection of the people.

In reality, there is not a more terrible event, than a total dissolution of government, which gives liberty to the multitude, and makes the determination or choice of a new establishment depend upon a number, which nearly approaches to that of the body of the people: For it never comes entirely to the whole body of them. Every wise man, then, wishes to see, at the head of a powerful and obedient army, a general, who may speedily seize the prize, and give to the people a master, which they are so unfit to chuse for themselves. So little correspondent is fact and reality to those philosophical notions.

The philosophical notions Hume refers to here include Locke’s doctrine of the “original contract” that asserts the only legitimate foundation of lawful government can be the consent of the people. See *ibid.*, 486–487. See also Plato, *The Republic*, trans. Allan Bloom (New York: Basic Books, 1968), 235–249, and Epstein, *The Political Theory of The Federalist*, 12–14.

10. On this Socratic account of justice and its relationship to the question of war, and specifically the development of martial excellence and martial qualities of soul, see Leon Harold Craig, *The War Lover: A Study of Plato’s Republic* (Toronto: University of Toronto Press, 1994).

11. See Michael P. Federici, *The Political Philosophy of Alexander Hamilton* (Baltimore: Johns Hopkins University Press, 2012), 62.

12. See Mackuban Thomas Owens, “Vigilance and Responsibility: Alexander Hamilton’s Strategic Sobriety,” in *National Review Online*, January 13, 2006, <http://www.nationalreview.com/script/printpage.p?ref=/owens/owens200601131053.asp>.

13. Adams had proclaimed in 1787 that the natural aristocracy could “always be made the greatest blessing of society, if it be judiciously managed in the constitution.” John Adams, *Defence of the Constitution of Government of the United States* (1787), in *The Founders' Constitution*, Vol. 1, ed. Philip Kurland and Ralph Lerner (Indianapolis: Liberty Fund, 1987), 543. Jefferson, in agreement with Adams, later contrasted the “artificial aristocracy, founded on wealth and birth,” with the natural aristocracy, whose grounds were “virtue and talents.” Jefferson considered the natural aristocracy “the most precious gift of nature, for the instruction, the trusts, and the government of society” and republicanism was the best form of government to cultivate this aristocracy. Thomas Jefferson to John Adams, October 28, 1813, in *The Portable Thomas Jefferson*, ed. Merrill D. Peterson (New York: Penguin Books, 1977), 534–535. As the argument in this book demonstrates, *The Federalist* agrees, suggesting that something like this natural aristocracy might be the outgrowth of the Constitution if it is adopted, even though it avoids terms like “natural aristocracy,” the cultivation of “excellence” or similar sounding rhetoric. See also, Martin Diamond, *As Far as Republican Principles Will Admit*, ed. William A. Schambra (Washington, DC: AEI Press, 1992), 363.

14. Reflecting upon *The Federalist's* separation of powers, and specifically those officeholders who will fill the branches of government, Harvey Mansfield notes: “Publius does not appeal to virtue, wary as he is of virtue in both republican and aristocratic form. But he also avoids reliance on the base motives of greed and vanity as well as common gain.” Harvey C. Mansfield, Jr., *Taming the Prince: The Ambivalence of Modern Executive Power* (Baltimore: The Johns Hopkins University Press, 1993), 263. I propose below that Publius seems to meet the republican and aristocratic forms of virtue half way. As I suggest in chapter 3, he promotes what I term the virtue of enterprise, exalting an ambitious and innovative but ultimately principled American character.

15. See Epstein, *The Political Theory of The Federalist*, 80. Epstein maintains that the factions understood by *Federalist 10* to be the necessary consequence of political freedom “led the notable modern Thomas Hobbes to disparage the liberty of political life.” Other scholars have proposed that Hobbes’ political philosophy threatened individual liberty because of the absolute power he granted the sovereign. See, for instance, Judith Shklar, “The Liberalism of Fear,” in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge, MA: Harvard University Press, 1989), 24; Susan Mollar Okin, “Humanist Liberalism,” in *Liberalism and the Moral Life*, 257; Benjamin Barber, “Liberal Democracy and the Costs of Consent,” in *Liberalism and the Moral Life*, 261; David Gauthier, “Public Reason,” *Social Philosophy and Policy* 12 (1995): 19–42; and Michael Ridge, “Hobbesian Public Reason,” *Ethics* 108 (1998): 538–568. For a response to these authors and a counterargument that Hobbes was not out to destroy individual liberty, see David van Mill, *Liberty, Rationality, and Agency in Hobbes' Leviathan* (Albany: State University Press of New York, 2001), 162–202. See also, Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and Its Genesis*, trans. Elisa M. Sinclair (Chicago: The University of Chicago Press, 1984).

16. See, for instance, Hobbes, *Leviathan*, ch. 18, 233:

[I]t is annexed to the Sovereignty, to be Judge of what Opinions and Doctrines are averse, and what conducing to Peace; and consequently, on what occasions, how farre, and what,

men are to be trusted withall, in speaking to Multitudes of people; and who shall examine the Doctrines of all books before they be published. For the Actions of men proceed from their Opinions; and in the well governing of Opinions, consisteth the well governing of mens Actions, in order to their Peace, and Concord.

Criticizing the influence of Aristotle in “the Universities of Christendome,” whose teaching Hobbes disputed, Hobbes advised his readers:

I say not this, as disapproving of the Universities: but because I am to speak hereafter of their office in a Commonwealth, I must let you see on all occasions by the way, what things would be amended in them; amongst which the frequency of insignificant Speech is one. (*Leviathan*, ch. 1, 87)

For a present-day defense of Hobbes’ restrictions on speech as a necessary precondition for saving modern liberal democracies from themselves, see Leon Harold Craig, “The Liberal Regime Under Attack,” in *The West at War*, ed. Bradley C. S. Watson (Lanham, MD: Lexington Books, 2006), esp. 93–94.

17. See Mansfield, *Taming the Prince*, 255:

It is characteristic of the American Constitution, by contrast to republican tradition, to *constitutionalize* necessities in the manner of Locke. Those necessities limiting our choice, which we would like to wish away, are brought into the Constitution so that the people, through their government, can choose how to deal with them after having anticipated the necessity of doing so. That is how reflection enables choice to contend with “accident and force,” which cannot in fact be removed from human affairs. Traditional republicanism might admit as much, but still choose to keep its republican faith intact and take its chances with events even if that faith were frequently frustrated. Such a choice would account for the strength of republican faith despite the disasters of republican experience. (emphasis in original)

18. The relationship of Locke to the American Revolution and to the Constitution is the subject of what is now a significant body of scholarship. What is presented here is only a précis of that scholarship and of Locke’s significance to *The Federalist*. According to Forrest McDonald,

The Patriots had turned to Locke rather than to the other great natural-law theorists—Hugo Grotius, Samuel von Pufendorf, Thomas Rutherford, Burlamaqui, Vattel—for the reason that none of the others was so well adapted to their purposes. Vattel, the most respected of the lot, went so far as to say that rights were “nothing else but the power of doing what is morally possible,” that is to say, what is proper and consistent with duty; and none of the theorists except Locke furnished a clear-cut rationale for independence. (McDonald, *Novus Ordo Seclorum*, 60)

19. Thomas G. West, “Forward,” in *Discourses Concerning Government*, ed. Algernon Sidney, xv.

20. For a succinct discussion of this, see Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: The University of Chicago Press, 1988), 133–140.

21. Locke, *Second Treatise*, § 1, 267–268.

22. *Ibid.*, § 95, 330–331. See, also, Epstein, *The Political Theory of The Federalist*, 13.

23. Locke, *Second Treatise*, § 3, 268.

24. *An Essay Concerning Human Understanding*, ed. Peter H. Nidditch (New York: Oxford University Press, 1991), IV, XII, § 1, 639, hereinafter *Essay*. Of course working from principles originating in nature is not unique to Locke. Aristotle, for instance, begins the *Metaphysics* in this same regard. See Aristotle, *Metaphysics*, trans. W. D. Ross, ed. Jonathan Barnes, in *The Complete Works of Aristotle*, Vol. Two, 1553–1554.

25. *Essay*, IV, VII, § 2, 591.

26. *Ibid.*, IV, III, § 17, 549. See, also, Leo Strauss, *Natural Right and History* (Chicago: The University of Chicago Press, 1953), 202.

27. Michael P. Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* (Notre Dame, IN: University of Notre Dame Press, 1996), 44. See Locke, *Essay*, I, III, § 1–27, 65–84. Zuckert writes: “To say ‘we hold these truths to be self-evident’ is not the same as to say ‘these truths are self-evident truths.’ ‘We hold’ insinuates a doubt as to the status of the truths. . . . An element of subjectivity and an element of hesitation are introduced into a judgment which should be the most epistemologically solid possible.” The truths in the Declaration “are not affirmed to be in themselves self-evident, only to be held as such by Americans.” Zuckert, *The Natural Rights Republic*, 45–46. Thomas West responds to this interpretation by Zuckert: “In this claim, Zuckert misses how unlikely it is that serious political men, in the midst of a Revolution and risking their lives and fortunes, would be expressing ‘doubt’ and ‘hesitation’ regarding the momentous step they were about to take.” Thomas G. West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom* (New York: Cambridge University Press, 2017), 79.

28. See, for instance, Locke, *Second Treatise*, § 225, 415.

29. Locke similarly maintains that the legislative power “is *not*, nor can possibly be absolutely *Arbitrary* over the Lives and Fortunes of the People.” Locke, *Second Treatise*, § 135, 357, emphasis in original.

30. (28:171–172). See also, Max M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), 120.

31. In *The Political Philosophy of Alexander Hamilton* (Baltimore: Johns Hopkins University Press, 2012), 12, Michael P. Federici remarks:

Locke suggested that order was ahistorically derived from abstract principles of natural rights and from a government that was made viable by the consent of the governed, regardless of historical contingency. He also touted a right to revolution that was far too perfunctory for someone with Hamilton’s reservations about the masses and insistence on the primacy of order.

Although there is certainly plenty of evidence regarding Hamilton’s reticence about a right to revolution in his opposition to such events as the French Revolution, Shay’s Rebellion, and the Whiskey Rebellion, as Federici points out, *Federalist* 28, authored by Hamilton, seems to suggest a more open mind about such an eventuality. Hamilton’s reference in No. 28 to an “original right of self-defense which is paramount to

all positive forms of government” sounds a lot like a natural right to revolution along Lockean lines. This interpretation seems to be supported by the fact that the example *Federalist* 28 refers to immediately after this statement involving a single state refers to citizens having to “rush tumultuously to arms” following the usurpations of those in such a state “intrusted with supreme power” (28:171). There are of course two important qualifications here. First, Hamilton refers to the right at issue in *Federalist* 28 as a right of self-defense, which may stop short of a right to revolution. This interpretation seems to be a bit of a stretch (and I have assumed otherwise in my interpretation of *Federalist* 28 in the text here) but it is a possible construction that might undermine my assumptions here. Second, the interpretive methodology adopted in this book is that Hamilton, like Madison and Jay, presents a defense of the Constitution as its framers might have best put it. In other words, *Federalist* 28 does not necessarily reflect the views of Hamilton so much as the views of the framers of the Constitution as Hamilton understood this. The framers as a whole might have embraced a right to revolution or an “original right of self-defense which is paramount to all positive forms of government” but not Hamilton. Nevertheless *Federalist* 28 provides an interesting antidote to the idea that Hamilton did not ascribe to a Lockean-like right to revolution on the part of the people should they be betrayed by their representatives.

32. Michael I. Meyerson, *Liberty's Blueprint: How Madison and Hamilton Wrote the Federalist Papers, Defined the Constitution, and Made Democracy Safe for the World* (New York: Basic Books, 2008), 55. See also, *ibid.*, 45–49, and Charles R. Kesler, in Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter, intro. and notes Charles R. Kesler (New York: Signet Classic, 2003), Notes, 611.

33. *Federalist* 78 similarly proposes that “the friends of the proposed Constitution” would never question “that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness” (78:500–501).

34. Michael P. Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* (Notre Dame, IN: University of Notre Dame Press, 1996), 23. See also, *ibid.*, 18, and Michael P. Zuckert, *Launching Liberalism*, 230.

35. See Harry V. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, MD: Rowman & Littlefield, 2000), esp. 117–122.

36. As Edling notes,

When they wrote *The Federalist*, Hamilton and Madison worked within a genre that was well established in both Britain and America. Print discourse had become the major form of national communication in eighteenth-century Britain, and it had helped establish the idea that there existed something called “the public opinion,” which could, and should, influence the actions of the government. In America, too, the press was the primary means to create a widely shared “public opinion.” Indeed, because of the absence of a political center, the importance of the press in America was even greater than in Britain. By the time of the ratification debate, deliberation on public issues in the press was a standard feature of political life. (Edling, *A Revolution in Favor of Government*, 18)

See also, Robert Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century* (New York: Vintage Books, 2007), 48:

American independence came in the midst of a communications revolution, especially in England but also on the European continent. There was an explosion in the dissemination of the printed word. London's first daily newspaper appeared in 1702; by the end of the century millions of newspapers were sold annually in the city. For the first time in human history, something like a public opinion was coming to play a role in European politics, and essential to the development of this public involvement was the new access to information, both local and international. The United States was the product of this new era, and its influence was the greater because of it.

37. See, for instance, *Federalist* 84: "The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the Union." Even "the information of intelligent men," in whom the citizens of the United States will "confide," will get their information "from the public prints" as well as "from the complexion of public measures . . . from correspondences with their representatives, and with other persons who reside at the place of their deliberations" (84:552–553).

38. See Hadley Arkes, *Beyond the Constitution* (Princeton, NJ: Princeton University Press, 1990), 60. Montesquieu informs us that we can understand the nature of government by who holds sovereign power or the political will. See Montesquieu, *The Spirit of the Laws*, II, 1–4, 239–249.

39. Hobbes, *Leviathan*, ch. 13, 188.

40. Compare Epstein, *The Political Theory of The Federalist*, 163.

41. Locke, *Second Treatise*, § 6, 271. Hobbes defines a law of nature in similar terms. See *Leviathan*, ch. 14, 189.

42. On the problem of the "doctrine of constructive powers" raised in *Federalist* 84, see W. B. Allen, with Kevin A. Cloonan, *The Federalist Papers: A Commentary* (New York: Peter Lang, 2000), 8–16.

43. Quoted in Arkes, *Beyond the Constitution*, 59. See also, *ibid.*, 60–61. Jefferson had made a similar argument in favor of a bill of rights in 1787 and 1788. See Paul A. Rahe, *Republics, Ancient and Modern, Volume III: Inventions of Prudence: Constituting the American Regime* (Chapel Hill, NC: The University of North Carolina Press, 1994), 178.

44. Arkes, *Beyond the Constitution*, 6–20, 59–60, 78–80.

45. Steven F. Hayward, *Patriotism Is Not Enough: Harry Jaffa, Walter Berns, and the Arguments that Redefined American Conservatism* (New York: Encounter, 2017), 165, emphasis in original.

46. See Bradley C. S. Watson, *Living Constitution, Dying Faith: Progressivism and the New Science of Jurisprudence* (Wilmington, DE: ISI Books, 2009). See also, Bradley C. S. Watson, "Republics of Conscience: Progressive Law Schools and the Crisis of Constitutionalism," *National Review*, October 29, 2012, 37.

47. Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991), 12.

48. *Ibid.*, 171.

49. Arkes, *Beyond the Constitution*, 71.

50. *Ibid.*, 61.

51. Arkes' natural rights or natural law approach to constitutional interpretation, particularly as it applies to judges, has generated significant controversy. This

involves not only *Beyond the Constitution* but his more recent *Constitutional Illusions and Anchoring Truths: The Touchstone of the Natural Law* (New York: Cambridge University Press, 2010). Not only have liberals been critical of Arkes' approach, which might be expected, but so too have conservatives or constitutional originalists, such as the late Robert Bork. In a eulogy to Bork in the conservative magazine *National Review*, Matthew J. Franck observed: "Although the people in [Bork's] sights were usually liberals, occasionally he fended off attacks from his right flank by proponents of natural-law judging, such as Harry Jaffa and Hadley Arkes" (*National Review*, January 28, 2013, 31). There is inadequate space here to address the many aspects of the dispute over how to interpret the Constitution that the discussion of Arkes and *Federalist* 84 here raises but it is worth noting that these issues have generated a cottage industry of sorts both within the fields of law and political science. For recent exchanges between Arkes and other scholars over the manner of his approach to constitutional interpretation, see Hadley Arkes, "The Mirage of Enumerated Powers," *Claremont Review of Books* Vol. XI, nos. 1–2 (Winter 2010–Spring 2011): 33, and subsequent responses and reply from Arkes in "Natural Law and Constitutional Law," *Claremont Review of Books* Vol. XI, no. 3 (Summer 2011): 5, as well as Hadley Arkes, "A Natural Law Manifesto," *Claremont Review of Books* Vol. XI, no. 4 (Fall 2011): 43, and responses by David F. Forte, "May It Please the Court," *ibid.*, 50 and Michael M. Uhlmann, "The Need for Natural Law," *ibid.*, 53.

52. See, for instance, Glendon, *Rights Talk*, 4. See also, Max M. Edling, *A Revolution in Favor of Government*, 4–5: "To complete the Madisonian analysis [in defense of the Constitution], two things have to be added. First, Madison had given up all hope that the states were able to, or would ever be able to, reform themselves. Second, he was convinced that institutional structure rather than formal rules—for example, bills of rights—safeguarded the public good and minority rights."

53. As Allen has highlighted, Publius' concern is

to create a certain kind of decision making in the people at large, which is much more fundamental than simply the arrangement of offices. . . . [T]he idea that the Founding Fathers are early versions of mechanical engineers doesn't do justice to their constitutional claims. They purport to be engaged in something far wider than simply designing the offices; they purport to be designing the lives that the people living under this constitution were meant to live. (Allen, *The Federalist Papers*, 28)

54. See *Federalist* 49:323: "If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion." On the importance of public opinion to the thought of Madison, see Colleen A. Sheehan, *James Madison and the Spirit of Republican Self-Government* (New York: Cambridge University Press, 2009). As Sheehan writes, "Madison grounded his theory of public opinion in a new conception of the politics of communication. He envisioned a commerce of ideas in the extended republic that would not only refine the will of the majority in the legislature but, to the extent possible, would also modify and enlarge the will and views of the majority (or society) itself" (*ibid.*, 94, emphasis in original). Sheehan focuses predominantly on Madison's post-*Federalist* writings but like many Madison scholars assumes a fundamental division

between Hamilton and Madison even in *The Federalist* on such issues as the role of public opinion, economic interest, passion, the shaping of American character and the human spirit, and the nature of republicanism under the Constitution.

55. In the Preface to *The Federalist*, published March 17, 1788, Hamilton wrote:

The particular circumstances under which these papers have been written, have rendered it impracticable to avoid violations of method and repetitions of ideas which cannot but displease a critical reader. The latter defect has even been intentionally indulged, in order the better to impress particular arguments which were most material to the general scope of the reasoning. Respect for public opinion, not anxiety for the literary character of the performance, dictates this remark. (*The Federalist Papers*, Kesler edition, lix)

Peter McNamara highlights that Hamilton was concerned about public opinion in his pre-*Federalist* writings as well. Commenting, for instance, on the financial crisis of 1779 Hamilton had speculated in a letter that same year on the cause of the rapid decline in value of paper money issued by the federal government. As McNamara summarizes Hamilton's assessment:

The excessive issue of paper had resulted in a sharp decline in its market value. The puzzle was that the decline in value seemed disproportionately large when looked at simply in terms of the magnitude of the increase in the supply of paper money. The apparently excessive decline, [Hamilton] explained, was "derived from opinion, a want of confidence." The want of confidence went beyond the nation's finances and was, in fact a crisis of confidence in the government itself. Furthermore, he added, "we deceive ourselves when we suppose the value will increase in proportion as the quantity is lessened. Opinion will operate here also; and a thousand circumstances may promote or counteract the principle." (Peter McNamara, *Political Economy and Statesmanship: Smith, Hamilton, and the Foundation of the Commercial Republic* [DeKalb: Northern Illinois University Press, 1998], 98)

Michael Chan has similarly observed that Hamilton was as concerned about the shaping of public opinion in his post-*Federalist* writings as he was in his pre-*Federalist* writings. Hamilton's *Report on Manufactures* (1791), for instance, underscored "Hamilton's recognition of the need to educate public opinion about the usefulness of manufactures." There Hamilton attempted "to instill an opinion that the interests of agriculture and manufacturing 'are intimately blended and interwoven.' . . . What Hamilton was confronting was a narrow view of interest that only looks as far as the immediate effects of a policy." As Chan elaborates, Hamilton believed that citizens had to

become willing to sacrifice their short-term interests to their long-term interests and to the long-term interests of the whole because experience had established "that *aggregate* prosperity of manufactures, and the *aggregate* prosperity of Agriculture are intimately connected." Yet the problem was as much a matter of people's *ideas* as their *interests*: "Ideas of a contrariety of interests between the Northern and southern regions of the Union, are in the Main as unfounded as they are mischievous. . . . [Such] suggestions are ever to be deplored, as unfriendly to the steady pursuit of one great common cause, and to the perfect harmony of all the parts." That is to say, the *idea* of a conflict between agriculture and manufacturing not only disturbs harmony among the various regions but also prevents citizens from thinking they are part of a whole with a common aim. In fact,

viewing oneself as participating in a common cause is the means by which harmony is promoted. Citizens must therefore be given the *same* opinion or idea of the complementary nature of agricultural and commercial interests, and giving citizens the same opinion requires that they be *habituated* into thinking that their interests are intimately blended and connected (Chan, *Aristotle and Hamilton*, 125–126, emphasis in original). See also, *ibid.*, 59n4 for Chan’s critique of Sheehan’s construction of Hamilton’s “‘thin version of the politics of public opinion’ restricted to inspiring ‘confidence’ in citizens.”

The role of habituating Americans to understanding that commercial and agricultural interests are complementary and that this complementarity will be facilitated by the Constitution will be central to *The Federalist’s* argument about how to shape public opinion in support of the new constitutional order.

56. Allen has said of this remark in *Federalist* 84 regarding liberty of the press and public opinion, it appears

to mean that there’s no provision that can be written respecting free government that can make government free. . . . Government, according to Publius, seems to be free only to the extent that it is a government whose citizens keep it free, whose citizens maintain it as free. And that, then, would explain why he refers . . . to “public opinion.” That would explain the reliance on public opinion to defend the liberty of the press. That means that what Publius is doing in terms of his—let me call it his constitutionalism—is providing an explanation about the organization of the polity.

We are used to speaking of free governments making free peoples. I think that’s the way we often think it works. . . . But Publius is saying the reverse, or seems to be saying the reverse, namely, free people make free governments. (Allen, *The Federalist Papers: A Commentary*, 16)

57. See Charles R. Kesler, “Introduction,” in Charles R. Kesler, ed., *Saving the Revolution: The Federalist Papers and the American Founding* (New York: The Free Press, 1987), 2:

As important as the specific provisions of the Constitution were—and as famous as its “auxiliary precautions” were to be made by later interpreters of *The Federalist*—the new Constitution would stand or fall by its effect on public opinion: immediately, insofar as its ratification depended on rallying support in at least nine and preferably all thirteen states; and ultimately, inasmuch as its perpetuation required the formation of a national public opinion that would be enlightened, moderate, just, yet also courageously loyal to the preservation and good name of the American republic.

58. Montesquieu, *The Spirit of the Laws*, Preface, 229.

59. *Ibid.*, I, 3, 238.

60. *Ibid.*, Preface, 231.

61. *Ibid.*, I, 1, 232.

62. *Ibid.*, III, 1, 250–251. See also, Hannah Arendt, *The Human Condition* (Chicago: The University of Chicago Press, 1958), 190n17.

63. Charles Kesler notes that at least early on in *The Federalist*, “The problem of politics seems to be how to arrange ‘the momentum of civil power’ so that it acts on individuals, moving their passions in the proper direction.” Charles R. Kesler, “Introduction to *The Federalist Papers*,” in *The Federalist Papers*, Kesler edition, xvii, paraphrasing *Federalist* 13.

64. “That nation, that peace and liberty would render easy” and “free of destructive prejudices, would,” Montesquieu declared, “be inclined to become commercial.” *The Spirit of the Laws*, XIX, 27, 578.

65. *Ibid.*, XX, 1, 585, and XIX, 27, 578–579.

66. See Ralph Lerner. “The Supreme Court as Republican Schoolmaster.” *The Supreme Court Review* 1967 (1967): 127–180. This essay by Lerner spawned a series of related essays. See, for instance, the six chapters making up “Part I: The Supreme Court as Republican Schoolmaster,” in *The Supreme Court and American Constitutionalism*, ed. Bradford P. Wilson and Ken Masugi (Lanham, MD: Rowman & Littlefield, 1998), 3–105.

Chapter 2

Natural Rights and a New Commercial Republican Theory

The last chapter examined the foundations in principle of *The Federalist's* constitutionalism. That constitutionalism was anchored in the natural rights philosophy of the Declaration of Independence. In *Federalists* 2–8 we begin to see how that philosophy will translate into constitutional practice. *Federalists* 2–8 address how union is necessary to protect against foreign threats as well as against domestic disorder and disputes between the states. *Federalist* 2 also explicitly identifies union with American greatness—a greatness that *The Federalist* suggests should be understood not as the pursuit of imperialism or of a belligerent power politics but as the lawful promotion of prosperity and greater liberty. As I indicated in the Introduction *Federalists* 2–14 on the “the utility of the Union to your political prosperity” are the most important *Federalist* numbers because they establish the ends or objects the Constitution will fulfill. However Publius’ point in these numbers is not to simply rehearse common opinion about the utility of the union; the union was already held in high esteem by the American people, as *Federalists* 1–3 emphasize. *Federalists* 2–14 are intended instead to educate Americans on those novelties of the union that they might not have appreciated and that might form new indices of attachment to it.¹ On *The Federalist's* reading, the Constitution was intended to reshape the American regime and to create a specific way of life in accordance with a particular understanding of justice that delineates what good things this new regime will inaugurate and perpetuate. That vision of justice originates in the natural rights constitutionalism that I described in the last chapter. The Articles of Confederation failed to embody that constitutionalism. The Constitution would.

But what exactly did that mean? Although anchored in a philosophy of natural rights, *The Federalist's* constitutional theory was distinguishable from those common constructions of modern liberalism and modern political

science that too often propose that the core of politics centers on such pre-political or subrational elements as economic interest, racial, ethnic, or religious identity, historical, geographical, or geopolitical determinism of some form or other, or simple power politics.² *The Federalist* was certainly cognizant of the influence of the pre-political, the subrational, or the passionate in individual and political life. Yet the appeal to “reflection and choice” in the opening paragraph of *Federalist* 1 and that same number’s plea to readers to ignore the motives of the participants in the constitutional debate and to focus on the merits of the arguments makes it clear that it views the American reading public as not entirely enslaved to its passions, interests, or other subrational elements. That public is capable of some capacity for reason, even if the principles of American government may give rise to certain passions that “make it move” as Montesquieu suggested. As we saw in the last chapter, *Federalist* 49 proclaims that “it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government” (49:325). Republicanism was better than direct democracy because of the greater capacity it afforded for governance by public reason rather than by majority faction. Republican government presumed that the people had some capacity to reason, not only because they had to scrutinize their representatives themselves but because a constitutional theory based on the rights of self-governance could not operate otherwise. *Federalist* 9 seemed to contemplate precisely this theory, suggesting that free government could be made consistent with the order of society.

Federalist 2 makes the same assumption. Attempting to elevate reason over passion, it reminds us that the Articles of Confederation were established in violent and inauspicious times, when Americans’ “habitations were in flames” and “their citizens were bleeding.” These were hardly propitious circumstances in which to forge “a wise and well-balanced government for a free people.” Yet Americans were an “intelligent people” and still “no less attached to union than enamored to liberty.” To protect both they pursued “a national government more wisely framed.” The result was the Constitution, which was “only *recommended*, not imposed,” and “neither recommended to *blind* approbation, nor to *blind* reprobation; but to that sedate and candid consideration which the magnitude and importance of the subject demand” (2:10, emphasis in original). *The Federalist* wanted to convince the American people of the worthiness of the Constitution; it did not seek blind approbation. The only passions it relied upon were Americans’ attachment to the union and their love of liberty.³ Yet *Federalist* 2, like many other *Federalist* numbers, reminds us of the difficulty of evaluating political or constitutional questions in a “sedate and candid” manner, particularly those questions of the utmost consequence. On the cusp of the Revolution, we are told, when the Congress of 1774 had recommended a number of measures that in “the event

proved their wisdom,” the press teamed with attacks against those measures from individuals who suffered “from the undue influence of ancient attachments or whose ambition aimed at objects which did not correspond with the public good.” In spite of this “the great majority of the people reasoned and decided judiciously” (2:11). Hopefully they and their delegates to the ratifying conventions could do the same thing when it came to considering the Constitution.

Federalist 2 introduces us to a discussion of the nature of American union and its importance to American nationhood. This chapter reviews that discussion and its relation to *The Federalist*’s constitutionalism. It begins with what has been seen as an apparent contradiction between the Lockean-like natural rights constitutionalism asserted at the outset of the number and the cultural or religious identity thesis asserted a little later on in the number. At the heart of this controversy is what precisely forms the basis of the Constitution? Is it a social contract, a union based on universal natural rights, or is the Constitution anchored instead on more fixed, nontransferable characteristics of culture? As I will emphasize below there is no real contradiction here. *Federalist 2* and later *Federalist* numbers make it clear that *The Federalist*’s natural rights constitutionalism is not intended to replace Anglo-American political, legal, or cultural traditions despite the obvious severance from British colonial rule that the Revolution implied. Rather the novel natural rights constitutionalism of *The Federalist* was intended more as a clarification of the nature of American union, a means of providing theoretical clarity and coherence to the union post-Revolution.

It is equally clear however that *The Federalist* did view the Constitution as an instrument of political and cultural transformation of some significance. That was the point of asserting its natural rights constitutionalism. Clarity with respect to the precise meaning of those rights and how they might be better vindicated was the best way of illustrating how the Constitution would make Americans’ lives better. This implied change, however, not constancy. What it also indicated was that the status quo at the time of the convention could not sustain itself. As I emphasize at the conclusion of the next section, the *Federalist* numbers that follow *Federalist 2* suggest that the merely conventional or cultural will likely be inadequate foundations for American union. *The Federalist* celebrated the nobility and originality of the Revolution, which dispatched the most fundamental of the traditional or the cultural: America’s English colonial tradition. *Federalists 5–7* also make clear that Anglo-American or Judeo-Christian culture on their own will be insufficient to bind Americans in a United States divided. This is a critical concession that reveals that Anglo-American culture alone cannot solidify union. Only the new Constitution and the new understanding of commercial republicanism that underlies it could do that.

The theme of the second section is related to this conclusion, centering on an issue originally raised at the end of *Federalist* 2: What exactly will American greatness consist of in the new constitutional order? Although not an easy question to answer, *The Federalist* proposes that it will consist at least in part of the Constitution better protecting rights of property and American industry. Importantly, the appeal here is not to some crass “materialism” or purely self-interested politics, or at least not to this alone. It is rather above all an appeal to establish public confidence in the federal government and America’s commercial order, both preconditions for the development of a new public spiritedness and freedom for individual development. Section two emphasizes this critical theme of *The Federalist*: That the enormous deficits in economic policy and national security that the Confederation had brought about had given birth to moral and spiritual deficits equally devastating to American pride and American character. Reform of commercial life was thus the necessary precondition to reform of American character and the American spirit. This is why the role of enterprise and the specific understanding of virtue it might produce assumes centrality in *The Federalist*’s teaching about the Constitution. We begin to see here the early elements of *The Federalist*’s doctrine regarding how the Constitution will reshape public opinion and the American spirit that our last chapter emphasized was so critical to the preservation of Americans’ liberties. It is through this novel commercial republican theory that *The Federalist* contends the Constitution will higher-tone American character.

Section three revisits the themes from section two with an emphasis on recent scholarship on Alexander Hamilton that has highlighted his concern for connecting instruments of federal power to public spiritedness and his suspicion about the role of self-interest in theories of political economy. The points emphasized here are fourfold. First, contrary to some scholarly treatments of Hamilton that have suggested otherwise, both in *The Federalist* and other writings he shared Madison’s concern for resurrecting the American spirit and enlightening public opinion through constitutional and commercial reform. Second, Madison and Jay in turn were just as much “commercial republicans” as Hamilton was in *The Federalist* if we understand by that term the attempt to use commercial instruments, such as prohibitions on states from issuing bills of credit, as a means to rehabilitate “the industry and morals of the people,” Madison’s formulation in *Federalist* 44 (44:285). Third, the moral and civic reform *The Federalist* associates with constitutional reform was as critical to rejuvenating the American military as it was to reforming civil society. Finally, this “package deal” of reform to both civil society and the American military did not just have to do with reestablishing confidence in government or public spiritedness related to that confidence. Above all it had to do with reforming civil society itself.

The final section of the chapter briefly reviews our findings in the earlier sections, emphasizing that the strongest bonds for the new constitutional union *The Federalist* suggests were to be found in political principles, commercial integration, and the nonarbitrary forms of governance the Constitution will facilitate. This section also briefly introduces those themes in *Federalists* 3–8 that establish most definitively the turn in *The Federalist*'s commercial republican theory. The significance of that to *The Federalist*'s constitutionalism will be discussed in chapters 3 and 4 when those *Federalist* numbers are examined in detail.

NATURAL RIGHTS AND AMERICAN CULTURE

Federalist 2 begins by inviting Americans to take “a very comprehensive” and “a very serious” view of the question of ratification. This seems sensible enough given what is at stake—the founding of a new government. As was noted in the last chapter, it is early in *Federalist* 2 that Publius affirms the natural rights foundation of the Constitution. Government is an “indispensable necessity” but it is a necessity founded upon the philosophy of natural rights (2:8). As Article VII of the Constitution, the ratification provision, makes clear, the Constitution is a Lockean-style social contract anchored in the principle of consent. It also seems to be Lockean in its emphasis not only on individual natural rights but on the promotion of property and prosperity, an additional Lockean element to *The Federalist*'s constitutionalism. Locke defined the very end of government as “the preservation of Property.” Indeed government had “*no other end.*”⁴ Although preservation of property was not the only end of the Constitution, its better protection was yet another reason *The Federalist* contended Americans should embrace the Constitution.⁵ *Federalist* 2 begins by proclaiming that “until lately” it has “been a received and uncontradicted opinion, that the prosperity of the people of America depended on their continuing firmly united” (2:8). The number concludes with a similar affirmation that every Congress from the time of the Revolution, “as well as the late convention, have invariably joined with the people in thinking that the prosperity of America depended on its Union. To preserve and perpetuate it was the great object of the people in forming that convention, and it is also the great object of the plan which the convention has advised them to adopt” (2:12). If the preservation and perpetuation of the union was the great object of the Constitution, one of the great objects of the union then was the promotion of prosperity. Americans were in apparent agreement with these propositions, with only a minority challenging them.⁶

If these elements of *The Federalist*'s constitutionalism—invoking the doctrine of natural rights and the promotion of prosperity and property—suggest a

certain Lockeanism to the Constitution, almost immediately *Federalist 2* raises the question of whether in fact the Constitution *is* Lockean, at least in the sense that it is simply a social contract devoted to individual rights or the promotion of prosperity and the protection of property. *Federalist 2* informs us that Providence has provided the United States a natural bounty of soils, resources, and interconnected waterways that have assisted Americans in the “transportation and exchange of their various commodities.” But it has done more. It has given

this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established their general liberty and independence. (2:9)⁷

Publius affirms that Americans are “attached to the same principles of government.” They fought a revolutionary war that “nobly established their general liberty and independence.” The Revolutionary War was noble presumably because it was just. It was just because it was fought for such political principles as equal rights and equal recognition of universal natural rights. *Federalist 2*, however, adds something here. It suggests a religious or cultural unity thesis as the basis for American constitutionalism in addition to—or perhaps as a substitute for—a social contract theory of constitutional union.⁸ Americans descend “from the same ancestors,” speak “the same language,” profess “the same religion.” In *Federalist 14*, Publius similarly intones that there is a “kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defense of their sacred rights” (14:84).

What does Publius mean by these remarks? Does unity depend on a common history or tradition; the English language, the British common law, or a Judeo-Christian religion, a “culture” as well as a “creed” as Samuel Huntington has recently proposed?⁹ It is certainly undeniable that an underlying social and political culture was a critical reason for American union. *Federalist 2* explicitly seems to recognize this. This implies however that *The Federalist* does not propose that some novel philosophical creed be embraced by the American people and form the basis of an ersatz constitutional union in lieu of long-standing Anglo-American political tradition. Rather Publius’ argument here is more qualified. *The Federalist* certainly does exalt the innovation of the Revolution. The capstone to *The Federalist’s* first section that begins with *Federalist 2*, for instance, concludes:

Is it not the glory of the people of America, that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered

a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit, posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theatre in favor of private rights and public happiness. . . . Happily for America, happily we trust for the whole human race, [Americans] pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. (14:84–85)

The traditional, the cultural, and the particular are subordinate to the principled and the universal, those innovations of America's "manly spirit" that favored private rights and public happiness that came from the Revolution. But this is not synonymous with abandonment of the cultural or the Anglo-American tradition per se, however much the legal and political ties with Great Britain were obviously severed. Rather, the innovations introduced by the Revolution should be understood as moderating or innovating upon the American political tradition. The new, revolutionary creed of natural rights was a means of providing theoretical clarity as well as coherence to the civic and political union that would post-date the Revolution. As Thomas West has proposed, natural rights theory was the specific *form* that was to guide or shape the *matter* of colonial America. *Federalist 2* highlighted Americans' common lineage, language, manners, customs, and religion, in addition to its auspicious geography, in order to make it clear that the realization of the Constitution's natural rights philosophy was a real possibility in a way that it would never have been had Americans not shared these common characteristics. But *Federalist 2* also emphasized above all that Americans were "attached to the same principles of government." It was natural rights theory that was the guiding light of *The Federalist's* constitutionalism and that made the American republican experiment defended by Publius truly distinct from anything in the British or Anglo-American tradition.¹⁰

This seems to be largely how natural rights were understood during the founding era.¹¹ John Adams, for instance, had raised the question of what would form the "foundation" of rights for American union at the Continental Congress in 1774. Would it be traditional appeals to the "British constitution," the "common law," and to those "charters and grants" that originally provided rights to Englishmen and their colonists? Or would it be to the "law of nature"?¹² As James Ceaser points out, "Adams and John Jay were the two most forceful advocates in this debate for the doctrine of the law of nature, urging that Congress embrace natural rights as a supplement to, if not a replacement for, the historical claims." Ceaser further emphasizes that the "same person who championed the adoption of the new principle of natural rights at the Continental Congress—John Jay—wrote the classic essay (*Federalist 2*)

specifying the factors that constitute Culture and their significance in contributing to unity.”¹³ Rejecting the “Culture-Creed distinction” that Huntington proposes because “it distorts” the founders’ view of the relationship between the American creed and American culture,¹⁴ Ceaser concludes: “The core of the Founders’ position was hardly ‘a-Cultural’: Beyond what was demanded for the protection of rights, there was no impediment to promoting cultural factors. The protection of natural rights is a floor of politics, even an absolute floor, but it is not its ceiling.”¹⁵ A case can certainly be made that Huntington himself did not see the culture-creed distinction as a firm one,¹⁶ but Ceaser’s point here is well taken. The creed of natural rights was not exclusive of American political culture or intended to replace that culture. Rather if anything it was a guide to it. It was also to elevate it. As *Federalist* 14 highlighted, America’s revolutionary course was not only “new.” It was “more noble.”

It was more noble because of the new civilizational dispensation it signaled, one that was more principled and that would allow for greater human flourishing under the auspices of the protection of men’s natural rights than had occurred previously. The Constitution was the vehicle for this new flourishing. It is *The Federalist*’s task to explain why and specifically how the Constitution would increase American prosperity. As we noted in the last chapter, *The Federalist* was famously skeptical of “theoretic politicians” (10:58) and proclaimed that “theoretic reasoning . . . must be qualified by the lessons of practice” (43:279). The work concludes on a cautionary note, citing not Locke but the arch-critic of Lockean natural rights philosophy, David Hume. Scholars have attributed much of the failure of Locke’s liberalism in Europe to Hume’s unrelenting criticism of it, however much Lockean liberalism may have flourished in America.¹⁷ But it was to Hume’s “The Rise of Arts and Sciences,” not Locke, that *Federalist* 85 turned when concluding, once again warning against the dangers of an excessively theoretical approach to politics. Describing Hume as “a writer equally solid and ingenious,” *Federalist* 85 paraphrases from “The Rise of Arts and Sciences”:

To balance a large state or society . . . on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work; experience must guide their labor; time must bring it to perfection, and the feeling of inconveniences must correct the mistakes which they *inevitably* fall into in their first trials and experiments. (85:564, emphasis in original)

Experience and, more generally, prudence must guide politics. Theoretical reason alone cannot dictate.

But importantly experience and judgment may lead to a rejection of the traditional or the cultural as much as to an embracing of it. *Federalist* 2 seemed

to mock “the undue influence of ancient attachments.” And *Federalist* 14 highlighted that it was Americans’ “own good sense, the knowledge of their own situation, and the lessons of their own experience” that led them away from “a blind veneration for antiquity, for custom, or for names.” As much as Americans may “have paid a decent regard to the opinions of former times and other nations,” they modified, if they did not entirely abandon, those opinions. In other words, reason and reflection, combined with experience, may lead to a *rejection* of the ancient, the traditional, or the cultural as much as to the continuing affirmation of these. *Federalist* 24 admonishes that “politicians have ever with great reason considered the ties of blood as feeble and precarious links of political connection” (24:149). And *Federalist* 14 qualifies that although Americans share a “kindred blood” it is a “mingled blood” shed in defense of Americans’ “sacred rights”—the rights of the Revolution that *The Federalist* suggests are both sublime and universal.¹⁸ It would seem that these rights are what are primary, not Anglo-American culture or “ties of blood.”¹⁹ The rights of the Revolution are readily understood through reflection and introspection, one might even say independently of experience. This again might be said to speak to the nobility or elevated character of the Constitution since like the pursuit of political philosophy itself, where the pursuer of wisdom is invited to ascend from the world of opinion or convention to the world of knowledge or what is right by nature, *The Federalist* similarly invites us to move beyond the merely traditional or conventional to what is right according to nature; *The Federalist* connects the Constitution to the standard or measure of truth in politics going back not only to the Declaration of Independence but to antiquity, specifically to Socrates and Thucydides.²⁰ As we saw in the last chapter, it was the failure of the Articles of Confederation to safeguard Americans’ natural rights, even to threaten them, that lead to the Constitutional convention and the rejection of that critical element of independent America’s brief tradition, the Articles.

As if to place an exclamation point on this, *The Federalist* is quick to emphasize that an Anglo-American or Judeo-Christian culture will be insufficient to unite Americans in a United States that is divided. *Federalist* 5, for instance, makes clear that despite whatever common heritage Americans share “it is far more probable that in America, as in Europe, neighboring nations, acting under the impulse of opposite interests and unfriendly passions, would frequently be found taking different sides” (5:26). Whatever blood ties Americans may share will be broken soon enough after disunion by their conflicting ambitions, opinions, interests, and passions. Neighbors who share borders often end up at war no matter what affinities they have in common. To think otherwise is fantasy; anyone who believes that the United States divided into “partial confederacies” would not be riven by “frequent and violent contests with each other” “must be far gone in Utopian speculations” (6:27). Union was necessary then to avoid civil war.

NATIONAL GREATNESS AND THE HIGHER TONING OF AMERICAN CHARACTER

But it was necessary for additional, arguably equally important, reasons as well. The opening *Federalist* numbers are concerned with national security; *Federalists* 3–5 with security against foreign influence and attack; and *Federalists* 6–8 with security against internal division between the states themselves. They are also concerned with the question of greatness. *Federalist* 2 is as well. Although it begins by referring to the centrality of union for prosperity, it concludes by invoking Shakespeare’s Cardinal Wolsey: “I sincerely wish that it may be as clearly foreseen by every good citizen, that whenever the dissolution of the Union arrives, America will have reason to exclaim, in the words of the poet: ‘FAREWELL! A LONG FAREWELL TO ALL MY GREATNESS’” (2:12, capitalization in original). *Federalist* 3, ostensibly about security against foreign arms and influence and how the Constitution will inoculate against just causes of war against the United States, similarly concludes with an example of how the small state of Genoa was not overrun militarily by Louis XIV but was rather humiliated by him; humiliated in a way large, powerful empires such as Spain or Britain never could be (3:17). And *Federalist* 4 ends on an equally pessimistic note that an America split into three or four confederacies will be seen by foreign nations “exactly as it is”; as “a poor, pitiful figure” (4:22). Union was critical not merely to security but to greatness and to the cultivation of American pride. Petty nations like Genoa were subject to humiliation. Powerful nations like Spain and Britain were not.

America too, should it remain united, could become a large and powerful empire. Indeed it will have to if it is to preserve its liberty in the face of the imperial empires of the day. *The Federalist* recognizes that the problem of how to reconcile free government and individual rights with those requirements for national security and the perennial threats of war that the modern era presented were perhaps the most daunting issues the convention faced.²¹ And the problem was not just political but rhetorical in nature, a matter of how to convince the American public of the need for granting the federal government greater powers over such things as war. “An enlightened zeal for the energy and efficiency of government,” *Federalist* 1 proclaims, “will be stigmatized as the offspring of a temper fond of power and hostile to the principles of liberty” (1:5). These remarks were directed against Whig political science, an influential strain of political thinking during the founding era characterized by a politics of suspicion toward centralized governmental power. The Whig approach to politics had underwritten the Articles of Confederation. Among other things, the Articles had no federal executive (or judiciary), required state approval of federal law, and further local approval for congressional war funding.²²

As *The Federalist* emphasized the Constitution, providing for a more vigorous federal government, was opposed to all of these features of the Articles. But a few qualifications are in order here. First, the case being made in *Federalist* 1 is not only for greater *energy* but greater *efficiency* in government, a point reiterated twice in *Federalist* 1, again in *Federalists* 3 and 4, and in later numbers including the end of the first volume of *The Federalist*.²³ Energy and efficiency are linked: Greater energy in government is possible only with greater efficiency and greater efficiency can only come with greater energy. Already in *Federalist* 1 we get a hint of *The Federalist*'s limited government constitutionalism that it develops in more detail later in the work; the case for energy in government is not a case for unlimited government but is rather a case for the contrary, limited, and *efficient* government. This will constitute part of American greatness because it will present a restraint on the powers of government unlike those that have existed in any previous regime—including the European states of the day that too many scholars have presumed the American founders, as well as the authors of *The Federalist*, sought to emulate.

But even if we grant that energy and efficiency in government are coeval terms on *The Federalist*'s reading and that the work defends limited government constitutionalism, is that all that American greatness will consist of? If the argument being made early in *The Federalist* is for a new, more powerful and integrated constitutional union, one that will give rise to a new commercial republican "empire" (to use *The Federalist*'s term) that will protect against the imperial empires of the day, how exactly is the new American empire going to be different from such imperial empires as Britain, France, and Spain? *Federalist* 14, as we saw, made clear that American greatness, should it transpire under the new constitutional order, will not consist of simple power politics or the use of force in the manner of European empires. It will be more principled. In the last chapter, we touched upon *Federalist* 22, where Publius proclaims: "The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority" (22:139, capitalization in original). American empire will be different from the European empires because it will be based on consensual government.²⁴ But again it bears asking: Is that all American greatness will consist of? Consent. This is not to downplay the importance of consensual government but that had already been achieved with the Confederation. If the Constitution was going to improve individual self-government and transform American political and economic culture as the last chapter proposed; if this was going to contribute to American greatness in some significant way, what exactly would that consist of?

The quotation that concludes *Federalist 2* may provide us a hint of what *The Federalist* has in mind here. It is from Shakespeare's *Henry VIII* and at first blush would seem an odd passage to cite in support of the inviolability of American union. The quote is a proclamation by Cardinal Wolsey immediately after he has been informed that he is to be stripped of all of his property by the king for his duplicitous representations to the pope about Henry's divorce from Catherine and other transgressions against England. Wolsey laments the vanity of human pride, the "vain pomp and glory of this world." He concedes: "how wretched is that poor man that hangs on princes' favours!"²⁵ Wolsey has spent years attempting to win Henry's applause but all is now lost and he is disgraced. Why precisely would Publius cite Wolsey here for the proposition that the destruction of American union will mean the loss of American greatness?

One explanation might lie in the careful language *Federalist 2* uses, referring to "the words of the poet" rather than specifically to the words of Wolsey. Shakespeare has put words into Wolsey's mouth and he appears to want to convey in the scene not only the fickle pride, if not narcissism, of Wolsey but the arbitrariness of rule and the precariousness of one's holdings, even one's reputation and liberty, in the regime of Henry; a regime that depends not only a prince's favors but on the machinations and whimsies of the likes of Wolsey himself. In the same way *Federalist 3* is critical of petty regimes like Genoa for undermining national security and national pride *Federalist 6* is critical of those political forms that allow "the favorites of a king or of a people . . . to sacrifice the national tranquillity to personal advantage or personal gratification" (6:28). The first two examples *Federalist 6* cites here are Pericles and Wolsey; Pericles because his peccadillos and piques brought about the Peloponnesian War, which "terminated in the ruin of the Athenian commonwealth"; Wolsey because his vanity in aspiring to the Papacy and his ploys with Charles V "precipitated England into a war with France, contrary to the plainest dictates of policy, and at the hazard of the safety and independence, as well of the kingdom over which he presided by his counsels, as of Europe in General" (6:28–29).

America's new republican constitution will avoid these disasters. Its republican form will guarantee good sense in foreign affairs. As the best in the country will serve in the new federal government, it will produce wiser, more judicious decisions. Presumably it will be free—or at least more free—from those who would sacrifice national tranquility for personal advantage or gratification. Given the clear control over foreign policy the Constitution provides the national government, there will be more consistent interpretation and execution of both treaties and the laws of nations than occurred under the Articles of Confederation. A firm constitutional union will also mean that the country will be less inclined to war on account of inflammatory regional

tensions or those controversies that might explode onto the scene between border states in a divided America (4:14–15). Arguing that the Constitution was conceived by patriots with ability and experience and with a view to the great object of prosperity, *Federalist* 2 suggests that the greatness of American union will be related to better republican governance and wealth—a wealth that unlike Shakespeare’s Wolsey’s will not be subject to the arbitrary caprices of a prince. This latter feature of better protecting wealth as well as industry, and even one’s liberty and reputation, in the new constitutional order is critical to *The Federalist*’s conception of American greatness. The predicate of that greatness will be resurrecting public spiritedness and confidence in American government.

Consider again the issue of prosperity. The prosperity spoken of in *The Federalist*, like its understanding of commercial republicanism more generally, is not some self-consuming or crass “materialism” of the sort the critics of commercial or capitalist society have so often identified with commercial life. *The Federalist* is certainly cognizant of the role of self-interest in politics, as our review in the last chapter of its understanding of human nature and man’s propensity to act on “momentary passions, and immediate interests,” made clear. But two points here deserve emphasis. First, self-interest is not selfishness, a distinction even Rousseau was prepared to recognize; the latter, selfishness, being all-consuming.²⁶ Second, the idea that the Constitution could be erected on such thin political foundations as mere self-interest itself ignores too many other passages central to *The Federalist*’s constitutional theory that suggests otherwise.

The Federalist’s commercial republican theory proposes that the salvation of America’s commercial life and the federal government’s solvency will be preconditions not only for constitutional reform but for moral and civic reform as well. This theme runs throughout *The Federalist*, from its early to its later numbers. *Federalist* 4, for instance, proclaims that if foreign nations “see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment” (4:22). The progression here is from well-organized and well-financed government and a properly ordered and disciplined militia to free and contented citizens; from good administration and military wherewithal to robust citizen character or virtue and unity. And all of these together will present a barrier against foreign aggression and intermeddling in America’s affairs.

The importance of public confidence and public spiritedness to *The Federalist*’s constitutional theory is evident throughout the work. Confidence in the federal government and in America’s commercial order will be preconditions

to the development of public spiritedness. And that spiritedness will be necessary to the development of an effective military instrument, although not just to that alone. As a real, palpable passion, public spiritedness is as conspicuous in investors and citizens as it is in soldiers.²⁷ *Federalist* 16 proclaims: “The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence upon the human heart” (16:98). The immediate object of *Federalist* 16 is to highlight why the laws of the federal government need to apply directly to individuals and not be dependent upon the discretion of the states for their applicability, as was the case under the Articles of Confederation. But this in itself will be inadequate for the purposes of resurrecting confidence in government. Reshaping the passions of the people in such a way as to make them sanguine, rather than pessimistic, about the federal government and America’s commercial order will not only require the direct application of federal law to individuals but stripping the states of a host of powers over economic and commercial development that they enjoyed under the Articles. *Federalist* 44, discussing the restrictions on state powers set out in Article I, Section 10 of the Constitution, maintains that extending the prohibition against states of emitting

bills of credit must give pleasure to every citizen, in proportion to his love of justice and his knowledge of the true springs of public prosperity. The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man, on the necessary confidence in the public councils, on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the States chargeable with this unadvised measure. (44:285–286)

The identification of “the industry and morals of the people” and “the character of republican government” is here made with matters of credit. The states must be stripped of the power of emitting bills of credit, in the same way Article I, Section 10 stipulates they must be stripped of the power of coining money, making anything but gold and silver legal tender for payment of debts, and prohibited from impairing the obligations of contracts. This must be done not only because these powers in the hands of the states have been economically disastrous. It is also because they have undermined both confidence in government and citizen character as well as the very foundations of American republican governance more generally.

Justice itself is implicated in the problems here because the mismanagement of state powers over money and credit have effectively stripped Americans of basic rights of property and the fruits of their labor. Specifically they have been denied the freedom to exercise their minds and bodies as they see fit and

to be compensated justly for that exercise. In addition, trust and honor have also been violated. Laws of credit, like those of contract, are based on promises and the assumptions of good faith that the parties involved will live up to their obligations. When those obligations are breached by government through such things as “the pestilent effects of paper money,” the consequences of the breaches, as *Federalist* 44 makes clear, are to erode “confidence in the public councils” and to undermine “the industry and morals of the people.”

Federalist 44 implies that the Constitution will embody “the true springs of public prosperity,” a theme similar to that we find in *Federalists* 2 and 4. *Federalist* 15, the opening number on the essays addressing why the Articles of Confederation were insufficient to preserve the union, again highlights the problems of morale and the depressed state of the American spirit under the Confederation. “We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarcely any thing that can wound the pride or degrade the character of an independent people which we do not experience.” What follows is a lengthy catalogue of critical defects under the Articles that were both political and commercial in nature: violations of international agreements Americans should have respected but did not; failure to pay war debts owed to foreign and domestic citizens; the illegal possession of American territories and posts which should have been transferred to the United States but remained in the hands of foreign nationals due to the lack of adequate troops, treasury, or government; the blocking of access to the Mississippi by Spain; absence of public credit to finance national defense; disruptions to commerce of almost every conceivable sort, including the inability to improve land or to sell it at fair market value due to a want of confidence in both the private market and the government; insufficient credit in domestic markets, and a reputation among foreign governments so poor that not only did they openly encroach on American interests but they refused to even negotiate with the United States given its imbecility. “Our ambassadors abroad are the mere pageants of mimic sovereignty,” *Federalist* 15 concludes. What “indication is there of national disorder, poverty, and insignificance that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes” (15:86–88).

The theme of *Federalist* 15, similar to that of *Federalists* 2, 4, and 44, was that Americans suffered not only enormous deficits in economic development and national security despite America’s vast “natural advantages” but that these deficits in turn caused moral and spiritual deficits so significant as to wound American pride and to degrade American character. Like other numbers in the work, *Federalist* 6 had raised the specter of the connection between America’s spiritual malaise and its economic stagnation, identifying “the point of extreme depression to which our national dignity” had sunk with

America's equally depressed credit (6:33). That theme connecting economic and political reform to spiritual reform and the reform of American character is prevalent throughout *The Federalist* and is critical to understanding its discussion of the role of enterprise that occupies so much of the outset of the work. It is also critical to understanding the unique form of virtue that might prevail in the United States under the Constitution that was discussed in the Introduction. This virtue I propose might underwrite not only the new civic order under the Constitution but the new army and navy the Constitution contemplates being developed.

We will deal with the question of the army and the navy later in this book. For now, it bears emphasizing that it is apparent from our brief review here that *The Federalist's* commercial republican theory is concerned with significantly more than mere trade or matters of material growth, as important as these objects obviously are. As the numbers above indicate, the constitutional reform *The Federalist* discusses purports to vindicate principles of justice, to resurrect industry and morality in America, and to allow for the development of a higher, if not high, toned American character over time. This seems to form at least part of what American greatness will consist of in the new constitutional order. Improving government and commercial life will be important means to reforming American public opinion and the American spirit, which as we saw in the last chapter will be critical to securing Americans' liberties under the Constitution.

COMMERCIAL REFORM AS MORAL REFORM

In *Republican Empire: Alexander Hamilton on War and Free Government* (1999), Karl Walling remarked that by the middle of the Revolutionary War Hamilton had come to appreciate the importance of the relationship "between arms and virtue or effective instruments of state power and public-spiritedness in America."²⁸ Anticipating Carl von Clausewitz's "trinity of war" that consisted of responsible government, a powerful military, and high national morale, Hamilton had focused on this latter element—morale—in his 1780 briefing to Congressman James Duane. There Hamilton had sought to promote constitutional and administrative reforms that might mobilize the passions of the American people for purposes of winning wars and building a new public spirit on the basis of a renewed popular confidence in government. If America was going to win wars in the future it could not do so simply on the basis of arms and wealth alone. America's public spirit would have to be rejuvenated. This became a long-standing theme of Hamilton's constitutionalism. Those *tangible* elements of state power would have to be fortified by the *intangible* elements of state power. Walling referred to this as Hamilton's

experiment with that modern, if controversial, understanding of civic virtue called “nationalism.” The professional soldiers that Hamilton contemplated America could produce would not be mercenaries because they would be citizens firmly attached to the freedoms they cherished and hoped to pass on to their children. Because of this freedom America’s soldiers would be better warriors than those indentured subjects of princes or kings. As members of a free society, Americans would also willingly obey federal laws and pay taxes. Hamilton hoped that these intangible advantages of being members of a free society could be combined with those more tangible advantages of professional military training in such a way as to give America’s military forces a superior zeal as well as at least equal confidence to what prevailed in European armies. And this meant of course, contrary to much scholarship on him, that Hamilton was not so much a *state*-builder as a *nation*-builder.²⁹

Peter McNamara has said similar things about Hamilton’s political thought. As early as his revolutionary era writings Hamilton had revealed a deep suspicion toward the role of self-interest in theories of political economy. Hamilton was suspicious not because self-interest was unimportant to understanding human action in the world of politics and economics but because an excessive focus on it tended to obscure the equally significant, if not more important, role of passion. The role of interest and passion and the interplay between these as functions of human nature are of course dominant themes throughout *The Federalist* in both Madison’s and Hamilton’s contributions. Indeed they were dominant themes in Enlightenment theory more generally.³⁰ Understanding these springs of human action in both their individual and collective capacities had occupied Hamilton’s thinking long before *The Federalist*. Discussing Hamilton’s views in 1779 McNamara summarizes his approach to politics and economics this way:

In the area of political economy, it is the influence of the passions that makes it problematic to rely upon elaborate calculations about the operations of society, calculations which assume that those operations are determined by the actions of individuals moved by an enlightened sense of their own self-interest. Often individuals do not—and, perhaps, cannot—know what is truly in their self-interest. At other times, they know but are led astray from their true interests by their immediate passions and inclinations.³¹

This is why Hamilton, following economists such as James Steuart in his *Principles of Political Economy*, placed so much emphasis on understanding the spirit, manners, customs, and opinions of Americans in his proposals for political and economic reform.³² “What Hamilton calls the natural course of things is, to a large extent, the product of the ‘moral causes’ that act on the nation and over which the government, through its laws and institutions, has an important influence.”³³ It is therefore surprising to find scholars on the

founding who downplay these moral causes in Hamilton's or the Federalists' proposals for constitutional reforms. Hamilton was after all arguably the leading Federalist reformer.³⁴

I emphasize these points about Hamilton and those in the last section for four reasons. First, those who have interpreted Hamilton's works, including his contributions to *The Federalist*, particularly within the Madisonian scholarly community, have tended to downplay, if not neglect, his emphasis on resurrecting the American spirit and public opinion through constitutional reform.³⁵ Hamilton's defense of the Constitution was not motivated simply by a desire to build a more powerful federal state through delivery of greater powers to the federal government and development of a constitutional edifice built upon self-interest. Walling and McNamara make that clear, as do Hamilton's contributions to *The Federalist*.

Second, it was not just Hamilton in *The Federalist* who understood the importance of resurrecting public confidence and public spiritedness through the Constitution's commercial and political reforms. So too did Jay and Madison. Jay authored *Federalist* 2 and Madison *Federalist* 44 discussed above. Hamilton authored *Federalists* 6 and 15. All of these *Federalist* numbers, as well as others, evince a common commitment to the same constitutional understanding of the need for moral and civic reform through constitutional and commercial reform. Jay and Madison were as much "commercial republicans" in *The Federalist* as Hamilton was if we understand by the term the centrality of commerce to *The Federalist's* republican theory and its proposals for constitutional reform. Madison's *Federalist* 44 viewed commercial instruments such as bills of credit as means for rehabilitating "the industry and morals of the people" and "the character of republican government."³⁶ *The Federalist's* pleas for improving commercial relations under the Constitution and its encomiums to the spirit of enterprise were not entreaties to some sort of crass economic materialism or proto-rational choice theory centered on explaining economic and political behavior as the invariable by-product of greed or rational self-interest. At least it was not this alone. Nor was it simply a manifesto for greater federal powers or the creation of a Leviathan state. This includes Hamilton's contributions. As Walling suggests, it would be an error to look upon Hamilton as a state-builder in the European style of eighteenth-century state-building, as Max Edling has proposed.³⁷ He was rather a nation-builder in the Constitution's unique embodiment of that term: as an extension of America's founding principles, which necessarily implied limited government.

The third point is related to this. The moral and civic reform that *The Federalist* links to constitutional reform is as critical to America's military transformation as it is to its rehabilitation of "the different circumstances of civil society" that *Federalist* 10 informs us determine the "different degrees

of activity” of faction (10:55). The Articles of Confederation had bred discord and factious strife that the Constitution would remedy. This is a familiar theme from *Federalists* 9 and 10 that has been discussed at length in scholarly literature. Less discussed has been *The Federalist*’s depiction of how the Articles had also led to the evisceration of American character and the public spirit. And the consequences of this were not just limited to commercial enterprise or those issues related to property and credit outlined above. In *Federalist* 22, for instance, when criticizing the Articles’ method of raising armies, which required requisitions to states for quotas of men, Publius pointed out that this resulted in states having to compete with one another in order to meet quotas. This in turn drove up the bounties for acquiring troops to insupportable sums and induced those inclined to enlist to procrastinate doing so in order to drive up the price for their services. Once enlisted, servicemen stayed only for short periods. The consequences of this, as Publius emphasized, were “slow and scanty levies of men, in the most critical emergencies of our affairs; short enlistments at an unparalleled expense; continual fluctuations in the troops, ruinous to their discipline and subjecting the public safety frequently to the perilous crisis of a disbanded army” (22:131). *Federalist* 22’s theme here, like the themes earlier regarding commercial development, property, and debtor-creditor relations, was again to highlight the necessary relationship between physical deprivation and moral depravity; the Continental army, deprived of the physical or tangible necessities of war, was undisciplined and demoralized, the very predictable intangible effects of the army’s poor administration and supply. *Federalist* 85 had concluded, similar to *Federalists* 2, 15, and 44, that the Constitution would take the necessary “precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit, have planted mutual distrust in the breasts of all classes of citizens, and have occasioned an almost universal prostration of morals” (85:558–559). What deserves emphasis here is that this prostration of morals affected not just civil or commercial relations but the army as well. What was needed then was a “package deal,” a new “American system,” that would remedy all of these material and spiritual deficits within the military as well as at the level of civil society (11:69).

The fourth point warranting emphasis here is then that *The Federalist*’s proposal for the package deal or new American system bringing about moral and civic reform from civil society to the army did not just have to do with confidence in government or public spiritedness related to that confidence. Obviously enough it had to begin above all with the reform of civil society, which as *Federalist* 10 makes clear was the critical element of American life that needed to be changed, not only to ameliorate faction but to higher-tone American character (10:55; I will have more to say about this in chapter 6.).

Federalist 15 had appealed to Americans' good judgment as well as to their honor; that an "enlightened people" might embrace the Constitution in order to "make a firm stand for our safety, our tranquility, our dignity, our reputation" (15:88). Progressing from basic necessities, safety and tranquility, to higher elements of civilization, a nation's dignity and reputation, *Federalist* 15, like *Federalists* 1 and 2, makes a concurrent appeal to Americans' better judgment and their honorable determination to seek a more perfect union through the Constitution. That more perfect union required sufficient energy to protect it. This of course presented its own problems, as *Federalist* 1 emphasized; to advocate for more energetic government would "be stigmatized as the offspring of a temper fond of power and hostile to the principles of liberty." The problem here was not just rhetorical since to choose a form of government strong enough to preserve a people's choice of government could be, as Hobbes proposed, the choice to end all choices. Government that possessed the means to protect the nation against all threats itself possessed the means to insure that it too could never be threatened by the people.³⁸

And this the Constitution's critics amply understood. It was a principal reason for their attacks on the Constitution, a document that proposed to create a standing army and to give the national government the power to call forth state militias to help "execute the Laws of the Union, suppress Insurrections and repel Invasions." These were significant, unprecedented, and potentially dangerous powers, even if the criticism of them was overstated.³⁹ In due course *The Federalist* would argue for the necessity of these powers. But it chose at the beginning of the work to argue for their justice. Or perhaps more accurately Publius would argue for the *injustices* that the new Constitution and the novel powers it provided the federal government might allow Americans to avoid committing.

COMMERCIAL REPUBLICANISM AND THE DYNAMISM OF AMERICAN ENTERPRISE

Federalist 2, where we began this chapter, identified union with nationhood and the collective experiences of war that had united Americans in the original instance.⁴⁰ Pleading to maintain not merely American union but American nationhood, *Federalist* 2 seeks the formation of a uniform political and cultural identity originally shaped through the shared experiences of war, foreign relations, cultural characteristics such as language and religion, and perhaps above all attachment "to the same principles of government." As we saw earlier, *The Federalist* makes clear that ethnic or religious identity on their own will be inadequate to maintain comity in an America divided. The stronger bonds of union were to be found in

political principles, commercial integration, and the nonarbitrary forms of governance that the references to Shakespeare's Wolsey in *Federalist* 2 and our discussion in the last chapter suggest the Constitution will embody. Americans may comprise the "western sons of liberty" (2:8) as *Federalist* 2 proclaims but their liberty is more refined and coherent than the original European variety because it is rooted in political principle. This argument for the persuasiveness of the justice of the Constitution is at the core of *The Federalist's* defense of it.

But *Federalist* 3 presents a counterpoise here, admonishing Americans that their current constitutional order may lead them, wittingly or not, to commit *injustices*, specifically injustices on the international stage. This in turn may provoke wars, which Americans would obviously want to avoid. The rhetorical strategy adopted in *Federalist* 3 may seem a bit strange, beginning the defense of the Constitution by pointing out *not* how it will assist Americans in bringing about *justice* but rather how the Constitution will save Americans from committing *injustices*.⁴¹ Publius' point here however is to challenge certain common opinions about the nature of the American commercial republic under the Confederation and to warn of its imprudent effects. The turn in *The Federalist's* commercial republican theory will be completed over the next few numbers. *Federalist* 2 advertised the greater prosperity that the new Constitution might bring about. *Federalist* 3 by contrast emphasized how Americans might precipitate just wars against themselves originating in violations of treaties or direct violence against other states—violating the terms of the Treaty of Paris was a constant complaint against the states of the Confederation. *Federalist* 4 continues the themes of *Federalist* 3, defending union against disunion, pointing out how the Constitution will protect Americans from aggression and humiliation, introducing us as well to the concept of American enterprise. Its dynamism and expansionist character we are told will threaten the commerce of European and Asian nations alike. And they know it. This again will create problems.

The dynamic feature of American enterprise is both friend and foe to peace and stability. It is evident that the commercial dynamism that the Constitution will facilitate will probably be the principal means by which American civil society and the pursuit of the higher elements of civilization will be developed in the new constitutional order. The growth of a host of commercial interests—landed, manufacturing, mercantile, moneyed, and those of a lesser variety—is described in *Federalist* 10 as a "*necessity* in civilized nations." These interests were not just matters of expediency, necessary for economic growth. As Publius' language here explicitly states, their development was a necessary, if not sufficient, condition for civilization. And their development would be critical to the exercise of Americans' natural rights, the understanding of justice *The Federalist* embraces, and to

the governmental, commercial, and spiritual reform *The Federalist* believed the Constitution might engender.

But the dynamism of the spirit of enterprise was also dangerous absent the right constitutional instruments both to facilitate it and to protect it. Why this is the case is explained early in *The Federalist* and marks the principal turn in *The Federalist's* commercial republican theory that has been inadequately accounted for in scholarship. It is especially in *Federalists* 3–8 that this turn becomes evident. I examine those numbers in detail in the next two chapters.

NOTES

1. Nathan Tarcov, “War and Peace in *The Federalist*,” *Political Science Reviewer* 19 (Spring 1990): 87.

2. Leo Strauss explained the distinction between ancient or Aristotelian political science and modern or “new” political science in the following terms:

According to the new political science . . . to understand a thing means to understand it in terms of its genesis or its conditions and hence, humanly speaking, to understand the higher in terms of the lower: the human in terms of the subhuman, the rational in terms of the subrational, the political in terms of the subpolitical. (Leo Strauss, *Liberalism Ancient and Modern*, foreword by Allan Bloom [Chicago: The University of Chicago Press, 1995], 207)

I have modified some of the terms of reference Strauss uses here but I believe his succinct description of the new political science, originally published in 1962, remains a largely accurate description of modern political science and the modern liberalism on which it is based.

3. Tarcov, “War and Peace in *The Federalist*,” 90–91.

4. John Locke, “Second Treatise of Government,” in *Two Treatises of Government*, ed. Peter Laslett (New York: Cambridge University Press, 1988), hereafter *Second Treatise*, § 94, 329, emphasis added. References here are to the section and page numbers respectively from the Laslett edition of the *Two Treatises of Government*.

5. *Federalist* 85, for instance, concludes that adoption of the Constitution will provide additional security “to republican government, to liberty, and to property” (85:558).

6. Murray Dry maintains that it was not only Federalists who sought to maintain American union, so too did most Antifederalists. Focusing on the writings of Brutus and Federal Farmer, “the two best Anti-Federalist writings” that served as a “counterpart to *The Federalist*” and which the latter clearly responded to in a host of *Federalist* numbers, Dry writes:

[A]side from a statement of Luther Martin’s in the Federal Convention that he would favor dissolution of the Union if equality of the states was abandoned, there seems to be no evidence that the Anti-Federalists favored separate confederacies.

On the contrary, both Federal Farmer and Brutus begin by acknowledging the country's critical period, demonstrating that the assessment was not the creation of later Federalist historians. Federal Farmer even admits "that our federal system is defective, and that some of the state governments are not well administered." Both emphasize the importance of full deliberation, however, because "when the people once part with power, they can seldom or never resume it again but by force," and hasty and blind changes will wear down the better part of the community and cause it to accept despotism. For these writers, the question is not union versus separation, but confederation versus consolidation—or more precisely, whether the proposed Constitution is compatible with confederation, and hence with republican government. They feared that it was not, at least in its present form. "The plan of government now proposed is evidently calculated totally to change, in time, our condition as a people. Instead of thirteen republics, under a federal head, it is clearly designed to be one consolidated government." ([Citing Federal Farmer I.] Murray Dry, "Anti-Federalism in *The Federalist*: A Founding Dialogue on the Constitution, Republican Government, and Federalism," in *Saving the Revolution: The Federalist Papers and the American Founding*, ed. Charles R. Kesler [New York: The Free Press, 1987], 42–43)

7. According to Sanford Levinson:

If we were interested in historical truth, it would be easy to demonstrate the utter fatuity of this declaration. . . . Many distinguished historians have shown that those who came from elsewhere (not to mention, of course, the Native American tribes who already inhabited the land) were descended from a wide variety of ancestors, including hundreds of thousands of slaves coercively brought from all over Africa. They most certainly did not all speak the same language. . . . Among the settlers from Great Britain alone, never mind those from other parts of Europe, there were remarkable variations of background. . . . Finally, they were hardly "attached to the same principles of government"; think only of the significant number, whom we tend to forget, who cast their lot with King George III and after defeat resettled in Canada, Jamaica, Great Britain, and, in the case of some former slaves, Sierra Leone. (Sanford Levinson, *An Argument Open to All: Reading The Federalist in the Twenty-First Century* [New Haven, CT: Yale University Press, 2015], 13)

Levinson shortly thereafter cites Samuel P. Huntington's, *Who Are We? The Challenges to America's National Identity* (New York: Simon & Schuster, 2004). Huntington disputes Levinson's pluralism thesis about the founding, adopting, as Levinson puts it, "a 'Publian' reading of our history" that assumes greater cultural homogeneity than Levinson is prepared to admit. However, as Levinson points out, Huntington "explicitly rejected the wisdom of relying only on what might be termed 'constitutional attachment,' describing this as the 'classic Enlightenment-based, civic concept of a nation in which 'nationalism,' lacking any other commonalities, was predicated entirely on commitment to abstract propositions. . . . Instead, he called for renewed emphasis on the 'core culture' that he believed dominated in 1787." Levinson, *An Argument Open to All*, 14–15. It is this thesis of Huntington's, and related arguments, that Bradley Watson and James Ceaser discuss (and dispute) below.

8. For a good commentary on this distinction, see Bradley C. S. Watson, "Creed & Culture in the American Founding," *The Intercollegiate Review* Vol. 41, no. 2 (Fall 2006): 32, and James W. Ceaser, "How to Think About the Foundations of American Conservatism," Heritage Foundation *First Principles* No. 22, December 10, 2008, 1.

9. Huntington, *Who Are We?*

10. Thomas G. West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom* (New York: Cambridge University Press, 2017), 50–58.

11. As Forrest McDonald notes:

[W]hen the First Continental Congress had convened in September of 1774 and had appointed a committee to draft a statement of “rights, grievances, and means of redress,” the committee immediately entered into an extended preliminary discussion of the sources of American rights. . . .

When the decision for independence was made, all claims to rights that were based upon royal grants, the common law, and the British constitution became theoretically irrelevant. Independence—the very existence of the United States—was unequivocally justified in the Declaration itself by an appeal to “the Laws of Nature and of Nature’s God.” Quite as clearly, it was declared that the rights of Americans arose from the same source.” (Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* [Lawrence: University Press of Kansas, 1985], 57–59)

12. John Adams, *The Works of John Adams* (Boston: Charles C. Little and James Brown, 1850), II, 370–374.

13. James W. Ceaser, “How to Think About the Foundations of American Conservatism,” Heritage Foundation *First Principles* No. 22, December 10, 2008, 6.

14. *Ibid.*, 2.

15. *Ibid.*, 7. See also, James W. Ceaser, “Foundational Concepts in American Political Development,” in *Nature and History in American Political Development*, ed. James W. Ceaser (Cambridge, MA: Harvard University Press, 2006), 5–6; and James W. Ceaser, *Designing a Polity: America’s Constitution in Theory and Practice* (Lanham, MD: Rowman & Littlefield Publishers, 2011), 7–8.

16. Huntington, for instance, emphasizes early on in *Who Are We?* that American “creed” and American “culture” are not independent phenomena. Rather, the former is derivative of the latter:

The “American Creed,” as initially formulated by Thomas Jefferson and elaborated by many others, is widely viewed as the crucial defining element of American identity. The Creed, however, was the product of the distinct Anglo-Protestant culture of the founding settlers of America in the seventeenth and eighteenth centuries. Key elements of that culture include: the English language; Christianity; religious commitment; English concepts of the rule of law, the responsibility of rulers, and the rights of individuals; and dissenting Protestant values of individualism, the work ethic, and the belief that humans have the ability and the duty to create a heaven on earth, a “city on a hill.” (xv–xvi)

17. See, for instance, Bradley C. S. Watson, “Creed & Culture in the American Founding,” *The Intercollegiate Review* Vol. 41, no. 2 (Fall 2006): 34: “Lockean social contract theory was stillborn in Europe, due in no small part to the intellectual assault launched upon it by David Hume, its greatest critic. In America, by contrast, the doctrine lived—albeit fighting for its life at times—through the early twentieth century.” See also, *ibid.*, 36 and 38.

18. See also *Federalist* 39:236: “The first question that offers itself is whether the general form and aspect of the government [under the Constitution] be strictly republican. It is evident that no other form would be reconcilable with the genius of the

people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.”

19. As David Epstein has observed, on Madison’s reading in *Federalist* 14 “Not inherited or sentimental or blood ties but the political choice of 1776 explains the unity of the American rather than the Anglo-American family; and only further political choice, *The Federalist* argues, can preserve the Union.” David F. Epstein, *The Political Theory of The Federalist* (Chicago: The University of Chicago Press, 1984), 20.

20. See Thomas L. Pangle and Peter J. Ahrensdoerf, *Justice Among Nations: On the Moral Basis of Power and Peace* (Lawrence: University Press of Kansas, 1999), 33: “The political philosophizing initiated by Socrates and foreshadowed by Thucydides demonstrates, in conversational argument with and on the basis of traditional views, the necessity of an ascent from tradition to the life according to nature.”

21. See *Federalist* 26:157:

It was a thing hardly to have been expected that in a popular revolution the minds of men should stop at that happy mean which marks the salutary boundary between POWER and PRIVILEGE, and combines the energy of government with the security of private rights. A failure in this delicate and important point is the great source of the inconveniences we experience, and if we are not cautious to avoid a repetition of the error, in our future attempts to rectify and ameliorate our system, we may travel from one chimerical project to another; we may try change after change; but we shall never be likely to make any material change for the better.

The idea of restraining the legislative authority, in the means of providing for the national defense, is one of those refinements which owe their origin to a zeal for liberty more ardent than enlightened. (Capitalization in original)

22. See Karl-Friedrich Walling, *Republican Empire: Alexander Hamilton on War and Free Government* (Lawrence: University Press of Kansas, 1999), 8; Bernard Bailyn, *The Ideological Origins of the American Revolution*, expanded ed. (Cambridge, MA: Belknap Press, 1992), ix; Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (New York: W. W. Norton & Company, 1972), 3–45, 127–161. Richard Kohn attributes the dominance of radical Whig Ideology during the period immediately following the Revolution and the difficulty of overcoming it to pre-revolutionary colonialism, on the one hand, and the novelty of self-governance and especially the new powers America’s central government would have to assume after Independence.

One of the most important results of the American Revolution, too often neglected by historians, was the stripping away of the central authority which for over a century had been the final arbiter of the most fundamental issues facing American society. By leaving the British empire, Americans were forced to confront problems with which they had dealt before only in the most peripheral manner. Nearly every major difficulty the new nation faced after 1783 flowed directly out of independence. Before 1775, Americans had never been allowed to determine for themselves the method of their defense, just as they could not control their economy, determine their relationship with foreign countries, oversee the

opening of the West, develop their own tradition in law, or decide the nature of their own government. The heart of their political tradition was opposition politics, the radical Whig ideology in which the prejudice against standing armies and the identification of militia with virtue and liberty was so central. Undoubtedly radical Whig philosophy had appealed to Americans in part because of their powerlessness within the empire, because they were ruled chiefly by executive power over which they had limited influence. Independence changed all that. What had before been decided in Whitehall, in the drawing rooms of London, or in the well of Parliament now had to be determined on the western side of the Atlantic, and politics in America after the Revolution was for the most part a struggle to resolve dilemmas which had previously been beyond American control. (Richard H. Kohn, *Eagle and the Sword: The Federalists and the Origins of the American Military Establishment, 1783–1802* [New York: Free Press, 1985], 296–297)

Article IX of the Articles of Confederation provided:

The United States in Congress assembled shall have authority . . . to agree to the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

23. *Federalist* 1 admonishes “that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government” (1:5). *Federalist* 3 proclaims: “When once an efficient national government is established, the best men in the country will not only consent to serve, but also will generally be appointed to manage it” (3:14). *Federalist* 4 similarly declares that if foreign nations “see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment” (4:22) (I discuss these passages from *Federalists* 3 and 4 in more detail later in this chapter.). Volume One of *The Federalist* concludes: “I have now gone through the examination of those powers proposed to be conferred upon the federal government; which relate more peculiarly to its energy, and to its efficiency, for answering the great and primary objects of union” (36:220).

24. To revert to the language of *Federalist* 1 the Constitution will be embraced, if it is embraced at all, on the basis of reflection and choice rather than accident or force. America’s commercial republican empire will be founded then on something other than force or fraud, what Machiavelli himself contended were the only truly effectual foundations for political authority. See Walling, *Republican Empire*, 15–16.

25. William Shakespeare, “Henry VIII,” in *The Complete Works of William Shakespeare*, ed. John Dover Wilson (London: Octopus Books Limited, 1982), 631.

26. Jean-Jacques Rousseau, *Discours sur l'origine, et les fondemens de l'inégalité parmi les hommes*, in *Oeuvres Complètes* (Gallimard, Paris, 1964), Vol. III, 155–156.

27. Walling, *Republican Empire*, 44.

28. Ibid., 43.

29. Ibid., 43–45 and 68–70.

30. See Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Princeton, NJ: Princeton University Press, 1997).

31. Peter McNamara, *Political Economy and Statesmanship: Smith, Hamilton, and the Foundation of the Commercial Republic* (DeKalb: Northern Illinois University Press, 1998), 97–98.

32. Ibid., 98–99.

33. Ibid., 103.

34. In *A Revolution in Favor of Government*, Max Edling seeks to concentrate on the Hamiltonian side of the Federalists' argument as opposed to the Madisonian side, which he contends overemphasizes the institutional makeup of government under the Constitution at the expense of examining the government's specific powers, especially those concerning fiscal and military reform. There is much to be commended with Edling's change of emphasis on Federalist scholarship. This book itself attempts such a change of emphasis. Yet when examining the Federalists' and Antifederalists' conflicting views on the Constitution's military clauses and the apparent lack of enthusiasm among Americans for military service in the late 1780s Edling concludes: "Given the stress sometimes put on the influence of classical republicanism in America, it is well to remember that when writing the Constitution and struggling for its adoption, it was government, not the moral character of the American citizenry, that the Federalists hoped to reform." Max M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), 80. Although the Federalists were certainly not attempting to inculcate a classical understanding of virtue in the American citizenry in their defense of the Constitution, Edling's categorical statement here underplays the extent to which the reform of American character was nevertheless considered an essential concomitant of constitutional reform, at least for the authors of *The Federalist*, including obviously Hamilton.

35. In *James Madison and the Spirit of Republican Self-Government* (2009), Colleen Sheehan, for instance, seeks to distinguish the views of John Adams, Hamilton, and Madison on the nature of republicanism. She says of Adams and Hamilton that

each saw himself as the rescuer of republicanism in a new age. For Adams, the challenge of republicanism was to provide an antidote to the pride of human nature, as it remained permanently in a fallen world, but could not be controlled by a new conception of dynamic balances. For Hamilton, the solution lay in a new order of republicanism in the modern age of industry and competitive advantage. Madison thought Adams and Hamilton placed too much reliance on modern science and the mechanics of self-interest and did not attend sufficiently to the power of the human spirit. He too sought a new order of the ages, but one that he believed marked a more noble republican course. (Sheehan, *James Madison*, 29–30)

These remarks come at the end of a chapter titled "Republican Opposition," covering Madison's opposition to the views of Federalists, including Adams and Hamilton, through the early 1790s. Given that this period came immediately after Madison's joint authorship with Hamilton of *The Federalist* it is difficult to see how Madison

could have seriously entertained the idea that Hamilton had insufficiently attended to the power of the human spirit in his proposals for republican reform. Rejuvenation of the American spirit was one of the central themes of Hamilton's contributions to *The Federalist*, to say nothing of his pre- and post-*Federalist* writings, as Walling, McNamara, and the discussion above and below highlight. Moreover, the idea that "Hamilton placed too much reliance on modern science and the mechanics of self-interest" has become a credo of many critics of Hamilton that scholars like Walling and McNamara have convincingly repudiated; this is not Hamilton but more the constructions imposed on him by those unsympathetic to his work. Hamilton's contributions to *The Federalist* alone would seem to make clear that a simple mechanics of self-interest are inadequate to his constitutionalism.

36. For a contrary view, see Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Ithaca, NY: Cornell University Press, 1995), 211–214.

37. See Edling, *A Revolution in Favor of Government*, 8–10, 45–46, and 219–229.

38. David F. Epstein, *The Political Theory of The Federalist* (Chicago: The University of Chicago Press, 1984), 16, referring to Thomas Hobbes, *Leviathan*, ed. C. B. MacPherson (New York: Penguin Books, 1968), ch. 19, 239–251.

39. Discussing the Constitution's war powers Max Edling observes:

The traditional question regarding the military clauses of the Constitution has been whether or not the Federalists believed in "militarism." Antifederalists and, later on, Democratic-Republicans accused the Federalists of wishing to establish a standing army in peacetime and to base government on coercion rather than consent. These accusations have been picked up by historians who view Federalists as elitist and undemocratic. As far as the debate over ratification goes, however, the first Antifederalist claim can be accepted only with qualifications, whereas the second has no support at all. . . . [The] Federalists were . . . ready to make a number of claims during the ratification debate that challenged the strong antiarmy sentiment prevailing in America. They spoke about the need to possess professional troops in peacetime; they criticized the militia; and they defended the use of military force to put down domestic disturbances. However, they also rejected the claim that the Constitution would establish a government of force and they never suggested anything other than that the peacetime army would be very small and garrisoned out of sight of the people. (Edling, *A Revolution in Favor of Government*, 83)

40. "As a nation we have made peace and war, as a nation we have vanquished our common enemies; as a nation we have formed alliances, and made treaties, and entered into various compacts and conventions with foreign states" (2:9).

41. See Tarcov, "War and Peace in *The Federalist*," 93.

Chapter 3

The Spirited Nature of Commercial Republics

The last two chapters have discussed *The Federalist's* natural rights constitutionalism and certain elements of its commercial republican theory that might be improved with the Constitution. Part of the argument here is that the Constitution would be a means to national greatness and the higher toning of American character through the political and commercial reforms it would bring about. Removing such things as “the pestilent effects of paper money” by proscriptions on the states issuing bills of credit might improve both “the industry and morals of the people” and “the character of republican government” as *Federalist* 44 proposed. The assumption here was that there was a certain morality or virtue that might be cultivated contemporaneously with an improvement in industry through proper constitutional reform; there was a connection in other words between industry, morality, and republican character. The example of bills of credit was just one discrete instance that highlighted the nature of *The Federalist's* commercial republican theory promoting a higher-toned American character. Obviously this is not the whole of *The Federalist's* constitutional theory but it does exemplify in a single important instance the potential *The Federalist* sees in the sort of commercial reforms described in the last chapter.

There was a problem however. Commercial republics were spirited and warlike, as *Federalists* 5 and 6 would shortly reveal. This had been the case since the time of such ancient commercial republics as Athens and Carthage. As Publius' discussion here will suggest, how might that spirited, warlike character be tempered by the Constitution to serve more salutary ends? *Federalists* 5–8 introduce us to the problem here and also begin to provide an answer to it. We will get to those issues shortly. Before doing so, however, the first section below reviews *Federalists* 3–4 and related numbers with a view to setting the stage for the later argument in *Federalists* 5–8 about the

dynamic character of commercial republics. The second section of the chapter begins our review of these latter numbers, which will continue into the next chapter. Much again turns on the distinctions drawn in *Federalists* 3–8 since the point of *The Federalist*’s arguments in these numbers is not only to underline the obvious about how the new constitutional union will enhance national security and domestic order but to demonstrate how the Constitution will promote political excellence, American greatness, and high civilization through a newly formulated commercial republican theory. That new theory begins to take shape in *Federalist* 3.

COMMERCE, ENTERPRISE, AND AMERICAN GREATNESS

Federalist 3 begins by once again affirming the intelligence of the American people and how such intelligent people rarely persevere for long “in an erroneous opinion respecting their interests” (3:13). The Constitution will certainly be in Americans’ best interests to adopt because of the greater national security and domestic order it will provide. But as we saw in the last chapter *Federalist* 3 is not just about interests. It is also about justice or more specifically how to avoid injustice, particularly those injustices that might result from Americans’ failure to respect treaties or from their committing unjustifiable violent acts against other states. The result in either case could be war, an eventuality that again Americans should obviously want to avoid.

As we recall from our discussion in chapter 1, *Federalist* 43 used the Declaration of Independence to dispatch the Articles of Confederation in favor of the Constitution, recurring “to the absolute necessity of the case; to the great principle of self-preservation; to the transcendent law of nature and of nature’s God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed” (43:283; see also 78:500). Invoking the law of nature and nature’s God in defense of the Constitution, *Federalist* 43 moved in ascending order of significance from absolute necessity to the happiness of society, suggesting that there is a hierarchy or order to the law of nature, one with which the Constitution will have to comport. We see this order and the invocation of both “safety” and the “happiness of society” in the only two instances in *The Federalist* in which Publius speaks directly of the first objects of government. *Federalist* 3 declares: “Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their *safety* seems to be the first” (3:13, emphasis in original). By contrast *Federalist* 10 defines “the first object of government” as the protection of “[t]he diversity in the faculties of men, from which the rights

of property originate” (10:55). As a preliminary matter, we might reconcile these statements by understanding that the people’s security is the first object of government in the realm of *necessity* (as Publius’ language in *Federalist* 3 suggests). In the realm of *freedom*, by contrast, in that world that good government should provide for once necessities have been accommodated, the first object of government is to protect those diverse faculties that men exercise to better themselves and to acquire property. These first objects of government speak respectively to the most important of the public goods the Constitution was to secure, namely national security, and the most fundamental of the private or individual rights it was also to provide for, namely the liberty to cultivate one’s faculties as one sees fit and to retain the benefits of that cultivation, usually in the form of private property.

We will discuss the full significance of this latter statement from *Federalist* 10 in chapter 6. Regarding the former statement we might say that the most obvious reason we want to be free from the violence of others is to exercise that freedom of movement and action necessary to allow us to do those things we are capable of; to “realize our full potential” as we might say today.¹ But that requires as a prerequisite security. *Federalist* 2 spoke about the prosperity the new constitutional union would bring to Americans. *Federalist* 3 speaks about safety. How precisely will the Constitution provide for this?

Publius maintains that it was of the utmost “importance to the peace of America that she observe the laws of nations” (3:14). This could only happen however if state sovereignty was curtailed and control over foreign policy, commerce, and national security was given to the federal government. Whether by design or by accident “violations of treaties and the laws of nations” were “less to be apprehended under one general government than under several lesser ones” (3:16). The reason was because the parts of the whole, namely the states or partial confederacies, were more likely to be infected with those passions or interests that lead to the violation of law than the nation as a whole. The same reasoning applied to illegal acts proceeding from direct violence: localities were more likely to engage in such brash action against foreign nationals and the Indian tribes than the federal government. In fact in all cases of hostilities against the latter, it was the provocations “by the improper conduct of individual States,” not the federal government, that had “given occasion to the slaughter of many innocent inhabitants” (3:16).

The argument here is similar to *Federalist* 10’s contention that the prospects for faction will be less in a larger republic than in a smaller one because those passions or interests adverse to the rights of individuals or the general welfare are more likely to fester in specific states than in the union as a whole (10:60). Publius’ contention in *Federalist* 3 is not that the national government under the Constitution will be free from committing its own injustices

but that it will commit *fewer* of them than the Confederation. The large republic the Constitution will create will be more moderate in its dealings in international relations because of its capacity to stand above the rash affectations of localities. It will also be more honorable because it will be able to punish those injustices committed by its own citizens. It was precisely the inability to punish America's violations of the Treaty of Paris that made it difficult for the United States "to remonstrate with dignity" regarding violations of that same treaty by the British (15:87).²

Honor was also apparently one of the reasons why the Constitution would facilitate greater political excellence than the Confederation: "When once an efficient national government is established, the best men in the country will not only consent to serve, but also will generally be appointed to manage it" (3:14). An efficient national government will draw to it a higher caliber of representation and administration, which in turn will produce better political, judicial, and administrative decisions than might occur in any of the individual states. As Nathan Tarcov has observed, the logic of *Federalist* 3 is that because the national government under the Constitution will be more effective at making national policy—states under the Confederation having the freedom to go their own way—it will attract men repelled by impotence and frustration while making their decisions stick.³ In addition, treaties and the laws of nations under the Constitution will have the added advantage of being more consistently interpreted. They will also be executed by a single national government rather than by a multiplicity of governments. All of these propositions from *Federalist* 3 seemed straight forward enough.

What was not straightforward was the precise meaning of "an efficient national government." And why exactly would such a government draw "the best men in the country" to serve in it? Was it simply a matter of greater prestige or was something else at work? If it was in fact prestige, what would be so prestigious about the federal government that the best men in the country would consent to serve in it? *Federalist* 3 does not provide us much guidance here. *Federalist* 17 however does provide us a hint about what *Federalist* 3 might have in mind. Reassuring skeptics of the Constitution that allowing federal legislation to apply directly to individuals, as the Constitution would, would not result in the federal government absorbing the powers of the states, *Federalist* 17 observes:

The regulation of the mere domestic police of a State appears to me to hold out slender allurements to ambition. Commerce, finance, negotiation, and war seem to comprehend all the objects which have charms for minds governed by that passion; and all the powers necessary to those objects ought, in the first instance, to be lodged in the national depository. . . . It is therefore improbable that there should exist a disposition in the federal councils to usurp the powers

with which they [the states] are connected; because the attempt to exercise them would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government. (17:100–101)

The dignity, importance, and splendor of the national government are what would apparently lure the greatest political talents into the national orbit. As one recent commentator has suggested, *Federalist* 17's reference to the mere police powers of the states seems to insult state legislators because of the pettiness of what they do. At the same time it acknowledges the honor and glory that those seeking national office pursue; that national representatives want to be remembered for their great achievements as warriors or statesmen or perhaps be memorialized through magnificent public monuments.⁴ Or perhaps, we might add, they want to be recognized for the great enterprising projects or scientific innovations they nurtured along, both of which are contemplated by the powers listed in Article I, Section 8 of the Constitution. *Federalist* 17 refers to "commerce" first among the four discrete, limited objects that are mentioned as allurements to the politically ambitious. So too does *Federalist* 56: "What are to be the objects of federal legislation? Those which are of most importance . . . are commerce, taxation, and the militia" (56:360). Article I, Section 8 of the Constitution itself gives textual primacy to commerce or commerce-related powers. These and the powers of finance and the promotion of science and the useful arts are listed first among the specific powers Congress will enjoy under the Constitution.

The other powers *Federalist* 17 lists after commerce—finance, negotiation, and war—like those of taxation and the militia listed in *Federalist* 56 are objects that we might say represent traditional powers that earlier political thought considered critical to all national governments.⁵ By adding commerce to this short list, and in the manner that they do, *Federalists* 17 and 56 highlight four things relevant to our discussion here. First, that the federal government will be a limited government; government limited to commerce, finance, negotiation (or treaty-making), and war. Second, the federal government will maintain this limited quality not so much because of textual constraints in the Constitution (which are not even mentioned in *Federalists* 17 or 56) but because of political anthropology or political sociology; because state powers and state governance are too petty to be of interest to federal representatives.⁶ Third, to the extent the federal government assumes the police powers of the states, which includes the "administration of private justice between citizens of the same State" and "the supervision of agriculture," it will by implication consume itself with trivial matters. This will arguably detract from the potential greatness federal representatives and the federal government more generally might be encouraged to pursue by the

Constitution (17:101). Finally, commerce clearly assumes a position of priority in the new constitutional order. It will be key to American greatness and key to the cultivation of a high and honorable politics.

The question remains how that greatness and high, honorable politics will be brought about in the face of all the obstacles, domestic and international, that stood in their way. *Federalist* 3 reaffirmed how the new Constitution will better respect the dictates of justice than the Confederation while reducing threats from abroad. But the United States, even under the auspices of the Constitution, might either through “designed or accidental violations of treaties and the laws of nations afford just causes of war” (3:16, emphasis removed). As *Federalist* 3 affirmed, justice certainly matters in international affairs. Moreover, just as *Federalists* 3 and 17 suggest that honor and glory will move members of Congress to pursue great commercial or military ventures for which they are remembered, *Federalist* 72 similarly implores that “the love of fame, the ruling passion of the noblest minds,” will move the president, the primary actor in foreign affairs. The president will be moved to “undertake extensive and arduous enterprises for the public benefit,” assuming he is in office long enough to “accomplish his work.” *Federalist* 72 emphasizes that the president’s “reputation” is at stake here, and we may presume that political actors—members of Congress as much as presidents—seek fame, not infamy (72:464). Accordingly, they will not want to be associated with acts of injustice committed either in domestic or international politics.

But *Federalist* 3 warns that that may not always be of their choosing. Even if only accidentally, the United States may be involved in unjust acts. If that is the case, how might the violence or humiliation that can result from such international incidents be avoided?⁷ *Federalist* 3 dons its “realist” hat here, offering the following advice: that “it is well known that acknowledgments, explanations, and compensations are often accepted as satisfactory from a strong united nation, which would be rejected as unsatisfactory if offered by a State or confederacy of little consideration or power” (3:17). Recall the example of Genoa that we discussed in chapter 1. Unlike that small city-state great empires, like Britain and Spain, can avoid humiliation at the hands of other great empires, like France. This is due to a simple fact: their power. Perhaps the United States could aspire to the same stature of Britain and Spain. But much would need to be done to get America to such a level of prominence, not the least of which was maintaining the union. *Federalist* 2 emphasized that the United States was forged by the exigencies of war, specifically the Revolutionary War. Americans were certainly capable of martial virtue, as the Revolution demonstrated, but that war also revealed that Americans lacked sufficient arms and professional competence to win the war on their own (25:155). Much more would need to be done to make America militarily

sound. And whatever international compacts the United States entered into would on their own be insufficient to provide for this.

The reason, as *Federalist* 4 clarifies, is that there are pretended as well as just causes of war, so simply accommodating the latter through compliance with treaties and international law will obviously not provide Americans the safety they need. As a commercial republic whose interests were best served by expanding commercial markets and enterprise, Americans needed to be cognizant of the fact that “jealousies and uneasiness” would overtake governments who would not regard America’s “advancement in union, in power and consequence by land and by sea, with an eye of indifference and composure” (4:19). The only hope for discouraging measures against the United States that opposing nations would find no shortage of pretenses to act upon was to provide “the best possible state of defence,” which necessarily depended “on the government, the arms, and the resources of the country” (4:19). This was as much a political and commercial problem as it was a military problem since the best possible state of defense depended not only on arms but on government and the resources of the country.⁸

COMMERCE, UNION, AND AMERICAN FOREIGN POLICY

Federalist 4 repeats what we have learned about political excellence from *Federalist* 3; that the new constitutional government will attract “the talents and experience of the ablest men” (4:20). But it adds that the new government would also be capable of more coherent policy and of applying the nation’s resources and power to defend any particular region of the country. The militia too would be integrated into a single corps by being placed under a uniform plan of discipline. Its officers would also be aligned in a subordinate position to a chief civil magistrate, the president. Being consolidated, the militia under the Constitution would be much more effective than if it was divided between thirteen states or three or four independent confederacies. It was precisely this ability to concentrate military power into a single union that had made the United Kingdom so powerful and respected. *Federalist* 4 cites the case of the British navy: “if one national government had not so regulated the navigation of Britain as to make it a nursery for seamen—if one national government had not called forth all the national means and materials for forming fleets, their prowess and their thunder would never have been celebrated” (4:20).

Again, the point here is not merely the safety but the greatness, pride, and rejuvenated public spirit the new constitutional union might create. Britain was celebrated because of its military wherewithal, specifically its navy,

which even today is seen as the source of its greatness and a critical engine of modernity.⁹ A significantly improved politics, that in the best case would amount to a new form of political excellence, is what *Federalists* 3 and 4 promise us with the new constitutional union. A higher caliber political actor in Congress and the Executive will pursue a more prudent, consistent, and principled politics. At least this is the theory. But commerce also emerges as equally critical to American foreign policy and national security.

Federalists 3 and 4 highlight that all nations have interests that are important enough to be defended or advanced by war or the threat of it. *Federalist* 4 focuses on interests determined by two principal factors: geography and commerce.¹⁰ America's geography made specific demands on its national security requirements such as the need for a federal army and navy to protect its extensive territory and coastline. Both of these military instruments would also assist the United States with its commercial enterprise by protecting those domestic and international trading routes that were so critical to America's growing prosperity. *Federalist* 4 offers us a pessimistic political anthropology; that not only will nations "make war whenever they have a prospect of getting anything by it" but that "absolute monarchs will often make war when their nations are to get nothing by it." They will conduct war for purposes "merely personal, such as a thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans." *Federalist* 4's point of emphasis here is that it is not only *human nature* that causes war but *forms of government* too. An absolute monarch can cause war for personal reasons "not sanctioned by justice or the voice and interests of his people" (4:18). Presumably constitutional republics will be less inclined to war for such causes even if they may not be entirely immune to them.¹¹

Emphasizing that these unjust causes of war are peculiar to monarchs, *Federalist* 4 also takes pains to point out that there are additional inducements to war that "affect nations as often as kings" (4:18). The examples provided here all involve instances of commercial conflict—The British and French rivalry with the United States over fisheries, similar rivalries with these and other European nations over navigation and the carrying trade in the Atlantic, and yet similar disputes involving Asiatic nations, which previously enjoyed trading monopolies in that region of the world, related to America's commerce with China and India. *Federalist* 4 concludes:

The extension of our own commerce in our own vessels cannot give pleasure to any nations who possess territories on or near this continent, because the cheapness and excellence of our productions, added to the circumstances of vicinity, and the enterprise and address of our merchants and navigators, will give us a greater share in the advantages which those territories afford, than consists with the wishes or policy of their respective sovereigns. (4:19)

Commercial nations are restless, acquisitive, and expansionist. This includes the United States. The cheapness and excellence of America's productions, combined with the enterprise and address of its merchants and navigators, will result in trade competition with Europeans and their colonies. The Europeans will not be happy with this competition. If agreements are not reached about how to manage these commercial disputes, war may result.

As *Federalist* 4 suggests here, not only the commercial dynamism and expansion of both European and Asian nations must be accounted for. So too must that of the United States. In fact, the obvious hope is that American commercial traffic will become *increasingly* dynamic and expansionist. This was a necessary concomitant of America's natural rights constitutionalism, which sought to increase opportunities for Americans not only in domestic markets but international markets too. *Federalist* 11 complements *Federalist* 4 in this regard. There Publius defends, in a manner similar to *Federalist* 4, the necessity of shipping American goods in American ships—an "active" as opposed to a "passive" commerce. In the absence of such an active commerce there would be consequences beyond lower prices for American commodities and the seizure of American profits by its "enemies and persecutors." In addition, that "unequalled spirit of enterprise, which signalizes the genius of the American merchants and navigators, and which is in itself an inexhaustible mine of national wealth, would be stifled and lost, and poverty and disgrace would overspread a country which, with wisdom, might make herself the admiration and envy of the world" (11:66). The unequalled spirit of enterprise is *in itself* an inexhaustible mine of national wealth; it is valuable not just for its effects but for being an *inherently* boundless source of human productivity in all domains.¹² We get a hint here of the broader understanding of human development that the spirit of enterprise might implicate, one of an evidently higher order since *Federalist* 11 makes clear that undermining that spirit would not only result in poverty but *disgrace*; it would be *dishonorable* as well as productive of greater penury. The mandate to protect enterprise, through firm union, a maritime carrying trade, and a navy, would appear to be as much a *moral* imperative—the offspring of "moral" necessity as *Federalist* 11 earlier put it—as it is a function of political, economic, military, or "physical" necessity. The "little arts of the little politicians" had to be overcome so that "the irresistible and unchangeable course of nature" might be pursued (11:65).

We will revisit *Federalist* 11 in chapter 7. The point of stressing the passage above here is to highlight the *political*, *moral*, and almost *ecumenical* aspect of the Constitution's commercial and naval reforms in *The Federalist's* view. These integrated reforms were a matter of pride and greatness as much as they were about economic interests and safety—this was nature's "irresistible and unchangeable course" that only the "little politicians" sought to interfere with. America through its enterprise might become "the admiration

and envy of the world.” Its citizens, as *Federalist* 4 intimated, might someday celebrate their own navy in a manner similar to the way the British celebrated theirs. Americans had a certain “genius” which American institutions and policies had to account for. Part of this genius was the “unequalled spirit of enterprise” referred to in *Federalist* 11. Another was the “genius of the people of America” that we discussed in chapter 1 and that was consistent with “the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government” (39:239).¹³ The genius of enterprise and that of self-government were related: The capacity of mankind for self-government could not be realized, at least not in any complete sense, without assisting that unequalled spirit of enterprise just as the unequalled spirit of enterprise needed the freedom of self-government and of uninhibited markets for those such as its merchants and navigators to flourish.

Federalist 11 celebrates those innovative, commercial actors whose genius and enterprise, if “stifled and lost,” would result in “poverty and disgrace.” The theme of these early *Federalist* numbers is not just to defend union against disunion but the Constitution against the Confederation.¹⁴ Only the Constitution granted the federal government sufficient powers to ensure that American enterprise would not be stifled and lost the way it had been under the Confederation. The defense of the Constitution was a defense of open markets against those political entrepreneurs who used government regulation and conniving manipulation for personal enrichment. Discussing the prohibitions on bills of attainder, ex post facto laws, and laws impairing the obligations of contracts in Article I of the Constitution, *Federalist* 44 again recounts how the Confederation undermined industry and public confidence in government in terms that would sound all too familiar to today’s critics of the modern regulatory state.

The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. (44:287)

Federalist 62 makes much the same argument as we find in *Federalist* 44. Mutable domestic policy

poisons the blessings of liberty. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that

they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue, or in any manner affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is the state of things in which it may be said with some truth that laws are made for the *few*, not for the *many*. (62:400, emphasis in original)

The intent of the Constitution's commercial reforms was to remove what *Federalists* 44 and 62 define as ever-multiplying, corrupting barriers to enterprise, industry, and innovation. The discussion here is directed both to prohibitions on the states and the federal government; *Federalist* 44's argument against undue regulation applies with as much force to the federal government as to the states. And *Federalist* 62's remarks are specifically made in the context of discussing the stabilizing effects the Senate will have on federal law. We may presume then that Publius' theory remains constant across government; federal legislation, like state legislation, should always be relatively simple and unfluctuating. Laws should not be so voluminous that they cannot be read or so incoherent that they cannot be understood. The rule of law demands as much. Nor should laws be used by the politically enterprising to ossify and stagnate the economy while strangling the more-industrious and less-informed with labyrinthine regulations. A free society should not require an undue level of vigilance by those less-informed. The politically less vigilant should be at liberty to exercise their freedom outside the world of the political without being made to suffer.

The messages in *Federalists* 44 and 62 are consistent with the themes outlined above from *Federalists* 3 and 17: The Constitution will create a legislative regime of efficient, limited government and commercial dynamism that will not interfere with personal rights. It should be clear from these statements as well that it is not just any commercial republic that will do for *The Federalist*. Only one that will *reduce* governmental interference in Americans' exercise of their personal rights, as *Federalists* 44 and 62 suggest here, is acceptable. This imperative is not just a function of justice but of necessity, as *Federalist* 5 makes clear. The Constitution's commercial reforms were intended to catalyze industry and innovation but they were also intended to integrate the more with the less dynamic elements of America's nascent

political economy, the former becoming increasingly impatient with the unnecessary restraints on its activities under the Confederation. As *Federalist* 44 highlighted, the “sober people of America” had not only become “weary of the fluctuating policy” which had directed the public councils. They had also witnessed “with *regret* and *indignation*” how multiple, unforeseen legislative burdens had been placed upon individual rights to the benefit of political entrepreneurs while simultaneously hamstringing those more-industrious who generated the real value in American political and economic life. The sober American was brimming with rage over what we might call the 1787 version of the regulatory state.

Federalist 5 introduces a theme similar to this when discussing the restless, aggressive, even expansionist nature of commercial republics, particularly those of a more industrial and manufacturing variety. Once again addressing the problems of disunion, *Federalist* 5 maintains that the new Constitution would breed greater national affection and unity through the vehicle of integrating the political economies and political cultures of the different regions of the country. Using the example of Great Britain, which provides “many useful lessons” for Americans, *Federalist* 5 warns how “weakness and divisions at home would invite dangers from abroad” (5:23). Queen Anne’s letter to the Scottish Parliament July 1, 1706 on the benefits of the proposed union between Scotland and England is cited with approval. That letter maintains that religion, liberty, and property will be better protected in the British kingdoms once they are joined in union. In addition, the union, by increasing the strength, riches, and trade of the new nation’s inhabitants, will also join the countries in affection, preventing them from division on the basis of different interests. *Federalist* 17 would later highlight how political and commercial integration could assist in overcoming ethnoracial divisions. There Publius emphasized how the “spirit of clanship” in Scotland that had for ages proven to be so “fierce and ungovernable” had through union with England become subordinated to “a more rational and more energetic system of civil polity” (17:104). Political and economic integration had the potential to overcome divisive ethnic, racial, and religious faction, making the civil polity both more *rational* and more *energetic*; rationality here apparently being identified with overcoming those petty, inflammatory distinctions synonymous with ethnoracial chauvinism, and energy being identified with greater commercial development and uniform civic spirit. Queen Anne’s letter concluded by emphasizing how the new British union would also allow England and Scotland to resist their common foes. Bordering nations were natural enemies and this was especially true of bordering commercial nations. *Federalist* 5 emphasizes similar problems that might arise in a disunited America. “Different commercial concerns must create different interests, and of course different degrees of political attachment to and connection with different

foreign nations” (5:25). Americans would suffer from foreign intrigue and interference in a divided America as well as from those fractious jealousies of particular states or confederacies that would focus on their particular interests rather than on the interests of the whole.

The new constitutional union would avoid all of these defects. Shaping public opinion through an open federal market, with an ever-integrating, ever-increasing division of labor and refinement of knowledge, the Constitution would bring together previously disparate national constituencies, smoothing over in particular the potential conflict between the more dynamic, commercialized, manufacturing North and those more agrarian regions to the South. In a divided America, the North, which was “generally the region of strength,” would in a short period of time

be unquestionably more formidable than any of the others. No sooner would this become evident than the *Northern Hive* would excite the same ideas and sensations in the more southern parts of America which it formerly did in the southern parts of Europe. Nor does it appear to be a rash conjecture that its young swarms might often be tempted to gather honey in the more blooming fields and milder air of their luxurious and more delicate neighbors. (5:25, emphasis in original)

Publius here uses an evocative metaphor, highlighted in italics, to accentuate the key differences of those cultures making up America’s political economy. The more commercialized, manufacturing North is a *hive*; it is active, busy, restless, acquisitive, and has the vigor of perpetual youth. Its “young swarms” in a divided America just might gather honey from their “luxurious and more delicate neighbors.” The distinction here is emphatic and the metaphor of the hive in keeping with other references in *The Federalist* to the spirited nature of commercial republics. This spiritedness is a good thing with the proper constitutional instruments to temper and direct it. But as *Federalist* 5 highlights, it can be highly problematic without those instruments. *Federalist* 6 makes this point even more emphatically.

COMMERCE, WAR, AND THE NEW REPUBLICANISM

Federalist 6 was dedicated to reviewing the causes of war that could arise among nations, including among the states in a divided America. Whereas *Federalist* 4 had been content to address the belligerence of absolute monarchies that made war from motives peculiar to them, *Federalist* 6 had to consider internecine war among the American states. It was thus compelled to address what has been called the “democratic peace” theory, the idea that democracies or republics, particularly commercial republics like those in the United States, would not go to war with each other since they were moderate

and pacific in nature.¹⁵ Recent Enlightenment theory had asserted that commercial republics were of this character. *Federalist* 6 contested the theory. Extending the argument introduced in *Federalist* 5 regarding the metaphor of the hive in what is perhaps the most important and overlooked transition in republican theory that *The Federalist* develops, *Federalist* 6 provides Publius' most explicit and provocative formulation of his distinctive sociology of commerce. He provides this while enucleating a theory of war that, like his sociology of commerce, is fundamentally Thucydidean in nature. *Federalist* 6's theory of war anticipates much international relations theory today.¹⁶

That number begins by acknowledging that the "causes of hostility among nations is innumerable" (6:27). Although the catalogue of causes of war is large, *Federalist* 6 focuses on three specific causes, ranging from most to least general. We have already canvassed examples of the latter in our discussion of Pericles and Cardinal Wolsey in the last chapter. *Federalist* 6 cited Pericles and Wolsey as examples of causes of war "which take their origin entirely in private passions; in the attachments, enmities, interests, hopes, and fears of leading individuals in the communities of which they are members." In contrast to these *least general causes* of war originating in private passions are those *most general causes* of war that have an "almost constant operation upon the *collective* bodies of society. Of this description are the love of power or the desire of preeminence and dominion—the jealousy of power, or the desire of equality and safety" (6:28, emphasis added). *Federalist* 6 proposes that both the least and most general causes of war are ineradicable because they originate in human nature, which in both individuals and collectivities is unchanging. In the case of the most general causes of war the love of power is inherent to all collectivities and nations. Nations typically seek power or dominion over other nations, especially those perceived to be vulnerable or weak. If this push for dominion itself does not precipitate war or at least the threat of war, those nations that are threatened by more powerful nations will, on account of their jealous pride or fear for safety, seek to build up militarily or to compensate for their military deficiencies by aligning with other nations. They will pursue, in a word, a "balance of power"—what *Federalist* 15 describes as an "equilibrium of power" (15:90).

Federalist 6 suggests that this interplay between the desire for preeminence and dominion among powerful states and the constant seeking of power balancing by weaker states will leave international relations in a state of perpetual flux. There will be no possibility of some sort of Kantian "perpetual peace."¹⁷ The threat of war accordingly will be a permanent feature of the relations between nations. The Antifederalist Agrippa had proposed that there would be comity among the divided states of America because the "diversity of produce, wants, and interests" would result in a "most friendly intercourse" between them.¹⁸ Those, such as the writers of *The Federalist*, who had

objected to the Greek and Roman republics because of their “irregularities,” had failed to appreciate that

war was the employment which they considered the most becoming of freemen. Agriculture, arts, and most domestick employment were committed chiefly to slaves. But Carthage, the great commercial republic of antiquity, though resembling Rome in the form of its government, and her rival for power, retained her freedom longer than Rome, and was never disturbed by sedition during the long period of her duration. This is a striking proof that the fault of the Greek and Roman republics was not owing to the form of their government, and that the spirit of commerce is the great bond of union among citizens. This furnishes employment for their activity, supplies their mutual wants, defends the rights of property, and producing reciprocal dependencies, renders the whole system harmonious and energetick.¹⁹

The Federalist would certainly agree that the ancient Greek republics were martial republics and that commerce could render republics both harmonious and energetic. But the latter required precise constitutional arrangements of the sort the Constitution would provide. Agrippa’s blissful vision of commercial republicanism on *The Federalist*’s reading ignored the fact that among the states that made up a divided America some would clearly be more powerful than others. It would only be a matter of time before an auspicious moment presented itself for these more powerful states to exercise their greater strength to expand their dominions at the expense of their weaker counterparts. If this was not cause enough for alarm *Federalist* 7 highlighted that hostility between the states would be further aggravated because of the extensive alliances with European states that the independent states of a divided America would inevitably assume. This would lead America, held together if it was held together at all “by the feeble tie of a simple league, offensive and defensive,” to become “gradually entangled in all the pernicious labyrinths of European politics and wars; and by the destructive contentions of the parts into which she was divided” the United States “would be likely to become a prey to the artifices and machinations of powers equally the enemies of them all. Divide et impera must be the motto of every nation that either hates or fears us” (7:40). The realities of human nature and international relations, which Antifederalists such as Agrippa ignored or at the least underplayed, meant that the states of a disunited America would soon be at war with each other and liberty would be lost.

An additional reason to be skeptical about the ostensible pacifism of commercial republics had to do with what *Federalist* 6 identified as the second most prevalent cause of war. These types of causes, similar to the most general causes of war, had “a more circumscribed though an equally operative influence within their spheres.” Singled out here for emphasis were those

“rivalships and competitions of commerce between commercial nations” (6:28). Again what was at play here was human nature, specifically men’s passions and those objects to which they could attach. Commerce was such an object. *Federalist* 6 emphasized that commercial nations were just as inclined to war as noncommercial nations and that it mattered little whether those commercial nations were republican or not. “Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities?” (6:30). Even in commercial republics, commerce could consume men’s appetites to the point of creating rivalries and eventually war between such states. Absent the Constitution the United States would likely prove no less immune to faction and those destructive commercial impulses that precipitate war. Referring to those “visionary or designing men, who stand ready to advocate the paradox of perpetual peace between the States, though dismembered and alienated from each other,” *Federalist* 6 observed: “The genius of republics (say they) is pacific; the spirit of commerce has a tendency to soften the manners of men, and to extinguish those inflammable humors which have so often kindled into war” (6:30). Disputing this, *Federalist* 6 highlighted that commercial nations did not change the passions of men so much as the objects of those passions and thus simply the objects of war. Commerce could be just as much an animating object of war as anything else. In fact, it could even incite a *greater* propensity to war.

Is not the love of wealth as domineering and enterprising a passion as that of power or glory? Have there not been as many wars founded upon commercial motives since that has become the prevailing system of nations, as were before occasioned by the cupidity of territory or dominion? Has not the spirit of commerce, in many instances, administered *new incentives* to the appetite, both for the one and for the other? Let experience, the least fallible guide of human opinions, be appealed to for an answer to these inquiries. (6:30, emphasis added)

Historical experience had demonstrated quite the opposite of what sophisticated opinion during the founding era had concluded: that commercial nations, including commercial republics, were generally sober and peaceful. As the passage here emphasizes, the spirit of commerce had in many instances administered *new incentives* to the appetite both for acquiring territory and for dominion.

The Federalist here recognizes that there is a *spirit* to commerce just as there is a *spirit* to enterprise. The spirit of commerce, as described in *Federalist* 6, was sufficiently animated that it provided *new incentives* to the appetite for territorial acquisition and for dominion that were, we may assume, not present before its introduction. Commerce does something to the appetite that the pursuit of territory or dominion on their own do not arouse. This point

is emphasized on a number of important occasions in the early *Federalist*, including in No. 7, as we will see in the next chapter. There a similar distinction is made about the spirit of enterprise—a direct relative it would appear of the spirit of commerce.

Federalist 6 highlighted that the dynamic features of commercial society have a long pedigree in Western history and Western republicanism, designating both ancient Athens and Carthage as republics of the “commercial kind.” Yet contrary to Agrippa’s suggestion above, commercial Carthage did not exist in harmony with others but was rather “the aggressor in the very war that ended in her destruction” (6:31). Being a commercial republic not only did not make a difference to Carthage’s longevity, her very *commercial nature* was apparently the *spur* to the aggression that led to her destruction. This was of no little significance since it demonstrated, again contrary to the likes of Agrippa, that the commercial republican form of government was not only no more pacific than other forms of government but could actually be more aggressive. The restlessness, innovation, daring, and acquisitiveness of commercial republican citizens gave no rest to other nations or cities. As we will see in chapter 5, this is a theme straight out of Thucydides. It is also a theme carried over from *Federalist* 6 to *Federalist* 7, which along with *Federalist* 8 we will examine in the next chapter.

NOTES

1. See W. B. Allen, with Kevin A. Cloonan, *The Federalist Papers: A Commentary* (New York: Peter Lang, 2000), 86.

2. Nathan Tarcov, “War and Peace in *The Federalist*,” *Political Science Reviewer* 19 (Spring 1990): 94–95.

3. *Ibid.*, 96.

4. Sanford Levinson, *An Argument Open to All: Reading The Federalist in the Twenty-First Century* (New Haven, CT: Yale University Press, 2015), 65. As Levinson notes, a similar argument involving “sociological, psychological and political realities” rather than textual considerations for why the states will enjoy priority in the people’s view over the federal government under the Constitution is made in *Federalist* 46 as well. *Ibid.*, 173. Levinson observes in addition that the desire to build lasting public monuments to memorialize their service is not only something members of Congress seek but is yet another reason *Federalists* 71 and 72 contend presidents too should be eligible for an unlimited number of terms (*Ibid.*, 273 and 275–276).

5. *Federalist* 45 gives further credence to this interpretation when acknowledging the novelty of the Constitution’s commerce power:

If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from

which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the articles of Confederation. (45:298, capitalization in original)

6. See Levinson, *An Argument Open to All*, 64.
7. Tarcov, "War and Peace in *The Federalist*," 96.
8. Ibid., 98.
9. See, for instance, Arthur Herman, *To Rule The Waves: How the British Navy Shaped the Modern World* (New York: HarperCollins, 2004).
10. Patrick J. Garrity, "Foreign Policy and *The Federalist*," in *Saving the Revolution: The Federalist Papers and The American Founding*, ed. Charles R. Kesler (New York: The Free Press, 1987), 86.
11. See Tarcov, "War and Peace in *The Federalist*," 97.
12. Michael D. Chan, *Aristotle and Hamilton: On Commerce and Statesmanship* (Columbia: University of Missouri Press, 2006), 128.
13. Garrity, "Foreign Policy and *The Federalist*," 90.
14. See Tarcov, "War and Peace in *The Federalist*," 98.
15. For a discussion of the concept of a "republican-commercial peace" and "democratic peace" theory from the eighteenth century to the present, see Azar Gat, *Victorious and Vulnerable: Why Democracy Won in the 20th Century and How It is Still Imperiled* (Lanham: Rowman & Littlefield Publishers, Inc., 2010), 35–38 and 87–116. See also, Tarcov, "War and Peace in *The Federalist*," 104.
16. On this latter subject, see Karl-Friedrich Walling, *Republican Empire: Alexander Hamilton on War and Free Government* (Lawrence: University Press of Kansas, 1999), 179; Tarcov, "War and Peace in *The Federalist*," 103; and Donald Kagan, *On the Origins of War and the Preservation of Peace* (New York: Anchor Books, 1996), 6–9.
17. As Garrity notes, *The Federalist* emphasizes "that the traditional balance of power politics, based on the conflict of nations, will not be replaced by some other, less conflict-ridden international system." Garrity, "Foreign Policy and *The Federalist*," 87.
18. Agrippa VIII, in *The Anti-Federalist: Writings by the Opponents of the Constitution*, ed. Herbert J. Storing, selected by Murray Dry (Chicago: The University of Chicago Press, 1985), 243.
19. Agrippa I, in *The Anti-Federalist*, 230.

Chapter 4

Taming the Commercial Republic

The spirit of commerce was an animated spirit that could indeed provide energy to the private sphere, as Agrippa had suggested. But on *The Federalist*'s reading it was also a spirit that could be belligerent and warlike, one that had led nations to use military force to attempt to acquire both territory and dominion over others, and this frequently at the cost of their own demise. The same would hold true in a divided America. *Federalist* 6 concluded by reminding readers of Abbé de Mably's admonition that neighboring nations were natural enemies and that a confederate republic was the only plausible solution to this problem.

Federalist 7 continues this theme by once again emphasizing the complications disunion might introduce given the expansionist impulses of contemporary Americans who sought broader markets and more land to develop. Four potential causes of war that might plague a disunited America are discussed in *Federalist* 7. All relate broadly to matters of commerce or property: territorial disputes, interstate competition over matters of commercial development and taxation, disagreements over the allocation of the states' public debt, and interstate violations of the laws of contract.¹ All of these would be problems in an America made up of a host of independent sovereignties. Yet these sovereignties, as independent nations, would be perfectly justified in giving their own citizens commercial preferences of the sort that had already begun to emerge under the Articles of Confederation. *Federalist* 7 declares:

The spirit of enterprise, which characterizes the commercial part of America, has left no occasion of displaying itself unimproved. It is not at all probable that this unbridled spirit would pay much respect to those regulations of trade by which particular States might endeavor to secure exclusive benefits to their own citizens. The infractions of these regulations, on one side, the efforts to

prevent and repel them, on the other, would naturally lead to outrages, and these to reprisals and wars. (7:37)²

But why put up with reprisals and wars? Why not avoid these altogether?

The deeper point of *Federalist* 7 is to encourage Americans to embrace the new constitutional union for its commercial and numerous other benefits. Embracing the Constitution will avoid those frivolous and oppressive state regulations that had impeded trade while allowing the “unbridled” spirit of enterprise to flourish. The fact that the spirit of enterprise was unbridled was an indication of its dynamic, if somewhat untamed and unrelenting character. The dynamism of the spirit of enterprise could have good or bad effects on American character, depending on what constitutional arrangements were embraced as a result of the ratification process. If the Constitution was rejected and the spirit of enterprise was inhibited by unnecessary regulations and preferences, as *Federalist* 7 suggested, the consequences could be lawlessness and even war. If the Constitution, however, was embraced and the spirit of enterprise effectively tamed by being allowed to flourish there could be many salutary benefits for America.

In this chapter I will examine the early *Federalist*’s rejection of orthodox republican theory and the implications of this for *The Federalist*’s constitutionalism. I will also review *Federalist* 8’s discussion of the distinction between the ancient Greek republics and the industrious habits of the people of the present day. Here Publius sets the stage for the emergence of a new virtue of enterprise under the Constitution where (in Lockean terms) the industrious and rational will be rewarded and the quarrelsome and contentious discouraged (see note 13 below). *The Federalist* suggests that the Constitution might use the very spiritedness of commercial republics to higher-tone American character and to curb those martial qualities of soul that in the past had been used predominantly for purposes of war. Now those martial qualities might be redirected through the Constitution’s novel commercial republican instruments toward more honorable pursuits such as innovation, entrepreneurship, the refinement of knowledge, and the development of greater individual liberty. This is how I contend *The Federalist* proposes the Constitution might tame the more martial features of the commercial republic that *The Federalist* goes to great length to detail and that represents, as I have said before, the most significant way in which *The Federalist* turns the tables on traditional republican theory.

Also in this chapter *The Federalist*’s defense of standing armies, which begins in earnest in *Federalist* 8, is developed. I propose, contrary to most scholarship on *The Federalist*, that the work did *not* embrace an “insularity doctrine” or the idea of a limited standing army or navy. There are simply too many other passages and arguments in the work beyond what we find in

Federalist 8 that makes it difficult to believe that the true long-term strategic vision of *The Federalist* was one of either a limited navy or a limited standing army as scholarship has proposed. There are significant consequences to this of course. The argument here sets the stage for my review of Thucydides in chapter 5 and will be developed in more detail in chapter 9 when I revisit the issue of national security under the Constitution addressed in the third part of *The Federalist* (Nos. 23–36).

THE RADICAL REPUBLICAN REVISIONISM OF *FEDERALISTS* 6–8

Very few scholars have taken sufficient notice of the originality of the republican theory proposed in the early *Federalist* numbers. Typically an account is given that acknowledges the skepticism that those *Federalist* numbers express toward the alleged pacifism of commercial republics. At that point the analysis proceeds as though the emphatic rejection of Enlightenment orthodoxy here has few, if any, further consequences for the rest of *The Federalist's* commercial republican doctrine. The presumption is that the work merely reflects the strains of classical liberalism or republican thinking dominant in the eighteenth century; *The Federalist* is not *sui generis* in the manner I have proposed in this book but is rather merely an *extension* of contemporaneously dominant ideology.

Yet there are a handful of scholars who have in fact paid attention to the significance of the early *Federalist* on the nature of commercial republics. Two of them are Patrick Garrity and Nathan Tarcov. Garrity examines the early *Federalist* in the context of its significance for the work's foreign policy. Of *Federalist* 7, for instance, Garrity observes that on Publius' reading the "commercial genius of the American people, being frustrated, had manifested itself in dangerous ways—e.g., separatist trends and flirtation with foreign powers in the West, the flouting of Congress' requests for cooperation on trade legislation. A breakup of the Union would leave matters even worse." Accordingly, *Federalist* 7 was not merely a plea for union but as Garrity interprets it an entreaty to stop impeding America's commercial genius. The benefits to this were broad, extending beyond the simple material progress greater commercial development has often been identified with. "*The Federalist* suggested that the new constitutional system, and an intelligent geopolitical approach to American security, would channel this potentially divisive commercial energy and ambition into policies aimed to strengthen the bonds of Union, increase the general prosperity, and maintain security from external threats."³ Garrity's focus in his commentary on *Federalist* 7 was again on foreign policy but it is clear that aiding America's commercial genius on *The*

Federalist's reading would have comprehensive effects on America's social and political character. The argument here is made in a series of stages.

The first of these, as we have seen, is laid out in *Federalist* 5 where Publius documents the spirited and potentially imperious qualities of the industrialized *Northern Hive*. The argument continues in *Federalists* 6–7 where Publius provides a compact assessment about the Janus face of commerce, how it may fuel daring and restlessness, even a spirit of war, but also how, if properly tempered and directed, it may serve higher, more salutary objects along the lines Garrity proposes. *Federalist* 6 again evinces a concern for the shaping of opinions, this time using experience as a guide. But experience had shown the more belligerent and imperialistic side of the commercial spirit, a belligerence that frequently emanated from the people. War was an inevitable concomitant of the human condition because men were creatures of passion; *Federalist* 34, we recall, had reminded readers “that the fiery and destructive passions of war reign in the human breast with much more powerful sway than the mild and beneficent sentiments of peace” (34:203). The “spirit of commerce” did little to change this belligerent feature of human nature. Given that it “administered new incentives to the appetite,” it might have actually aggravated it. Commercial peoples were certainly spirited and this could lead to territorial conquest and imperialism. But this spiritedness was not necessarily a bad thing. As we saw earlier, *Federalist* 2 affirmed that only recently Americans had fought “side by side throughout a long and bloody war” that had “nobly established general liberty and independence.” America's commercial and republican genius could also become a military genius when necessary but it would be a military genius presumably tempered by the principles of the Declaration of Independence that recognized the natural equality of all.

Federalist 6 had nevertheless countered to this more sanguine vision of America's commercial genius that as much promise as the United States might hold out, commercial republics, including those of the American variety, were aggressive, territorial, and domineering. Nathan Tarcov has observed that “in arguing for republican belligerence” *Federalist* 6 effectively rejected what we described in the last chapter as the democratic peace theory. In “asserting that there is absolutely no difference in international behavior between republics and despotisms” *Federalist* 6 “would tend to leave the United States indifferent to the fate of republicanism elsewhere and therefore less serious about the significance of America's own republicanism.”⁴ Tarcov's contention here is compelling, as is Garrity's, who similarly remarks that *Federalist* 6 makes no distinction between the *forms* of government when it comes to the propensity to make war; republics are treated just like monarchies regarding their pursuits of international commerce and their inclination to conflict.⁵ Given the many encomiums in *The Federalist* to how

exceptional and more principled the United States is from other nations and particularly the European empires of the day, does Publius not have to answer to Tarcov's and Garrity's objections? Does Publius not have to make some effort to demonstrate the less militant, more restrained posture the American republic will assume from the reigning monarchies of the day, to say nothing of despotic or tyrannical forms of government?

Federalist 6 does go some distance to accommodating the problem here, recognizing the legitimacy of consensual government when critiquing the recent wars between England and France. Those wars had grown out of "commercial considerations" such as attempts to control trade and navigation routes as well as the "even the more culpable desire of sharing in the commerce of other nations without their consent" (6:32). The fact that sharing in other nations' commerce without their consent was even more culpable than attempting to control trade and navigation routes through force suggests that Publius is aware of the affront to republican principle here. *Federalist* 3 moreover, as we saw earlier, cautioned readers about how Americans might avoid committing injustices in foreign affairs by embracing the Constitution. A series of later numbers, such as *Federalists* 14 and 39, stress that the United States was the only government in history that could boast of being wholly popular or governed throughout by a power drawn directly or indirectly from the people (14:80, 39:240). And *Federalists* 39, 43, and 84 refer to the Constitution's prohibition against titles of nobility and the guarantee clause of Article IV as assurances that America's republican form of government will be preserved against any possible corruptions of "aristocratic or monarchical innovations" (43:277; see, also, 39:242 and 84:548). As the only true republic in history it would seem almost a necessity that the United States act more justly in foreign policy than other regimes.

Yet there is nothing in *Federalist* 6 beyond the minimal qualification above that indicates what precisely the difference here is between the American republic and other forms of government. Tarcov's and Garrity's objections remain: *Federalist* 6 does little to distinguish republican forms of government from the unwarranted belligerence of other regimes in international politics. This problem is further complicated by the fact that *Federalist* 6 was not so much about republics as it was about *commercial* republics. Publius contests the proposition that the "genius of republics" is pacific and points out that there have been "almost as many popular as royal wars" (6:31). But he also disputes that the "spirit of commerce" softens the manners of men or extinguishes "those inflammable humors which have so often kindled into wars." As I indicated in the Introduction, the critique here seems to be directed specifically at repudiating two propositions from Montesquieu's *Spirit of the Laws*; the first in Book 9, that "the spirit of republics is peace and moderation"; the second in Book 8, that it was ancient Athens becoming a monarchy

rather than it being a republic that had caused it to become imperialistic. *Federalist* 6 contests both propositions, indicting not just republics but above all republics “of the commercial kind.”⁶ Commerce assumes a critical role here for at least two reasons. First, it speaks to one of the most significant problems the United States will face if the Constitution is not ratified. Second, if the Constitution should be ratified the improvement of commercial relations between the states and between individuals and the government may offer a solution to the millennial-old problems of republican governance that the Constitution’s other modifications do not address. The issues here become a little clearer in *Federalist* 8 where the key distinction between the ancient Greek republics and the modern American republics hinges *not* on their republican character but on the latter’s “industrious habits,” their absorption “in the pursuits of gain,” and their devotion “to the improvements of agriculture and commerce” (8:44). As *Federalist* 6 framed the matter, the distinction seems to originate in those “commercial motives” that have “become the prevailing system of nations” (6:30).

Federalist 6 on its face seems to present us a different picture of the commercial republic than what we are presented in *Federalist* 8. In fact they are two sides of the same commercial coin, *Federalist* 6 offering up the more spirited, militaristic side of the commercial republic, *Federalist* 8 the more industrious, temperate side. What side prevails in America will depend on whether the Constitution is adopted or not. *Federalist* 6 sets the stage for *Federalist* 8 and the potential that the new Constitution’s military and commercial reforms hold out by, first, challenging elite orthodoxies regarding the alleged pacifism of commercial republics and, second, critiquing the austere understanding of civic and martial virtue that was so often associated with classical republican doctrine:

Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, the weaknesses, and the evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age, and to adopt as a practical maxim for the direction of our political conduct that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue? (6:33)

The Federalist’s contempt here was complete. Those who thought that the states of America, particularly in an America divided, could obtain a virtue greater than anything that could be obtained under the Constitution were delusional; their reveries were little more than the deceitful dreams of a golden age. Proposing a more practical maxim, *The Federalist* emphasized that not only was it Americans who were remote from the happy empire of perfect wisdom and perfect virtue, so too were the other inhabitants of the

globe. And this apparently applied to all historical epochs, not just the present. The republican vision proposed by those critics of the Constitution's extended republicanism, seeking to maintain small republics and a more severe understanding of republican virtue and often reveling in the romanticized glory of republics past, did not understand the basic elements of human nature. These persisted through time and place. Neither the small ancient democracies of Greece nor the modern republics of America were models of republican virtue, at least not as those models had been portrayed in the fallacies and extravagancies of those idle theories that had been used to attack the Constitution. Such theories not only proposed visions of human perfectibility that were unattainable but understandings of virtue that were actually *destructive* of the ends of civil society and of government because of the freedoms they curtailed.⁷ The old models of republicanism were exceedingly sanguine in their assumptions about human nature. American society, like all prior political societies, could never aspire to the level of wisdom or virtue earlier political thinking had proposed. Such elevated understandings of civic character never existed and never would exist.

"INDUSTRIOUS CITIZENS" VERSUS "A NATION OF SOLDIERS"

But as I indicated in the Introduction, this does not mean *The Federalist* abandoned all prospect for the development of virtue. As *Federalist* 55 emphasized, republican government presupposed the existence of those most estimable qualities of human nature to "a higher degree than any other form" of government (55:359). The question was how to tap those qualities? The development of enterprise would be critical here. Although *Federalist* 6 seemed to agree with Thucydides about the exaggerated martial virtue of the Spartans and classical republican theory more generally, *The Federalist* would embrace an idea of virtue identified with the self-governing discipline of enterprise. Industry, innovation, economy, self-restraint, honesty, prudence, temperance, firmness, vigilance, and an appreciation for free, limited government constitutionalism, would form the substance of American character under the natural rights constitutionalism of 1787. So *The Federalist* seemed to propose.

We begin to see the contours of this understanding of virtue a little more clearly in *Federalist* 8. *Federalist* 6 had referred to Sparta as "little better than a well-regulated camp" (6:31). *Federalist* 8 continues this theme by suggesting that classical republican theory had overlooked the fact that what was traditionally perceived as civic or martial virtue was little more than the belligerence of fundamentally militant cultures. In the mind of Publius men

only became truly virtuous when they exercised their natural powers of mind and body, their art, and their industry, toward more civilized ends.⁸ We begin to see the elements of this argument in *Federalist* 8 where, responding to the question of why standing armies did not “spring up out of the contentions which so often distracted the ancient republics of Greece,” Publius averred:

Different answers, equally satisfactory, may be given to this question. The industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce, are incompatible with a nation of soldiers, which was the true condition of those republics. The means of revenue, which have been so greatly multiplied by the increase of gold and silver and of the arts of industry, and the science of finance, which is the offspring of modern times, concurring with the habits of nations, have produced an entire revolution in the system of war, and have rendered disciplined armies, distinct from the body of the citizens, the inseparable companions of frequent hostility. (8:44)

The ancient Greek republics were at bottom nations of soldiers. Presumably this covered both the ancient republics of Athens and Sparta referred to earlier in *Federalist* 6. There Athens was described as a commercial republic. In *Federalist* 8 it is now designated additionally as a martial republic. Commercial republics and martial republics were of course not mutually exclusive, as *Federalists* 6 and 7 suggested, since commercial republics were not pacific in character but rather inclined to expansionism and war.

Federalist 8, however, introduces a further distinction between ancient and modern commercial republics that suggests that the character of such republics is not finally determined merely by their preference for commercial activity. Ancient commercial republics, such as Athens and Carthage, were defined by commerce as is the modern republic of America. However the ancient commercial republics were obviously different in terms of their size, the nature of their commerce, and their character. The people of the present day are defined by their “industrious habits.” They are “absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce.” They are distinct from the citizens of the ancient Greek republics, which were “nations of soldiers.” Publius seems to suggest a number of things here.

First, the ancient Greeks, as much as they may have been members of commercial republics, were also citizen soldiers. To the extent their work was not done by slaves, the hoplite armies of Greek antiquity were made up of citizens who had “day jobs” as farmers, merchants, fishermen, craftsman, and other occupations. The hoplites were not professional soldiers in the modern sense but rather something more akin to the militia of the founding era.⁹ Americans had industrious habits and were consumed with the improvements of agriculture and commerce. Even militia service might have been

unpalatable to many Americans, which is one reason they needed a standing army. Given that the ancient Greeks were both citizens and soldiers in a way Americans were not, Publius may have construed this to mean that the ancient Greek republics were accordingly “nations of soldiers.”¹⁰

His more likely meaning, as I have already suggested, was that the ancient Greek republics were simply more militant and belligerent in their character than was the American republic. In other words, the Greek republics were not merely different from the United States because they were comprised of citizen soldiers. They were also different because as “nations of soldiers” they engaged in a militarism that was incompatible with the more restrained liberty that defined American republicanism. The ancient Greeks and Romans could not be a model for America because their governments were constituted completely for war. Unprofitable heroism abounded in ages of pride, in which men displayed their power through dominion. *The Federalist* did not debunk the heroic virtues but it did dismiss the willful pride of the ancients, whose fruitless displays of valor were incompatible with the spirit of the modern age of liberty and prosperity.¹¹

If this was in fact the critical distinction between the ancient Greeks and modernity however it is important to emphasize that on *The Federalist*’s reading it was a distinction only in a qualified and contingent sense. In the next chapter we will briefly review the history of Thucydides. That history provides the infamous examples of the Athenians’ merciless slaughter of the Melians and the Spartans similarly merciless extermination of the Plataeans. Both of these events have been considered to exemplify the brutality the ancient Greek republics were capable of. Yet *Federalist* 6 drew a parallel between that same Athenian republic and the commercial republics of America. And *Federalist* 3 pointed out “the slaughter of many innocent inhabitants” in those “several instances of Indian hostilities” that had “been provoked by the improper conduct of individual States” (3:16). *Federalist* 6 also highlighted that the most recent war between Britain and Spain had originated in attempts by British merchants to conduct an illicit trade with the Spanish Main. The result of violations of Spanish trade laws were cruelties inflicted by the Spanish on British subjects that “exceeded the bounds of a just retaliation.” In response to this English merchants complained to the British government, which in turn “kindled a violent flame throughout the nation.” War ensued, the consequence of which was the overthrow of “all the alliances that but twenty years before had been formed with the sanguine expectations of the most beneficial fruits” (6:32).¹²

The portrayal of commercial character here is not a pretty one. *Federalist* 6’s theme is that the American commercial republics will behave little differently in a divided America from the British or Spanish or even the ancient Greeks. If there was a distinction then between the ancient Greek and modern

American commercial republics regarding their potential for militarism, it was a qualified distinction contingent on America embracing the Constitution. Without this, as *Federalist* 8 highlights, America would likely descend into an archipelago of highly militarized states similar to modern continental Europe with a militaristic ethos in its civic life that both the European continent and the ancient Greek republics exemplified. What was critical here were the industrious habits of modern Americans. If these could be protected or even improved upon by the Constitution there was significant prospect for a distinctly American brand of political excellence; America could indeed live up to its promise of becoming “an empire in many respects the most interesting in the world” (1:3), exemplifying energy, stability, unparalleled industry and innovation, and ultimately high civilization.

Federalist 8 made its statement regarding the revolution in the system of war immediately following its Declaration regarding the incompatibility between the industrious habits of the people of the present day and the militant character of the ancient Greek republics. The two statements were related. The distinction *Federalist* 8 introduces here reminds us of John Locke’s observation in the *Second Treatise of Government* that although “God gave the World to Men in Common. . . . He gave it to the use of the Industrious and Rational . . . not to the Fancy or Covetousness of the Quarrelsome and Contentious.”¹³ *Federalist* 8 appears to agree with Locke’s sociological taxonomy, distinguishing the industrious habits of modern peoples from the more quarrelsome character of the ancient Greeks. Ironically, it was the former who would prove better at providing the military wherewithal necessary for effective warfare, as *Federalist* 8’s remarks about the modern revolution in war and its relationship to the means of revenue and science of finance implied. Locke had proposed that “that Prince who shall be so wise and godlike as by established laws of liberty to secure protection and encouragement to the honest industry of Mankind against the oppression of power and narrowness of Party will quickly be too hard for his neighbours.”¹⁴ *The Federalist* would agree.

But this was all contingent on the Constitution. Whether America became a sanctuary for the industrious and rational rather than a dystopia for the quarrelsome and contentious would depend on the abandonment of the Articles of Confederation for the Constitution. *Federalist* 7 had already intimated the extent to which the quarrelsome might emerge in the face of the undue regulations on trade and industry that had prevailed under the Confederation. *Federalist* 42 made the same point: that without a federal power to regulate commerce among the states “future contrivances” by local governments would “nourish unceasing animosities” between the merchants and consumers of the different states that would “not improbably terminate in serious interruptions to the public tranquility” (42:270). Americans may have had

more “industrious habits” than the ancient Greeks, “devoted to the improvements of agriculture and commerce” in a way the ancients were not, but these habits would be improved or undermined depending on what constitutional instruments Americans choose to embrace. *Federalist* 8 hints at the type of virtue the Constitution might cultivate, a self-governing discipline of enterprise consisting of character traits such as those listed above: industry, innovation, economy, self-restraint, honesty, prudence, and so on.

Improving industry and commerce and protecting those rights of property that emanated from the exercise of men’s diverse faculties were fundamental to *The Federalist*’s constitutionalism. The concept of human nature developed in *The Federalist*, as we have seen, was comprised of both low and high elements. As much as it may have been fixed, human character was also capable of guidance and sublimation as *Federalist* 55 proposed. The protection of property and promotion of commerce were critical to this latter task. Commercial development contributed to equality of opportunity by giving all, including the poor, the chance to rise up socially and economically. The improvement of property and promotion of trade facilitated industry and induced people to work and to avoid sloth.¹⁵ Property interests were rational interests not only because they were necessary to the support of life and liberty, but also because, being tangible, they directed men’s attention to concrete realities—specifically, those concrete realities that might be improved. As much as they could result in conflict, as *Federalists* 6 and 7 highlighted, they also directed men’s attention to the longer-term view of political order and thus held out the promise of reconciliation and the promotion of good government, as *Federalists* 9–14 made clear (and as I will explain in more detail in chapters 6 and 7).¹⁶ When enumerating those “three descriptions of men” who would be chosen to represent the people in Congress, it was no accident that *The Federalist* outlined predominantly economic categories: “landholders, merchants, and men of the learned professions” (35:211).

This is not to say, of course, that Americans were simply economic beings or that they would be defined solely or principally by commercial relations under the Constitution. To the contrary, the economic freedoms that the Constitution promoted would be equaled or surpassed by those political and other liberties that the Constitution promised to secure. Publius was as interested in accommodating man’s *political* impulses as he was in accommodating man’s *economic* impulses.¹⁷ But those political impulses had their limitations in a regime of limited government constitutionalism. And there was more to *The Federalist*’s commercial republicanism than simple *economic* impulses. The Constitution was based on principles of limited and responsible government. Its commercial republicanism reduced the scope of the political in the premodern, preliberal sense primarily (although not solely) to issues of security and political economy—national defense, domestic order, foreign and

interstate commerce—not only because this was prudent and the precondition for civic harmony, but also because constitutional principle and individual liberty required it. Too often *The Federalist's* vision of political economy has been interpreted narrowly. The “spirit of enterprise” on *The Federalist's* reading was not just about money-grubbing or wealth acquisition. It had much broader consequences for American character. As Thomas West has written, the “spirit of enterprise” discussed in *The Federalist* was intended to capture not only “the daring self-assertion of great commercial leaders,” providing them “their due honor.” It was also intended to capture such things as “the entrepreneurial and independent spirit that won the day in the Normandy invasion, when many officers were killed in the early going and lowly lieutenants and sergeants took the initiative and sustained the fight. A regime of property rights may lack the noble aspirations of a regime of self-denial. But in practice, it may promote public and private virtue more successfully than any alternative.”¹⁸

West's statement here accurately captures *The Federalist's* understanding of commerce and its long-term effects on American character—on public and private virtue as West describes it. Commerce, enterprise, and a regime of property rights would not only facilitate an entrepreneurial and independent spirit but a civic virtue and martial valor anchored in large measure in a commitment to the principles of the Declaration of Independence and the Constitution. *Federalist* 6 had highlighted that bordering commercial states in a divided America would not enjoy the “perpetual peace” that “visionary or designing men” advocating a divided America contend would occur (6:29). While accentuating the aggressiveness of commercial republics as an antidote to the likes of those such as Immanuel Kant, Montesquieu, Turgot, and Thomas Paine, all of whom maintained commercial republics were more pacific in nature,¹⁹ Publius suggests, as West proposes, that the Constitution might *use* the very *spiritedness* of commercial republics to higher-tone American character. The industry and productivity that the spirit of commerce exemplified could be used to overcome indolence and that spiritual and physical corruption that had so often threatened republicanism in the past.²⁰ Placing a premium on the productive industry of the American citizen, the “spirit of commerce” may have simply “administered new incentives to the appetite” for war, appetites that had not fundamentally changed since commerce became “the prevailing system of nations.” But what if these appetites could be changed or at least redirected through the appropriate constitutional channels? What if the spirit of commerce could be tempered and directed by new constitutional instruments to move the appetites to distinct, even higher, objects of human activity? By encouraging the development of disciplined and energetic individuals, commerce had the capacity to promote, rather than destroy, virtue.²¹ Moreover, beyond contributing to America's moral and

spiritual character, Publius suggests that the Constitution might even facilitate a certain intellectual virtue, making the world of politics safe for philosophy—at least as safe as these things can be made in the practical world.

As Thomas Pangle has observed, even if the life of the mind was not central to *The Federalist's* constitutionalism and the work focused primarily on threats to property, personal security, and citizen prosperity, *The Federalist* at least acknowledges in passing the grim fate the classical republic imposed on the philosophic arts. *Federalist* 63, for instance, maintains that “[p]opular liberty” in Athens had been plagued by “decreeing to the same citizens the hemlock on one day and statues on the next” (63:404). The antinomy of the classical republic to philosophy and its relentless demands for conformity originated on *The Federalist's* reading, according to Pangle, in its diminutive size, a size required by the people’s unremitting insistence on direct political self-governance—what we call direct democracy; what *Federalist* 63 termed “popular liberty.” The small size of the classical republic exposed it to perennial invasion. It required the Greek and Roman city-states to transform themselves into armed camps, their citizens into perpetual soldiers. Instead of achieving security, however, this in turn had the effect of breeding a sort of domestic imperialism, the fiercely ambitious and restless citizenry seeking to smother civil strife by demanding uniformity of opinions, passions, and interests. The hornet-like militarism and susceptibility to Periclean-like demagogues of the sort depicted in *Federalist* 6 condemned the classical republican experiment to failure. The “diversity in the faculties of men, from which the rights of property originate” (10:55), could not be smoothed over or removed, at least not for long. Consequently, either the tyranny over the many by the few or, more usually, the majority over the minority was the consequence of this misconceived ancient political arrangement. As Pangle concludes: “One does not distort Publius’ message in saying that he imputes to classical republicanism crimes against both ordinary humanity and philosophy, an undermining of both material and spiritual welfare.”²²

Presumably the Constitution would remedy both of these elements of material and spiritual deprivation. Protecting the freedom to develop the diversity in the faculties of men, including the philosophical faculties,²³ *The Federalist's* critique of classical republicanism, synonymous with its denunciation of the harsh conception of virtue associated with it, was not synonymous with the abandonment of every aspect of classical political science or the development of virtue. To the contrary, the more principled and prudent understanding of virtue that *The Federalist* seems to embrace and *The Federalist's* natural rights constitutionalism were only possible with the greater freedom for commercial development that the Constitution would unleash and the industry and opportunity this in turn would afford. *Federalist* 9 had recognized that the idea of civil liberty that the Constitution would protect and

expand upon had its origins, however imperfect, in Greek antiquity. As we will see in the next chapter, Thucydides' lament with Periclean Athens was that its appetite for new conquests grew too large, especially after the death of Pericles, whom Thucydides suggests might have saved Athens from itself.²⁴ Although Thucydides' portrayal of ancient Athens comports with the depiction of that ancient city in *Federalist* 6, the liberty, self-reliance, innovation, and versatility in the face of adversity that Pericles declared distinguished the Athenians reflected the sort of virtue that Thucydides himself seemed to admire and thought warranted preservation.²⁵

But how? What were the constitutional or political means that would preserve the better features of ancient Greek—and we might say Western—civilization while avoiding its worst features? *Federalist* 9's denunciation of “the advocates of despotism” who had rejected republican government and “the very principles of civil liberty” because of their identification of the disorders of the ancient Greek and Italian republics with republicanism per se evinces a sympathy with the idea that the civil freedom that originated in ancient Greek cities such as Periclean Athens was well worth preserving.²⁶ *Federalist* 9, as we saw in chapter 1, emphasizes that it had been the “vices of government” that had perverted “the direction and tarnished the lustre of those bright talents and exalted endowments for which the favored soils that produced them had been so justly celebrated.” The bright talents and exalted endowments were rightfully celebrated. The question, in the case of America, was how to remove those vices of government that impede these talents and endowments so that they might flourish more readily. *Federalist* 7 had emphasized how impeding the “unbridled” spirit of enterprise, as the Confederation had, might result in war, the restlessness of this spirit showing little tolerance for self-serving state regulations of trade. But if the Constitution was to free this unbridled spirit and create greater opportunities for the talents and endowments of Americans, providing that *social* energy necessary to fund the *governmental* energy *The Federalist* is famous for defending, how exactly was this to be done?

Federalists 6–14 provide us a preliminary vision of how the Constitution might achieve this. *Federalist* 6 affirmed that “commercial motives” had “become the prevailing system of nations” and that included the United States. There was, in other words, no choice as to whether the United States would be a commercial republic. It had to be. Nor was there any choice of whether or not union was necessary. Both commerce and union were needed not only because military necessity and modern military science demanded them, commerce being the precondition, as Ezra Stiles put it, for the interchange of knowledge and science.²⁷ Commerce was also what defined the “motives” or nature of America in 1787. It could not be developed without the extended free (or freer) market that the new constitutional union would

promote. The expansion of domestic and international markets was a necessary prerequisite to the advancement of innovation, the creation of jobs, and the development of greater prosperity and that export capability needed for America's manufactured and agricultural products. Maintaining American union would allow for commercial and territorial expansion while avoiding the problem of civil war that *Federalists* 6 and 7 warned against.

But in addition to this *Federalists* 6 and 7 mark the beginning of a transition in *The Federalist* in which those martial qualities of soul that in the past had been employed predominantly for purposes of war would be redirected through the Constitution's novel commercial republican instruments toward more honorable pursuits such as innovation, entrepreneurship, the refinement of knowledge, and the development of greater individual liberty.²⁸ Not that using the martial qualities of soul for purposes of war was dishonorable but war waged for unjust or unnecessary causes was. *Federalist* 3 had already made a preliminary distinction between just and unjust causes of war, even though subsequent *Federalist* numbers made it clear that this distinction was practically irrelevant for purposes of providing for national security. *Federalist* 8 returns us to the question of unnecessary causes of war when discussing how earlier republics could be distinguished precisely because they had been principally, rather than only incidentally, martial republics.

Federalist 8, again addressing the consequences of an America divided into a host of confederacies or states, defends the necessity of a permanent standing army, albeit a limited one. The number begins by drawing a parallel to continental Europe. The states of Europe had permanent standing armies as well as fortifications in order to keep their neighbors at bay. Although they bore "a malignant aspect to liberty and economy," Europe's standing armies nevertheless served the salutary purpose of preventing sudden conquests and all of the horrors and destruction that war in the past had brought on before the introduction of such armies. Americans' repugnance toward military establishments meant that the states in a divided America would postpone their acquisition as long as they could. However, since those states also had few fortifications and open frontiers, this would invite neighboring states, particularly those that were stronger, to invade. Those invasions in turn would be of limited utility since on account of the lack of standing armies and fortifications it would be as difficult to retain acquired territory as it was easy to invade it. War would be a permanent feature of a divided America. In *Federalist* 8's words, it "would be desultory and predatory. Plunder and devastation ever march in the train of irregulars." The solution was the standing army the Constitution contemplated, something the American people would have to come to recognize as a political necessity. Why? Because

safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free. (8:41–42)

Ironically, it would be the small states that America's Whigs and Antifederalists frequently held up as the exemplars of genuine republican liberty that would be most in need of standing armies in a divided America. This was because of the perennial threats that would loom from larger states. Eventually however all states, small and large, would require standing armies just as continental European nations did because like those nations the states of a divided America would be facing unending threats from their neighbors.

But, again, why accept this intolerable eventuality? If Europe was to be the model, why not seek to emulate the insular model of Great Britain rather than the disunited model of continental Europe? As an island nation Britain was able to do just fine with a small standing army while enjoying the most powerful navy in the world. That navy constituted hardly any threat to the people of Great Britain while affording that people a protection unparalleled by any of the other European nations.²⁹ In emulating insular Britain as opposed to continental Europe, which America could do by embracing the new constitutional union, the United States might avoid "the same engines of despotism which have been the scourge of the Old World" (8:44).

MILITIAS, STANDING ARMIES, AND *THE* FEDERALIST'S GRAND STRATEGY

This then is what *Federalist* 8 proposes. It defends union, a limited standing army, and enhanced executive powers as the necessary concomitants to providing that security necessary to preserve American liberty.³⁰ Over the short term the immediate task *Federalist* 8 had to address was domestic order and the need for a standing army. Part of the problem here hinged on the distinction between a standing army and a citizen militia. The other had to do with the possibility of maintaining a position of relative insularity, which the United States could do under the Constitution but could not achieve otherwise. With respect to the first issue, Publius was aware of the role that the courage and honor of America's militia played during the Revolution, as his praise of Revolutionary America's martial valor made clear. But he was equally skeptical of the imprudence and unnecessary violence

that unprofessional militaries like militias too frequently displayed. His point in *Federalist* 8 was not merely to implore that America had to embrace a professional, standing army because the “means of revenue,” the “science of finance,” and the “habits of nations, had produced an entire revolution in the system of war.”³¹ He also sought to expose the misconception among Antifederalists like Brutus and the Minority of Pennsylvania, as well as many others, that citizen militias were less violent or less of a threat to social and political order than standing armies.³²

Federalist 8 recognized the potential dangers a standing army posed, highlighting that “disciplined armies” can “bear a malignant aspect to liberty and economy.” But it also sought to accentuate that in addition to being too incompetent and too unreliable to wage modern warfare, militias could also be more malicious and unduly violent than a regular army. “Plunder and devastation ever march in the train of irregulars,” *Federalist* 8 proclaimed. “Disciplined armies, distinct from the body of citizens” were more competent militarily than militias. But they were also more professional, accountable, and efficient. *Federalist* 25 gave credit to America’s revolutionary militia but again emphasized that militias were inadequate to national defense or the promotion of stable and energetic government:

The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind. Considerations of economy, not less than of stability and vigor, confirm this position. The American militia, in the course of the late war, have, by their valor on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know that the liberty of their country could not have been established by their efforts alone, however great and valuable they were. War, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice. (25:155)

The Federalist does not downplay the importance of valor and the erecting of eternal monuments to one’s fame in the conduct of war. These “great” and “valuable” contributions were as critical to Americans who might have to wage war as they were to the citizen soldiers of ancient Athens eulogized in Pericles’ funeral oration. But additional considerations had to be weighed in the calculus of modern warfare, which was becoming an increasingly advanced science. Regular and disciplined armies brought greater economy, stability, and vigor to the exercise of war; the modern military was a profession requiring diligence, perseverance, time, and practice to be perfected. Such professionalism was distinct from the amateurishness of militias and from the crude forms of organization that typified ancient modes of warfare.³³ It was also more principled, another reason it refrained from the plunder and

devastation *Federalist* 8 suggested followed in the wake of militias and other irregular military groups.

The final point of emphasis in *Federalist* 8 had to do with the potential insularity that the United States might enjoy under the newly firmed up union the Constitution will create. “There is a wide difference,” Publius declares, “between military establishments in a country which, by its situation is seldom exposed to invasions, and one which is often subject to them, and always apprehensive of them.” In the former state there is no good pretext for the country’s rulers to maintain large standing armies. In the latter there is. In the former, because of the lack of large professional armies, law is maintained and not subordinated to military exigencies. There is little danger of the civil state becoming subservient to the military state. Soldiers in a more insulated state are neither loved nor feared. In a less insulated one the contrary obtains: “The military state becomes elevated above the civil.” The frequent violation of rights that occur in such states makes the citizenry increasingly numb to them. The military by degrees is considered not only the citizens’ protector but their superior. From here it is only a short step to it being considered the citizens’ master. This is the situation in continental Europe, awash in standing armies, perennially on a war footing, and populated throughout by monarchs who wield absolute power. Britain, by contrast, is the exemplar of the insular nation. Guarded by a powerful marine, it has a limited army, sufficient to allow the militia time to gather in response to an invasion. Neither national policy nor public opinion would tolerate anything more. “If we are wise enough to preserve the Union,” *Federalist* 8 concludes, “we may for ages enjoy an advantage similar to that of an insulated situation. Europe is at a great distance from us. Her colonies in our vicinity will be likely to continue too much disproportioned in strength to be able to give us any dangerous annoyance. Extensive military establishments cannot, in this position, be necessary to our security” (8:44–46). Perhaps, but extensive military establishments just might become necessary because of other threats *The Federalist* outlines elsewhere. This remark about limited military establishments in *Federalist* 8 points to a broader issue of interpretation in *The Federalist*: What exactly does Publius understand to be the United States’ grand strategy in foreign policy under the Constitution, particularly over the long term? This question is more complicated than what has been proposed by scholarship on the work that has contended Publius simply embraced an “insularity doctrine” in foreign affairs. When looking at the work as a whole that is a dubious proposition.

Other passages in *The Federalist* beyond those in No. 8 suggest that it is anything but clear that America could remain safe simply by assuming an isolated position in foreign policy as *Federalist* 8 suggests. In the face of other statements in *The Federalist*, *Federalist* 8 almost appears disingenuous on this score. *Federalist* 4, for instance, maintained that the United States

needed “the best possible state of defence.” What country, it might be asked, did not? In America’s case, however, the best possible state of defense was critical because its situation was so precarious. It was surrounded on all sides by threats: “Spain thinks it convenient to shut the Mississippi against us on the one side, and Britain excludes us from the Saint Lawrence on the other; nor will either of them permit the other waters which are between them and us to become the means of mutual intercourse and traffic” (4:19). The threats here were all around and they were not just naval in form. They were also territorial, apparently requiring a significant standing army in America’s north, south, and west—this at least if the problems *Federalist* 4 outlines were to be taken seriously and dealt with realistically. *Federalist* 4 even raises the specter of long-distance threats, recognizing that America’s present “trade to China and India” interferes “with more than one nation” (4:19). How precisely could defending America’s trade in central and east Asia in the late eighteenth century be accommodated by assuming an insular position? To protect that trade would require the ability to project military power far beyond the Caribbean or the shores of the Atlantic and into the far reaches of the Pacific. Moreover, as *Federalist* 4 again suggested, should America stay united its growing greatness would arouse jealousy and fear in other nations, inciting them to war against the United States if conditions permitted.³⁴ The key therefore was not to permit those conditions. If America was to acquire the best possible state of defense, particularly against world empires, it would have to become an empire itself. And it is obvious that this would require significantly more than adopting a position of mere insularity.

Federalist 24 goes even further than *Federalist* 4 to suggest that Americans should not be complacent about their ostensible isolation from the European powers.

Though a wide ocean separates the United States from Europe, yet there are various considerations that warn us against an excess of confidence or security. On one side of us, and stretching far into our rear, are growing settlements subject to the dominion of Britain. On the other side, and extending to meet the British settlements, are colonies and establishments subject to the dominion of Spain. The situation and the vicinity of the West India Islands, belonging to these two powers, create between them, in respect to their American possessions and in relation to us, a common interest. The savage tribes on our Western frontier ought to be regarded as our natural enemies, their natural allies, because they have most to fear from us, and most to hope from them. The improvements in the art of navigation have, as to the facility of communication, rendered distant nations, in a great measure, neighbors. (24:149)

Modern technology and the perennial improvements of the naval arts meant that Americans could not rely on insularity to remain secure—at least not

for long and possibly not even in 1787. Like other *Federalist* numbers such as No. 4, *Federalist* 24 emphasizes that there are threats all around. And not just from the Europeans nor just from the sea. Large garrisons it would seem would be needed to deal with the British threats “stretching far into our rear” as well as those Spanish threats “extending to meet the British settlements.” In addition small garrisons too would be needed on America’s Western frontier “to guard against the ravages and depredations of the Indians” (24:149).

Like *Federalist* 4, *Federalist* 24 presents readers a conundrum. Scholarship has suggested that the best way to interpret the national security policy of *The Federalist* is in insular terms. Patrick Garrity, for instance, has emphasized the limited military footprint the Constitution would create to secure Americans’ well-being and their commercial interests. Pursuing “the British pattern of security” would require “maintaining the Union, and developing an effective maritime (naval) capability to defend against seaborne invasion, protect American commercial shipping, preserve America’s rights as a neutral, and (in the modern vernacular) project military power if such became necessary.” Geopolitically, the emphasis on a “navy was a cheap way to purchase a great deal of diplomatic and economic leverage.” In addition, “a strong navy was much less offensive to republican liberty than a standing army.”³⁵ America’s geopolitical advantage of being relatively isolated would allow it to assume an insular position and remain neutral to a large extent in great power conflicts. Beyond *Federalist* 8’s plea that America adopt the “insulated situation” Great Britain exemplified, what more, it might be asked, could the United States do with its predominantly agricultural political economy, a perennially weak army and navy, and a citizenry averse to military establishments?

This is the narrative in much literature on *The Federalist* and the founding. But is it an accurate portrayal of *The Federalist*’s grand strategy for the United States under the Constitution? If we take *Federalists* 4 and 24 literally, it is difficult to believe that the true long-term strategic vision of *The Federalist* is one of either a limited navy or even a limited standing army. Technological development alone would require an investment in national security beyond a limited footprint; it was clearly within the contemplation of Publius that the “improvements in the art of navigation” in addition to numerous other improvements in military science would mean that America’s military posture would necessarily have to expand, and expand significantly, post-1787. Moreover, the immediate territorial threats outlined in *Federalists* 4 and 24 alone suggest that a small standing army will be inadequate to America’s strategic goals, even over the short term. Garrity acknowledges that “The consensus articulated in the name of Publius—that insularity and the pursuit of commerce represented the essential American national interest toward the rest of the world—proved impossible to maintain in practice.” The reason was because those such as Hamilton and Madison, as well as their

followers, who never “repudiated this basic goal of American foreign policy,” construed “the means to that goal (and indeed, the goal itself) in vastly different lights.”³⁶ The disputes between the two political camps Hamilton and Madison spearheaded in the 1790s, typified by vehement opposition to one another, accentuated the differences here.

But was the foreign policy consensus in *The Federalist* really just one of “insularity and the pursuit of commerce”? This is certainly a plausible interpretation given the text of *The Federalist* that we just read. No one disputes that *The Federalist* sought to promote the pursuit of commerce both in domestic and international markets. But could this pursuit be reconciled with an insularity thesis of the sort Garrity and others have proposed; could “insularity and the pursuit of commerce” coherently coexist? Expansive commercial development seemed to imply rejection of an insularity doctrine since the theory underlying the Constitution on *The Federalist*’s reading anticipated that America was going to expand much more broadly into international markets and territorially far beyond the nation’s boundaries of 1787. This at least is what could be expected should the Constitution be ratified. Neither expansion in international markets nor territorial growth could occur without a significant and consistently amplifying federal military presence.

As *Federalists* 4 and 24 also demonstrate we can dispute the insularity doctrine on the same basis the doctrine’s advocates do: the text of *The Federalist*. Although there are *Federalist* numbers like *Federalist* 8 that advocate for an insular strategy in national security policy there are equally explicit statements, such as those in *Federalists* 4 and 24, which openly seem to contest such a strategy. There are even those occasions where *The Federalist* purports to embrace an insularity doctrine while the very message of its supporting text seems to reject the feasibility of such a doctrine. Consider *Federalist* 41. There Publius invites his readers to contemplate how America’s situation bears “likeness to the insular advantage of Great Britain.” We are told that “[t]he inhabitants of the Atlantic Frontier” are deeply interested in the Constitution’s provision for naval protection. If those inhabitants

have hitherto been suffered to sleep quietly in their beds; if their property has remained safe against the predatory spirit of licentious adventurers; if their maritime towns have not yet been compelled to ransom themselves from the terrors of a conflagration, by yielding to the exactions of daring and sudden invaders, these instances of good fortune are not to be ascribed to the capacity of the existing government for the protection of those from whom it claims allegiance, but to causes that are fugitive and fallacious. (41:262)

After the citizens of Virginia and Maryland, New Yorkers were perhaps the most vulnerable to predators along their eastern seaboard. The state’s coast, Publius emphasizes, was extensive. In addition, New York was

“penetrated by a large navigable river for more than fifty leagues. The great emporium of its commerce, the great reservoir of its wealth, lies every moment at the mercy of events, and may almost be regarded as a hostage for ignominious compliances with the dictates of a foreign enemy, or even with the rapacious demands of pirates and barbarians” (ibid.). It is difficult to read these statements as encomiums for a minimal military establishment. The language used here is ominous and graphic. The message would appear to contain, at a minimum, a plea for two things: first, a navy capable of defending both the entire eastern seaboard of the United States as well as the navigable rivers of America; and, second, an army large enough to address foreign or piratical aggressions from America’s coastal towns to its remotest hinterlands. America’s security and its commerce, the great reservoir of the country’s wealth and not just New York’s, could abide nothing less. So it would seem.

It is certainly fair then to ask why the text of *The Federalist* is so difficult, if not incoherent, to interpret with respect to the work’s grand strategy? What was *The Federalist* advocating, an insularity doctrine or something quite opposed to this? Much of the difficulty here arises from the political and rhetorical problem *The Federalist* identifies in its very first number that we discussed in chapter 2: that “An enlightened zeal for the energy and efficiency of government will be stigmatized as the offspring of a temper fond of power and hostile to the principles of liberty.” As students of the founding era have noted, as much as there may have been a general recognition at the Constitutional convention that the federal government needed greater military and fiscal powers there also persisted in the country a political culture averse to concentrated national authority.³⁷ This made the rhetorical project of *The Federalist* an exceedingly difficult one. “The idea of an American national state that” the Federalists “developed during the ratification debate,” Max Edling has observed, “was the result of creative thinking in the face of serious challenges.” What the Federalists did was “develop a conceptual framework that made it possible to accommodate the creation of a powerful national government to the strong anti-statist current in the American political tradition.”³⁸ Cathy Matson and Nicholas Onuf have similarly observed that “if the defects of the Confederation were easily demonstrated, it was much more difficult for reformers to redefine ‘union’ in a way that would rationalize a radical redistribution of power from the states to the central government. Reformers had to overcome formidable obstacles before they could design and then defend the extended, federal republic. The most obvious were popular loyalty to the states and the pervasive fear that constitutional innovations would jeopardize republican liberty.”³⁹ In their attempt to defend the Constitution, the “Federalists faced daunting conceptual and rhetorical challenges from their Antifederalist opponents.”⁴⁰

The situation was even more challenging in the case of the Federalists' defense of enhanced federal military power and the necessity for a permanent standing army. This stemmed from what some believed to be the tension inherent in modern liberalism. Seeking on the one hand to protect individual liberties and national security, liberalism on the other was averse to the very means necessary to provide that security. As Samuel Huntington observed in his seminal 1957 work, *The Soldier and the State*, "liberalism dominated American thinking from the Revolution through the first half of the twentieth century." But it did "not understand and [was] hostile to military institutions and the military function."⁴¹ Huntington concluded that this long-standing dispensation, seeking "to impose liberal solutions in military affairs as well as in civil life . . . constituted the gravest domestic threat to American military security."⁴² Publius, who admonished at the outset of *The Federalist* that an enlightened zeal for energetic and efficient government would be stigmatized as hostile to the principles of liberty, might have agreed. Huntington defined liberalism in a way that conflicted with Publius' reading of this stream of modern thought. For Publius, liberalism *required* government to take those measures necessary to secure their citizens' rights. Yet he conceded that the anti-military dispensation of many Americans, as prevalent during the founding as it remains today, made the framers' task of providing for national security that much more difficult.⁴³

Federalist 1 obviously recognized the difficulties here but nevertheless admonished that vigorous government was essential to the protection of liberty. *The Federalist* would defend this platform throughout the work but apparently recognized, in Edling's language, that "creative thinking" might be needed in making the case. If this is accurate, however, it raises an important interpretive issue that may help explain *The Federalist's* apparently conflicting statements about what America's grand strategy under the Constitution should be. *The Federalist*, as I contended at the outset of this book, remains a largely unstudied and misunderstood text, particularly regarding its broader themes. One reason for this is what some have considered to be its unsystematic treatment of the Constitution and its apparent lack of any firm thematic design. It is certainly the case that *The Federalist* was not as systematic in its treatment of its subject as some of the texts in the great tradition of political philosophy or some of the better commentary on the Constitution. Yet it is equally worth emphasizing that lack of system is not sufficient for dismissing the work and may have actually assisted *The Federalist* in its overall pedagogical task. To take only one instructive example. Montesquieu's *The Spirit of the Laws* is considered to be among the most comprehensive and incisive works in the history of political philosophy. It is also one of the most obscure and seemingly disordered. Yet despite this, *The Spirit of the Laws* enjoyed wide readership during the founding era—the work is referred to twelve times

in *The Federalist*—and Montesquieu’s opaque manner of writing arguably served his philosophical and political purpose better than a more systematic account would have. It hid, even to thoughtful readers, the more controversial aspects of his teaching. These included how those most fundamental principles of political order were frequently in conflict with one another and how necessity imposed political restrictions on government that were often unpalatable to the citizens of a regime and thus best left unarticulated, at least to most.⁴⁴

The same can be said of *The Federalist*. The book’s disorder has been attributed to a host of factors: hasty composition by multiple authors, expansion of the original project of 20–25 papers to an eventual 85, indicating no firm design; serial publication of the essays, first in New York and later elsewhere, and then their eventual collection into not one but two volumes, again suggesting a bifurcated theme. Critics have also contended that *The Federalist* was little more than an ex post facto rationalization of a constitutional convention that had little structural design and certainly did not emanate from any fixed, higher order principles or political philosophy but rather was the product of a dyspeptic series of compromises.⁴⁵

These allegations may have some merit but a better explanation for *The Federalist*’s apparent lack of system can be made. Defenders of the work have argued that many of the complaints lodged against *The Federalist*’s alleged incoherence and “split personality” are exaggerated. Commenting on Alexander Hamilton’s contributions to the work, Michael Federici responds to Clinton Rossiter’s accusation “that *The Federalist* is ‘a less satisfactory work in political thought than [Hobbes’] *Leviathan* or [Rousseau’s] *The Social Contract*’”:

In fact, an argument can be made that *The Federalist* possesses greater theoretical clarity on the problem of human nature and government than Hobbes or Rousseau achieved. . . . Hamilton’s political theory, as scattered and unsystematic as it may be, lacks the ahistorical abstractions that plague the works of Hobbes and Rousseau and give them, in places, more the texture of ideological fantasy or “second reality” than of political philosophy. Though inspired by the political exigencies of his day, Hamilton’s political theory has an enduring quality to it because, in responding to the transient affairs of politics, Hamilton addressed perennial problems of political life.⁴⁶

David Epstein has similarly advanced that not only is *The Federalist* written more carefully and precisely than is often assumed, its three authors were steeped in political experience and had reflected long and hard on the principal subjects of the book. Accordingly, they did not approach each publication deadline from scratch. Moreover, it is clear that Publius intended *The Federalist* to be something more than mere hastily produced campaign literature.

Epstein cites as evidence *Federalist* 10's discussion of the nature of man as the cause of faction, *Federalist* 37's disquisition on the origins of knowledge, political and otherwise, and the claim in the preface to the first bound volume of *The Federalist* that the "great wish" of Publius was that the work "may promote the cause of truth and lead to a right judgment of the true interests of the community." Presumably the truth here expressed would be true for all times and not just 1787.⁴⁷

Martin Diamond has similarly pointed out that the authors of *The Federalist* clearly intended their work to be the authoritative interpretation of the Constitution that would influence later generations. Written not only for a general electorate—"the People of the State of New York"—but to those able and educated state convention delegates at the time who would determine whether the Constitution got ratified or not, *The Federalist* had a twofold design. It was written both for a popular audience as well as for "thoughtful men then and now." Diamond adds that "Publius makes good on his claim" to "supply a consistent, comprehensive, and true account of the Constitution and of the regime it was calculated to engender." The two principal architects of *The Federalist*, Hamilton and Madison, "had motive and capacity to achieve a remarkably consistent Publius. . . . [T]hey could readily agree on how to make the Constitution seem most attractive and least noxious to those they were seeking to persuade."⁴⁸ It is particularly this latter theme that may help us understand the lack of system to *The Federalist*, especially in the context of the themes of this book: union, enterprise, and above all war.

Advocating for a more powerful military instrument under the Constitution would arguably be the most difficult rhetorical task *The Federalist* would have to confront. Making that aspect of the Constitution "least noxious" may explain the difficulty of interpreting *The Federalist's* grand strategy for the Constitution. The seeming contradiction between some of the ostensibly more clear statements on subjects such as the need for a limited standing army, insularity in foreign policy, and other comments that seem directly contrary to these and that required almost unlimited military power might be explained by this problem of rhetorical complexity. As Montesquieu's interpreters proposed, the political restrictions necessity imposes on government, often unpalatable to the citizens of a regime, are perhaps best left unarticulated to a majority of readers. This may explain the seemingly opposed positions *The Federalist* takes in different parts of the work when addressing issues relating to America's grand strategy under the Constitution.

Not that Publius was not explicit on a number of issues related to this. Like *Federalist* 1's warning that the need for energetic government would be portrayed as a threat to liberty, *Federalist* 26 critiqued any attempt to limit legislative power to provide for national defense as reflecting "a zeal for liberty more ardent than enlightened (26:157)." *Federalist* 23 on a similar note

declared that the powers of common defense “ought to exist without limitation, *because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them*” (23:140, emphasis in original). Later in *The Federalist* No. 41 implied the need for unlimited federal military power and even executive prerogative power when proclaiming: “The means of security can only be regulated by the means and the danger of attack. They will, in fact, be ever determined by these rules, and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions” (41:258). All of these *Federalist* numbers—1, 23, 26, 41—are intended to turn the tables on Whig republican theory that portrayed more centralized power, particularly military power, as a danger to liberty. *The Federalist*’s counter was that such a restrictive position actually threatened liberty and the very private rights it sought to protect (1:5–6 and 26:157).⁴⁹

The obvious question here was how statements like those above were to be reconciled with *The Federalist*’s insularity doctrine? Publius pleaded for more energetic national defense. His discussion of the need for *unlimited* national security powers in the third section of the work (which I will discuss in more detail in chapter 9), in addition to his suggestion in numbers like *Federalist* 3 that the United States avoid the fate of small states like Genoa and aspire to become an empire like Britain or Spain, all militate against the view that Publius was content with America assuming a limited military posture under the Constitution. *Federalist* 4, as I indicated earlier, even raises the question of whether the insularity doctrine would be adequate over the short term given the threats to American trade that loomed in China and India. Moreover, there was the potential jealousy European powers might harbor toward America’s growing greatness. This again would require an ever-expanding military posture to respond to.

THE TURN IN *THE FEDERALIST*’S COMMERCIAL REPUBLICAN THEORY

I will have more to say about the insularity doctrine in chapter 9. Acknowledging the tension here however between it and other teachings in *The Federalist* requiring unlimited power for national defense speaks to the rhetorical complexity underlying *The Federalist*’s grand strategy. How seriously are we to take the counsel in *Federalist* 8 that America adopt an insular position and a limited standing army? *Federalist* 8 marks a critical turn in *The Federalist*’s commercial republican theory for a number of reasons. First, it

distinguishes the United States from the ancient Greek republics. *Federalist* 6 had likened the United States to the ancient commercial republics of Athens and Carthage, suggesting that America, like these other commercial republics, did not lack a martial spirit or that dynamism in its commercial pursuits that might lead it to aggressively pursue territorial expansion and conquest. *Federalist* 7 had similarly maintained that the “unbridled” spirit of enterprise might lead states to war over regulations unduly encroaching on it. *Federalist* 8 by contrast distinguished America from the ancient Greeks by emphasizing that Americans, like other moderns, had “industrious habits.” They were “absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce.” Americans were thoroughly commercial and agricultural in character and this was a good thing. It offered up the potential, in Locke’s terms, for the “industrious and rational” prevailing over the “quarrelsome and contentious.” The ancient Greek republics had been too militant, a militancy that was too often confused with civic or martial virtue rather than with what it actually was: unjust belligerency and imperialism. America had the opportunity to cultivate a truly civic virtue, the virtue of enterprise.

W. B. Allen has said of *Federalist* 8’s remarks regarding the ancient Greek republics and modern peoples that it was clear on Publius’ reading that America would not abide by “the old fashioned virtue, which was based on the martial spirit in small republics of ancient times.” The Constitution was drafted and ratified in “the modern era.”⁵⁰ This implied rejection of “old fashioned virtue.” Hiram Catton has similarly observed that the modern “scientific” notion of political thought, “initiated by Hobbes, developed by Locke” and “polished by Hume and Montesquieu,” had already “rejected classical republicanism because of its instability and martial character, deficiencies that were traced to the specious notion of virtue and to the barbarism of Greece and Rome.” The virtuous republic, understood in the classical sense, was untenable. The small republics of Greek and Roman antiquity had never attained the high-toned character they were so often credited with. They were rather, as *Federalist* 8 made clear, belligerent and martial. *The Federalist* was not alone in its condemnation of these republics or of classical republicanism. Nor was *The Federalist* the first to reject what Catton refers to as the “second strand” of modern political thought, that which had “espoused the virtuous republic.” *Federalist* 6 Catton maintains had made clear that “Modern republics were to be based on the new dispensation of production, commerce, and improved knowledge stemming from the progress of the arts and sciences.” The posture of the virtuous republic “was nostalgic and moral, since no program could be generated from virtue.”⁵¹ And it was precisely the lack of such a “program” that had left old-school republicanism, with its focus on a classical understanding of virtue, politically hollow. What exactly were the

citizens of a “virtuous” republic to do with their daily lives, particularly in the modern commercial world?

The Federalist understood the problems here. This is what had made older republics such inappropriate and at times even silly examples for modern Americans to follow. But it was here as well that *The Federalist* began to chart its own course in modern republican theory. By rejecting the idea that commercial republics were moderate or peaceful and operated to soften men’s mores, as Montesquieu, Paine, and other modern theorists had proposed, Publius had repudiated the most dominant theory of commerce prevalent among opponents of the Constitution such as Agrippa. The vision of commerce portrayed in *Federalist* 6 returns us to an older, more sober vision, one similar to that of Thucydides who had recognized—and whose speakers in *The Peloponnesian War* had recognized—the spirited or thumotic quality of commercial, enterprising citizens; in Thucydides’ case the citizens of Periclean Athenians. For Thucydides both human nature and politics were understood in terms of motion, the Peloponnesian War marking “the greatest movement” known through to Thucydides’ day.⁵²

In the modern era it was Hobbes, Thucydides’ English translator, who had embraced Thucydides’ political anthropology of movement. “Life it selfe is but Motion” Hobbes famously proclaimed.⁵³ When individuals stopped moving they were dead. The same was true of political regimes that invariably sought power over other political regimes. As David Epstein has highlighted, *The Federalist* too defines politics in terms of motion or as bodies acting and reacting against one another. As much as nations may be collections of minds thinking, willing, and drafting laws, they are also comprised of human beings who are driven not merely by reason or ratiocination but by passion. This is especially true insofar as they act as collectivities. It is in this capacity above all that men move in the manner of Thucydides’ political science, being more inclined to vex one another than to cooperate. *Federalist* 15 informs us that governments are instituted because “the passions of men will not conform to the dictates of reason and justice without constraint.” But it is as “bodies” that men act with less “rectitude” and “disinterestedness than individuals.” Publius gives us the example of “sovereign power,” which looks “with an evil eye upon all external attempts to restrain or direct its operation.” This proclivity “has its origin in the love of power. Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged” (15:91–92).⁵⁴

This sounds Hobbesian enough. For Caton the fact that *The Federalist* rejected the virtuous republic in favor of a more blunt power politics meant that the theoretical locus of its political science was best situated in Hobbes’ *Leviathan*. There Hobbes

had anchored equality in the striving of men for power after power, but especially the power impulse to life, liberty, and the means of life. It followed that distinctions drawn from morality, religion, or honor are illusions used by designing men to promote their own power. The trace of this reflection is stamped deeply in *Federalist* nos. 1–8, which vigorously reassert the constancy of human nature and the war of all on all.⁵⁵

But this is an overstatement. As was noted in chapter 1, *The Federalist* is fundamentally Lockean, not Hobbesian, in its theoretical locus. *Federalist* 4 emphasizes that nations will make war whenever they might get anything by it. *Federalist* 34 similarly implores that men's warlike passions are stronger than their sentiments of peace (34:203). And as we just saw above *Federalist* 15 makes similar assertions about competing powers not wanting to be controlled or abridged by their rivals. These statements certainly have a Hobbesian tenor to them but they are not made in an unqualified sense. They are best understood as prudential warnings or advisories against the baser elements of human nature that might rise up should Americans select the wrong constitutional instruments for their government. They were not the whole story regarding *The Federalist's* understanding of the nature of man or of America's role in international relations.

The Federalist warns Americans not to be utopians. That is certainly true. But it also advises that they should not be unqualified skeptics or mere pawns for the simplistic doctrine that all politics is about power. The latter might have been the vision of Thrasymachus or even Hobbes but it was not that of Publius. America on *The Federalist's* reading had much potential for greatness. This was the reason to embrace the Constitution, which was based as we have seen on a moral order or principles of justice that in a very non-Hobbesian sense preceded the Constitution and guided it. These principles are what made America exceptional. But *Federalists* 2–7 also made clear that Americans shared certain characteristics with the ancient Athenians described in Thucydides' history. They were energetic, enterprising, daring, ambitious, relentless in their pursuit of opportunity, even to the point *Federalist* 7 suggests of being willing to break the law and to go to war over unnecessary regulations of trade. At least this is what the "commercial part of America" threatened to do. And the "spirit of enterprise" which characterized that commercial part had "left *no occasion* of displaying itself unimproved." With the right constitutional instruments it could be improved even more. But what would this require? In the next chapter I explore this question by returning to the history of Thucydides, which I contend might provide *The Federalist* some significant guidance about how to answer the question.

NOTES

1. The territorial disputes Publius discusses in *Federalist* 7 concerned American expansion into the Western frontier where “an ample theatre for hostile pretensions, without any umpire or common judge to interpose between the common parties,” would exist. On the topic of “competitions of commerce,” which would provide “another fruitful source of contention,” *Federalist* 7 proposed something approximating free trade in order to avoid those “distinctions, preferences, and exclusions” that states invariably grant their own commercial enterprises and that “beget discontent” (7:35–37).

2. See also, *Federalist* 12:72: “The relative situation of these States; the number of rivers with which they are intersected, and of bays that wash their shores; the facility of communication in every direction; the affinity of language and manners; the familiar habits of intercourse;—all these are circumstances that would conspire to render an illicit trade between them a matter of little difficulty, and would insure frequent evasions of the commercial regulations of each other.”

3. Patrick J. Garrity, “Foreign Policy and *The Federalist*,” in *Saving the Revolution: The Federalist Papers and The American Founding*, ed. Charles R. Kesler (New York: The Free Press, 1987), 93–94.

4. Nathan Tarcov, “War and Peace in *The Federalist*,” *Political Science Reviewer* 19 (Spring 1990): 105.

5. Garrity, “Foreign Policy and *The Federalist*,” 95.

6. As Hiram Catton notes, “After a fast-paced review of the course of politics under the commercial dispensation, *The Federalist* gave it out as ‘solid conclusions drawn from the natural and necessary progress of human affairs’ that the actual tendency of such politics was not toward peace and liberty, but toward war and despotism. We pause before this staggering conclusion, so at cross-purposes with the advanced political thought of the day.” Hiram Catton, *The Politics of Progress: The Origins and Development of the Commercial Republic, 1600–1835* (Gainesville: University of Florida Press, 1988), 464.

7. See Alan Levine, “The Idea of Commerce in Enlightenment Political Thought,” in *Rediscovering Political Economy*, ed. Joseph Postell and Bradley C. S. Watson (Lanham, MD: Lexington Books, 2011), 62.

8. Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill: The University of North Carolina Press, 1980), 28.

9. Max Edling notes that “According to the most influential treatment of Country thought,” that of J. G. A. Pocock, the anti-military tradition in America during the founding era

encompassed a classical, “essentially Greek,” conception of citizenship, which saw the true citizen as a man of property standing free from all forms of dependence. One of the most important elements of this conception of the citizen was his readiness to appear in arms for the defense of his country. In practice, this ideal was realized through service in the militia, “whereby the public defence is exercised directly by the independent proprietors appearing in arms at their own charge.” Even if Country thought dominated American political rhetoric, actual military institutions did not conform to the principles of the Country tradition. Starting in the late seventeenth century, the militia began to be replaced by volunteer forces in military campaigns. These forces were not made up of freeholders

but men with little or no property. In this respect, the Continental Army was no different. (Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* [New York: Oxford University Press, 2003], 81)

10. One consequence of this was that since Greek citizens were also soldiers who participated directly in government, they had little to fear from the sort of political tyranny that America's Whigs and Antifederalists identified with standing armies. The widely read Antifederalist Brutus had identified such armies with despotic government and the monarchies of Europe. "[K]eeping up a standing army," he proclaimed, "would be in the highest degree dangerous to the liberty and happiness of the community." Brutus VIII, in *The Anti-Federalist: An Abridgment*, by Murray Dry, of *The Complete Anti-Federalist*, ed., with commentary and notes, by Herbert J. Storing (Chicago: The University of Chicago Press, 1985), 153. The Dissent of the Minority of the Convention of Pennsylvania had similarly contended that since the Congress of the United States under the Constitution would not have the support of the American people, federal laws would have to "be executed by the aid of a numerous standing army, which would be inconsistent with the very idea of liberty; for the same force that may be employed to compel obedience to good laws, might and probably would be used to wrest from the people their constitutional liberties." *Ibid.*, 219–220. See, also, Edling, *A Revolution in Favor of Government*, 44. The historian Richard Kohn has noted that in the early American mind militias were identified "with liberty, freedom, and colonial virtue" while standing armies were associated "with European militarism, corruption, and tyranny." Richard H. Kohn, *Eagle and Sword: The Beginnings of the Military Establishment in America* (New York: The Free Press, 1975), 9. See also, Edling, *A Revolution in Favor of Government*, 42: "The new government was . . . granted powers that Antifederalists believed threatened the future of liberty. The right to raise and maintain standing armies in peacetime was one of these. In the Country ideology, "standing armies" carried strong and ominous connotations as a certain bane to liberty. In all nations in which standing armies had been created, slavery had followed." It is easy to see how in the mind of such Americans both militias and the ancient Greek republics would be attractive models post-Revolutionary America might emulate while standing armies were to be shunned. As symbols of imperialism and tyranny, the latter could too readily provide government those means necessary to oppress the governed. The ancient Greek republics were made up of citizen soldiers and did not have to worry about the Hobbesian dilemma of government using the military against its own citizens because those citizens themselves made up the military and were able to defend their self-governing choices as they saw fit. See David F. Epstein, *The Political Theory of The Federalist* (Chicago: The University of Chicago Press, 1984), 18. The introduction of a standing army however would change this calculus and the overall balance of power in favor of government.

11. See Karl-Friedrich Walling, *Republican Empire: Alexander Hamilton on War and Free Government* (Lawrence: University Press of Kansas, 1999), 85.

12. See Peter McNamara, *Political Economy and Statesmanship: Smith, Hamilton, and the Foundation of the Commercial Republic* (DeKalb: Northern Illinois University Press, 1998), 110.

13. John Locke, *Second Treatise of Government*, in *Two Treatises of Government*, ed. Peter Laslett (New York: Cambridge University Press, 1988), § 34, 291.

14. Ibid., § 42, 298.

15. On these themes, see Anthony A. Peacock, "The Voting Rights Act and the Politics of Multiculturalism: The Challenge to Commercial Republicanism at Century's Turn," in *Courts and the Culture Wars*, ed. Bradley C. S. Watson (Lanham, MD: Lexington Books, 2002), 185–186; McCoy, *The Elusive Republic*, 76–104; and Michael D. Chan, *Aristotle and Hamilton On Commerce and Statesmanship* (Columbia: University of Missouri Press, 2006), 146–154.

16. See Hiram Catton, *The Politics of Progress: The Origins and Development of the Commercial Republic, 1600–1835* (Gainesville: University of Florida Press, 1988), 472; Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Princeton, NJ: Princeton University Press, 1997), 9–66. As Walter Berns has remarked, unlike other forms of faction, such as those based on religion, "property factions could be regulated (and accommodated) because, although divided from one another, they shared a common interest in economic growth, and to promote this growth would be the task of modern legislation. America's business would be (as Calvin Coolidge many years later said it was) business." Walter Berns, "Constitutionalism and Multiculturalism," in *Multiculturalism and American Democracy*, eds. Arthur M. Melzer, Jerry Weinberger, and M. Richard Zinman (Lawrence: University Press of Kansas, 1998), 96. Although Berns was certainly not suggesting this and was no liberal, it is important to note, as Charles Kesler has emphasized, that Coolidge's words here have been frequently misquoted.

What "Coolidge actually said was," 'After all, the chief business of the American people is business. They are profoundly concerned with producing, buying, selling, investing and prospering in the world.' The *chief* business is not the only, nor the highest, business of the American people, though liberal historians and journalists have deliberately misinterpreted Coolidge's meaning, the better to tar his character and career. . . .

Here is Coolidge, from the same speech in which he described the chief business of the American people:

Wealth is the product of industry, ambition, character and untiring effort. In all experience, the accumulation of wealth means the multiplication of schools, the increase of knowledge, the dissemination of intelligence, the encouragement of science, the broadening of outlook, the expansion of liberties, the widening of culture. Of course, the accumulation of wealth cannot be justified as the chief end of existence. But we are compelled to recognize it as a means to well-nigh every desirable achievement. So long as wealth is made the means and not the end, we need not greatly fear it. (Charles R. Kesler "The Republican Trump," *Claremont Review of Books* Vol. XVII, no. 1 [Winter 2016/17]: 14 [emphasis in original])

17. See Epstein, *The Political Theory of The Federalist*, 6.

18. Thomas G. West, *Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 1997), 70.

19. See Azar Gat, *Victorious and Vulnerable: Why Democracy Won in the 20th Century and How It Is Still Imperiled* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2010), 95–96:

Paine and Kant subscribed to the Enlightenment view that selfish autocrats were responsible for war. According to that view, if the people were given the choice, they would recoil from war because they carried the burden of war and incurred its costs. But it was the populace in Athens, not the aristocrats, that pushed for aggressive imperial expansion and war, even though

the people fought in the army, manned the rowing benches of the Athenian navy, and had to endure war's destruction and misery, as in the forced evacuation of Attica during the Peloponnesian War. Rome's military prowess and tenacity similarly derived specifically from its republican regime, which successfully co-opted the populace for the purpose of war. Historically, democracies proved particularly tenacious in war precisely because they were socially and political inclusive. And again, in pre-modern times, they did not refrain from fighting each other.

20. McCoy, *The Elusive Republic*, 78.

21. *Ibid.*, 77.

22. Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: The University of Chicago Press, 1988), 46–47.

23. Madison seems to suggest something along these lines subsequent to his authorship of *The Federalist*. Writing in the *National Gazette* February 20, 1792, he analyzes the kind of spirit that predominates in

A government deriving its energy from the will of the society, and operating, by the reason of its measures, on the understanding and interest of the society. Such is the government for which philosophy has been searching and humanity been fighting from the most remote ages. Such are the republican governments which it is the glory of America to have invented, and her unrivalled happiness to possess. May her glory be completed by every improvement on the theory which experience may teach, and her happiness be perpetuated by a system of administration corresponding with the purity of the theory. (Marvin Meyers, ed., *The Mind of the Founder: Sources of the Political Thought of James Madison* [Hanover, MD: Brandeis University Press, 1981], 184)

24. See, for instance, Donald Kagan, *Thucydides: The Reinvention of History* (New York: Viking, 2009). Kagan provides an extensive and compelling textual interpretation for his conclusion “that Thucydides gives a full and unequivocal endorsement to Pericles’ strategy for victory in the great war that began in 431.” At 75. See, also, *ibid.*, 86: “Thucydides . . . insists that the failure of Pericles’ strategy was due to its abandonment by his successors, who ‘did everything contrary to his plan in every way’ (2.65.7).” As his title suggests, Kagan questions this conclusion of Thucydides as well as a host of others.

25. See *The Peloponnesian War*, 2:41 and 2:64.

26. *The Federalist* of course is not the only defender of the Constitution who sees its principal virtue to be the protection of a “private” sphere of civil freedom from undue intrusions of government. As Pangle again has observed of James Wilson’s defense of the Constitution’s Lockean natural rights theory (paraphrasing from Wilson here): “‘In this government liberty shall reign triumphant’; more precisely, what shall triumph is ‘civil liberty,’ defined as ‘natural liberty itself, divested only of that part, which, placed in the government, produces more good and happiness to the community, than if it had remained in the individual.’” Pangle, *The Spirit of Modern Republicanism*, 123. Wilson’s remarks here remind us of *Federalist* 2’s Declaration, discussed in chapter 1, that “the people must cede to [the government] some of their natural rights, in order to vest it with the requisite powers” (2:8).

27. See McCoy, *The Elusive Republic*, 28.

28. West, *Vindicating the Founders*, 70. Karl Walling has similarly written that Hamilton “believed the protocapitalist economy he sought to establish would have two major advantages for liberty in America. First, it would supply greater opportunities for individuals to develop their faculties and thereby encourage an independent spirit of enterprise. Second, Hamilton’s system was deliberately intended to avoid the danger that the nation’s army might have to rob citizens to support itself in time of war.” Walling, *Republican Empire*, 175. See also, Arthur Herman, *Freedom’s Forge: How American Business Produced Victory in World War II* (New York: Random House, Inc., 2013).

29. *Federalist* 41 proposes a similar advantage for America:

The palpable necessity of the power to provide and maintain a navy has protected that part of the Constitution against a spirit of censure, which has spared few other parts. It must, indeed, be numbered among the greatest blessings of America, that as her Union will be the only source of her maritime strength, so this will be a principal source of her security against danger from abroad. In this respect our situation bears another likeness to the insular advantage of Great Britain. The batteries most capable of repelling foreign enterprises on our safety, are happily such as can never be turned by a perfidious government against our liberties. (41:261–262)

30. According to *Federalist* 8, “It was of the nature of war to increase the executive at the expense of the legislative authority” (8:43).

31. See Chan, *Aristotle and Hamilton*, 84; Edling, *A Revolution in Favor of Government*, 47–128.

32. See note 10.

33. For a discussion of these themes see Samuel P. Huntington, *The Soldier and the State* (Cambridge, MA: Belknap/Harvard University Press, 1957), esp. chapter 2; and Edling, *A Revolution in Favor of Government*, 81–82.

34. The “jealousy” of “more than one nation of Europe” should America remain united “under an efficient government” is again reemphasized in *Federalist* 59 (59:383).

35. Garrity, “Foreign Policy and *The Federalist*,” 97; see also, Tarcov, who largely agrees with Garrity, “War and Peace in *The Federalist*,” 106, as well as Epstein, *The Political Theory of The Federalist*, 18–19.

36. Garrity, “Foreign Policy and *The Federalist*,” 98.

37. *The Federalist* itself acknowledges this culture, if only among an enthusiastic minority. Just as *Federalist* 1, for instance, emphasizes that its zeal in defense of the Constitution will be enlightened, that zeal is to be contrasted with the “counterfeit zeal” and “incoherent dreams of a delirious jealousy” that characterizes those who entertain the “visionary supposition” that the states will be overrun by a “federal government” which under the Constitution might “accumulate a military force for the projects of ambition” (46:304–305). As Hiram Catton has noted, here and elsewhere *The Federalist* is openly disdainful of the Country shibboleths that Whigs, Antifederalists, and others adopted and that it had to dismember. Catton lists those shibboleths as “violent opposition to standing armies, extreme jealousy of the taxing power and extreme suspicion of the executive power, blindness to the despotic potential of popular assemblies, and unshakable faith in the virtuous republic.” Catton, *The Politics of Progress*, 462.

38. Edling, *A Revolution in Favor of Government*, 219. See also *ibid.*, 10, 57–58, and 29: “the Constitution radically challenged the American political tradition of anti-statism and it became the task of its supporters to calm the fears, and answer the objections, of the opposition.” See as well Caton, *The Politics of Progress*, 462.

39. Cathy D. Matson and Peter S. Onuf, *A Union of Interests: Political and Economic Thought in Revolutionary America* (Lawrence: University Press of Kansas, 1990), 6.

40. *Ibid.*, 125.

41. Samuel P. Huntington, *The Soldier and the State* (Cambridge, MA: Belknap/Harvard University Press, 1957), 144.

42. *Ibid.*, 457.

43. Richard Kohn has argued similar to Huntington that the pervasive public sentiment throughout the revolutionary period in America was one of strong anti-militarism and particularly aversion to peacetime standing armies. As he notes: “No principle of government was more widely understood or more completely accepted by the generation of Americans that established the United States than the danger of a standing army in peacetime. Because a standing army represented the ultimate in uncontrolled and uncontrollable power, any nation that maintained permanent forces surely risked the overthrow of legitimate government and the introduction of tyranny and despotism.” Kohn, *Eagle and the Sword*, 2. As Kohn observes, the anti-militarism of Americans during the founding period presented a significant problem for Federalists who contended that a standing army was absolutely necessary and that the Articles of Confederation were incompetent to provide for one. See *ibid.*, esp. 54–88. Walling, whose *Republican Empire* was written largely to refute Kohn’s accusation that Hamilton was a militarist who sought to resolve political disputes at home and abroad by force alone, contends that Hamilton’s support for a standing army had principled, theoretical roots. Hamilton was no militarist or jingoist and he did not defend energetic government or a more effective military instrument simply as a matter of necessity. “The priority Hamilton gave to securing American rights was not the result of realpolitik but a necessary consequence of American revolutionary principles as he understood them.” Walling, *Republican Empire*, 22. See also, *ibid.*, 3–5.

44. As d’Alembert observed, Montesquieu reserved his teaching for the wise and wrote esoterically to hide certain important truths from vulgar readers who would have found them unpalatable or worse. D’Alembert, “Éloge de Monsieur le Président de Montesquieu,” in *De l’esprit des lois*, (Paris: Garnier Flammarion, 1979), 65, 79–80. Montesquieu himself remarked at the end of Book XI of *The Spirit of the Laws* that “it is not always necessary to so exhaust a subject, as to leave the reader nothing to do. It is not a question of making him read, as to make him think.” Montesquieu, *The Spirit of the Laws*, Preface, 229. See also, Thomas L. Pangle, *Montesquieu’s Philosophy of Liberalism: A Commentary on The Spirit of the Laws* (Chicago: The University of Chicago, 1973), 16–19 and 71.

45. See, for instance, John P. Roche, “The Founding Fathers: A Reform Caucus in Action,” *American Political Science Review* 55 (December 1961): 804:

Commentators on the Constitution who have read *The Federalist* in lieu of reading the actual debates have credited the Fathers with the invention of a sublime concept called “Federalism.” Unfortunately *The Federalist* is probative evidence for only one

proposition: that Hamilton and Madison were inspired propagandists with a genius for retrospective symmetry. Federalism, as the theory is generally defined, was an improvisation which was later promoted into a political theory.

46. Michael P. Federici, *The Political Philosophy of Alexander Hamilton* (Baltimore: Johns Hopkins University Press, 2012), 5, citing Clinton Rossiter, *Alexander Hamilton and the Constitution* (New York: Harcourt, Brace & World, 1964), 58.

47. Epstein, *The Political Theory of The Federalist*, 2. See also, Charles R. Kesler, "Introduction," in *Saving the Revolution: The Federalist Papers and the American Founding*, ed. Charles R. Kesler (New York: The Free Press, 1987), 3.

48. Martin Diamond, *As Far as Republican Principles Will Admit*, ed. William A. Schambra (Washington, DC: AEI Press, 1992), 37–38.

49. For a discussion of the dominance of radical Whig ideology during the founding era, see chapter 2, n.22.

50. W. B. Allen with Kevin A. Cloonan, *The Federalist Papers: A Commentary* (New York: Peter Lang, 2000), 56.

51. Caton, *The Politics of Progress*, 463–464.

52. *The Landmark Thucydides: A Comprehensive Guide to The Peloponnesian War*, ed. Robert B. Strassler, intro. Victor Davis Hanson, trans. Richard Crawley (New York: Touchstone, 1996), 1.1.

53. Thomas Hobbes, *Leviathan*, ed. C. B. MacPherson (New York: Penguin Books), ch. 6, 130.

54. Publius tells us that collectivities act worse than individuals for three reasons. First, reputation "has a less active influence when the infamy of a bad action is to be divided among a number than when it is to fall singly upon one." Second, the "spirit of faction . . . is apt to mingle its poison in the deliberations of all bodies of men" such that it "will often hurry the persons of whom they are composed into improprieties and excesses for which they would blush in a private capacity." And, finally, there is the problem mentioned above of "sovereign power," which all collective bodies exercise to a greater or lesser extent. Collectivities tend "to look with an evil eye upon all external attempts to restrain or direct" their "operations." Publius attributes this tendency to "the love of power. Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged"(15:92). See also Epstein, *The Political Theory of The Federalist*, 36–37.

55. Caton, *The Politics of Progress*, 467.

Chapter 5

Thucydides and *The Federalist*

As the last chapter indicated, *The Federalist* embraces a theory of commercial republicanism that challenges the orthodoxy of Enlightenment political thinking that commercial societies, particularly commercial republics, were moderate or pacific in character.¹ In addition, as we saw at the end of the last chapter, the grand strategy of *The Federalist*, although somewhat ambiguous, is likely not one of insularity. There is at least strong evidence that despite some explicit statements to the contrary, *The Federalist*'s grand strategy consists of insisting that if America's commercial dynamism, in addition to its territorial acquisition, is to continue to grow under the Constitution the United States will have to project military power throughout the North American continent, into the Atlantic, and conceivably as far away as Asia. As *Federalist* 4 made clear, even in 1787 the United States already had significant commercial interests in India and China that threatened the most powerful empires of the day.

I will deal with the question of *The Federalist*'s rejection of the insularity doctrine in more detail in chapter 9. At this point however we can at least conclude from our analysis so far that on *The Federalist*'s reading the fundamental features of commercial republics like America's are that they are spirited and dynamic as well as acquisitive and expansionist in nature. These features of the commercial republic emanate from its daring, restlessness, and enterprising character. Commercial republics, as *The Federalist* also proposes, require a military instrument sufficient to protect not only their territorial integrity but their carrying trade and ever-expanding commercial markets. The link between commercial republicanism and military wherewithal formed a comprehensive vision throughout *The Federalist* and was key to understanding the work's constitutionalism. It is thus fair to ask: Where did such a vision of the nature of commercial republics and their strategic

interests originate? And what were the implications of this distinct form of republican theory *The Federalist* embraced?

Although we can never know the answer to these questions for sure, one place we might search for clues is the history of Thucydides. Thucydides is an authority that has almost never been considered in *Federalist* scholarship and certainly never considered beyond mere passing reference in *any* such scholarship. At some level the disregard of Thucydides is understandable. *The Federalist* purports to embrace the improved science of modern liberal politics. Why consider an ancient authority who is never explicitly named in the work and who would seem to have little relevance to a Constitution drafted in 1787? This is especially true when we consider the Constitution's institutional mechanisms so obviously drawn from such moderns as John Locke and Montesquieu.

At another level, however, an interpretive model excluding Thucydides is not at all compelling. This is especially true if we are considering *The Federalist's* noninstitutional teaching. As I have already noted, *The Federalist* itself points us to Thucydides not only in its three explicit references to the Peloponnesian War but in its numerous referrals to ancient political configurations that might assist Americans in understanding what constitutional options they had for improving the American federal union in 1787. There are also numerous overlapping themes between Thucydides and *The Federalist* on the question war. And the appeal to Thucydides' history begins early in the work. Addressing the prospect of America's dissolution into a host of separate governments, *Federalist* 4 for instance invited readers to revisit the "history of the states of Greece" and warned that "when a people or family so divide, it never fails to be against themselves" (4:22). Thucydides' history is obviously one of the instructive histories "of the states of Greece." And it had a lot to offer Americans on the question of union and the potential for civil war. As Thucydides' history exemplified, civil war was the most violent and intractable war that faced any political regime. And this was a very real prospect that confronted a divided America in 1787. *Federalist* 18 reemphasizes the significance of Thucydides when highlighting how, after the defeat of the Persians, the Athenians' and Spartans' jealousies, fears, and hatreds, along with the injuries they had caused each other, "ended in the celebrated Peloponnesian war" (18:107). As the original account of that war, of Pericles, and of ancient Athens and contemporary Sparta that figure so prominently in *The Federalist*, does Publius not obviously invite us to consult Thucydides? After all it was this sage Athenian general who first described Periclean Athens and Corinth as the most dynamic, seafaring commercial emporiums that dominated the ancient Greek world.

Federalist 6 also referred to ancient Athens as a "republic of the commercial kind"; it was "as often engaged in wars, offensive and defensive,

as the neighboring monarchies,” a comment that I have suggested was a direct repudiation of Montesquieu. If Publius repudiated Montesquieu on this score and drew this characterization of Athens directly or indirectly from Thucydides, he was just as likely familiar with other aspects of Thucydides’ history and teaching. He was no doubt familiar with the additional features of Athenian as well as non-Athenian societies of the day that *The Peloponnesian War* recounted, Thucydides’ broader sociology of commerce, and his historically unparalleled dissection of the nature of war and the belligerence of human nature and political man. We may never know what specific influence Thucydides had on *The Federalist*’s three authors but there is certainly strong evidence of overlapping themes from the two works that warrant consideration. In this chapter I examine those themes.

THUCYDIDES’ HISTORY AND *THE FEDERALIST*

As I suggested above, Thucydides is important to *The Federalist* not only because of his detailing of the character of ancient commercial Athens and its contrast with the more agrarian Spartan regime. He is also important because of the theory of war his history outlines. Like other Greek historians, Thucydides drew cultural lessons from war. He documented how a specific government’s military competence reflected larger political, economic, and other cultural forces that seemingly had little to do with war but were in fact intimately related to a government’s war-making capabilities. What types of political regimes, for instance, best promoted that intellectual freedom and liberty of action that might most productively stimulate innovation, scientific rationalism in the conduct of war, and other features that made those regimes superior at the execution of war? What was the role of capital accumulation in warfare and what political orders best provided for that? We tend to think of these questions as the exclusive province of modern political thought and military theory. But as Victor Davis Hanson, Donald Kagan, and Mary Nichols among others have pointed out they are also addressed extensively in Thucydides’ history.² Did Publius too recognize this?

Like the early *Federalist* numbers, a principal concern of Thucydides in *The Peloponnesian War* seemed to center on the question of union. Specifically, how could two distinct but nevertheless Greek political cultures—the more dynamic and commercial Athenians and the more staid and agrarian Spartans—clash so violently and this so soon after their successful galvanization against the Persians? The contrast between the Athenians and Spartans is not unlike the decisive contrast presented in *Federalist* 5 where Publius, again warning against dividing the states of America into distinct confederacies, implores that the more commercial North, “generally the region of strength,”

would quickly become “more formidable than any of the others. No sooner would this become evident than the *Northern Hive* would excite the same ideas and sensations in the more southern parts of America which it formerly did in the southern parts of Europe.” The idea of exciting “the same ideas and sensations” here reminds us of Thucydides’ attribution of the cause of the Peloponnesian War to the fear the Spartans harbored regarding the Athenians growing domination in the eastern Mediterranean. “The real cause” of the war Thucydides proclaims was the “growth of the power of Athens, and the alarm which this inspired in Sparta.” This “made war inevitable” (1:23). Perhaps Publius shared the same sentiment. In a divided America where similar political, economic, and cultural divisions obtained war would also be inevitable. Contrasting the Northern Hive with the rest of America, *Federalist* 5 invited readers to “consider the history of similar divisions and confederacies” (5:25; see also, 13:77–78). With its multiple references to the Peloponnesian War as well as to ancient Athens and Sparta, one such instructive history that *The Federalist* again points us to is that of Thucydides.

Thucydides’ relevance to *The Federalist* consists not only of the similarities the latter invites us to consider between the Greek states circa the Peloponnesian War and America in 1787. Thucydides is relevant as well because his history is as much a defense of the free, enterprising culture of the commercial Athenians as it is a critique of their propensity to imperial overreach. Thucydides, in a sense, presents the “first philosophy” explaining and defending free commercial society of the sort *The Federalist* seems to want both to preserve and to refine. Thucydides’ “Archeology” (the first twenty-three chapters of Book I of *The Peloponnesian War*) traces the origins of the “country now called Hellas” (1.2.1). That country, made up of both Spartans and Athenians as well as many others, could emerge only once there was an extensive commerce and navies that could defend it. Pre-national life in Greece was nomadic, poor, and lawless. Political or collective action could only take place once there appeared settled populations capable of commercial interaction, capital accumulation, an extensive division of labor, agriculture, increased capacities of navigation that facilitated greater communication, mobility, and defense of territory. There also had to be good laws and freedom from tyrants. All of these conditions were necessary to the development of “large cities” and “any other form of greatness” (1.2). Thucydides seemed to identify large cities with greatness because of their heterogeneity and the potential they provided to cultivate the kaleidoscope of human faculties in the most comprehensive way. The essence of what it was to be “Greek,” captured in the Archeology’s depiction of progress from barbaric simplicity to the height of Greek civilization, seemed to lay in the development of speech; in the cultivation of wisdom, judgment, and understandings of justice, all of which were critical to the exercise of liberty as opposed to

mere licentiousness.³ *Federalist* 1 began with the distinction between those political constitutions established through reflection and choice and those established through accident and force. As Mary Nichols has pointed out, this same distinction was central to Thucydides' characterization of Athens and Sparta. Athens exemplified the virtues of judgment and daring, including that freedom of thought that delivered men from the restraints of necessity. Deliberation, as Nichols emphasizes, allows choice and "frees human beings from compulsion, whether coming from their passions and interests, or from the circumstances to which they react." Sparta rarely engaged in deliberation. Once the war began Thucydides recorded no speeches by Spartans at Sparta. He recorded multiple speeches, including multiple exchanges of speeches, by Athenians at Athens. "Speech makes a greater difference for Athens than for Sparta in determining actions."⁴ Despite its defects Athens remained the exemplary Greek city. The cultivation of speech achieved its apotheosis in Athens. Its freedom and commerce were also essential to its character.

Aristotle likely had Periclean Athens in mind when he maintained that the city represented the complete political good (or at least the potential for that good). The city held out the best prospects for developing what we discussed in chapter 1 as a "natural aristocracy."⁵ As we saw in *Federalist* 6 Athens and Carthage were described as dynamic commercial republics; dynamic to the point of frequently going to war. Thucydides' interlocutors described Periclean Athens in similar terms; as being forever in motion and never giving rest to any of those cities it came into contact with. That included Sparta (3.45, 4:41, 4.92, 6.8, 6.18). Although this perpetual motion by Athens may implicate a spirit of imperialism or domination, and thus injustice (2.63.3 and 3.37.2),⁶ Thucydides also seems to want to convey, both in his own voice and that of others, the novelty of Athens, its energy, innovative character, and civilizational dynamism. Early in Thucydides' history, for instance, the Corinthians publicly criticized the Spartans by pointing out how "addicted to innovation" the Athenians were, that they were swift "alike in conception and execution." By contrast the Spartans suffered from a "total want of invention" and never went "far enough" when forced to act. The Athenians were "adventurous beyond their power, and daring beyond their judgment." In danger they were "sanguine." The Spartans on the other hand attempted less than was justified by their power and mistrusted even what their judgment sanctioned, fancying that from danger there was "no release." Perhaps above all, the Athenians' bodies were spent "ungrudgingly in their country's cause; their intellect they jealously husband[ed] to be employed in her service." The Corinthians concluded by admonishing the Spartans: "It is the law, as in the arts so in politics, that improvements ever prevail; and though fixed usages may be the best for undisturbed communities, constant necessities of action must be accompanied by the constant improvement of methods. Thus it happens that the vast

experience of Athens has carried her further than [the Spartans] on the path of innovation” (1.70–71). Identifying politics with the arts and the necessities of action with the imperative of constantly improving methods, the Corinthians maintain that because of the Athenians’ wider experience they had proven to be more innovative than the Spartans. The Spartans, the Corinthians imply, suffered from excessively fixed usages. We may further surmise that the Athenians had greater experience and were more innovative than the Spartans because they were more energetic, enterprising, and commercial.

Thucydides does not necessarily concur with the Corinthians’ assessment here; after all it is the Corinthians speaking, not Thucydides.⁷ However, at the conclusion of his history Thucydides does make it clear that it was the Athenians who were the most militarily competent, not the Spartans, because of their “dash and enterprise.” This dash and enterprise had “proved of the greatest service, especially to a maritime empire like Athens” (8.96.5).⁸ Thucydides offers us his own candid assessment here at the end of his exhaustive history and immediately following the Athenians’ loss of Euboea in 411. After the island’s downfall the Spartans had the opportunity to attack the Piraeus and end the war. However due to their “slowness and want of energy” they failed to do so. As Thucydides concludes, “here, as on so many other occasions, the Spartans proved to be the most convenient people in the world for the Athenians to be at war with” (8:96.5). Thucydides offers us here an assessment, in his own voice, about the ineptitude of the Spartans, an ineptitude that was not merely limited to their failure to attack the Piraeus in 411.

Thucydides’ critique of the Spartans did not stop at the Spartans slowness and want of energy in warfare. His history portrays Sparta as in many respects the antithesis of the Greek life of understanding and speech. The Spartans, he informs us, were notoriously bad speakers. Even those like Brasidas, who was not “a bad speaker for a Spartan” (4.84.2), were prone to orthodoxy, known more for what they did than what they said. One of the most judicious of the Spartans, King Archidamus, informed the Spartans that they were “wise” precisely because they were “educated with too little learning to despise the laws” (1.84.3). Devotion to the laws, civic and divine, no doubt helps explain the stability of Sparta and its endurance over centuries. But it also implicates that the Spartans were largely herd animals, too simple to aspire to the civilizational achievements that abounded in Athens.⁹ Thucydides goes so far at one point as to almost mock Brasidas, the Spartan general most distinguished at the time. He describes Brasidas, wounded in the Battle of Pylos, fainting and the Athenians then proceeding to steal his shield for a trophy (4.12). Thucydides emphasizes that nothing surprised the Hellenes during the war more than the Spartan surrender at Pylos, a shock so significant “people could scarcely believe that those who had surrendered were of the same stuff as the fallen” (4.40). Thucydides’ implies that perhaps the Spartans’ reputation for

martial virtue was more mythology than reality. His conclusion to *The Peloponnesian War* would seem to corroborate such an interpretation.

Sparta was no doubt a martial regime of the first order and the leading land power of the day. It did win the war after all. But it was almost by accident that it did, emulating the Athenians at sea by taking advantage of the incompetence of the Athenian navy at the Hellespont in 405 and experiencing the good fortune of a commander like Lysander. As *Federalist* 25 informs us, the Spartans were only able to avail themselves of Lysander's extraordinary talents by violating the Spartan constitution, yet another example of political necessity trumping mere constitutional convention (25:156).¹⁰

In their speech at Sparta, the Corinthians had tried to impress on the Spartans the importance of politically accommodating the impositions of necessity; that any political regime that did not accommodate these impositions would be eclipsed by those like the Athenians that did. The Corinthians suggested that the Athenians were much better at war because they were much more adaptable and capable of that innovation and enterprise necessary to prevail in war. And for the same reason they were better at just about everything else in both politics and the arts. The Corinthians remind us of Robert Kagan's observation that pre-Revolutionary Americans understood their impending civilizational greatness the way the ancient Athenians did. It was the offspring of economic, political, cultural, and scientific forces all harmoniously reinforcing one another simultaneously. Quoting the Corinthians in Thucydides' history regarding how the Athenians were forever on the move, never resting or allowing anyone else to rest, Kagan writes:

If the Athenians aimed "at something and do not get it, they think they have been deprived of what belonged to them already; whereas, if their enterprise is successful, they regard that success as nothing compared to what they will do next." In the eighteenth century, Americans, too, were in a permanent state of restlessness, driven ever forward and outward by the search for opportunity, accepting momentary delays in achieving their grand ambitions but never abandoning them. By the eve of the Revolution leaders of the colonial rebellion saw themselves no longer as merely the strongest part of the British Empire but as its heirs.¹¹

This is largely how *The Federalist* viewed the Americans of 1787. The "western sons of liberty" (2:8) would not be outdone by that "Mistress of the World," Europe. It belonged to America "to vindicate the honor of the human race, and to teach that assuming brother, moderation." And Americans would do this by disdaining "to be the instruments of European greatness" and "erecting one great American system" (12:68–69). The "system" here is not just government. It is all of the components—economic, political, cultural, and scientific—that Kagan mentions above coming together in an unprecedented manner in a new constitutional union. All these together

will form a new civilizational dispensation. But it is important to stress that Kagan attributes this concept of composite civilizational system not to modern liberalism or at least not to that alone. Rather it originates in Thucydides and specifically Thucydides' Corinthian interlocutors at Sparta. In *Federalist* 6 Americans were identified with the same Athenians the Corinthians recounted in Thucydides' history. The commercial, political, military, and moral reforms the new Constitution would bring about described earlier in this book, integrated together, would constitute the "great American system" *Federalist* 12 alludes to. But the modifier here, "great," makes clear that the new civilizational system will be of a high-toned order, as Thucydides made clear the Athenian system was as well.

In addition to introducing this notion of a civilizational system, the Corinthians' remarks at Sparta also speak to a central theme in *The Peloponnesian War*, one picked up by Hobbes: the idea of politics as movement. Thucydides refers to the Peloponnesian War as "the greatest movement yet known in history" (1.1). As his history demonstrates political regimes were forever in flux. They may at times be at peace but they were never fully at rest. However much cities or nations might seek rest or peace they were perennially confronted with the prospect of increased motion or war. This explained the importance and omnipresence of faction, which could operate internally by dividing cities or externally by pitting them against one another. The two often operated concurrently. Athens, Thucydides informs us, lost the war because of faction; because of its own internecine strife and the private interests that tore it apart (2.65). But that faction occurred because of the Peloponnesian War itself and the internal pressures on Athens it imposed. Cities perpetually in motion invariably collided with other cities. This is what happened in the war between Athens and Sparta. It was the greatest of all historical movements because it was the most complete, violent, and total war up to Thucydides' time. The Peloponnesian War consumed every aspect of Greek life—as well as life beyond the Greek world. As Thucydides reminds us, his history was written not "to win the applause of the moment, but as a possession for all time" (1.22.4). It was a possession for all time because it revealed human nature in its most comprehensive sense. War was the greatest of all events not merely because it moved history and transformed politics like nothing else did but because it demonstrated the extremes to which human nature could be taken, both its heights and its depths. In addition war highlighted the power and the limits of politics. As the most violent expression of political action, war exposed the character of regimes and the principles that animated them in the rawest of terms. Although those principles could be assessed for their justice or injustice, as Thucydides made clear the question of justice was always qualified by the question of compulsion or necessity as much as by competing understandings of justice.

This is what made the Athenian question so interesting. As Pericles' emphasized in his funeral oration, modern Athens raised novel questions of justice because it was itself new. Periclean Athens was constitutionally distinct because it promoted a new and comprehensive freedom, one that anticipated the modern liberal order. The Peloponnesian War represented the first "clash of civilizations," a conflict between a free, democratic regime and a more austere oligarchy that some suggest would become the model for later conflicts like the greatest of the twentieth century that pitted democracies against oligarchic, fascist, socialist, and militaristic states.¹² For Pericles what distinguished Athenian greatness was a constitution that did not emulate any others but was rather a model to be emulated. Athens enjoyed a democratic administration that favored the many rather than the few, a legal system that provided equal justice to all regardless of private differences, public advancement based on reputation for capacity, social standing established not by class but by merit, and an economic order where the poorest could rise up. Athens was cosmopolitan, a city open to the world and whose commerce imported goods from all points of the compass. Contrary to the Spartans, who trusted in system and policy and whose citizens were subject from childhood to a painful discipline to make them martial, Athenians were free and enterprising. They trusted more in civic spirit, avoiding hardships until they were necessary, but facing them as fearlessly as those subjected to them every day. Athenians were also urbane; refined without being extravagant, they cultivated knowledge without vanity. They pursued wealth for use rather than for show. Public men in Athens had private lives and ordinary citizens pursued industry while being civically minded. They scrutinized public matters and held in contempt those who were politically apathetic. Athenian democracy, in a word, was dynamic and deliberative, having overcome the primitive world of necessity like no other civilization to promote a freedom never before seen (2.36–40). In Pericles' words Athens was the "school of Hellas." Its liberty, ingenuity, and industry were synonymous with its power. Athens had "forced every sea and land to be the highway of [its] daring" (2.41).

Again, these are Pericles' words, not Thucydides, and we may question the extent to which Thucydides concurred with Pericles' diagnoses of Athenian character. Yet Thucydides described Pericles in superlative terms. He was the first man of his time, Athens' leading statesman, and the "ablest alike in counsel and in action" (1.139; see also 1.127). It would seem Thucydides found Pericles' powers of intellect, observation, and strategy compelling and that he agreed that Athens was superior to Sparta. Prior to the end of the Peloponnesian War the only city that decisively beat the Athenians on their own terms was (similarly) democratic Syracuse. The Syracusans were able to beat the Athenians largely by emulating them; by innovatively improving their triremes and naval tactics, then defeating the Athenians at their

own game, sea warfare. Syracuse completed the destruction of the Athenian forces by relentlessly pursuing their army across southern Sicily, eventually destroying the Athenian army in 413. Thucydides describes the Syracusan victory against Athens as “the greatest Hellenic achievement of any in [the] war, or, in my opinion, in Hellenic history; at once most glorious to the victors, and most calamitous to the conquered” (7.87.5). Syracuse did not suffer the slowness and want of energy of the Spartans. To the contrary, the Syracusans and their allies “were the only cities that [the Athenians] had yet encountered, similar to their own in character, under democracies like themselves” (7.55.2). Syracuse defeated Athens almost by being more Athenian than the Athenians.

We have here only a brief snippet of Thucydides’ history. However, it is adequate to convey at least in a preliminary way how he understands, as Montesquieu would later refine the distinction, precisely how the nature of political regimes conditions their principle or what makes them act. Obviously Thucydides did not examine the nature of government understood as Montesquieu and others in the modern tradition did. He did not focus on a divided governmental structure or the separation of powers, checks and balances, forms of representation, independent judiciaries, or any of the other elements making up the new science of politics. The tangible instruments of state were not the center of attention in Thucydides’ history. Rather Thucydides shared Montesquieu’s interest in the *intangible* instruments of state, what Montesquieu called the spirit of the laws; what Thucydides portrayed as those animating principles of regimes and how they shaped the character of the individuals who made up those regimes. It is in this sense that Thucydides’ history may have the most relevance to *The Federalist*. Unlike Montesquieu, who understood commercial republics to be more pacific in character, Thucydides understood commercial societies in precisely the manner that *Federalist* 6 did: That their spiritedness and audacity inclined them as much toward imperialism, domination, and war as it did toward liberty and peace. How to untangle that dynamism or the “movement” component of free, commercial cities like Periclean Athens from their unnecessarily warlike propensities and to marry that dynamism with the stability or “rest” of more ostensibly moderate cities, like Sparta, seemed to be at the core of Thucydides’ concerns regarding the cataclysmic failure of Greek political union.

The Federalist too shared a similar concern, evident in its focus on how to integrate America’s “Northern Hive” with the “more southern parts of America” in a new constitutional union. As its references to the Peloponnesian War make clear, *The Federalist* apparently foresaw how failure to reform American union might eventuate in those conditions similar to what existed in ancient Greece. There the commercially advanced Athenians were pitted

against the economically less developed Spartans. Could the same thing happen in America? And if this was a threat, as *Federalist* 5 suggested it was, how exactly would the Constitution ameliorate or mitigate the problem? And which form of political economy did Publius prefer? Why?

Again, *The Peloponnesian War* might provide some guidance here. Thucydides evidently preferred the spiritedness and rationality of the Athenians to the reticence, if not doltishness, of the Spartans. We might agree with Leo Strauss' assessment: "However highly Thucydides may have thought of Sparta, moderation, and the divine law, his thought belongs altogether to innovating Athens rather than to old-fashioned Sparta. The conventional opening of his work ('Thucydides the Athenian') carries a non-conventional message."¹³ As Strauss notes, Thucydides certainly admired the longevity of the Spartan regime and the fact that it was the Spartans who put down the tyranny that allowed the country of Hellas to emerge. He also seemed to admire Sparta's piety and moderation (*sophrosyne*).¹⁴ Yet it was the Spartans, not the Athenians, who started the Peloponnesian War. Moreover, Sparta's moderation, as Thucydides suggested, may have been as much due to fear of its Helots (slaves) revolting should its army stray too far from the Peloponnese as it was to any inherent virtue or character of the Spartan regime.¹⁵ In addition, Sparta may have been just as imperialistic as Athens. Only its imperialism was essentially invisible because its empire was older than Athens' and had long before the war reached its natural limits.¹⁶ On the other side of the ledger, Thucydides applauded Athens' singularly public-spirited nature and the exemplary individuals the city produced in number far beyond Sparta's sole standout Brasidas. Whereas Sparta produced herd animals rather than individuals, Athens produced lions.¹⁷ The Corinthians correctly observed (as Thucydides did) that the Athenians not only had dash and enterprise but were willing to devote their very bodies and intellects to the cause of Athens. This is apparently what made the city so brilliant militarily. The Athenians lost so decisively in Sicily precisely by assuming the posture of the Spartans. Uncertain of how to respond to the Syracusans' land and naval tactics and waiting almost a month to move out of Syracuse in order to appease the gods on account of a lunar eclipse, their apprehensiveness paved the way to their demise in the quarries of Sicily.¹⁸

THUCYDIDES' FOUR LESSONS FOR *THE FEDERALIST*

Thucydides' lessons for *The Federalist* are many but four in particular stand out. First, there is the Thucydidean trinity. Thucydides was the original expositor of the idea that durable liberty required political union or something like the nation-state (here Greece), a culture of freedom and enterprise,

and sufficient naval or war power to protect that union, culture, and related markets. These were not the only elements to contribute to durable liberty and high civilization but they did seem to be their preconditions. The dynamism, restlessness, daring, individualism, and martial superiority of Periclean Athens were the first of its kind and the liberty it represented unique, if tenuous. However it emerged, so Thucydides' Archeology informs us, from the more general relationship between the cities of Hellas and the growing sea power their commercial emporiums, like Corinth and Athens, exemplified. Thucydides' exposition of the relationship between individual and political liberty, commercial development, and the military "dash and enterprise" of free, commercial cities like Athens and its affiliates, anticipates *Federalist* 11's analogue about the importance of union, commercial expansion into international markets, and a navy to protect those markets. *Federalist* 11 recognizes that the system that brings all of these elements together will not only allow the United States to address the military exigencies of the day but high-tone American constitutionalism to such an extent that American greatness will compete with European greatness for the mantle of high civilization.¹⁹ But this also implies, in both the case of Thucydides and *The Federalist*, the rejection of an insularity doctrine; the idea that either the commercial dynamism of Periclean Athens or that of the United States could comport with a limited military establishment or navy. That military establishment would always have to be commensurate with a city's or nation's commercial order and interests. As both Thucydides and *The Federalist* suggest, the dynamism of such an order would inevitably require an equally dynamic military and carrying trade. Again, I will have more to say about this in chapter 9 but the origin of the relationship between commercial development and military wherewithal as political complementarities in Thucydides is worth emphasizing here.

This relates to a further point. As was mentioned earlier, Thucydides and those interlocutors who defended commercial Athens also understood the necessity of prosperity for the flourishing of a comprehensive moral order and political regime. Pericles had emphasized that the Athenians acquired wealth not for show but for use. Democratic Athens recognized people for their merit rather than their status—a first in history. Wealth, as both Thucydides and Pericles inform us, was the foundation of significantly more than mere financial gain or vanity. The precondition for the creation of those political institutions that made nations great, wealth served political, intellectual, and ethical ends beyond those ends that were purely material. *The Federalist* would agree that the generation of wealth or prosperity was not only necessary for such prudential ends as the provision of national security but might actually promote, contrary to the prejudices of many critics of commercial society then and now, citizen virtue. Mary Nichols has observed: "A free man

and city are not merely free from subjection to others, but manifest deeds appropriate to freedom. Athenians' virtue, according to Pericles, comes from 'within' themselves unlike that of the Spartans, whose courage is compelled by harsh discipline and training. Athenians 'willingly' (*ethelein*) risk their lives on behalf of their city and toil for its sake."²⁰ There is a recognition of this element of the free and patriotic spirit of the republican citizen and its related virtue in *The Federalist* too. I have referred to that attribute as the virtue of enterprise. Although it may not share all the characteristics with the virtue Nichols describes here, it shares enough of its characteristics that it may be considered a close cousin. However, it would not be possible without the terms of the Thucydidean trinity being met. *The Federalist* seems to understand how that trinity will be improved by the Constitution and how the two together will create "one great American system" that will merge those economic, political, cultural, and scientific forces critical not only to American national security and greater individual opportunity but to the advancement of high civilization.

The second lesson Thucydides offers *The Federalist* regards how his history captured the specific "clash of civilizations" that would define key divisions between political and economic regimes in the West. That included regimes within the United States. The conflict between Athens and Sparta, set out in such discrete terms by the likes of the Corinthians, Pericles, and many others in Thucydides' history, to a large extent mirrors the scholarly dispute of recent on America's founding; between those, for instance, who contend that America's origins are liberal and Lockean, defined by the spirit of innovation and pursuit of private property, and those in the republican thesis school who trace America's origins more to the "virtuous" republic of ancient Sparta. The principal elements of these schools of thought, commercial dynamism versus a less enterprising agrarian republicanism, are similar to the characteristics of the Athenians and Spartans as these are documented in Thucydides' history. The tension announced in *Federalist* 5 between America's "Northern Hive" and the more sedentary, agrarian regions of the country is very Thucydidean in theme; a recognition both of the spiritedness and expansionism of advanced commercial societies as well as of the tension between the social characteristics of those more commercially dynamic regions of America and those less so.²¹ Even if Federalist forces prevail in the ratification debates, *Federalist* 5 makes it clear that the Constitution is going to have to reconcile these discordant elements, highlighting that the problem of American union and federalism is not just a problem of balancing state versus federal powers. It is perhaps above all a question of attempting to shape in some uniform manner the American spirit and public opinion, bringing together disparate political, economic, and cultural elements of the sort we see in their earliest incarnations in *The Peloponnesian War*. *The Federalist*

rejects the possibility of a virtuous republic in the classical sense in much the same way that Thucydides' dismissed the ostensible virtue or martial prowess of Sparta as exaggerated mythology in ancient Greece. Thucydides sought, through the character of Pericles, to describe a more plausible virtue, originating in Athenian freedom, that seems to be an early specie of the sort of freedom we see described in *The Federalist*. And as Thucydides preferred the high civilization, adaptability, and dynamism of Athens to that of Sparta, *The Federalist* makes clear that the Constitution, with its raft of provisions intended to emancipate commercial development in America, will prefer the more enterprising culture of the Northern Hive to the less developed political economy of the more agrarian regions of the country. This again is not merely an imperative of national security and providing that wealth and technological wherewithal necessary to conduct modern warfare. It is also a function of justice, of defending what will likely go furthest to promoting that individual, political, and martial excellence *The Federalist* identifies both with the new constitutional order and the freedom it will provide individuals to develop their faculties as they see fit.

The third lesson of Thucydides' history relates to the second and concerns the specific concept of liberty that Periclean Athens stood for. As I discuss in the final section of this chapter, despite its many defects, particularly to modern eyes, the Athens of Pericles' generation was home to many distinctive freedoms and an animated spirit of the sort described by the Corinthians. The list of freedoms Pericles outlined in his funeral oration seemed to comport with those "principles of civil liberty" *Federalist* 9 traces to Greek antiquity and that it believes the Constitution will both preserve and help flourish. Thucydides' history is evidently a lament for the failure of Greek political union and the lost promise of high civilization that failure entailed. What was worse, this failure occurred immediately after the Greeks had united so effectively against the overwhelming odds they faced against Xerxes and the Persian army and navy.²² Donald Kagan has observed that Thucydides "seems to have been the first to present the view that the Peloponnesian War was a single conflict, not a series of separate wars."²³ We might speculate that Thucydides presents the Peloponnesian War as a single conflict because among other things it involved the destruction of a single union, the "country now called Hellas." This is certainly how *Federalist* 18 viewed the war, admonishing that it demonstrated the Greeks' need for a "closer union." Publius also refers to the dyspeptic features of the Spartan and Athenian confederacy leading up to the war as proving "at once the inefficiency of the union, the ambition and jealousy of its most powerful members, and the dependent and degraded condition of the rest" (18:107). Greece represented the free world as opposed to the non-free or barbarian world external to it. The destruction of Greece came at the height of what many consider to be its

“golden age.” How could a civilization of such great promise self-destruct so completely, so violently, and so soon after it had succeeded so superlatively against the Persians? After their successful Revolution of 1776 and the failure of the Confederation, Americans faced a similar potential collapse in 1787.

Seeking to understand the causes of the Greeks’ destruction and by implication what might have saved the warring parties from themselves, Thucydides’ history is the first that leads us to speculate on how national union, in this case the integrated system of Greek cities, might have been preserved. The Athenians and Spartans had combined their allies and subject states into loose confederations that held together until the Peloponnesian War. However, the entirety of the nation Thucydides referred to as Hellas had never integrated into a coherent national whole of the sort that Thucydides’ history, and particularly his *Archaeology*, seemed to contemplate. This failed consummation Thucydides seemed to lament. As we saw in the last chapter, *The Federalist* concurs with Thucydides’ assessment that the ancient Greek republics were exceedingly militaristic. This was equally true of those republics that were commercial; indeed it was precisely Athens’ imperialism, supported emphatically by its people, that led to its defeat in Syracuse. The central question then was this: How were such republics’ warlike and imperious spirit to be tamed while maintaining those principles of civil liberty critical to the preservation and expansion of civilization that commercial republicanism uniquely entailed? Thucydides seemed to seek political or institutional mechanisms that might preserve Greek union while harnessing the enterprising spirit that the height of that union, Athens, represented.

The conclusion Thucydides would seem to lead us to is that Athens alone was not enough. It needed to be complemented or tempered by something beyond itself; by other cities perhaps or other political configurations that might correct its intemperate character. Thucydides seems to introduce us to the idea of the “extended sphere.” The complete political good could not apparently be provided by the singular city if only because the city, as Thucydides demonstrated, was inevitably prone to mortal faction. In addition, it could not provide for the most essential military, economic, and political necessities that even the limited world of the Mediterranean in the fifth century BC required.²⁴ Civilization, at least civilization that was stable, necessitated something more than the city or the small agrarian republic. *Federalist* 5 seems to concur. How might the Northern Hive be reconciled to America’s South in such a way that the dynamism of the Hive would be preserved but made more moderate or tame, serving both individual interests and the general welfare? The spiritedness of commercial societies was good. The Athenians, as the Corinthians reminded us, dedicated their very bodies and intellects to Athens, as individual citizens of free societies were evidently willing to do. Maybe America’s commercial dynamism could be directed to achieve the

same social and political effects in the new constitutional order. But this could only occur in an extended sphere that would amplify commercial heterogeneity while integrating the political order through the dependence of those same heterogeneous parts on each other. Thucydides history hints at something like this in its seminal portrait of a spirited but more integrated Hellas. *The Federalist* provides us a fuller conceptualization of this seminal vision. *Federalist* 18 highlighted how much promise “the Greeks” gave up by engaging in civil war rather than establishing a “closer union” through availing “themselves of the peace which followed their success against the Persian arms” (18:107). In 1787 maybe the United States could do better.

Finally, Thucydides’ history highlights the importance of money in war, and how agrarian republics are inadequate to provide money for sustained war. The most moderate of the Spartan Kings, Archidamus, made clear to the Spartans that the Athenians conducted a *qualitatively* distinct type of warfare from the Spartans and their allies. The Athenians had greater familiarity with the sea, were well prepared in terms of hoplites, horses, and ships, and had greater wealth, both private and public.²⁵ “We neither have [money] in our treasury, nor are we ready to contribute it from our private funds,” Archidamus observed (1.80). This was a problem because as he added, “war is a matter not so much of arms as of money, which makes arms of use. And this is more than ever true in a struggle between a continental and a maritime power” (1.83). Both the Mytileneans (3.1) and Pericles made observations similar to Archidamus’. Pericles in particular, while articulating his strategy against the Spartans, like Archidamus, affirmed that the Peloponnesians were agricultural, with little private or public money. The Spartans could not leave their land for long and they had little experience in long wars across seas, the result of their poverty. “Capital,” Pericles observed, “maintains a war more than forced contributions. Farmers are a class of men that are always more ready to serve in person than in purse. Confident that the former will survive the dangers, they are by no means so sure that the latter will not be prematurely exhausted, especially if the war last longer than they expect, which it likely will.” In this same speech Pericles not only discusses the Spartans’ lack of a capital intensive political economy but also raises an argument familiar to readers of *The Federalist*: that the precondition for effective war making is the need for energy and dispatch in government:

In a single battle the Peloponnesians and their allies may be able to defy all Hellas, but they are incapacitated from carrying on a war against a power different in character from their own, by the want of the single council chamber requisite to prompt and vigorous action, and the substitution of a congress composed of various peoples, in which every state possesses an equal vote, and each presses its own ends—a condition of things which generally results in no action at all. (1:141)

This combination of warnings, that Sparta cannot prevail in a sustained war because it lacks a capital intensive economy and a government sufficiently energetic and decisive, are similar to arguments we find in *The Federalist*; outlining the defects of the Articles of Confederation, Publius would advocate the need for a constitution “equally energetic with the one proposed, to the preservation of the Union” (23:140).

There is of course a significant distance between the Greece of Thucydides’ day and the America of the founding era, including the nature of commerce in the two political orders. And there is an obvious difference between what we might call the ancient liberalism Thucydides’ history depicts and the more modern variety defended in *The Federalist*. But to what extent do these differences exist? And of what significance are they? Should we not at least consider what Thucydides might have to offer in our understanding of *The Federalist*?

ANCIENT AND MODERN LIBERALISM

Numerous political thinkers in the modern era have suggested that there is little guidance to be found in ancient political thought or ancient history of the sort Thucydides provides. Our era is so new and technologically complex, so the argument goes, our modern nations so much more different and bigger, and our political principles so much more enlightened, that attempting to draw any parallel between those early liberal republics of Thucydides’ day and those of our own is futile. But how compelling are these accounts themselves?

There are of course political commentators who have attempted to delineate the distinctions between ancient and modern liberalism. Benjamin Constant and Fustel de Coulanges, for instance, did so in the nineteenth century and Leo Strauss in the twentieth. Constant, while a defender of Athens against the parochialism and oppression of Sparta, nevertheless understood ancient Athens to possess much less individual freedom than the modern city or nineteenth-century France. The same was true of Coulanges, who expressed similar apprehensions about ancient Athens and Rome in *The Ancient City* (1864).²⁶

Writing in *The Spirit of Conquest and Usurpation* (1814), Constant remarked that “what we now call civil liberty was unknown to the majority of ancient peoples. All the Greek republics, with the exception of Athens, subjected individuals to an almost unlimited social jurisdiction. The same subjection of the individual characterized the great centuries of Rome.” Modern states were different from the ancient republics both because territorially they were larger and because the mass of their citizens, whatever form of

government they embraced, did not participate in their government. At most, they exercised “sovereignty” through representation. Constant depicted representative government as a safeguard for liberty but nevertheless as a form of sovereignty exercised “in a fictitious manner.”²⁷ In “The Liberty of the Ancients Compared With That of the Moderns” (1819), Constant refined his characterology of five years earlier. The best way to understand the distinction between ancient and modern liberty was to think of the distinction between political and individual liberty. In Greek antiquity, where citizens participated in political decision-making directly, they exercised “complete sovereignty,” deciding such important questions as whether the city would go to war or remain at peace, whether it would form alliances with foreign governments or not; the people even pronounced what we would today consider legal judgments and scrutinized public financial accounts. In short, the ancients enjoyed a comprehensive political liberty but did so at the expense of individual liberty. The latter was completely subject “to the authority of the community.” This was particularly so in those “domains which seem to us the most useful.”²⁸ Those domains not only involved individual rights such as procedural guarantees in criminal law, free speech, associational rights, religious freedom, as well as the freedom to exercise at least some influence over government through elections or representation. They also involved the freedom “to develop our own faculties as we like best.”²⁹

This latter freedom was a critical one that the development of commerce had made even more important because of the augmentation and refinement of the faculties that commerce promoted. “The exercise of political rights” offered moderns “but a part of the pleasures that the ancients found in it, while at the same time the progress of civilization, the commercial tendency of the age, the communication amongst peoples, have infinitely multiplied and varied the means of personal happiness.”³⁰ Commerce and public credit had assumed particular importance in the modern age because of how they transformed not only the nature of civil society but government as well. The moral surveillance exercised over ancient peoples, endorsed by such moderns as Jean-Jacques Rousseau and Abbé de Mably, were both oppressive and inappropriate in the modern era. The complex of social relations and those refinements of civilization that typified modern commercial life would never tolerate such surveillance. Constant maintained that censorship in antiquity did not create good morals. Rather it worked only because those morals were so simple. Today an institution of

censorship would be at once ineffective and intolerable. In the present conditions of society, morals are formed by subtle, fluctuating, elusive nuances, which would be distorted in a thousand ways if one attempted to define them more precisely. Public opinion alone can reach them; public opinion alone can

judge them, because it is of the same nature. It would rebel against any positive authority which wanted to give it greater precision.³¹

There was a new causal relationship between society, morals, and public opinion that had to be accounted for when comparing ancient to modern liberalism.

Similar to *The Federalist's* observations on this score, Constant maintained that the principal platforms from which "the present conditions of society" and governmental relations sprang were commerce and credit. Commerce was the engine that drove modern society's complexity by conferring what Constant referred to as "a new quality on property, circulation." Absent circulation political authority could interfere with property simply by preventing its enjoyment. But with circulation came "an invisible and invincible obstacle to the actions of social power." Modern commerce might have made arbitrary authority more oppressive than it had been in the past because "as our speculations are more varied, arbitrary power must multiply itself to reach them." But it also made this power easier to elude through the circulation of property and through credit. The effects of commerce, extending beyond the emancipation of individuals through the creation of credit, placed "authority itself in a position of dependence." Although it had limited influence among the ancients and as a consequence allowed their governments to be stronger than the individual, in the modern age both commerce and credit were of the utmost political significance. They gave the individual greater strength over political authorities, which were increasingly reliant on the wealth that individuals generated. All of this however had important political implications, as Constant emphasized: "since the liberty we need is different from that of the ancients, it needs a different organization from the one which would suit ancient liberty."³²

This was the difficult constitutional question that led many to conclude that ancient political thought provided little guidance for modern politics. *The Federalist*, written over 30 years earlier, would agree with much of Constant's analysis, including his observation that the spirit of the ancient republics was bellicose, owing largely to their small size and their constantly being at war. Of "the trading peoples of antiquity," Constant wrote, "their commerce was itself impregnated by the spirit of the age, by the atmosphere of war and hostility which surrounded it."³³ Publius would concur. But Constant went beyond this. "War," he proclaimed, "is all impulse, commerce, calculation. Hence it follows that an age must come in which commerce replaces war. We have reached this age."³⁴ Writing in 1819 Constant was perhaps overly optimistic. *The Federalist* was much more prescient when proclaiming that commercial peoples could be just as warlike as noncommercial peoples—maybe even more so. In the modern age it was the commercial empires that were the most militant and best prepared for war. And they knew it. Modern warfare's

demands on military science, professionalism, and wealth made commercial regimes not only the best equipped to wage war. Knowing that they enjoyed distinct advantages in the conduct of war, commercial nations arguably were more inclined to risk war precisely because they knew they could more readily reap the rewards of it. Did the history of Europe post-1819 not confirm this as much as that history dominant in 1787?

Importantly, this animated, belligerent feature of commercial nations was not only true of modernity. As we have just seen, Thucydides documented the spiritedness, innovation, and warlike character of Periclean Athens. *Federalist* 6 made much the same point, extending its heterodox interpretation of commercial republics to Greek antiquity. But this characterization of commercial republics was lost on many moderns such as Constant. He was not alone. Immediately prior to World War I Norman Angell's bestselling book *The Great Illusion* predicted that warfare between modern commercial European states would be fruitless because it was too violent and too expensive from the point of view of lost trade and investments.³⁵ History of course would prove this theory illusory but it does illustrate how only a few generations removed from Constant's assessment of modern commercial society, with its focus on trade and credit, similar assumptions about the pacific nature of the commercial West still persisted.

What then might we learn from the ancients and specifically from Thucydides? I have already suggested at least four lessons Thucydides' history might have provided *The Federalist*. There are of course others. Constant identified similarities between ancient and modern liberalism, the most significant of which consisted of the greater emphasis on political liberty in the former and individual liberty in the latter. Constant also described ancient Athens as *sui generis* in many respects. It not only practiced more individual freedom than the other Greek republics of the day but was the most commercial "of all the Greek republics. . . . The spirit of the Athenian merchants was similar to that of the merchants of our days."³⁶ Yet despite these similarities Constant rejected the idea of any firm identity between ancient Athens and modernity. In addition, he rejected the proposition that modern commercial nations were fundamentally militant in character.

Like Thucydides' history, *The Federalist* is never referred to in Constant's political works. Leo Strauss by contrast wrote extensively on Thucydides. One of the twentieth century's most astute political thinkers, Strauss understood Thucydides' relevance to modern political thought, particularly on the questions of humanity and war.³⁷ It would be a banality of course to propose that there were differences between the forms of freedom and democracy that defined the ancient and modern regimes of the West as well as the different understandings of natural right that distinguished ancient from modern political thought. Who but the most indiscriminate would deny this? To expect

ancient understandings of freedom and consent or conceptions of natural right to mirror today's would be exceedingly utopian.³⁸

Yet at the same time to disregard the teachings of ancient political thought as impertinent to modern America would be equally indiscriminate, as *The Federalist*'s numerous examples from ancient politics suggests. The "principles of civil liberty" that Constant identified with modernity were referred to in *Federalist* 9 as having their origins in Greek antiquity. How those principles might be refined, expanded, and protected through the Constitution was the task *The Federalist* charged to the natural rights constitutionalism it inaugurated. Like Constant, *The Federalist* might certainly agree that the moral surveillance, censorship, and militarism of antiquity were inappropriate to modern America. It might also agree that commerce and credit as well as the more ready circulation of property had put political authority in a position of dependence on the individual, specifically the wealth generated by individuals. But this theme is evident in Thucydides as well, whose Pericles and others celebrated the individualism, freedom, and private wealth generated in ancient Athens. As Donald Kagan has indicated, just like *Federalist* 10 Thucydides connected "the rise of civilization itself with the amassing of wealth." He also understood the importance of public finance and the need for "vast accumulations of money" to conduct war.³⁹ These were not modern discoveries, even if their refinement might have taken place in the modern era. Thucydides understood war to be a permanent feature of the human condition and that included, perhaps above all, commercial societies like Periclean Athens and ancient Corinth. Thucydides was no Enlightenment intellectual in this sense. If anything defined the modern Enlightenment, it was the exuberance it expressed toward the idea, as Constant put it, that commerce would replace war in the modern era; that commerce would bring about a new pacific epoch of civilization.

Like Thucydides *The Federalist* suggested otherwise. But like Thucydides *The Federalist* saw great promise in the spiritedness of commercial and enterprising individuals. The Constitution might introduce those correctives that could take the animated spirit here and direct it toward more salutary ends. Commerce could indeed lead to a higher-toned politics but only with the proper constitutional instruments and union. Thucydides may have been the first to educate the West about this fact. In *Federalists* 9–14 we begin to see how Publius suggests the Constitution might be used to resolve the Thucydidean trinity of reconciling a large political union with enterprise and provision for war.

NOTES

1. The text of Thucydides' history used in this chapter and throughout this book is *The Landmark Thucydides: A Comprehensive Guide to The Peloponnesian War*, ed.

Robert B. Strassler, intro. Victor Davis Hanson, trans. Richard Crawley (New York: Touchstone, 1996), hereinafter *The Peloponnesian War*. References to Thucydides that appear below are to the book, chapter, and, where appropriate, section within that chapter from the Strassler edition. For instance (1.75.4) refers to Book I, Chapter 75, Section 4 of *The Peloponnesian War*.

2. Victor Davis Hanson, *Carnage and Culture: Landmark Battles in the Rise of Western Power* (New York: Anchor Books, 2002), 6–15, 260, and 270; see also, Victor Davis Hanson, *The Father of Us All: War and History, Ancient and Modern* (New York: Bloomsbury Press, 2010), 86; Donald Kagan, *Thucydides: The Reinvention of History* (New York: Viking, 2009); and Mary P. Nichols, *Thucydides and the Pursuit of Freedom* (Ithaca, NY: Cornell University Press, 2015).

3. On this theme, see Leo Strauss, “On Thucydides’ War of the Peloponnesians and the Athenians,” in Leo Strauss, *The City and Man* (Chicago: The University of Chicago Press, 1964), 139, esp. 230–231. See also, Harvey Yunis, *Taming Democracy: Models of Political Rhetoric in Classical Athens* (Ithaca, NY: Cornell University Press, 1996), 68–69; and Nichols, *Thucydides and the Pursuit of Freedom*. Nichols stresses the role of speech in Thucydides’ history and Thucydides’ fundamental agreement with Pericles early on:

And so, Pericles says, Athenians do not think that speech and action are at odds, but that it is beneficial to be taught about what should be done before they act. Rather than being forced to act by their circumstances, Athenians are guided by speech and therewith reasons for acting in one way rather than in another. Thucydides demonstrates his agreement with Pericles by recording in his history more speeches in Athens than in any other city, and more opposing speeches in Athens than in any other city. Freedom lies in thinking about the reasons for acting and judging which actions in a given situation best serve the goods one wants to achieve. In all these ways, for Pericles, the past does not determine the future, for reason or speech has an effect on what happens. (At 4. See also, *ibid.*, 26, 46–47, 55, 59, 64, 68, and 82)

On the question of the distinction between liberty and licentiousness, it is worth noting that *Federalist* 63 warns us “that liberty may be endangered by the abuses of liberty as well as by the abuses of power; that there are numerous instances of the former as well as of the latter; and that the former, rather than the latter, are apparently most to be apprehended by the United States” (63:407).

4. Nichols, *Thucydides and the Pursuit of Freedom*, 52–53. See, also, *ibid.*, 64.

5. Aristotle’s *Politics*, trans. Carnes Lord, 2nd ed. (Chicago: The University of Chicago Press, 2013), 3–5.

6. Clifford Orwin, *The Humanity of Thucydides* (Princeton, NJ: Princeton University Press, 1994), 43; David Bolotin, “Thucydides,” in *History of Political Philosophy, 3rd Edition*, ed. Leo Strauss and Joseph Cropsey (Chicago: The University of Chicago Press, 1987), 7; and Nichols, *Thucydides and the Pursuit of Freedom*, 5.

7. That said, Thucydides does seem to concur with the Corinthians characterization of the reticence or moderation of the Spartans in a number of places in his history. One follows not long after the Corinthians first speech to the Spartans, immediately prior to their second speech at Sparta at the close of Book 1. There Thucydides outlines the extent to which, between the retreat of Xerxes and the outset of the

Peloponnesian war, “the Athenians succeeded in placing their empire on a firmer basis, and themselves advanced their own power to a very great height. The Spartans, though fully aware of it, opposed it only for a little while, but remained inactive during most of the period, being of old slow to go to war except under the pressure of necessity, and in the present instance being hampered by wars at home.” Although Thucydides reports that the Spartans did eventually respond to the growing Athenian power by deciding to go to war, they were again hesitant, first consulting the god of Delphi and then consulting again with their allies 1.118–1.119.

8. Strauss, *The City and Man*, 146.

9. Ibid., 212–213.

10. See also, Kagan, *Thucydides*, 5.

11. Robert Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century* (New York: Vintage Books, 2007), 38.

12. See Hanson, *The Father of Us All*, 85–89. See also, Kagan, *Thucydides*, 1–2.

13. Strauss, *The City and Man*, 159; see also, ibid., 161–162.

14. Ibid., 145–148.

15. This would seem to imply a rejection of Montesquieu, Rousseau, and those in the republican thesis scholarship who have held up Sparta as a model of republican virtue. There is much in Thucydides that would suggest otherwise. Thucydides remarks that “fear of their numbers and obstinacy” guided the Spartans in their approach to the Helots, “their policy at all times having been governed by the necessity of taking precautions against them” (4.80.3). See, also, Nichols, *Thucydides and the Pursuit of Freedom*, 80–81.

16. Strauss, *The City and Man*, 191–192.

17. Ibid., 170, 193, 211, and 212–213:

Thucydides presents to us a galaxy of outstanding Athenians—outstanding by intelligence or sheer cleverness and efficiency, by mobility of character or *hybris*—and only a single outstanding Spartan, Brasidas. Sparta was less threatened by outstanding men than Athens because she had so few of them; the Spartans were members of a herd rather than individuals; Sparta did not, like Athens, bring forth lions. How petty and how poor does the Spartan traitor Pausanias look in contrast with the Athenian traitors Themistocles and Alcibiades. It goes without saying that there is no Spartan whom one could for one moment dream of comparing to Pericles, who appears to be unrivalled even among the Athenians of his time.

18. Ibid., 206.

19. *Federalist* 11 itself anticipates later works such as Alfred Thayer Mahan's seminal 1890 text, *The Influence of Sea Power Upon History, 1660–1783*. Mahan's book altered the strategic vision of a number of nations, including the United States'. Like Thucydides and *The Federalist* it examined the influence of navies, from ancient Athens to modern England, from the perspective of how all elements of a nation's strength, and not just its military wherewithal, contributed to its sea power. See also, Samuel P. Huntington, *The Soldier and the State* (Cambridge, MA: Belknap/Harvard University Press, 1957), 276; and Donald Kagan, *On the Origins of War and the Preservation of Peace* (New York: Anchor Books, 1996), 134–135 and 213.

20. Nichols, *Thucydides and the Pursuit of Freedom*, 4.

21. I leave aside here of course the slavery issue discussed explicitly in *Federalist* 54 that introduces a divisive social question between America's regions of a very different sort.

22. See Hanson, *The Father of Us All*, 53–55, 86–87; and Hanson, *Carnage and Culture*, esp. chapter 2.

23. Kagan, *Thucydides*, 23.

24. See Hanson, *The Father of Us All*, 91. As Hanson remarks in his "Introduction" to *The Landmark Thucydides*:

Thucydides suggests . . . that the legacy of the Peloponnesian War would not be the victory of Spartan authoritarianism and the repudiation of the imperial democratic culture of Athens. No, it would be the irrevocable exhaustion and bankruptcy of the Greek city-state itself. The polis was, after all, an egalitarian but closed and static institution that could not adapt well to the military, economic, and political challenges of the wider Mediterranean world, changes initiated by the Persian invasion at the beginning of the fifth century, but dramatically and tragically elaborated by the virulent war between its most distinctive representatives, Athens and Sparta. (Victor Davis Hanson, "Introduction," in *The Landmark Thucydides: A Comprehensive Guide to The Peloponnesian War*, ed. Robert B. Strassler, intro. Victor Davis Hanson, trans. Richard Crawley [New York: Touchstone, 1996], xx)

25. As Hanson notes, the changing nature of warfare, not only the product of wealth production but of changing strategies and tactics, was evident not only to Thucydides but to Xenophon, whose *Anabasis* traces the march of ten thousand Greek mercenaries from Greece to Persia and back again. Hanson emphasizes that in a manner not unlike Thucydides Xenophon recognized the anachronistic character of traditional Greek warfare anchored in agrarian economies:

The Ten Thousand . . . really were a precursor to Alexander, who crushed his enemies at four set-piece battles with phalangites, but who also got to those battlefields only through the use of almost every other type of troops imaginable. One of the great stories of ancient military history was the divorce of infantry organization, tactics, and weaponry in the fourth-century B.C. from the original agrarian moral landscape of its birth. That evolution saw small farmers of the phalanx in heavy bronze panoplies give way to hired phalangites with eighteen-feet-long pikes. Somewhere in between lie the hired hoplites of the Ten Thousand, who ventured into exotic terrain against untraditional enemies, requiring changes in organization, armament, and tactics. (Hanson, *The Father of Us All*, 68. See also, *ibid.*, 132–133)

26. Numa Denis Fustel de Coulanges, *The Ancient City: A Study on the Religion, Laws, and Institutions of Greece and Rome*, foreword Arnaldo Momigliano and S.C. Humphreys (Baltimore: Johns Hopkins University Press, 1980).

27. Benjamin Constant, *Political Writings*, trans. and ed. Biancamaria Fontana (New York: Cambridge University Press, 1988), 103–104. All references to Constant's work below are to this edition.

28. *Ibid.*, 311.

29. *Ibid.*, 323.

30. *Ibid.*, 316.

31. *Ibid.*, 322.

32. *Ibid.*, 324–325.

33. Ibid., 314.

34. Ibid., 313.

35. Norman Angell, *The Great Illusion: A Study of the Relation of Military Power to National Advantage* (New York: G. P. Putnam's Sons, 1910). See also Henry R. Nau, *Perspectives on International Relations: Power, Institutions, and Ideas* (Thousand Oaks, CA: CQ Press, 2015), 103–104.

36. Constant, *Political Writings*, 315.

37. Thucydides, Strauss wrote, was a historian who saw “the singulars in the light of clearly grasped universals, the changing in the light of the permanent or sempiternal.” “Human nature” on his reading was a “part of the whole,” which itself was “characterized by the interplay between motion and rest.” For Strauss Thucydides was “a philosophic historian,” Strauss, *The City and Man*, 236. Thucydides referred to his history as a possession for all time (1.22.4). Its relevance had not diminished in the modern era. Strauss concluded that the distance between ancient and modern liberalism, and we might add between Thucydides and *The Federalist*, was not as far as some have proposed. In *Liberalism Ancient and Modern* Strauss highlighted the distinctions between ancient and modern liberalism but also the continuity between the two. As Allan Bloom remarked in his Forward to the book, “Strauss adumbrates in various ways the difference between ancient liberalism with its orientation toward human excellence and modern liberalism with its orientation toward universal freedom. But he does not treat them as polar opposites, let alone mortal antagonists. On the contrary, he reminds us that the aspirations of contemporary liberals have their roots in the Western tradition.” Leo Strauss, *Liberalism Ancient and Modern*, foreword by Allan Bloom (Chicago: The University of Chicago Press, 1995), v. Specifically they have their roots in the Western tradition of natural right, a subject central to many of Strauss’ writings, most significantly *Natural Right and History* (1953).

38. As Hanson observes in *Carnage and Culture*, 23: “Even on the most controversial of issues like freedom, consensual government, and dissent, we must judge Western failings not through the lenses of utopian perfectionism of the present, but in the context of the global landscape of the times. Western values are absolute, but they are also evolutionary, being perfect at neither their birth nor their adolescence.” Orwin highlights Strauss’ appreciation for Thucydides’ humanity in his own book by that title. See Orwin, *The Humanity of Thucydides*, esp. 6–7.

39. Kagan, *Thucydides*, 87.

Chapter 6

The Virtue of Enterprise

How then might we take the lessons from Thucydides and apply them to *The Federalist*? What exactly do we have to learn here? To recapitulate, the emphasis on the spirited, even warlike character of commercial republics that occupies the early *Federalist* numbers provides us a clue about how *The Federalist* will turn the tables on traditional republican theory in its approach to explaining the novelty of the Constitution. Why, we might ask, are *Federalists* 2–8 structured the way they are? And how do they fit with *Federalists* 9–14, which complete the first part of *The Federalist* dedicated to illuminating “the utility of the Union to your political prosperity”?

Federalists 2–8 are ostensibly about the importance of union to national security and Americans’ political prosperity. Yet in the middle of this argument *The Federalist* engages in a jeremiad against the prevailing Enlightenment orthodoxy that presumes commercial republics to be moderate and pacific. The history of such republics had demonstrated otherwise, as Thucydides’ seminal account of the Peloponnesian War revealed. *The Federalist* appeared to concur with Thucydides’ millennial-old sociology of commercial republics. Should American union be divided into an archipelago of small republics or confederacies, the result will not be comity or stable coexistence between more or less independent nation-states. Rather it will be instability and civil war. Moreover, in America war between the states would be even worse than war between those countries with regular military establishments. Conquests would be easy to execute and territory captured difficult to retain. Even those nations most attached to liberty, *Federalist* 8 proclaimed, will embrace institutions that tend to destroy civil and political freedoms to achieve that repose from the death and destruction incident to war. As “the most powerful director of national conduct,” Publius demurs, the desire for safety from external danger was stronger even

than “the ardent love of liberty,” which “will after a time, give way to its dictates” (8:42).

But why expose the United States to the dictates of that most fundamental passion for survival? The new constitutional union could avoid this eventuality altogether. It would address the four lessons from Thucydides we outlined in the last chapter. First, it would finally cut the Gordian knot of that Thucydidean trinity of union, enterprise, and war. The new constitutional union would overcome those republic-destroying incidences of faction by multiplying and integrating the disparate elements of America’s political economy, allowing the spirit of enterprise to flourish while providing adequate military instruments to secure both American liberties and commercial interests at home and abroad. Creating “one great American system,” the new constitutional order would do this without militarizing the civil state as *Federalist* 8 proclaimed. Second, the new constitutional order would also overcome the “clash of civilizations” depicted in *Federalist* 5 between the bustling hive-like manufacturing communities of the North and those more traditional agrarian communities of the South and West—a point emphasized particularly in *Federalists* 11 and 12 as we will see in chapter 7. Third, *The Federalist* sees its defense of the Constitution as safeguarding and expanding upon the specific concept of liberty that originated in ancient Athens. *Federalist* 9 highlights the origins of civil liberty in ancient Greece. As I suggested in the last chapter, defending that civil liberty as Thucydides himself seemed to suggest would require an extended sphere of territory and population. Thucydides may have preferred Athens over Sparta, as Strauss suggested, but Athens on its own was inadequate. Something more was needed than the singular city or the small agrarian republic to truly vindicate republican liberty and overcome the problem of faction. That problem was fatal to Athens. *Federalists* 9 and 10 provide us a preliminary answer regarding how the Constitution might address these issues by introducing us to the concept of the Constitution’s enlarged orbit. But in the process it will expand upon the very concept of civil liberty itself, providing new meaning to the term. I will examine these issues from *Federalists* 9 and 10 in more detail below in this chapter.

Finally, by facilitating greater commercial development than the Articles of Confederation ever did the Constitution not only recognized the importance of money in war, allowing Congress, for instance, “to borrow Money on the credit of the United States.” It also recognized the inadequacy of agrarian republics to provide sufficient financial wherewithal to win wars. This was especially true with modern wars. King Archidamus identified the qualitatively distinct type of warfare the commercial and seafaring Athenians were capable of. If war depended on money more than arms, as he proposed, and that was especially true of war between a continental and maritime power,

The Federalist seemed to recognize both the costs of war and the distinction between continental and maritime powers. But Archidamus' remarks here raise a further problem in the context of *The Federalist's* grand strategy. *Federalist* 8 had acknowledged the distinction between insular Great Britain, a maritime power, and continental Europe, with its raft of standing armies. The suggestion was that America's military posture could remain small if it emulated Great Britain. With a navy sufficient to guard America's coastline from aggressors, the United States would not have to spend much to provide for national defense since all it needed was an adequate navy. Its standing army accordingly could be minimal. *Federalist* 4 by contrast suggested the contrary. Pointing out that America's trade in China and India was now interfering with long-standing monopolies of the European powers dominant there, America's strategic profile was going to have to assume worldwide proportions. Americans were now supplying themselves with commodities from China and India rather than buying these wares from the Europeans as they had prior to 1787. This was going to cause problems with European trade in South and East Asia. To defend America's commercial traffic on such an extensive scale, *Federalist* 4 suggests, would be no small proposition. In fact, *Federalist* 4's very point in the discussion here was the antithesis of the theme of *Federalist* 8. Defending the necessity of union for purposes of security against foreign powers, *Federalist* 4 suggests that only the large commercial republic the Constitution contemplates, with its potentially unlimited military wherewithal, could provide adequate protection for America's growing worldwide commercial traffic. That traffic would not only interfere with those "sovereigns" whose nations "possess territories on or near this continent" but with imperial powers whose interests were as far away as "China and India" (4:19). Archidamus had highlighted that commercial emporiums like Athens were wealthy and capable of fighting longer wars at greater distances than the Spartans. Indeed, the Athenians had to fight longer wars at greater distances as a matter of commercial necessity to protect their expanding interests and markets. *Federalist* 4 proposes America will have to do the same.

As I will emphasize in chapter 9, the dynamic and expansionist character of commercial republics generally, and the Constitution's republic more specifically, makes it implausible *The Federalist* embraced an insularity doctrine as its grand strategy. That implausibility becomes even more compelling given the nature of modern warfare and the fact that such things as the modern art of navigation have "rendered distant nations, in great measure, neighbors" (24:149). The proximity that modern shipping and military technology alone made of formerly distant nations meant that guarding America's interests abroad, like those in China and India, would require the utmost of military capabilities and commitments. American greatness could abide nothing less.

Providing the military wherewithal to defend American interests at home and abroad depended on many things but perhaps above all on a reformed American civil state. This was another central theme of Thucydides' history, tying the capacity to conduct war above all to the civil and political culture that waged it. We will get to the issues involving the war powers under the Constitution and the insularity doctrine in chapter 9. In this chapter I focus on how *The Federalist* maintains the Constitution will improve America's civil order, that crucial prerequisite to reforming its military order. The seminal outline of this account of America's civil order is provided in *Federalists* 9–14, which I will review in the next two chapters. In this chapter I will examine *Federalists* 9–10. In chapter 7 I will examine *Federalists* 11–14. It is in *Federalists* 9–10 that we begin to see the contours of that new virtue of enterprise that *The Federalist* maintains the Constitution will make the nucleus of American character.

CLASSICAL VIRTUE ECLIPSED, THE VIRTUE OF ENTERPRISE EMBRACED

As I have already proposed, the shift in emphasis from *Federalists* 6 and 7 to *Federalist* 8 signals a shift of emphasis from the militancy of commercial republicanism to its more industrious nature in the modern commercial world. But maintaining this industrious nature would depend on the new constitutional union, without which the disunited states of America might descend into perpetual conflict. *Federalist* 9 introduced us to Montesquieu's idea of a confederate republic "as the expedient for extending the sphere of republican government." That number also revealed to us the institutional or structural components making up the improved "science of politics" (9:48–50). Montesquieu as we recall had distinguished the nature or structure of government from its animating principle or those springs or "passions that set it in motion." It was these passions in particular or what specifically moved ancient and modern commercial republics that formed the thematic center of *Federalists* 2–8, linking them to *Federalists* 9–14. By identifying commercial republics, ancient and modern, with militancy or imperialism as *Federalist* 6 did and then distinguishing the ancient Greek republics, identified as nations of soldiers, from modern America, described as industrious in *Federalist* 8, Publius sought to emphasize that commercial republics were spirited, even warlike, but at least in the case of America might be tamed for higher political, individual, and military objects.

This emphasis on the spirited and warlike character of commercial republics suggests that as much as *Federalist* 9 might have directed its readers to Montesquieu for the idea of an extended confederate republic, the early

Federalist's sociology of commerce at the same time represented a rejection of the new "science of society" that Montesquieu and others had developed and that had emerged contemporaneously with classical liberalism's new science of politics.¹ As I have proposed, this rejection may well have come from Thucydides or a Thucydidean-like account of commercial republics. We get a taste of this in *Federalist* 6, which was intended, among other things, to disabuse Americans of the idea that any republic past or present was virtuous in the traditional or comprehensive sense of that term. This included the American states of 1787.

The assessment provided in *Federalist* 6 contrasts with what Montesquieu had to say almost contemporaneously in *The Spirit of the Laws* about the ancient Greek republics of Sparta and Athens. Although Montesquieu himself did not embrace Sparta as a political regime worthy of emulation, preferring modern commercial Britain, he nevertheless portrayed Sparta as exemplifying republican virtue of the classical variety. Montesquieu had cited Sparta as a paradigm of anti-luxury republics in Book 7 of *The Spirit of the Laws* when discussing the effects of luxury on republican virtue. He again cited Sparta when emphasizing the necessity of a small extent of territory in Book 8 of *The Spirit of the Laws*. Book 8 was dedicated to examining how the principles of republics, aristocracies, and monarchies became corrupted. Republics required a small extent of territory if their principle of republican virtue was to be maintained. Only in this way could the public good be known and felt. "What made Lacedaemonia last so long is that, after all its wars, it always remained within its territory." What ended up corrupting it was Athens, which "was consumed with ambition, and transmitted this to Lacedaemonia; but this was rather to command free peoples, than to govern slaves; to be at the head of the union, rather than to rupture it. All was lost when a monarchy arose, a government whose spirit tends more toward aggrandizement."²

The Federalist again contests Montesquieu's analysis here. As I indicated in the Introduction, *Federalist* 6 proposes that it was not Athens becoming a monarchy that had led it to its aggrandizement but its commercial character and enterprising spirit. This is similar to what Thucydides had to say about Athens as well. Obviously the enterprising spirit of commercial republics was not always a bad thing, even if it could lead as Thucydides proposed to imperial overreach. *The Federalist* will in fact suggest that it is precisely the spirit of enterprise that might serve as the source for that unique American virtue that could arise under the new constitutional order—the virtue of enterprise.

In her commentary on Thucydides Mary Nichols referred to the Athenians' virtue as coming from "within," whereas the Spartans had it forced on them from "without" through harsh discipline and training. *The Federalist* seems to have something along the lines of the Athenians' virtue from "within" when

it talks about the moral reforms that will come about through the commercial and other reforms the Constitution will engender. There already exists a “spirit of enterprise” in America. The question is whether that spirit will be allowed to flourish for more salutary purposes than had occurred under the Articles of Confederation. The choice *The Federalist* suggests is available here is not, as some have proposed following Montesquieu, abandoning the traditional republican pursuit of virtue for a governmental end of liberty.³ Indeed if there was any hope for America achieving whatever virtue was necessary to maintain republicanism in the New World, as *Federalist* 55 had proposed, it could only take place under the Constitution. But what was the particular type of virtue *The Federalist* had in mind? If it was distinct from the more classical varieties that made up the content of those more “idle theories” (6:33) that had referred to a sort of virtue that could never be attained by men on earth, what did it consist of?

Publius never answers this question. At least not very explicitly. However, over the course of *Federalists* 6–14 we begin to see take shape the sort of American character *The Federalist* seems to think the Constitution and its new instruments of union will produce. That character is best defined by what I have termed “enterprise.” It is this individual trait that seems to be at the core of the new virtue that the Constitution would presumably facilitate, not among all Americans of course but perhaps over at least an ever-increasing proportion. The dictionary definition of “enterprise,” referring to individuals of “adventurous spirit or ingenuity” who undertake projects “requiring originality, boldness, or energy,”⁴ is adequate enough for our purposes. However, we could add to that definition as well. Obviously those who exercise virtue in the new constitutional order must know the moral and political foundations of that exercise and accordingly the principles on which the Constitution, which affords them their freedoms, is based. As *Federalist* 28 emphasized, effective resistance to governmental usurpation required a citizenry that understood their rights and were disposed to defend them. But there is little said in *The Federalist* about the nature of the private or civic education that will imbue Americans with that understanding of their rights adequate to know what their rights are, when they are being violated, and when action needs to be taken to defend them. This omission is understandable given that the object of *The Federalist* was to defend a Constitution of government, not an outline for American education or a revolution against government. The Constitution had virtually nothing to say of these latter issues and understandably so. However *The Federalist* does talk at some length about the nature of the American spirit that the Constitution has the potential to facilitate. Much of this will relate to the constitutional and commercial reforms we discussed in chapters 1 and 2. The theory underlying those reforms is hinted at in *Federalist* 10.

THE MEANING OF *FEDERALIST* 10

Forming a transition from *Federalist* 8 on the consequences of war in a divided America to the remainder of *The Federalist*, *Federalists* 9 and 10 were dedicated to the question of how the narrowness of party or domestic faction might be mitigated by the new constitutional union but in a manner consistent with republican principles. *Federalists* 9 and 10 suggest that the Constitution will address the nature of factional struggle in American politics through the creation of an extended commercial union that will, in the language of Hobbes, crush the children of pride and the spirit of vanity. These elements had too often defined the nature of earlier, more martial republics. *The Federalist's* natural rights constitutionalism would be different, based as it was on the principles of the Declaration of Independence. Given that those principles were fixed, this further implied that the Constitution would extinguish politics understood as widespread and perennial contests over such fundamental political or constitutional principles.⁵ The central question then was how the Constitution might clarify and better realize those principles. *Federalist* 10 helps us answer that question.

Although some scholars have pooh-poohed the importance of *Federalist* 10, suggesting, on the one hand, that what Madison writes there conflicts with Hamilton's advocacy of "the benefits of an expanding commerce," and, on the other, that *Federalist* 10's theory of republicanism and of human nature were thin and "barely hinted at other deep concerns,"⁶ the account below begs to differ. *Federalist* 10, although compact, reflects a comprehensive vision of republicanism that Madison, Hamilton, and Jay develop throughout *The Federalist*. Madison thought long and hard about the themes of *Federalist* 10, as his remarks at the Federal Convention June 6 and other evidence, such as his letter to Thomas Jefferson October 24, 1787, make clear.⁷ However, we do not need to stray beyond the text of *The Federalist* to know how careful Madison was with his language there and how comprehensive *Federalist* 10 was in its implications. It is evident both in the precision of the language used in *Federalist* 10 and how well its themes integrate with those themes of *The Federalist* numbers immediately surrounding it. *Federalists* 9–14 form a coherent whole and comport with the broader themes of *The Federalist's* natural rights constitutionalism.

That constitutionalism helps to explain the argument of *Federalist* 10 and precisely how the new Constitution will remedy the defects of the Articles of Confederation. Again, *Federalist* 10 defined "the first object of government" as the protection of "[t]he diversity in the faculties of men, from which the rights of property originate." Importantly, *Federalist* 10 does not describe the first object of government as the protection of property or of private property but rather as the protection of the diverse *faculties* from which the rights of

property originate. *Federalist* 10's first object appears to be broader than the mere protection of property since the acquisition of property or the acquisition of a *right* to property is only *one* aspect of the protection of individual faculties. Men enter political society, *Federalist* 10 suggests, to protect their faculties writ large, not merely their faculties of acquiring property.⁸ The original draft of the Declaration of Independence, prior to the full committee's revisions, we recall, had referred to "property" rather than the "pursuit of happiness." The latter, which was eventually adopted, was broader in its signification, implying human fulfillment, even the pursuit of excellence, of almost any sort. As Harry Jaffa has observed the Declaration does not follow what some believed to be the contention of both Hobbes and Locke (who allegedly followed Hobbes in this regard) that man did not have a natural end or *summum bonum* but simply sought to avoid the *summum malum*—death and especially violent death. This has been seen by critics, such as Jean-Jacques Rousseau, perhaps Hobbes' and Locke's most incisive antagonist, as a defect in their political philosophy. However, as Jaffa writes,

every schoolboy knows—or at least once knew—that Jefferson departed from Locke in declaring that among man's unalienable rights were life, liberty, and the pursuit of happiness—happiness, mind you, and not "property" or "estate." If man in the state of nature, or by nature, pursues happiness, then by nature he pursues a *summum bonum* and does not merely flee a *summum malum*. This theoretical defect in Hobbes' and Locke's teaching is then not a necessary defect of the Declaration.⁹

As Jaffa suggests the Declaration pursues an Aristotelean-like *summum bonum* and both it and the teaching of *The Federalist*, which follows it, are distinct from the philosophy of Hobbes and Locke in this critical respect.¹⁰ As we will see later there are other important respects in which *Federalist* 10 distinguishes itself from the teachings of Hobbes and Locke, again testifying to the originality and philosophical depth of that *Federalist* number.

Federalist 9 had suggested that it was to "promote the greatness" as well as the "happiness of the people of America" that the Constitution had been embraced by its framers (9:50). Other *Federalist* numbers had made happiness an end of the Constitution, the government it sought to create, and the Union.¹¹ Although the pursuit of happiness had never before been made an inalienable right forming the basis of a nation, as both the Declaration and *The Federalist* proposed, defining politics as aiming at happiness had a significant legacy in Western political thought, beginning with Aristotle. His *Nicomachean Ethics* proposed that however much men might disagree on just what happiness (*eudaimonia*) consisted of, they could at least agree that it was the aim of the political art.¹² *The Federalist* draws a number of parallels to Aristotle's political philosophy, as it does to Thucydides' political and

military theory, again suggesting that the Constitution is not just an instrument of modern liberal political philosophy.

In the *Politics* Aristotle elaborated on the meaning of the city in much the same way Thucydides did (as we saw in chapter 5). Whereas household economy originated out of the necessities of procreation and preservation of the family, and the village or the union of several households provided for non-daily needs, it was only in the city that the complete political life or the good life could take place.¹³ Only the city was self-sufficient and allowed for the full cultivation of speech (*logos*), which “man alone among the animals” possessed. It was this that provided man the ability to distinguish justice from injustice, the advantageous from the harmful.¹⁴ The genesis of politics was in the family and the village but it was only in the city—the *polis*—that that form of political association sufficient to the fulfillment of human nature could be achieved.

The reason for this, as was the case with Thucydides, seemed to be the city’s heterogeneity. The city, Aristotle maintained, was “made up not only of a number of human beings, but also of those differing in kind: a city does not arise from persons who are similar.”¹⁵ Heterogeneity was not a sufficient condition for the development of individual, political, or martial excellence but it seemed to be a necessary condition for these, at least in most cases. It had been Plato’s error, as it was the error of all those who saw communal ownership or communism as a solution to factious conflict originating in property, that he attempted to achieve political unity by eliminating private ownership—not only private ownership of property but of women and children as well. This applied at least to the guardians or those who were to rule the ideal city.¹⁶ Political community was necessarily a community of property but Aristotle stressed that it was not “the lack of sharing” that created the “ills” associated with it but “depravity,” which is to say moral depravity or deprivation of character.¹⁷ Unequal property was not what caused factious division among men so much as the disorder of their souls. Like Phaleas of Chalcedon, who proposed that property should be equalized because inequality of property was the cause of faction, Plato confused cause with effect. Unequal property was not the source of faction. Rather an excess of desire was. Believing that by solving the narrow *economic* problem of unequal property a particular regime could solve the broader *political* problem of faction per se Plato, like Phaleas, took too slender a view of politics. He overlooked the more inveterate sources of faction arising out of desires for honor and unnecessary pleasures. “[F]actional conflict,” Aristotle observes, “occurs not only because of inequality of possessions, but also because of inequality of honors, though in an opposite way in each case; for the many engage in factional conflict because possessions are unequal, but the refined do so if honors are equal—hence the verse ‘in single honor whether vile or worthy.’”¹⁸

The verse here is from Homer's *Iliad* and it is instructive. It is made by Achilles, Homer's consummate tragic hero forever consumed by the intrigues of passion; by anger, love, and grief. In the verse Achilles rejects the pleas of Odysseus that he return from self-imposed exile to again assist the cause of the Achaeans in taking up battle against Troy. Unmoved by Odysseus' pleas, Achilles specifically refuses Odysseus' many offerings of tangible rewards to assist the Achaeans. The reason is that Achilles' previous heroic acts have all been in vain. He fought with courage and achieved glory only to have Agamemnon, commander of the Achaeans, take his beloved Briseis, his only real love and his true prize of honor. Whether he fights the Trojans or not, the same fate awaits him. Achilles will not be denied twice. His heart has taken all of the affliction it can.¹⁹

Aristotle invokes Homer in his discussion of Phaeas to emphasize the strength of the passion of honor. The war with the Trojans was not a war over questions of property or of interest. Originating in the theft of Helen by Paris it was rather a war of passion or pride, symbolic of the strength of those sources of faction beyond the necessary things or beyond property that cause political strife. The Trojan War also illustrated the potential vanity, if not outright silliness, of honor as a spring for political action. The war was as much comedy or farce as it was tragedy. It was fought over a woman.²⁰ If nothing else, the Trojan War illustrates the fickleness of human nature.

The Federalist agrees with Aristotle that the equalization of property will not resolve the violence of faction. *Federalist* 10 refers to the "rage . . . for an equal division of property" as a "wicked project," an injustice. Demanding an equalization of property, at a very minimum, would seem to violate the fundamental, natural right of individuals to retain the fruits of their labor. It would also be imprudent or "improper" as *Federalist* 10 puts it (10:61). It would undermine the stability of the commercial order as well as society's moral order. *The Federalist* also agrees with Aristotle's political anthropology insofar as it proposes that passion is the most dangerous and intractable source of faction. "By a faction," Publius' well-known formulation goes, "I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." We see here again how faction threatens the two principal ends the Constitution was to secure: private rights ("the rights of other citizens") and the public good ("the permanent and aggregate interests of the community"). Additionally, any number of citizens, a majority or a minority, can qualify as a faction and factions are animated by two common impulses: those of passion and those of interest.

Like Aristotle, *The Federalist* finds that it is primarily the former—factions actuated by the impulse of passion—that pose the most significant threat to

civil order. Following many classical liberal thinkers before him, Publius not only understood the centrality of interest and passion as the principal moving impulses of politics,²¹ but that the most tempestuous and explosive factions were those animated by passion, particularly collective passion.²² Governments, for instance, that sought to inculcate men's faculties with religious doctrine or whose object was the salvation of souls were not only wrong as a matter of principle because they afforded government too much power over the individual's conscience and rights of self-government. They were also imprudently constructed since many such governments met violent deaths precisely because they incited those volcanic passions of rage that attached to differing religious opinions.²³ As *Federalist* 10 proposed:

The latent causes of faction are . . . sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. (10:55–56)

The theme here is compact but clear. Although the most common and durable sources of faction originate in the various and unequal distribution of property, the *most violent conflicts* originate in unfriendly *passions*. These, like perhaps the mythological war over Helen of Troy, are capable of being ignited by insubstantial occasions and by the most frivolous and fanciful distinctions. It would seem that it is these latter conflicts anchored in unfriendly passions that are most to be avoided since they result in the greatest violence. Avoiding such violence or any increased incidences of faction will depend upon manipulating those “circumstances of civil society” that bring the causes of faction into “different degrees of activity.” Shaping or controlling these circumstances would seem critical to reducing the degrees of activity that accelerate or decrease the latent causes of faction, whether they be those animated by impulses of passion or of interest.

This of course is where the enlarged geographic and governmental sphere introduced in *Federalist* 9 becomes most significant, as Martin Diamond and

others have pointed out. *Federalist* 10 emphasized that “the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government” was not only a key point of distinction between the two forms of government. It further stressed that it was “this circumstance *principally* which renders factious combinations less to be dreaded in the former than in the latter” (10:60, emphasis added). *The Federalist’s* rejection of direct democracies in favor of representative or republican government spread out over a large territory like that of the United States is well known. Republics allowed government to be delegated to a small number of representatives, a process that was intended to “refine and enlarge the public views” through the medium of representation (10:58–59). Also, a large republic presented the greater likelihood of choosing more fit characters for representatives, given the greater choice available. It also rendered it less likely that more unworthy candidates would get elected since more citizens voted in elections in large republics. This at least was the theory set out in *Federalist* 10. Even if it worked however such representational remedies to the incidences of faction, like the Constitution’s other institutional remedies—separation of powers, checks and balances, federalism, and judges holding office during good behavior—were designed to check the factionalism of oppressive majorities only *after* they had formed.

What was needed was some mechanism that would check such factionalism *before* it could form. As *The Federalist* implored, the problem of faction needed to be addressed most fundamentally at the level of *society*, before it could infiltrate the ranks of government.²⁴ If it was the “circumstances of civil society” that brought the causes of faction into “different degrees of activity,” as *Federalist* 10 proposed, then it was *those* circumstances most importantly that would have to be manipulated by the Constitution if the degrees of faction currently prevalent in the United States were to be lessened. Although the Constitution’s institutional features would certainly contribute to this by shaping the spirit of the laws that would presumably alter and temper the circumstances of civil society, *Federalist* 10 suggests that it was the extended sphere above all that was intended to serve this purpose. “Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other” (10:60).

As Martin Diamond has explained, it was not just any large republic that would do in forming the Constitution’s designs against faction. Since historically there had existed many large political regimes that had broken down into simple classes—rich on the one side, undifferentiated poor on the other—only in a large *commercial* republic could propertied interests be

sufficiently differentiated to avoid the class conflict that had been the bane of republics since time immemorial.²⁵ *Federalist* 10 had stressed that “From the protection of the different and unequal faculties of acquiring property, the possession of different *degrees* and *kinds* of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties” (10:55, emphasis added). As Diamond interpreted *Federalist* 10, key to resolving the problem of faction was replacing divisions over *degrees or amounts* of property with divisions over *kinds* of property. Only by multiplying the number of economic interests in the United States to such an extent that those interests could never coalesce around distinct classes, with all the class conflict of the Marxist variety certain to ensue, could the problem of class-driven faction be overcome. “At present some of the States are little more than a society of husbandmen,” *Federalist* 56 observed. “Few of them have made much progress in those branches of industry which give a variety and complexity to the affairs of a nation” (56:363). The development of commerce would be necessary to provide this variety and complexity. But once it was provided and the *kinds* of property or interests in the United States began to be multiplied in such a way as to overcome divisions over *degrees* of property or interests, the conditions would be set for overcoming those class conflicts that had so fatally undermined republics in the past. It was in this sense, as I noted in the Introduction, that Diamond highlighted just how James Madison in *Federalist* 10 “gave a beforehand answer to Marx.”²⁶ As Diamond clarified: “Madison’s whole scheme essentially comes down to this. The struggle of classes is to be replaced by a struggle of interests. The class struggle is domestic convulsion; the struggle of interests is a safe, even energizing, struggle which is compatible with, or even promotes, the safety and stability of society.”²⁷

We can understand *The Federalist*’s proposal to create a virtue out of enterprise as well as its attempt to aid, in Lockean terms, the “industrious and rational” while discouraging “the fancy or covetousness of the quarrelsome and contentious,”²⁸ through this vehicle of the energizing struggle of interests Diamond refers to. Diamond interprets this energizing struggle as a mechanism for promoting “the safety and stability of society.” It is certainly that and Diamond’s construction of *The Federalist*’s doctrine here as something approximating Tocqueville’s concept of “self-interest rightly understood” is compelling.²⁹ But like Tocqueville’s account it is also deficient. As congenial to human appetite as human comfort and security were, they were not lofty or noble political objects on Diamond’s reading. *The Federalist*’s project to remedy faction came at a price since “in order to defuse the dangerous factional force of opinion, passion, and class interest,” it deliberately risked “magnifying and multiplying in American life the selfish, the interested, the

narrow, the vulgar, and the crassly economic.” Diamond described the American way as “solid but low,” at least compared to “the premodern perspective.”³⁰ He certainly did not deny that virtue and excellence, even the “love of learning,” could be cultivated under the new constitutional order. But this would have to be done “privately”—in the private sphere, outside the scope of the political.³¹ Americans might aspire to virtue but their virtues would be “bourgeois virtues,” the virtues Montesquieu associated with commercial democracies: “frugality, economy, moderation, labor, prudence, tranquility, order, and rule.”³² We might call these, in Locke’s terms, the virtues of the “industrious and rational.”

However we label them, for Diamond they were virtues that paled in comparison to the self-sacrificing and martial virtues the ancients sought to inculcate in their political philosophy. But did Diamond get either the ancients or America right? The question concerning the defense of the Constitution, as *The Federalist* understands this, turns largely on the distinctions Diamond introduces here. Diamond is correct to emphasize that the cultivation of virtue in the classical sense was outside the scope of the political on both *The Federalist*’s and the founders’ readings more generally. There is virtually no mention of the classical understanding of virtue in *The Federalist* and for good reason. It was the pursuit of such a harsh understanding of human action that we have already seen Publius dismissed as little more than the seductive reveries or deceitful dreams of a golden age—an age that never existed, never would exist, and that failed to account for the imperfections, weaknesses, and evils incident to *all* societies. Moreover, what is typically referred to as classical virtue too often broke down, in its practical application, to some sort of martial belligerence. This is the important transition that *Federalist* 8 introduces with its distinction between the industrious people of the present day and the unduly militant character of the ancient Greek republics. *Federalist* 10 again fortifies the themes from *Federalists* 6 and 8 when discussing what it maintains are the only two possible remedies to the problem of majority faction in popular government:

Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful. (10:57–58)

Pure democracies, administered in person by a small number of citizens, cannot remedy the problem of faction because “a common passion or interest

will, in almost every case, be felt by a majority of the whole.” Accordingly, “such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths” (ibid.). The only solution was therefore a republic and, more specifically, a large republic.

In addition, *Federalist* 10 makes clear that old-school understandings of virtue that sought to constrain individuals through moral education or through the discipline of religion could not work to maintain political order since “neither moral nor religious motives” had adequate control over individuals. They had even less control over collectivities, where their putative restraints became weaker as they became more imperative.³³ Classical understandings of republicanism that generally looked at small states as the ideal for achieving a high level of citizen virtue devoted to self-sacrifice and the common good over-estimated the potentialities of human nature, particularly men in their political or collective capacity. *The Federalist’s* political anthropology and its understanding of republicanism is more constrained than the classical understanding embraced by opponents of the Constitution during the ratification debates. But to repeat, this was not synonymous with abandoning all forms of virtue as Diamond and others in the republican thesis school have suggested. Rather *The Federalist* views the new Constitution as the *precondition* for the development of what I have referred to as a new virtue of enterprise. Such a novel concept of virtue would have to cater to the full scope of human proclivities and talents that the more capacious understanding of human happiness consistent with the principles of the Declaration of Independence required. In other words, if the Constitution was to live up to its billing as a full vindication of the principles of the Declaration, as *The Federalist* proposed, it would have to, *of necessity*, be more comprehensive in the form of civic order it facilitated than what Diamond was prepared to concede. Those “different circumstances of civil society” referred to in *Federalist* 10 would have to allow for the pursuit of human activities beyond those that were merely acquisitive in nature, as important as these latter nevertheless were to political order, wealth generation, and security.

Diamond was well aware of the ancient, and particularly Aristotelean, teaching regarding happiness, the importance of speech and its relation to reason, and the guidance to human action and opinion provided by ethics. The “idea of character formation,” Diamond emphasized, was the very “foundation of the ancient idea of ethics.”³⁴ As the analysis in this book has made clear Publius did not accept that self-sacrificing virtue could ever be the foundation of republican government. *Federalist* 10 acknowledged that man had a political nature but it did not consist of his instinctive sociability, as Rousseau or members of the Scottish Enlightenment might have proposed.

Rather, it consisted of man's capacity to think and speak, which as I suggested in the last chapter may have had its origins in Thucydides and in particular Thucydides' understanding of the role of speech, reason, and justice that constituted the essence of Greek, and particularly, Athenian, life.

Aristotle understood human nature in similar terms. Speech or the capacity to reason is what distinguished man from the animals. It is what made for man's political nature. Diamond maintained that in *Federalist* 10 "Madison is at one with Aristotle in recognizing the power and autonomy of the speaking-reasoning or opining capacity of man." The difference between Madison and Aristotle "as to what should be done with that capacity" is what constitutes "the difference between modernity and antiquity."³⁵ Diamond's argument regarding *Federalist* 10 here is interesting but again the question is whether he gets Madison right.

Diamond recognized, as was emphasized above, that the crucial passage in *Federalist* 10 was Madison's proposal that it was the manipulation of the different circumstances of *civil society* that was key to remedying the incidences of faction in modern America. Much, if not everything, seems to turn on how these circumstances will be manipulated. Reading through the critical passages of *Federalist* 10 Diamond outlines a "threefold typology of factions": those originating in opinion, passion, and interest. As his remarks above indicate, Diamond interprets Madison to want to downplay those forms of faction originating in opinion and passion and to manipulate the circumstances of civil society so that the unequal struggle over *amounts* of property is replaced by "a new kind of economic faction derived from the *variety* of property."³⁶ The focus here is still on interests but it is property-related interests of a more variegated sort than those anchored in simple class-based divisions over unequal property that pits rich against poor, haves against have-nots. And again an extensive, highly advanced commercial society is the prerequisite for Madison's vision here. As *Federalist* 10 makes clear, the more civilization advances, the more complex become those relations of commerce; an increasing variety of interests "grow up of necessity in civilized nations." And the nature of these interests will largely define the nature of federalism under the Constitution's expansive republicanism; "the great and aggregate interests being referred to the national [legislature], the local and particular to the State legislatures" (10:60).³⁷

It is not however on the question of interests that Diamond is most apprehensive about Madison's "threefold typology of factions." Rather it is on the question of opinion. And it is here that our question about Aristotle and the opining faculty of man becomes central. For Diamond, those opinions referred to in *Federalist* 10 where Madison speaks of the "latent causes of faction" (see the quote above)

are not merely rationalizations of prior passion or interest, but are rather the autonomous product of the high human need and capacity to opine about such elevated matters as, say, what is advantageous and just.

Now, Aristotelian political science . . . takes its bearing from just this high human capacity. From the classic perspective, *the* political task is to refine and improve a regime's opinion of what is advantageous and just and to help thereby improve the human characters formed by that regime. But Madison instead turns away almost in horror from the human "zeal for different opinions concerning religion, concerning government." He is only too aware that such opining has rendered mankind "much more disposed to vex and oppress each other than to co-operate for their common good." From the perspective of the new political science, it is apparently too risky to rely on refining and improving a society's opinions. The statesmanly task, rather, is to mute as much as possible the force of religious and political opining as a cause of faction. Such opinion is not so much to be improved as tamed or devitalized.

Madison comes to a similar conclusion regarding factions that derive directly from the human passions.³⁸

We might agree with Diamond here that Madison seeks to tame or devitalize factions that derive directly from the human passions. That seems clear enough from the language and theory of *Federalist* 10 which stresses that the "most violent conflicts" originate in "unfriendly passions." However Diamond's statement that Madison takes the same approach with respect to the question of opinion is suspect. His contention that "from the perspective of the new political science"—which presumably includes Madison's political science—"it is apparently too risky to rely on refining and improving a society's opinions" disregards the argument we examined in chapter 1 about *The Federalist's* emphasis on the importance of reshaping opinion and maintaining it over time.

As we have already seen Madison was certainly concerned with the opining faculty of man that yearns to understand such elevated matters as what is advantageous and just, which Diamond acknowledges is the highest element of Aristotelian political science. *The Federalist* itself, a series of newspaper articles, as its Preface proclaims, is dedicated to "the cause of truth" and "intentionally indulged" "repetitions of ideas" out of a "[r]espect for public opinion." Madison's statement in *Federalist* 51 that "justice is the end of government" and "the end of civil society" and that it will forever "be pursued until it be obtained, or until liberty be lost in the pursuit" (51:334), suggests that the Constitution will bring about a comprehensive form of justice that will extend beyond the world of government to the private sphere of society. Presumably men's opinions will be shaped in the process. Indeed, it would seem that *the* most important task of *The Federalist* is precisely to shape Americans' opinions on this very issue of the Constitution's justice.

Federalist 10 alone confirms this. It may well be the case that “neither moral nor religious motives can be relied on as an adequate control” for majority faction but this is not to say that the Constitution does not have a moral foundation or that men’s opinions cannot be shaped in a manner consistent with principles of justice. It is simply to acknowledge the inefficacy of relying on these mechanisms for purposes of relieving or mitigating the problem of majority faction.

Federalist 10 begins with the Declaration that under the Articles of Confederation measures had “too often [been] decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority” (10:54). Similarly, in legislative matters and specifically in matters involving disputes between debtors and creditors, *Federalist* 10 proclaims: “Justice ought to hold the balance between them” (10:56). Presumably in both of these cases the Constitution will facilitate the institution of justice in these matters. And how could it institute such a thing if there was not a concern about questions of justice among those who framed, defended, and ratified the Constitution? And what about those who would later defend the Constitution and its derivative politics? How could these be defended other than on the basis of their justice or what was right as opposed to what was wrong? We noted earlier that *Federalist* 10 went to great lengths to emphasize that on questions of property and the redistribution of wealth what was at issue were not merely matters of utility but of justice. At stake were questions involving the exercise of one’s liberty and the freedom to use one’s mind and body as one saw fit. In chapter 1 we also saw how Madison in *Federalist* 49 was of a mind that opinion formed the basis of government, echoing Hamilton’s remarks in *Federalist* 84 that “public opinion” and “the general spirit of the people and of the government” provided “the only solid basis of all our rights” (84:551). On Madison’s reading, as on Hamilton’s, the key to the Constitution’s success ultimately turned on how it would shape public opinion. Without properly informed opinion, the foundations of government would dissolve.

More evidence from *The Federalist* could be cited here but this might be sufficient for us to agree with Diamond’s critics’ that his approach to *The Federalist* was too one-dimensional.³⁹ Diamond suffered on the one hand from too narrow a view of the Constitution’s commercial republican theory and on the other from too low a view of its objects. Madison may have sought to tame overzealous opinion on questions of religion and government and he was ostensibly as suspicious as Aristotle about the fickleness of public opinion, particularly in democratic regimes. But the very point of the Constitution’s republicanism, as *Federalist* 10 makes clear, was to improve that opinion not to silence it or “to mute as much as possible the force” of it. In the language of *Federalist* 10, the Constitution’s republicanism was designed “to

refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations” (10:58–59). Here again the theme of justice is central and the free exchange of opinions is presupposed. It is also evident that the people’s representatives under the Constitution will assist in the shaping of public opinion by refining *and* enlarging it. *The Federalist* also assumes as we saw earlier that the people themselves, having the responsibility of self-governance, will be expected to have a relatively high level of politically educated opinion. Ultimately they will be the final arbiters of the government, enforcing principles of justice and constitutional limits on their representatives’ actions. How, again, could this occur by muting the force of opinion?

None of this of course is to say that *The Federalist*’s theory of republicanism is not of a piece with much classical liberalism, as Diamond proposed. Predicated on the recognition that the difficult question for representative institutions was not so much how to *receive* interests into the legislature but rather how to refine them and combine them effectively for the general welfare,⁴⁰ the case for union centered on the question of around just what specific interests would political bonds be formed? Classical liberal political science, developed by Hobbes and later honed by the likes of Locke, Montesquieu, and Hume, originated in a political anthropology that understood individuals to be divided naturally by their passions but capable of being united artificially by their interests.⁴¹ Property (for Locke) and commerce (for Montesquieu and Hume) were essential to this project of unification, the preconditions for stable and energetic government. *Federalist* 10 agreed with classical liberal theory that political conflict originating in emotion or passion was typically excited by frivolous, insubstantial causes. By contrast, political conflict originating in interest derived primarily from relations of property, relations that might ultimately be reconciled. Again, property interests were not only rational interests, necessary to the support of life and liberty, but because they directed men’s attention to those concrete realities that might be improved they were key to the promise of reconciliation and good government.

By contrast, the most destructive and explosive factions, as *Federalist* 10 indicated, were those anchored in passion—in afflictions such as pride, hatred, and vanity. These conflicts, above all, were to be avoided. As historians and political theorists have informed us, the new science of politics that provided much of the blueprint for the Constitution, and that the Constitution improved upon yet again, emerged against a backdrop of violent ethnic and religious wars that marked the nadir of European politics throughout the seventeenth and eighteenth centuries. *Federalist* 17 pointed out how political union in Britain overcame the “fierce and ungovernable” “spirit of clanship”

in Scotland, subordinating this spirit to “a more rational and more energetic system of civil polity” (17:104). The Constitution’s extended commercial union would presumably provide a more energetic system of civil polity for the United States too. Classical liberal theory assumed that factious conflicts, such as those originating in atavistic ideas of clanship or in other passionate attachments to revealed religion or ethnoracial chauvinism, might be smoothed over, if not eliminated altogether, by anchoring political bonds in relations of property with a view to promoting safety, stability, and material well-being. This is consistent with what Diamond suggested.

Yet *The Federalist* seemed to have a more capacious understanding of the faculties that might be both protected and exercised under the Constitution than the limited version Diamond proposed was coeval with what might promote the safety and the stability of society. *Federalist* 10 emphasized that it is the protection of the “diversity in the faculties of men” that is the first object of government; it is not merely the acquisitive faculties or property-generating faculties that the Constitution must protect but *any* faculties that might serve the public good or individual rights—those ends *Federalist* 10 informs us the Constitution was to secure against majority faction. Publius’ emphasis on the *diversity* of the faculties of men in *Federalist* 10 contrasts with Hobbes’ and Locke’s proposal that it is the *equality* of men’s faculties that forms the basis of the political equality they make the foundation of their political teachings.⁴² We will examine these distinctions in more detail in chapter 10 when we discuss *Federalist* 37 and Publius’ subsequent examination of federal powers facilitating commercial development. For now, suffice it to say that *The Federalist* seemed to have the highest of the human faculties, those that might serve innovation and science, military development, and even the philosophical arts, in mind when it spoke of what the first object of government must protect. Exercising one’s private rights in freedom from governmental interference certainly meant the freedom to exercise one’s faculties as one saw fit. But *The Federalist* went further than this: These principles of self-government might produce in the United States not just unparalleled freedom but forms of greatness and human excellence never before seen. The evocations in those numbers immediately following *Federalist* 10—that it was up to America “to vindicate the honor of the human race”; (11:69) that it was “the glory of the people of America” that they had engaged in “numerous innovations . . . in favor of private rights and public happiness”; that Americans had “accomplished a revolution which has no parallel in the annals of human society”; (14:84–85) and that they should “disdain to be the instruments of European greatness” and erect “one great American system” (11:69)—testify to this. How could American greatness compete with European greatness if it did not include all of those elements that made up the heights of European greatness or of what we have come to

know as Western civilization—the heights of philosophy and the arts and sciences?

At a minimum it would seem critical to *The Federalist*'s mission of defending the Constitution that it demonstrate how the Constitution might contribute to this achievement of American greatness. And part of this would consist in demonstrating to the American public precisely how the Constitution might, as *Federalists* 8–10 hinted, assist the industrious and rational while impeding the machinations of the quarrelsome and contentious. The quarrelsome and contentious, *Federalists* 8–10 suggested, had dominated the small democracies and republics of ancient and modern history. The Constitution would avoid the many dangerous vices these small republics exemplified. It would do so however by reversing the assumptions of old-school republicanism and instituting an unprecedented form of large-scale republicanism. How that large-scale republicanism would assist the industrious and rational, effectively making a virtue out of enterprise, was a critical issue the early *Federalist* tasked itself with addressing.

REVISITING THE LESSONS FROM THUCYDIDES

As *Federalist* 10 proposed only a large commercial republic could provide both the complex of interests that made up modern civilization as well as the opportunities necessary for the development of human faculties that it was the first object of government to protect. Commerce was an implied term of the argument in *Federalist* 10 because without it the multiplicity of interests discussed there could never be produced. Although the advanced industrial society that defined the nineteenth century had yet to emerge, *The Federalist* seems both to anticipate it and to defend it. It does this in *Federalist* 10 and especially in *Federalist* 11, which explains “[t]he importance of the Union, in a commercial light” (11:62).⁴³ Yet the logic of the argument here is as old as Thucydides and Aristotle. It was they who, perhaps more than any other ancient thinkers, first realized the importance of the heterogeneity of the city and of commercial trade for the advancement of freedom and civilization. Thucydides also stressed the significance of a navy for the protection and extension of commercial enterprise.

Diamond was certainly correct to propose that the large commercial republic *The Federalist* outlines in its defense of the Constitution would engender the sort of “energizing struggle” between property interests that he described. Yet the effects of the commercial republic would be more ubiquitous, working to energize all aspects of civil society. This again is a very Thucydidean theme and speaks to how the Constitution would not merely serve the purely utilitarian function of mitigating faction. Thucydides, and perhaps above all

Thucydides' Pericles, described the novelty of Athens, its energy, innovative character, and civilizational dynamism. Athenians pursued wealth for use rather than show and had forced every sea and land to be the highway of their daring. Perhaps Americans could do the same under the Constitution. But this would require the Thucydidean trinity of union, the development of enterprise, and provision for war, including the establishment of a navy as *Federalist* 11 will contend. Along with other *Federalist* numbers, *Federalist* 11 also suggests that an insularity doctrine as the grand strategy for the Constitution will have to be rejected. America's commercial development mandated such an outcome. As I indicated in the last chapter, rejection of an insularity doctrine appeared to be a corollary of the first lesson from Thucydides' history regarding the need for the Thucydidean trinity.

As this chapter has suggested, the Constitution would cultivate a new and more plausible virtue, a distinctly American virtue of enterprise. *Federalists* 11 and 12 propose that developing such a virtue would have the social and political consequence of overcoming that "clash of civilizations" between the Northern Hive and the more agrarian regions of the country. This argument again reminds us of the second lesson from Thucydides that was outlined in chapter 5. As we will see in the next chapter, *Federalist* 12 will deny any rivalry between commerce and agriculture and propose instead that the two are mutually beneficial. In terms that both Thucydides and Montesquieu would understand, the Constitution would foment a new American spirit that was more energetic, both improving and refining what *The Federalist* suggests is a concept of liberty unique to Western civilization and that originated in ancient Greece.

As Thucydides' third lesson proposed, in order to facilitate that liberty and secure it on a more permanent basis from factious strife something more was needed than what the singular city, Athens, could provide. The Constitution's proposed extended sphere would deliver the solution here and would assist with cultivating an improved public opinion that Publius suggests would also be more uniform. As Thucydides recounted, the spirit of Athens was related to its seminal form of freedom and its enterprising character. Athenians dedicated their very bodies and intellects to their city as the Corinthians informed the Spartans early in Thucydides' history. Perhaps the Constitution again could inaugurate the same sort of patriotic spirit in the United States. Yet in America's case this spirit and related opinion would presumably be more moderate and less imperialistic as *Federalist* 10 suggested. Among other things, they would be anchored in the modest and egalitarian principles of the Declaration of Independence.

Finally, as we will see in chapters 7–9, *Federalist* 11 as well as later *Federalist* numbers also address Thucydides' fourth lesson regarding the importance of money for war and the inability of agrarian republics to provide for this.

This as well as the other features mentioned above will combine to make up part of that “great American system” *Federalist* 12 pleaded with its readers to embrace and develop. As our analysis of *Federalist* 10 has suggested, the Constitution’s purpose was to vindicate men’s rights in a way the Declaration of Independence had contemplated but that the Articles of Confederation never did. But what exactly did *The Federalist* mean by the term “rights”—individual rights or “private rights” as *Federalist* 10 labeled them? And what was the relationship of *The Federalist*’s unique conception of rights to the protection of men’s faculties that also seemed so central to *Federalist* 10? In the next chapter I will begin by addressing these questions. I then propose to relate them to the themes from Thucydides’ history discussed above that I contend remain at the center of *The Federalist*’s analysis of the Constitution in *Federalists* 11–14.

NOTES

1. On the new “science of society” see Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill: The University of North Carolina Press, 1980), 18. See also, Hiram Catton, *The Politics of Progress: The Origins and Development of the Commercial Republic, 1600–1835* (Gainesville: University of Florida Press, 1988), 460–468.

2. Montesquieu, *The Spirit of the Laws*, VIII, 16, 362–363.

3. For a good, succinct discussion of this distinction see W. B. Allen with Kevin A. Cloonan, *The Federalist Papers: A Commentary* (New York: Peter Lang, 2000), 78; and Peter McNamara, *Political Economy and Statesmanship: Smith, Hamilton, and the Foundation of the Commercial Republic* (DeKalb: Northern Illinois University Press, 1998), 108.

4. Random House, *Webster’s Concise Dictionary*, 2nd ed. (New York: Random House, 1998), 218.

5. See Thomas L. Pangle, *Montesquieu’s Philosophy of Liberalism: A Commentary on the Spirit of the Laws* (Chicago: The University of Chicago Press, 1973), 127.

6. Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Ithaca, NY: Cornell University Press, 1995), 212. These are some of the more stunning and cavalier remarks in Banning’s otherwise very fine book. Contrast what Banning says there about *Federalist* 10 with Martin Diamond’s much more charitable and accurate assessment that *Federalist* 10 represents “perhaps the most remarkable single American expression of the ‘improved’ or new science of politics.” Martin Diamond, *As Far as Republican Principles Will Admit*, ed. William A. Schambra (Washington, DC: AEI Press, 1992), 346. Diamond’s analysis following this statement, see *ibid.*, 346–368, is conclusive evidence *on its own* of Banning’s misguided assessment of *Federalist* 10. I discuss Diamond’s account of *Federalist* 10 later in this chapter.

7. Recounting the misfortunes of ancient democracy and the more recent experience of the newly emancipated American states, Madison had this to say at the

Constitutional Convention: “The lesson we are to draw from the whole is that where a majority are united by a common sentiment and have an opportunity, the rights of the minor party become insecure. In a Republican Govt. the Majority if united have always an opportunity. The only remedy is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1st. place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2nd. place, that in case they shd. have such an interest, they may not be apt to unite in the pursuit of it. It was incumbent on us then to try this remedy, and with that view to frame a republican system on such a scale & in such a form as will controul all the evils wch. have been experienced.” Max Farrand, ed., *Records of the Federal Convention* (New Haven, CT: Yale University Press, 1966), 1:136. See also, James Madison to Thomas Jefferson 24 Oct. 1787, in *The Papers of James Madison*, ed. William T. Hutchinson et al. (Chicago: The University of Chicago Press, 1977), 10:207–215.

8. “To the extent that the Constitution secures more than the diverse faculties that give rise to property,” Charles Kesler has written, “insofar as it secures the people’s ‘safety and happiness,’ it exists for the sake of more than a merely commercial nation.” Charles R. Kesler, “*Federalist* 10 and American Republicanism,” in *Saving the Revolution: The Federalist Papers and The American Founding*, ed. Charles R. Kesler (New York: The Free Press, 1987), 30. This, again, is one of the important implications of the natural rights constitutionalism of *The Federalist*. As the language of *Federalist* 43 cited above indicates—and other passages from *The Federalist* might be cited to make this same point—happiness is central to the Constitution’s ultimate ends, a derivative of the principles of the Declaration itself, which proclaims the people’s right “to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their safety and happiness.” The emphasis on happiness rather than on property, as I note below, gives the Declaration and the Constitution more of an Aristotelean than Lockean tenor, at least as to the ultimate end of government.

9. Harry V. Jaffa, *American Conservatism and the American Founding* (Durham, NC: Carolina Academic Press, 1984), 24.

10. Thomas Pangle proposes that the modern “‘pursuit of happiness’—as opposed to the classical idea of a ‘*summum bonum*,’ or an ‘attainment of happiness,’” is itself Lockean (See Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* [Chicago: The University of Chicago Press, 1988], 20, emphasis in original).

11. See, for instance, 1:6, 9:50, 14:84, 22:138, 36:221, 41:256, 59:382, 62:398 (“A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained.”), 71:458, 78:500–501, and 84:554.

12. *Aristotle’s Nicomachean Ethics*, trans. Robert C. Bartlett and Susan D. Collins (Chicago: The University of Chicago Press, 2011), 1.4.1095a14–22 (4–5). All references to Aristotle’s *Nicomachean Ethics* below are to this translation. The numbers that appear in brackets beside the book, chapter, and line citations refer to the page number(s) in the Bartlett and Collins translation where the citation is found. Here, for

instance, the reference is found at pages 4–5 of the Bartlett and Collins text. See also, *Aristotle's Politics*, 2nd ed., trans. Carnes Lord (Chicago: The University of Chicago Press, 2013), 7.8.1328a36–40–1328b1 (200–201). All references to the *Politics* below are to this translation. The numbers that appear in brackets beside the book, chapter, and line citations refer to the page number(s) in the Lord translation where the citation is found. Here, for instance, the reference is found at pages 200–201 of the Lord text. See also, Jaffa, *American Conservatism and the American Founding*, 20–21.

13. *Politics*, 1.2.1252a24–1252b36 (2–4).

14. *Ibid.*, 1.2.1253a9–15 (4).

15. *Ibid.*, 2.2.1261a22–24 (26).

16. See Books III and V of *The Republic of Plato*, trans. Allan Bloom (New York: Basic Books, 1968).

17. *Politics*, 2.5.1263b22–23 (32).

18. *Ibid.*, 2.7.1266b38–40–1267a3 (40). See also, *The Iliad of Homer*, trans. Richard Lattimore (Chicago: The University of Chicago Press, 1951), 9.319. All references to the *Iliad* below are to this translation. The references are to the book and line numbers respectively in the Lattimore translation of the *Iliad*. Here, for instance, the citation paraphrased in the *Politics* can be found in Book 9 at line 319 of the Lattimore text. See also, Michael D. Chan, *Aristotle and Hamilton: On Commerce and Statesmanship* (Columbia: University of Missouri Press, 2006), 37–42.

19. *Iliad*, 9.320–44.

20. *Nicomachean Ethics*, 2.9.1109b1–13 and Note 29 (40–41).

21. For a good survey of the centuries-old philosophical treatment of the distinction between interest and passion in classical liberal thought, see Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Princeton, NJ: Princeton University Press, 1997). As Hirschman remarks: “Ever since the end of the Middle Ages, and particularly as a result of the increasing frequency of war and civil war in the seventeenth and eighteenth centuries, the search was on for a behavioral equivalent for the religious precept, for new rules of conduct and devices that would impose much needed discipline and constraints on both rulers and ruled, and the expansion of commerce and industry was thought to hold much promise in this regard.” At 129.

22. See Hans A. Linde, “When Initiative Lawmaking Is Not ‘Republican Government’” *Oregon Law Review* 72 (1993): 32: “Republican government must be responsive to the people, but what both history and recent experience in the states led the framers to fear was unbridled ‘interest’ and ‘passion.’ These were well-known terms in Enlightenment political theory, and nothing since has made them obscure. By the end of the seventeenth century, ‘interest’ had a specifically economic meaning. Individual ‘passion’ included noneconomic motives like pride and ambition. But only collective passion endangered a system built on collective action. . . . To the federalists, collective ‘passion’ was the antithesis of ‘reason.’” See also *Federalist* 15:91–92:

Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint. Has it been found that bodies of men act with more rectitude or greater disinterestedness than individuals? The contrary of

this has been inferred by all accurate observers of the conduct of mankind; and the inference is founded upon obvious reasons. Regard to reputation has a less active influence, when the infamy of a bad action is to be divided among a number, than when it is to fall singly upon one. A spirit of faction, which is apt to mingle its poison in the deliberations of all bodies of men, will often hurry the persons of whom they are composed into improprieties and excesses, for which they would blush in a private capacity.

23. See David F. Epstein, *The Political Theory of the Federalist* (Chicago: The University of Chicago Press, 1984), 80. See also, *ibid.*, 107 (emphasis in original):

Factions are moved by an “impulse of passion, or of interest.” Passionate factions are often passionately attached to an opinion. Charles Beard and his successors have emphasized *interested* factions, and have especially quoted Madison’s remarks that economic divisions are the most “common and durable,” and that their regulation is the “principle task of modern legislation.” But even though interested factions are durable and necessarily involved in politics, passionate factions are more explosive. They show man at his most contentious, angrily and intentionally vexing and oppressing his fellow man. Interested factions oppress each other only as a means to their own profit; for passionate factions oppression is almost an end in itself.

24. In *Federalist* 51 Publius proclaims:

It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. . . . The second method will be exemplified in the federal republic of the United States. . . . In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of the country and number of people comprehended under the same government. (51:333–334)

See also, Diamond, *As Far as Republican Principles Will Admit*, 53.

25. Diamond, *As Far as Republican Principles Will Admit*, 55–56.

26. *Ibid.*, 32. See also, Kesler, “*Federalist* 10 and American Republicanism,” 17, and Allen, *The Federalist Papers*, 111.

27. Diamond, *As Far as Republican Principles Will Admit*, 33.

28. John Locke, *Second Treatise of Government*, in *Two Treatises of Government*, ed. Peter Laslett (New York: Cambridge University Press, 1988), § 34, 291, capitalization removed. References here are to the section and page numbers respectively from the Laslett edition of the *Two Treatises of Government*.

29. Diamond, *As Far As Republican Principles Will Admit*, 34:

Madison’s plan, as I have described it, most assuredly does not rest on the “moral and religious motives” whose efficacy he deprecated. Indeed there is not even the suggestion

that the pursuit of interest should be an especially enlightened pursuit. Rather, the problem posed by the dangerous passions and interests of the many is solved primarily by a reliance upon passion and interest themselves. As Tocqueville pointed out, Americans employ the principle of “self-interest rightly understood.”

The principle of self-interest rightly understood is not a lofty one, but it is clear and sure. It does not aim at mighty objects, but it attains . . . all those at which it aims. By its admirable conformity to human weaknesses it easily obtains great dominion; nor is that dominion precarious, since the principle checks one personal interest by another, and uses, to direct the passions, the very same instrument that excites them.

See also, *ibid.*, 361–363.

30. *Ibid.*, 355.

31. *Ibid.*, 367, 363.

32. *Ibid.*, 361.

33. Allen, *The Federalist Papers*, 96.

34. Diamond, *As Far As Republican Principles Will Admit*, 339.

35. *Ibid.*, 348.

36. *Ibid.*, 351, emphasis in original.

37. See also, Allen, *The Federalist Papers*, 102–103.

38. Diamond, *As Far As Republican Principles Will Admit*, 349–350, emphasis in original.

39. See Kesler, “Federalist 10 and American Republicanism,” 18; and Chan, *Aristotle and Hamilton*, 188–189.

40. Epstein, *Political Theory of the Federalist*, 159.

41. See Caton, *The Politics of Progress*, 470.

42. See Epstein, *The Political Theory of The Federalist*, 72–75.

43. See Allen, *The Federalist Papers*, 106–108.

Chapter 7

Federalists 11–14 and the Spirit of Enterprise

Federalist 10 proposes that individual rights are private in nature. They are private because in a strict legal sense they generally apply only to those matters over which individuals have exclusive control: property, contracts, claims of negligence, even such things as the right to vote, which individuals are free to exercise or not as they see fit. Rights are not public or political in character because, first, as the Declaration of Independence made clear they antedate government, being unalienable; second, they are not subject to political contest but are in effect trumps on that contest. Adhering to the individual, rights protect specific, cognizable claims against the state and private parties. Rights in this sense are distinct from *interests*, which are not private in character but make claims on the public good, and are properly the subject of political dispute.¹

The distinction between private rights and the public good has its constitutional embodiment in the distinction between the judiciary and the political branches of government. The separation of powers doctrine, found primarily in *Federalists* 47–51, is based on a functional distinction between the expertise and capability of the various branches of government as much as on a political anthropology that seeks to counteract ambition with ambition (51:330–335). The judiciary is charged with protecting the rights of individuals against encroachments from the political branches of government. *Federalist* 78, for instance, proclaims that it “is peculiarly essential in a limited Constitution” that the “courts of justice” have the power “to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.” The precondition for this power of judicial review was that the judiciary itself not engage in political disputes or decision-making. In agreement with Montesquieu (quoted here), *Federalist* 78 maintains that there can be “no liberty,

if the power of judging be not separated from the legislative and executive powers” (78:497). Separation from the political branches was necessary if the judiciary was to arbitrate neutrally on questions of rights.²

In contrast to this narrow legal meaning of rights was a second broader but complementary meaning. On *The Federalist*’s reading rights not only provided specific legal guarantees but were the vehicle through which self-government was exercised. This was because of the space rights provided between the private and political worlds, a space that allowed for the exercise of freedom or the cultivation of one’s faculties free from governmental interference. *The Federalist* defends a broad and novel understanding of private rights, one which implied more than the protection of individual security, rights of self-defense, or even the rights of property, important and fundamental as all of these were. The Declaration of Independence departed from Locke’s political philosophy, as we noted in the last chapter, by declaring that men had inalienable rights to life, liberty, and the pursuit of *happiness* rather than the pursuit of property or estate. *Federalist* 10’s definition of the first object of government as the protection of the diverse faculties of men from which the rights of property originate seemed to comport with this more capacious understanding of liberty and happiness, an understanding broad enough to incorporate human fulfillment, even the pursuit of excellence, of almost any sort. There were significant implications to this, not the least of which were the limitations on government it implied. If government was limited to securing rights, as the Declaration proposed, this left the specific manner in which individuals exercised their rights up to them alone, a fundamental prerogative of the principles of self-government. As David Epstein has written, given *The Federalist*’s emphasis on men’s faculty to choose freely, “justice does not depend on a ‘plan of legislation’ imposing conditions favorable to men’s faculties. While just legislators might quietly consider the merits of the life of manufacturing and the life of farming, their principal problem would be to regulate those interests in a way which respects the free choice of those men engaging in each.”³

Federalist 10’s statement regarding the first object of government being the protection of men’s diverse faculties amounts to a defense of what academics today would call a “negative” concept of liberty and a “negative” understanding of rights. Negative rights, those rights to noninterference from others and specifically government, are distinct from positive rights, which are generally group-oriented, prescriptive rights or entitlements for designated constituencies. Positive rights require affirmative grants or dispensations from others, usually in the form of money or comparable material benefits. Negative rights do not; they do not require government taking property or wealth from one individual and giving it to another. In addition, negative rights can coexist without conflicting with the rights of others. Positive rights cannot.⁴ The right to pursue happiness, Thomas West has written, “does not mean government

guarantees a certain amount of happiness and property to everyone, but only that government will protect the right to pursue happiness and the right to keep the fruits of one's labor."⁵ "The founders believed that people are usually capable of taking care of themselves, if only the artificial weights of hereditary privilege and legal restrictions—the legacy of medieval times—are removed."⁶ Peter McNamara has similarly observed: "One need only look at the rights mentioned in the Constitution and the Bill of Rights to see that there is no suggestion that the national government is responsible for the material welfare of individuals. In other words, there is no opening for an 'entitlement' state."⁷ These remarks by West and McNamara represent an important qualification to our discussion in the last chapter about *Federalist* 10. Although the first object of government may be the protection of the diverse faculties of men, the concept of protection here is more one of *facilitating* the exercise of rights rather than stepping into the place of individuals and *exercising* their rights for them. This latter dispensation is what the modern entitlement state usually entails. *Federalists* 11–14 help us understand how this process of facilitation is intended to take shape. This, I propose, is what the meaning of enterprise as *The Federalist* understands it entails. It speaks to how the Constitution will facilitate the exercise of individual rights by creating what we today would refer to as a freer, more open "market" that does not have the sort of regulatory burdens, from either states or the federal government, that *Federalists* 7, 42, 44, and 62 all alluded to. Freedom from undue regulation is not all the Constitution of enterprise will consist of but it is an important part of it.

The most explicit defense of this approach to political economy in the early *Federalist* appears in *Federalists* 11–12. I will focus on those numbers in this chapter, as well as *Federalists* 13–14 toward the end of the chapter. I will also relate the themes from these numbers to those themes from Thucydides discussed in chapters 5 and 6. Doing so reveals the comprehensiveness of *The Federalist's* commercial republican theory as well as the dynamism it associates with the spirit of enterprise, a spirit that, again, constitutes arguably the most distinctive feature of *The Federalist's* commercial republican teaching. *Federalists* 11 and 12 also reveal why the insularity doctrine is difficult to reconcile with *The Federalist's* grand strategy and foreign policy. The contours of that grand strategy and foreign policy are given seminal definition in *Federalist* 11, which I will begin with below.

AMERICA'S COMMERCIAL DYNAMISM AND THE FEDERALIST'S NASCENT FOREIGN POLICY

Federalist 11 proposes to enable individual rights through both opening up *and* protecting the channels of commerce. Making the case for the "importance of

the Union, in a commercial light,” the number begins with a reaffirmation of the animated, even daring nature of America’s commercial genius: “There are appearances to authorize a supposition that the adventurous spirit, which distinguishes the commercial character of America, has already excited uneasy sensations in several of the maritime powers of Europe” (11:62). As I indicated in the Introduction, *Federalist* 11 suggests that in 1787 Americans were pursuing a commercial and civilizational dynamism of a nature the Europeans had initiated but with a potentially greater fervor and prospect. This would not only mean greater prosperity and liberty but increased military wherewithal over time as well, a prospect that mortified the Europeans in 1787 as much as it does today. So Publius suggests. The adventurous spirit that distinguished America’s commercial character and that *Federalist* 7 identified with a spirit of enterprise that would brook no unnecessary regulations of trade imposed by the states would be galvanized by greater constitutional union, commercial intercourse, and a federal navy. A seaworthy navy and commercial marine, what *Federalist* 11 terms an “ACTIVE COMMERCE in our own bottoms,” was a necessary concomitant to national security and increased commercial development (11:62, capitalization in original). If Americans meant “to be a commercial people,” as *Federalist* 25 declared, they would have to “endeavor, as soon as possible, to have a navy” (25:150). The importance of a federal navy is reiterated throughout *The Federalist*.

In proposing the remedies it does as a means to the broader constitutional objects *The Federalist* sought to defend *Federalist* 11 revisits a theme from earlier chapters: The problem of political necessity and how choice, informed by reflection (through adoption of the Constitution), will enable Americans to deal with the problems of accident and force. As Harvey Mansfield has noted, the essential distinction spelled out in *Federalists* 9, 10, and 14 between democracies and republics is to reveal how only republics can address the necessities that perennially limit democratic or republican choice. If “*The Federalist* shows that by constitutionalizing the limits to republican choice, it has improved republican choice,” then the Constitution will have saved republicanism from the disapprobation that numbers such as *Federalist* 9 suggest it has rightly suffered from in the past.⁸ *Federalist* 10 illustrated how the Constitution might save Americans from the fatal disease of domestic faction. *Federalist* 11 complements *Federalist* 10 by highlighting how fortified union, improved commercial enterprise, and its protection from international threats, will further improve republican choice. In a state of disunion “it would be in the power of the maritime nations, availing themselves of our universal impotence, to prescribe the conditions of our political existence” (11:65). The maritime nations were of course the commercial empires of the day, Spain, France, and especially Great Britain. Despite being commercial these nations had proven themselves to be none too pacific. America’s political

freedom would therefore require adequate provision against these empires. That in turn would require firm union, the resources it would incorporate, and an energetic government, which included a federal navy. *Federalist* 11 concludes: “A unity of commercial, as well as political, interests, can only result from a unity of government” (11:68). But this appears to be only a necessary condition, not a sufficient condition for national tranquility.

Federalist 11 adds that if America’s federal navy is adequate enough the United States might “become the arbiter of Europe in America.” It might “be able to incline the balance of European competitions in this part of the world as our interest may dictate” (11:65). Later when pleading with Americans to erect “one great American system,” *Federalist* 11 further implores that that system be “superior to the control of all transatlantic force or influence, and able to dictate the terms of the connection between the old and the new world” (11:69). It has been suggested that this is a plea for something like the Monroe Doctrine.⁹ Admittedly, what precisely Publius meant by these statements is not clear. Perhaps American national security required an ever-expanding sphere of dominance and control since in both the Atlantic and the Western hinterlands as soon as any boundary for security was established another threat always seemed to loom just beyond the horizon.¹⁰ Or perhaps *Federalist* 11’s proposals here were a necessary concomitant to the spirited commercial expansionism that *Federalist* 7 alluded to and that it maintained was an indelible trait of America’s commercial character; the Western Atlantic needed to be controlled to protect America’s continued expansion into new markets. Or maybe *Federalist* 11 simply reflected Publius’ recognition of America’s republican commitments in the West; that it would not tolerate non-republican empires in that part of the Atlantic close to America’s shores.

There was of course more to the argument here. As we have seen, as early as *Federalist* 4 Publius suggested that America’s military wherewithal would have to be significantly improved not merely because of the threats to its commercial interests along the Atlantic seaboard but because America’s trade in South and East Asia was also threatened by multiple nations. *Federalist* 24 had additionally suggested that America’s expansion through the western frontier would also require a significant military presence there as it grew. One way to interpret *Federalist* 11 is then perhaps as the beginning of a more explicit repudiation of *Federalist* 8’s proposal for a limited standing army and military presence; the beginning of a repudiation of the insularity doctrine. *Federalist* 11 pleads not for an adequate marine but for “a powerful marine” (11:62, emphasis added). If the United States was to become “the arbiter of Europe in America” in order to incline “the balance of European competitions in this part of the world as our interest may dictate,” why limit the new constitutional order’s grand strategy to the Caribbean or Western Atlantic? Should influencing the balance of competitions between nations not

take place anywhere America's "interest may dictate"? And those interests, as *Federalist* 4 suggested, were worldwide.

It is important to stress that what is being proposed in *Federalist* 11 is not a foreign policy of imperialism. As Karl Walling has emphasized, *Federalist* 11's plea is for "one great *American* system." That system was defined, as *The Federalist* stresses time and again, by the primacy of consensual government. If, as Walling also suggests, *Federalist* 11 presented an early version of the Monroe Doctrine as a vehicle to resisting European imperialism and as an appeal to alliances in Central and South America, that appeal was for those countries in the New World to join America in throwing off colonial rule against their European masters. This is what the United States had done. Other nations in the Caribbean and the Americas could do the same. The call to greatness in *Federalist* 11 was therefore not, as Gerald Stourzh has proposed, a devious ruse for American domination in the West Atlantic dressed up in the language of self-determination.¹¹ The relationship between leadership and consent in all alliances was certainly ambiguous, as Walling highlighted, but given the importance of consent to *The Federalist's* defense of the Constitution the declarations in *Federalist* 11 regarding America's grand strategy should be more charitable than what critics like Stourzh have proposed. If America was in fact to lead in the New World and perhaps beyond Publius was suggesting that it should do so in a manner consistent with republican principles.¹²

FEDERALISTS 11 AND 12 ON THE THUCYDIDEAN TRINITY

This last point is important as it tempers *The Federalist's* grand strategy from what those such as Stourzh would impute to it. As I have indicated above *Federalist* 11 begins with an affirmation of the Thucydidean trinity: That American liberty required firm political union, a culture of freedom and enterprise, and sufficient naval power to protect that union and commercial trade. Part of the equation here, as we saw in *Federalist* 10, involved the connection between commercial development and the growth of civilization. *Federalists* 11 and 12 again complement this by lauding commerce not only as necessary politics, the precondition for the wealth necessary to fund and maintain national security and a navy, but as high politics.

This was of course a common theme not only with Thucydides and *The Federalist* but among many classical liberals who emerged in the modern era to defend commercial life, economic freedom, and later capitalism. As Alan Levine has observed: "The way the Founders of the United States dealt with their economic situation—the way that we deal with our economic

situation—could not have happened without the Enlightenment philosophers who radically reconceptualized commerce’s benefits and harms.”¹³ Those Enlightenment philosophers supportive of commercial development rejected ancient and medieval philosophy Levine maintains, as well as Christian theology, none of which celebrated commerce as either choice worthy or laudable. Plato’s *Republic*, for instance, relegated craftsmen who made and traders who moved products to the lowest of the ideal city’s three classes. Those who lived primarily for riches or pleasures had a soul dominated by desires rather than by reason or spiritedness (*thymos*). On Levine’s reading Aristotle’s *Politics* similarly viewed economics and commerce as base activities, supplying necessities or luxuries for the body but not providing for the most important things. Economics may have assisted with material life but it did not provide for the good life, which again consisted of those higher activities of the soul such as politics or philosophy. Although the social valuation of commerce increased during the Renaissance in the minds of such thinkers as Dante, Machiavelli, and Boccaccio, even then commerce as a way of life was not celebrated. As Michael Chan has observed, in *The Prince* Machiavelli declared that “it is a very natural and ordinary thing to desire to acquire.” But what Machiavelli meant by this was “political acquisition in the form of conquest” or “acquisition by force and fraud.” It was not until the Enlightenment that “economism” or “acquisition by labor and commerce” rather than through more belligerent means occurred.¹⁴ Figures such as John Locke, Bernard Mandeville, Montesquieu, Voltaire, and David Hume provided the modern defense of commercial life, demonstrating how commerce improved the condition of all, promoted and protected freedom, fostered innovation, destroyed prejudices, and facilitated moderation, peace, and the rule of law. As Levine concludes, these Enlightenment thinkers together defended commerce as a major factor responsible for most of the good things in life, creating “wealth, freedom, peace, moderation, toleration, civilization, security, greatness, and power.”¹⁵

The Federalist would not dispute much of any of this. And, again, it is important to emphasize that it is with Locke and Hume that *The Federalist* throws in its lot. It supports “economism,” acquisition through labor and commerce, not Machiavelli’s idea of acquisition through force and fraud. This should inform our interpretation of *Federalist* 11’s grand strategy. But with that said, a few qualifications are in order. First, as I have already noted, a relatively new genre of scholarship such as Chan’s has emerged demonstrating how ancient political thinkers like Aristotle were not as averse to the commercial life as they are often portrayed. Second, additional scholarship has also established that many of America’s founders were deeply influenced by the classics and may not have perceived the gulf between ancient and modern political thought in such categorical terms as much contemporary

thinking proposes, particularly on the issue of commercial society and its political and economic benefits.¹⁶ Third, as this book has documented, *The Federalist* considers both ancient and modern examples in its illustrations regarding the problems of union and commercial development, suggesting a continuity from antiquity to modernity at least on some of the issues relevant to the subject of our discussions here. Finally, although much of *The Federalist*'s advocacy may be seen to fit the modern genre of political thinking that defends commercial life, it also challenges enough of the orthodoxies of that same thinking that it remains distinct from it in important respects as well. Our analysis of Thucydides' history in chapter 5 illustrated that dynamic, commercial republics such as Periclean Athens were both spirited and militarily imperialist. *Federalist* 6 explicitly seemed to agree with this, going so far as to identify the United States with the dynamism and militancy of the ancient Athenian commercial republic. *Federalist* 8 by contrast seemed to want to distinguish the United States from the ancient Greek republics precisely because of America's industriousness. *Federalist* 11 splits the difference between *Federalists* 6 and 8. It again contests Enlightenment orthodoxy that commercial regimes are pacific in nature but suggests that the United States under the Constitution might be different from these more belligerent, less principled European empires.

Federalist 11 proposes that the very *need* for an improved American navy and the protection of American trade in the Atlantic is due to the potential bellicosity of commercial empires such as Britain, France, and Spain. Contemporary Britain, arguably the most threatening of the empires of the day, was not only the most commercial empire of the time but also the very model of a commercial nation Montesquieu had held up for the highest esteem in *The Spirit of the Laws*. Montesquieu was aware of the daring of commercial empires like Great Britain but his comments on this subject were confined to their willingness to undertake risky *economic* ventures, not military ones.¹⁷ The daring of which he spoke was not fundamentally military in nature of the sort Thucydides and his history's speakers identified with commercial Athens or that *The Federalist* identifies with commercial regimes old and new.

In addition to recognizing that it was the most active trading nations that threatened the greatest potential belligerence to America, *Federalist* 11 further suggested that it was this threat above all that was perhaps the most significant reason for the extensive and unqualified war powers the Constitution granted to the federal government. It was also the reason the federal government needed a navy and a professional standing army. Europe's trading nations in the Atlantic had been uncompromising and aggressive. Their denying Americans their own carrying trade there had served the threefold purpose of preventing the United States from interfering in their navigation, purloining American profits, and "clipping the wings by which [America]

might soar to a dangerous greatness” (11:62). The modifier here, “*dangerous* greatness,” seemed to recognize at one and the same time America’s commercial potential as well as its potential to compete militarily with the world’s most powerful seafaring nations. This of course would take time. But *Federalist* 11 consistently speaks of America’s promise in the most visionary of terms. *Federalist* 10 had connected civilization to the development of commerce. *Federalist* 11 expands upon this theme, connecting the development of commerce to union, a navy, vigorous maritime trade, and the further development of men’s faculties that only an advanced commercial society can provide. A divided America “would frustrate all the tempting advantages which nature has kindly placed within our reach.” By contrast:

Under a vigorous national government, the natural strength and resources of the country, directed to a common interest, would baffle all the combinations of European jealousy to restrain our growth. This situation would even take away the motive to such combinations, by inducing an impracticability of success. An active commerce, an extensive navigation, a flourishing marine would then be the offspring of moral and physical necessity. We might defy the little arts of the little politicians to control or vary the irresistible and unchangeable course of nature. (11:65)

The irresistible and unchangeable course of nature, as was noted in the Introduction, was to be found in the large commercial republic that the Constitution would create, both an historical first and an engine of *moral* and *political*, as well as economic, growth. The Articles of Confederation might have temporarily impeded “the irresistible and unchangeable course of nature” but the Constitution and its new civil order of enterprise would change this.

Again, are we to take Publius literally here? And what precisely are the moral and physical necessities he is referring to? If the Constitution will create a national government so vigorous as to baffle *all* the combinations of European jealousy and the situation will even take away the *motive* to such combinations, this would seem to require significantly more than a minimum military presence of the sort proposed by the insularity doctrine theorists. Over time what *Federalist* 11 seems to prescribe would require a military strong enough presumably to compete with the strongest military empires of the day. America’s military might even have to be *stronger* than the militaries of the reigning empires of the day if it was to take away even “the *motive* to such combinations.” This is what “a vigorous national government” seemed to contemplate. Again, we do not want to overstate the importance of military strength here but there are other passages in *Federalist* 11 that fortify these conclusions. That same number, for instance, admonishes: “A nation, despicable by its weakness, forfeits even the privilege of being neutral” (11:65). Even being neutral requires sufficient military wherewithal to assert that

neutrality. And such military wherewithal is not just a function of necessity but of honor; being weak is *despicable* and not merely imprudent. *Federalist* 25 also invokes the question of honor when it demurs that “the rights of a feeble government are [unlikely] to be respected, even by its own constituents” (25:156). A nation characterized by a weak condition is not only ineffective to the point of being unable to maintain a position of neutrality, undermining the first two prongs of the Clausewitzian trinity: that of responsible government and an effective military instrument. Not being capable of respect by its own citizens, it is demoralizing, thus undermining the third prong of the Clausewitzian trinity, the requirement for high national morale.

In summary, even if America wanted to remain neutral it would have to become powerful enough to do so, something critics of the federal government’s new military prerogatives under the Constitution failed to adequately appreciate. Such military power would require prosperity or the provision of adequate wealth to establish a military instrument competent for national defense and domestic tranquility. This again only the Constitution could provide. To provide anything less would be not only improvident but dishonorable.

All of the arguments above may explain, at least to some extent, in what way an active commerce, an extensive navigation, and a flourishing marine could be considered the offspring of a *physical* necessity. But in what sense is it a *moral* necessity? Anything less than what is proposed above, *Federalist* 11 suggests, would certainly be shameful to Americans and this may constitute part of the *moral* necessity argument here. But something more than the negative eventuality of avoiding a national disgrace, as obviously significant as that concern was, seems to be involved here. One explanation might relate to what was discussed in chapter 1: That the obligation to vindicate the principles of the Declaration of Independence was a moral imperative and only greater commercial development and a military instrument sufficient to protect this could achieve such an end. Such a moral imperative seemed to be synonymous with the plea to “vindicate the honor of the human race” that *Federalist* 11 concludes with. It also may help explain the proclamations in *Federalist* 1 that ratification of the Constitution involved “the fate of an empire in many respects the most interesting in the world” and that failure to ratify the Constitution would inure to “the general misfortune of mankind” (1:3). These encomiums might well have been intended merely to flatter the pride of *The Federalist*’s readership. After all, the authors of *The Federalist* conceded the enormity of the task of persuasion they had ahead of them and flattery might have aided their project, especially in its early stages.

But another, more charitable, gloss on these passages might be that they are to be taken quite literally and speak to the higher objects of the Constitution.¹⁹ Publius chooses his words carefully and his praise for the

Constitution's high objects, objects beyond mere individual or collective interest, is evident throughout *The Federalist*.¹⁹ As I have noted, commercial life was frequently disparaged in the eighteenth century, as it is today, for its debilitating effects on national character and its propensity to facilitate a fractious, base, materialistic society. The most famous eighteenth-century critic of advanced commercial life, Jean-Jacques Rousseau, had scoffed at commercial society precisely because in his view it promoted inequality, avarice, narcissism, and softness of manners. Commercial society, in a word, was enervating, undermining both civic and martial virtue.²⁰ *The Federalist* of course disagreed with this sociology of commerce, viewing commercial development in quite opposed terms as a fuel for the spirit of enterprise and its related virtues. These included not only such commercial or enterprising virtues as innovation, industry, punctuality, thrift, prudence, responsibility for fulfilling contracts, and the like. It also included that more refined, rational professionalism that the US military might embrace under the Constitution.²¹ (I will have more to say about this latter idea in chapters 9 and 10.)

Federalist 12, dedicated to examining the effects of union on promoting the "interests of revenue" (12:69) again gives us a taste of *The Federalist*'s more sanguine hopes for the Constitution's commercial republican theory. The number opens by stressing that a "prosperous commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares." Stressing the productivity of commercial development for national wealth might strike us today as a banality. But as Chan has observed in 1787 the development of commerce required both a principled and practical defense in the face of those anti-commerce views that typified many of the Constitution's critics.²² Immediately following this fairly straightforward affirmation of the importance for increased commerce however *Federalist* 12 seems to confirm the worst fears of commercial society's skeptics regarding the base motives underlying the modern commercial republic:

By multiplying the means of gratification, by promoting the introduction and circulation of the precious metals, those darling objects of human avarice and enterprise, [a prosperous commerce] serves to vivify and invigorate all the channels of industry, and to make them flow with greater activity and copiousness. The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer,—all orders of men, look forward with eager expectation and growing alacrity to this pleasing reward of their toils. (12:69–70)

The conjunction "avarice and enterprise" makes clear that these are two distinct features of human activity, not one. But both are moved by those darling objects, the precious metals or money. Avarice alone may amount to simple

unadulterated greed. But it is equally obvious from this passage that it is also what apparently moves enterprise. Enterprise is much more than simple avarice of course since it provides the added utility of offering something to the exercise of private rights and the promotion of the public good. And as we have already suggested, properly directed it can facilitate all of the virtues associated with enterprise: industry, innovation, economy, self-restraint, and honest dealing, all of which may be pursued with or without concern for remuneration or gratification from “those darling objects of human avarice.” However one interprets the language above, the critical point is that *Federalist* 12 affirms the importance of a prosperous commerce to the vivification and invigoration of “all the channels of industry.” It is the necessary, if not sufficient, condition for the development of human industry in all forms.

Yet *Federalist* 12 on its face nevertheless seems to undermine the high-toned politics of the Constitution’s commercial republican theory by conceding a fundamental role for avarice in American commercial life. Or does it? *Federalist* 12 informs us that all men eagerly look forward to a prosperous commerce and the money it generates as a reward for their many toils: the assiduous merchant, the active mechanic, the industrious manufacturer, even the laborious husbandman, that hardworking farmer who has served as a model of republican virtue from time immemorial—they all look forward to these material rewards. This would seem to confirm precisely those allegations of the commercial republic’s staunchest critics, that commercial life is anchored in selfish, materialist impulses opposed to the common good. How could any republic predicated upon such a low foundation be defended as noble, worthy of honor, or facilitative of virtue, as *The Federalist* seems to want to assert?

The answer here would seem to depend on the relative nature of the question. Avarice certainly played a role in American commercial life, as it did in all other commercial regimes. Arguably, however, it played no more of a role in the United States than it did anywhere else or in any other form of government. Human nature was constant over time and place. *The Federalist* simply sought to make the best use of it given its indelible character. Recall *Federalist* 51: “what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary” (51:331). The same would seem to apply to men in their more private lives; human nature must be taken for what it is when attempting to calculate the effects of the Constitution on “the different circumstances of civil society” (as *Federalist* 10 put it). As we recounted in chapter 2, *Federalist* 85 described David Hume as a “writer equally solid and ingenious.” That number then proceeded to cite Hume’s “The Rise of Arts and Sciences” to admonish Americans against an excessively theoretical

approach to politics (84:564). In that same essay Hume proclaimed: “Avarice, or the desire of gain, is an universal passion, which operates at all times, in all places, and upon all persons.”²³ *Federalist* 12 would seem to agree with this proposition; from the laborious husbandman to the industrious manufacturer, “all orders of men” seek a “pleasing reward” for their toils. And it was precisely by “multiplying the means of gratification,” not *reducing* them, that a “prosperous commerce” served “to vivify and invigorate *all* the channels of industry and to make them flow with greater activity and copiousness.”²⁴

This made quite clear what the engine of human innovation is and what spurs men’s faculties to their utmost development. Thucydides, Pericles, and the Corinthians at Sparta, who all described the commercial Athenians’ dynamism, restlessness, and ingenuity, might agree. In his funeral oration Pericles had extolled the distinct morality of the Athenians that had come from their freedom and commercial worldliness, how they possessed a virtue that as Mary Nichols put it came from “within,” unlike the Spartans’ virtue that was derived from “without”; from harsh discipline and training.²⁵ Hume, like Publius, provides us a further extension of this sort of sociology of commercial peoples that we find in its original incarnation in Thucydides—a sociology that accentuates why free commercial societies are better than agrarian or noncommercial societies at providing greater opportunities for self-government and the realization of human potential.²⁶ In “Of Refinement in the Arts” Hume defends luxury as necessary to the maintenance of morality, commercial society’s critics having alleged the opposite, that luxury undermined morality. Hume offers us here a diagnosis similar to Pericles of how open, commercial societies foster morals peculiar to commercial ages:

In times when industry and the arts flourish, men are kept in perpetual occupation, and enjoy, as their reward, the occupation itself, as well as those pleasures which are the fruit of their labour. The mind acquires new vigour; enlarges its powers and faculties; and by an assiduity in honest industry, both satisfies its natural appetites, and prevents the growth of unnatural ones, which commonly spring up, when nourished by ease and idleness. Banish those arts from society, you deprive men both of action and of pleasure; and leaving nothing but indolence in their place, you even destroy the relish of indolence, which never is agreeable, but when it succeeds to labour, and recruits the spirits, exhausted by too much application and fatigue.²⁷

Hume’s defense here highlights the importance of commerce to the development of the full complement of human faculties and the promotion of civic energy. The faculties of men remain idle without industry and the arts, whose development becomes the precondition for the highest forms of morality and civilization. This is an echo of *Federalist* 10’s identification of commercial

development with civilization and the first object of government with the protection of the diverse faculties of men. The greater ingenuity that was involved in commercial development, manufacturing, and industry, not only appealed to human spiritedness but to human rationality. And the greater variety of occupations that commerce, industry, and manufacturing opened up served both the ends of virtue, understood as industriousness, and liberty, understood as opportunity. To Locke's assertion that the spirit of enterprise—or something akin to it—was founded in a negative anthropological condition, namely, “that the chief if not only spur to humane Industry and Action is uneasiness,”²⁸ Hume and Publius proposed a more positive anthropological origin for this spirit: that it emerged not only from pangs of want but in addition, and most importantly *increasingly* as civilization advanced, from the sheer enjoyment of being able to pursue a job that one took pleasure in and could improve upon. Work was not merely toil. It could result in enjoyment or even an occupation one did not consider to be work. *The Federalist* made clear that the spirit of enterprise would contract or expand in proportion to the simplicity or complexity of the economy. This is why the large commercial republic the Constitution would create was so critical to the promotion of political, individual, and martial excellence. Only that large, commercial republic could provide the most talented individuals the opportunities they needed to pursue the most ambitious of enterprises. Absent this opportunity, those same talented and ambitious individuals, languishing in idleness and boredom, might turn from being industrious and rational to being quarrelsome and contentious.²⁹ This is the ominous portent *Federalists* 7 and 42 warned of.

The basic idea here again was nothing new. In Thucydides' language of political dynamics, commercial societies or those societies that facilitate industry and the arts are restless; they “move” men to do more than do other societies. In Hume's words, in societies where “industry and the arts flourish, men are kept in perpetual occupation” and their minds acquire “new vigor”; their “powers and faculties” are enlarged. When making their original pleas to the Spartans to initiate war against the Athenians, the Corinthians not only highlighted the dynamism and innovation of the Athenians but also their public spiritedness; that their bodies were spent “ungrudgingly in their country's cause; their intellect they jealously husband[ed] to be employed in her service.” Hume makes a similar contention, that contrary to the allegation of commercial society's critics that martial virtue is undermined in such societies because of the development of the arts, in fact citizens of such societies remain just as public spirited, even more so since their senses of honor and courage are that much more refined:

Nor need we fear, that men, by losing their ferocity, will lose their martial spirit, or become less undaunted and vigorous in defence of their country or their

liberty. The arts have no such effect in enervating either the mind or body. On the contrary, industry, their inseparable attendant, adds new force to both. And if anger, which is said to be the whetstone of courage, loses somewhat of its asperity, by politeness and refinement; a sense of honour, which is a stronger, more constant, and more governable principle, acquires fresh vigour by that elevation of genius which arises from knowledge and a good education. Add to this, that courage can neither have any duration, nor be of any use, when not accompanied with discipline and martial skill, which are seldom found among a barbarous people.³⁰

As Thucydides emphasized throughout his history, the Athenians were more competent at prosecuting war than the Spartans, who suffered from “slowness and want of energy.” As we saw in chapter 5, Thucydides also emphasized that it was the Athenians’ “dash and enterprise” that had “proved of the greatest service” to them.³¹ In their failure to attack the Piraeus following the Athenians’ defeat at Euboea, Thucydides had concluded that once again “here, as on so many other occasions, the Spartans proved to be the most convenient people in the world for the Athenians to be at war with.”

Like Thucydides, Hume similarly connected military prowess to those larger social, political, economic, and cultural practices that not only seemed to have little to do with war but almost seemed to be opposed to the development of martial virtue.³² Both Thucydides and Hume had opposed traditional orthodoxies that assumed such virtue was to be found in a Spartan-like austerity and severe discipline. It was rather to be found in societies with a high level of freedom and commercial development. *The Federalist* contested similar orthodoxies in 1787. It also contested the closely related sentiment that only citizen militias, not standing armies, were consistent with American republican traditions since they were made up of the people rather than standing apart from them.³³ Publius certainly embraces militias, particularly insofar as they might be used by the federal government under the Constitution. He also cautions against the dangers of standing armies, at least in a disunited republic—“standing armies,” *Federalist* 8 proclaims, “must inevitably result from a dissolution of the Confederacy.” Professional armies may have been a menace to continental Europe but they also assisted in maintaining the peace by making invasion of foreign nations there futile. However, as much as they might be dangerous in a United States divided, standing armies were also essential to American national security and unity. *Federalist* 8 had emphasized that “PLUNDER and devastation ever march in the train of irregulars.” It was *militias*, not standing armies, that posed the real threat of uninhibited violence in modern America. Militias tended to be much more undisciplined than professional armies. “When the sword is once drawn,” *Federalist* 16 warned, “the passions of men observe no bounds of moderation” (16:96). This was especially true of militias. Again, *The Federalist* will turn the tables

on traditional republican theory by suggesting that standing armies were not only more competent militarily than militias but were also more moderate, professional, and accountable.

However, the precondition for the development of standing armies was the nurturing of a culture of enterprise that would be critical both to providing the wealth needed to raise and maintain such armies as well as the creativity and innovation needed for the development of the arts and sciences, especially the military sciences, that were so crucial to the improvement of modern armies and navies. As Hume proposed, development of industry and the arts enlarged men's faculties and promoted a more refined martial virtue than prevailed in noncommercial societies. *Federalist* 8 discussed how the "arts of industry, and the science of finance" had "produced an entire revolution in the system of war" (8:45). The cultivation of enterprise was critical here; it was not only a *moral* imperative, as *Federalist* 11 proposed, demanded by considerations of principle or what was necessary to the vindication of men's natural rights but a *physical* or *military necessity* as well. Without such a culture how was that prosperity and the development of the arts of industry, the science of finance, and other elements crucial to providing for a modern military establishment to emerge?

Federalist 11 makes an appeal to Americans to pursue the sort of dash and enterprise Thucydides' history contended the Athenians exemplified. This would be achieved by embracing the Constitution and creating at least the beginning of a maritime presence of the sort outlined in that number. Fostering such a presence however would require among other things an increased division of labor and the integration of both the manufacturing and agricultural markets of America that would be synonymous with increasing the development of commerce and the spirit of enterprise.

INTEGRATING CULTURE AND MODERATING MILITANCY

As I indicated earlier *Federalists* 11 and 12 promote the Thucydidean trinity of firm political union, a culture of enterprise, and provision for war. They also address Thucydides' second and third themes: the clash between disparate political cultures, in America's case its Northern Hive and more agricultural regions; and the problem of taming the commercial republic's warlike spirit while maintaining principles of civil liberty. *Federalist* 9 had alluded to those principles that dated back to Greek antiquity and that were threatened by earlier republican orders. Like *Federalist* 10, *Federalists* 11 and 12 proposed remedies to these earlier problems, highlighting how the Constitution will provide greater freedom of enterprise, an increasingly integrated national

political economy, and provision for a federal navy. The three issues here were related, as we can illustrate through the different treatment accorded the “Northern Hive” in *Federalists* 5 and 11. *Federalist* 5 had referred to the Northern Hive as a potentially imperious instrument of conquest in a divided America. In *Federalist* 11—the only other reference to the metaphor in *The Federalist*—the Northern Hive is referred to as an instrument of national integration, a prodigious source for seamen who will contribute to the establishment of an American navy (11:67). In the contrast between the Northern Hive’s treatment in *Federalists* 5 and 11, we begin to see the manner in which *The Federalist* proposes the Constitution will temper and redirect the aggressive spirit of enterprise to more salutary ends, ends that will contribute to, rather than undermine, the general welfare. In this case the enterprise of the manufacturing and seafaring North will be integrated with naval stores from the southern and middling states to produce a federal naval force. In *Federalist* 5 the Northern Hive is characterized as a belligerent threat that might invade America’s “more delicate” agricultural regions. In *Federalist* 11, by contrast, under the auspices of the Constitution the Northern Hive has been tempered. It is now a potential source of national integration and strength that will contribute to a federal navy.

Both the division of labor and the division of knowledge figure prominently in the example *Federalist* 5 provides us of a federal navy. The creation of that navy, as *Federalist* 11 highlights, will make full use of the different forms of labor and material available in each region of the country. Moreover, the navy itself will benefit from the development of a national fishing trade. “As a nursery of seamen, [the fishing trade] now is, or, when time shall have more nearly assimilated the principles of navigation in the several States, will become, a universal resource. To the establishment of a navy, it must be indispensable” (11:66). The fishing trade will be indispensable to the establishment of a navy because it will create a reservoir of knowledge that the American navy can use. Such a reservoir of knowledge will be as critical to America’s ever-expanding, ever-refining national economy as the division of labor. It will allow, for instance, the American navy to be consistently improved by virtue of the knowledge and expertise developed in one commercial enterprise and applying this to another.

Emphasizing that a prosperous commerce multiplies the means of gratification *Federalist* 11 not only highlighted the variety of the means of fulfillment modern commerce provided American industry but also the importance of the division of labor. Without a division of labor there would be no multiplication of the means of gratification possible since it is precisely the different types of activities and work that modern commercial life facilitates that allows the means of gratification to be multiplied. The division of labor serves as much as “those darling objects of human avarice and enterprise”

to “vivify and invigorate all the channels of industry.” As we saw earlier *The Federalist* seems to follow Thucydides’ and Hume’s sociology of commerce by suggesting, contrary to what critics of commercial society and the division of labor had proposed, that the refinement of the division of labor through greater commercial development would not dehumanize men as the critics proclaimed but rather have an opposite effect on their character: it would elevate and ennoble them. It would also energize them. By stimulating the faculties of even those of lesser abilities through specialization and simplification of the tasks they had to do, the division of labor would improve the skills of all workers while sharpening their minds. Allowing workers to focus on a particular task, the division of labor effectively invites them to use their imagination to reduce the amount of labor necessary to produce something than would happen were they overwhelmed by a complexity of irreducible tasks. The specialization promoted by greater commercial development and refinement of labor that would occur in the new constitutional order would lead to greater industry and innovation. In addition, by providing workers greater choice of employment opportunities and spurring them on to increased productivity, the new Constitution would invigorate the spirit of enterprise and increase the potential development of that diversity of faculties *Federalist* 10 made the first object of government to protect.³⁴ But if the first object of government was to protect the diverse faculties of men then crucial to this object was the Constitution’s expanded, integrated commercial union.

Why this was so critical is again highlighted in *Federalist* 11. As the Introduction noted, those critics of the Constitution supportive of small, agrarian republics failed to appreciate how the faculties of men, particularly those of the most talented and ambitious, remained idle absent that robust commercial development that the more advanced, complex, and large economy the Constitution would provide facilitated.³⁵ In Thucydidean language that identifies commercial development with movement and spiritedness, *Federalist* 11 expounds upon the virtues of an extensive federal market:

An unrestrained intercourse between the States themselves will advance the trade of each by an interchange of their respective productions, not only for the supply of reciprocal wants, but for exportation to foreign markets. The veins of commerce in every part will be replenished, and will acquire additional motion and vigor, from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope, from the diversity in the productions of the different States. When the staple of one fails from a bad harvest or unproductive crop, it can call to its aid the staple of another. The variety, not less than the value, of products for exportation, contributes to the activity of foreign commerce. (11:67)

We see here a number of distinct features critical to *The Federalist*'s commercial republican theory. First, the free enterprise and national free trade model of commercial development *The Federalist* promotes. Second, how *Federalist* 11 answers the problem related to that unruly side of the spirit of enterprise initially raised in *Federalist* 5. Third, how *Federalist* 11 may serve to fortify our earlier argument defending the principled foundations of American constitutionalism and how the Constitution will vindicate those principled foundations through increased commercial development. Fourth, how the Constitution's free trade will integrate manufacturing and agricultural markets, a theme *Federalist* 12 is even more explicit about. Fifth, how the Constitution will shape some of the most distinctive traits that will subsequently define Americans' enterprising character. And, finally, the inadequacy of the insularity doctrine to protect what *Federalist* 11 suggests will be a perennially growing foreign commerce. This further explains *Federalist* 11's suggestion of the need not only for a competent but an expanding blue water navy.

The defense of national free trade is palpable in *Federalist* 11. Through the "*unrestrained intercourse between the states*" the "*veins of commerce in every part will be replenished, and will acquire additional motion and vigor, from a free circulation of the commodities of every part*. Commercial enterprise will have a much greater *scope*, from the *diversity* in the productions of the different States." And the "*variety, not less than the value, of products for exportation,*" will contribute "*to the activity of foreign commerce.*" All of these emphases make clear what the Constitution's specific provisions, such as the commerce clause, are intended to achieve. They are not only to create a national free trade zone—or at least one as free as legal and political circumstances might admit—but to move and invigorate American commerce and presumably America's enterprising spirit as well.

Second, by allowing for "an unrestrained intercourse between the States themselves," the more integrated union will temper the more unruly element of the spirit of enterprise by allowing that spirit to pursue more salutary objects in an uninhibited manner. Those more enterprising Americans might be able to achieve through legal means under the Constitution what they could only have achieved illicitly under the Articles of Confederation. More importantly, perhaps, this same process will temper the spirit of enterprise by opening up those channels of economic and intellectual intercourse that were impeded by the Articles. It will also facilitate that industry and rationality that *The Federalist* seems to identify with the virtue of enterprise and that *Federalists* 10 and 11 together suggest will allow for the unmitigated development of men's faculties. *Federalist* 11 makes clear that it is not only *human* nature that will enjoy greater utilization in the new constitutional order but *nature*

herself; failing to embrace union, we are told, would not only make “the rivalships of the parts . . . checks upon each other” but would also “frustrate all the tempting advantages which nature has kindly placed within our reach” (11:65).

Providing a broader scope for the development of both mother nature and the diversity in natural talents, aptitudes, and dispositions that earlier, less refined and more restricted economies permitted, Americans under the Constitution might be able to capitalize on those underutilized elements of human nature in a way Europe never could. *Federalist* 11 speculates on what the consequences of disunion and the imposition of a passive commerce by Europe’s maritime nations would mean: “That unequalled spirit of enterprise, which signalizes the genius of the American merchants and navigators, and which is in itself an inexhaustible mine of national wealth, would be stifled and lost, and poverty and disgrace would overspread a country which, with wisdom, might make herself the admiration and envy of the world” (11:66). The unequalled spirit of enterprise is *in itself* an inexhaustible mine of national wealth; it is valuable not just for its *effects* but is *in itself* a potentially boundless source of human productivity.³⁶ Moreover, it is clear that it is the *unequaled* spirit of enterprise that under the Constitution will be *the* key—or at least a critical key—to making the United States the admiration and envy of the world. Enterprise will, in other words, be the key to American greatness. Requiring firm union, a maritime carrying trade, and a navy, *Federalist* 11 makes clear that undermining the spirit of enterprise would not only result in poverty but *disgrace*; it would be *dishonorable* as well as productive of greater penury. Again, the mandate to protect enterprise would appear to be as much a *moral* imperative—the offspring of moral necessity as *Federalist* 11 earlier put it—as it is a function of political, economic, military, or *physical* necessity.

This relates to the third feature outlined above regarding how *Federalist* 11 fortified our earlier discussion in defense of the principled foundations of American constitutionalism; the Constitution would vindicate America’s principled foundations through increased commercial development. The natural rights constitutionalism of *The Federalist* stipulating that there is a pre-political, natural right to property originating in the exercise of one’s faculties, would appear to be at least one of the reasons for the morally imperative quality of maintaining the union “in a commercial light.” The implication here is that there should be no undue restrictions on the exercise of such rights that much modern and classical political science tolerated for differing reasons. *Federalist* 11 would seem to comport then with *Federalist* 10, suggesting that the new constitutional order is a function of moral necessity because it is the necessary precondition to realizing government’s first object, the protection of the diverse faculties from which the rights of property originate.

The fourth feature of *The Federalist's* commercial republican theory that *Federalist* 11 illuminated was how the Constitution's free trade would integrate manufacturing and agricultural markets. *Federalist* 12 is even more explicit about this. *The Federalist* sought to acknowledge the reality of human nature for what it was. Every modern advocate of commerce, from Hume, to Locke, to Mandeville had made clear that the self-sacrificing political ideal conceived by the critics of commercial life, such as Jean-Jacques Rousseau and those who supported smaller, more agrarian and democratic regimes, was little more than an Edenic utopian dream.³⁷ In fact it was worse than a utopian dream since in practice it promoted a *dystopia* dangerous to the advancement of civilization. *Federalist* 10 had criticized "theoretic politicians" who had patronized pure democracies because those democracies were "incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths" (10:58).³⁸ *Federalist* 12 continues this line of criticism in the context of the alleged conflict between commerce and agriculture, bringing to the fore the second lesson from Thucydides' history, that of the "clash of civilizations"; in America's case the clash between the more commercial states with a higher degree of developed manufactures and those more agrarian states with less. *Federalist* 12 treats the putative conflict between commercial or manufacturing economies and agricultural economies as one rooted more in abstract theory than in reality. The central question those who framed the Constitution had to address was not *whether* America was going to be a commercial republic but *how* it was going to be one; how was commerce going to be nurtured by the "western sons of liberty" (2:8)? What kind of economy would the Constitution beget over time? Union and commercial "deregulation" would evidently be prerequisites in this new economy as the early *Federalist* numbers that we have reviewed made clear. Such deregulation, as *Federalist* 7 suggested, would be the point of giving the federal government power over interstate and international commerce. But there was an immediate problem with *The Federalist's* vision of commercial republicanism that *Federalist* 11 highlights early in the number. America was a nation "for the most part exclusively addicted to agriculture, and likely from local circumstance to remain so" (11:63). As J. R. Pole has pointed out, at the time *The Federalist* was published roughly 80 percent of the American people lived by agriculture.³⁹ How was the United States to become a dynamic commercial empire in the face of a predominantly agrarian economy?

The Federalist's response here was twofold. First, the nature of America's economy in 1787 was largely irrelevant to the nature the economy might assume over time under the auspices of the Constitution. As *Federalist* 11's evocative rhetoric makes clear, the United States in 1787 was pure potential. In the only such instance of restrained speculation in *The Federalist*,

immediately after pointing out that a unity of commercial and political interests could only come about “from a unity of government” *Federalist* 11 concludes: “There are other points of view in which this subject might be placed, of a striking and animating kind. But they would lead us too far into the regions of futurity, and would involve topics not proper for a newspaper discussion. I shall briefly observe, that our situation invites and our interests prompt us to aim at an ascendant in the system of American affairs” (11:68). Futurity and aiming at an ascendant in the system of American affairs is what *Federalist* 11 ultimately points us to. It contemplates an America significantly different from that of 1787, where “local circumstance” presumably will dictate less and less, and where we might anticipate a greater unity of commercial and political interests resulting from a greater unity of government. Union, the development of enterprise, and provision for war would be critical to this new ascendant in the system of American affairs and they would be essential features to *The Federalist*’s futuristic vision of unity.

Why they are is related to the second response *The Federalist* might make to the predominantly agricultural nature of the American economy in 1787. This has to do with the increasing irrelevance of the very distinction between commerce and agriculture, a distinction that will progressively dissolve in the new constitutional union while enterprise and provision for war will expand. *Federalist* 11’s emphasis on the predominance of agriculture in America is made immediately after Publius explains (in the same sentence) how a “manufacturing nation” like Britain would benefit from “the markets of three millions of people” that would only increase over time (11:63). The United States may be a predominantly agricultural nation but even its agricultural economy makes up a “market”; it is a market in the sense that farmers consume manufactured goods and it is a market additionally in the sense that the extra product farmers do not consume on the farm is sold in domestic or international trade. Like manufactured goods, agricultural goods are all a part of commerce.

In response to the Thucydidean question then of how to resolve the conflict between commercial and agrarian societies, *The Federalist*’s straightforward answer is simple: No such conflict in reality exists, at least not in any long-term, definitive sense. This will become increasingly apparent as the new constitutional union becomes increasingly integrated. As *Federalist* 12 clarifies:

The often-agitated question between agriculture and commerce has, from indubitable experience, received a decision which has silenced the rivalry that once subsisted between them, and has proved, to the entire satisfaction of their friends, that their interests are intimately blended and interwoven. It has been found in various countries that, in proportion as commerce has flourished,

land has risen in value. And how could it have happened otherwise? Could that which procures a freer vent for the products of the earth, which furnishes new incitements to the cultivation of land, which is the most powerful instrument in increasing the quantity of money in a state—could that, in fine, which is the faithful handmaid of labor and industry, in every shape, fail to augment that article, which is the prolific parent of far the greatest part of the objects upon which they are exerted? It is astonishing that so simple a truth should ever have had an adversary; and it is one among a multitude of proofs, how apt a spirit of ill-informed jealousy, or of too great abstraction and refinement, is to lead men astray from the plainest truths of reason and conviction. (12:70)

Those countries in which commerce has flourished have provided a freer vent for the products of the earth and have furnished new incitements to the cultivation of land. The way commerce excites the faculties to action is eloquently explicit here. Even agriculture or “the cultivation of land” will benefit from those incitements increased commerce brings about. *Federalist* 12 here again seeks to challenge orthodoxies of modern republican theory and political economy.

The problem of “a spirit of ill-informed jealousy, or of too great abstraction and refinement” was the problem of economic theorists such as the Physiocrats. They believed that only agriculture produced true wealth and that this natural order of wealth generation should not be interfered with by advanced commerce. In the Physiocrats’ view advanced commerce was parasitic upon real wealth.⁴⁰ *Federalists* 11 and 12 contest such an interpretation of commercial life. The interests of agriculture and commerce were “blended and interwoven” in a mutually beneficial way. They would become increasingly mixed in the new constitutional union, accelerating regional and economic integration. What was more, in the same way the Corinthians had admonished the Spartans that it was the law in the arts as well as in politics that “undisturbed communities” could never persist indefinitely because necessities required a “constant improvement of methods” (1:70–71), *Federalist* 11 admonishes Americans of a similar need to heed necessary change. Commercial development involved constant innovation and was necessarily disruptive. In this sense, it was inconsistent with tradition or with undisturbed communities. Nevertheless, commerce and the innovation it bred was an imperative both for the advancement of civilization and for national survival because as the Corinthians suggested “necessities of action” had to “be accompanied by the constant improvement of methods.”

As the experience and dynamism of the Athenians had led them to be the most adaptable and innovative of all of the Greek republics, surpassing the Spartans in this regard, *Federalist* 11 proposes that Americans, through union, increased commercial trade, and a navy could similarly surpass the

Europeans in adaptability and innovation. This was the point of *Federalist* 11's suggestion that the "unequalled spirit of enterprise," if properly directed by the Constitution's novel powers and institutions, might make the United States "the admiration and envy of the world." It was also the meaning of *Federalist* 11's conclusion imploring Americans to pursue an ascendant in the system of American affairs; Americans should disdain being "the instruments of European greatness" and erect "one great American system, superior to the control of all transatlantic force or influence, and able to dictate the terms of the connection between the old and the new world!" (11:69). The development of commerce and enterprise was critical to this new American system; critical both as a matter of necessity or of political survival as well as a matter of principle and high-toned politics.

THUCYDIDES' THIRD LESSON AND THE MODERN MARKET

Publius' advocacy here connects *Federalists* 8–10 to *Federalists* 11 and 12 as well as to the third lesson from Thucydides' history. That lesson regards the preservation of that peculiar form of liberty and animated spirit that originated in Periclean Athens. The Constitution might extend this liberty and animated spirit in improved form. *Federalist* 8 introduced us to the distinction between the ancient republics of Greece, which were in "the condition of a nation of soldiers," and the "industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce." Improving agriculture and commerce is identified here as being assisted by, if not originating in, the same thing: industriousness and the pursuits of gain. Whether it be agriculture or commerce, in other words, industry and the pursuit of gain is what causes their improvement.

Robert Curry has observed that the public benefits provided by the pursuit of gain and those market principles established by the likes of David Hume and Adam Smith are seen time and again in *The Federalist*. Smith had demonstrated in *The Wealth of Nations* how markets had enabled individuals to satisfy themselves by first satisfying others through the vehicle of mutually beneficial exchanges. The system of market exchange, which precipitated the division of labor and was a principal cause of the wealth of nations, ran throughout the constitutional order. Importantly, Curry observed, economic exchanges constituted only a fraction of those unending processes of exchange that made up the social system. The free market functions of Smith's *Wealth of Nations*, which demonstrated how our needs were increasingly better served as the free market was extended, is seen in *Federalists* 9 and 10 where Publius proposed that our rights would be better

secured in a similar way through an extended federal republic. This is why Publius in that number arrived at a completely opposite understanding of the possibilities for an extended republic than Montesquieu had. The latter held fast to standard republican tenets that the natural geographic boundaries for a republic were small. As Curry emphasizes, just as we rely on our fellow citizens and their kaleidoscope of interests to compete and cooperate with ours in securing our economic and social needs, *Federalists* 9 and 10 proposed that the extended republic, by accommodating a greater variety of interests and concerns of America's citizens, would help better protect our rights. "America's extended republic, like the extended market order itself, works by bringing . . . dispersed human knowledge together in order to solve, with astonishing efficiency compared to every other system, the problems of daily existence."⁴¹ This better use of the division of knowledge, itself a product of the division of labor, was a critical feature of the new constitutional theory articulated in *The Federalist*. *Federalist* 11's example of the navy exemplified this feature.

Two centuries before Friedrich Hayek proclaimed that Western civilization had progressed beyond the planned economies of the East not merely because it generated greater wealth through accumulated capital but because it used knowledge more effectively,⁴² *Federalists* 11 and 12 provided this same essential insight. Only in this case it was in defense of the Constitution. As those numbers highlight, commerce was the fuel that ignited the spirit of enterprise and that pushed human faculties to their utmost development. It also contributed to refining these faculties and not just those related to the manufacturing arts. A "prosperous commerce" vivified and invigorated "all the channels of industry," including agriculture, by providing "a freer vent for the products of the earth" and furnishing "new incitements to the cultivation of land" (12:70). Commerce would improve civilization not only through the division of labor and specialization, which enhanced economies of scale, but as was mentioned earlier by dispersing knowledge and developing different skills through increasing not only the *value* of products, as *Federalist* 11 proclaimed, but their *variety*. Consider again the fishing trade example from above. Discussing how the rights of trade in America were "rights of the Union," *Federalist* 11 outlined how the development of the fisheries in America's "navigating States" would benefit "under circumstances of a greater extension of mercantile capacity." This in turn would contribute to other social and political projects once "time shall have more nearly assimilated the principles of navigation in the several States." As "a universal resource," the fisheries—a "branch of trade [that] ought *not* to be considered as a *partial* benefit"—would be "indispensable" to "the establishment of a navy" (11:66, emphasis added). Why? Again, because the assimilation of the principles of navigation and the increased knowledge this implied would facilitate not only

a national fishing trade but other related vocations that might use that same knowledge, including the navy.

It was precisely because of its enterprising and commercial nature, as well as the *size* of the new constitutional union, that the knowledge transfer and improved use of resources would become possible under the Constitution. This also helps explain how America might be able to aspire to a form of greatness equal to or surpassing that of the Europeans. As *Federalist* 11 elaborates in the context of how the Constitution's commercial republican theory will contribute to the establishment of a federal navy:

Every institution will grow and flourish in proportion to the quantity and extent of the means concentrated towards its formation and support. A navy of the United States, as it would embrace the resources of all, is an object far less remote than a navy of any single State or partial confederacy, which would only embrace the resources of a single part. It happens, indeed, that different proportions of confederated America possess each some peculiar advantage for this essential establishment. (11:66–67)

Here we have *The Federalist's* economies of scale argument in defense of the new constitutional union. *Federalist* 11 speculates about how the “tar, pitch, and turpentine,” as well as the more “solid and lasting” wood of southern states, when combined with the iron of the southern and middle states, and the seamen of the “Northern hive,” would contribute to a national navy as that navy in turn would contribute to an expanding commercial maritime enterprise. *Federalist* 11 emphasizes the symbiosis here: “The necessity of naval protection to external or maritime commerce and the conduciveness of that species of commerce to the prosperity of a navy, are points too manifest to require a particular elucidation” (11:67). The size of the constitutional union would make the establishment of a navy “less remote” than attempting such a thing in “any single State or partial confederacy” because “it would embrace the resources of all.” The new, enlarged constitutional union would make the creation of a federal navy *easier* because of the sharing of resources, knowledge, and reduction of costs it would entail.

Federalist 11 illuminates how the enterprising spirit of America will be connected not only to the development of a federal navy but to the nation's other military instruments and to the development of America's other political institutions more generally. Improved union, and particularly free trade, crucial to the development of enterprise, will be critical as *Federalist* 11 highlights to the success of America's political and military institutions as these will be to the maintenance of commercial enterprise. This interrelationship is a vital component of *The Federalist's* constitutionalism, which is not just about governmental institutions but about the reform of American civil society and how that society will contribute to those institutions. Without

the appropriate civil society the political institutions will fail. *Federalist* 11 emphasized that the “different proportions of confederated America possess *each* some peculiar advantage” for the “essential establishment” of a navy. That essential establishment, the navy, needed the resources of the “different proportions” of America just as those different proportions would benefit from the navy. But it would need more than just this.

As *Federalist* 10 suggested, the success of the Constitution would turn on how it might improve “the different circumstances of civil society.” *Federalist* 11 complements *Federalist* 10 by suggesting how this might happen. The paragraph above in *Federalist* 11 is immediately followed by the remark that it is the “unrestrained intercourse between the States themselves” that will replenish the “veins of commerce in every part.” The metaphors here are of a uniform body, a political body typified by ever-increasing movement—“unrestrained intercourse” replenishing the “veins of commerce.” The prosperity and dynamism generated by the spirit of enterprise in an economy of free trade will be the engine of American civilization in the future. This will not be the only such engine obviously enough but it may well make up America’s principal defining character. This point is emphasized in different ways in the concluding numbers of part one of *The Federalist* on “the utility of the union to your political prosperity.”

Federalist 12, for instance, is dedicated to impressing upon its readers how important union and commercial prosperity are to the generation of revenue: “The ability of a country to pay taxes must always be proportioned, in a great degree, to the quantity of money in circulation, and to the celerity with which it circulates. Commerce, contributing to both these objects, must of necessity render the payment of taxes easier, and facilitate the requisite supplies to the treasury” (12:69–70). Commerce will be critical to both the *quantity* and *celerity* with which money circulates in the new union. As intellectual historians have noted, much of the impetus for new sources of tax revenue and public credit in Europe’s early modern nation-states emerged as a result of the expense of modern warfare—the “revolution in the system of war” that *Federalist* 8 acknowledges. Transformations in military organization and technology had brought about changes in political organization and statecraft, making the latter largely subservient to the former.⁴³

The Federalist acknowledges this and recognizes its constitutional and strategic significance. *Federalist* 12, for instance, echoes Archidamus’ warning to the Spartans about the difficulties they will have waging a protracted war against the more commercially dynamic Athenians. Immediately after explaining how a “prosperous commerce” is what provides “the most powerful instrument in increasing the quantity of money in a state,” being “the faithful handmaid of labor and industry, in every shape,” Publius then goes on to cite the case of monarchical Germany whose emperor, “from the want

of the fostering influence of commerce,” was unable “to sustain a long or continued war” (12:70–71). *Federalist* 30, defending “a general power of taxation,” for such federal objects as funding the raising of troops, the building and equipping of fleets, “and all other expenses in any wise connected with military arrangements and operations,” concludes: “Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions” (30:180). And *Federalist* 41 further recognizes the importance of public credit to the waging of modern war: “The power of levying and borrowing money, being the sinew of that which is to be exerted in the national defence, is properly thrown into the same class with it” (41:263). All of these statements affirm the necessary connection between commercial development and the exigencies of national security. There is no choice of whether America need become a dynamic commercial empire. It must.

But this is not all *Federalists* 10–12 are proposing since it is not just *any* form of commercial development that the Constitution seeks to facilitate. The point of giving the federal government such ubiquitous powers over commerce under the Constitution is precisely to get government *out of the way* in Americans’ exercise of their private rights.⁴⁴ This includes not only the state governments but the federal government too. The “*free circulation* of the commodities of *every part*” *Federalist* 11 suggests the Constitution will facilitate was as applicable to the national government as it was to the states. This would presumably be the guiding principle of American constitutionalism. It is an argument that is too often overlooked in scholarship on *The Federalist*, particularly that which discusses how the work sought to promote greater energy in government or proposed that the Constitution was in reality an attempt to emulate European-style statist governments. *The Federalist* did not advocate greater statism. To the contrary, it advocated for limited government constitutionalism.

Federalist 1 proposed that Publius’ defense of the Constitution would consist of “an enlightened zeal for the energy *and* efficiency of government” (1:5, emphasis added). And it is precisely “the continuance of the Union under an *efficient* government” that would put it in America’s “power, at a period not very distant,” the creation of “a navy which, if it could not vie with those of the great maritime powers, would at least be of respectable weight if thrown into the scale of either of two contending parties” (11:64, emphasis added). The efficiency in government *The Federalist* speaks of here would consist of a more effective civil administration as well. *Federalist* 13 proposes that the new constitutional union will be more administratively efficient because it would be less expensive to establish one national administration in the new constitutional order than the multiple administrations that would be necessary in two or three confederacies or in numerous separate states. However, that

efficiency would also consist of a more uniform and integrated economy. *Federalist* 13 contended that such an economy would necessarily be disrupted by the competing commercial interests of the northern and southern states in a divided America. Such a disaggregated America “would not be less injurious to the economy, than to the tranquility, commerce, revenue, and liberty of every part” (13:78). The progression here is from necessity to freedom; from providing for peace or tranquility to the development of commerce and good government—“economy” and “revenue”—and ultimately greater liberty for every part. The free trade between the states that *Federalist* 11 maintained the Constitution would facilitate was as important to the enterprise of the new Constitution as any instruments of government. This would be critical to the vindication of Americans’ private rights.

This fact is too often overlooked in scholarship on *The Federalist*, specifically that which examines its well-known promotion of more energetic government. The “fiscal-military state” that scholars such as Max Edling have discussed were no doubt an important part of *The Federalist*’s constitutionalism. Granting the federal government greater powers over commerce, war, and taxation were crucial to increasing America’s military and extractive capacity.⁴⁵ But *The Federalist* as we have seen is not a treatise about state-building, as Edling proposes. It is more accurately described as a text on nation-building, specifically a nation defined by limited government constitutionalism. As Karl Walling has proposed, as a book devoted to nation-building, *The Federalist* proposed not merely to improve government by making the federal government more energetic, paradoxically requiring improving the federal government’s powers while limiting them to what it could effectively achieve. It also sought to cultivate a new American patriotism and improved public spirit.⁴⁶ *The Federalist* viewed constitutional reform as the principal means to moral and civic reform; it was the reform of America’s civil state, as *Federalist* 10 made clear, that was the necessary precondition to the reformation and later maintenance of the instruments of government that would eventually come to dominate under the new Constitution.

Civic reform was also crucial to the development of the arts and sciences. *Federalist* 9 had emphasized that the Constitution was the product of the “science of politics,” which had “received great improvement” (9:48, emphasis added). *Federalist* 8 similarly referred to the “revolution in the system of war” that had occurred because “of the arts of industry, and the science of finance,” both “the offspring of modern times” (8:44, emphasis added). The development of the arts and sciences was the essence of what constituted modernity and the consequences of this development for politics and military strategy were significant.

But the effects of the arts and sciences on politics, as Thucydides’ history demonstrated, was itself nothing new. Just as the Corinthians had warned

the Spartans at the outset of the Peloponnesian War that improvements ever prevail in the arts and politics, and that the Athenians were far more advanced down “the path of innovation” than the Spartans, so *The Federalist* warns its readers that they must embrace a Constitution that will allow them to act as latter-day Athenians rather than succumbing to the inertia of modernity’s latter-day Spartans. Those latter-day Spartans were the non-industrial, non-commercial political orders mired in predominantly agrarian economies. The changes in modernity were of course of a different variety than the changes of antiquity and 1787 America was still overwhelmingly agricultural as *Federalist* 11 acknowledged. But modern constitutions, just like the constitutions of old, had to accommodate (as the Corinthians put it) “the constant improvement of methods” that the “constant necessities of action” demanded.

The Federalist’s plea in Nos. 9–14 is that the Constitution is not only a vehicle for meeting these necessities of action, those expediencies that the modern world of politics and America’s own geopolitical situation required. Its plea is further that the Constitution was also the vehicle to the pursuit of human excellence in as many forms as the modern age might permit. *Federalist* 11 concludes with an entreaty to Americans to aspire to a greatness distinct from, and superior, to that of the Europeans. *Federalist* 14 similarly concludes with a paean to America’s “manly spirit” of innovation. The “new and more noble course” that Americans pursued during their Revolutionary period was happy not merely for them but “for the whole human race.” These encomiums exude high praise for America, an appeal not merely to American interest but above all to American pride. Volume 1 of *The Federalist* concludes by proposing how “honorable for human nature” and “glorious an example to mankind” it would be if Americans exercised “wisdom and virtue enough” to embrace the Constitution, a document that would promote “the great ends of public happiness and national prosperity” (37:221). *Federalist* 14 similarly directs its praise at the particular forms of government Americans chose “in favor of private rights and public happiness,” forms of government that would preserve and enhance their “liberties” (14:84–85).

I have proposed in this book that the most general way in which the Constitution might promote Americans’ liberties would consist of freeing up the spirit of enterprise. Americans were not polis dwelling pagans. Nor were they the commiserating village people of Rousseau’s *Social Contract*. They were restless, modern, entrepreneurial individuals who sought not merely material gain but all of the other opportunities commercial society offered, including the pursuit of individual, political, and martial excellence. All of these would be impossible without advanced commercial development. This is an argument both Hamilton and Madison proposed in *The Federalist*. They were consistent in this regard. In the next chapter I provide a brief examination of certain themes that emerge in *The Federalist*’s second section, Nos. 15–22 on the

“insufficiency of the present Confederation to the preservation of the Union.” The focus here will be on specific numbers that highlight the distinct nature of federal powers under the Constitution and how pursuit of these powers will promote a new American nationalism and enhanced spirit of enterprise. The discussion here makes clear that *The Federalist* did not embrace any sort of restricted vision of the role of commerce in the new constitutional order along the lines that the republican thesis proponents have proposed. To the contrary, the authors of *The Federalist* hoped America over time would become perhaps the most dynamic of the modern commercial empires. Nor, it becomes clear, did *The Federalist* seriously entertain a restricted role for America’s military over the long term. This becomes particularly evident given the objects the federal government was anticipated to pursue. We get a strong indication of what those objects will be in *The Federalist*’s second section.

NOTES

1. See Jeremy Rabkin, *Judicial Compulsions: How Public Law Distorts Public Policy* (New York: Basic Books, 1989), 44–48.

2. See Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Alfred A. Knopf, 1992), 324–25.

3. David F. Epstein, *The Political Theory of The Federalist* (Chicago: The University of Chicago Press, 1984), 85.

4. The concepts of negative and positive liberty, from which the distinction between negative and positive rights derives, were originally developed most notably by Friedrich Hayek and Isaiah Berlin. See F. A. Hayek, *The Constitution of Liberty* (Chicago: The University of Chicago Press, 2011), esp. 69–70 and chapter 4, “Freedom, Reason, and Tradition”; see also, Isaiah Berlin, “Two Concepts of Liberty,” in *Four Essays on Liberty* (New York: Oxford University Press, 1969), 118. The examples in *Federalist* 78, for instance, of those rare instances in which the judiciary could find legislative acts constitutionally infirm—bills of attainder and ex post facto laws, for example—were cases involving “reservations” against government “of particular rights or privileges” (78:497, emphasis added). The implication here, like *The Federalist*’s frequent reference to rights under the Constitution as “private rights” (not public or group rights), was that the Constitution’s original rights were individual rights that were negative in character; judicial review would focus on reservations against government of particular rights.

5. Thomas G. West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom* (New York: Cambridge University Press, 2017), 34.

6. *Ibid.*, 49.

7. Peter McNamara, *Political Economy and Statesmanship: Smith, Hamilton, and the Foundation of the Commercial Republic* (DeKalb: Northern Illinois University Press, 1998), 113.

8. Harvey C. Mansfield, Jr., *Taming the Prince: The Ambivalence of Modern Executive Power* (Baltimore: Johns Hopkins University Press, 1993), 255–256.

9. See Karl-Friedrich Walling, *Republican Empire: Alexander Hamilton on War and Free Government* (Lawrence: University Press of Kansas, 1999), 114–115.

10. Robert Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century* (New York: Vintage Books, 2007), 12.

11. Gerald Stourzh, *Alexander Hamilton and the Idea of Republican Government* (Palo Alto, CA: Stanford University Press, 1970), 196.

12. As Walling concludes, *Federalist* 11 took American exceptionalism more seriously and perhaps more romantically than anyone ever had before. Hamilton's blend of liberal principle with geopolitical prudence provided an almost utopian vision of American national greatness, one that comported more with twentieth-century America's understanding of its role in the world than the eighteenth-century founders' vision. Walling, *Republican Empire*, 114–115.

13. Alan Levine, "The Idea of Commerce in Enlightenment Political Thought," in Joseph Postell and Bradley C. S. Watson, *Rediscovering Political Economy*, ed. Joseph Postell and Bradley C. S. Watson (Lanham, MD: Lexington Books, 2011), 55.

14. Michael D. Chan, *Aristotle and Hamilton On Commerce and Statesmanship* (Columbia: University of Missouri Press, 2006), 66.

15. Levine, "The Idea of Commerce in Enlightenment Political Thought," 68. See also, *ibid.*, 55–56, 58–60, 63, 65, and 67.

16. See, for instance, Carl J. Richard, *The Founders and the Classics: Greece, Rome, and the American Enlightenment* (Cambridge, MA: Harvard University Press, 1994); Carl J. Richard, *Greeks and Romans Bearing Gifts: How the Ancients Inspired the Founding Fathers* (Lanham, MD: Rowman & Littlefield, 2009); and Colleen A. Sheehan, *The Mind of James Madison: The Legacy of Classical Republicanism* (New York: Cambridge University Press, 2015).

17. Montesquieu, *The Spirit of the Laws*, XX, 4, 587–588.

18. *Federalist* 1 invited readers to overlook the motives of the disputants in the debate over ratification. This included Publius, whose "motives" he proclaimed "must remain in the depository of my own breast." Publius added: "My arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth" (1:6). One way to interpret these statements is that there would be little need to read behind *The Federalist's* lines. Publius' arguments after all will be open to all, may be judged by all, and will not disgrace the cause of truth. Presumably, Publius will speak frankly and honestly and let the chips fall where they may. At least in most instances. As I have already indicated, there are other instances in which prudence would dictate a more cautious approach to Publius' genuine advocacy, such as regarding his teaching concerning America's true grand strategy under the Constitution.

19. *Federalist* 1, for instance, proposes that adopting the Constitution will lead not merely to "your liberty" and "your happiness" but to "your dignity" (1:6). Dignity is something distinct from liberty and happiness. It invokes the idea of honor, something itself distinct from interest. *Federalist* 14, concluding the first section of *The Federalist* on the utility of the union to Americans' political prosperity, again defends the new

constitutional union in terms of honor rather than interest: it is to “the glory of the people of America” that their “manly spirit” pursued “numerous innovations” that would be “displayed on the American theatre.” And it is not merely “posterity” that “will be indebted for the possession” but “the world for the example” of these innovations (14:84). Volume one of *The Federalist* similarly concludes with the Declaration that adoption of the Constitution will not only be good for America and reflect the “wisdom and virtue” of its proponents but that it will be “most honorable for human nature” and “set so glorious an example to mankind!” (36:221).

Why—why will the world be indebted for these innovations and why does resolution of the American problem inure to the benefit of the world per se? What makes the particular case of the United States a potential model of universal application? And why precisely is the Constitution so honorable, “most honorable” Publius suggests not only for the United States or any other discrete political regime but for *human nature* itself? Why exactly would embracing the Constitution be most honorable for human nature? Or why would it set so glorious an example to mankind? These are pretty laudatory statements. In fact they are the *most* laudatory. If we do not accept *The Federalist*’s superlatives here as mere rhetorical garnish, intended to flatter the opinions of his readers, the Constitution it would seem is not merely expedient on Publius’ reading but conducive toward some sort of excellence or virtue, worthy of such designations as dignity, honor, and glory.

20. See Chan, *Aristotle and Hamilton on Commerce and Statesmanship*, 81.

21. See, *ibid.*, 166.

22. *Ibid.*, 65–66.

23. David Hume, “Of the Rise and Progress of the Arts and Sciences,” in *Essays: Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Classics, 1985), 113.

24. Chan, *Aristotle and Hamilton*, 71.

25. Mary P. Nichols, *Thucydides and the Pursuit of Freedom* (Ithaca, NY: Cornell University Press, 2015), 4. See, also, 15, 35, 46–47, and 52–53.

26. Walling notes in *Republican Empire*:

Pericles, the leader of the greatest maritime commercial republic of Greece, praised Athens for many of the dynamic qualities admired by Hamilton and Hume in their discussions of commerce. Our word “energy” comes from the Greek *energeia*, the term Aristotle used to describe the actualization of potential, including human potential. Hamilton may not have known the etymology of the energetic side of his character, and he may not have cared, but he did make a strong case that a commercial republic supplied greater opportunities for self-actualization than an agrarian one. (At 330, n65)

27. David Hume, “Of Refinement in the Arts,” in *Essays: Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Classics, 1985), 270. See also, Chan, *Aristotle and Hamilton*, 152–153; and Ryu Susato, “Hume’s Nuanced Defense of Luxury,” *Hume Studies* Vol. 32, no. 1 (April 2006): 167.

28. *An Essay Concerning Human Understanding*, ed. Peter H. Nidditch (New York: Oxford University Press, 1991), II, XX, § 6, 230.

29. The interpretation above in this paragraph is a slight modification of Chan’s argument in *Aristotle and Hamilton*, 152–153.

30. Hume, "Of Refinement in the Arts," 274.
31. See also, Leo Strauss, "On Thucydides' War of the Peloponnesians and the Athenians," in Leo Strauss, *The City and Man* (Chicago: The University of Chicago Press, 1964), 146.
32. See Victor Davis Hanson, *Carnage and Culture: Landmark Battles in the Rise of Western Power* (New York: Anchor Books, 2002), 6.
33. See John Yoo, *The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11* (Chicago: The University of Chicago Press, 2005), 66–67.
34. See Chan, *Aristotle and Hamilton*, 149–153.
35. *Ibid.*, 152–153.
36. *Ibid.*, 128.
37. See Levine, "The Idea of Commerce in Enlightenment Political Thought," 61 and 68.
38. *Federalist* 10 proclaims: "No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment" (10:56). Robert Curry interprets this statement in the context of the problem of direct democracy:

The Constitution has the design it has so that we can have self-government without being judges in our own cause. Because the monarch is a judge in his own cause, monarchy violates this self-evident truth. But to make the people a judge in their own cause violates it equally. A direct democracy, one in which the people, in Madison's words in No. 10, "assemble and administer the government in person," makes the people judges in their own cause. Direct democracy therefore also fails to meet the standard of a government of laws and not of men. (Robert Curry, *Common Sense Nation: Unlocking the Forgotten Power of the American Idea* [New York: Encounter Books, 2015], 118)

39. Alexander Hamilton, John Jay, and James Madison, *The Federalist*, ed. and intro. J. R. Pole (Indianapolis: Hackett, 2005), 56.
40. See Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill: The University of North Carolina Press, 1980), 52–53; Levine, "The Idea of Commerce in Enlightenment Political Thought," 71; and Chan, *Aristotle and Hamilton*, 146–147.
41. Curry, *Common Sense Nation*, 114. See, also, *ibid.*, 105, 110, 111–112, and 115.
42. F. A. Hayek, *The Constitution of Liberty*, in *The Collected Works of F.A. Hayek*, Vol. 17, ed. Ronald Hamowy (Chicago: The University of Chicago Press, 2011), 100.
43. See, for instance, Bruce D. Porter, *War and the Rise of the State: The Military Foundations of Modern Politics* (New York: The Free Press, 1994), esp. chapter 7; Geoffrey Parker, *The Military Revolution: Military Innovation and the Rise of the West, 1500–1800*, 2nd ed. (New York: Cambridge University Press, 1996); Max Boot, *War Made New: Technology, Warfare, and the Course of History, 1500 to Today* (New York: Gotham Books, 2002); Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987), esp. chapter 7; and Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), 48, 59–60, 76, and 80.

44. As Thomas West has pointed out, to say that the protection of property is secured on the founders' reading "by getting government out of the way" is not to deny the "substantial legal infrastructure" that is necessary for that protection. It is just to acknowledge the need to keep government from unduly interfering with the exercise of men's natural rights through unnecessary regulation. West, *The Political Theory of the American Founding*, 8–9. See also, *ibid.*, 309–361.

45. Edling, *A Revolution in Favor of Government*, 46.

46. Walling, *Republican Empire*, 15, 44–45, 69–70, 123, and 154–172.

Chapter 8

Enterprise and the High Politics of American Constitutionalism

The last two chapters have presented *Federalists* 9–14 as complementary numbers. *Federalists* 11–14 emphasized how the development of commerce and enterprise under the Constitution would assist that first governmental object announced in *Federalist* 10 of protecting men’s faculties. The Constitution would protect those faculties and assist in the exercise of individual private rights through the creation of an enlarged, more integrated commercial republic than anything the Confederation could muster. As I also proposed earlier, there was a tension in *The Federalist*’s early argument regarding America’s grand strategy under the Constitution. Was *The Federalist* advocating a position of insularity or beneath the veneer of that advocacy was its real teaching one of a more extensive role for the American military in international affairs, especially over the long haul? The tension here continues throughout *Federalists* 15–36.

The Federalist’s rejection of an insularity doctrine is apparent early on in part two of the work, implied by the argument we find in *Federalists* 15 and 16. Those numbers, like *Federalists* 20, 23, and 40,¹ stress the need for federal law to apply directly to individuals rather than simply to the states as occurred under the Articles of Confederation. Publius’ contention in these numbers is that absent the applicability of federal law to individuals the only solution to national law enforcement will be the use of military force against the states. Laws can be administered one of two ways: “by the agency of the courts of justice, or by military force; by the COECION of the magistracy, or by the COERCION of arms” (15:91). The latter will necessarily occur anywhere national laws do not apply to individuals through the medium of the courts. And where force is required, so too will be a large standing army to impose that force. If the federal government is compelled to use force against the states to carry out its laws, the consequence will not only be a large standing army. It will also likely be civil war (16:94–95).

Although the advocacy in *Federalists* 15 and 16 is for the need to apply federal law directly to individuals, it is important to emphasize that the argument in these numbers applies only to American *domestic* politics. It has *no* applicability to the international world since in that world there is no effective prosecution of law against individual states. The ramification is that there will be a need for a large military presence to deal with the potential belligerence of opposing states. This was particularly so given the imperial empires that dominated the Atlantic and much of the Pacific world in 1787, to say nothing of the pirates of the Mediterranean that had harassed American shipping and enslaved American sailors since the end of the Revolution.

The need for greater militarization is a theme throughout *Federalists* 23–36. There Publius makes the case for unlimited federal military power. The suggestion once more is that *The Federalist*'s grand strategy for America under the Constitution will be much broader than any insularity doctrine would allow. If America was to compete with the imperial and commercial empires of the day, the United States itself would have to become an empire—a commercial republican empire but an empire nonetheless. Necessity required nothing short of this. But it is not just necessity that demanded such an empire. Justice did too. This becomes evident in *Federalists* 15–22, which seek to detail precisely why the Confederation government was too weak to preserve American union. And that weakness would jeopardize American liberty and those rights Publius maintains the Constitution would protect. It would also jeopardize that common stock of property and resources that with the appropriate constitutional instruments might serve to activate a greater spirit of enterprise that *The Federalist* suggests was necessary to the exercise of American rights. *Federalist* 24 concludes with the proclamation that it is the very “extent of the country” that “is the strongest argument in favor of an energetic government; for any other can certainly never preserve the Union of so large an empire” (24:145). And *Federalist* 38 gives us a hint of what that empire's character looks like when describing the enterprising, if not aggressive and acquisitive, nature of the American people. The government has recognized that enterprise and acquisitiveness by aiding and abetting Americans' expansion into the frontier. “It is now no longer a point of speculation and hope, that the Western territory is a mine of vast wealth to the United States.” Under the “proper management” that territory might be able to help pay off America's domestic debt and assist the federal treasury in other ways with the government's additional objects. Americans may presume “that a rich and fertile country, of an area equal to the inhabited extent of the United States, will soon become a national stock. Congress has assumed the administration of this stock. They have begun to render it productive. Congress has undertaken to do more: they have proceeded to form new States, to erect temporary governments, to appoint officers for them, and

to prescribe the conditions on which such states shall be admitted into the Confederacy.” But Congress has done this without constitutional authority. Yet, importantly, *Federalist* 38 stresses that it raises the issues of territorial acquisition here not “to throw censure on the measures which have been pursued by the Congress.” Publius is “sensible they could not have done otherwise.” Rather *Federalist* 38 emphasizes what it does to point out that “[t]he public interest, the necessity of the case, imposed on them the task of overleaping their constitutional limits” (38:237–238).

When I discussed *Federalist* 38 in chapter 1 it was to emphasize that it was not just necessity but the public interest that Publius maintained had caused Congress to overstep its constitutional limits here. Revisiting this number again, we might highlight this time Publius’ recognition of the restless, dynamic character the American people had assumed by 1787. There was a good likelihood that that character would assume an even more dynamic posture in future. *Federalist* 38 impresses upon its readers that Congress “could not have done *otherwise*” than to overstep its constitutional limits to accommodate American expansion into the West. This was necessary to make that “rich and fertile country” a “national stock,” which Congress apparently had the good sense to start making “productive.” This perhaps is at least one reason why, in *Federalist* 24’s language, the extent of a burgeoning America was the strongest argument in favor of an energetic government; why no lesser form of government could “preserve the Union of so large an empire.” The enterprising, dynamic, and expansionist nature of American character once again could abide nothing less.

Federalists 18–20 set the stage for this proclamation in *Federalist* 24 by demonstrating how ancient and modern confederations suffered primarily from centrifugal forces. They tended to break apart rather than consolidate. The threat with confederal government, particularly those of a more restless, commercial, and dynamic variety, was not tyranny at the center so much as dissolution at the periphery. This again critics of the Constitution had disputed. They maintained that the Constitution would either create a consolidated government, reducing the states and local institutions to insignificance. Or instead the Constitution would produce a tyrannical government that would make oppressive demands on the people and increasingly threaten individual liberties.² I will deal with *Federalists* 18–20 later in this chapter. First, however, I want to focus on *Federalist* 17’s contention that the federal government will not subsume the powers of the states. As we saw in chapter 3, *Federalist* 17 makes a qualitative distinction between the types of limited powers the federal government will exercise. The discussion there, which I revisit below, gives us a hint of what type of nationalism *The Federalist* thinks the Constitution might beget, a nationalism tied to a new virtue of enterprise. This in turn provides us an opportunity to review in more depth

The Federalist's commercial republican theory vis-à-vis other approaches to commercial republicanism prevalent in political thought circa 1787. I will provide that review shortly but for now turn to Publius' defense of the limited powers of the federal government.

LIMITED GOVERNMENT AND THE HIGH OBJECTS OF AMERICAN CONSTITUTIONALISM

Federalist 14 concluded with four observations intended to place the enlarged republic contemplated by the Constitution in a favorable light. The first, and perhaps most important, was that the general government's jurisdiction was "limited to certain enumerated objects." These objects concerned "all the members of the republic" and could not "be attained by the separate provisions of any" (14:82). *Federalist* 17 reaffirms this commitment to limited government constitutionalism, assuring readers that the states' police powers will not be subsumed by the federal government under the Constitution because they are too petty to occupy the attention of those ambitious for federal office. For these latter only the powers over "commerce, finance, negotiation, and war" will provide sufficient allurements or contribute to the dignity, importance, or splendor of the national government. These are the powers that the federal government will exercise under the Constitution and the fact that they are so limited will contribute to the efficiency of the national government (17:100–101).

Federalist 17's defense of these qualified federal objects is important not only because it suggests that political anthropology or political sociology rather than the text of the Constitution will guide federal officeholders in keeping the federal government's powers limited but also because it proposes that those powers are associated with the honor of federal office. The people of the states will remain most closely tied to their local governments because those governments will continue to deal with matters of criminal and civil law. These issues deal with questions of life and property that are near and dear to the people. They also contribute more than any other issues "to impressing upon the minds of the people, affection, esteem, and reverence towards the government." By contrast, the operations of the federal government are much more remote. Falling less immediately under the people's observation, their benefits "will chiefly be perceived and attended to by speculative men" (17:102–103). This means that the American citizenry's attachment will be much more closely affiliated with the state governments than with the federal government. *Federalist* 17 suggests that this will not only serve to check national power but may even become a dangerous rival to it. Both the federal system and the national government's limited powers then will preserve the people's liberties under the Constitution.

This argument serves as a preview for the remainder of *Federalist* 17 as well as *Federalists* 18–20. All of these numbers review examples of confederations both ancient and modern that suffered from inadequate power being given to the central or national governments. Before turning to those examples it is worth emphasizing the roles of honor and excellence in *The Federalist*'s construction of the national government's powers under the Constitution—powers whose appropriate use (as the passage above suggests) will be appreciated primarily by “*speculative men*”; men presumably of sufficient intelligence that they will appreciate what is truly necessary for the long-term general welfare of the United States. Chapter 3 emphasized that *The Federalist* maintains that the Constitution is designed to attract the best available men to federal office. One way the Constitution will do this, as *Federalist* 17 highlights, is by limiting the federal government's powers to those that have the greatest allure to the politically ambitious: those powers that might garner them memorialization as great warriors, statesmen, or facilitators of great enterprising projects or scientific innovations—these are the powers over commerce, finance, negotiation, and war.

One obvious implication of *Federalist* 17 is that the truly great questions involving these issues will not be dealt with by the states, at least not for the most part and certainly not in the first instance. W. B. Allen has observed that *Federalist* 17's list of federal powers almost seems comical to us today since even concerns over sewage and garbage have become matters of federal regulatory policy. The Environmental Protection Agency as well as many other agencies of the federal government focuses precisely on these types of issues.³ This may indicate how far from *The Federalist*'s model of constitutionalism we have moved in the twentieth and twenty-first centuries, but it also serves to accentuate the hierarchy of powers *The Federalist* contemplates should dominate the federal order. The list of four federal objects *Federalist* 17 provides us as apparently the highest in that order may not seem perspicaciously clear to us today but what we might at least acknowledge is that issues like commerce and war, whatever their precise nature, are of significantly more dignity or importance than sewage and garbage.

The reason this distinction is significant is twofold. First, it provides us some idea about what Publius thought the new nationalism linking Americans to one another might consist of. That nationalism will center on issues related to commerce, finance, negotiation, and war. It is these issues that the federal government will be consumed with and that will presumably form the basis around which a new American identity will be forged. Second, like the argument rejecting the insularity doctrine as *The Federalist*'s grand strategy for America under the Constitution, *Federalist* 17's defense of state prerogatives against federal overreach may conceal, at least to some extent, Publius' real aspirations about what might transpire under the Constitution over the

long term. Those aspirations become more explicit later in *The Federalist*. If readers were not compelled by *Federalist* 17's political anthropology explanation regarding why federal officeholders would not encroach on state powers, Publius counters that it will always be easier for state representatives to encroach on national powers than for federal representatives to encroach on state prerogatives. The reason is because of the greater influence the state governments have over people for the rationales listed above. But an important qualification is introduced here. The people will evince such a preference only so long as the states "administer their affairs with uprightness and prudence" (17:101). Failing that, we may presume that the people's preferences may switch to the national government. And it is with the national government that Publius hopes the people's affections will eventually rest. Indeed, if the best and the brightest are naturally going to drift toward the federal government under the Constitution, as *Federalist* 17 suggests, then it would seem inevitable that it is at that level that the best administration will occur over time.

Later *Federalist* numbers confirm this. Responding to the accusation that the federal government will have to use military force to execute its laws, *Federalist* 27, for instance, denies the presupposition on which this contention is based; namely, that the people will be so unhappy with the national government that military force will have to be used against them to give effect to federal law. To demonstrate the contrary *Federalist* 27 presents a catalogue of reasons for why "the general government will be better administered than the particular governments": the better quality of representatives, given the broader choice available and their means of selection, including Senators selected because of their preeminence by their state governments; the greater knowledge federal representatives will have of both local and national affairs; the decreased incidences of faction that necessarily occur in larger constituencies like those from which members of the federal government will be drawn, as well as the benefits generated by the "interior structure" of the national government that later *Federalist* numbers will document. Moreover, if the "hope of impunity is a strong incitement to sedition; the dread of punishment, a proportionally strong discouragement to it," will "not the government of the Union, which, if possessed of a due degree of power, can call to its aid the collective resources of the whole Confederacy, be more likely to repress the *former* sentiment and to inspire the *latter*, than that of a single State, which can only command the resources within itself?" *Federalist* 27 concludes that the more the operations of the federal authority are mingled in the operations of government and the more the people become familiar with it, the more the federal government will endear itself to Americans; "the further it enters into those objects which touch the most sensible chords and put in motion the most active springs of the human heart, the greater will be the probability that

it will conciliate the respect and attachment of the community” (27:165–166, emphasis in original). Later *Federalist* numbers say much the same thing; the federal government will be better administered under the Constitution and as people become increasingly habituated to it the national government will become increasingly popular.⁴

As the passages above illustrate, *Federalist* 17 provides a precursor to Publius’ later exposition of why Americans may come to identify more with their national government than with their state governments. This constitutes one element of the new national pride or patriotism *The Federalist* anticipates the Constitution facilitating. But the other relates to the nature of the objects the federal government will pursue. These necessarily have to be limited and not just as a matter of principle. *Federalist* 46, again seeking to reassure readers in the manner *Federalist* 17 did, speculates that if

the people should in future become more partial to the federal than to the State governments, the change can only result from such manifest and irresistible proofs of a better administration, as will overcome all their antecedent propensities. And in that case, the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due; but even in that case the State governments could have little to apprehend, because it is only within a certain sphere that the federal power can, in the nature of things, be advantageously administered. (46:301)

The jack-of-all-trades is a master of none. The federal government can only be competent in a limited number of fields. This is a function of the *nature of things*. There is in other words a natural order to federal and state powers. That order seems to involve the objects of federal power outlined in *Federalist* 17: commerce, finance, negotiation, and war. These were powers (to use the language of *Federalist* 14) that concerned “all the members of the republic” but could not “be attained by the separate provisions of any.” To go beyond this list of powers would violate the nature of things and breed unpopularity since the presumption in *Federalist* 46 is that too extensive a list of federal objects cannot be advantageously administered. Perhaps Publius here anticipates the unpopularity of today’s federal government that as Allen and others have suggested has become so overbearing that it regulates even matters relating to sewage and garbage.

But this returns us to our earlier issue: If the objects of the federal government were those it was naturally competent to administer, commerce, finance, negotiation, and war, these were also apparently what brought dignity, importance, and splendor to the national government as *Federalist* 17 maintains. Why precisely do they do so? And what exactly do these objects consist of?

It seems that on *The Federalist's* reading there were at least two purposes for giving the federal government power to regulate commerce "among the several States." First, to eliminate those state barriers to commercial activity that had prevailed under the Articles of Confederation. Second, to create a national market for goods and services.⁵ As *Federalist 7* had highlighted, freeing the spirit of enterprise from those undue regulations of trade that the states had imposed on individuals across jurisdictions in the Confederation was a necessary precondition not only to interstate comity but to pursuing greater commercial enterprise. How else could such enterprise improve without the removal of such interstate trade barriers? But if removing such barriers was intended to incentivize Americans to be more enterprising, this seemed to imply a rejection of the more constrained vision of commercial development that some in the republican thesis and classical republican schools of founding thought have proposed. *Federalist 8* had highlighted the all-consuming nature of commercial enterprise in the modern era; that those industrious habits of modern peoples had left them "absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce." Publius here also highlighted that the "means of revenue," which had "been so greatly multiplied by the increase of gold and silver," as well as by the "arts of industry, and the science of finance," had "produced an entire revolution in the system of war" (8:44, emphasis added). If that revolution was to be accommodated and if commercial development, along with the development of the arts and sciences so critical to industry, finance, and the improvement of the American military, was to proceed apace, a new dispensation allowing for the utmost accommodation of these objects would have to be pursued under the Constitution. This is what *Federalist 17* seemed to contemplate by emphasizing that the objects of commerce, finance, negotiation, and war were what would contribute to the dignity, importance, and splendor of the national government. And if that was the case, this in turn seemed to underscore the importance of the new virtue of enterprise Americans would be invited to undertake in the new constitutional order. It seemed federal representatives themselves would be encouraged to facilitate this virtue through new legislative initiatives.

The pursuit of such a new dispensation and virtue under the Constitution stood athwart traditional accounts of governmental powers and republican character. As I have noted on a number of occasions throughout this book, critics of commercial society viewed advanced commercial development and the growth of the arts and sciences as antithetical to the cultivation of an effective military instrument and martial virtue. I mentioned Rousseau in the last chapter, who had indicted large commercial societies, the arts and sciences that were an integral part of those societies, and their professional militaries. The combination of the development of commerce, along with arts

and sciences, had created in Rousseau's opinion a kaleidoscope of artificial and unnecessary needs, desires, and hopes, making men soft and undermining their moral character.⁶ The all too predictable consequence was that the more the arts and sciences developed in advanced commercial society the more men became alienated from their seminal duties as citizens and the more civic and martial virtue became enervated.⁷

As Drew McCoy, J. G. A. Pocock, Gordon Wood, and others in the classical republican school of founding scholarship have pointed out there were a number of American founders who, like Rousseau, were equally skeptical of modern commercial life. Two, McCoy observes, were Thomas Jefferson and Benjamin Franklin. Both Jefferson and Franklin had their doubts about commercial society in Great Britain with its vast inequality of wealth, its industrial and exceedingly dependent poor, its consumption with undue, "vicious" luxury, and its political cronyism. Much of the reason for the skepticism of those opposed to extensive industrial and commercial development had to do with their interpretation of economic growth—an interpretation that understood commercial advancement, along with the progress of the arts and sciences, as coeval with social and political decay. McCoy points out that a dominant strain of the new science of society that began to emerge in the late eighteenth century had embraced a multistage theory of economic development. This multistage view began with a most primitive stage of human development, hunting and gathering, then moved through a pasturage stage dominated by nomadic herdsman or shepherds, then an agricultural or soil-tilling stage, and, finally, a commercial stage, the highest or most advanced level of development with myriad manufacturing, an advanced division of labor, and a populace characterized by refined manners and an abundance of luxuries.⁸ Associated with each of these stages of economic development were specific forms of behavior; the manners, habits, customs, even the morality of men were shaped by economic systems. Adam Smith, who adhered to this multistage theory of economic development, believed an advanced division of labor could undermine men's intellectual, social, and martial virtues by dulling the mind of the laboring poor. An advanced division of labor also tended to eviscerate the self-sufficiency that typified more primitive societies where workers provided basic necessities on their own and performed multiple tasks. Because of the intricate network of exchange complex commercial societies facilitated, the populations of such societies became increasingly dependent on others for an accelerating variety of staples and luxuries. Rousseau's famous critique of commercial society had zeroed in on luxuries because they made men soft and vain as luxuries became more refined and widespread. In addition, ever expanding and differentiated forms of wealth generated by commercial progress created increasing inequality and fueled a growing, unrestrained avarice.⁹

How could republicanism survive, let alone thrive, in such a society? Benjamin Franklin largely concurred with Rousseau's assessment. Observing late eighteenth-century Britain and its mercantilist economy Franklin had been mortified by the political and social pathologies he witnessed. "Here Numberless and needless Places, enormous Salaries, Pensions, Perquisites, Bribes, groundless Quarrels, foolish Expeditions, false Accounts or no Accounts, Contracts and Jobbs," he demurred, "devour all Revenue, and produce continual Necessity in the midst of natural Plenty."¹⁰ What was worse, the working poor were mere pawns of Britain's export trade and indentured servants of well-connected industrialists. Such citizens, utterly dependent on others and just scraping by, could never be independent or self-governing. As McCoy notes, "Franklin's view of England reflected a common belief that political corruption and constitutional decay festered most readily in societies where individuals had lost their economic independence and moral integrity."¹¹ Thus American republicanism and both the public and private virtue necessary to maintain it could only be undermined by advanced commercial development and large-scale manufacturing. To inoculate against this Franklin, like Jefferson and Madison more definitively in the 1790s and beyond, pursued a political economy that, in McCoy's words, sought to expand American republicanism through *space* rather than *time*. The latter constituted the approach of Alexander Hamilton and the Federalists. Their economic platform sought, by means of a funded debt, national bank, and mobilization of mercantile capital, to bring America into the modern world of international commerce. The Federalists fully embraced the modern world's advanced division of labor, revolution in public finance, large corporations, and institutionalization of money markets.¹² Franklin, Jefferson, and Madison, by contrast, sought to arrest America's commercial development by suspending the American economy in a more or less static agricultural stage of social development. This would allow the American republic's burgeoning population to expand across the almost limitless North American continent. By growing across space, rather than vertically through time, America would avert the social and political pathologies advanced commercial development like that in Britain entailed.¹³

The Federalist of course rejected such a pessimistic vision of commercial society as well as the social and intellectual pathologies associated with it. This rejection included the contributions of Madison. According to J. R. Pole, editor of a popular edition of *The Federalist*, foremost among the "theoretic politicians" Madison had in mind when he criticized them in *Federalist* 10 was Jean-Jacques Rousseau.¹⁴ As much as Madison may have abandoned the more dynamic interpretation of commercial political economy in the 1790s in his contributions to the *National Gazette* and other writings,¹⁵ his essays in *The Federalist* provide no evidence of an affection for agrarian

republicanism. Nor do they evince any opposition to the sort of economic programs Hamilton developed as Treasury Secretary in the Washington administration and that Hamilton set out, with Madison, in preliminary form in *The Federalist*.¹⁶ Madison's contributions to *The Federalist* in fact were essential to the articulation of a highly developed, largely unrestrained commercial enterprise that integrated the manufacturing North with the agrarian South in an innovative, increasingly dynamic commercial union. Again, it is important to remember that Madison's defense of the Constitution in *The Federalist*, like Hamilton's and Jay's, is made under the pseudonym of Publius. It does not necessarily reflect his own opinions about the Constitution so much as the best defense of the Constitution the convention and an informed political theory might provide.

In addition to being necessary to meet the military exigencies of the modern age, development of commerce and the arts not only might moderate—as *Federalist* 8 suggested—the militancy that so often defined less commercial regimes, invigorating and refining human faculties through innovation, industry, and the acquisition of knowledge in the manner Hume proposed. It also presented the opportunity of mitigating the problem of faction and breaking the aforementioned cycle of regimes that had been embraced by critics of advanced commercial society like Jefferson and Franklin. As Cathy Matson and Nicholas Onuf have proposed, the Federalists defended a novel form of republicanism that sought to expand the scope of economic opportunities that had been opened up by independence but largely arrested by state governments under the Articles of Confederation. Advocating the protection and promotion of the ever-proliferating interests of enterprising citizens, the Federalists rejected the stale and timeworn advocacy of classical republicanism, which celebrated small, homogenous polities. Such a vision of republicanism was obviously incompatible with the promise of an expanding and prosperous commercial republican empire of the sort discussed in *The Federalist*. More than merely a foil to Antifederalist allegations that the constitutional reformers were attempting to institute an elitist, aristocratic regime built upon the ashes of republican liberty in the states, the Federalists' proposals for constitutional reform Matson and Onuf maintain reconceptualized the very nature of commerce by focusing more on *production* and *industriousness* rather than on *consumption* or the *effects* of commerce.

The latter had served as the springboard for so much criticism about the corruption of vicious luxury and the unnecessary, artificial desires commercial life allegedly created. By concentrating on production and industriousness, the Federalists had the opportunity to explain how the Constitution might promote more social energy and greater union, thus allowing Americans to transcend the debilitating and petty divisiveness of the sectional politics that had defined life under the Confederation. Commerce was considered by the

Federalists not merely as a precondition for the advancement of civilization and a salutary expression of man's social nature but was crucial to fomenting a continent-wide "natural harmony of interdependent interests." This was the centerpiece of the constitutional reformers' vision of political economy. As Matson and Onuf conclude, the framers' "union of interests" invited Americans to think continentally and to embrace westward expansion as well as the development of America's vast natural bounties. It also allowed supporters of the Constitution to expand upon the nascent economic liberalism that later became more dominant in American politics and to refine their vision of political economy. That vision, as Matson and Onuf explain, moved "beyond traditional assumptions about the inevitable cycle of growth and decay."¹⁷

As Michael Chan has suggested, *The Federalist* assumed that the cycle of regimes that McCoy and others have described as typifying much eighteenth-century political economy could in fact be overcome by greater commercial and technological development. *Federalist* 8 had highlighted that the modern revolution in war was no less momentous than the modern revolution in politics recounted in *Federalist* 9. Both were the product of the advancement of the arts and sciences. According to Francis Bacon, who anticipated as well as anyone the changes the modern arts would bring to the world of war and politics, the latter, modern war, may well have determined the former, modern politics. As Chan observes, Bacon viewed the printing press, gunpowder, and the compass as having (in Bacon's words)

"changed the whole face and condition of things throughout the world, in literature, in warfare, and in navigation. From them innumerable changes followed, so much so, that no empire, no sect, no star has been seen to exert more power and influence over the affairs of men than have these mechanical discoveries." In arguing that "no empire, no sect, no star" has been more influential in human affairs than the arts, Bacon was not so subtly denigrating the role of politics, religion, and even Nature herself in human affairs. And if the arts are, in fact, so influential, then technological virtù (if properly cultivated), not classical virtue, will eventually dictate the cycle of regimes.¹⁸

In *The Spirit of the Laws* Montesquieu had praised the constitution of England above all others because whereas other nations had "ceded the interests of commerce to political interests," England had "always ceded political interests to the interests of commerce."¹⁹ Montesquieu's praise of England was synonymous with its subordination of politics to commerce. This was the key to England's moderation and stability. Examining the passions that made up the animating principles of regime types Montesquieu sounded a note similar to Hume's observations in "The Rise of the Arts and Sciences." Monarchies, whose spring was honor, had a natural proclivity to act on the impetus of pride. This was dangerous to political order.

Vanity is as good a spring for a government, as pride is a dangerous one for it. To see this we need only to represent, on the one hand, the innumerable goods that result from vanity: luxury, industry, the arts, fashions, politeness, taste; and, on the other hand, the infinite evils of the pride born of certain nations: laziness, poverty, the abandon of all, the destruction of nations that chance has placed in their hands, including their own.²⁰

Montesquieu originally described the emergence of vanity and luxury as the corruption of republican virtue,²¹ but now they seem somehow essential to it or at least to that sort of virtue Chan refers to as technological virtù. Industry, the arts and fashions, which were all antithetical to the small, “virtuous” republic, are apparently integral to the large, modern commercial republic. The spring of honor, which moved monarchies, produced laziness, poverty, the abandon of all, and unnecessary destruction and war. What about traditional republican “virtue” then? Did Montesquieu interpret such a virtue, like monarchical pride, as something of a fraud as well, a pretense to vices similar to those found in monarchical regimes and whose consequences were more pernicious than anything found in modern commercial republics?

The Federalist certainly seemed to think along these lines. What we see in works from ancients like Thucydides to moderns like Bacon, Montesquieu, and Hume are sentiments similar to what lay at the heart of *Federalist* 8’s distinction between the “industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce” and the ancient Greek republics, which were in “the condition of a nation of soldiers.” It was that condition, what *Federalist* 10 referred to as the “circumstances of civil society,” that was crucial. The meaning of the changes the Constitution would bring to that condition and what those changes implied reveals the significance of *Federalist* 10 and its relationship to Nos. 11–14 as well as to *Federalist* 17. The latter number had referred to commerce as an object with the potential to bring dignity, importance, and splendor to the national government. Great commercial enterprises could hardly take place in a predominantly agrarian economy. Only a large commercial economy could bring that about.

But as I have suggested throughout this book, none of this is necessarily new. Even the concept of the large commercial republic is not necessarily new. *Federalist* 9 acknowledges this. When introducing the idea of the enlarged orbit the Constitution contemplates, it refers to this as merely appearing to be novel “to some” (9:48). The suggestion is that the concept of the large republic is itself not new. As I suggest below Publius’ discussion of the ancient republics in *Federalist* 16 and 18 makes it clear that the concept of an extended sphere or confederal republic has roots in Greek antiquity. So too does the idea of the benefits of advanced commerce and the possibilities it presents of fostering civic greatness that *Federalist* 17 alludes to. This was

the message of Thucydides' history and its celebration of Periclean Athens, the "school of Hellas." It is a central theme of Chan's book. Contrary to much scholarly convention that has held that Aristotle viewed the commercial life as ignoble and contrary to virtue, Chan maintains that Aristotle in fact preferred commercial Carthage to agrarian Sparta. This was because the practice of virtue required "equipment" that only commercial regimes could provide.²² Similar to what I have suggested of Thucydides' construction of Spartan character as well as *Federalist* 6's denunciation of Sparta as an unrefined, belligerent military camp, Chan maintains that Aristotle criticized Sparta specifically because it had failed to cultivate the arts. Commerce was a political necessity because the "natural" forms of acquisition Aristotle outlined—the life of the nomad, the hunter, and the farmer—were deficient in providing both sufficient necessities for life and for what was useful for partnership in the household and the city. Only after the advent of money and the development of the art peculiar to its use, commerce, was it possible to have enough wealth beyond what was necessary for natural self-sufficiency. In this sense, art was not artifice for Aristotle the way it was for Rousseau. Rather, art and specifically the art of commerce, *completed* nature by assisting men in the attainment of their highest ends. Commerce was similar to *law*, which like the art of commerce could complete nature to the extent it allowed men to follow their natural ends or what was right by nature. Aristotle maintained a middle ground between Rousseau, who praised Sparta although a slave society because it pursued political virtue while excluding commerce and the arts, and Montesquieu, who promoted commerce and the arts but did so at the expense of noble politics. As Chan concludes, for Aristotle a city without the arts to inform its politics was prone to be harsh and benighted, while a city without noble politics informing its commerce and arts was apt to be soft and crass.²³

For *The Federalist* the troubling political issue was not the softness or crassness of the commercial republic. It was rather its restlessness and dynamism. Thucydides, in contrast to Rousseau and Montesquieu, had identified this restlessness and dynamism with a propensity to imperialism if not outright belligerence. It was certainly the case that *The Federalist* saw great potential in commercial development for a new, more noble or magnanimous American politics. This appeared to be the meaning of *Federalist* 17's identification of commerce, as well as finance, negotiation, and war, with those objects of government having the greatest potential to contribute to the dignity, importance, and splendor of the national government. But such an identification was not a uniquely modern phenomenon. As much as it may have comported with the teachings of moderns such as Montesquieu and Hume, it also comported with the teachings of classics like Thucydides and Aristotle.

THE ANCIENT MODELS, WAR, AND WEAK FEDERATIONS

This speaks to the second issue I touched on above. That issue concerns the importance of the ancient models of Confederation to *The Federalist's* defense of the Constitution. Just as modern liberalism alone cannot explain *The Federalist's* constitutionalism, particularly its sociology of commerce and its understanding of the spirit of enterprise, the same can be said about its teaching regarding confederal union. *Federalists* 18–20 deal with examples from ancient and modern politics regarding how confederations prior to the Constitution had failed to provide the central government's at issue adequate power. It needs to be stressed, however, that the emphasis is as much, if not perhaps *more*, on ancient as well as modern examples here. *Federalist* 16 described the Lycian and Achaean Leagues as those examples of ancient confederacies most applauded by political writers for avoiding the “mistaken principle” of legislating for states in their political capacities (16:94). And *Federalist* 18 again referred to the Achaean League, whose democratic members were equally represented in a federal council. There Publius lamented that there was so little information available about the League. Had there been more, particularly concerning “its interior structure and regular operation . . . it is probable that more light would be thrown by it on the science of federal government, than by *any of the like experiments* with which we are acquainted” (18:109, emphasis added). The Achaean League may have provided a better example of confederal union than *any* example available in modernity. As I indicated in the Introduction, the problem of union—how to properly construct one that was both stable and democratic—was just as much an ancient problem as it was a modern one. The ancient examples may have in fact been more informative because of the lack of modern examples available in 1787.

But this highlights that *The Federalist* did not see the problem of union as a distinctly modern problem brought on by the circumstances peculiar to the modern nation-state. Yes, there were in 1787 technologically advanced world empires and nation-states the likes of which did not exist in Greek antiquity. And the world of international relations and international law were certainly different in the eighteenth century as well. But the idea of a large, confederate republic as a remedy to the problems of defense and commercial development was not entirely new. *Federalist* 9 had proposed, contrary to the opponents of the Constitution who had cited “Montesquieu on the necessity of a contracted territory for a republican government,” that this “great man” had also explicitly referred to a confederate republic “as the expedient for extending the sphere of popular government, and reconciling the advantages of monarchy with those of republicanism” (9:49–50). But Montesquieu was not the only

example of such an expedient as *The Federalist* explicitly acknowledges. Publius, for instance, cites examples like the Lycian and Achaean confederacies of Greek antiquity. In addition he refers to the failure of the Athenian and Spartan confederacy in the example of the Peloponnesian War. The ancient confederacies cited suffered from many of the same defects as the modern confederacies, including that of the United States.

None of this of course is to deny the relevancy of such moderns as Locke and Montesquieu for *The Federalist*'s teaching, especially regarding the Constitution's institutional features. But *The Federalist*'s numerous references to ancient authorities should alert us to their significance for *The Federalist*'s teaching and not only on the questions of union. They are also instructive on the question of war. As we saw in chapter 5, Thucydides' third lesson for *The Federalist* was that Athens on its own was not enough. Something more was needed to temper its imperial propensities and to provide for those military, economic, and political necessities that even fifth-century Mediterranean life revealed were critical. *Federalist* 18 acknowledges this lesson by emphasizing that the Persian Wars should have educated the Greeks on the need for greater union. Instead the Athenians and Spartans tore themselves apart in civil war by inflicting on themselves more violence than Xerxes ever visited upon them. *The Federalist*'s lesson throughout *Federalists* 18–20 is that the centrifugal forces of earlier confederations resulted in their demise. As the Peloponnesian War itself demonstrated, the ambitions, jealousies, fears, hatreds, and injuries that afflicted the member cities along with “the inefficiency of the union” resulted in the destruction of Greece (18:107). Eventually all of Greece would wear the chains of Macedon and later Rome. Even the most well-constructed of the ancient Greek confederations, the Achaean League, whose popular government was “tempered by the general authority and laws of the confederacy” would fall victim to the “arts of division. . . . Each city was seduced into a separate interest” and “the union was dissolved” (18:109, emphasis in original). *Federalists* 19 and 20 add that the same essential centrifugal forces were evident in such modern confederations as Germany, Poland, Switzerland, the Netherlands, and Belgium.

There are a number of points to *The Federalist*'s discussion in Nos. 17–20 but for our purposes I will focus on two. The first has to do with the problem of the “separate interest” of each city referred to in the context of the Achaeans in *Federalist* 18. The United States does not want to be divided by a host of similarly partisan interests at the state or local level. This had been the case with the Articles of Confederation. The Articles had simply aided and abetted such divisiveness rather than mollifying it. As W. B. Allen has noted, *The Federalist* talks as much about distinct ways of life as it does about distinct forms of government. It was not enough that the Constitution improve upon the Confederation by providing better federal institutions or national security,

as important as these objects no doubt were. The case for the Constitution could only be compelling if it offered the prospect of an improved way of life, one that harmonized the interests and sentiments of the different regions of the country while allowing the highly differentiated interests of individuals to flourish at the same time. This was the Constitution's soul-shaping function. It was designed to avoid the arts of division that had contributed so disastrously to the centrifugal forces of earlier experiments in federal government, including the Articles.²⁴ The development of an extensive commerce would be key to this process of improved union. First, its development might better integrate the political economies of the different regions while smoothing over those elements of cultural, ethnoracial, and religious identity that *Federalist* 17 contended Britain's Act of Union had done with the problem of clanship in Scotland. Second, the development of commerce might foment a new patriotism linked to those acts of national greatness *Federalist* 17 alluded to. *Federalist* 17 connected the federal government's new powers over commerce, finance, negotiation, and war to the potential dignity, importance, and splendor of that government. It suggested that American greatness would center on these issues and perhaps especially on how these objects of government, when combined in the new constitutional order, might result in great national projects. A federal navy would be such a project.

The second point worthy of emphasis in *Federalists* 17–20 is directly linked to this question of combining governmental objects in the new constitutional order and *The Federalist's* discussion of war. The reference to both ancient and modern examples of confederal failures is intended to underline the permanency of those features of war and federal politics that can lead to the destruction of federal unions. If the Constitution was to be successful it would have to accommodate both war's constant features as well as those characteristics of war embodied in ever-changing historical and technological conditions—what *Federalist* 8 referred to as the modern revolution in war for instance. These perennial and transitory aspects of war had to be addressed if national security and political stability were to be achieved under the Constitution. The discussion in *Federalists* 17–20 focuses on the former—the permanent features of war. *Federalist* 17, for instance, recounts the politics of the ancient feudal systems, which were not strictly considered to be confederations although they resembled them in character. There was a common head or sovereign over the nation in such systems. But the subordinate vassals or feudatories, allotted large portions of land, competed with these national authorities. Given the continual opposition between these competing sovereignties, national and local, peace could never be maintained. The national governments were also too weak to prevent the oppressions of the monarchy's vassals over their dependents within the separate feudatories. The barons and nobles that controlled these feudatories, loathed equally by

the sovereigns as their enemy and by the common people as their oppressors, were eclipsed; “mutual danger and mutual interest effected a union between” the national sovereigns and the people “fatal to the power of the aristocracy” (17:104).²⁵

Federalist 17 uses the example of the eclipse of the feudal baronies to demonstrate not only the centralization of power that gave birth to the modern nation-state, merging the “common people” to “royal authority” (ibid.).²⁶ It also seeks to underscore the causes of war that originate in human nature, particularly among collectivities. The conflicts here resulted in “feudal anarchy” and the lessons learned from that experience were as applicable to separate governments in confederacies as they were to the feudal baronies (17:103–104). *Federalist* 18 recounts how the original Achaean confederacy broke up. Following this some of the former cities of that confederacy attempted to salvage their liberty from the shame and oppression they had suffered under the yoke of Macedon, their present oppressor. They formed a league with other cities in the Peloponnese. That league allied with the kings of Syria and Egypt. The ambition of Cleomenes, king of Sparta, led him to an unprovoked attack on the Achaeans, his neighbors. Cleomenes was able to effect a breach of the alliance between the Syrians, Egyptians, and Achaeans. This left the Achaeans squeezed between the alternatives of submitting to Cleomenes or requesting the aid of their former oppressor, Macedon. They opted for the latter. Macedon, now ruled by Philip, obliged and sent an army that promptly vanquished Cleomenes. The result of this was yet further oppressions of the Achaeans and other Greeks by Philip. The Achaeans, despite their own internal dissensions, subsequently allied with the Aetolians, Athenians, and others. Their new league again challenged the tyranny of Macedon. The league however was not militarily up to the task. The Achaeans and their allies “once more had recourse to the dangerous expedient of introducing the succor of foreign arms. The Romans, to whom the invitation was made, eagerly embraced it. Philip was conquered; Macedon subdued. A new crisis ensued to the league. Dissension broke out among its members. These the Romans fostered.” As *Federalist* 18 concluded, the Romans reveled in their juxtaposed roles of liberators, on the one hand, freeing the Achaeans from Macedonian tyranny and, on the other hand, duplicitously facilitating irreconcilable differences between the Greek cities they boasted of having freed. By the Romans’ “arts this union, the last hope of Greece, the last hope of ancient liberty, was torn into pieces; and such imbecility and distraction introduced, that the arms of Rome found little difficulty in completing the ruin which their arts had commenced. The Achaeans were cut to pieces, and Achaia loaded with chains, under which it is groaning at this hour” (18:110–111).

The lessons *Federalist* 18 seeks to impress on its readers is that the national governments of federal bodies are not generally inclined to tyranny.

Rather, due to their weakness, federal bodies are much more prone to disintegrate into anarchy. In addition, weak federal bodies are exposed to undue foreign influence and intrigue as well as to reliance on foreign arms. *Federalists* 19 and 20 emphasize similar problems with modern confederacies. Germany's history was that of perpetual war between the emperor and the different princes and states that made up its feudal and later federal systems. The German empire was a "nerveless body" in which the strong were licentious, the weak oppressed, foreign intrusions and foreign intrigue frequent, and requisitions to states within the empire for men and money disregarded. Military preparations in the modern German empire had to be preceded by so many tedious discussions that arose from the jealousy, pride, and clashing viewpoints of the various sovereign bodies that by the time the diet settled the arrangements the enemy were in the field (19:114–115). Poland too, as a government dominated by local sovereigns, was "unfit for self-government and self-defense," perennially at the mercy of its powerful neighbors. And the connection between the Swiss cantons scarcely amounted to a confederacy. The Swiss had no common treasury, troops, money, judiciary, or other mark of shared sovereignty (19:117). The United Netherlands and Belgic confederations were equally defective modern examples. As *Federalist* 20 concludes, the confederacies, both ancient and modern, that Publius reviews here were as ill-conceived in their theory as they were violent in their practice.²⁷

But if federal systems needed to grant their central governments greater powers to survive, what specific powers should they be granted? Weak constitutions, *Federalist* 20 proclaimed, necessarily dissolved either from a lack of proper powers or from the usurpation of those powers necessary for the public safety (20:121). Public safety was the most critical first priority of any government. The powers necessary to it had to be provided to the national government. State governments too had to be protected against violence, which the guarantee clause of Article IV would provide. As *Federalist* 21 further emphasized, the principle of regulating contributions to the federal treasury by quotas from the states, as occurred under the Articles of Confederation, would also have to be abandoned. As there was no fixed way to determine appropriate contributions to the national government, the federal government would have to be given the power to tax and be permitted the discretion to raise revenues as it saw fit. Additionally, the power of raising armies under the Articles by means of requisitions to the states for quotas of men had failed miserably. During the Revolutionary War this provision had resulted in bidding competitions for men between the states. This at one and the same time drove up the costs of raising armies while introducing perpetual uncertainty in their maintenance. This proved again a further "imbecility in the Union" that had resulted in "inequality and injustice among

the members” (22:132). Accordingly, Congress would have to be given the power to raise and support armies directly.

Federalist 22’s admonition about the need to give the federal government the power to regulate commerce both domestically and internationally was equally critical to America’s national defense. According to Publius it was evident, even “on the most superficial view,” that there was “no object, either as it respects the interests of trade or finance, that more strongly demands a federal superintendence. The want of it has already operated as a bar to the formation of beneficial treaties with foreign powers, and has given occasions of dissatisfaction between the states” (22:129). I mentioned earlier that there were two points to be stressed from *Federalists* 17–20: the need to integrate the United States and to avoid those separate interests of states or regions that might work to make the union less, rather than more, perfect; and, second, the permanency of those features or causes of war that destroy federal unions and the combination of powers *Federalist* 17 suggests might address such problems. *Federalist* 17 specifically suggests that forging a more perfect union of interests, sentiments, and principles, as well as avoiding those causes of war that have historically ravaged federal unions, will require granting the federal government powers over commerce, finance, negotiation, and war. Moreover, it is the pursuit of these objects that might bring dignity, importance, and splendor to the federal government. The objects here might also be combined. The development of commerce, for instance, might obviously help with the provision for war or national security. If money was “the vital principle of the body politic,” sustaining “its life and motion” and enabling “it to perform its most essential functions,” and if “wars and rebellions” constituted “the chief sources of expense in every government” (34:203), it was not hard to comprehend how commerce might assist the federal government in providing for war. In fact these will turn out to be the two most important of the four powers outlined above that the federal government will exercise under the Constitution. This becomes clearer in *Federalists* 23–36, discussed in the next chapter.

NOTES

1. See *Federalists* 20:123 and 23:142. *Federalist* 40 provides a catalogue of those instances when federal law will apply directly to individuals under the Constitution:

In cases of capture; of piracy; of the post-office; of coins, weights, and measures; of trade with the Indians; of claims under grants of land by different States; and, above all, in the case of trials by courts-martial in the army and navy, by which death may be inflicted without the intervention of a jury, or even of a civil magistrate;—in all these cases the powers of the Confederation operate immediately on the persons and interests of individual citizens. (40:250)

2. Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), 57–58.

3. W. B. Allen with Kevin A. Cloonan, *The Federalist Papers: A Commentary* (New York: Peter Lang, 2000), 125–128.

4. See *Federalists* 46:301, 68:438, 71:457, 72:462–463, and 76:485–487.

5. See Ralph A. Rossum and G. Alan Tarr, *American Constitutional Law: The Structure of Government*, Vol. I, 10th ed. (Boulder, CO: Westview Press, 2017), 355.

6. Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill: The University of North Carolina Press, 1980), 24; Alan Levine, “The Idea of Commerce in Enlightenment Political Thought,” in *Rediscovering Political Economy*, ed. Joseph Postell and Bradley C. S. Watson (Lanham, MD: Lexington Books, 2011), 70.

7. On this theme, see generally Rousseau’s *First Discourse*. See also Rousseau’s *Preface to Narcisse ou L’Amant de Lui-Meme*, in *Oeuvres Complètes* (Paris: Gallimard, 1964) Vol. II, 959, at 965–66:

The first Philosophers earned great renown by teaching men to perform their duties and the principles of virtue. But before long these precepts had become commonplaces, and in order to achieve distinction men had to strike out in opposite directions. Such is the origin of the absurd systems of men like Leucippus, Diogenes, Pyrrho, Protagoras, Lucretius. Men like Hobbes, Mandeville and a thousand others have chosen to achieve distinction among us in the same way; and their dangerous teaching has borne so much fruit that, although we still have some true Philosophers eager to recall to our hearts the laws of humanity and virtue, one is horrified to see how far the maxims of our ratiocinating century have carried the contempt for the duties of man and citizen.

A taste for letters, philosophy, and the fine arts destroys the love of our primary duties and true glory. Once talents preempt the honors owed to virtue, everyone wants to be an agreeable man, and no one cares to be a good man. This gives rise to the further inconsistency, that men are rewarded only for qualities which do not depend on them: for we are born with our talents, only our virtues belong to us.

The first and almost the only care taken for our education is both the fruit and the seed of these ridiculous prejudices.

See also, *ibid.*, 969:

What a strange and ruinous constitution, where to have wealth always makes it easier to acquire more, and where he who has nothing finds it impossible to acquire something; where a good man has no way out of his misery; where the most knavish are the most honored, and where one necessarily has to renounce virtue in order to become an honest man!

8. McCoy, *The Elusive Republic*, 18–21. See also, Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 132.

9. McCoy, *The Elusive Republic*, 23–24.

10. Franklin to Joseph Galloway, Feb. 25, 1775, Albert Henry Smyth, ed., *The Writings of Benjamin Franklin* (New York, 1907), VI, 312, quoted in McCoy, *The Elusive Republic*, 58.

11. McCoy, *The Elusive Republic*, 61.

12. *Ibid.*, 17, 146–147.

13. *Ibid.*, 9. McCoy concludes *The Elusive Republic* with the following rather pessimistic remarks:

If the republican revolution had initially been defined as an escape from time, Madison had always acknowledged that, in the long run, such a revolution was doomed. Eventually the New World would come to resemble the Old. America would become part of history and the human condition. And as Madison understood it, the challenge to future generations of Americans would be to redefine the republican revolution by adapting its basic spirit and principles to a form of society that was traditionally thought to deny them. Whether this challenge has been successfully met—and the spirit of Madison’s republican revolution vindicated—are questions that must now bear on the conscience of the heirs to his republican tradition. Surely Madison would no longer permit them the luxury of regarding his crisis as prospective. (At 259)

But is McCoy right regarding how he defines the republican revolution, particularly as it was modified by the Constitution? Is this revolution really in crisis or might it not have succeeded beyond the founders’ wildest dreams, despite whatever problems have arisen recently in America’s republican experiment?

14. Alexander Hamilton, John Jay, and James Madison, *The Federalist*, ed. and intro. J. R. Pole (Indianapolis: Hackett, 2005), 52, note on Lines 138–39.

15. For a discussion of this see Colleen A. Sheehan, *James Madison and the Spirit of Republican Self-Government* (New York: Cambridge University Press, 2009).

16. As Marvin Meyers has pointed out:

In the Continental Congress, Madison had consistently advanced policies closely paralleling those that Hamilton now proposed [in the Washington administration]: funding the national debt without discrimination between original and current creditors; assuming state debts; expanding federal power over taxation and trade; even, with some constitutional doubts, chartering a national bank. He had worked hard and brilliantly to create a new national regime capable of remedying the mortal diseases of bankruptcy, political and military impotence, separatism, and factional injustice. Madison, too, had a grand conception of federal policy to integrate, enrich, and strengthen the American union. (Marvin Meyers, ed., *The Mind of the Founder: Sources of the Political Thought of James Madison* [Hanover, MD: Brandeis University Press, 1981], 180)

Paul Rahe has also noted:

Had anyone predicted to James Madison in June 1789 that he would soon be leading the opposition to the Washington administration, the young statesman would probably have thought the man daft. Up to that point, he had been the chief spokesman in Congress for that administration, and the work he had done in securing passage of the legislation which set the new government in motion had been absolutely essential to its well-being. It was only gradually that he came to be an opponent, and he did not begin shifting ground until after the first session of the First Congress had come to an end. (Paul A. Rahe, *Republics, Ancient and Modern, Volume III: Inventions of Prudence: Constituting the American Regime* [Chapel Hill: The University of North Carolina Press, 1994], 134)

17. Cathy D. Matson and Peter S. Onuf, *A Union of Interests: Political and Economic Thought in Revolutionary America* (Lawrence: University Press of Kansas, 1990), 149. See also, 8, 37, 48, 91–92, and 150; and Chan, *Aristotle and Hamilton*, 82.

18. Chan, *Aristotle and Hamilton*, 82.

19. *The Spirit of the Laws*, XX, 7, 590. Montesquieu's praise of the constitution of England is perhaps most explicit in Book XI of *The Spirit of the Laws*.

20. *Ibid.*, XIX, 11, 563.

21. *Ibid.* V, 3–7, 274–83.

22. Chan, *Aristotle and Hamilton*, 12. For the anti-commerce interpretation of Aristotle, Chan cited Paul A. Rahe, *Republics Ancient and Modern: Classical Republicanism and the American Revolution* (Chapel Hill: University of North Carolina Press, 1992); and J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975). According to Chan,

Carthage was more commercial than the much-maligned commercial regime of Athens. Yet in their highly influential treatments of classical republicanism, J. G. A. Pocock omits any mention of Carthage, while Paul Rahe only briefly discusses Carthage in the context of Cicero's assessment that the city's downfall was rooted in its "lust for trade and navigation." This neglect of the Carthaginian regime has led to a serious distortion of the classical republican thought of Aristotle, especially his view of commerce. (*Aristotle and Hamilton*, 43)

23. Chan, *Aristotle and Hamilton*, 19, 25–36, and 53–54.

24. See Allen, *The Federalist Papers*, 28, 43, and 86.

25. A similar historical account is provided in *Federalist* 26 at 158–159.

26. See Edling, *A Revolution in Favor of Government*, 60–61.

27. *Federalist* 20:123 (emphasis in original): "a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity, by substituting *violence* in the place of *law*, or the destructive *coercion* of the *sword* in place of the mild and salutary *coercion* of the *magistracy*."

Chapter 9

War and the Impossibility of an Insularity Doctrine

Federalist 19 identified self-government with self-defense. If a nation could not defend itself it could not be self-governing. Like *The Federalist's* admonition against the use of foreign arms, the identification of self-government with self-defense was offered up as a permanent feature of politics, as necessary in ancient times as it was in modernity. It was also a critical component of *The Federalist's* constitutionalism. Self-government and self-defense were coeval terms because the very possibility of self-governance depended upon self-defense. This may seem like a bromide but it was precisely earlier political thinking's neglect of providing government those powers essential to deal with the necessities of politics, particularly those necessities relating to national survival, that had led to so much abuse in earlier federal systems. "Tyranny has perhaps oftener grown out of the assumptions of power, called for, on pressing exigencies, by a defective constitution, than out of the full exercise of the largest constitutional authorities" (20:121). Expanding these constitutional authorities would be essential if the new Constitution was to address those pressing exigencies the Articles of Confederation had overlooked.

The threats to self-defense, like the features of war more generally, were of both a permanent and transitory variety. *Federalists* 23–36's discussion of the necessary provisions for war and national security included both of these aspects. As I noted in the last chapter, the persistent features of war that Publius reviews in his survey of ancient and modern confederations highlight attributes of human nature in its collective capacity. Thucydides (and later Clausewitz) taught that war was a fundamentally political phenomenon not only because its ends were political and determined by regime types but because it was a constant feature of man's political nature. Men acting in small bodies or states, for instance, tended to act oppressively, if

not violently. This was the message of *Federalist* 10 and the problem of faction in small democracies. It was the message of *The Peloponnesian War*. But as we have also seen both *The Federalist* and *The Peloponnesian War* assign unique attributes to commercial republics as well as to human nature more generally. Commercial republics were spirited and daring. Their restlessness could lead to imperialism and war. But it could also lead men to a higher politics if properly tempered by the right constitutional instruments. *Federalist* 22 had emphasized that a federal power to regulate commerce was of the highest priority. States in the Confederation had generated a raft of “interfering and unneighborly regulations” that were “contrary to the true spirit of the Union.” Publius then recounted the sclerotic regulations placed upon commerce in the German empire. Like the United States, Germany had “fine streams and navigable rivers” that were so auspicious to the development of commerce. Yet these natural resources had been “rendered almost useless” by a litany of duties that princes and states had imposed on goods of trade passing through their jurisdictions. *Federalist* 22 had proclaimed that “the genius of the people of this country might never permit” these type of regulatory impositions to be applied to Americans. But Publius cautioned that “we may reasonably expect, from the gradual conflicts of State regulations, that the citizens of each would at length come to be considered and treated by the others in no better light than that of foreigners and aliens” (22:130–131).

The genius of Americans was apparently opposed to the regulatory state of 1787; at least it would “never permit” the sort that persisted in contemporary Germany. So Publius suggested. As Americans were becoming increasingly intolerant toward those interstate regulations emerging in the Confederation, the question *Federalist* 22 seems to raise was precisely how to unleash that “genius of the people” or “true spirit of the Union” that apparently required something along the lines of a nationwide commercial free market. Without this states would generate more and more self-serving regulations, interfering with the rights of the citizens of other states. The result would be a nation in which Americans would increasingly be treated by their fellow citizens as no better than “foreigners and aliens.” The problem of union was as much a problem of commercial integration as it was anything else. But it was also a question of providing for adequate national defense, which was much more closely related to the idea of a commercial free market than commentary on *The Federalist* has been prepared to admit. And it is important to emphasize that throughout *The Federalist*, Madison and Hamilton are both on board with this theme. It is not just Hamilton who advocates for the need for improved self-defense and a national free market for commerce. Madison does as well. I mention this because the analysis in this chapter reviews *Federalists* 23–36, all written by Hamilton. However, I point out throughout the chapter that in

other numbers of *The Federalist* Madison concurs with Hamilton's remarks throughout these papers.

UNLIMITED POWER FOR LIMITED OBJECTS

Federalists 23–36 on “[t]he necessity of a Constitution, at least equally energetic with the one proposed,” (23:140) highlight the importance, once again, of commerce and national security to the new federal constitutional order. Whereas *Federalists* 15–22 had emphasized the need for providing greater power to central governments than the ancient and modern examples of federal systems had demonstrated, *Federalists* 23–36 propose to drill down into the details of what specific powers are needed, particularly in the American case. *Federalist* 23 focuses on three issues: the *objects* the federal government should be permitted to pursue, the amount of *power* it will need to accomplish those objects, and the *persons* on whom federal power should operate. Under the first heading, *Federalist* 23 outlines four “principal purposes” of the union: “the common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries” (23:140). This list fairly closely parallels the list of federal objects outlined in *Federalist* 17: commerce, finance, negotiation, and war. It also overlaps with the list from *Federalist* 56 that we reviewed in chapter 3. Those objects of federal legislation said to be “of the most importance” were “commerce, taxation, and the militia” (56:360). *Federalists* 23 and 17 were written by Hamilton, *Federalist* 56 by Madison.

For the “split personality” theorists of *The Federalist* perhaps the single most critical distinction between Hamilton and Madison centers on precisely these issues concerning what objects and powers the federal government will possess under the Constitution. However, the differences between Hamilton and Madison on these matters, if they exist at all, are negligible.¹ Consider, for instance, *Federalist* 41. There Madison writes that the classes of federal powers can be reduced to six objects:

1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3. Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due efficacy to all these powers. (41:256–257)

Objects 1–3 and 5 listed here are probably the most important. Although they are not identical to those listed in *Federalist* 23, there is significant overlap with the four principal purposes Hamilton lists there. *Federalists* 41, 42, and

44 (all written by Madison) clarifying what specific constitutional provisions are referred to in the headings outlined in *Federalist* 41 make that clear. It is also worth observing that although *Federalists* 17 (by Hamilton) and 56 (by Madison) present commerce as textually first in importance regarding the federal objects, something Article I, Section 8 of the Constitution itself seems to affirm, Hamilton and Madison in *Federalists* 23 and 41, respectively, present the common defense or security against foreign threats as the first of the federal objects. Both commerce and national defense are of course on both Hamilton's and Madison's readings critical first objects of the Constitution. They also share overlapping features; the facilitation of commerce is critical to the provision of national defense just as adequate defense of America's commercial interests and markets abroad are critical to the development of American commerce. *Federalist* 22 had proposed that granting the federal government the power to regulate commerce "among the several States" was something "all parties" could agree on (22:129). Perhaps that was true. The same could certainly not be said about the power to provide for the common defense or security against foreign danger.

The reasons for concern here among critics of the Constitution were primarily twofold. First, Article I granted the federal government the power to raise and maintain standing armies. Second, although the Constitution's supporters claimed the Constitution was an instrument of limited government, it was difficult to see how this would be the case in practice, especially once the federal government began exercising powers over military affairs. *Federalist* 23 again highlights the issues here. After listing the four principal purposes that the new constitutional union would be tasked with addressing, that number outlined the authorities that would be critical to the common defense. These again make up Article I, Section 8 powers; specifically the powers to raise armies, build and equip fleets, prescribe rules for the government of both, direct the operations of both, and provide for their support. Those powers themselves, especially the powers to raise and direct armies, were controversial enough. What followed in *Federalist* 23 however was arguably even more controversial given its implications. As Hamilton emphasized, the federal government's powers over the common defense

ought to exist without limitation, *because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. (23:140, emphasis in original)

The emphasis here is Hamilton's and his point is to highlight the variety of potential threats to the United States being unlimited, so too has to be

the power of the national government to deal with those threats. “[T]he *means* ought to be proportioned to the *end*” (23:141, emphasis in original). And since the exigencies America must meet are potentially infinite, so too must be the means to meet them. Hamilton adds that it is not just immediate exigencies that the Constitution must accommodate. As he explains in *Federalist* 34:

Constitutions of civil government are not to be framed upon a calculation of existing exigencies, but upon a combination of these with the probable exigencies of ages, according to the natural and tried course of human affairs. Nothing, therefore, can be more fallacious than to infer the extent of any power, proper to be lodged in the national government, from an estimate of its immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, so it is impossible safely to limit that capacity. (34:202, capitalization in original)

Hamilton contends that the Constitution’s means must be adequate to its ends; and the national government needs unlimited powers for purposes of national defense since the threats America faces are potentially infinite.

Madison makes much the same point in *Federalist* 20, as we have already seen. There he affirms that a weak constitution can terminate either from a *want* of proper powers or from *usurpation* of powers requisite for public safety. Although he is not explicit about this, he implies that any constitution the United States adopts will have to provide for however much power any “pressing exigencies” might demand since otherwise a greater threat of tyranny will loom; tyranny is more likely from a “defective constitution” that requires the assumptions of power when necessity beckons than from one that allows for “the full exercise of the *largest constitutional* authorities” (20:121, emphasis added). The implications here are fairly obvious.

If they are not, *Federalist* 41, also by Madison, clarifies that the federal government will require whatever means are necessary to achieve its limited ends (41:256). In the case of national security the power the federal government will require is potentially limitless. Addressing the question whether it was necessary to give the federal government “an INDEFINITE POWER of raising TROOPS, as well as providing fleets; and of maintaining both in PEACE, as well as in war,” Madison demurs:

With what color of propriety could the force necessary for defence be limited by those who cannot limit the force of offence? If a federal Constitution could chain the ambition or set bounds to the exertions of all other nations, then indeed might it prudently chain the discretion of its own government, and set bounds to the exertions for its own safety.

How could a readiness for war in time of peace be safely prohibited, unless we could prohibit, in like manner, the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack. They will, in fact, be ever determined by these rules, and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions. (41:257–258)

Too much republican theory in the past had exaggerated the capacity for human choice, a choice limited, as we have seen before, by necessity. In war a nation's enemies set the conditions under which that war is engaged. For a nation to unilaterally disarm or prematurely restrict its options through constitutional limitations is at best imprudent, at worst national suicide. Madison's Declaration that there are no constitutional barriers that can be placed upon the impulse of self-preservation is a concession to human nature, which of course cannot be changed. But it also helps explain the paradox, if not utopianism, of the Whig (or Country or Antifederalist) opposition to standing armies and navies during peacetime. These positions were of course the coin of the realm among opponents of the Constitution. As much as criticism of the maintenance of standing armies outside war was intended to promote liberty, civil order, and the rule of law, Madison suggests it would actually undermine these objects by requiring that the Constitution be violated anytime acts of discretion to preserve public safety were necessary. How, for instance, could liberty be preserved or the rule of law be maintained when the nation's most fundamental law had to be broken anytime a matter of self-preservation came into conflict with it? War, and how it was provided for in a republic, was always problematic because victory in battle could never "be calculated by the rules which prevail in a census of the inhabitants, or which determine the event of an election" (43:280).² War followed its own logic and the fog of war presented myriad problems that could never be anticipated in advance. Any restrictions, constitutional or otherwise, imposed on those necessities of war outlined here could be fatal to a republic.

Madison never elaborated in *Federalist* 41 on why exactly usurpations of the Constitution would create precedents which could lead to further abuse. Hamilton however, concurring with Madison's assessment there, suggests an answer in *Federalist* 25. There he implores

that nations pay little regard to rules and maxims calculated in their very nature to run counter to the necessities of society. Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the

breast of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable. (25:156)

Federalist 84 made clear that the character of public opinion as well as the general spirit of the people and of the government were of critical importance to the maintenance of Americans' rights. As *Federalist* 25 suggests, the spirit of the government is crucial to maintaining veneration for the Constitution because government is where political power is directly exercised on behalf of the people. If the government has to violate the Constitution to meet the necessities of society, this will not only undermine reverence for the Constitution among the populace but perhaps most importantly among those very individuals who exercise political power. Such violations would introduce instability by making it easier for further constitutional violations by the government where necessity was not at issue. In *Federalist* 49 Madison suggested that all government rested on public opinion. He was critical of Thomas Jefferson's proposal, in a draft constitution appended to his *Notes on the State of Virginia*, that a constitutional convention be held anytime two of three branches of government, with a two-thirds vote from each, concur that a convention is necessary to amend the Constitution. Madison objected that Jefferson's Whig politics of popular vigilance went too far. Such frequent appeals to the people to change the Constitution as Jefferson proposed would imply "some defect in the government." It would "deprive the government of that veneration which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability" (49:323). Undermining veneration for the Constitution, both in the case of appeals to necessity and to constitutional reform, links the themes of *Federalists* 25 and 49 to the importance of public opinion and the general spirit of America. Violating the Constitution by restricting the powers of self-defense under it might undermine both the opinion regarding the Constitution and the general spirit by diminishing veneration for the nation's highest law. It was that law that would have to be violated every time national defense required exceeding its limits. Why then propose constitutional restrictions upon the federal government's powers to defend the nation when the requirements of self-defense can never be known in advance and any limitations upon them will have to be violated any time necessity beckons?

Yet advocating the need for unlimited federal powers in the case of national defense would seem to be at odds with the very nature of limited government constitutionalism. Does such advocacy not contradict the most fundamental tenets of such forms of constitutional governance? And especially with respect to military matters, does such advocacy not invite the utmost of abuse and even tyranny?

Both Hamilton and Madison concur that the federal government needs to be provided, and in fact *is* provided, potentially unlimited power to address questions of national defense under the Constitution. This is worth emphasizing since there is a significant literature that has proposed that Hamilton and Madison actually differed on this issue. Madison was an advocate, it has been proposed, of a much more restrained and limited vision of federal powers than Hamilton. This was especially true in the case of national defense powers. This was key to the distinction between the two. In contrast to Madison, for instance, Hamilton has been depicted in scholarship as an “American Machiavelli.”³ On another account Hamilton was a wise, if perhaps cunning, statesman with anti-democratic, even imperialistic or militaristic designs.⁴ Yet others have suggested that Hamilton was the patron saint of unlimited centralized powers, the harbinger of the modern progressive liberal state.⁵ As we have seen, at least in the case of national defense powers, Madison and Hamilton were in essential agreement in *The Federalist* that unrestricted federal power was necessary for the preservation of American liberty. Was this inconsistent, we might ask, with limited government constitutionalism? Or did it necessarily equate to the promotion of militarism?

According to one of the leading *Federalist* scholars of the twentieth century, Douglass Adair, the answer in the case of Hamilton was “yes.” On Adair’s reading, Hamilton’s plans for American government were both imperialistic and anti-democratic. At the Constitutional Convention, Hamilton had sought to impose a governmental scheme “modeled after the British monarchy.” Fearing that any form of government that vested power in the hands of the people would be torn apart by class struggles between rich and poor, Hamilton had proposed “the Hobbesian expedient of setting up a Leviathan state to impose order upon the American people from above.”⁶ Some scholars have since followed Adair’s lead in proposing that Hamilton was both a Hobbesian and a supporter of a governmental Leviathan. But it is particularly Adair’s remarks about Hamilton’s contributions to *The Federalist* that are of interest. On Adair’s reading Hamilton’s contributions to that work provided evidence of his strong feelings “about the need for an overruling, irresponsible, and unlimited government.” As proof of this Adair cited *Federalist* 9, which he claimed clearly indicated the extent to which Hamilton “expected a continual use of military force would be required to keep the rebellious poor in their place.” *Federalists* 23 and 30 provided further evidence of Hamilton’s “belief that no government could endure without unlimited fiscal and military power.” Both of these numbers also foreshadowed Hamilton’s “doctrine of ‘liberal construction,’ which was later invoked to justify the National Bank.”⁷

A case can certainly be made that *Federalists* 23 and 30 plead (respectively) for unlimited military and fiscal power under the new Constitution. And it was also the case that *The Federalist* consistently advocated the need

for more adequate federal powers and greater energy in government. And not just Hamilton but Madison adopted this position. “Energy in government,” Madison wrote, “is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws which enter into the very definition of good government” (37:224).

But was *The Federalist*, and Hamilton’s writings in particular, genuinely proposing a form of federal government that would be overruling, irresponsible, and unlimited? Adair contends that *Federalist* 9 advocates for union “because it will permit the use of troops raised in one section of the country to stamp out revolts in other districts, an expedient resorted to by Hamilton during the Whiskey Rebellion.”⁸ Adair does not cite any text from *Federalist* 9 in support of this interpretation but he appears to be referring to a quotation from Montesquieu’s *The Spirit of the Laws* that Hamilton cites to substantiate the proposition that a large, confederate republic is indeed the best expedient to extend the sphere of popular government. “‘Should a popular insurrection happen in one of the confederate states,’ Montesquieu writes, ‘the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound’” (9:51). It is difficult to interpret this passage in any reasonable way as support for the proposition of the sort of militarism Adair claims Hamilton obsequiously seeks “to keep the rebellious poor in their place.” If anything, it would seem that Montesquieu’s—and presumably Hamilton’s—policy prescription here is eminently reasonable and consistent with sound domestic security. Adair maintains that “James Madison carried to the Convention a plan that was the exact opposite of Hamilton’s” and that “the theory he advocated at Philadelphia and in his *Federalist* essays was developed as a republican substitute for the New Yorker’s ‘high toned’ scheme of state.”⁹ Yet on the very point Adair raises in dispute in *Federalist* 9 as evidence of Hamilton’s militarism Madison completely concurs with in *Federalist* 43. There, while discussing the guarantee clause of Article IV of the Constitution, specifically its efficacy in protecting against domestic violence, Madison cites in support of his argument the *very same* passage from Montesquieu’s *The Spirit of the Laws* Hamilton cites in *Federalist* 9 (43:281). As Madison extrapolates:

Insurrections in a State will rarely induce a federal interposition, unless the number concerned bear some proportion to the friends of government. It will be much better that the violence in such cases should be suppressed by the superintending power, than that the majority should be left to maintain their cause by a bloody and obstinate contest. The existence of a right to interpose, will generally prevent the necessity of exerting it. (43:279–280)

Far from affirming Hamilton’s militarism or the “split personality” thesis of *The Federalist*, Adair’s example from *Federalist* 9, when examined closely, actually leads the careful reader to conclusions the very opposite of Adair’s.

The extended federal union of the Constitution will actually promote greater national comity and prosperity. Both Hamilton and Madison agree on this.

Adair's contention that Hamilton advocated a construction of the Constitution that was "liberal" insofar as it would give the federal government unlimited powers is similarly flawed. A number of passages from Hamilton's writings in *The Federalist* might be cited in response to this but perhaps the most relevant, directly addressing the point at issue, is his remarks in *Federalist* 83. There Hamilton comments on the meaning of the general welfare clause of Article I, Section 8. "The plan of the convention declares that the power of Congress, or, in other words, of the *national legislature*, shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended" (83:532, emphasis in original). Hamilton's interpretation here replicates Madison's construction of federal powers in *Federalist* 41. There Madison also addressed whether the general welfare clause was a license for unlimited federal power. Madison's response, like Hamilton's, affirmed the contrary. The general welfare clause was in fact a *limitation* on the federal government's powers, not an *expansion* of them. Its meaning was this: to the extent the federal government exercised its powers they had to be exercised for the purposes of the general welfare. Clientele politics or the politics of interest-group liberalism was not to be tolerated under the Constitution.¹⁰ Madison stressed that there would be no point in enumerating a host of particular powers following the assertion of the general power at the opening of Article I, Section 8, if those particulars were simply to be subsumed under that general power. In language virtually identical to Hamilton's in *Federalist* 83, Madison described such an interpretation as "an absurdity" (41:264–265).

If then both Hamilton and Madison rejected any construction of the Constitution that would give the federal government unlimited powers while at the same time arguing for the necessity of unlimited powers for purposes of national defense, how are these propositions to be reconciled?

A preliminary answer has to do with the paradoxical nature of national security and the limits of the rule of law, even in a constitution of limited government.¹¹ Like Thucydides, *The Federalist* recognized that any restrictions on the impulse of self-preservation or the right of self-defense were more dangerous to the rule of law than no restrictions at all.¹² The necessity of resorting to force was an unfortunate reality in politics. *Federalist* 28 implored that the American national government enjoyed no exceptions here; seditions, insurrections, and emergencies of a similar nature had the potential to arise in the United States as much as anywhere else. In fact they had already arisen under the Confederation. *The Federalist* cites the example of

Shays Rebellion. There had also been uprisings in Pennsylvania in the Wyoming Valley. And New York had land disputes with what later became the state of Vermont. All of these incidents revealed the need for a regular army sufficient to maintain domestic order. The “idea of governing at all times by the simple force of law (which we have been told is the only admissible principle of republican government),” Publius proclaimed, “has no place but in the reveries of those political doctors whose sagacity disdains the admonitions of experimental instruction. Should such emergencies at any time happen under the national government, there could be no remedy but force. The means to be employed must be proportioned to the extent of the mischief” (28:168–169). And, again, those means had to be unlimited because the mischiefs themselves were potentially unlimited.

WHY A STANDING ARMY WILL NOT THREATEN THE UNITED STATES

But this was not a license for belligerence as some critics of the Constitution had proposed. *The Federalist* provides a number of assurances to its readers that the creation of a peacetime standing army under the Constitution will not be a threat to American liberties. First, the United States was a free republic. There was no threat of a standing army in peacetime because the entirety of the nation’s political powers were lodged in the representatives of the people. For reasons of honor or fidelity to their constituents as well as because they might take pride in promoting initiatives that benefited their constituents and the general welfare, *The Federalist* presumed representatives would act in the best interests of the people (57:366–367). If they did not and they betrayed their constituents, *Federalist* 28 reassures its readers that there was an original or natural right to self-defense that was “paramount to all positive forms of government.” This natural right would be easier to vindicate in a larger than in a smaller republic because the people’s “natural strength” in the larger community would outweigh “the artificial strength of the government” (28:171). What was more, America’s federal system itself would compound the difficulties any level of government would experience trying to exert military force unjustifiably. As power is generally the rival of power the federal and state governments would operate as checks on one another. Whichever level of government the people threw their support behind would prevail. Maintenance of the union however was critical to this popular advantage.

The second reason a standing army would not be a threat to the people of the United States related to a singular advantage Americans enjoyed over Europeans. They were vigilant about their rights. The Revolution itself proved the point. *Federalist* 28 had qualified that American citizens could ultimately

exercise their pre-political, natural rights of self-defense—those “paramount to all positive forms of government”—only if they understood their rights and were disposed to defend them. *Federalist* 57 made it clear that Americans did indeed understand their rights and that they were more than adequately disposed to defend them. That number addresses concerns about the House of Representatives. What happens, for instance, if the House should be self-serving or if it should try to exempt itself or special constituencies from the laws Congress passes? Publius responds: “If it be asked, what is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of the society? I answer: the genius of the whole system; the nature of just and constitutional laws; and above all, the vigilant and manly spirit which actuates the people of America. If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate any thing but liberty” (57:367–368). As much as this passage may be interpreted as a sop to American pride, it actually touches upon what *The Federalist* informs us throughout the work is the ultimate guarantor of American republicanism and American rights: Americans’ understanding of the founding principles of their constitutionalism and their disposition to defend those principles and derivative rights. If these features of American character should ever dissipate or become “so far debased” as to tolerate obvious affronts to Americans’ liberties, the constitutional order will be lost. This is the meaning of *Federalist* 57. It is the meaning of *Federalist* 84’s Declaration that Americans’ rights ultimately depend on public opinion and the general spirit of the people and of the government. It is also the basis of *Federalist* 28’s appeal to Americans having to know, and being willing to defend, those rights of self-defense that were paramount to all positive forms of government.

If there was a right to self-defense that could be asserted against abuses from a standing army then that right seemed to imply a right to bear arms, that uniquely American freedom.¹³ *Federalists* 29 and 46 appear to assert such a right on behalf of Americans. *Federalist* 46 further observes that Americans are in fact armed. That they are armed and that the states possess militias made up of citizens who are armed constitute two further reasons why a standing army will not be a threat to the American people. But the argument here regarding the militia is a qualified one.

Federalist 29 addresses the federal government’s control over the militia in Article I, Section 8 of the Constitution. Subsection 15 allows the federal government to call forth the militia in order to execute federal laws and to respond to insurrections and invasions. Subsection 16 provides Congress the power to organize, arm, and discipline the militia as well as to govern that part of it put into service on behalf of the federal government. The Constitution also leaves to the states the appointment of the militia’s officers

but requires the states to train the militia in accordance with “the discipline prescribed by Congress.” The theory underlining the Constitution’s militia provisions *The Federalist* proposes originates in the need to provide a consistent line of authority stemming from the national government and running throughout the federal state. “It requires no skill in the science of war,” Publius declares, “to discern that uniformity in the organization and discipline of the militia would be attended with the most beneficial effects, whenever they were called into service for the public defence.” The beneficial effects *Federalist* 29 has in mind are among other things the application of “mutual intelligence and concert,” a matter particularly beneficial to an army in the conduct of national defense (29:173). *Federalist* 23 made the case for why the federal government and not the states needed to conduct national defense: As the center of information, it would best understand the extent and magnitude of the dangers that threatened the nation; it also represented the whole country and as such would be most deeply concerned, and duty-bound, to preserve every part of the union. Also, the federal government alone could establish unity and concert in plans for national defense (23:143). *Federalist* 25 had additionally detailed how leaving control of national defense in the hands of the states would be both oppressive to the states and dangerous to the nation. It would also be divisive owing to the obvious disagreements that would inevitably arise between individual members of the federation and the disparity between local military establishments that would no doubt emerge if the states were allowed to control defense issues (25:151–152). *Federalist* 29 adds that achieving uniformity here could only be accomplished if the federal government was granted the power to regulate the militia in addition to all other elements of America’s military establishments (29:173–174). This of course was controversial.

Antifederalists had complained that giving the federal government control over the militia would transfer to the national government power over most adult men; the entirety of the political nation in effect would be at the beck and call of the president and Congress. In addition, if Congress had authority over local militias, it might choose to march them out of state for indefinite periods of time. Militias were composed of regular citizens who had difficulty leaving their jobs. Service in the militia was especially burdensome on the poor and on the majority of America’s militia who were farmers.¹⁴ As farming work was seasonal, it was virtually impossible to leave home during such periods as seeding and harvesting. Yet if it was so inconvenient to mobilize the militia in the way the Antifederalists had outlined, however much their arguments may have served to protect the militia they had the unintended effect of conceding just how useless the militia actually was in practice. What military utility could the militia provide if it could rarely, if ever, leave home for any sustained period of time? Service in the militia was

also notoriously unpopular, even when it was only used for local government purposes. Historical scholarship has noted that during the colonial period as well as during the War of Independence militia service was scorned. It was typified by repeated refusals to serve and widespread incidents of desertion.¹⁵ Moreover, by refusing to specify precisely how militias might be improved or how they might be classed to allow a select few to be better trained, the Antifederalists provided no realistic solution to how the division of labor so essential to the professionalization of the modern military might be applied to improve the militia.¹⁶

Publius suggested that by providing for the organizing, arming, and disciplining of the militia and for the states training the militia in accordance with that discipline, the Constitution ensured that at least some improvement of the militia might take place. In addition, state militias would not languish through neglect, the way they too often had under the auspices of local governments. *Federalist* 29 further addressed Antifederalist complaints by emphasizing that the federal government's concurrent control over the militia and the federal army under Article I would actually *reduce* the need for a standing army because in national emergencies the militia could be used in its place. Moreover, control of the militia here was only partial since the Constitution left the appointment of the militia's officers and the training of the militia in accordance with a discipline provided by Congress in the hands of the states.

Federalist 29 was particularly concerned about that "curious refinement upon the spirit of republican jealousy" that had contended that control of the militia by the federal government under the Constitution would lead to the militia *itself* being used against the people. The need for a professionalized militia that had "[a] tolerable expertness in military movements" was the evident meaning of Article I's language giving Congress the power to organize, arm, and discipline the militia. But such professionalization was a time-consuming practice that would require months, if not years, to perfect. Obviously, not many Americans would want to participate in the creation of such "a well-regulated militia" because it would "abridge the mass of labor and industry" of most people to too great an extent. Little more could "reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped." This seemed to imply a right of citizens to bear arms. If it did not, it did at least suggest that the people *should* be armed. *Federalist* 29 adds that although it is impossible to train the entire nation as a well-regulated militia, a moderate-sized corps subject to the appropriate discipline could produce "an excellent body of well-trained militia, ready to take the field whenever the defense of the State shall require it." Such a trained body would not only reduce the need for a standing army for the reasons outlined above. It could also present that army, should it ever threaten the liberties of the people, "with a large body of citizens, little, if at all, inferior

to them in discipline and the use of arms.” It is at this point that Publius addresses that element of a certain “republican jealousy” that presumes that a federally controlled militia will turn on its own people. Not surprisingly, he exercises little restraint in expressing his indignation toward such anti-republican condescension:

Where, in the name of common-sense, are our fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What shadow of danger can there be from men who are daily mingling with the rest of their countrymen, and who participate with them in the same feelings, sentiments, habits, and interests? What reasonable cause of apprehension can be inferred from a power in the Union to prescribe regulations for the militia, and to command its services when necessary, while the particular States are to have the *sole and exclusive appointment of the officers?* (29:175–177, emphasis in original)

The same argument might be made of America’s standing army itself. Who will comprise that army if it is not largely, if not entirely, those same citizens who share similar feelings, sentiments, habits, and interests? And how seriously should we entertain the possibility that these same citizens will constitute a threat to the very community from which they came?

Federalist 46 once again addresses the Constitution’s critics who assume that Americans and their state governments will sit idly by as the national government accumulates a military force for the specific purpose of bringing about the downfall of the state governments. Publius describes the idea of the people and their state representatives abiding such a “gathering storm” as, again, nothing short of paranoia. Such delusions seem “more like the incoherent dreams of a delirious jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of genuine patriotism” (46:305). Genuine patriotism here is contrasted with the counterfeit zeal that had typified that mixture of Court and Country Whig supposition making up Antifederalist orthodoxy opposed to standing armies.¹⁷ Although the zeal against standing armies in popular governments was misguided, *Federalist* 46 nevertheless indulges it for argument’s sake. That number maintains that any regular army raised by the federal government under the Constitution could only ever amount in the best instance to 25,000 to 30,000 men. This number could never match the numerical superiority of an American militia of nearly half a million citizens—a militia too large to be conquered by such a paltry number of regular troops. The Revolution’s success against British arms demonstrated the willingness of Americans to fight as well as the strength of the American militia against a regular army. That American militia was made up of a citizenry that enjoyed “the advantage of being armed,” an advantage Americans possessed “over the people of almost every other nation.” Consider the case of the Europeans. In addition to having extensive

military establishments, the governments of the kingdoms of Europe were “afraid to trust the people with arms.” Arming the people of Europe on its own might not succeed in overthrowing Europe’s governing elites. However if that was combined with local governments that appointed their own officers to the militia *Federalist* 46 speculates “that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it.” Publius seems to suggest that Americans not only have the advantage over Europeans of being armed but, similar to the suggestion in *Federalist* 29, that they have a fundamental *right* to being armed since it is the precondition for the affirmation of their other rights: “Let us not insult the free and gallant citizens of America with the suspicion, that they would be less able to defend the rights of which they would be in actual possession, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors” (46:306). The European kingdoms do not trust their citizens with arms. The American governments must. Americans not only bear arms but apparently have a right to do so. Without such a right it would seem impossible to assert those additional rights of which they are also in “actual possession.” Americans are free and more spirited than the “debased subjects of arbitrary power.” And since they are also armed they would present a formidable obstacle to any attempt to use a standing army to oppress them.

A fifth barrier against potential abuse from a peacetime standing army is the extended size of the new constitutional union (28:172). A federal army might be able to put down the resistance of a single state but not those at a greater distance. Moreover, *Federalist* 28 reminds readers that any federal military force would be entirely dependent on “the resources of the country.” Those resources in 1787 were very limited. It would thus take a significant amount of time for the federal government to develop any sort of army of stature. While this was taking place, both the American population and the “natural strength of the community” would themselves be growing proportionate to the government and whatever resources it might muster. This growth in civil society would offset any threat the army might pose (28:172–173).

NATIONAL SECURITY AS A MORAL IMPERATIVE

Federalists 24–26 make an explicit pitch in favor of standing armies on grounds “the primary principle of our political association” is “the common defense” (25:151). *Federalist* 23 further suggests that a standing army is not only a military or political necessity but a *moral* imperative.¹⁸ “A government, the constitution of which renders it unfit to be intrusted with all the powers which a free people *ought to delegate to any government*, would be an unsafe and improper depository of the NATIONAL INTERESTS” (23:144). The emphasis (and

capitalization) here is *The Federalist's* and it stresses what a *free* people *ought* to delegate to *any* government; it would not only be *unsafe* to deny the federal government the power to raise a standing army but *improper* to do so. The same is true of the federal government's power over commerce. That too has to be a plenary power granted to the federal government. To fail to grant the union the power "to pass all laws, and to make all regulations" with respect to "the common safety" and "in respect to commerce" would again "be to violate the most obvious rules of prudence *and* propriety" (23:142–143, emphasis added). The conjunction in both of these phrases—"unsafe *and* improper" and "prudence *and* propriety"—highlights that *The Federalist's* pleas for the powers of the federal government are not just a function of utility but of morality; particularly the morality of a republic, a government of a "free people."

This is important to stress because of the confusion that has arisen over *The Federalist's* discussion of the federal government's war and commercial powers under the Constitution. I will address the war powers in the remainder of this section and the federal government's commercial powers at the beginning of the next section.

Arguably the most influential book on civil-military relations written by an American over the last century has been Samuel Huntington's *The Soldier and the State* (1957). As I indicated in chapter 4, there Huntington maintained that the dominant ideology in the United States from the Revolution through the mid-twentieth century was liberalism, an inheritance from the English tradition of John Locke. Liberalism had its origins in the claim that individuals had rights that could be asserted against the state.¹⁹ Its ethos was so pervasive that it created a uniformity of belief throughout the United States that "would be the envy of a totalitarian dictator."²⁰ Most importantly for our purposes Huntington maintained that liberalism did not understand the need for a military. In fact it was openly hostile to military institutions, especially standing armies. Although liberalism tolerated the use of war in particular instances to advance universal principles of justice and freedom, it was opposed to war used more generally as an instrument of national policy. To engage in war for this latter purpose was immoral.²¹ War in the eyes of American liberalism was a function of America's peculiar nationalism. That nationalism, unlike other varieties, did not assert the superiority of the American *people* over others but rather the superiority of America's *ideals* over others. As Huntington elaborates: "American idealism has tended to make every war a crusade, fought, not for specific objectives of national security, but on behalf of universal principles such as democracy, freedom of the seas, and self-determination."²² At the institutional level this meant that as much as liberalism was "divided in its views on war" it was nevertheless "united in its hostility to the military profession. The function of this profession is the military security of the state, and the legitimacy of this concern is recognized

by neither crusader nor pacifist.”²³ The only two groups in American history that Huntington maintained refused to adhere to the liberal ideology were the Federalists and members of the antebellum South. The Federalists, who were in control of the federal government for its first twelve years, were represented above all by Alexander Hamilton. The antebellum South was represented most prominently by George Fitzhugh and especially John C. Calhoun. Both the Federalist’s and these southerners understood the necessity for military institutions and actively promoted them. They did so however for fundamentally different purposes.²⁴

Huntington’s interpretation of American liberalism is typical of much academic literature on American constitutional thinking. The skepticism toward professional militaries, and particularly standing armies, is the hallmark for instance of republican thesis scholarship that followed in the decades after the publication of Huntington’s book. The hostility toward a formal military profession is something not only scholarship on founding era opinion has stressed but that *The Federalist* itself recognized. Although Huntington’s interpretation of liberalism is really only an interpretation of the Whig variety of that thinking, *The Federalist* itself acknowledges the prevalence of this orthodoxy in 1787. Similar to Huntington, for instance, *Federalist* 26 emphasizes that “the origin and progress of the idea, which aims at the exclusion of military establishments in time of peace” can “be traced to those habits of thinking which we derive from the nation from which the inhabitants of these States have in general sprung”—Britain (26:158). But the habits of thinking that harbored hostility toward standing armies was not traced by *Federalist* 26 to John Locke or classical liberal thinking more generally. Rather, it was traced to James II, who increased England’s regular army from 5,000 to 30,000 troops. And while this executive power of raising standing armies was considered dangerous by the British, in the wake of the Revolution of 1688 the English Bill of Rights abolished the prerogative of the king to raise troops. From that time on maintaining a peacetime army could only be done with the consent of Parliament.

This marked a watershed in British politics. The British people recognized that a peacetime army was a necessity. But as long as the legislature, not the executive, was the body raising the army there was little threat to English liberty doing so. On Publius’ reading, the English

patriots, who effected that memorable revolution, were too temperate, too well-informed, to think of any restraint on the legislative discretion. They were aware that a certain number of troops for guards and garrisons were indispensable; that no precise bounds could be set to the national exigencies; that a power equal to every possible contingency must exist somewhere in the government: and that when they referred the exercise of that power to the judgment of the legislature,

they had arrived at the ultimate point of precaution which was reconcilable with the safety of the community. (26:159)

It was from the same British skeptics of standing armies that Americans had themselves “derived an hereditary impression of danger to liberty, from standing armies in time of peace.” The American Revolution had “quickened the public sensibility” regarding what was necessary to the protection of rights. In some instances this raised the warmth of America’s “zeal beyond the degree which consisted with the due temperature of the body politic” (26:159). In fact, *Federalist* 26 implores from the outset that following a popular revolution like the American Revolution it was hardly to be expected that the country should have arrived at that “happy mean” that marked “the salutary boundary between POWER and PRIVILEGE” and that combined “the energy of government with the security of private rights.” It was the “failure in this delicate and important point” that was “the great source of the inconveniences” Americans experienced (26:157).

It is important to highlight these aspects of *Federalist* 26’s argument in detail because they reveal the extent to which Huntington and others have misrepresented Americans’ aversion to standing armies in 1787. According to *The Federalist* no such widespread aversion existed at that time, as much as it may have existed among certain influential and vocal elites. As *Federalist* 26 underscores, of the states of the Confederation in 1787 only Pennsylvania and North Carolina proscribed peacetime standing armies; “all the others refused to give [such a policy] the least countenance” (26:157). In both the case of Pennsylvania and North Carolina Publius attributes the proscriptions against standing armies to the excessive zeal that one might expect to follow in the wake of a revolution against a king. Neither policy was wise. Nor did they accord with the sentiments of an overwhelming majority of Americans.

This misrepresentation about Americans’ views toward popularly controlled standing armies is a critical misconstruction since the failure to understand this aspect of political thought was “the *great source* of the inconveniences” Americans experienced in 1787. *Federalist* 26 of course was by Hamilton. However, we have already seen that it was not just him who understood the necessity for unlimited federal military power and the need for a standing army. So too did Madison. It was Madison, for instance, in *Federalist* 46 who contrasted the *genuine patriotism* of those who supported the Constitution with the *counterfeit zeal* of those who think that standing armies will be raised under its auspices to undermine the people and governments of the states. Hamilton referred to a similar type of counterfeit zeal twice in *Federalist* 26. His first reference was in the passage above, describing an overzealous security for popular rights in the body politic as having failed to achieve that “due temperature” necessary for understanding the need for

a permanent standing army. In the second reference Hamilton admonishes: “The idea of restraining the legislative authority, in the means for providing for the national defense, is one of those refinements which owe their origin to a zeal for liberty more ardent than enlightened” (26:157).

The distinction between an *ardent* as opposed to an *enlightened* zeal for liberty represents the difference between denying the need for adequate national defense and recognizing both its physical and moral necessity. In language that is similar to *Federalist* 11’s Declaration regarding the physical and moral necessity for a more active commerce and flourishing marine, *Federalist* 24 similarly connects commerce to national defense and specifically a navy; “If we mean to be a commercial people . . . we must endeavor, as soon as possible, to have a navy. To this purpose there must be dock-yards and arsenals; and for the defense of these, fortifications, and probably garrisons” (24:150). If Americans intended to be commercial people, as Publius obviously hoped they would, they would need to have adequate means to protect the relevant commercial blue water traffic lanes and other international commercial interests they presently had and may have in future. Becoming a commercial people was both a moral and a military necessity if the Constitution was to vindicate those natural rights tied to the exercise of men’s faculties.

A NATIONAL FREE MARKET AS A MORAL AND MILITARY IMPERATIVE

But this meant that federal powers over commerce—the second issue to be discussed regarding federal powers—were necessary and not just for reasons of utility. As Thucydides, Hume, and *The Federalist* all propose, the expansion of commerce, industry, and the arts were the necessary precondition to “moving” the faculties of men from an idle to an active state. This was not just a descriptive statement but a moral proposition related to Americans’ natural and constitutional rights; the development of commerce was necessary to the full exercise of those rights. As Thucydides’ Corinthians recounted, the public spiritedness of the Athenians caused them to devote their minds and bodies to the service of Athens. This was a function of their freedom and of their enterprising character. Thucydides’ Archeology and other parts of his history suggests that this public spiritedness derived largely from Athens’ commercial dynamism. *The Federalist* anticipates much the same thing in the United States under the Constitution. The dynamism of America’s commercial republican character could provide unparalleled prosperity and civic energy if tempered by the right constitutional instruments. And this constituted a critical part of *The Federalist*’s teaching not only regarding commercial enterprise but national security as well.

Federalist 26 reassured Americans that Article I, Section 8 of the Constitution would prohibit Congress from providing the executive department permanent funding for a standing army because appropriations for the purposes of raising and supporting armies were limited to two years (26:161). *The Federalist* certainly seems at times schizophrenic on the issue of standing armies, admonishing against their danger at one time and advocating for their necessity at another. As we saw earlier *Federalist* 8 warned that the disciplined armies that were always afoot in Europe, as much as they may have maintained order by discouraging invasion from other countries, nevertheless bore “a malignant aspect to liberty and economy.” In states exposed to frequent invasion, where such armies were numerous, the military state could become elevated over the civil. And both *Federalists* 8 and 16 warned that in a divided America or a loose league like that under the Confederation there would be a greater propensity for the growth of standing armies which could threaten American liberties.

Yet other *Federalist* numbers as we know defend the necessity of peacetime armies and even advocate for their growth as the situation demands. *Federalist* 23 maintained that the powers of national defense, including the power “to raise armies,” must “exist without limitation.” *Federalist* 46 refers to that genuine patriotism that comprehends that standing armies in a republic like America’s were not only not opposed to Americans’ liberties but were critical to their protection. Again appealing to Americans’ good judgment, *Federalist* 24 demurred that the objection from the Constitution’s critics that no provision had been made against the existence of peacetime standing armies was “supported only by bold assertions” and not sound arguments. Such a position stood in stark “contradiction to the practice of other free nations, and to the general sense of America, as expressed in most of the existing constitutions” (24:145). *Free nations* should not be opposed to standing armies; such armies are not a threat to the citizens of such nations because they are drawn largely, if not entirely, from the people. Moreover, the reference in *Federalist* 24 to the general sense of America, like the reference to the idea of genuine patriotism in *Federalist* 46, hints at the new sort of nationalism that both Hamilton (in *Federalist* 24) and Madison (in *Federalist* 46) suggest might undergird the Constitution. This new nationalism would evince confidence not only in American arms created under the auspices of the Constitution but in a more patriotic identification with the union or America through better administration of the federal government. An essential component of this better administration would consist of providing for a standing army to protect American liberties. Denying that the federal government would have to enforce its laws through the exercise of military force, *Federalist* 27 laid down as a general rule that the people’s “confidence in and their obedience to a government will commonly be proportioned to the goodness or badness of

its administration” (27:164). If the federal government was to succeed under the Constitution, it was necessary for the federal authority to be properly administered. This included the administration of a federal army.

Publius contends that there was very little reluctance on the part of Americans even in 1787 to support popularly approved standing armies. As was noted above, only Pennsylvania and North Carolina had cautioned their legislatures against maintaining peacetime armies. The other eleven states were either silent on the subject or allowed their assemblies to authorize such armies. The Articles of Confederation prohibited the states from having ships or troops without the consent of Congress but placed no restrictions on Congress itself raising peacetime armies (24:147–148 and 25:153). *Federalist* 84 had admonished against the need for a constitutional bill of rights because such measures typically involved stipulations between monarchs and their subjects, “reservations of rights not surrendered to the prince” (84:549). In republics like America’s, where political authority originated in the people, there was no need for a bill of rights because the people were given their (pre-political) rights by God or nature and nothing was surrendered to a prince. *The Federalist* applies a similar logic to undue restrictions on Congress with respect to the raising and maintaining of standing armies. In a republic, Publius asked, where else was the power of raising armies to reside other than in the legislature? “[I]t was superfluous, if not absurd, to declare that a matter should not be done without the consent of a body, which alone had the power of doing it” (26:159–160). Putting “the whole powers of the proposed government . . . in the hands of the representatives of the people” was “the only efficacious security for the rights and privileges of the people, which is attainable in civil society” (28:170).

It was a fundament of *The Federalist*’s constitutionalism that power had to be commensurate to the responsibility America’s representatives had to maintain the safety of those who elected them. The only restraints that could be placed upon this constitutional power were “the exigencies of the nation and the resources of the community” (31:188). National defense required resources. Resources here referred to two things: taxes and the vibrant commercial economy that provided the wealth from which those taxes would be extracted. *Federalist* 12 had impressed upon readers how important commercial prosperity was to the ability of a country to pay taxes. Commerce contributed both “to the *quantity* of money in circulation” as well as “to the *celerity* with which it circulates.” It rendered “the payment of taxes easier” and facilitated “the requisite supplies to the treasury.” But this was not all that was required for national defense. So too were the fiscal reforms the Constitution would bring about. Without those reforms, *Federalist* 30 proclaims, disaster would befall the United States in “the very first war” it engaged in. If the government had to rely on requisitions as it had under the Confederation

and was unable to secure any other resources, it would be driven to expropriating funds from the other objects of government once war broke out. This in turn would likely destroy America's public credit, which itself would aggravate the prosecution of any military operations. "In the modern system of war, nations the most wealthy are obliged to have recourse to large loans" (30:184). These would be difficult to come by should the United States be unable to fulfill its financial pledges. *Federalist* 30 emphasizes that from a deficiency in fiscal reforms and specifically granting the federal government the power to tax as the Constitution would the people would be subjected to continual plunder in order to meet the government's necessities. Either that or the government itself would sink into a fatal atrophy and eventually perish (30:180).

Federalist 30 defended "a general power of taxation" for such federal objects as funding the raising of troops, the building and equipping of fleets, "and all other expenses in any wise connected with military arrangements and operations." As "the vital principle of the body politic," what sustained "its life and motion" and enabled "it to perform its most essential functions," money was critical to war (30:180). Although the ability to conduct war was not the only object of the federal government, it was its most important; in Publius' words, the "common defense" was "the primary principle of our political association" (25:151). War was also the most burdensome cost that governments of the late eighteenth century incurred. "What are the chief sources of expense in every government," *Federalist* 34 inquired? "What has occasioned that enormous accumulation of debts with which several of the European nations are oppressed? The answer plainly is, wars and rebellions." And in a passage that accentuates the difference between the politics of the eighteenth-century nation-state and the politics of the modern welfare state, *Federalist* 34 elaborates:

The expenses arising from those institutions which relate to the mere domestic police of a state, to the support of its legislative, executive, and judiciary departments, with their different appendages, and to the encouragement of agriculture and manufactures (which will comprehend almost all the objects of state expenditure), are insignificant in comparison with those which relate to the national defense. (34:203–204)

If the principal cost of the eighteenth-century nation-state was national defense, the federal government would need sufficient revenue to provide for it. Publius will in fact contend that the federal government needs "an *unqualified* power of taxation in the ordinary modes" (31:188, emphasis added).

Those ordinary modes in 1787 would consist primarily of property taxes and duties or tariffs on imports. These taxes would go primarily to providing

for national defense. And they would have to be relatively consistent with the promotion of free trade. Otherwise the purpose of providing the federal government the power of taxation would be counterproductive. This is the theme of *Federalist* 35. As Charles Kesler has suggested, *The Federalist* agreed as a matter of economic theory that free trade was the best policy to adopt as a general rule, even if for political reasons such as the protection of the armaments industry and the merchant marine economic protectionism of some form might be advisable as a temporary federal policy. Tariffs were the primary source of funding for the federal government in the late nineteenth century, as they would remain through ratification of the Sixteenth Amendment. But tariffs, as *Federalist* 35 warned, could be “prejudicial to the fair trader, and eventually to the revenue itself: they tend to render other classes of the community tributary, in an improper degree, to the manufacturing classes, to whom they give a premature monopoly of the markets; they sometimes force industry out of its more natural channels into others in which it flows with less advantage” (35:207). As Kesler underlines, in the language of today’s politics Publius was aware, as *Federalist* 35 indicates, of the problem of government picking winners and losers, raising prices unnecessarily for domestic consumers, and losing tax revenue on account of tax rates being too high. All of these distinctly modern problems Publius was fully cognizant of. In its tenor *Federalist* 35 sounds a note similar to Adam Smith’s promotion of the natural liberty of free markets expressed in *The Wealth of Nations*.²⁵

The economic policy ideal Publius seems to identify with the Constitution is a free market model; one that lets industry flow into “its more natural channels.” This generally will bring the utmost “advantage.” Such a free market ideal comports with emancipating the spirit of enterprise that *The Federalist* suggests had been unduly restricted by government regulations that impeded industry flowing into these more natural channels. As we have seen *Federalists* 44 and 62 were even more emphatic than *Federalist* 7 in articulating the problems of overregulation. Fluctuating policies and “legislative interferences, in cases affecting personal rights,” *Federalist* 44 complained, had not only “become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community.” They also represented “the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding.” And *Federalist* 62 had similarly demurred that mutable domestic policy had poisoned “the blessings of liberty” and undermined the rule of law. Every new regulation of commerce or revenue that affected “the value of the different species of property” had presented “a new harvest” to those cunning speculators who monitored such changes in order to purloin the windfalls produced “not by themselves, but by the toils and cares of the great body of their fellow-citizens.” All of these problems of fluctuating policy,

overregulation, and unjust enrichment, impaired the flow of enterprise and industry into what we might call (using the language of *Federalist* 35) their more natural channels; channels more beneficial to the general welfare.

The complaints of *Federalists* 44 and 62, familiar to today's critics of the modern regulatory state, are important to recognize not only because of the permanency of the problem of overregulation but because it accentuates the importance of free-market economics to *The Federalist's* commercial republican theory. This fact is too often overlooked in commentary on *The Federalist's* defense of the need for more energetic government under the Constitution. Energy in government was not just a function of better governmental institutions or the granting of appropriate powers to the federal government. It was also a function of political economy. And not just *any* political economy but the *best* political economy that would create the greatest amount of wealth and innovation consistent with respect for individual rights. *The Federalist* suggests that this political economy will be something along the lines of a free market economy, one that will unleash the spirit of enterprise in a way the Articles of Confederation never could. The third part of *The Federalist* certainly spoke to the need for more energetic government. This was the reason for its extensive discussion of why the Constitution granted the federal government unlimited powers to deal with national security and taxation. But commerce was a key component—perhaps the *central* component—of the equation here, as the numerous provisions in the Constitution relating to it affirm. “[I]f we mean to be a commercial people,” *Federalist* 34 implored, “it must form part of our policy to be able one day to defend that commerce. The support of a navy and of naval wars would involve contingencies that must baffle all the efforts of political arithmetic” (34:203). *Federalist* 34 reiterates *Federalist* 24's invocation on the need to become a “commercial people.” Federal institutions and powers under the Constitution were directed to that end, a precondition *The Federalist* suggests to achieving American greatness and the furthering of civilization.

But this had further implications for America's grand strategy under the Constitution. The Constitution's commercial reforms were critical to the moral reforms *The Federalist* outlined in detail and that we reviewed earlier in this book. These reforms themselves were related to the development of a nationalist ethos or patriotism that were in turn related to the cultivation of an invigorated spirit of enterprise. As the passage from *Federalist* 34 above indicates America becoming a “commercial people” was directly related to the need for a navy. And how extensive that navy needed to be was something that was dependent on “contingencies” that could not be predicted; that would “baffle all the efforts of political arithmetic.” Publius seems to imply here as elsewhere the impossibility of an insularity doctrine as the grand strategy for America under the Constitution. For how could it be known in

1787 to what extent a navy or army would be needed for American national security or the protection of American interests abroad if this was dependent, as *Federalist* 34 suggested, on the extent to which Americans became a “commercial people”? Increased commercial development and improvement of the conditions for the exercise of American enterprise was the evident hope of *The Federalist*. If such growth and improvement persisted over decades and even generations, the extent to which Americans increasingly became a commercial people would grow exponentially. So too presumably would America’s domestic and international trade. As our discussion of *Federalist* 38 in the last chapter made clear, Americans’ expansion into the Western frontier confirmed that Americans were restless, dynamic, and acquisitive. As *Federalist* 38 affirmed, Congress had no choice regarding whether it should violate the Articles of Confederation to accommodate America’s territorial and commercial expansion. The “public interest” and the “necessity of the case” had imposed on members of Congress “the task of overleaping their constitutional limits.” Whatever ethereal considerations America’s political or intellectual elites harbored about America’s western territorial growth and the consequences of commercial development on American character, those real-world Americans charged with surviving on the Western frontier and in the still relatively New World were not to be constrained. Their enterprising and expansionist domestic growth and aggressive pursuit of ever-augmenting international markets would require a corresponding growth in America’s military wherewithal to protect American commerce and interests. This is a central theme throughout parts 2 and 3 of *The Federalist*.

It was no accident that in the very paragraph in *Federalist* 34 that concluded that if America wanted to become a commercial people, it would have to be able to defend that commerce that Publius makes his most emphatic plea for the uncertainty of the future and the need for unlimited governmental powers to accommodate that uncertainty.

Constitutions of civil government are not to be framed upon a calculation of existing exigencies, but upon a combination of these with the probable exigencies of ages, according to the natural and tried course of human affairs. Nothing, therefore, can be more fallacious than to infer the extent of any power, proper to be lodged in the national government, from an estimate of its immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, so it is impossible safely to limit that capacity. (34:202, capitalization in original)

The federal government needed “an indefinite power of providing for emergencies as they might arise” (ibid.). These passages alone should make clear that however much *The Federalist* postured in 1787 that an insular foreign policy or military strategy was what Americans might pursue over the short

term, Publius obviously foresaw a future in which a much broader grand strategy might be necessary. *Federalist* 34's multiple emphases on promoting the "capacity to provide for future contingencies as they may happen," that such contingencies "are *illimitable in their nature*," and that there was a need for "an *indefinite* power of providing for emergencies," further fortifies this interpretation.

The beginning of the very next paragraph in *Federalist* 34 even suggests that trying to tie "up the hands of government from *offensive* war" would be a "novel and *absurd* experiment in politics" (34:203, emphasis added). Publius' contention here is that at a minimum Americans should not disable the federal government "from guarding the community against the ambition or enmity of other nations." But his prefatory remark in this same sentence makes clear that the Constitution and sound grand strategy clearly contemplate the possibility of offensive war should it be necessary to preempt the aggressions of other nations or to protect American interests abroad. The speculation here about what precisely is *The Federalist's* long-term grand strategy for America under the new Constitution is closely tied to the issue of the improving confidence in the federal government and the related patriotism it might facilitate, issues also addressed in the third part of *The Federalist*.

A NEW AMERICAN NATIONALISM

The final question that *Federalist* 23 sought to resolve and that we have not discussed yet in this chapter focuses on the persons upon whom federal powers ought to operate. We already know the answer to this last question from our discussion in the last chapter. As *Federalists* 15 and 16 indicated, if the federal government was to enjoy true sovereignty, as opposed to mere "mimic sovereignty" (15:87), and if the United States was to be a genuine *government* as opposed to a mere *league* (15:90), the federal government's powers would have to operate directly upon individuals rather than leaving application of federal laws to the discretion of the states, as occurred under the Articles of Confederation. *Federalist* 23 advances a similar argument with respect to governmental energy and stability; that "if we are earnest about giving the Union energy and duration, we must abandon the vain project of legislating upon the States in their collective capacities; we must extend the laws of the federal government to the individual citizens of America" (23:142). Not being able to apply federal law directly to individuals under the Articles had left the national government at the mercy of the states for implementation of its law. This undermined federal sovereignty and ultimately threatened the substitution of "*violence* in the place of *law*" (20:123, emphasis in original). But it had also prevented the government from being "able to address itself

immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence upon the human heart” (16:98). Depriving the federal government of any direct attachment to individuals had undermined the development of a coherent sense of nationalism or fealty to the federal government.

If *The Federalist* understood constitutional reform to be impossible without moral and civic reform, as I have proposed throughout this book, critical to the latter would be allowing the federal government the prerogative of attaching itself to those intangible elements of state power, men’s passions. The argument in *Federalist* 23 about energy and duration in the union being possible only if federal law could be applied directly to individual citizens was not just about the raw application of federal law to individuals. It was rather more an appeal to the moral suasion that might take place over time—the *spirit* that might emerge from the law. It was Publius’ hope that under the auspices of the Constitution the people of the country would increasingly identify as “citizens of *America*” (instead of states) because of the better administration and effectiveness of the federal government. *Federalist* 23 concludes that the very “extent of the country is the strongest argument in favor of an energetic government; for any other can certainly never preserve the Union of so large an empire” (23:145). What is rarely noted in commentary on this passage is that preserving the union here was not just a function of raw political power; that only the powers granted to the federal government, for instance, could physically provide for security against foreign or domestic threats. Preserving the union was also a function of addressing those “hopes and fears of individuals” that *Federalist* 16 had alluded to was as necessary to the federal government’s success as any formal powers the Constitution granted it. Only, for instance, if the federal government accommodated the spirit of enterprise, and those hopes associated with its development, through the exercise of adequate powers over commerce could the union be preserved in a more intangible but nevertheless critical sense. And a more energetic union was essential to the development of commerce and the large commercial republic that would require.

This was also closely related to the military question, the idea of developing a more professional and competent military instrument. If the American people could become more confident in their national government, believing it genuinely protected their rights and respected their true interests, as *The Federalist* proposed it would, they might more readily lend themselves to the raising and maintaining of a standing army and federal navy. They might even at some point in the future want to participate in that army and navy, both of which would presumably grow with the growing confidence Americans felt toward their federal government and the commercial republic the Constitution would foster.

NOTES

1. See George W. Carey, *In Defense of the Constitution* (Indianapolis: Liberty Fund, 1995), 18–33 and esp. 25.

2. See David F. Epstein, *The Political Theory of The Federalist* (Chicago: The University of Chicago Press, 1984), 16.

3. John Lamberton Harper, *American Machiavelli: Alexander Hamilton and the Origins of U.S. Foreign Policy* (New York: Cambridge University Press, 2004).

4. See Richard H. Kohn, *Eagle and the Sword: The Federalists and the Origins of the American Military Establishment, 1783–1802* (New York: Free Press, 1985). Kohn describes Hamilton as “the personification of American militarism. . . . [N]o one posed a greater danger to the nation’s emerging military traditions.” *Ibid.*, 286. A more charitable interpretation of Hamilton’s military and foreign policy can be found in Gerald Stourzh, *Alexander Hamilton and the Idea of Republican Government* (Palo Alto, CA: Stanford University Press, 1970). Stourzh however also portrays Hamilton as someone who, despite his good intentions, had little patience for constitutional restraints when they impinged on his political aspirations. For a response to these works as well as a defense of Hamilton more generally, see Karl-Friedrich Walling, *Republican Empire: Alexander Hamilton on War and Free Government* (Lawrence: University Press of Kansas, 1999); Peter McNamara, *Political Economy and Statesmanship: Smith, Hamilton, and the Foundations of the Commercial Republic* (DeKalb: Northern Illinois University Press, 1998); Stephen F. Knott, *Alexander Hamilton and the Persistence of Myth* (Lawrence: University Press of Kansas, 2002); Ron Chernow, *Alexander Hamilton* (New York: Penguin Books, 2004); and Michael P. Federici, *The Political Philosophy of Alexander Hamilton* (Baltimore: Johns Hopkins University Press, 2012).

5. In *War and the Rise of the State: The Military Foundations of Modern Politics* (New York: The Free Press, 1994), Bruce D. Porter consistently describes the victory of bigger government over smaller government in the United States as a victory for Hamiltonianism over Jeffersonianism. Concluding his analysis of war and the rise of the American state from 1787 to 1990, which in many other respects is excellent, Porter has this to say:

Throughout American history, two visions of the state have competed: the Hamiltonian vision of a strong, centralized state, and the Jeffersonian vision of a limited state, where human liberty was the highest ideal. In considering the expansion of the federal government and the enormous accretion in state power that has occurred since the Civil War, it is tempting to conclude that the Hamiltonian vision has triumphed unconditionally. As Robert Tucker and David Hendrickson observe:

The institutions that characterize American public life today—the standing military establishments, the ballooning debt and high taxes, the subordinate position of state governments in relation to national power. . . . All this he [Jefferson] would have beheld with a kind of sacred horror, as constituting the victory of Alexander Hamilton’s vision of American life.

Yet the premise of a total Hamiltonian victory is faulty and itself derives from excessive fixation on the state. As Tucker and Hendrickson observe, “the ideals of American life

remain Jeffersonian, even in the midst of all these powerful and corrupting institutions.” (*War and the Rise of the State*, 293. See also, *ibid.*, 254–255, 258, and 286)

Porter’s, Tucker’s, and Hendrickson’s views mirror much academic orthodoxy that depicts Hamilton as the arch-advocate of today’s big government liberalism—“ballooning debt and high taxes,” “powerful and corrupting institutions,” and a vision of government that as Porter suggests subordinates liberty to the growth of the state. See also, Cass R. Sunstein, *The Rights Revolution: Reconceiving the Regulatory State* (Cambridge, MA: Harvard University Press, 1990), esp. 22. But defenders of Hamilton have pointed out that such a description of Hamilton’s political science is more mythology than fact. As the analysis in this book has already indicated Hamilton, like Madison, understood energetic government as the necessary *precondition* for the preservation of durable liberty and limited government constitutionalism. Moreover, as Stephen Knott has written, those who indulge in “Hamiltonian myth making” too often overlook that “concealed beneath layers of rhetoric, Jefferson was a Hamiltonian chief executive” (Knott, *Alexander Hamilton and the Persistence of Myth*, 215). Even those sympathetic to the Jeffersonian and later Madisonian embrace of an “agrarian” or “republican political economy” in the early decades of constitutional history concede that both came to recognize, if not fully embrace, the Hamiltonian prescriptions for effective government. As Drew R. McCoy, concludes *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill: University of North Carolina Press, 1980): “although neither Jefferson nor Madison ever succumbed completely to pessimism and despair, both men remained troubled by an unhappy, apparently unshakable truth: the republican social order that they had labored so long to secure was necessarily ephemeral” (239). “Above all, many Republicans finally confronted the disturbing possibility they had evaded for so long: that an overwhelmingly agricultural economy was simply incapable of sustaining an industrious and fully employed citizenry” (*Ibid.*, 247). See also, *ibid.*, 9–10 and 249–252. Summarizing the work of Forrest McDonald on Hamilton’s understanding of the presidency, Walling concludes in apparent agreement with McDonald and contrary to the likes of Porter, Tucker, and Hendrickson:

McDonald leaves little doubt that the sometimes unmanageable national government that evolved from presidential leadership during the New Deal and the cold war is quite far from Hamilton’s vision of energetic government. When presidents try to do everything, they are sometimes unable to accomplish much of anything. In that respect, the modern presidency seems to have little to do with Hamilton’s original vision, which was more energetic than the contemporary presidency *precisely because* it was more limited. (Walling, *Republican Empire*, 123, emphasis added. See also, *ibid.*, 162 and 170)

6. Douglass Adair, *Fame and the Founding Fathers*, ed. Trevor Colbourn (Indianapolis: Liberty Fund, 1974), 94–95.

7. *Ibid.*, 97.

8. *Ibid.*

9. *Ibid.*, 97–98.

10. See Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States*, 2nd ed. (New York: W. W. Norton, 1979), esp. chapter 3, “The New Public Philosophy: Interest-Group Liberalism,” 42–63.

11. I have addressed this question in more detail and in the context of recent Supreme Court cases raising this issue in Anthony A. Peacock, “When the Rule of Law Can Undermine the Rule of Law: *Hamdi* and *The Federalist* on War and Necessity,” in *Freedom and the Rule of Law*, ed. Anthony A. Peacock (Lanham, MD: Lexington Books, 2010), 227–256. A number of the issues discussed in this book related to this question were initially broached by me in *Freedom and the Rule of Law*.

12. See Thucydides, *The Peloponnesian War*, 1.122 and 3.84.

13. As Thomas West proposes: “The right to life—along with all the other natural rights—includes the right to self-defense, if necessary by using force to resist force. The right to own firearms would follow.” Thomas G. West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom* (New York: Cambridge University Press, 2017), 28.

14. As Max Edling remarks,

It was against this background that the Antifederalist minority in the Maryland convention believed it to be “essential” to restrict the national government’s right to march the militia out of the state. To “march beyond the limits of a neighbouring state, the general militia, who consists of so many poor people that can ill be spared from their families and domestic concerns, by power of congress, who could know nothing of their circumstances” was bound to result in grievances. (Max M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), 114)

15. Douglas Edward Leach, *Arms for Empire: A Military History of the British Colonies in North America, 1607–1763* (New York: Macmillan, 1973), 20; Don Higginbotham, *War and Society in Revolutionary America: The Wider Dimensions of Conflict* (Columbia: University of South Carolina Press, 1988), 23–24; Arthur J. Alexander, “Pennsylvania’s Revolutionary Militia,” *The Pennsylvania Magazine of History and Bibliography* 69 (1945), 23; Albert H. Tillson, Jr., “The Militia and Popular Culture in the Upper Valley of Virginia, 1740–1755,” *The Virginia Magazine of History and Biography*, 94 (1986): 291, 293–295; cited in Edling, *A Revolution in Favor of Government*, 284, n.76.

16. Edling, *A Revolution in Favor of Government*, 112–114.

17. Hiram Catton, *The Politics of Progress: The Origins and Development of the Commercial Republic, 1600–1835* (Gainesville: University of Florida Press, 1988), 462. See also, Jackson Turner Main, *The Antifederalists: Critics of the Constitution, 1781–1788* (Chapel Hill: The University of North Carolina Press, 1961), 119–167. As Edling observes, the new government under the proposed Constitution of 1787 would be

granted powers that Antifederalists believed threatened the future of liberty. The right to raise and maintain standing armies in peacetime was one of these. In the Country ideology, “standing armies” carried strong and ominous connotations as a certain bane to liberty.

. . . As the prominent Antifederalist writer “Brutus” noted, standing armies were a feature of despotic governments as well as of “all the monarchies of Europe.” (Edling, *A Revolution in Favor of Government*, 42 and 44. See also, *ibid.*, 55, 81)

18. See chapter 4, n43.

19. Samuel P. Huntington, *The Soldier and the State* (Cambridge, MA: Belknap/Harvard University Press, 1957), 149.

20. Ibid., 146.
21. Ibid., 91.
22. Ibid., 152.
23. Ibid., 153.
24. Ibid., 146–147.
25. Charles R. Kesler, “The Republican Trump,” *Claremont Review of Books* Vol. XVII, no. I (Winter 2016/2017): 11.

Chapter 10

Constitutional Powers and *The Federalist's* High-Toned Politics

My focus at the end of the last chapter was on two themes: the creation of a national free market as a moral and a military imperative, and Publius' idea about how a new American nationalism might be nurtured through improved confidence in the federal government and commercial enterprise. These themes are developed throughout the first three sections of *The Federalist*, what has been referred to as Volume I of the work (*Federalists* 1–36). In the remainder of this book I focus on Volume II (*Federalists* 37–85). Although I have already discussed many of the *Federalist* numbers in that volume in the context of issues addressed in earlier chapters and my discussion of Volume II here will be brief, there are three additional themes from that volume examined in this chapter and the next. The first concerns the discussion of the theory of federal representation and constitutional powers *The Federalist* defends, an issue initially broached in *Federalists* 35–36. The second concerns Publius' intriguing remarks in *Federalist* 37 regarding the nature of human understanding, and specifically the faculties of the mind, and how this relates to our previous discussion about the government's obligation to protect the diversity in the faculties of men. The final issue concerns the relationship of the spirit of enterprise to the American way of war. *The Federalist* I contend develops this theme and anticipates many features of the modern American way of war that we see in the twentieth and twenty-first centuries. I will deal with the first two issues in this chapter. I will deal with the last issue in the final chapter of the book.

REPRESENTATION AND THE EXERCISE OF CONSTITUTIONAL POWERS

The constitutional powers that are discussed early on in Volume II of *The Federalist* are preceded by a brief discussion on taxes and the nature of

representation in Congress that are initially raised in *Federalists* 35 and 36. The issue of constitutional powers, including the federal power to tax, and *The Federalist's* theory of representation are closely related. I have contended in this book that *The Federalist* does not just defend the modern commercial republic the Constitution will create but a free market commercial republic, one that will let commerce flow into those natural channels that an unfettered, national economy will generate. This will not only produce the greatest amount of wealth and prosperity but the greatest freedom for individuals to exercise their faculties as they see fit. This commercial republican theory of *The Federalist* is directly related to *The Federalist's* discussion of taxes, as the last chapter demonstrated. It is also obviously related to the theory of representation *The Federalist* develops. *Federalist* 41 informs us that the Constitution may be considered from “two general points of view.” The first concerns “the sum or quantity of power” the Constitution vests in the federal government. The second concerns “the particular structure of the government, and the distribution of power among its several branches” (41:255). These topics are addressed in *Federalists* 41–46 and 47–84, respectively. But the discussion here is preceded by a brief review of taxes and questions about representation that are initially broached in *Federalists* 35 and 36.

I contended in the last chapter that *Federalist* 35 defends a free market understanding of constitutional government. This was evident in its discussion of taxes and specifically tariffs. The federal government under the Constitution, Publius proposed, should pursue whatever policy might avoid forcing “industry out of its more natural channels” and into those in which it flowed “with less advantage.” In the midst of this discussion Publius abruptly turns his attention to the question of representation. Specifically he addresses the objection from Antifederalists that the House of Representatives would not be numerous enough to represent all the classes of society or “the interests and feelings of every part of the community” (35:209). Antifederalists, such as the *Federal Farmer*, had raised precisely this objection. “[T]here ought to be *an increase of the numbers of representatives*” *Federal Farmer VII* proclaimed. American electors should be able to “chuse men from among themselves, and genuinely like themselves.”¹ *The Federalist* disagreed. Such a “mirror” concept of representation was the antithesis of the Convention’s limited government constitutionalism; a recipe for what we would today call “interest-group liberalism” or the unlimited government of the modern programmatic liberal state. In such a state government is charged with resolving all social, economic, and political problems for which there is a constituency.²

This kind of argument, as *Federalists* 35 and 36 demonstrated, and as *Federalist* 55 and 56 would later refine, misapprehended the nature of the Constitution’s republicanism. Representing all classes and all interests in society was both *impracticable* and *unnecessary*. It was *impracticable*

because it was impossible to represent all interests in any representative body, especially in the large commercial republic envisioned by the Constitution. It was *unnecessary* because the objects of the federal government (as we saw earlier) were limited to commerce, finance, military affairs, treaties, and other forms of “negotiation,” all of which would be pursued with a view to the common good, not narrow constituent interests (35:209–212; 36:214). An election was not about representing interests or about capturing every shade of public opinion. It was, rather, about judging the character and the opinions of a representative and selecting a government that was the best available.

This was made clear in Publius’ discussion of the nature of the Constitution’s theory of representation throughout *The Federalist*. That theory held that although the majority *had* interests, it was not the business of federal representatives to merely *re-present* those interests; rather, members of Congress were to deliberate and refine common opinion regarding such interests with a view to pursuing the public good as best they could.³ *Federalist* 10 implored that “[w]hen a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens.” The purpose of the Constitution was “[t]o secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and form of popular government” (10:57). *Federalist* 55 supplemented *Federalist* 10’ and 35’s deliberative republican model by proposing that the goal for representative institutions was not an arithmetic mean but a prudential one. Although 60 or 70 representatives might have been better than six or seven, 600 or 700 were not better than 60 or 70. Representative institutions should be large enough “to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes” but small enough “to avoid the confusion and intemperance of a multitude” (55:355–356). *Federalist* 56 reminded us of *Federalist* 17’s counsel that the objects of the federal government were few and significant, contributing to the dignity, importance, and splendor of the national government. “It is a sound and important principle that the representative ought to be acquainted with the interests and circumstances of his constituents. But this principle can extend no further than to those circumstances and interests to which the authority and care of the representative relate. An ignorance of a variety of minute and particular objects, which do not lie within the compass of legislation, is consistent with every attribute necessary to a due performance of the legislative trust.” And when responding to the inquiry of just what were the objects of federal legislation, *Federalist* 56 again maintained that those “of most importance, and which seem most to require local knowledge, are commerce, taxation, and the militia” (56:360).

Although there are many implications to these compact statements about the nature of representation under the Constitution four in particular deserve emphasis. First, the form of popular government under the Constitution would have to be configured in such a way as to ensure that the majority could not sacrifice the public good or private rights to its ruling passion or interest. As the basis of American constitutionalism was the individual, so the object of the legislative process was to be the general welfare or public interest.

Second, *The Federalist's* republicanism was not intended to promote bargaining, logrolling (where legislators exchange support for one another's proposals), or trade-offs among discrete groups so they could have their interests satisfied.⁴ Discussing the spirit that had characterized the Continental Congress *Federalist* 46 had complained that members had "too frequently displayed the character, rather of partisans of their respective States, than of impartial guardians of a common interest." The "great interests of the nation" had too often suffered "from an undue attention to the local prejudices, interests, and views of the particular States" (46:302–303). Although the complaint here was directed to the partisan, discrete interests of the states, *Federalists* 44 and 62 (as we saw earlier) had similarly complained about how overregulation by Congress had imposed punitive measures on the more-industrious, less-informed part of the community while rewarding "enterprising and influential speculators." Capitulation to the self-serving interests of political entrepreneurs was as deplorable in 1787 as it is today. But this highlighted an important feature of *The Federalist's* republican theory that is too often overlooked. As George Carey has observed: "The currently fashionable interpretation of the American political process" explains it "in terms of a collision of interests where it is assumed that the outcome of the collision accords with the common good largely because of the degree of consensus behind it." But, as Carey emphasizes, absent "from this depiction are such considerations as [what Madison referred to as] 'the true interest' of the country, 'the permanent and aggregate interests of the community,' or the 'general good' . . . Madison's theory, no matter how one chooses to read it, does not support the notion that the true interests of the country emerge through the resolution of interest conflict."⁵ Representatives were to be cognizant of constituent interests, as *Federalist* 56 proposed, but they should not be "advocates and parties to the causes which they determine" (10:56). To do so would simply give preference to the legislator's personal interests or, as *Federalist* 46 proposed, the interests of the legislator's constituents—a recipe for faction and for unlimited government because the desires of legislators and constituents are potentially infinite.

The third implication of the above passages, following from the first two, was that the majority's ruling passions and interests were not synonymous with the public good; in fact, they were its antithesis.⁶ As Publius' comments

in *Federalist* 10 made clear, the public good was something distinct from mere particular passions or interests, including those of the majority.⁷ However much passions or interests might animate political actors—be they part of the majority or minority—the specific purpose of federal institutional process was to wean representatives from those interests to which they were drawn so passionately. Key here were the Constitution's institutional processes and limited objects, both of which would work to raise deliberations from mere interests to what would promote the general welfare.⁸ The republican theory of *the Federalist* therefore poses problems for political observers and advocates who would reduce politics to a mere clash of interests.

The fourth point to be drawn from the above passages concerns *The Federalist's* affirmation of the Constitution's limited, predominantly commercial and national security, objects. *Federalist* 56, like other numbers we have reviewed in earlier chapters, emphasizes that the most important objects of federal legislation that members of Congress will have to concern themselves with are commerce, taxation, and the militia or military affairs. *Federalist* 36 made a similar point, again reaffirming that more representatives were not necessary to adequately represent the electorate in Congress because the federal government's objects were limited. *Federalist* 56 had proposed that the difficult task for federal representatives was not acquiring information about the differences between local laws and circumstances *within* a single state but rather finding out what differences existed *among* the several states that needed to be accounted for in federal law (56:362). *Federalist* 36 asked what specific *local* knowledge federal representatives needed to make good federal law. What kind of local knowledge, for instance, would be necessary to administer a federal tax? Would it be knowledge of "a minute topographical acquaintance with all the mountains, rivers, streams, highways, and by-paths in each State?" Or would it be better to have "a general acquaintance with [a state's] situation and resources, with the state of its agriculture, commerce, manufactures, with the nature of its products and consumptions, with the different degrees and kinds of wealth, property, and industry?" (36:215). Publius suggests that it is particularly a general knowledge, especially regarding commercial affairs or issues affecting property, that federal representatives would benefit from.

Federalist 35 seemed to confirm this focus when making the provocative suggestion that where the votes of the people were left free "the representative body, with too few exceptions to have any influence on the spirit of the government, will be composed of landholders, merchants, and men of the learned professions" (35:211). These three designations, two relating to what we might call economic categories—landholders and merchants—would be sufficient to capture the interests and feelings of the different classes of American citizens. Landholders would adequately represent the interests of

landed property both large and small since any encumbrance on property of any sort would affect both categories of landholding proprietors. Merchants would similarly look after their own interests as well as those of the mechanic and manufacturing arts since their own commerce was so closely allied with those interests. The learned professions formed no distinct interest in society and accordingly were presumed to arbitrate neutrally between the rivalships of the different branches of industry.

W. B. Allen has suggested that the learned professions were critical to *The Federalist's* republican theory not only because they would act as nonpartisan arbiters between the contesting interests of industry generally but because they would mediate between the two great competing interests that made up the America economy in 1787: commerce and agriculture.⁹ Growing as America moved further and further away from a predominantly agricultural economy to one more commercial in nature, the learned professions would take on an increasingly important role in the Constitution's republican form of government. As Colleen Sheehan has written of Allen's account: "Publius does not simply replace the age-old struggle between the haves and have-nots with a new rivalry among multiple economic interests. In the commercial republic of America, with its plurality of interests *and* bounty of professionals serving the public, class interest and aggregate interest are superseded by impartial public decisions grounded in the common interest and the general good."¹⁰ Perhaps. This was one possible way the Constitution's institutional process might ascend from the mere conflict of interests to the general welfare—whatever that might consist of.

However, as *Federalist* 12 proposed, the long-standing supposition that agriculture and commerce were antithetical interests in reality presented a false dichotomy. The two interests Publius declared were "intimately blended and interwoven." The distinctions between agriculture and commerce would presumably become increasingly murky as the American economy became increasingly integrated. Eventually they might dissolve altogether. If that did not occur as the economy became more complex and integrated, the blending and interweaving of agricultural and commercial interests might at some point at least render them largely indistinguishable. More importantly, *Federalist* 12 emphasizes that even agricultural interests were a part of "commerce," at least to the extent they involved produce not consumed on the farm. Such additional product would enter into either domestic or international trade or both. This suggests that the role of federal representation, including the role of landholders and merchants as well as members of the learned professions who might act as representatives, was to see the American commercial republic as a comprehensive whole. *Federalist* 35 certainly suggests this when concluding that no part of government administration required a greater knowledge of the principles of political economy than taxation.

The man who understands those principles best will be least likely to resort to oppressive expedients, or to sacrifice any particular class of citizens to the procurement of revenue. It might be demonstrated that the most productive system of finance will always be the least burdensome. There can be no doubt that in order to a judicious exercise of the power of taxation, it is necessary that the person in whose hands it is should be acquainted with the general genius, habits, and modes of thinking of the people at large, and with all the resources of the country. And this is all that can be reasonably meant by a knowledge of the interests and feelings of the people. In any other sense the proposition has either no meaning or an absurd one. (35:212–213)

The Federalist's republicanism stresses the predominance of commerce in its theory of representation. It is landholders and merchants who will become federal officeholders along with members of the learned professions. It is these who will make up “the *spirit* of the government.” *The Federalist* also emphasizes that central to this spirit of the government will be facilitating what we would today call a free market economy, one that would avoid “oppressive expedients.” “The man who understands those principles of political economy” will not pick winners and losers or “sacrifice any particular class of citizens to the procurement of revenue.” The Constitution grants the federal government the power to borrow money. But “the most productive system of finance,” we are told, “will always be the *least* burdensome.” Despite the emphasis on interest-based forms of representation among opponents of the Constitution (and among political scientists and legal academics today), *The Federalist's* commercial republicanism tends to downplay such an understanding of representation in the hopes that the American electorate will select the best federal representatives available, those “acquainted with the general genius, habits, and modes of thinking of the people at large, and with all the resources of the country.” This may sound utopian and perhaps it is. But it is the ideal *The Federalist* advances as its theory of republicanism for the federal government and the high-toned politics it hopes might be achieved under the Constitution.

Theory is also evident in *The Federalist's* defense of the specific powers the Constitution grants to the federal government. *Federalist* 37 begins Volume II of *The Federalist* on the federal government's powers and structure under the Constitution by emphasizing the importance of theory to the founders' constitutionalism. The novelty of the constitutional undertaking in 1787 meant that earlier forms of confederations could be used as beacons “warning of the course to be shunned” but could not provide adequate light about the course that “ought to be pursued.” A critical problem the convention faced was how to combine stability and energy in government without violating Americans' liberties or the country's republican form of government (37:223–224). The energy component of the equation here began with

Publius' defense of the Constitution's war powers. The liberty component was provided, among other things, by Publius' reassurance—twice in consecutive numbers—that the federal government's jurisdiction extended only “to certain enumerated objects” and left to the states “a residuary and inviolable sovereignty over all other objects” (39:245). *Federalist* 40 again reaffirmed that “in the new government, as in the old, the general powers are limited; and that the States, in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction” (40:251).

This double emphasis on the limited government constitutionalism of the convention was crucial because the Antifederalists had warned of the danger of consolidating all power in the national government. The Constitution granted federal authorities the power to raise and maintain armies and navies, control the militia, regulate interstate and international commerce as well as elections, pay representatives, suppress rebellions and insurrections, and impose taxes, duties, imposts, and excises. Antifederalists like Cincinnatus, A Farmer, and the Federal Farmer had all speculated about just how states could maintain any “residuary and inviolable sovereignty” or “sovereign and independent jurisdiction” in the face of such unprecedented and far-reaching federal powers? If citizens obeyed the federal government or assisted it, Brutus added, they would likely do so not because they had consented to but because they feared retribution if they did not.¹¹ *Federalists* 41–46 responded to these complaints, contending that the quantity or general mass of powers that the Constitution transferred to the federal government were not only necessary and proper but would not be dangerous to the states or threaten their sovereign jurisdiction. They might even fortify that jurisdiction.

Federalists 15, 16, and 23 had all contended that if the federal government was granted the power to make laws it also had to have the power to execute the law. This is why the Constitution would be effective: federal laws would apply directly to individuals. The general principle here, applicable across all government, was that power had to follow responsibility. The means had to be proportionate to the end. So it was with national defense. “Security against foreign danger,” *Federalist* 41 proclaimed, was “one of the primitive objects of civil society. It is an avowed and essential object of the American Union.” Those powers necessary to attaining it therefore had to “be effectually confided to the federal councils.” *Federalist* 41 reviewed the Constitution's Article I war powers. The power of declaring war, Publius maintains, had to be lodged in the federal government, failing which there would be incoherence and inconsistency in national security policy. As *Federalist* 3 had cautioned, the passions and interests of a part of the union were much more likely to be inflamed than those of the union as a whole. In addition, if states were given the power to declare or make war, those states bordering one another might

engage in hostilities in a way the union never would if the power of making war was lodged entirely in the federal government. *Federalist* 41 reasoned that if the power of declaring war was lodged in the federal government then how could the additional powers of raising armies or equipping fleets necessary to the exercise of that power not follow? Were they not necessary to the administration of war? And, again, once this power was acknowledged, it was equally important that it could not be constitutionally limited since your enemies set the limits in warfare. To constitutionally restrict the government's discretion in the provision for war would be to sign onto a suicide pact. The Constitution was no such pact. The federal government's power to wage war therefore had to be potentially unlimited.

Flexibility in the conduct of war was especially important because as *Federalist* 41 again emphasized the nature of modern warfare had changed. Both military technology and military establishments drove history and government. Charles VII of France demonstrated this in the fifteenth century, having transformed European politics by introducing peacetime military establishments. Following this, if the other nations of Europe did not want to wear "the chains of a universal monarch" they too would have to follow suit. But accommodating military necessity was not just a modern phenomenon. We know this from our discussion of Thucydides earlier and the many examples from the ancient Greeks *The Federalist* refers us to. *Federalist* 41 cited the case of the Romans; that "[t]he veteran legions of Rome were an overmatch for the undisciplined valor of all other nations, and rendered her the mistress of the world" (41:258).

There were at least three lessons to be drawn from Publius' succinct discussion of the cases of Charles VII and Rome. First, Publius sought to highlight what happens when nations fail to heed military necessity—they get eclipsed or oppressed by those that do. Second, it was not only necessary to heed military necessity in constitutional law but the professionalization of the military that formed the core component in 1787 of that necessity. The "veteran legions of Rome" were the best of the professionals. They vanquished the "other nations" that brought to the battlefield mere "undisciplined valor." The latter comment should have struck a nerve with Publius' readers, reminding them of the fate of the American militia in the Revolutionary War. *Federalist* 25 had pleaded the case for peacetime standing armies and Americans embracing an improved military science. The idea "that the militia of the country" was America's "natural bulwark" that "would at all times be equal to the national defense," Publius declared, was a "doctrine" that "in substance, had like to have lost us our independence. It cost millions to the United States that might have been saved. The facts which, from our own experience, forbid a reliance of this kind, are too recent to permit us to be the dupes of such a suggestion" (25:155).

The Revolutionary War revealed just how bad ordinary citizens were at warfare. It also disclosed just how surreal, if not utopian, was the Antifederalist narrative that the citizen militia was the natural bulwark of republican liberty. *Federalist* 25 had alluded to the fact that the citizens who made up the American militia in the Revolutionary War were unaccustomed to both the hardships and the discipline necessary to the effective conduct of military operations. At the Virginia ratifying convention, General Henry Lee had recounted how at the Battle of Guildford Courthouse in 1781 the American militia broke ranks and ran, abandoning the Continental regulars to fight the British on their own. The result was an American defeat despite initial overwhelming American numbers. Had the militia not fled the scene, Lee speculated, the Americans might have won the battle and ended the Revolutionary War right then.¹² As *Federalist* 25 concluded: “The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind.” The Battle of Guildford Courthouse had demonstrated that when confronted by well-trained and disciplined British army regulars the American militia were inadequate to the military task—just as the untrained opponents of the Roman legions singled out in *Federalist* 41 had been. The intent of *Federalist* 25 was not to belittle the militia. It did recognize that the American militia had displayed valor on the battlefield and “erected eternal monuments to their fame; but the bravest of them” knew “that the liberty of their country could not have been established by their efforts alone, however great and valuable they were.” War was “a science to be acquired and perfected by diligence, by perseverance, by time, and by practice” (25:155). That science was the preserve of professional militaries, not militias. Only a professional army could compete on equal terms with the professional militaries of Europe that the Americans encountered during the Revolutionary War and that they would likely encounter in future.

An additional benefit that a professional army would provide was that it would relieve Americans of the burden of military service. Such service was unpalatable to many Americans in 1787. As we saw in the last chapter that included militia service, which imposed many of the same hardships that professional military service imposed. Contrasting the use of a professional standing army with the use of a citizen militia to garrison the Western frontier *Federalist* 24 had contended that Americans would not long tolerate the latter service in times of “profound peace”; few, if any, would “submit to be dragged from their occupations and families to perform that most disagreeable duty. And if they could be prevailed upon or compelled to do it, the increased expense of a frequent rotation of service, and the loss of labor and disconcertion of the industrious pursuits of individuals, would form conclusive objections to the scheme. It would be as burdensome and injurious to the public as ruinous to private citizens” (24:149–150). Again, the counsel here

is that a professional army, permanently in the service of the federal government, was the only practical solution. But again that army could be small.

Federalist 41 made the same point. America's insular situation meant that as long as the country remained united, any peacetime regular army that the Constitution contemplated could be negligible. Publius proclaimed that "America united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat" (41:258–259). Publius' point here was that America was so isolated geopolitically that as long as the country remained united it would likely need only a minimum military establishment. Should it divide, it would need as many standing armies as there were states or confederacies. Competition within the European system of states had been the engine of state-building on that continent.¹³ America would fare no better in a similar environment of political and military competition. A position of solidarity would further inoculate the United States against all the foreign intrigue certain to follow a state of disunion. That foreign intrigue would in fact be worse in a disunited America than in continental Europe because the latter was not exposed to the same level of foreign influence and subterfuge that a divided America would be subjected to (41:259–261).

The third lesson that Publius sought to impress upon his readers relevant to the examples of Charles VII and Rome was that the maintenance of a peacetime military, being fundamentally republican in character, would not threaten American liberties the way it had the liberties of the Europeans and the Romans. *Federalist* 41 maintains that the "liberties of Rome" were "the final victim of her military triumphs." And military establishments had similarly threatened the liberties of Europe (41:258). The liberties of Americans however could remain safe as long as America remained unified. This was not merely because a peacetime regular army could be kept small but because that army would be fundamentally republican in its make-up. Unlike the French under Charles VII, ancient Rome, or even the British of 1787, an American standing army raised and maintained under the auspices of the Constitution would be both created and restrained by a popular government. It would also be made up of citizen soldiers. *Federalist* 41 returns us to the argument we saw in the last chapter from *Federalist* 23. *Federalist* 23 had been contemptuous of those who deigned to presume that an American militia comprised of American citizens would somehow turn on its own because it was being used by the federal government to repel insurrections or invasions. *Federalist* 41 suggests that America's republican character and new nationalist ethos would preclude abuse from any national military establishment that might otherwise happen in non-republican or non-American regimes.

There were two essential components to the reasoning here, one formal, one informal. The formal component related to the specific provisions of

the Constitution that would protect against abuses from the Constitution's national security edifice. *Federalist* 41 highlighted Article I's limitations on congressional appropriations for the purposes of raising or supporting armies to two years. This effectively required ratification every two years by the people's representatives for any military or war-related funding. In addition, this provision meant that independently of the actual funding for war a strategic reassessment of whether an ongoing war was really in the national interest would presumably also take place.

Federalist 41's informal reasoning reassuring its readers that the Constitution would not result in an abuse of federal military power focused on the improved republican character of the new constitutional union. *Federalist* 39 had emphasized that only the United States was a true republic. Those countries such as Holland, Venice, and Poland, frequently described by "political writers" as "republics" were not in fact republics because they were not based on republican principles. That was the litmus test for genuine republics; true republican government derived "all its powers directly or indirectly from the great body of the people." They had to be "administered by persons holding their offices during pleasure, for a limited period, or during good behavior" (39:239–240). The president and the Congress in the new constitutional order were republican institutions that would be restrained by these republican principles—they were elected directly or indirectly by the people and held their offices for a limited period. The federal judiciary was appointed by elected officials and held their office during good behavior.

Federalist 41 extends *Federalist* 39's republican principle argument when responding to critics who alleged that the constitutional monarchy of Britain placed greater restraints upon military appropriations than the Constitution because appropriations there were limited to a year. In fact that was not the case. There was no limitation on military spending in Britain because there was no written constitution and the term for military spending was effectively unlimited. Moreover, the greater danger in Britain was that the government was less democratic and more corrupt than the United States. Members of the House of Commons were elected for seven years from a fraction of the electorate members of Congress would be elected from under the Constitution. In addition, British electors themselves were so corrupted by their representatives and their representatives were so corrupted by the Crown that Britain's representative body could make appropriations for the army for as long as it wished without consequence. That was the reality in 1787 (41:260–261).

The theme of *Federalist* 41, like *Federalist* 39, was not merely that the Constitution was more republican in form and effective than earlier forms of republican government. It was also that the "people" under the Constitution would be identified as a national constituency rather than primarily as a state constituency. The latter had been the case with the Confederation. Things

were going to change with the Constitution. This was part of the new nationalist ethos *The Federalist* suggested the Constitution might foster. And the argument here again was relevant to the federal government's war powers. The federal government had the constitutional power over the militia and the federal army among other things to put down insurrections in a state. That included insurrections mounted by a *majority* of the state.¹⁴ As we saw in the last chapter, *Federalist* 43 underscored that it was not just the Constitution's Article I powers that granted the federal government the authority to suppress insurrections within states but the Article IV power guaranteeing states a republican form of government. The guarantee clause protected states against domestic violence. *Federalist* 43 had declared that where a majority persisted in maintaining "a bloody and obstinate contest" the federal government had the right to interpose to prevent insurrections of this sort (43:279–280). Madison wrote *Federalist* 43. Hamilton wrote *Federalist* 9 where he advanced a virtually identical argument—as we saw in chapter 9. Madison and Hamilton thus made the same point in different numbers: State majorities were not sacrosanct. They could be brought in line by national majorities as reflected in national governments. And these presumably would be more moderate and principled majorities that would give effect to sound republican standards in federal law in a manner contemplated by the guarantee clause and by Article I. Like many of the other powers that are discussed in *Federalists* 41–46, the theme of *Federalist* 43, like *Federalists* 9 and 41, is that the Constitution will facilitate something along the lines of a new principled American patriotism that will form the core of a new nationalist ethos.

Facilitating a new American patriotism would also be critical to the exercise of federal military power for at least two reasons. First, *The Federalist* sought to reassure its readers that the national government would be a people's government that would create a people's military. Such a military would be safe for American liberties. Second, military instruments such as a federal army and navy could not survive on the basis of technical competence alone. They also required a level of public spiritedness, of devotion, discipline, sacrifice, honor, and love of country without which any technical or professional military skills would be largely ineffective. *Federalists* 23, 41, and other numbers strongly suggest that all of these elements might flourish over time under the Constitution if the federal government was both principled in its dealings with American citizens, respectful of private rights, and effectively and efficiently administered.

Again, this returns us to a theme of *The Federalist* that we discussed as early as chapter 2: the connection between constitutional and commercial reforms and moral and civic reform, including the reform of public opinion. In the case of the Constitution's war powers, these were closely connected to the reforms of America's commercial order since the improvements in public

spiritedness there would likely bleed over into other elements of American civil society. Allowing the spirit of enterprise, for instance, to flourish across state lines, with greater opportunities and markets for the individuals involved, would result not only in greater wealth but greater confidence in government, the bolstering of national pride, and the cultivation of a broader affection for the country as a whole. The passions of the people would be attached to a new, more principled, and stable American national identity. In chapter 2 I noted how Karl Walling had highlighted the connection in Hamilton's thinking between American arms and virtue or between effective instruments of state power and public spiritedness in America. If America was going to win wars in future, mere arms and wealth were not enough. America's public spirit would have to be rejuvenated. But as a free people that Publius defines time and again as vigilant in protecting their liberties and where Americans have "the advantage of being armed," which they "possess over the people of almost every other nation" (46:305), Americans were pure potential. Their military might become the most powerful, professionally competent, and publicly spirited precisely because unlike the soldiers or sailors of other forms of government they would not be the indentured servants of princes, kings, or despots. The very thing then that made some of the founding generation so skeptical of a standing army, America's love of liberty, might become the very vehicle for the creation of the most powerful military in history.

Such a patriotic view was not only evident in Hamilton's contributions to *The Federalist* but Madison's as well. *Federalists* 39 and 41, promoting the high principles of republican government and the importance of the new republican union under the Constitution, were written by Madison. *Federalist* 42, also written by Madison, similarly emphasizes the prospect of facilitating a greater nationalist ethos through the federal government's constitutional powers over foreign affairs and commerce. The powers to make treaties, send and receive ambassadors, to punish piracies and felonies committed on the high seas, as well as offenses against the law of nations, like the power to regulate foreign commerce, were all powers that rightfully belonged to the national government. As *Federalist* 42 concludes: "If we are to be one nation in any respect, it clearly ought to be in respect to other nations" (42:266). Uniformity and coherence in America's dealings with foreign policy was a critical principle that the Confederation had failed to respect. Again, this would change fundamentally under the Constitution. And the concept of "one nation" here that Americans might identify with and take an increasing pride in is central to Madison's constitutional theory.

Those powers additionally described in *Federalist* 42 as providing for greater harmony between the states followed similar principles of uniformity and coherence. They again affirm the centrality of national identity and

republican principle to the founders' constitutionalism. In addition, the Article I powers discussed here once again attest to the commercial republican theory that underwrites *The Federalist's* interpretation of the Constitution. Those powers included Congress' authority over interstate commerce, to coin and regulate money, punish counterfeiting, fix the standards of weights and measures, and establish uniform rules for naturalization as well as uniform laws of bankruptcy. Part of the argument here was to emphasize the need for the federal government to regulate *domestic* commerce in order to make its regulation of *foreign* commerce effective. A critical component of this power was to provide relief to those states that imported and exported goods through other states. These latter intermediary states had too often imposed oppressive taxes or duties on trade passing through their jurisdiction. In the absence of a federal power to regulate such burdensome measures *Federalist* 42 speculated that Americans could be certain "future contrivances" would be imposed by these intermediary states on their neighbors. These in turn would "nourish unceasing animosities" between the traders and consumers of the affected states. The result would "not improbably terminate in serious interruptions to the public tranquility." Again the dynamic spirit of enterprise is implicated here. *The Federalist's* plea is once more to both facilitate and temper this spirit by imposing "a superintending authority over the reciprocal trade of confederated States" (42:270). The other powers discussed to facilitate national harmony—coining money, punishing counterfeiting, fixing the standards of weights and measures, generating uniform laws of bankruptcy, even the provision of post-roads that would facilitate "intercourse between the States"—were similarly aimed at promoting national integration and especially national integration in American commercial life (42:274).

It needs to be emphasized again that *The Federalist's* defense of cultivating a nationalist ethos or identity through a more integrated, stable, national political economy is not a defense of "big government." Quite the contrary, as we saw in the passages above from *Federalists* 39 and 40, Publius goes to great lengths to reassure readers that the federal government's powers extend only to "certain enumerated objects." *Federalist* 45 again proclaims:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected.

The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government. The more adequate, indeed, the federal powers may be rendered

to the national defence, the less frequent will be those scenes of danger which might favor their ascendancy over the governments of the particular States. (45:298)

Federalist 45 is written to reassure readers that the powers granted the federal government under the Constitution will not endanger the states. Publius emphasizes that the principal objects of the federal government will be “external” in nature. They will deal primarily with war and foreign commerce. Moreover, these objects are what federal taxes are expected to pay for. They will not be used to pay for domestic programs of the sort that most federal tax revenue goes to today.

The passage above also emphasizes the importance of strong national defense powers. The better these are the less danger there will be to the states being superceded by the federal government on account of a constant intervention over national security concerns. Discussing the guarantee clause of Article IV and the power of the federal government to intervene to protect states against domestic violence, *Federalist* 43 had observed that “[t]he existence of a right to interpose, will generally prevent the necessity of exercising it” (43:280). Publius seems to make the same assumptions regarding the power of deterrence in foreign policy. Should the United States project sufficient military power to the external world—however qualified that power might still be in the late eighteenth century—potential adversaries would think twice before engaging in aggressive measures against America. The greater domestic tranquility this would afford would in turn give the states greater influence over American citizens since those citizens’ “lives, liberties, and properties” were the prerogative of the states to oversee (45:298). And these issues would become the focal point of the American citizenry’s more pacific domestic lives than would otherwise be the case should the United States constantly be at war.

This last point regarding America’s defense posture is important. *Federalist* 41 appeared to promote an insularity doctrine by again emphasizing as earlier numbers had America’s geopolitical isolation. In such an isolated situation any standing army the federal government might create could be small—should America remain unified. But once again Publius qualifies his remarks. His meaning in this number, like elsewhere, is ambiguous. Although a regular army was both a *dangerous* while at the same time a *necessary* provision and while on the smallest scale a standing army had its *inconveniences*, while on an extensive scale it could be *fatal* to civil liberty, a “wise nation” did “not rashly preclude itself from any resource which may become essential to its safety” (41:258). America’s military needs would be contingent on future developments. They would have to be proportionate to those developments. *Federalist* 24 had said much the same thing when discussing

America's frontier. Publius there had cautioned that the British and Spanish could be expected to augment their military establishments across America's expanding borders over time. If Americans did not want to be left "naked and defenseless" to the "insults and encroachments" of these imperial powers, they would similarly have to increase their "frontier garrisons in *some ratio* to the *force* by which [America's] Western settlements might be annoyed." *Federalist* 24 contemplated then a potential increase to any American garrison on the frontier in *proportion* to whatever increased *threats* might arise. And given the perpetual expansion of that frontier that both the Constitution and *The Federalist* anticipated, the small garrison needed for it that *Federalist* 24 advertised would in all likelihood be only temporary. Publius seemed to fortify this speculation when he concluded: "Can any man think it would be wise to leave such posts in such a situation to be at any instant seized by one or the other of two neighboring and formidable powers? To act this part would be to desert all the usual maxims of prudence and policy." Publius makes this statement just before emphasizing that if Americans "mean to be a commercial people" they will need a navy adequate to the task and land forces sufficient to protect America's "dock-yards and arsenals" (24:150, emphasis added). The combination of territorial expansion and ever-increasing commercial development that the Constitution and *The Federalist* embrace suggests that Publius' advocacy of a small military establishment for 1787 is a contingent and likely temporary phenomenon.

Federalist 41 makes a similar admonishment. Americans can anticipate significant future economic growth under the Constitution. "The power of levying and borrowing money," we are told, "being the sinew of that which is to be exerted in the national defense, is properly thrown into the same class with it." But the forms of taxation that might be used to finance national defense needed to be flexible because the economy itself could be expected to grow and change dramatically. Domestic manufacturing, *Federalist* 41 proposes, may increase while agriculture declines as a proportion of America's economic engine. "A system of government, meant for duration, ought to contemplate these [economic] revolutions, and be able to accommodate itself to them" (41:263). Such accommodation did not just apply to flexible modes of taxation to maintain public finance and credit. As both *Federalists* 24 and 41 suggest, they also involved strategic and military considerations as well. Both would fluctuate with America's commercial and territorial growth. *Federalist* 43 began by discussing the Article I congressional power promoting "the progress of science and useful arts, by securing, for a limited time, to authors and inventors, the exclusive right to their respective writings and discoveries." It was clearly within the contemplation of the framers that the spirit of enterprise and innovation should be fostered by such a federal power. The expansionist character of the United States was also accommodated in

two additional powers *Federalist* 43 discussed: the Article IV power admitting new states to the union and the additional power providing Congress the authority to dispose of, and to regulate, property belonging to the United States. Publius described the latter power as “of very great importance” to the disposition of “the Western territory” (43:277).

Publius anticipated that the United States would expand commercially and territorially. The Constitution’s federal powers accommodate this eventuality. But the specific type of commercial expansion and perhaps even territorial expansion that Publius contemplated the Constitution would engender was one that might allow men the greatest freedom to exercise their faculties as they saw fit. *Federalist* 9 had proposed that the principles of civil liberty were those most fundamental principles that any just form of government, including republican government, had to respect. *Federalist* 10 indicated that this translated into a first object of government that required the protection of the diverse faculties of men from which the rights of property originate. The exercise of civil liberty in the precise, highest sense of the term implied the exercise of these faculties. But what exactly did those faculties consist of and how were they to be protected? We already have a partial answer to the latter question in our review above of the federal powers under the Constitution. *Federalist* 37, we will see below, may assist us with answering the former question.

CONSTITUTIONAL POWERS AND THE LIFE OF THE MIND

In *The Political Theory of The Federalist* David Epstein sought to highlight that *The Federalist* was as interested in accommodating man’s political impulses as it was in accommodating his economic impulses. Too often commentators had focused on the latter to the exclusion of the former. Those political impulses Publius had in mind included what *Federalist* 72 referred to as the “love of fame,” the “ruling passion of the noblest minds” (72:464); the desire for power or the simple ambition to run for political office, which republican or “wholly popular” government permitted more than any other (14:80); and what *Federalist* 10 proposed was the passion of opinionated partisans who supported “different leaders ambitiously contending for pre-eminence and power” (10:55). Liberalism, which focused on men’s economic self-interest, and republicanism, based on political aspirations for self-abnegation, did not adequately account for the full range of human impulses that in important cases were neither economic nor altruistic but selfish and political. In addition to being economically self-indulgent, Epstein emphasized, men were also politically self-assertive. For this reason politics could not be

understood as “an arena for the practice of virtue or simply a realm for the competition or aggregation of interests.”¹⁵ It involved more. As Epstein concluded: “The ‘popular government’ Madison recommends opens a field for men to exercise their faculty of passionately opining, in contrast to previous nonpopular modern governments which sought to protect only the faculties of acquisition.”¹⁶

Epstein’s analysis of *The Federalist* focuses on the nature of those political faculties that he contends too much commentary on the work has neglected. Subsequent scholarship on *The Federalist* has suggested that Epstein himself may have focused too narrowly on the political faculties, underplaying those private or civil liberties *The Federalist* also makes much of. *The Federalist*’s institutional politics certainly accommodates the politically ambitious. The congressional and presidential offices the Constitution will create will, for instance, presumably attract enthusiastic candidates and even those who might distinguish themselves by their wisdom, ability, and virtue (57:365; 64:411). “Ambition must be made to counteract ambition,” *Federalist* 51 famously contended. “The interest of the man must be connected with the constitutional rights of the place” (51:331).¹⁷ The separation of powers doctrine will also depend on political ambition assisting in the maintenance of the balance of powers between the branches of the federal government. Actors in those branches of government will exercise their “constitutional rights” to jealously guard their institutional turf. And *Federalist* 17, as we recall, assures us that the police powers of the states will not be encroached upon by those moved by the “allurements of ambition” because these powers of the states are apparently too menial or petty for such political actors.¹⁸ These statements all testify to the centrality of political ambition of both a high and low order in the constitutional theory of *The Federalist* as Epstein proposes.

But in a political regime in which the vast majority of citizens will not be direct players in politics and in which citizens will be able to vote but not enjoy too many other forums in which to exercise their “faculty of passionately opining” the way one might in a direct democracy, one would think that the majority of Americans will bide their time exercising faculties other than those of a strictly political nature. This is the theme of Thomas Pangle’s interpretation of *The Federalist* in *The Spirit of Modern Republicanism*. Crediting Epstein with revealing *Federalist* 37 “as a kind of fulcrum of the work,” Pangle doubts Epstein’s proposition that “the fundamental meaning of liberty” in *The Federalist* is “‘political liberty,’ as distinguished from ‘private liberty’ or ‘civil liberty.’”¹⁹ For Pangle Epstein places too Aristotelean an emphasis on *The Federalist*’s political anthropology and ignores the more prominent role that civil liberty and private rights play in the work. *The Federalist* speaks of two types of rights, political and private, and two types of liberty, public and personal (10:54). The “private or personal aspect of

liberty includes not only security of person, property, opinion, and religious persuasion; it includes as well the liberty to remain in a private station, the right to refuse most of the burdens and responsibilities of republicanism.” As *The Federalist* portrays it, most Americans in the new constitutional order “will participate only very indirectly and infrequently in governing the United States. The vast majority will pursue happiness in the private realm; and they will not feel deprived of dignity by being relegated to a private condition.”²⁰

Pangle’s and Epstein’s interpretations of *The Federalist* are markedly different. And Pangle makes a compelling case that there is good reason to place greater emphasis in the new constitutional order on those faculties of a more private nature rather than those of a more political nature. It is an open question whether this will necessarily mean refusing “most of the burdens and responsibilities of republicanism.” The very point of *The Federalist*’s limited government constitutionalism is to impress upon Americans the need to reduce the scope of the political—and by implication the scope of the related burdens and responsibilities of republicanism—while increasing the energy of the federal government for the *limited* objects it will pursue. These two propositions are connected as I have noted. The Constitution is predicated on the assumption that energy in government can only come from a federal government that is limited in nature. The corollary to the energy the Constitution will provide to *limited* government is the *social* energy the Constitution will generate through facilitation of an open civil society with presumably unparalleled civil liberties—the benefit of limited government constitutionalism. *Federalist* 15 lamented that the United States was “a community so peculiarly blessed with natural advantages” that it did not exploit (11:88). And *Federalist* 21 acknowledged:

The wealth of nations depends upon an infinite variety of causes. Situation, soil, climate, the nature of the productions, the nature of the government, the genius of the citizens, the degree of information they possess, the state of commerce, of arts, of industry—these circumstances and many more, too complex, minute, or adventitious to admit of a particular specification, occasion differences hardly conceivable in the relative opulence and riches of different countries. (21:127)

Adam Smith’s own *Wealth of Nations* could not have formulated the problem more succinctly: The origins of wealth were largely unknown. Natural advantages and the nature of the government were obviously important. But so too were the genius of the citizens, the degree of information they possessed, and the nation’s state of commerce, arts, and industry. It was particularly these latter phenomena that *The Federalist* proposed the Constitution might aid as much as the formal institutions of government. In fact, those institutions of government were designed to aid *these* elements of civil society. The first

object of government we recall was the protection of the diverse—*private*—faculties of men.

Federalist 10's statement of this first object was capacious and seemed to implicate not only the physically laboring faculties but the intellectual faculties as well. This is where *Federalist* 37 may assist us in deciphering this essential feature of *The Federalist*'s teaching: Just what do the faculties *Federalist* 10 refers to consist of? Despite their obvious difference in interpretations, Pangle and Epstein nevertheless agreed on the importance of ideas in *The Federalist*. In their estimate the work placed a premium on the development of the speaking and reasoning faculties of men. This was essential to *The Federalist*'s theory of rights and critical to Publius' view of the Constitution's republicanism. It was not just threats to property, personal security, and citizen prosperity, for instance, that *The Federalist* focused on in its critique of the turbulent democracies of the past. As we saw in chapter 4, Pangle pointed out that it was also the grim fate the classical republic imposed upon philosophy.

Pangle complimented Epstein on his recognition of *Federalist* 37 "as a kind of fulcrum" for *The Federalist*. What Pangle meant by this was the tension mentioned in *Federalist* 37 between the "genius of republican liberty," which seemed to require consensual government, short terms in office, and power spread among many hands, and stability and energy in government; stability requiring long—or longer—terms in office while energy in government required "not only a certain duration of power, but the exercise of it by a single hand" (37:224). As Pangle described it, in the opinion of *The Federalist*, the most critical flaw of classical republicanism was "its failure to confront and wrestle adequately with this fundamental problem." And it was this problem that had "for the first time in history been faced and largely mastered by the Constitutional Convention."²¹ The Constitution accommodated republican liberty while also providing for stability and energy in government, something no previous political regime had achieved.

Pangle's point here is well taken but for our purposes we might find additional significance to *Federalist* 37. That number marked a turning point in *The Federalist* not merely because it constituted the introductory number to the second volume of the work on "[t]he conformity of the proposed Constitution to the true principles of republican government" (1:6, emphasis in original). It was also important because of its theoretical originality. That originality certainly consisted in resolving the political problem of combining liberty with stability and energy in government. A complex of the Constitution's institutions and procedures would provide for this. But *Federalist* 37 may also help explain *Federalist* 10. As Epstein notes *Federalist* 10's reference to the "diversity in the faculties of men" makes the idea of diversity here relevant in at least two important respects. First, men are different in terms

of their faculties. Second, if men are in fact so diverse in their faculties, what precisely does that diversity consist of?²²

Regarding the first issue, unlike Hobbes and Locke who stressed the *equality* of men's faculties and made this the basis for consensual government, *Federalist* 10 does the opposite, stressing the *inequality* of their faculties.²³ This does not necessarily undermine the equal right of every individual to rule himself or to be self-governing. One's faculties may still be presumed sufficient for this despite the assertion that men are fundamentally unequal in this regard. However, stressing the inequality of faculties does seem to imply a correlative inequality of property-based holdings, at least to the extent that the faculties of men are *protected* by government. *Federalist* 10 confirms this: "From the *protection* of different and unequal faculties of acquiring property, the possession of different *degrees* and *kinds* of property immediately results" (10:55, emphasis added). Such an inequality of property is a necessary concomitant of government protecting the "rights of property" that *Federalist* 10 makes clear republican government must provide for along with "personal security" (10:58). To protect men's faculties implies protecting their exercise of those faculties and above all protecting the *fruits* of that exercise. As Epstein emphasizes, by protecting both men's faculties and the fruits of that exercise this gives men "sufficient incentive for the possibly arduous exercise of those faculties."²⁴ Without such an incentive, how worthwhile would it be putting one's faculties to use, particularly for those most arduous of enterprises?

This argument is compelling and raises a host of additional questions, including the second issue raised above. What precisely do men's faculties consist of? Is it just their faculties of labor? Physical labor? Intellectual labor? Do men's faculties consist of something beyond the laboring or working faculties? Is government obliged to protect those faculties beyond those "from which the rights of property originate?" And to what extent are men's faculties differentiated? How are they differentiated and just how much more might they be differentiated? By what means does such differentiation occur? Epstein points out that in *Federalist* 10 Madison never defined with precision what precisely the "faculties of men" consisted of. *Federalist* 37 may provide some assistance here since it again refers to "the various 'faculties of the mind.'"²⁵ It does so in what Epstein contends "must be ranked as the most astonishing passage in *The Federalist*."²⁶ That passage begins:

The faculties of the mind itself have never yet been distinguished and defined, with satisfactory precision, by all the efforts of the most acute and metaphysical philosophers. Sense, perception, judgment, desire, volition, memory, imagination, are found to be separated by such delicate shades and minute gradations that their boundaries have eluded the most subtle investigations, and remain a pregnant source of ingenious disquisition and controversy. (37:225)

These comments are made in the context of explaining how difficult it is to establish any precise line of demarcation between the powers of the national and state governments. However, they also highlight the largely unknown capacities of the human mind. Publius' suggestion here is that the faculties of the mind are capable of greater distinction and definition than what "the most acute and metaphysical philosophers" have come up with so far. This may be interpreted as an indictment of previous philosophy or metaphysics. But it also seems to invite speculation on just how exactly additional distinctions and definitions in the faculties of the mind might in future be established. And what might be the vehicle through which those distinctions would take place? Could this be another fruitful avenue for the exercise of private rights, one which might provide benefits of a philosophical and scientific nature in addition to whatever purely practical benefits this might provide?

The faculties of the mind are not just identified in *Federalist* 37 but later again in *Federalist* 79. There they are referred to in the context of the proposal to remove "judges on account of inability." Publius contends that such a power over the judiciary would result in too much political partisanship and be virtually impossible to administer: "The mensuration of the faculties of the mind has . . . no place in the catalogue of known arts" (80:506). The disquisitions in both *Federalists* 37 and 79 on the indefinable and immeasurable qualities of the intellectual faculties suggests not only that they make up part of the diverse faculties government must protect but that the faculties of the mind remain a largely undeveloped source of potential for civilizational growth. This of course is what older forms of political theory that defined the scope of the political too broadly never fully appreciated. They gave too much power to the world of the political and failed to limit the scope of government the way the Constitution would. Accordingly, older political configurations, conceived both in speech and in practice, failed to respect the principles of civil liberty. *Federalist* 9 suggests that those principles might have been better honored had those vices of government been removed that in earlier eras perverted the direction and tarnished the luster of those bright talents and exalted endowments for which those eras have been justly celebrated.

Earlier I made reference to the patent and copyright clause of Article I of the Constitution. That clause was intended "to promote the progress of science and useful arts" by providing "authors and inventors the exclusive right to their respective writings and discoveries" for a limited time. *Federalist* 43 points out that authorial copyright was recognized in Great Britain as a common law right. Publius extrapolates from this that "[t]he right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals" (43:274). The patent and copyright clause reflects what one constitutional commentator has observed was the founders' recognition of

“a public interest in the fruits of American creativity.”²⁷ Thomas Nachbar has said of *Federalist* 43’s discussion of this clause that it “extolled a natural-rights view of intellectual property.” In addition, it reflects “an incentives-based approach, justifying intellectual property regulation by its contribution to the public, as well as private, benefit.”²⁸ This is a fair construction of *Federalist* 43’s argument. It captures both the concern with the development of the intellect and innovation that *The Federalist*’s natural rights constitutionalism seems to contemplate as well as its interpretation of the utility the spirit of enterprise might serve American society.

But this also speaks to a broader issue relevant to the concept of enterprise in the new constitutional order that the patent and copyright clause explicitly seems to recognize. The origin of most new ideas not only in the world of industry and economics but in the world of politics will be civil society. It is here in the private world that the spirit of enterprise has the greatest capacity to flourish. And it is here that the possibilities for innovation and ingenuity in both the natural and philosophical sciences have the greatest potential for growth. In addition to the faculties of the mind never having been adequately defined, *Federalist* 37 informs us that neither have the “boundaries between the great kingdom of nature” or its “various provinces and lesser portions” been adequately distinguished.

The most sagacious and laborious naturalists have never yet succeeded in tracing with certainty the line which separates the district of vegetable life from the neighboring region of unorganized matter, or which marks the termination of the former and the commencement of the animal empire. A still greater obscurity lies in the distinctive characters by which the objects in each of these great departments of nature have been arranged and assorted.

When we pass from the works of nature, in which all the delineations are perfectly accurate, and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises as well from the object itself as from the organ by which it is contemplated, we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity. (37:225)

The state of human knowledge is highly imperfect. There is significant potential for development and refinement not only in the physical or natural sciences but in the human sciences, in the domains of politics and economics for instance. The principal task of modern legislation, *Federalist* 10 informs us, will be to weigh the various, competing, and ever-differentiating interests that make up “the different circumstances of civil society” (10:55). But this further suggests that it is here, in civil society, that the greatest number of ideas will be generated. Ideas originate in the world of experience, which

in the new constitutional order will be overwhelmingly in the world of civil society. It is also here that most interests will arise and compete.

As I noted in the Introduction, the very purpose of an open, free market economy of the sort the Constitution was to encourage was precisely to *reduce* the role of political and intellectual elites guiding or controlling civil society. The Constitution's large commercial republic would foster an ever-increasing division of labor and refinement of knowledge. This would be assisted through development of the arts and sciences that it was expected all members of humanity and not just a political or intellectual clerisy could contribute to.²⁹ *Federalist* 37 hints at what potential there is here. It was undue interference in America's "private sector" that had created so many problems under the Articles of Confederation; the spirit of enterprise flourished in the private, civil world but it had been unduly impeded by regulations and other legislative burdens generated under the auspices of the Articles.

Of course it had been a general problem with earlier republican theory *per se* that it conceived the role of government too broadly. By implication it overstated what should constitute "the burdens and responsibilities of republicanism." Those burdens and responsibilities would assume a more private form in the new constitutional order; the general welfare in short was going to be served, perhaps above all, by the contributions citizens made through their private activities and the exercise of their private rights. This is what self-government consisted of. It is also what would make up most of that new virtue of enterprise that I have proposed citizens would exercise under the Constitution. Tocqueville had described democracy in America as characterized by powerful civil associations, religious groups, and other private communities governing the civil world. The great danger, he maintained, was the tutelary state that might come to oppress that private world. *The Federalist* had said much the same thing about government that was too extensive and that did not remain limited. Both *The Federalist* and Tocqueville anticipated the dangers of what would later be described as the "planned economy" and the "administrative state."

Federalist 17 of course proposed that federal representatives might participate in the great enterprises of government—commerce, finance, negotiation, and war—that would contribute to the dignity, importance, and splendor of government. But the role these federal representatives would play in these projects would be that of a supporting cast. Moreover, the objects the federal government would be pursuing here were significantly limited relative to what they are today. In fact they were limited relative to what they were for many of the European states of 1787. Those states suffered few if any constitutional or legal limitations on what they could do. As *Federalist* 21 underscored, it was the genius of the citizens, the degree of information they possessed, the state of commerce, arts, and industry that contributed as

importantly to the wealth of nations as the form of government. The Constitution would respect Americans' natural rights and reward industry and innovation through such powers as the commerce clause and the patent and copyright clause discussed above. These powers were intended for a nation of industrious and enterprising individuals. This is why the first object of government was the protection of the diverse faculties of men. The exercise of those faculties as one saw fit were the foundation stone of free government. As proposed by *The Federalist*, this teaching of the Constitution was honorable both because it treated men as being capable of intelligent choice and because it assumed that they could rise above the level of tame beasts moved by simple pleasure and pain.³⁰

Martin Diamond may have been correct to suggest that the "struggle of interests" in the enlarged republic *The Federalist* contemplated would be "a safe, even energizing, struggle" compatible with "the safety and stability of society." But as the discussion above suggests Publius seemed to contemplate something more extensive—and higher—than this for the Constitution. The horizons for the exercise of private rights on *The Federalist's* reading present a fairly unlimited scope for the development of human faculties—and civilization. As *The Federalist* placed emphasis on the necessity of government protecting men's diverse faculties rather than on the more narrow object of government protecting men's rights of property, it is important to recognize that the latter is nevertheless an implied term of the former. *Federalist* 10's critique of pure democracies' incompatibility with the rights of property or personal security highlighted this.

THE FEDERALIST AND LOCKE'S DOCTRINE OF PROPERTY

The contrast between *The Federalist's* commercial republican theory and Locke's doctrine of property is noteworthy. Arguably the most significant and distinguishing feature of Locke's political philosophy was his doctrine of property. It was significant because Locke reduced the very end of government to the preservation of property.³¹ It was distinguishing because unlike his predecessors in the tradition of political thought Locke made a man's labor, and the property derived from it, entirely his own.³² Government was removed from any natural or pre-political title to individual property since private property originated prior to government. It was the tenuous quality of property in the state of nature that eventually made government necessary. From the beginning Locke highlights man had to labor to create property not only because "the penury of his Condition required it of him" but because uncultivated nature was useless.³³ As Locke emphasizes "*Labour . . . puts*

the difference of value on every thing.” In fact when we look at the things we use ninety-nine one hundredths of their value comes from human labor, not nature.³⁴ Nature must be worked to be made useful, transformed from its original state through human ingenuity or techné.

Locke’s anchoring of the natural right to property in men’s labor is a critical feature of his political philosophy. By characterizing the “rights to property” as originating in the “diversity in the faculties of men”—rights being referred to in the plural and the diversity of human faculties being the source of those rights—*Federalist* 10 seems to distinguish itself from Locke’s political philosophy in at least two important respects. First, in addition to an individual’s labor *Federalist* 10 suggests that there may be other legitimate modes of acquiring property. Second, *Federalist* 10 suggests that it is not just men’s acquisitive rights or those rights accumulated through labor or other activities that put a value on things that government is obligated to protect. Describing the faculties of acquisition as simply a subset of the faculties of men, *Federalist* 10 implies that government is obliged to protect potentially all exercises of human faculties or at least those that may make up part of an individual’s rights or that may contribute to the common good.³⁵ And, again, this is not an argument in favor of big government liberalism. To the contrary, this constitutes another critical aspect of *The Federalist’s* teaching regarding private rights and limited government constitutionalism. As David Epstein suggested earlier, *The Federalist’s* understanding of justice requires that concerns for the effects of different ways of life on human character be subordinated to a respect for the individual faculty of free choice. Government accordingly must refrain from developing “a ‘plan of legislation’ imposing conditions favorable to men’s faculties.”³⁶ Respecting men’s free choice to exercise their rights as they see fit, government, as *Federalist* 7 proposes, would be best to stay out of the way. But it needs to stay out of the way not only with respect to the acquisition of rights of property but with respect to the exercise of a host of other faculties that individuals in their freedom may choose to exercise. The limited government constitutionalism of *The Federalist* would seem to require even *smaller* government than Locke’s constitutionalism because of the more capacious understanding of men’s faculties that men should be free from government to exercise as they see fit.

I belabor this point regarding what *The Federalist* understands to be the first object of government because it highlights both the comprehensiveness of what the Constitution will engender and that it is not simply a Lockean instrument as many intellectuals identify it. This is not however to deny the obvious. The constitutional order *The Federalist* defends will certainly be one that provides for national security, domestic order, the protection of property rights, and a life of acquisition. *The Federalist* explicitly promises this. And all of these are good things that will provide many benefits. But this is not all

The Federalist promises. My construction here proposes that the new constitutional order *The Federalist* defends will be amenable to the development of knowledge and individual genius, as the work's many references to greatness and such singular examples as the patents and copyrights clause suggest. In a word, the Constitution will not exile the intellectual arts, the sciences, or the powers of innovation from private life or the public square. To the contrary, both the new military science and the professionalism it requires along with the broader objects of *The Federalist*'s natural rights constitutionalism would seem to require the protection and even encouragement of these elements of civilization.

Nor will the new constitutional order simply create a citizenry with a taste for trivial things or that will fritter away its time on distractions or frivolities, never pursuing anything worthy of honor, nobility, or philosophical notability. Certainly undue consumption with well-being or the petty things of life, as Tocqueville and others would later point out, may well occupy many in the new constitutional republic. But they will not necessarily occupy all or even most, particularly among those who make up the "discerning patriots" and "discerning people" of the new constitutional order (29:179). The new understanding of liberty *The Federalist* has in mind will not be synonymous with licentiousness even though *The Federalist* does recognize that "abuses of liberty" may be an even greater threat to freedom in America than any "abuses of power" (63:407). In 1787 there were of course no guarantees of what the new constitutional order would portend. However *The Federalist* is based on a wager that the expanded commercial republic the Constitution will create will provide enhanced opportunities for the development of American spiritedness in a salutary sense, something that will move Americans to great endeavors if given the opportunity.

Providing these opportunities will require certain political developments, such as opening the channels of commerce and the creation of a blue water navy. As we saw in chapter 5 Thucydides himself recognized a navy as the precondition for the development of Greek civilization and the very idea of Greek union or "Greekness." The mythological Minos was the first to create a navy both to crush the rampant piracy on the Greek seas as well as to improve commercial traffic, a process that had the effect of producing greater national integration. In the more contemporary era it was Corinth that had first developed modern naval architecture, increasing its power and financial wherewithal. Athens followed suit, eventually possessing at the time of the Peloponnesian War the most powerful navy in Greece along with the most advanced commerce and civilization (1.2–1.13). *The Federalist* embraces a navy for many of the same reasons Thucydides contends the Greeks did: To bolster and protect America's expanding international commercial trade, to defeat piracy, including piracy along the Atlantic seaboard and America's

inland waterways, to preserve alliances and enhance its diplomatic authority, and to defeat enemies who threaten the United States and its interests. As Seth Cropsey has observed, the United States' emphasis on the importance of a navy is little different from the importance placed on a navy during Thucydides' day. And that importance has changed little from the time of the American founding to the twenty-first century.³⁷

NOTES

1. Federal Farmer VII, in *The Anti-Federalist: Writings in Opposition of the Constitution*, ed. Herbert J. Storing, selected by Murray Dry (Chicago: The University of Chicago Press, 1985), 74–75, emphasis in original. See also Melancton Smith, who made a similar argument at the New York Ratifying Convention, 20–21 June, 1788. *The Founders' Constitution*, Vol. 1, eds. Philip B. Kurland and Ralph Lerner (Indianapolis: Liberty Fund, 1987), 410.

2. As Hannah Pitkin notes, the mirror concept of representation, like that suggested by the Antifederalists, might require selection of candidates by lottery or random sampling if the ideal of representing as many segments or “classes” in society is to be achieved. See Hannah Fenichel Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1972), 73. See also, Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (New York: Oxford University Press, 1997), 139. On the concept of interest-group liberalism, see Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States*, 2nd ed. (New York: W. W. Norton & Company, 1979), 55. On the modern programmatic liberal state, see John Marini and Ken Masugi, “Introduction,” in *The Progressive Revolution in Politics and Political Science: Transforming the American Regime*, ed. John Marini and Ken Masugi (Lanham, MD: Rowman and Littlefield, 2005), 1; John Marini, “Progressivism, Modern Political Science, and the Transformation of American Constitutionalism,” in *The Progressive Revolution in Politics*, 221; and Harry V. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, MD: Rowman and Littlefield, 2000), 73–152.

3. As *Federalist* 45 affirmed: “the public good, the real welfare of the great body of the people, is the supreme object to be pursued; . . . no form of government whatever has any other value than as it may be fitted for the attainment of this object” (45:294). See also, Tom G. Palmer, “Madison and Multiculturalism: Group Representation, Group Rights, and Constitutionalism,” in *James Madison and the Future of Limited Government*, ed. John Samples (Washington, DC: Cato Institute, 2002), 78.

4. For a discussion of bargaining theories of congressional process and their limits, see Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago: The University of Chicago Press, 1994), esp. 56–66. Comparing the representational theory of John Stuart Mill, one of the original proponents of proportional representation, with that of James Madison, Mark Rush has observed: “In fact, both Mill and Madison advocated their visions of government *not* to advance the discrete interests of the factional interests that comprised

society but, instead, to promote the *public* interest *despite* the wishes of discrete or, worse, what Mill referred to as the ‘uninstructed’ minorities. Accordingly, a key goal of their prescriptions was to create a process by which the governing majority would be least likely to represent one discrete or uninformed interest. Furthermore, both sought to ensure that, ultimately, elites (presumably enlightened ones) would be insulated somewhat from the masses in order to be free to govern in the public interest.” Mark E. Rush, “The Hidden Costs of Electoral Reform,” in *Fair and Effective Representation? Debating Electoral Reform and Minority Rights*, ed. Mark E. Rush and Richard L. Engstrom (Lanham, MD: Rowman & Littlefield, 2001), 104, emphasis in original. See also Bessette, *The Mild Voice of Reason*, 56.

5. George W. Carey, *In Defense of the Constitution* (Indianapolis: Liberty Fund, 1995), 46–47. See also, Lowi, *End of Liberalism*, 58: “To the Madisonian, groups were a necessary evil much in need of regulation. To the modern pluralist, groups are good, requiring only accommodation. Madison went beyond his definition of the group to a position that ‘the regulation of these various interfering interests forms the principal task of modern legislation.’” Bessette, in *The Mild Voice of Reason*, describes how the dominant theories of congressional process in modern political science have similarly denigrated Madison’s understanding of deliberative democracy: “Scholars of American government and politics seem increasingly drawn to an analytical framework that sees lawmaking and policymaking as the aggregation of individual interests and preferences—the rational actor, or self-interest, model—and not the result of argument, reasoning, and persuasion about common ends or goals” (xi). See also Jeremy Rabkin, *Judicial Compulsions: How Public Law Distorts Public Policy* (New York: Basic Books, 1989), 23–26, 41; and Ward E. Y. Elliott, *The Rise of Guardian Democracy: The Supreme Court’s Role in Voting Rights Disputes, 1845–1969* (Cambridge, MA: Harvard University Press, 1974), 7–8.

6. Publius emphasizes this point in the first paragraph of *Federalist* 10: “Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority” (10:54).

7. In a letter to Thomas Jefferson dated October 17, 1788, Madison remarked: “Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents. This is a truth of great importance, but not yet sufficiently attended to.” Cited in Marvin Meyers, ed., *The Mind of the Founder: Sources of the Political Thought of James Madison* (Hanover, MD: Brandeis University Press, 1981), 157, emphasis in original.

8. See *Federalist* 60: 384–85:

There is sufficient diversity in the state of property, in the genius, manners, and habits of the people of the different parts of the Union, to occasion a material diversity of disposition in their representatives towards the different ranks and conditions of society. And

though an intimate intercourse under the same government will promote a gradual assimilation in temper and sentiments, yet there are causes, as well physical as moral, which may, in a greater or less degree, permanently nourish different propensities and inclinations in this particular. But the circumstance which will be likely to have the greatest influence in the matter, will be the dissimilar modes of constituting the several component parts of the government. The House of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by electors chosen for that purpose by the people, there would be little probability of a common interest to cement these different branches in a predilection for any particular class of electors.

9. W. B. Allen with Kevin A. Cloonan, *The Federalist Papers: A Commentary* (New York: Peter Lang, 2000), 170.

10. Colleen A. Sheehan, Review of *The Federalist Papers: A Commentary* by W. B. Allen, with Kevin A. Cloonan, in *Publius: The Journal of Federalism* 31, no. 4 (Fall 2001): 134, emphasis in original.

11. Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), 106, n27, n28, n29, 111.

12. *Ibid.*, 97–98.

13. *Ibid.*, 123.

14. See *ibid.*, 119–120.

15. David F. Epstein, *The Political Theory of The Federalist* (Chicago: The University of Chicago Press, 1984), 6. See also, *ibid.*, 194.

16. *Ibid.*, 108.

17. For an incisive commentary on this passage and the issues immediately above, see Harvey C. Mansfield, Jr., *Taming the Prince: The Ambivalence of Modern Executive Power* (Baltimore: Johns Hopkins University Press, 1993), 263–264.

18. See Epstein, *The Political Theory of The Federalist*, 29.

19. Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: The University of Chicago Press, 1988), 290 n.3.

20. *Ibid.*, 117.

21. *Ibid.*, 46.

22. Epstein, *The Political Theory of The Federalist*, 115–116.

23. Hobbes began chapter 13 of his *Leviathan* on the natural condition of man by emphasizing the natural equality in men's faculties of both body and mind. (For a good discussion of this, see Laurence Berns, "Hobbes," in *History of Political Philosophy*, 3rd ed., ed. Leo Strauss and Joseph Cropsey [Chicago: University of Chicago Press, 1987], esp. 399.) Regarding the faculties of the body the weak were comparable to the strong above all because either through secret machinations on their own or in confederacy with others they could readily kill the strong. There was an even greater equality in faculties of the mind between men because independently of those who possess scientific knowledge, which only a few ever acquire and then only on a few subjects, men become prudent through experience, which time bestows equally on all men. Moreover, men often think they are wiser than others but this is more a function of their vanity than any actual superiority in intelligence. Thomas Hobbes, *Leviathan*, ed. C. B. McPherson (New York: Penguin Classics, 1985), 183–184.

Like Hobbes, Locke similarly stressed man's natural state was one of equal endowment in faculties. Locke begins his chapter on the state of nature in the *Second Treatise* with the following Declaration:

To understand Political Power right, and derive it from its Original, we must consider what State all Men are Naturally in, and that is, a *State of perfect Freedom* to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.

A *State also of Equality*, wherein all the Power and Jurisdiction is reciprocal, no one having more than another: there being nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and use of the same faculties, should also be equal one amongst another without Subordination or Subjection. (John Locke, "Second Treatise of Government," in *Two Treatises of Government*, ed. Peter Laslett [New York: Cambridge University Press, 1988]), hereafter *Second Treatise*, § 4, 269, emphases in original. References here are to the section and page numbers respectively from the Laslett edition of the *Two Treatises of Government*.

Hobbes and Locke begin by affirming the relative sameness of the faculties of men. *Federalist* 10 by contrast begins by asserting the dissimilarity or diversity in the faculties of men from which the rights of property originate. Although *The Federalist* may be in agreement with the natural rights doctrine of both Hobbes and Locke insofar as it understands men's inalienable or natural rights to predate political society and political society to be established in order to protect those rights, its emphasis on the protection of the diverse faculties of men being the first object of government and that from the protection of *different* and *unequal* faculties of acquiring property, the possession of different *degrees* and *kinds* of property immediately results, suggests a different point of emphasis on the need for political society. It also suggests a modification in the doctrine of acquisition that Locke in particular develops. *The Federalist* seems to suggest that although men possess an equal right to self-governance political society needs to accommodate itself to the diversity in the faculties of men as well as the unequal division of property this results in, something an increasingly refined commercial society would provide for but that, as *Federalist* 10 anticipates, would create problems precisely because of the inequality in property-related holdings that ensues from this. However, this inequality is not necessarily a bad thing since people given equal opportunities will exercise those opportunities unequally; the protection of men's diverse faculties will *necessarily* result in diverse property holdings. Accordingly, the social or economic inequality that invariably results from government protecting men's diverse faculties in a nonpartisan or equitable way would appear to be a necessary concomitant to *The Federalist's* natural rights constitutionalism.

24. Epstein, *The Political Theory of The Federalist*, 75.

25. *Ibid.*, 74–75.

26. *Ibid.*, 114.

27. Seth Lipsky, *The Citizen's Constitution: An Annotated Guide* (New York: Basic Books, 2011), 61.

28. Thomas Nachbar, "Patent and Copyright Clause," in *The Heritage Guide to the Constitution*, 2nd ed., eds. Edwin Meese III, David F. Forte, and Matthew Spalding (Washington, DC: Regnery and The Heritage Foundation, 2014), 153. Nachbar notes

regarding Madison's *Federalist* 43 comments that Britain had recognized the copy-right of authors as a common law right: "On this point Madison was mistaken; the House of Lords had decided in 1774 that copyright was not a common-law right, and invention patents had always been granted as a matter of political discretion, not legal right." *Ibid.*

29. Thomas Sowell, *Basic Economics: A Common Sense Guide to the Economy, Fifth Edition* (New York: Basic Books, 2015), 601. See also, Robert Curry, *Common Sense Nation: Unlocking the Forgotten Power of the American Idea* (New York: Encounter, 2015), 113–114.

30. Epstein, *The Political Theory of The Federalist*, 119.

31. See *Second Treatise*: "Government has no other end but the preservation of Property" (§ 94, 329); "The great and *chief* end . . . of Mens uniting into Commonwealths, and putting themselves under Government, *is the Preservation of their Property*" (*ibid.*, § 124, 350–51, emphasis in original);

The Reason why Men enter into Society, is the preservation of their Property; and the end why they chuse and authorize a Legislative, is, that there may be Laws made, and Rules set as Guards and Fences to the properties of all the Members of the Society, to limit the Power, and moderate the Dominion of every Part and Member of the Society." (*ibid.*, § 222, 412)

"[T]he end of Government it self . . . is the publick good and preservation of Property" (*ibid.*, § 239, 424), by which Locke seems to identify the public good with the preservation of property. (He speaks here of "end," not "ends.") See also *First Treatise*: "Government being for the Preservation of every Mans Right and Property, by preserving him from the Violence or Injury of others, is for the good of the Governed" (§ 92, 209).

32. See *Second Treatise*, § 27, 287–88 (emphasis in original):

The *Labour* of [a man's] Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the state that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*. It being by him removed from the common state Nature placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other Men. For this *Labour* being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others.

See also, *ibid.*, § 34, 291 (emphasis in original):

God gave the World to Men in Common; but since he gave it them for their benefit, and the greatest Conveniences of Life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the Industrious and Rational, (and *Labour* was to be *his Title* to it).

"Thus *Labour*, in the Beginning, gave a *Right of Property*, where-ever anyone was pleased to employ it, upon what was common" (*ibid.*, § 45, 299, emphasis in original).

33. *Second Treatise*, § 32, 291.

34. Ibid., § 40, 296 (emphasis in original).
35. Epstein, *The Political Theory of The Federalist*, 72–74.
36. Ibid., 85.
37. Seth Cropsey, *Mayday: The Decline of American Naval Supremacy* (New York: The Overlook Press, 2014), 18, 21, 34, 37–38, 182–185.

Conclusion

The Commercial Republic and the American Way of War

As I indicated in the introduction, this book was intended to vindicate the modern commercial republic, specifically the American commercial republic established by the Constitution and defended in *The Federalist*. The previous eleven chapters have demonstrated that, contrary to much scholarship on the work, *The Federalist* supported a higher-toned form of politics than Publius is often given credit for. The last chapter provided yet further evidence that *The Federalist* seemed to contemplate an American spirit of enterprise that with the aid of such new constitutional powers as the commerce clause and the patent and copyright clause might over time unlock many of the unknown and unused capacities of the human mind and of nature. *Federalist* 37 also makes clear the potential for significant improvements in politics and economics given its recognition of how even more imperfect the human and social sciences are, to say nothing about the “cloudy medium” of words that makes the composition of laws and constitutions, and the ability to interpret them, that much more complicated (37:227).

The Federalist, perhaps more than any other text in early or later American political thought, promotes with enthusiasm the promise of the new American constitutional order. Not only might the natural and philosophical sciences, so critical to the development of civilization, be vastly improved by that order’s provisions. So too might industry and innovation. All of these *The Federalist* proposes might make America the most powerful and principled of all historical political configurations to date. This last point is an important one and a critical reason why *The Federalist*’s advocacy for an improved military establishment was not advocacy for militarism. Nor was its advocacy of “empire” advocacy for imperialism. *The Federalist* sought to create a commercial republican empire that was distinguished from the imperial empires of the day precisely because it was based on natural rights and consent. Yet

like many of those imperial empires the hope of Publius was that the United States under the Constitution might be able to marshal unlimited military power when it was needed.¹

That power would not only be used to advance American interests but as the foregoing suggests republican principle as well. As Thucydides understood, war revealed the character and principles of a regime. The United States would be no different. Its wars would reflect the nature of its commercial republican character. The wars America would be engaged in would be directed primarily at protecting the United States' commercial traffic lanes. This is a dominant theme of *The Federalist* as we have seen. But *The Federalist* also suggests that the United States might also spread freedom in those instances where prudence might allow it being done. To be clear, this was not a recipe for "nation-building" but rather for assisting democratic development where it was possible. As I mentioned earlier, facilitating democracy in the Americas has been one of the constructions placed upon *Federalist* 11's ostensible support for what has been interpreted as an early version of the Monroe Doctrine.

The Federalist's grand strategy was also not that of the modern liberal internationalist tradition. *Federalist* 6's critique of the democratic peace theory advanced by the more pacific school of classical liberal and continental thought made that clear. So too did *Federalist* 15, which mocked the "epidemic rage in Europe" for those international agreements in the early eighteenth century "from which the politicians of the times fondly hoped for benefits which were never realized" (15:89–90). These qualifications aside, *The Federalist's* grand strategy was also not one that could be reduced to a simple behaviorist or determinist form of realism anchored in a narrow politics of self-interest. Thucydides had defined the essence of Greekness, and particularly Athenianism, as the development of speech. Athens exemplified the virtues of daring and judgment, dash and enterprise, but these were developed through a high level of public reason that scholars such as Mary Nichols have pointed out Thucydides believed the Athenians personified. *The Federalist* views Americans in similarly exceptional terms. As *Federalist* 9 suggested America might improve upon Periclean Athens' seminal model of liberty if it was enabled with the right constitutional instruments. Based on natural rights and consent, the United States would be a truly exceptional nation exemplifying principles of justice in the modern world.

But if this was the case and American foreign policy was informed by those principles of justice underwriting its domestic politics, this seemed to imply a duty to bring about improved freedom, commercial markets, elements of self-governance, the rule of law, and whatever other features of an international order consistent with the American constitutional order might be attainable. This was not of course to suggest that the American military

become a global police force. It never has been that—its interventions have only ever been limited.² And *The Federalist* obviously does not propose in 1787 that America's very limited military establishment become any such thing. But *Federalist* 51 declared that justice was the end of government and the end of civil society. "It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit" (51:334). And *Federalist* 11 demanded that Americans "vindicate the honor of the human race" and "teach that assuming brother," imperial Europe, "moderation." Pleading with his countrymen "to aim at an ascendant in the system of American affairs," Publius implored that Americans "disdain to be the instruments of European greatness," remain "bound together in a strict and indissoluble Union," and "concur in erecting one great American system, superior to the control of all transatlantic force or influence, and able to dictate the terms of the connection between the old and new world!" *Federalist* 11 was clear that the old world had imposed its jurisdiction over the other regions of the planet—"Africa, Asia, and America"—"by force and by fraud" (11:68–69). Its plain implication was that America's foreign policy and grand strategy would operate upon different, presumably higher, more just principles.

The "American system" referred to in *Federalist* 11 consisted among other things in the Thucydidean trinity of union, enterprise, and war. I have maintained throughout this book that these were the critical features making up *The Federalist's* vindication of the Constitution's commercial republicanism. *Federalist* 11 explicitly refers to the importance of "indissoluble union." The development of enterprise and provision for war are the other critical elements of the Thucydidean trinity that I have discussed as part of the "package deal" *The Federalist* contends the Constitution will make the basis of its commercial republican theory. In the Introduction I proposed that *The Federalist* provides us the consummate seminal exposition of the American way of life—the life of enterprise. As the first comprehensive text in the American political lexicon that makes the spirit of enterprise central to the American constitutional order, it was evident that the development of commerce along with territorial acquisition and the ability to protect both of these aspects of American activity would be critical elements to the founders' constitutionalism post-1787, at least as far as *The Federalist* interprets this constitutionalism.

In the remainder of this chapter I look at the consequences of this book's foregoing analysis of that constitutionalism. I first examine the implications of *The Federalist's* attempt to unleash the spirit of enterprise from undue governmental regulatory control. As earlier chapters have demonstrated, *The Federalist* was focused on illuminating how the Constitution might harness the vastly unused human potential that earlier political orders had failed to make use of. This again was the theme of *Federalist* 9 that we examined in

chapter 1. That number had excoriated those “vices of government” that had perverted the direction and tarnished the luster “of those bright talents and exalted endowments” that had flourished in the republics of Greece and Italy *despite* the governmental barriers that had been thrown in their way. But this meant an approach not only to government but to unassisted nature that is the antithesis of the way many today, particularly on the American Left, would approach either government or nature. Government on *The Federalist*’s reading had to be limited if it was to be effective. And nature was there for Americans to use, to be acquired and transformed. Without man’s acting into nature, nature was useless.³ In 1787 this Lockean view was largely how Americans interpreted the world. It made up the heart of the spirit of enterprise as *The Federalist* described it. It was this spirit that *The Federalist* sought to give coherence to and it was this that the Constitution would both unleash while tempering.

The aggressive nature of the American spirit of enterprise was outlined as early as *Federalist* 7. That spirit and the impossibility of accommodating it as well as the dynamism of the American commercial republic more generally by the embrace of something like an insularity doctrine as America’s grand strategy has been the subject of recent international relations theory. In chapter 8 I reviewed Drew McCoy’s *The Elusive Republic* (1980). The emphasis there was on McCoy’s account of how founders such as Benjamin Franklin and Thomas Jefferson had expressed reticence about advanced commercial society. McCoy’s book was one of the most influential contributions over the last generation to the republican thesis school of founding scholarship. Early on that scholarship was criticized by those who contended that the genre ignored the Lockean liberal strains of the founding that informed the Constitution. Writing in 1988, for instance, Thomas Pangle had said of McCoy’s work: “this book, which in later sections is often excellent, opens with a thirty-four page account of eighteenth-century social thought which does not refer to Locke or the idea of natural rights.”⁴ More recent scholarship has also emphasized the failure of the republican thesis scholarship to account for the Lockean liberal foundations of American constitutionalism but with a bit of a different emphasis. Now commentators are also contending that such scholarship along with international relations theory more generally today has failed to adequately account for the United States’ aggressive, interventionist foreign policy from the beginning of its constitutional history. Works by Max Boot, Walter Russell Mead, and Henry Nau have all emphasized the principled, non-isolationist nature of American foreign policy.⁵ So too has Robert Kagan’s *Dangerous Nation: America’s Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century* (2007).⁶

In the next section I begin with a brief review of Kagan’s *Dangerous Nation*. Kagan’s book exemplifies what I referred to in the Introduction (following

Walter Russell Mead's designation of this school of thinking) as the "New Look revisionism"—scholarship that emphasized the importance of union and national security to the framing of the Constitution. My point in discussing Kagan is to highlight not only the impossibility of restraining America's dynamic commercial temperament by such ethereal and misguided theoretical considerations as what effects commercial development might have on American character. It is also to illustrate the impossibility of an insularity doctrine of the sort many scholars have proposed *The Federalist* was offering. Such a doctrine was impossible to reconcile with the dynamic commercial republicanism *The Federalist* openly supported. That dynamic commercial republicanism always contemplated an active and expanding military instrument as the necessary concomitant to America's commercial growth. And the authors of *The Federalist* recognized this. The full implications of this and other concluding remarks are provided below by briefly examining recent literature that links American enterprise to the American way of war in a manner I believe *The Federalist* did. A final section outlines a few of the more prominent threats to *The Federalist's* commercial republican theory that have recently emerged. The list here is not exhaustive but touches upon a few of the more salient issues.

COMMERCIAL DYNAMISM AND THE IMPOSSIBILITY OF AN INSULARITY DOCTRINE

Kagan's *Dangerous Nation* is relevant to our examination of *The Federalist* for a couple of reasons. First, it presents a nonconventional interpretation of American foreign policy that comports with the interpretation of that foreign policy I contend *The Federalist* embraced. Kagan proposes, contrary to dominant educated opinion today, that American foreign policy has never been "isolationist" or committed to "non-entanglement" or "neutrality." Rather, America has always been interventionist and nations have accordingly feared it as a "dangerous nation." Kagan attributes this fear to the country's early desire for territory and dominant influence as well as to its revolutionary ideology and liberal, commercial nature. These features, present from its beginning, have led the United States to appear to swallow up cultures it has come into contact with.⁷ Similar to those works cited above by Boot, Mead, and Nau, Kagan's work closely follows the themes of this book; that *The Federalist* understood the American spirit of enterprise as daring and dynamic and that the new constitutional order of 1787 could never abide an insularity doctrine as America's grand strategy over time. Although Kagan's book is intellectual history and not an interpretation of *The Federalist* it nevertheless largely accords with the interpretation of American constitutionalism that I have advanced in this book.

Kagan's *Dangerous Nation* is relevant to *The Federalist* for a second, more immediately significant, reason as well. That is because, as noted above, it is critical of the republican thesis scholarship. Drew McCoy, Gordon Wood, and others in the republican school of political economy have sought to explain the actions of some of the founding era's political elite on the basis of refined distinctions between how America was going to develop through "space" as opposed to "time." Kagan responds that these distinctions have, on the one hand, been exaggerated and, on the other, were irrelevant to those real-world Americans who actually created the country. As Forrest McDonald put it over a generation ago, the republican thesis approach is "pie-in-the-sky political economy."⁸ The Americans of 1787 were commercial republicans of the Lockean liberal variety and had been for generations before the Revolution.⁹ Evidence of this abounds. There were the materialist forces within American Protestantism that by the early 1700s had vanquished the Puritan fathers' original godly vision of America in favor of individualism, progress, and modernity.¹⁰ There was the very Lockean Declaration of Independence. And both the Constitution and the Northwest Ordinance, each with provisions accommodating vast territorial acquisition, testify to the aggressive, expansionist impulses of the American people. In addition new states, particularly in the north and west, were given those rights of self-government that would ensure continued commercial development and expansion. As Kagan observes:

In the new liberal and commercial order described by Locke and Smith and embodied in Jefferson's Declaration of Independence, a government constructed by the people for the purpose of protecting *their* life, liberty, and pursuit of happiness could not easily stand in the way of their efforts to acquire and settle new lands, or to trade in overseas markets. . . . The political survival of American leaders depended on their solicitousness to the interests of the increasing numbers of voters spreading out across the western lands and to the merchants of the Atlantic seaboard who hoped to spread out across the oceans.¹¹

Kagan maintains that both before and after the Revolution it would have been political suicide for America's leaders to attempt to constrain those American citizens who sought overwhelmingly territorial and commercial expansion. One of the principal issues the Constitution had to address was how to secure this continuing expansion and the extensive commercial enterprise it involved. As we saw in the last chapter, one of the solutions here was Congress' Article IV powers to admit new states to the union and to dispose of federal lands. Also relevant were Congress' Article I, Section 8 powers, roughly half of which concerned issues affecting "commerce."

The Federalist largely agrees with Kagan's accounting of pre-Constitutional America, documenting the aggressive nature of the commercial republican spirit. *Federalists* 6 and 7, for instance, catalogued the regional voices of discontent that had grown under the Articles of Confederation due to issues relating to territorial expansion and other matters regarding commerce and property. *Federalist* 7 also documented the aggressive spirit of enterprise that characterized the commercial part of America. *Federalists* 2 and 14 further declared that Americans' continued prosperity and expanding empire could only proceed with the new Constitution. And *Federalist* 38, as we saw, had optimistically remarked that it "is no longer a point of speculation and hope, that the Western territory is a mine of vast wealth to the United States." Publius boasted "that a rich and fertile country, of an area equal to the inhabited extent of the United States, will soon become a national stock." These statements all testify to the sort of aggressive and acquisitive character Kagan maintains exemplified American character both before and after the Constitutional Convention. Moreover, as *The Federalist* itself observed, if America's national government was unable to provide stronger defense against the vast array of regional and interstate divisions as well as against external threats such as Britain, France, and Spain, the various regions of the country would likely turn against the federal government and secede.¹²

Supporters of the Constitution, Kagan highlights, had endorsed a stronger federal government among other reasons because that government might better protect their interests in expanding territorially and augmenting trade both domestically and internationally.¹³ There was virtually *no concern* expressed at the Federal Convention over such ethereal questions as what negative effects increased commercial development might have on American character. To the contrary, the most pressing concerns centered on something quite opposed to this, specifically how to unleash America's commercial and enterprising spirit and to free it from the sclerotic restrictions that had been imposed by the Articles of Confederation. Those scholarly treatments of the founding era that have depended on hard and fast distinctions between the more dynamic commercial republicanism of the Hamiltonians and the more staid agrarianism of the Jeffersonians have too often ignored the fundamental broad agreement that existed in 1787. That agreement centered on the nature of American republicanism and the political economy attached to it. Whatever distinctions regarding theories of political economy may have occurred *after* ratification of the Constitution, they were barely noticeable in Philadelphia. There Kagan maintains there was significant accord on the most fundamental questions not only concerning political economy but foreign policy and America's republican character. As much as they may have

fretted about the dangers of luxury and avarice a multiplying commerce produced, the members of the founding generation, from Federalists like Hamilton to Republicans like Jefferson and Madison, questioned neither the commercial nature of the American people nor the vast benefits to the nation that would be gained by unleashing the forces of commercial liberalism. Their grand scheme was to harness the material ambitions of men and women into a mammoth self-generating engine of national wealth and power. American foreign policy in the first decade of the republic aimed, above all other goals save the preservation of the nation itself, at feeding the ravenous appetites of a generation of Americans whom Gouverneur Morris recognized as “the first-born children of the commercial age.”

Those “first-born children” were an acquisitive people, and indeed they celebrated acquisitiveness as a virtue. The tenets of liberalism exhorted individuals to seek their fortunes and exalted the acquisition of wealth and property not as selfish pursuits but as virtuous ones. The acquisition of property was, in fact, a public as well as a private virtue, essential to the common good. According to Locke, property served as the very foundation of civilized society.¹⁴

As we saw earlier, *Federalist* 10 agreed, describing the growth of a host of interests—landed, manufacturing, mercantile, moneyed, and those of a lesser variety—as a “*necessity* in civilized nations.” It was men acting into nature, transforming it, and making it useful that created the real value in society as Locke recognized. The dispersed knowledge and different skills that came from such transformations of nature, the variety of habits and the opportunities for individuals that they brought about, were what improved society and transformed civil relations for the better. This is what advanced commerce did. And this is how the faculties of men and the division of knowledge got increasingly refined.¹⁵

Representing the exercise of one’s liberty and the freedom to use one’s mind and body as one saw fit, the acquisition of property also implicated matters of *justice* as well as questions of utility. This is one of the respects in which we can understand the acquisition of property, as Kagan proposes above, as something involving the exercise of virtue. Coercive policies of redistribution undercut such principles as the imperative of responsible self-governance, the value of work, and the right of individuals to retain the fruits of their physical and intellectual labor.¹⁶ As I noted in the introduction to this book, Friedrich Hayek had proposed that in commercial society new ideas most often originated through the tireless efforts of enterprising individuals confronting ever-new practical situations and discovering, through the process of trial and error in concrete situations, new solutions to problems and new forms of action.¹⁷ The patent and copyright clause that we discussed in the last chapter seemed to recognize this. As the great engine of industry and innovation, commerce permeated virtually all aspects of civil and private

life. But this implied that it would be here, in the private world, that the overwhelming generation of new ideas under the Constitution would occur.

Our earlier review of *Federalist* 44 had stressed that Publius' discussion of the Constitution's commercial reforms were intended to improve "the industry and morals of the people" as much as the national economy. Confidence in the federal government and in America's commercial order was the precondition to resurrecting public spiritedness. This itself would be a necessary precondition for developing an effective military instrument post-1787. Recall Clausewitz's famous "trinity of war" that linked a powerful military instrument to responsible government and high national morale. Responsible government would be achieved through the specific forms of representation and the separation of powers discussed in the last half of *The Federalist*. High national morale would be achieved among other things through the commercial reforms outlined above and the better administration of government, part of which consisted of providing for improved national security. *Federalist* 26 had complained that the critics of Congress' national defense powers under the Constitution had effectively proposed that "the tone of government had been found too high" and sought "to depress or to relax it" (26:158). Part of the high toning of government *The Federalist* had in mind involved the professional military training the modern revolution in military science would provide the new American army and navy. The Continental army had certainly evinced important features of that new professionalism during the Revolutionary War. But that army was so small and underfunded that those improvements from the point of view of American national security were negligible. The professional military training the United States army would be subjected to under the Constitution, as *The Federalist* presented this, would not only make the army more effective against European armies of a similar character. The other point of emphasis in numbers such as *Federalists* 8 and 25 was that, contrary to the orthodoxy of traditional republican theory, a professional army would be much more restrained, moderate, and accountable than traditional republican militias. *Federalist* 8 had demurred about how "plunder and devastation" ever marched "in the train of irregulars."

Publius wanted to highlight that an American standing army under the Constitution would not only be more competent but more restrained and less violent than an American militia. As I have proposed, *The Federalist* rejected an insularity doctrine as the grand strategy for the United States under the Constitution because over time, with its anticipated extensive commercial and territorial growth, the United States government could not possibly protect American interests at home or abroad by following the constraints of an insular military strategy. But a key qualification here was that however far American military policy might extend it would be much more moderate and principled than the military policy of the imperial empires of the day—and of

every other world power it might come into competition with. This again was the objective of *The Federalist's* contrast of America's military instrument under the Constitution not only with regimes that were obviously more belligerent and despotic but even regimes like Britain. *Federalist* 41 had impugned the British government as fundamentally unrepblican and corrupt. America was different. Its principled commercial republicanism was more high-toned and would make up the core of its exceptionalism.

Henry Nau has suggested that it is precisely the recognition of this high politics of American exceptionalism that has guided what he refers to as "conservative internationalism." This foreign policy, which many American presidents of multiple parties have followed throughout American history, dates back to the founding generation. However it has received little scholarly attention. Like Kagan's analysis of American foreign policy, Nau understands America's conservative internationalism to be informed by the country's domestic policies and principles. It holds that America is an exceptional nation and the leading liberal society of the world. Although conservative internationalism promotes democracy in other countries it seeks to "do so primarily by competitive means rather than international institutions." It respects national sovereignty. It also understands that nondemocracies persist in the world and use force both to oppress their own citizens as well as to gain advantage over other nations. Diplomacy backed up by force is therefore critical to effective implementation of American foreign policy. Finally, "while conservative internationalists believe in free trade, they do not believe, as many liberal internationalists and isolationists do, that commerce and wealth eventually eliminate dangerous political differences. Even among democracies or within a world of all democracies, the threat of dominant and potentially oppressive power remains."¹⁸ This last feature of conservative internationalism, a rejection of the democratic peace theory, reminds us of *Federalists* 6 and 15. It is consistent with the teaching from *The Federalist* that this book has proposed. It is also consistent with the teaching of Thucydides.

I raise the examples of Nau and Kagan in this concluding chapter for a specific reason. They both provide a heterodox interpretation of American foreign policy that is becoming increasingly predominant in serious scholarship and that comports with the interpretation of *The Federalist's* understanding of American constitutionalism that I have offered in this book. Nau and Kagan both accept the dynamism of the American spirit of enterprise that defines American character. They also accept its corollary of an active, non-insular foreign policy. This has been America's foreign policy, Nau and Kagan contend, from the very beginning of American constitutional history; America's foreign policy has consistently been activist and non-isolationist. Walter Russell Mead's *Special Providence* and Max Boot's *The Savage Wars of Peace* convey themes similar to Nau's and Kagan's.¹⁹

The same problem in international relations theory that the scholars above have highlighted in their field applies to scholarship on *The Federalist*. That scholarship has uniformly proposed that Publius advanced an insularity doctrine as America's grand strategy under the Constitution. Publius did this, scholarship contends, largely because of the aversion to standing armies that existed among the American people in 1787. Both of these propositions are highly suspect as *The Federalist* itself makes clear. As I noted earlier, Publius highlighted that the only states in 1787 to explicitly proscribe standing armies were Pennsylvania and North Carolina. And this was due to an overzealous reaction to a recent bloody revolution against an unpopular king. The other eleven states of 1787 had no proscriptions against peacetime regular armies nor did the Articles of Confederation proscribe Congress from raising them.

Despite the many explicit passages in *The Federalist* advocating an insularity doctrine there are an equal, if not greater, number of passages that suggest that this cannot possibly be *The Federalist's* true grand strategy, particularly over the long term. Of course if there was a concern among some vocal Americans in 1787 regarding the potential dangers of a federal standing army it would make perfectly good sense not to be too explicit about rejecting an insularity doctrine as America's grand strategy under the Constitution. *The Federalist* does acknowledge the rhetorical problem of advocating for more energetic and efficient government as early as *Federalist* 1; that such advocacy "will be stigmatized as the offspring of a temper fond of power and hostile to the principles of liberty." But Publius also makes clear later in the work at various points that concerns about a standing army are significantly overstated. They are much more limited among citizens and their representatives in the American states than those critical of the Constitution's national security provisions would let on.

The writings of Kagan, Nau, Mead, Boot, and others of the "New Look revisionism" genre not only lend credence to the themes of this book by suggesting that American foreign policy from early on was never insular or isolationist. They also fortify, as *The Federalist* itself makes clear, that American foreign policy never *could* be isolationist. As the brief account of Kagan's outlined above highlights, equally untenable is the proposal in much scholarship on *The Federalist* and the founding that there was genuine or widespread concern about the alleged adverse effects of an advanced commerce on American character. Kagan emphasizes that this was never evident at the Constitutional convention in any significant way or among anything other than a handful of elites post-ratification. As Forrest McDonald suggested, this republican thesis theme was little more than academic pie-in-the-sky. The Americans of 1787 were classic Lockean, typified by commercial dynamism, daring, and acquisitiveness—acquisitiveness understood "as a virtue" as Kagan put it. Americans possessed this character long

before the Revolution and they were not going to abandon it anytime soon. Nor should they.

THE SPIRIT OF ENTERPRISE AND THE AMERICAN WAY OF WAR

This speaks to two additional issues that our analysis of the early *Federalist* and of Thucydides revealed. First, the need for commercial development as the precondition for the exercise of virtue, specifically the virtue of enterprise. Second, the “clash of civilizations” that Thucydides originally introduced between Athens and Sparta and that we saw initially raised in *Federalist* 5 about how the Northern Hive’s “young swarms” might devour “their luxurious and more delicate neighbors” if union failed. These two issues regarding the virtue of enterprise and the clash of civilizations are related and may educate us on the unique American way of war that *The Federalist* anticipated. As I indicated in the last paragraph, Americans were not going to abandon their Lockean-like character after 1787. Nor could they. Nor would they want to. *Federalist* 5’s comments about the “young swarms” of the Northern Hive being “tempted to gather honey in the more blooming fields and milder air” of their southern neighbors is intended not only to warn Americans about the possibility of war in a divided America. It is also intended to capture the spiritedness, daring, and acquisitiveness of the Northern states. Those states were defined by an advanced development of commerce and manufacturing. If the states went to war, which inevitably they would in a condition of disunion, it was clear that the North, the “region of strength,” would in all likelihood prevail (5:25). It was also clear, given the region’s dynamism and evident territorialism, that it would be the North that would likely initiate war between the states in a disunited America. This at least would take place unless preemptive action was taken by those more docile states to the south that feared what the future had to offer from their northern neighbors. As we know from our review of Thucydides, it was precisely because of their fear of the Athenians growing power that Sparta started the Peloponnesian War.

The spiritedness of the North that is depicted in *Federalist* 5 provides us the same sociology of commerce that we find in *Federalists* 7 and 42. In *Federalist* 7 the “unbridled” spirit of enterprise that characterized “the commercial part of America” was portrayed as likely to react with violence to those unnecessary regulations of trade by which states worked to stifle the industry of commercial enterprise in order to benefit special interests in their own states. And *Federalist* 42 similarly noted that without the federal power to regulate commerce among the states “future contrivances” such as levies on imports and exports by intermediary states through which goods traveled

“would nourish unceasing animosities” between traders and consumers of other states. These animosities would “not improbably terminate in serious interruptions to the public tranquility.” Yet as dangerous as the spirit of enterprise might become when impeded by undue regulations, Publius had described that same spirit as having “left no occasion of displaying itself unimproved.” The dynamism of the spirit of enterprise was a good thing. It was a potential virtue because it is what moved industry, innovation, the arts, the sciences, and most other elements of civilization to their utmost development. But as we have seen throughout this book—and as *Federalists* 5, 7, and 42 exemplify—Publius’ message is that without the proper constitutional instruments to tame and direct it, the spirit of enterprise could also be politically dangerous given its restlessness. This is why Thucydides’ history is so important. It provides us the seminal account of that restlessness and daring that the spirit of enterprise exhibited in Periclean Athens.

Victor Davis Hanson would agree. It was Hanson who observed (as chapter 5 did) that Thucydides educated us on the first “clash of civilizations” between the Athenians and the Spartans. The ever-discerning Greek historian understood that the political and cultural idiosyncrasies of each regime type, however imperceptible they may have been to the citizens of each city, virtually guaranteed that the petty and more immediate disputes between the cities and their coalitions would eventually explode into a Hellas-wide conflagration. “After all,” Hanson writes,

If Sparta ignored the pretexts of the Corinthian and Megarian grievances, the sheer dynamism of Pericles’ imperial culture—majestic buildings, drama, comedy, intellectual fervor, an immense fleet, radical democratic government, an expanding population, and a growing overseas empire—would eventually spread throughout the Peloponnese and offer incentives to Sparta’s friends that she could not match. Who could win a war of attrition against the world’s first America—especially when you could offer only massive iron ingots as money, a ramshackle hovel as a national capital, and a Gestapo-like storm corps in lieu of an army of liberation?²⁰

If Athens was the world’s first America as Hanson proposes *The Federalist* understood the clash of civilizations between the Northern Hive and the more agrarian regions of the South in 1787 in precisely the same terms Thucydides understood the clash between the Athenians and the Spartans. In the latter case, as we saw in chapter 5, from Thucydides’ point of view there was no effective choice between which of the regime types to prefer either as a matter of justice or of necessity. Despite its excesses Athens was to be preferred on both counts. The Spartans realized that the dynamism of Pericles’ imperial culture meant that in a short period of time their ramshackle hovel of the Peloponnese would be eclipsed by the Athenians both civilizationally and

politically. More and more Greek cities were sure to join the Athenian coalition over time. And Thucydides made it clear that it was not only the Athenian regime that was civilizationally much more advanced than the Spartans but that it was the Athenians who were also much better equipped to deal with the demands of necessity—particularly the demands of military necessity.

Publius saw things in similar terms for the United States. The spirit of enterprise that dominated the dynamic Northern Hive of America was to be preferred over the less dynamic political economy of the South. This too was a function of both justice and necessity. The Hive's more dynamic spirit of enterprise provided greater opportunity to individuals to develop their faculties as they saw fit. Such an enterprising spirit for the same reason would likely be the principal source of America's future great achievements in such things as architecture, the arts, the intellectual world, military technology, political refinement, and those features similar to what Hanson identified with Periclean Athens. Publius' preference for the North's more dynamic spirit of enterprise was expressed of course with some qualification since *Federalist* 12 proposed that the "often-agitated question between agriculture and commerce" had "received a decision which has silenced the rivalry that once subsisted between them." The alleged conflict between commerce and the manufacturing or more industrial North and agriculture or the more agrarian South was a fraud. The interests of the two regions, *Federalist* 12 suggests, "are intimately blended and interwoven."

But it is clear from our analysis of *The Federalist* in this book that the spirit of enterprise that had reached its apogee in the more industrialized, manufacturing North on *The Federalist*'s reading was the model of enterprise that *The Federalist* hoped the entire country might eventually emulate. This preference not only anticipated the dynamism of the American way of war that *The Federalist* alluded might well occur under the Constitution, particularly with its new breed of nationalism. It also served to illustrate how *The Federalist* proposed to resolve the second and third lessons from Thucydides' history regarding those nation-destroying "clash of civilizations" the likes of which ravaged Greece in the Peloponnesian War and how the specific concept of liberty that we see originally in Periclean Athens might be preserved—and expanded. The answer to the second lesson in America's case was to integrate the political economies of the Northern Hive and the more agrarian regions of the South through increased commercial interaction between them.²¹ The answer to the third lesson was to open up the channels of commerce, which would give individuals greater opportunity to exercise their faculties as they saw fit.

Federalist 11 had maintained that an unrestricted intercourse between the states would replenish the "veins of commerce in every part." It would provide "commercial enterprise" that "much greater scope, from the diversity in

the productions of the different States.” The Thucydidean language of *Federalist* 11, describing how the unrestrained commercial intercourse between the states would provide “additional motion and vigor, from a free circulation of the commodities of every part,” was not limited to purely economic activity. It also spoke to the dynamism that might underwrite America’s military instrument. As we saw in chapter 7 *Federalist* 11 highlighted how much easier a navy would be to build in the Constitution’s large commercial republic, with its potentially unlimited resources, than it would be to build in the confines of a single state. Embracing “the resources of all”—the tar, pitch, turpentine, and more durable wood of the South, the iron of the southern and middle states, the seamen of the Northern Hive—a national navy would contribute to an expanding commercial maritime enterprise as that enterprise would contribute to the navy in turn. In addition, while an expanding commercial maritime enterprise would increase the *variety* as well as the *value* of exports for foreign commerce (to use the language of *Federalist* 11), the paradox is that this increase in variety and complexity, as *Federalist* 56 proposed, would have an *assimilating* tendency on the nation (56:363).

The nascent nationalism that *The Federalist* identifies with the Constitution’s spirited and integrative commercial republicanism begins to emerge here. The dynamic and symbiotic character of building a navy through a nationwide political economy that would be fundamentally *private* in character corresponds to how the enlarged republic the Constitution will create would protect and expand upon those *civil* liberties referred to in *Federalist* 9; liberties that Publius suggested originated in ancient Greece. It would be *civil* society in other words, not government—which was just the enabler here—that would create America’s new and more powerful navy. Invigorating the American spirit of private enterprise, the Constitution would in turn underwrite a unique American manner of warfare. Of course the American military’s dynamism would not be simply a function of commerce or economic development. The lessons *The Federalist* sought to convey in such examples as *Federalist* 41’s references to Charles VII and ancient Rome was that an American standing army and navy established under the Constitution would be different from the European militaries of antiquity and modernity precisely because they would be thoroughly republican in character. America’s army and navy would be grounded in high principle.

Hanson has described the American way of war in terms consistent with *The Federalist*’s account of the Constitution’s commercial republican way of war. What is particularly valuable about Hanson’s analysis is that he sees America’s peculiar brand of war as an extension and refinement of the Western way of war, which he maintains began at least as early as the Battle of Salamis (480 BC).²² That Western way of war, extending from Greek and Roman antiquity to the present, has been predicated upon such cultural and

political elements as consensual government, a civic militarism derived from this, the idea of a nation-in-arms populated by citizen soldiers who have rights as well as responsibilities to protect the nation, order and discipline in military engagements, individual freedom, spontaneity, and initiative, free markets and the open exchange of goods and information they promote, science and rationalism applied to the conduct of war unrestricted by any cultural or religious barriers, decisive shock battle, civilian audit of military operations, superior military technology and the encouragement of unfettered research to consistently improve upon this, open financial and capital markets to promote innovation and to fund military operations, constitutional government, and strategy designed as an instrument of state policy or politics, not religion or something other than politics.²³

Hanson maintains that while many of the elements of the American way of war reflect this broader Western tradition, America's peculiar way of war is also a product of the country's unique character and history. The United States took such preexisting Western ideas as political and economic freedom, individualism, commitment to ongoing self-critique, particularly in military affairs, and advanced these to their theoretical limits. But it also had its own cultural and political idiosyncrasies that contributed to a unique military culture. American society, for instance, was generally a meritorious one and not reliant on class or aristocratic preference for advancement. The country's military branches have thus been led by gifted but at times eccentric, swashbuckling, even unseemly, commanders from all walks of life. These individuals in other regimes would have never been considered for any form of professional military advancement. Another unique American characteristic, widespread gun ownership, has also meant that military service and the use of weapons have not been seen here as strange or antithetical to society the way both are in Europe. America's frontier experience and vast geography has additionally led the United States to develop technologies that have conquered space and time—railroads, steam engines, automobiles, telegraph and telephone services, electrical power—more quickly and extensively than any other nation. And America's extensive familiarity with mechanical enterprise has, on the one hand, made the American citizen ideal for modern mechanized warfare and, on the other, resulted in revolutionary innovations to such weapons technologies as the repeating rifle and the Gatling gun. During World War II American mass production of Sherman tanks, B-24 bombers, P-51 fighters, and other munitions demonstrated the unparalleled ingenuity and vigor of the American private sector. Indeed, one of the defining characteristics of the American way of war has been the extent to which Americans have trusted in private enterprise to come up with the solution to virtually every technological innovation necessary to win wars and to keep America ahead of the military revolution in arms. "While there is much to say

about the divide between America's military and civilian cultures," Hanson observes, "the shared dynamism of both is far more significant for understanding the future of American military power."²⁴

This concept of dynamism is central of course to *The Federalist's* teaching regarding the Constitution's commercial republicanism. We might understand it as the direct offspring of the Constitution's noninstitutional design as *The Federalist* explains this. More than any other work in early American political thought *The Federalist* emphasized the importance and unlimited potential of the spirit of enterprise. What Hanson describes as the American way of war might be seen as the direct offspring of this spirit. And like Hanson *The Federalist* sees this as an aspect of the Western way of war dating back to at least Thucydides and his understanding of the spirited and daring nature of commercial peoples.

Not only Hanson but other astute observers, like Arthur Herman, have noted the significance of American private enterprise in the conduct of American warfare. Herman's *Freedom's Forge: How American Business Produced Victory in World War II* (2012)²⁵ is dedicated to revealing in detail how America's forgotten heroes of World War II, its businessmen, product managers, engineers, and workers in the private sector, built the most formidable military machine in history. It was this arsenal of democracy that armed not only the United States but all of the allied forces that defeated the Axis powers. The very term "arsenal of democracy" was coined by Bill Knudsen, a former Ford and General Motors executive tapped by President Franklin D. Roosevelt to co-chair the Office of Production Management during World War II. Knudsen had originally referred to the arsenal of democracy to describe the automobile industry's commitment to war production. However, it became a metaphor for the entirety of the American wartime economy since the specific manner of production that the auto industry inaugurated infected every stratum of the national economy committed to wartime output.²⁶

It was appropriate that the phrase "arsenal of democracy" referred to private enterprise and not government. The theme of Herman's book was that it was the spirit of enterprise found in the business community that was perhaps the principal reason the United States won World War II. And the arsenal referred to that private industry that more than any other in the first half of the twentieth century epitomized the American spirit of enterprise: the automobile industry. Knudsen himself was the perfect exemplar of that business. A Danish immigrant and self-made man, as an executive at Ford Knudsen conceived the continuous linear sequence critical to the mass-production assembly line of the Model T. By 1910 his innovations, along with those of Albert Kahn, had revolutionized the American auto industry to the point where the Ford emblem had become an international symbol of American industrial might. Along with Ford, "Knudsen had triggered a second industrial

revolution based on mass production, one that lowered costs by making more, not fewer, of a product—and one that ruthlessly weeded out the old and obsolete to make way for the new.”²⁷ Knudsen was the ideal pick to lead American munitions production during World War II not only because of his enormous success in the private sector but because he knew the principles of free enterprise and how they might be applied to war production. Those principles were something the FDR administration was not only largely oblivious to but, to the extent it was familiar with them, openly hostile to.

Herman maintains that the Axis powers lost the war largely because of their failure to embrace the appropriate free market principles of arms production. On his reading had the New Dealers had their way during World War II American wartime production would have suffered all of the same inefficiencies and ineptitudes of the Germans, Japanese, and Italians. Niall Ferguson and Azar Gat have contended that the victory of the liberal democracies in World War II was much more a product of accident than many in the West are prepared to admit. The totalitarian regimes, Germany and the Soviet Union, Ferguson suggests, were better at “all-out economic, military, and cultural mobilization. The fact that it took another totalitarian regime to defeat the Third Reich in the crucial East European theatre speaks for itself.”²⁸ Gat similarly maintains that the liberal democracies were much more disorderly and inept at mobilization. They won World War II largely on the basis of contingencies, the most important of which was the “United States factor.” The “capitalist nondemocratic powers,” Germany and Japan, “were defeated because they were too small.” The allies won because they had the United States on their side. America’s power throughout the twentieth century “consistently surpassed that of the next two strongest states combined.” And it was this—the United States factor—that was the key that tipped the balance of power in World War I and World War II. “The liberal democracies possessed greater aggregate resources than their rivals because of that crucial fact no less than because of their advanced economies (which, again, were not more advanced than Germany’s).”²⁹

But in fact the US economy *was* more advanced than Germany’s. Germany may have been a “capitalist nondemocracy” during World War II as Gat put it but its capitalism was nothing like the American variety either in principle or in form. And for Herman that was the critical difference. Ferguson concludes: “It was a hallmark of the improved efficiency of Hitler’s war economy compared with Hindenburg’s that Albert Speer was able—despite the disruptive effects of British and American bombing—to raise German real GDP by 1944 to a level 25 per cent higher than in 1938.”³⁰ But it was Speer, Nazi Germany’s Minister of Armaments and War Production, who Herman targeted as having personified the incompetence of the Germans’ war materiel production. Hitler had given Speer all of the powers typical of a command economy: Speer had

the authority to decide which factories produced what, what materials and workers went to which industries, and what wages and prices could be charged in the war production process. He had everything, in short, “that people in Washington wanted for an American production czar.” This included all of the resources Joseph Goebbels’ Propaganda Ministry had to mobilize public opinion through newsreels showing massive German production of munitions. Yet despite all of these powers or perhaps precisely *because* of them—command economy powers that Ferguson and Gat applauded as key to the Axis nations’ superior military constitutions—the Germans’ war production efforts failed miserably. And for Herman it was not hard to understand why.

What Speer lacked was Knudsen’s secret weapon: America’s prodigious industrial base built around free enterprise, which now was giving its full attention to war production. Speer was an architect by training. He knew nothing about how to lay out a factory or run an assembly line. Likewise, Germanic pride made many key industries resist the transition to American-style mass production. Tank and aircraft factory workers remained faithful to the traditions of quality craftsmanship, as did their managers, which ensured they never made enough. The German car industry, including the Opel factories the government had seized from General Motors, sat half-idle through the entire war. And constant meddling and changes of priorities by the German military ensured that time and energy and materials were lost in a limitless bureaucratic maze.³¹

And it was this limitless bureaucratic maze, in addition to all of the other inefficiencies and incompetencies that Germany’s wartime command economy exemplified, that had the New Dealers had their way would have characterized America’s World War II arms production. Thankfully Bill Knudsen and other advocates of a free market approach to such production, particularly in the business community, prevented this from happening.

Herman’s account of World War II is worth studying in some detail for at least two reasons. First, it is an ideal vehicle to highlight the legacy of *The Federalist’s* commercial republican theory in the modern era, particularly with respect to the spirit of enterprise and its relationship to the American way of war. Second, it provides a lengthy catalogue of those problems that today threaten both the American way of life and the American way of war that are at the heart of *The Federalist’s* theory. Herman makes clear how crucial it is to maintain those fragile freedoms—the principles of civil liberty as *Federalist* 9 put it—that are at the heart of the American constitutional order. And he points out how those principles have been threatened over the last century by America’s political and intellectual classes who are so often contemptuous of the founders’ limited government constitutionalism. Let me say a bit more about this first point immediately below. I will address the second point in the last section of the chapter.

As I have stressed in this book *The Federalist's* commercial republican theory emphasized the importance of the spirit of enterprise not only to America's individualism, initiative, and domestic commercial production. It was also critical to what later would become known as the American way of war. *Freedom's Forge* is as good an analysis as any today that demonstrates how *The Federalist's* constitutional theory might have translated into practice in the most significant global conflict the United States has ever been involved in. It underscores the contrast, as we have seen, between the alternative forms of government and political economies that have been in contention throughout much recent American history. It also exemplifies the understanding of freedom outlined in *The Federalist* and the concept of human nature on which that understanding is based. Herman makes clear, for instance, in a manner reminiscent of *Federalist* 6, that as much as Bill Knudsen's model of war production might have appealed to a fervent American patriotism or desire to give back to a country that had granted one so many opportunities and freedoms—as was the case with Knudsen himself—it made no demand for some pure or surreal self-sacrificing virtue or compulsion that was part of such totalitarian political orders as Nazi Germany, Imperial Japan, and the Soviet Union. FDR's War Production Board did order companies *not* to produce certain goods such as cars, refrigerators, and other heavy durable goods. But it never mandated to anyone *what* to produce. That was left to the better judgment of American business. War production in the United States throughout World War II was *voluntary*. And that was crucial to Knudsen's entire wartime system of production. "Everything made for the war effort was made by those who saw some advantage for themselves in doing so, and therefore they brought all their skills and tools and knowledge to bear on the task—both to help the country and to make some money. This drove the New Dealers crazy, but it was what Adam Smith had recognized a century and a half before as the cornerstone of capitalism." *Federalist* 11 had highlighted how the enormous nationwide free market the Constitution would produce would assist in creating a federal navy by making unparalleled use of both the division of labor and the division of knowledge that only the founders' system of private enterprise in America's large commercial republic could fully exploit. Herman similarly notes time and again how the same principles were at work for America's World War II war production. In his words Americans relied "on a collaboration between businesses large and small forged years before by the free market, a system so complex and so constantly changing that no government agency could ever have devised a system to supervise—let alone plan out—the result."³²

Herman adds that unlike those favored state industries of Nazi Germany and Imperial Japan, inherent to command and control economies like theirs, no American companies enjoyed any privileged status in the war production process throughout World War II. All had to compete and adapt. But if

companies did so successfully they could not only survive but even thrive.³³ Herman describes the contrast between the production process for the much-vaunted Japanese Zero, produced like German aircraft in a handcraft tradition, and Lockheed's twin-engine P-38 Lightning. The P-38 had been specifically designed for the long distances that had to be traveled in the Pacific. It was both a powerful plane and heavily armed. Along with the Grumman F6F Hellcat the P-38 would sweep the previously feared Zero from the skies, clearing the way for the eventual invasion and defeat of Japan. Yet in August, 1943 the Army Air Force had wanted to shift production away from the P-38 to the newer P-51 Mustang. Knudsen had worked at GM where the best corporate governance was deemed to be the one that governed least. In the early 1920s GM had revolutionized American business by giving the directors of its corporate divisions, Buick, Chevrolet, Pontiac, and Oakland Trucks, the freedom to produce those products that they thought would be best for their division's market share, factories, engineers, and workers. These considerations would be coordinated by the directors of the divisions in such a way as to ensure profitability but the underlying principle of governance at GM was to let loose the entrepreneurial instincts of the company's top executives on the problem of how best to build cars and get them to market. Instead of giving orders the chief executive's job was now simply to gather information on how GM was progressing, what problems it might face, to evaluate progress in its various divisions, and to keep those divisions, corporately speaking, pointing in the right direction. Knudsen applied this same decentralized decision-making process from the private sector to military procurement. In the case of the P-38 Knudsen had flown to New Guinea August 17, 1943 to consult directly with General George Kenney, commander of the Fifth Air Force, and his brigadier general Ennis Whitehead. Staying up late one night, Kenney and Whitehead had convinced Knudsen of the value of the P-38, which both had direct experience with. The consequence was that Knudsen would reverse the Army Air Force's decision to replace the P-38 with the P-51. Having been convinced by Kenney and Whitehead of the Lightning's consummate suitability for long journey's over water and jungle, Knudsen's decision "cut through the red tape and fog of decision making" to ensure the plane's continued production, which would reach 10,000 by war's end.³⁴

THE FEDERALIST'S COMMERCIAL REPUBLICAN THEORY AND WHAT THREATENS IT TODAY

This last problem of bureaucratic red tape epitomized many of the obstacles Knudsen and others from the private sector involved in American munitions production faced throughout World War II. This again is a central theme of

Freedom's Forge: The chief enemies of the business community that had become so instrumental to American war production were not the soldiers, sailors, or airmen of the Axis powers. They were rather Washington politicians, bureaucrats, hostile journalists, and the denizens of Big Labor and Big Government. Labor unions, as Herman recounts time and again, demanded conditions that could not be met, threatened as well as carried out strikes at numerous industries affecting war production, railroads, and other essential infrastructure, colluded with governmental entities under New Deal legislation to impede war production, and otherwise never let the war interfere with their litany of grievances.³⁵

By late 1940 America was facing the prospect of having to gear up for total war. But Knudsen recognized that America's system of production had by then become obsolete. It had been depleted not merely by the depression but by a government committed to increasing taxes on business and to giving ever more power to labor unions. Those unions, their leaders, and the federal government could never produce what unregulated industry could. In a spirit antithetical to the Progressive mantra supportive of the modern regulatory state, with its rule by centralized planners and so-called scientific "experts," Knudsen placed his trust by contrast in a system of self-governing free enterprise. That system was not centrally planned but was based rather on a confidence that free markets could produce their own "spontaneous orders" (to use an economic term) that would match supply to demand even in a time of war. Herman concludes that Knudsen and his team succeeded in creating the most dynamic wartime production system ever created precisely because what they created was *not* a system. It was "an almost self-perpetuating mechanism that fed upon its own individual dynamic elements"—the very spontaneous order Knudsen anticipated they might produce. Knudsen's arsenal of democracy was the "most powerful and flexible system of wartime production ever devised, because in the end no one devised it. It grew out of the underlying productivity of the American economy, dampened by a decade of depression but ready to spring to life. Out of what seemed like chaos and disorder to Washington would come an explosion of innovation, adaptation, and creativity—not to mention hard work—across the country."³⁶

This book has been a defense of the American spirit of enterprise as seen through the text of *The Federalist*. That spirit of enterprise I have proposed is both what defines American character today and what informs the American way of war. It is predicated on *The Federalist's* defense of a natural rights constitutionalism that understands commerce to be the critical vehicle to the vindication of those rights. Commerce completes nature in a sense by assisting men in attaining their highest ends, ends that are achieved through the exercise of individual, private faculties that it is government's first object to protect. It was the obstructions to commercial enterprise by government in

addition to America's inability to defend itself that had led to the Constitutional convention of 1787. And what the convention sought to provide on *The Federalist's* reading was something approaching a national free market, what Publius suggests was the necessary concomitant of the natural rights constitutionalism *The Federalist* defended. Americans' natural or private rights would be fully activated through the unleashing of that daring and innovative spirit of enterprise *Federalists* 5–7 introduce us to. This same spirit would inform America's military regime and character under the Constitution.

Herman and Hanson say much the same thing about the American way of war in the modern era; that it was the American spirit of enterprise, particularly in the private sector, that as Herman put it produced the greatest arsenal of democracy the world has ever seen. *The Federalist* may have been distant in time from the wars of the twenty and twenty-first centuries but it was not too distant in theory from the interpretations of Herman and Hanson. *The Federalist* was also the first significant American text to express concerns about the regulatory state. *Federalist* 46 had characterized "the spirit" of Congress in 1787 as little more than a collection of special interest pleaders, "partisans of their respective States" rather than "impartial guardians of a common interest." And both *Federalists* 44 and 62 had warned about the problems of laws that were too voluminous to be read and too incoherent to be understood; that benefited the conniving at the expense of the industrious; and that collected wealth from the great body of citizens who worked to create it in order to redistribute it to those who did not; laws that benefited the few rather than the many.

Freedom's Forge presents a litany of examples of how New Deal era regulations impeded the efforts of Bill Knudsen and others to create the arsenal of democracy. But it is not alone in presenting this catalogue. There is a cottage industry of sorts that has documented the extent to which the modern regulatory state has transformed American constitutionalism. That transformation itself took place in the early twentieth century. It occurred contemporaneously with a transformation in American political and social science that rejected the natural rights constitutionalism and political science of *The Federalist*.³⁷ The ideology of progressivism that underwrote the New Deal and other progressive initiatives such as the Great Society had its most discernable origins in nineteenth-century German historicism. In *Natural Right and History* (1953), perhaps the most comprehensive indictment of the historicist school of thought ever written, Leo Strauss spoke of the paradox of World War II: That as much as the United States may have vanquished Germany on the battlefield and annihilated it as a political entity, the conquerors would be deprived of that most sublime fruit of victory by having the yoke of German thought imposed on them thereafter. As I indicated in the Introduction, American social science would carry the torch of German historicism by

denying the natural rights teachings of the Declaration of Independence. All rights, according to modern social science would now be “positive rights”—the product of human contrivance or positive law.³⁸

Carl Becker, perhaps the most influential progressive scholar on the meaning of the Declaration of Independence, wrote in 1922 that the Declaration was “founded on a superficial knowledge of history” and “a naive faith in the instinctive virtues of human kind,” a “faith that could not survive the harsh realities of the modern world.”³⁹ According to Becker, “To ask whether the natural rights philosophy of the Declaration of Independence is true or false is essentially a meaningless question.”⁴⁰ The natural rights of the Declaration were better understood as “historic rights,” rights that might be founded in “nature,” but nature as defined by the particular customs, traditions, and experiences of discrete historical times.⁴¹ Becker of course was not alone in his inimical thinking. An entire generation of progressivist thinkers who accepted the same assumptions emerged in the late nineteenth and early twentieth centuries. Woodrow Wilson, John W. Burgess, Westel H. Willoughby, J. Allen Smith, Frank J. Goodnow, Charles Beard, Henry Jones Ford, and Ramond G. Gettell, among other progressive scholars, challenged explicitly or implicitly the assumptions of the Declaration and the original constitutional order based on those assumptions.⁴²

Progressive political science, epitomized by the American Political Science Association, established in 1903 with Goodnow as its president, was instrumental in providing the intellectual foundations for the modern regulatory state. As Theodore Lowi remarked in *The End of Liberalism*, “The tie between the modern liberal state and political science parallels the older tie between the capitalist system and laissez-faire economics.”⁴³ The new discipline of professional political science was intended to be methodologically rigorous and value-neutral. It was to be divorced from the “subjective” speculations of political philosophy, including the political philosophy of *The Federalist*. Under the guidance of the progressives, modern political science would be “applied science,” social science in service to the ever-augmenting administrative state.⁴⁴ (Goodnow himself was one of the seminal architects of the new discipline of administrative law.)

At the level of constitutional law, once the founders’ natural rights were viewed as mere historical contingencies that could be dispatched as simple anachronisms—all rights thereafter becoming mere “positive” rights as the legal realists would later affirm—the limited government of the Constitution, which derived from the founders’ natural rights, could also be dispatched on grounds that it had been historically eclipsed. If constitutional law were not to be laden by the dead hand of history, the Constitution needed to become a “living” document, adjusting and adapting to the historical imperatives of the day—an idea that became a doctrine of constitutional interpretation for those

who wanted to use the Constitution for their own political purposes. The idea of a “living” Constitution was also a critical ideological presupposition the progressives would have to adopt if the founders’ Constitution of limited government and separated powers were to be abandoned.⁴⁵

The abandonment of limited government constitutionalism and separation of powers has been perhaps the most significant development undermining *The Federalist*’s commercial republican theory. All of the problems of the regulatory state outlined in *Federalists* 44, 46, and 62 have resulted from this demise of the original constitutional order. The consequence has been significant impediments being imposed on American enterprise and national security. In the progressive regime of positive rights, government is exposed to capture by specific interests because, as the *Federalist* numbers above anticipated, the objects of government are no longer public but private goods. Such a concept of interest representation is far from *The Federalist*’s commercial republican theory which was intended for a regime of limited government, a government of limited objects and objects of common concern. The regime of programmatic liberalism that defines modern American republicanism, where representatives are expected to pursue virtually any object of public desire, is not only marked by a transition from the natural rights of the original Constitution to the programmatic rights of the modern welfare state.⁴⁶ It is also marked by faction. By converting what were previously considered to be governmental dispensations into vested or positive rights,⁴⁷ the programmatic liberal state renders politics exceedingly divisive because the positive rights’ granted designated beneficiaries are necessarily exclusive and discriminatory. As the conservative commentator George Will recently suggested, if Americans are not prepared return to “an open, free, mobile, dynamic society” they are “going to have the most bitter distributional politics imaginable.”⁴⁸

And the distributional politics are not merely economic. The late civil rights historian Hugh Davis Graham noted that over the course of the twentieth century, a transition had occurred from the *economic* regulatory state of the Progressive and New Deal eras to the *racial* and *social* regulatory state of the Great Society and beyond.⁴⁹ The transposition of the progressivist class-conflict model of American politics from economic categories to racial and ethnic categories that took place under such initiatives as the Voting Rights Act of 1965 introduced even further problems of political polarization into American law and politics. Like other civil rights initiatives of the mid-1960s, the VRA had initially been an anti-discrimination measure intended to provide African Americans the right to vote almost 100 years after passage of the Fifteenth Amendment. Applying overwhelmingly to those southern states with an egregious history of voting discrimination, the VRA of 1965 was both highly principled and enormously successful. Within five years of its passage it transformed southern politics and American politics more generally.

But then like other civil rights initiatives the VRA became a racial entitlement measure. Extending to language minorities in 1975 the act as interpreted by the US Supreme Court effectively required proportional representation based on race as the de facto legal condition for compliance with the legislation. The result was that there was not only increasing polarization in American politics, as had occurred with the redistributionist policies of the economic regulatory state and the economic class warfare vision embraced by mid-twentieth century progressivism. In the case of the VRA the polarization now taking place was occurring on the basis of that very spring of action both *The Federalist* and the Constitution suggested was the most factious of all: race.⁵⁰

As I have suggested in this book the Constitution's commercial republicanism on *The Federalist's* reading was intended to subordinate racial and religious classifications to economic classifications. This was the point of *Federalist* 10's distinction between those "most violent" factions based on passion and those more common but reconcilable factions based on interest. It was also the point of *Federalist* 17's Declaration that the new constitutional union might moderate the spirit of clanship or claims of ethnoracial chauvinism as had occurred with the Scots when they joined the Acts of Union with England in 1706. As we saw in chapter 6 Martin Diamond described the extended sphere on *The Federalist's* reading as being designed to reduce those divisive economic class struggles that had plagued premodern republics to the safe, even salutary, struggles among ever more differentiated kinds of propertied interests that would flourish under the Constitution. Today's VRA threatens both of these elements of *The Federalist's* commercial republican theory by elevating race to a status of preeminence in American law and by institutionalizing a racial class warfare vision of America that threatens the resurrection of preliberal forms of political conflict anchored in divisive notions of racial identity. Taking purely partisan political conflicts and converting these into incendiary racial conflagrations was a key reason for the litany of constitutional challenges in the 1990s to the race-based redistricting the Federal Department of Justice had imposed on states as a condition for compliance with the VRA.⁵¹ In all of the cases the plaintiffs succeeded in their challenges to the race-based political and social engineering the DOJ was requiring as a matter of course for compliance with the act. As the Court declared in the first of those cases, *Shaw v. Reno* (1993), "racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions."⁵² Justice Clarence Thomas would suggest in another VRA case a year later that the VRA had transformed the highly differentiated regime of predominantly political and economic interests contemplated by the founders' commercial republicanism into an artificially contrived Confederation of race-based "political homelands."⁵³

I mention the case of the VRA because in too many discussions of the modern regulatory state simple economic conflict is the focus of discussion. Wedded to the original idea of the economic regulatory state of the earlier part of the twentieth century however has been a new politics of multiculturalism, a vision of America that considers race and ethnicity not merely as sources of identity and of mutual interest but also as legally determinative categories that afford legitimate foundations for claims to representation and political rule.⁵⁴ And it is not just in voting rights that this multiculturalist vision of America has been institutionalized. It has also occurred in the Supreme Court's affirmative action jurisprudence—in two seminal cases, *Grutter v. Bollinger*⁵⁵ and *Gratz v. Bollinger*.⁵⁶ Three days after the release of those decisions in June 2003 the Court handed down *Georgia v. Ashcroft*,⁵⁷ a VRA case that sought to affirm the same multiculturalist vision of America. *Grutter* and *Gratz* involved “underrepresented minorities” in higher education. *Ashcroft* involved underrepresented minorities in electoral redistricting. In all three cases underrepresentation was defined exclusively in terms of race and ethnicity. The classes recognized were those that John Skrentny has referred to as the handful designated as America's “official minorities”: blacks, Hispanics, and Native Americans in the case of the University of Michigan's undergraduate and law school admissions policies, and blacks in the case of *Ashcroft*—a group recognized under the VRA.⁵⁸ In *Grutter*, a majority on the Court created for the first time in constitutional history a “diversity” exception to the laws of equal protection, ruling that a public university had a compelling interest in promoting a racially diverse student body. Writing in response to the majority's opinion, Justice Clarence Thomas again chided his colleagues: “The Court's civics lesson presents yet another example of judicial selection of a theory of political representation based on skin color—an endeavor” Justice Thomas had “previously rejected” in the case of the VRA.⁵⁹ Such a race-identity theory of representation undermined *The Federalist's* commercial republican theory that sought to define American character by the principle of equality and a spirit of enterprise rather than any type of race classification.

There are additional developments in constitutional law that threaten *The Federalist's* commercial republican theory. Let me conclude by outlining three. The list here of course is not exhaustive and a number of others might be provided but those listed below, like the ones above, relate directly to the themes of this book.

The first challenge to *The Federalist's* commercial republican theory has to do with arguably the most important provision of the Constitution intended to realize that theory: the commerce clause. Ironically, it has been this clause that has been used more than any other provision of the Constitution to allow the federal government to expand its powers beyond those limited enumerated

powers that *The Federalist* defended throughout the work. As every student of constitutional law knows, the rapid growth of the national government through the latter decades of the twentieth century occurred largely as a result of the broad construction of the commerce clause given by the Supreme Court during the New Deal era. Article I, Section 8 of the Constitution provides that Congress shall have the power “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” As *Federalist* 42 made clear commerce here meant “trade,” the buying, selling, and exchange of goods. Identifying commerce with trade when explaining that without the commerce clause states would otherwise be “at liberty to regulate the *trade* between State and State,” Publius then emphasized the identity of commerce with trade again when declaring: “The necessity of a superintending authority over the reciprocal *trade* of confederated States, has been illustrated by other examples as well as our own.” *Federalist* 42 then proceeded to examine trade regulations in Switzerland, Germany, and Holland (42:270–271, emphasis added). *Federalist* 36 similarly distinguished between “agriculture, commerce, and manufactures,” suggesting that when these terms were narrowly construed they referred to three distinct activities (36:215).⁶⁰ In *Federalist* 7, as we know, Publius expressed alarm regarding “those regulations of *trade* by which particular States might endeavor to secure exclusive benefits to their own citizens” and the violence that might ensue from this. The commerce clause was apparently directed at redressing these problems of trade that originated in restrictions between states that had so clogged the arteries of commerce under the Articles of Confederation that a sort of economic sclerosis had set in by 1787. This sclerosis had become so severe that it threatened the prospect of war between the states.

This understanding of the commerce clause is important since the current debate over the size and powers of the federal government largely centers on it. *State of Florida v. United States Department of Health and Human Services* (2011)⁶¹ was one of the early constitutional challenges to the Affordable Care Act (“Obamacare”). There Judge Roger Vinson, hearing the case in the original instance, remarked that there exists today two strains of jurisprudence on the commerce clause that are at loggerheads with one another. The first strain follows the founders’ understanding of commerce as this was outlined in *The Federalist*. Commerce on this reading is what is equivalent to the regulation of trade—the buying or selling of goods. The purpose of the commerce clause on this originalist reading was to create free trade among the states.⁶² The second, newer strain of jurisprudence emerged in 1937 during the era of the New Deal Court. This new, more progressive strain of cases would eventually settle on a broad definition of the commerce clause, one that understood it as allowing for regulations of those activities that had a “substantial economic effect on interstate commerce.”⁶³ This broad construction

of the commerce clause opened the door to the modern regulatory state that many consider to be the antithesis of any notion of free or open trade. There thus stands in constitutional law today two conflicting strains of commerce clause jurisprudence. The Supreme Court presently seems unable to decide which strain shall prevail over time.⁶⁴ Should the Court retain the broader construction of the commerce clause, allowing the federal government to regulate any activity having a substantial economic effect on interstate commerce, the door will remain open for virtually limitless regulations on free trade and a host of other activities nationwide.

The dangers of the modern regulatory state, enabled by the broad reading of the commerce clause referred to above, are the second threat to *The Federalist's* commercial republican theory worth emphasizing. This threat is closely related to the first and has two components. The first is a legal component related to the discussion above. *Federalist* 48 had warned of the dangers of the legislative branch “everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex” (48:316). This is what has happened since the days of the New Deal Court. The Court’s embrace of the substantial effect test in commerce clause jurisprudence has been a recipe for unlimited government and the continuance of the programmatic liberal state where every interest for which there is a constituency gets virtually anything it demands. This construction of the commerce clause has also undermined the Tenth Amendment. States cannot retain those powers left to them under that amendment if the Court persists with its broad construction of the commerce clause.⁶⁵ Accordingly, until the Court revisits such problems as its broad construction of the commerce clause, the federal government’s powers to reign in the spirit of enterprise through regulation will be extensive. This is the *legal* problem involving the regulatory state: Without a favorably inclined Supreme Court, it is difficult to see how the regulatory state can be curtailed since the political class has proven unable and unwilling to restrain it.

The *practical* problems of regulation make up the second component of the problems with the regulatory state. There is again a significant literature on this problem that cannot be recounted here. A couple of examples will have to suffice. As Doug Bandow has proposed, there have been numerous costs to the modern regulatory state for American enterprise. Summarizing a number of recent studies documenting this, Bandow points out that those costs include both the regulatory budget and the increase in total number of restrictions on American business. According to Patrick McLaughlin and Oliver Sherouse of George Mason University’s Mercatus Center, the federal regulatory budget has doubled over the last twenty years and there has been a 25 percent increase in total number of restrictions—the addition of 220,000 regulations.⁶⁶ Clyde Wayne Crews Jr. of the Competitive Enterprise Institute in 2017 estimated the annual cost of regulation at \$1.902 trillion. Economic

regulation was the largest portion of this number at \$399 billion. A close second were environmental regulatory costs at \$394 billion. Tax compliance costs were \$316 billion dollars, while health care costs stood at \$196 billion. There were additional smaller costs for regulations in the areas of communications, labor, financial markets, transportation, energy, agriculture, and other sectors.⁶⁷ Generally speaking big businesses do better than small businesses when it comes to shouldering the cost of regulatory compliance. As Creighton University's James Bailey and Diana Thomas have pointed out, as procedures for starting new businesses increase the number of new businesses entering the market decrease. What is worse, larger incumbent firms fare much better than smaller firms because they can shoulder the regulatory compliance costs much easier.⁶⁸

And compliance costs for federal regulations are not just born by individuals and companies. As McLaughlin and Sherouse point out, there are an enormous kaleidoscope of costs for states. Some states, such as Louisiana, Alaska, and Wyoming are much worse off because of their reliance on chemical production and manufacturing as well as oil and gas extraction. Other states, such as New Hampshire, Rhode Island, and Massachusetts fare much better in terms of regulatory costs because of the different types of business enterprises those states support. The net result is a significant inequality in treatment, undermining principles of federalism. In addition the federal government further upsets federal-state relations by picking winners and losers in the national economy based on ever-changing, frequently fickle political preferences that result in disproportionate impacts on different states. As Badow emphasizes, the defense of the regulatory state has always been that the regulations produce more benefits than costs. But the federal departments, agencies, and commissions that generate the regulations have a strong incentive to inflate the benefits of regulation while downplaying the costs; they tend exaggerate "social costs" while discounting compliance costs. What is more, as Crews points out, "The majority of federal rules and regulations never get officially reviewed."⁶⁹ So there is little science to assessing the costs, other than what is done outside of government. But those costs are significant. Economists John W. Dawson and John J. Seater, calculating the costs of regulations through the cumulative impact of those portions of economic growth lost to regulation from 1949–2005, conclude that the American economy lost \$38.8 trillion of potential GDP through the end of 2011. In other words, had regulations stayed at their 1949 level, America's GDP in 2011 would have been \$53.9 trillion rather than \$15.1 trillion. Finally, in manner reminiscent of *Federalists* 44 and 62, Badow stresses that regulations contribute to increased inequality and undermine the rule of law. They increase inequality because they skew income toward those producers who are politically connected and away from those lacking the resources to navigate the labyrinthine

legal and regulatory frameworks the federal government has generated. Regulations also undermine the rule of law because the regulatory system is fundamentally lawless, beyond any reasonable form of accountability that should be accepted in a democratic system.⁷⁰

Joseph Postell, Paul Moreno, and Philip Hamburger would agree with this assessment of the regulatory state.⁷¹ Again sounding a note similar to Publius' admonitions, Hamburger points out that the modern administrative state is nothing new or peculiar to the last century of American governance. Rather the administrative state is entirely retrograde, reminiscent of the royal prerogative that was exercised by English monarchs during the early Middle Ages prior to the series of reforms that began with Magna Carta (1215). Those reforms sought to institute rule by law rather than by administrative fiat. Hamburger maintains that the administrative state is not a natural outgrowth of modern government but more closely approximates a return to a profoundly unlawful and insidious form of absolute rule the Constitution was designed to overcome. *Federalist* 47 warned that "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny" (47:307–308). Both the hereditary and elective versions of the administrative state, Hamburger maintains, display the same pernicious and potentially tyrannical legal and political sequelae.

The third and final danger to *The Federalist's* commercial republican theory that I will broach relates to how this novelty of the administrative state adversely affects American national defense. There are again two features to the problem here. The first relates to the size of the federal government and how it has blurred that government's priorities, including its most important constitutional responsibility, national defense. *Federalist* 17 reminded us that it was commerce, finance, negotiation, and war that both *should* and likely *would* be the primary concerns of federal representatives given the nature of their ambition. To the extent the federal government consumed itself with the police powers of the states' federal representatives would be occupying themselves with petty matters. So *Federalist* 17 suggested. This seems to have in fact occurred with the ballooning of the federal government's jurisdiction over a seemingly endless number of objects, many of which used to be the domain of state police powers—criminal law, education, public health, land use, etc. The result of these developments has been that national defense is now considered just one of a number of policy preferences government can choose or not choose to support. A good example of this is Congress' 2011 Budget Control Act. Although the BCA imposed different ten-year spending caps for the defense and non-defense components of the discretionary budget it placed caps upon, the defense budget was just as exposed to cuts as budgets

from the Agriculture Department, the Department of Commerce, Health and Human Services, Housing and Urban Development, and a host of other federal departments and agencies. By making defense a discretionary item of spending, as opposed to those non-discretionary items that are the largest part of Congress' annual budgets,⁷² Medicare, Medicaid, and Social Security, the Constitutional significance of national defense has been undermined. "[T]he telling fact," as Seth Cropsey observes, "is that members of Congress, industry leaders, and budget experts" discuss defense department "cuts as though defense were just another federal program. It is not."⁷³ It is arguably the most important constitutional responsibility Congress has to fund. Cropsey notes that the US Navy, since the founding of the Constitution, has been seen as a necessary concomitant of the founders' commercial republican theory. Like the domestic free market that we see *The Federalist* promote, a navy as *Federalist* 11 suggested is necessary to keeping open those oceanic arteries through which commerce must be able to flow.⁷⁴

Obviously enough it is not just the navy that has suffered under the new dispensation that defense is just another policy preference among many. So too has every other branch of the military. But the critical point here is Cropsey's recognition of what this has done to the American spirit of enterprise and its connection to provision for war, a dominant theme of *The Federalist* as well as of this book. "At its core, American seapower is anchored in the entrepreneurial, innovative character that the Constitution's framers saw in their fellow citizens and sought to encourage." Cropsey cites numerous examples of this spirit of innovation dating back to the 1700s. The examples reveal the extent to which the "enterprising democratic spirit has persevered in the American character from the beginning of the Republic. . . . From helping to open new commercial markets to assuring their stability by the reliable enforcement of maritime order, America's innovative spirit finds new economic outlets for innovation."⁷⁵ It may be this, above all, that stands to be lost by the modern regulatory state and those other factors that Cropsey suggests have led to the decline in American naval and military supremacy in recent decades.

Finally, the size of the modern administrative state has led indirectly to undue restrictions on the president's war powers. I have not discussed this aspect of *The Federalist's* constitutionalism since I have focused in this book on the work's noninstitutional theory. However, a critical part of that noninstitutional theory has been how *The Federalist* proposed to reconcile necessity, and in particular military necessity, with political choice. The impossibility of regulating war by fixed rules of law is a problem as old as Western civilization. In *The Peloponnesian War*, for instance, Thucydides detailed how necessity curtailed political choice during war. It perpetually confronted the Athenian and Spartan coalitions with decisions that required breaking laws,

violating treaties, denying long-standing political customs, and alienating allies. The very first paragraph of *The Federalist* itself distinguished between those “political constitutions” established through “reflection and choice” and those established by “accident and force.” Publius highlighted that a critical issue for any government was preserving the freedom to choose and to choose wisely. The most important *Federalist* numbers on national security similarly addressed the necessity of the Constitution accommodating both the positive laws, or those rules freely chosen by the people’s representatives, and extra-legal discretion, the exercise of political judgment confronted by necessity that can never be reduced to rules. Recall *Federalist* 28’s admonition that the “idea of governing at all times by the simple force of law (which we have been told is the only admissible principle of republican government), has no place but in the reveries of those political doctors whose sagacity disdains the admonitions of experimental instruction.” When emergencies arise there may be “no remedy but force” and the means used “must be proportioned to the extent of the mischief.” Fixed rules cannot restrict the use of the appropriate remedies, including remedies involving force.

This power of discretion is critical to the president’s war powers, without which he will be handcuffed in his ability to conduct war. And it raises the question of what restrictions, if any, can be imposed on this executive power. Until recently there were few, other than what voters could exercise at the ballot box. However, presidential war powers have been subjected recently to wide-ranging scrutiny in both the academy and world of politics and law. Much of the criticism here originated in a reassessment of the modern regulatory state and the increased power executive branch departments and agencies exercised over American domestic politics after the New Deal. The criticisms here of executive overreach have been compelling. Too often, however, these criticisms have indiscriminately bled over to foreign policy and national security issues, where the president’s powers should not be curtailed or at least not as readily.

Recently the Supreme Court has weighed into the dispute by arrogating to itself the power of final arbiter over national security in a host of detainee cases arising from the war on terrorism.⁷⁶ In *Hamdi v. Rumsfeld* (2004),⁷⁷ for instance, a plurality on the Court held that citizen detainees who sought to challenge their classifications as enemy combatants were entitled to notification of the factual basis for their classification as well as a fair opportunity to challenge the government’s assertions before a neutral decisionmaker.⁷⁸ In *Boumediene v. Bush* (2008), the Court went even further, providing alien detainees full constitutional habeas corpus rights anywhere the United States exercised de facto jurisdiction. Both *Hamdi* and *Boumediene* centered on what has been a perennial problem in American constitutional law: how to reconcile individual rights with the president’s war powers. The principal

problem in both cases was not merely, as their critics have argued, that the Supreme Court was granting to itself what only the political branches of government could decide (although that was certainly a significant problem). An additional issue in these cases was that the Court was trying to “legalize” an area of political decision-making that could not be reduced to rules. Not only would the decisions in *Hamdi* and *Boumediene* result in the judiciary displacing the political branches of government, the president and Congress, as the final arbiter of national security policy. In addition, because the Court was attempting to reduce to legalistic rules these types of war policy questions, judges and lawyers would be making terrorism policy rather than politically responsible representatives exercising fact-contingent discretion.⁷⁹ Whatever benefits these decisions may have granted to individual citizen and alien detainees, it would have the arguably more significant adverse effect of reducing America’s ability to conduct war effectively. This itself would jeopardize the rights of all other Americans affected by such decisions. *Hamdi* and *Boumediene* also placed the ultimate responsibility for deciding the most fundamental questions of war in the judiciary. According to critics, including the Court itself in an earlier incarnation, that institution has neither the constitutional *authority* nor the institutional *capacity* to assess such questions.⁸⁰

Much more could be said about this issue as well as the other issues above. However, I have tried to outline here a number of recent problems that have arisen that in different ways threaten *The Federalist*’s commercial republican theory as I have developed it in this book. As I indicated in the introduction, this book was intended to vindicate the American commercial republic described in *The Federalist* against those liberal critics today who look upon commercial life and its development with condescension or derision. Even America’s corporate leaders today seem prepared to embrace the progressive disdain for the corporate or commercial life.⁸¹ Although like every other political regime, the commercial republic has its defects, a number of which I have discussed in this book, the commercial republic has proven to be arguably the most defensible regime that is practically attainable. Its theoretical basis in the American case is principled. The economic and social inequality it facilitates is in most instances a consequence of its justice since those given equal opportunities will inevitably exercise those opportunities unequally. Yet the wealth the American commercial republic has generated has been used for numerous programs, welfare and otherwise, that have benefited the least fortunate and not just those in this country.

The attacks on the Lockean understanding of nature that *The Federalist* largely embraces by those such as the environmental lobby are too often exaggerated. They are also frequently based on dubious and speculative science that is partisan. In addition, today’s anti-commerce critics, including modern environmentalists, too seldom consider the real costs to Americans of compliance

with all too-often overzealous demands. As the economist and former president of the Czech Republic, Vaclav Klaus, has proposed the modern environmentalist and green movements are not only anti-individual, anti-market collectivist movements that are fundamentally fervent in character. In their attempt to set up a brave-new world opposed to all forms of commercial advancement, they constitute one of the most significant threats to freedom in both Europe and America. That includes both freedom of speech and freedom of action. Based more on ideology than they are on science, the climate change and global warming movements ultimately threaten civilization itself.⁸² *The Federalist* embraces a theory of human thought and action that understands that work and the innovative transformation of nature are the preconditions to the generation of real value in economic and social life as well as the precondition for civilization. To say this of course is not to say that the commercial republic *The Federalist* defends cannot exist “in harmony with nature”—whatever that might mean. It does however recognize that the very problems environmentalists contend need to be resolved are themselves *technological* problems that generally require *more*, not less, commercial and scientific development. Whatever dreams those in the environmental community may harbor about arresting the advance of the commercial republic, the trajectory of that republic will continue unabated.

Finally, *The Federalist* supports a national security apparatus that is prepared to intervene in international affairs not only for reasons of interest but for reasons of principle as well. The two are often aligned. Paraphrasing from the historian and archaeologist, John R. Hale, Robert Kaplan has remarked that in ancient Greece “it was the Athenian navy that was the ‘emblem of liberty and democracy.’ . . . ‘Without the Athenian navy,’ Hale writes, ‘there would have been no Parthenon, no tragedies of Sophocles or Euripides, no *Republic* of Plato or *Politics* of Aristotle.’ The warships of ancient Athens were ‘also a force that fostered new democracies throughout the Greek world.’”⁸³ America’s navy Kaplan maintains has served a similar purpose in the modern world, maintaining order, democratic principle, and commercial traffic lanes. Like Seth Cropsey, Kaplan contends that the US Navy has created a global commons in a way the Russians and Chinese, fundamentally undemocratic regimes, never could.⁸⁴

Perhaps this then is the ultimate testament to the prescience of both Thucydides and *The Federalist*, who anticipated as well as any political thinkers the importance of navies to the dynamism and the principles of commercial republics old and new. In America’s case, the US Navy has been a partner of American commercial development since the country’s founding. Yet it is important to stress that *The Federalist*’s commercial republican theory cannot work on autopilot. If its most critical elements are to be preserved in future it will require political and intellectual leadership that understands its principles and what is necessary to maintain them.

NOTES

1. Karl-Friedrich Walling, *Republican Empire: Alexander Hamilton on War and Free Government* (Lawrence: University Press of Kansas, 1999), 96.

2. Seth Cropsey, *Mayday: The Decline of American Naval Supremacy* (New York: The Overlook Press, 2014), 36.

3. This is how Barry Cooper describes what we might call the Lockean approach to nature that has typified Western technological society. That approach to nature has been the subject of analysis by such twentieth century thinkers as Eric Voegelin, Leo Strauss, Hannah Arendt, Hans Jonas, and George Grant. See Barry Cooper, *Action into Nature: An Essay on the Meaning of Technology* (Notre Dame, IN: University of Notre Dame Press, 1991).

4. Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: The University of Chicago Press, 1988), 285, n.3. See also, The Introduction, n42.

5. See, for instance, Max Boot, *The Savage Wars of Peace: Small Wars and the Rise of American Power* (New York: Basic Books, 2002); Walter Russell Mead, *Special Providence: American Foreign Policy and How It Changed the World* (New York: Routledge, 2002); and Henry R. Nau, *Conservative Internationalism: Armed Diplomacy under Jefferson, Polk, Truman, and Reagan* (Princeton, NJ: Princeton University Press, 2013).

6. Robert Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century* (New York: Vintage Books, 2007).

7. Kagan, *Dangerous Nation*, 3–4, 39–52, and 71–81. Abraham Lincoln affirmed the nature of American nationhood during the Civil War by proposing that its “central idea” was not to be found in the Constitution or the Union but rather in those equal rights promised in the Declaration of Independence. If that was the case then at the core of American nationhood “were universal principles that transcended national boundaries” (*Ibid.*, 262). Kagan maintains those principles have guided American foreign policy from its inception.

8. McDonald summarizes the elements of James Madison’s political economy as McCoy develops this: “that government should intervene to arrest the evolution of the stages of progress at the commercial agricultural stage,” engage in commercial regulations that would secure America’s markets for agricultural production, keep household manufactures limited to simple objects while more refined manufactures could be imported from Europe, and promote territorial expansion as well as commercially discriminatory policies against Britain. In response, McDonald concludes: “This was pie-in-the-sky political economy, based upon abstract theory and a lack of understanding of the British economy, international trade, and the requisites of credit, both public and private.” Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 134–135.

9. Kagan, *Dangerous Nation*, 428, n.1:

The engines of American expansion before, during, and after the Revolution were classically liberal pursuits: individual freedom, financial well-being, personal fulfillment, greed, the desire for land and profits. While an attempt has been made to distinguish Jeffersonian

expansionism “in space” aimed at preserving republican virtues, and a Hamiltonian expansion “in time,” aimed at building a liberal, commercial, modern state (see Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* [Chapel Hill: The University of North Carolina Press, 1980]), this is one of those cases where the simplest explanations work best. Jefferson may well have hoped that territorial expansion into the Louisiana territory would help him extend the life of the yeoman farmer in America. But that is not why Americans, and America, expanded into the Louisiana territory. The reasons were much the same as they had been when Anglo-Americans expanded into the Ohio Valley, and later when they moved across the Great Plains and into the Pacific Northwest.

10. See *ibid.*, 9. See also, Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. Talcott Parsons, intro. Anthony Giddens (New York: Routledge, 1996).

11. Kagan, *Dangerous Nation*, 74–75, emphasis in original.

12. On the need for a federal military during the 1780s and the dangers of states seceding or taking over the defense of border regions in the United States, see also, Richard H. Kohn, *Eagle and the Sword: The Federalists and the Origins of the American Military Establishment, 1783–1802* (New York: Free Press, 1985), 54–60.

13. Kagan, *Dangerous Nation*, 75.

14. Kagan, *Dangerous Nation*, 72–73. See also, Thomas G. West, “The Economic Theory of the American Founding,” in *Rediscovering Political Economy*, ed. Joseph Postell and Bradley C. S. Watson (Lanham, MD: Lexington Books, 2011), 159:

It is true that there were bitter disputes over particular policies during the Founding era, such as the paying of the national debt, the existence of a national bank, and whether to subsidize domestic manufactures, and these differences seemed tremendously important in the 1790s. But in spite of these quarrels, there was a background consensus on both principles and the main lines of economic policy that government should follow. John Nelson’s verdict on the 1790s is sound: “[W]hen the causes of the slow dissolution of consensus among America’s ruling elites after ratification of the Constitution are detailed, the evidence points to *specific* disagreements over programmatic issues and not fundamental schisms over the essential role of government.” (emphasis in original)

It is worth noting that Drew McCoy has also observed that during the Revolutionary period

most Americans had no choice but to adopt the deceptively simple and perhaps chimerical proposal that John Brown had offered in his widely read tract from the 1750s—“that Commerce and Wealth not be discouraged in their Growth; but checked and controuled in their Effects”—for very few of them, including Benjamin Franklin, ever seriously anticipated a republican America without commerce and the wealth and refinement it would inevitably bring. Franklin’s vision of an expanding agricultural republic was not a call for Americans to retreat to a social simplicity that was primitive or barbarous—indeed, no one appreciated more than he the advantages of Hume’s version of civilized cultural progress. And above all, Franklin’s republican vision was hardly that of a Spartan, self-contained society of hermit yeomen, for it was closely tied to a much broader international commercial vision.” (Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* [Chapel Hill: The University of North Carolina Press, 1980], 75)

15. F. A. Hayek, *The Constitution of Liberty*, in *The Collected Works of F.A. Hayek*, Vol. 17, ed. Ronald Hamowy (Chicago: The University of Chicago Press, 2011), 79.

16. See West, “The Economic Theory of the American Founding,” 159–160 and 179–180.

17. See Hayek, *The Constitution of Liberty*, 85.

18. Henry R. Nau, *Conservative Internationalism: Armed Diplomacy under Jefferson, Polk, Truman, and Reagan* (Princeton, NJ: Princeton University Press, 2015), 50–51.

19. See note 5.

20. Victor Davis Hanson, *The Father of Us All: War and History, Ancient and Modern* (New York: Bloomsbury Press, 2010), 88.

21. At one level this would “raise up” the entrepreneurial spirit of the South to a degree more closely approaching the Northern Hive while at the same time tempering the potential aggressiveness of the Hive’s own animated spirit of enterprise that *Federalist 5* suggested might lead to war or territorial conquest in an America divided. At another level Publius saw such economic integration as potentially facilitating political integration as well. Although many of the states in 1787 were “little more than a society of husbandmen” and had made little “progress in those branches of industry which give a variety and complexity to the affairs of a nation,” the changes that would take place “on the comparative situation of the different States” over time under the Constitution would invariably “have an assimilating tendency” (56:363). *Federalist 53* further speculated: “The affairs of the Union will become more and more objects of curiosity and conversation among the citizens at large. And the increased intercourse among those of different States will contribute not a little to diffuse a mutual knowledge of their affairs, as this again will contribute to a general assimilation of their manners and laws” (53:345). The intercourse referred to here would likely be that of a predominantly economic variety. Through facilitation of an increasingly uniform culture of enterprise, *Federalist 53* suggests, greater interaction will occur between the states and this will expand discussion of political affairs of a more nationalist variety. American manners and the spirit of the laws under the Constitution will be increasingly assimilated and a more perfect union fostered.

22. See Victor Davis Hanson, *Carnage and Culture: Landmark Battles in the Rise of Western Power* (New York: Anchor Books, 2002), esp. 27–59.

23. *Ibid.*, 1–24, 32, 39–59, 74–79, 90–98, 120–132, 162–169, 254–267, 269–275, 368–388, and 392–463. See also, Hanson, *The Father of Us All*, 137–157.

24. Hanson, *The Father of Us All*, 140.

25. Arthur Herman, *Freedom’s Forge: How American Business Produced Victory in WW II* (New York: Random House, 2012).

26. *Ibid.*, ix–x, 14–36, 115, and 126–127.

27. *Ibid.*, 23. See also, *ibid.*, 14–22.

28. Niall Ferguson, *The Cash Nexus: Money and Power in the Modern World, 1700–2000* (New York: Basic Books, 2001), 404.

29. Azar Gat, *Victorious and Vulnerable: Why Democracy Won in the 20th Century and How It Is Still Imperiled* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2010), 4–6.

30. Ferguson, *The Cash Nexus*, 403.

31. Herman, *Freedom's Forge*, 167–168.
32. *Ibid.*, 254.
33. *Ibid.*, 256.
34. *Ibid.*, 287. See also, *ibid* 27–28 and 284–288.
35. In his chapter on the problems that Henry Kaiser's shipping business, Knudsen, and ultimately all of American industry faced with labor unions in early 1941, Herman writes:

In February the CIO pulled workers off the lines at the Allis-Chalmers plant in Milwaukee, which was making turbines for Navy vessels, and at the Cluett and Peabody factory making uniforms. There were strikes at International Harvester, at Ford's major plants, and at the North American plant where B-25s were being built. By March 1941, at a time when airplane production was at a vital premium, there were no fewer than fifteen strikes at aircraft or aircraft-related companies.

Knudsen was furious. "This is criminal," he told the National Press Club, "almost like men fighting about who should hold the hose when the house is on fire"—because he knew most of the strikes weren't over wages or conditions but which union should have jurisdiction over new workers or a new plant. . . .

Then, at the start of April, John L. Lewis, the fiery leader of the United Mine Workers, threatened to pull 400,000 of his men out in a nation-wide strike. It was not just defense plants but the entire width and breadth of American industry that was looking at a complete shutdown.

As Herman comments, what was particularly aggravating to Knudsen was that the friends of the unions in the administration were "blaming him and big business for moving slowly on war production, when it was the unions who were putting on the brakes—slowing war production before Pearl Harbor, Knudsen later calculated, by as much as 25 percent." Herman, *Freedom's Forge*, 140–141. See also, *ibid.*, X and 156–160.

36. *Ibid.*, 154. See also, *ibid.*, 112, 115–117, and 119.
37. See James W. Ceaser, *Liberal Democracy and Political Science* (Baltimore: Johns Hopkins University Press, 1990), esp. 11–24 and 41–93.
38. Leo Strauss, *Natural Right and History* (Chicago: The University of Chicago Press, 1953), 1–8, 35–80.
39. Carl Becker, *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Vintage Books, 1922), 278–279.
40. *Ibid.*, 277.
41. *Ibid.*, 265–266. See also, Harry V. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, MD: Rowman & Littlefield, 2000), 73–121.
42. Dennis J. Mahoney, *Politics and Progress: The Emergence of American Political Science* (Lanham, MD: Lexington Books, 2004), 75–87, 145–150.
43. Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States*, 2nd ed. (New York: W. W. Norton & Company, 1979), xv.
44. John Marini and Ken Masugi, "Introduction," in *The Progressive Revolution in Politics and Political Science: Transforming the American Regime*, ed. John Marini and Ken Masugi (Lanham, MD: Rowman & Littlefield, 2005), 2.

45. See Thomas G. West, "Progressivism and the Transformation of American Government," in *The Progressive Revolution in Politics and Political Science*, 13, 28.

46. Sidney M. Milkis, *The President and the Parties: The Transformation of the American Party System since the New Deal* (New York: Oxford University Press, 1993), 14.

47. George W. Carey, *In Defense of the Constitution* (Indianapolis: Liberty Fund, 1995), 50.

48. George F. Will, "Connoisseurs of Liberty," *Cato's Letter* 15, no. 3 (Summer 2017): 2.

49. See Hugh Davis Graham, "Voting Rights and the American Regulatory State," in *Controversies in Minority Voting*, eds. Bernard Grofman and Chandler Davidson (Washington, DC: Brookings Institution, 1992), 177. See also, Hugh Davis Graham, *The Civil Rights Era: Origins and Development of National Policy, 1960–1972* (New York: Oxford University Press, 1990), esp. 362–365.

50. In his famous convention speech of June 6, 1787, the precursor to *Federalist* 10, Madison noted how religion could "become a motive to persecution & oppression" and that "we have seen the mere distinction of colour made in the midst of the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man." James Madison, speech at the Constitutional Convention, June 6, 1787, in *Records of the Federal Convention*, ed. Max Farrand (New Haven, CT: Yale University Press, 1966) 1:135. Thus, for Madison, not just religious classifications might promote oppression and social disintegration; race classifications were equally ominous.

51. *Shaw v. Reno*, 113 S.Ct. 2816. (1993), *Miller v. Johnson*, 115 S.Ct. 2475 (1995), *Shaw v. Hunt*, 116 S.Ct. 1894 (1996), and *Bush v. Vera* 116 S.Ct. 1941 (1996), all involved successful constitutional challenges to the racial redistricting that compliance with the VRA required as a matter of course.

52. *Shaw v. Reno*, 113 S.Ct. at 2832, O'Connor, J., opinion of the Court.

53. *Holder v. Hall* (1994) 114 S.Ct. 2581, 2598, Thomas, J., concurring.

54. Anthony A. Peacock, "The Voting Rights Act and the Politics of Multiculturalism: The Challenge to Commercial Republicanism at Century's Turn," in *Courts and the Culture Wars*, ed. Bradley C. S. Watson (Lanham, MD: Lexington Books, 2002), 167, 168.

55. 123 S.Ct. 2325.

56. 123 S.Ct. 2411.

57. 123 S.Ct. 2498.

58. See John D. Skrentny, *The Minority Rights Revolution* (Cambridge, MA: Belknap Press of Harvard University Press, 2002), 1–20, 85–142.

59. 123 S.Ct. at 2363, Thomas, J., concurring in part and dissenting in part, referring to *Holder v. Hall*, 512 U.S. 874, 899, Thomas, J., concurring in judgment.

60. See also, *United States v. Lopez*, 514 U.S. at 586, Thomas, J., concurring.

61. Case No.: 10–cv–91–RV/EMT, hereinafter *Florida v. HHS*.

62. In *Florida v. HHS* Judge Vinson examined essays by Robert Bork and Daniel Troy, as well as by Randy Barnett. These essays made clear that "commerce" during the founding era, in Madison's notes to the Convention, in *The Federalist*, and other

sources, referred only to activity involving trade or exchange. *Ibid.*, 21. It never meant what the Court says it means today—namely, anything that has “a substantial economic effect on interstate commerce” (This test was first embraced by the Court in *Wickard v. Filburn*, 317 U.S. 111 at 125 (1942)). As Judge Vinson pointed out, Hamilton intimated in *Federalist* 34 that the legal definition of commerce did not encompass manufacturing or agriculture since the encouragement of these activities was to remain a subject of state expenditures. *Florida v. HHS*, 22–23. Vinson concluded that the commerce clause was intended, above all, to create free trade between the states. Trade restrictions between states had almost destroyed the union, as *Federalists* 6 and 7 pointed out.

A long line of Supreme Court cases was consistent with this interpretation of the commerce clause. Some of the more significant examples are *United States v. E.C. Knight Co.*, 156 U.S. 1 (1895), finding that a manufacturing monopoly was not subject to the commerce power, *Hammer v. Dagenhart*, 247 U.S. 251 (1918), concluding that Congress was without power to prohibit the interstate transportation of goods produced with child labor, and *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936), maintaining that the commerce power did not extend to the regulation of the wages, hours, and working conditions for coal miners. Prior to these decisions the Supreme Court’s seminal holding in *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824), that commerce included commercial navigation on waterways between states, also seemed to understand commerce in terms of trade. Later cases like *United States v. Lopez*, 514 U.S. 549 (1995), striking down the Gun-Free School Zones Act of 1990, *Printz v. United States*, 521 U.S. 898 (1997) finding provisions of the Brady Handgun Violence Prevention Act of 1993 constitutionally infirm, and *United States v. Morrison*, 529 U.S. 598 (2000), similarly holding the Violence Against Women Act of 1994 unconstitutional, also viewed commerce narrowly and placed limits on what Congress could do under the auspices of the commerce clause.

63. *Wickard v. Filburn*, 317 U.S. 111 at 125 (1942). Decisions such as *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), upholding the National Labor Relations Act of 1935, *United States v. Darby*, 312 U.S. 100 (1941), upholding the Fair Labor Standards Act of 1938, and *Wickard*, upholding the Agricultural Adjustment Act of 1938, developed this line of jurisprudence. Most recently *Gonzales v. Raich*, 545 U.S. 1 (2005), which rejected a challenge to the federal Controlled Substances Act (regulating drugs) largely on the basis of *Wickard*, has maintained this line of authority and even expanded it.

64. The most significant recent case on this score has been *National Federation of Independent Business v. Sebelius* 567 U.S. 519 (2012). That case again represented a challenge to Obamacare’s individual mandate to purchase medical insurance. The mandate had been defended by the Obama Administration on the basis of the commerce clause—that the commerce clause allowed the federal government to impose the mandate. The Court disagreed, contending that the mandate could not be imposed under the commerce clause because there was no activity to regulate. Rather, it said, the mandate was itself requiring activity, something Congress could not do under the clause. However, Chief Justice Roberts, for a different majority on the Court, *did* allow the individual mandate to be imposed by Congress under its taxing power, even

though, as the dissent argued, the mandate had been defined in the Obamacare legislation specifically as a “penalty,” with all of the legal consequences that flowed from that, one of which is that it could not be construed as a tax.

65. Justice Thomas, writing a concurring opinion in *United States v. Lopez*, remarked that the Court’s “substantial effect” test, “taken to its logical extreme, would give Congress a ‘police power’ over all aspects of American life.” *United States v. Lopez*, 514 U.S., at 584, Thomas, J., concurring. Rendering numerous other provisions of Article 1, Section 8, such as the power to enact bankruptcy laws (cl. 4) and to grant patents and copyrights (cl. 8), superfluous, *ibid.*, 588, the substantial effect test came close to turning “the Tenth Amendment on its head. Our case law could be read to reserve to the United States all powers not expressly *prohibited* by the Constitution” (*ibid.*, 589, emphasis in original).

66. Doug Bandow, “Mr. Trump: America’s Economic Problem Is Regulation, Not Trade,” *The American Spectator*, April 4, 2016, https://spectator.org/65954_mr-trump-americas-economic-problem-regulation-not-trade/, 1.

67. Clyde Wayne Crews Jr., *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, 2017 Edition (January 8, 2017). <https://ssrn.com/abstract=2502883>, <http://dx.doi.org/10.2139/ssrn.22883>.

68. Bandow, “Mr. Trump,” 1–2.

69. Crews, “Tip of the Costberg,” 32.

70. Bandow, “Mr. Trump,” 3–4.

71. Joseph Postell, *Bureaucracy in America: The Administrative State’s Challenge to Constitutional Government* (Columbia: University of Missouri Press, 2017); Paul D. Moreno, *The Bureaucrat Kings: The Origins and Underpinnings of America’s Bureaucratic State* (Santa Barbara, CA: Praeger, 2017); Philip Hamburger, *The Administrative Threat* (New York: Encounter Books, 2017); and Philip Hamburger, *Is Administrative Law Unlawful?* (Chicago: The University of Chicago Press, 2014).

72. Since defense appropriations are done annually, the Article I, Section 8, Subsection 12 mandate restricting military appropriations to two years is not implicated here.

73. Seth Cropsey, *Mayday: The Decline of American Naval Supremacy* (New York: The Overlook Press, 2014), 110. See also, *ibid.*, 306–308.

74. *Ibid.*, 55. See also, *ibid.*, 38, 58, 61, 67, and 100.

75. *Ibid.*, 100.

76. *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Rasul v. Bush*, 542 U.S. 466 (2004); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006); and *Boumediene v. Bush*, 553 U.S. 723 (2008).

77. 542 U.S. 507.

78. 542 U.S. at 533, O’Connor, J., opinion of the Court; see also *ibid.*, 509.

79. On the problem of judges and lawyers making terrorism policy, see Jack Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* (New York: W. W. Norton, 2007). See also, John Yoo, *The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11* (Chicago: The University of Chicago Press, 2005).

80. In *Chicago & Southern Airlines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103 (1948), FDR’s former attorney general, Justice Robert Jackson, had this to say on behalf of the Court:

The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit *in camera* in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry. (*Chicago & Southern Airlines*, 333 U.S. at 111, cited at *Hamdi v. Rumsfeld*, 542 U.S. at 582, Thomas, J., dissenting)

Justice Jackson here was emphatic: the judiciary had *no* role in foreign policy disputes. Courts not only lacked the “aptitude, facilities [and] responsibility” to make foreign policy decisions. Such decisions were inherently *political*. That is why the Constitution “wholly confided” such powers “to the political departments of government.”

This point was crucial to *Federalist* 78, where Publius emphasized that “the general liberty of the people can never be endangered from [the courts of justice] . . . so long as the judiciary remains truly distinct from both the legislature and the Executive.” Publius agreed that “‘there is no liberty, if the power of judging be not separated from the legislative and executive powers’” (78:497, quoting Montesquieu’s *The Spirit of the Laws*) Where the judiciary exercises legislative or executive powers, then, liberty will be in jeopardy.

81. As Kevin Williamson of the conservative magazine *National Review* recently remarked: “In the progressive lexicon, the word ‘corporation’ is practically a synonym for ‘evil.’ Corporations, in the progressive view, are so stoned on greed and ripped on ruthlessness that they present an existential threat to democracy as we know it. When the Left flies into a mad rage about . . . whatever, the black-bloc terrorists don’t burn down the tax office or the police station: They smash the windows of a Starbucks, never mind CEO Howard Schultz’s impeccably lefty credentials.” Kevin D. Williamson, “Progressivism in the Boardroom: A Class and Its Interests,” *National Review*, March 6, 2017, 24. As Williamson’s article highlights, the CEO’s of many of America’s largest corporations themselves embrace the progressive credo of contempt for corporate America.

82. Vaclav Klaus, *Blue Planet in Green Shackles: What is Endangered: Climate or Freedom?* (Washington, DC: Competitive Enterprise Institute, 2008).

83. Robert D. Kaplan, *Earning the Rockies: How Geography Shapes America’s Role in the World* (New York: Random House, 2017), 130, quoting John R. Hale, *Lords of the Sea: The Epic Story of the Athenian Navy and the Birth of Democracy* (New York: Viking Penguin, 2009), xxiii–xxv and xxvii. See also, Kaplan, *Earning the Rockies*, 173.

84. Kaplan, *Earning the Rockies*, 136.

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