

THE CONCEPT OF INSTABILITY AND THE THEORY OF
DEMOCRACY IN THE *FEDERALIST*

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Dissertation submitted in partial fulfillment
of the requirements for a Doctor in Philosophy
in Political Science in the Graduate School
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ABSTRACT

This dissertation describes instability as a problem with a variety of sources and explains Publius' contribution to understanding the importance of these problems for politics and political theory. Using the *Federalist* and Publius' reading in political theory, history, and politics to ground my analysis, I explain the concept of instability as a multi-faceted problem that requires different solutions. Rather than referring to instability as an abstract and amorphous idea, I describe instability as arising from one or a combination of four distinct notions: *stasis* or factional conflict, corruption, the mutability of the laws, and changing global conditions. My dissertation suggests that one of the primary goals of ancient and modern democracies was to solve the political challenges posed by instability. I further argue that the sources of instability remain relevant because they allow us to describe the problem of instability in a way that is theoretically and practically useful for understanding the role that democracy plays in addressing them. Finally, I suggest that describing and addressing the patterns of instability were central to Publius' interpretation of history and political theory and that recognizing and tackling these patterns are a part of the scope of modern political science and are central to the study of democratic politics.

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1. Introduction

1.1. Publius and the Concept of the Instability

The analysis undertaken in this project examines the contribution made by Publius to the history of political theory in general and to the study of instability in particular. My dissertation operates under the assumption that a careful study of the *Federalist* is not merely a study of the origins of the American political system, but that it provides an opportunity to study the concept of instability as a central question of political theory. Since the establishment of the United States as the first modern democracy, the idea that democracies can be stable regimes has contributed to shaping the contemporary endorsement of democracy as the best form of government. Yet the correlation of democracy with stability is a relatively new notion. Indeed, it is only in the last 250 years that collective wisdom has associated democracy with stability. This state of affairs stands in sharp contrast to the discourse about democracy in the *Federalist*, which describes the democratic idea of rule by the people as a history of chaos and decay. Claims about the chaos and turbulence of assemblies were pervasive in the *Federalist*. Yet despite the evidence from history that democracies were unstable and turbulent, the argument of the *Federalist* insists that good government can be constructed so that it is both popularly-based *and* stable.

In this dissertation, I use the *Federalist* to examine the problem of instability in democracies. The choice of this collection of essays written by Alexander Hamilton, John Jay, and James Madison under the pseudonym Publius is an appropriate one because the *Federalist* provides what is perhaps the first and most significant defense of the idea that popular government can provide a credible, preferable, and stable alternative to monarchy in the modern canon of Western political theory. My dissertation uses ancient and modern history and politics to explain the concept of instability as a political problem that shapes the history, theory and practice of democratic politics. I further trace the origins of the conceptual history of instability to classical antiquity and examine the ways that the notion of instability as articulated by Montesquieu, the foremost modern political thinker of Publius' time, formed the basis of Publius' description of instability and his defense of the ways that the new Constitution would provide the means to address the problem.

The notion that stability in democracy depends upon correctly understanding the threats posed to majority government and establishing prudent practices and institutions that would prevent them is articulated and re-articulated throughout the history of political theory. By the time the framers confronted the problem of instability in the late eighteenth century, there was a long tradition on the matter from which they could draw. According to Madison and Hamilton, who collectively wrote under the pseudonym Publius, the history of democratic politics from classical antiquity through early modern times taught an almost unequivocal lesson about the ineffectiveness of all attempts to construct stable democratic governments. In view of

this history, one could thus only be skeptical regarding the possibility of establishing stable democracies. On the basis of this interpretation, Publius argued tirelessly that democracy and popular governments, as they were hitherto understood, were synonymous with mob rule. The solution, Publius argued, was to structure majoritarian government so that the problem of instability could be avoided. Publius' arguments influenced the ratification of the Constitution of 1787 and helped to establish the question of democracy as central to modern political theory. In recognition of this fact, years after its ratification, Madison referred to the Constitution as "the best legacy ever left by law givers to their country and the best lesson given to the world by its benefactors."¹

According to Publius' interpretation of history and experience, the concern expressed in the opening lines of the *Federalist* suggested that the democracies of the past could not protect themselves against the consequences of chance and force. Publius drew on the experiences of ancient democracies, ancient confederations, ancient republics, medieval republics, modern confederations, modern monarchies, and modern confederations in his articulation of the problem of instability in democracy. Publius pieced together this long and often incongruent history to advocate for a set of institutions promoting stability and institutions, which only nominally had their foundation in the history of political theory and practice. According to Publius' pronouncement in *Federalist* 1, "It has been frequently

¹ See Madison's article on "The Government of the United States" in the *National Gazette*, February 6, 1792.

remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.” Publius not only suggested the experimental nature of the American political enterprise, but also he used history to challenge prevailing views about securing political stability by suggesting that the politics of America would provide an alternative to monarchical government, the dominant political system of the European world at that time. According to the *Federalist*, despite a long history of political instability that Publius saw as endemic to democracies, the Constitution held the possibility of a break with this history and a legitimate chance for securing a stable democratic government.

This dissertation describes instability as a problem with a variety of sources and explains Publius’ contribution to understanding the importance of these problems for politics and political theory. I employ the political and historical lessons, which were the basis for Publius’ understanding of democracy, to describe the concept of instability. Using the *Federalist* and Publius’ reading in political theory, history, and politics to ground my analysis, I explain the concept of instability as a multi-faceted problem that requires different solutions. Rather than referring to instability as an abstract and amorphous idea, I describe instability as arising from one or a combination of four distinct notions: *stasis* or factional conflict, corruption, the mutability of the laws, and changing global conditions. My dissertation suggests that

using ancient politics and history to describe the sources of instability and to prescribe their solutions, which Publius did when defending the Constitution of 1787, allows us to recognize that one of the primary goals of ancient and modern democracies was to solve the political challenges posed by instability. In what follows, I argue that a concern for these sources of instability continues throughout political history and political theory. I further argue that the sources of instability remain relevant because they allow us to describe the problem of instability in a way that is theoretically and practically useful for understanding the role that democracy plays in addressing them. Finally, I suggest that describing and addressing the patterns of instability were central to Publius' interpretation of history and political theory and that recognizing and tackling these patterns are a part of the scope of modern political science and are central to the study of democratic politics.

1.2. The Sources of Instability: A Long and Complex History

This project identifies *stasis* as the first and most prevalent source of political instability in the history of human affairs. *Stasis* is an ancient Greek term that describes factional conflict or civil war. According to the ancient Greek narratives, *stasis* emerges when individuals form factions that are uncooperative and typically violent in ways that threaten political stability. I suggest that there is a connection between Publius' definition of faction in Federalist 10 and the description of factional conflict provided by the ancient commentators. Publius famously defined faction as "a majority or minority group united by some common interest adverse to the rights of

other citizens and to the public good.”² As ancient and modern history and American political life in the late eighteenth century confirmed, the most prevalent source of faction was the conflict between the classes. While there was some sense of the basic divisions shaping political conflict in the late eighteenth century, which included one’s status as a creditor or a debtor, residency in large/small states or slave/non-slave states, various religious differences, and conflicts over political allegiances, Publius recognized that these conflicts and new unpredictable sources of conflict would remain an enduring feature of political life in an America in which government was popularly based.

Publius saw factional instability as a problem that could only be solved politically. Gordon Wood (1969) confirms that Publius believed that every community divides itself into hostile camps of the few and the many and therefore experiences the consequences of faction. “If either of these interests possessed all the power, it would oppress the other.”³ This was an argument that had been rehearsed just a decade prior by the Loyalists during the American Revolution. They argued against a break with the crown on the grounds that republics “had always been torn to pieces by faction and internal struggle.”⁴ The *Federalist* suggests that faction was a greater concern under popular government because majority politics becomes a tool of factional conflict. The problem of faction was arguably the most significant impediment to the establishment of the new regime for Publius. Wood articulates

² See Federalist 10.

³ See Wood 554.

⁴ See Wood 95.

Publius' view of faction in the following manner: "In the minds of the Federalists the measure of a free government had become its ability to control factions."⁵ The great fear expressed by Publius was that a majority faction in a democratic republic would seize power and threaten the liberty of everyone. Because of the nature of decision-making under democratic forms of government, majority factions, Publius argued, were the most dangerous type of faction and majority factions formed on the basis of property relationships were the most threatening forms of these. The best way to address the problem which these conflicts posed to the maintenance of a peaceful society was to craft a system in which factions could not use their majority rule to their advantage at the expense of others.

Wood argues that Publius' primary and express purpose was to suppress majority faction. Publius hoped above all else that enlarging the republic would help to prevent a "dangerous combination of the majority" from forming. An extended republic could account for the various interests without falling into confusion or instability. Publius was convinced that small and weak governments exacerbate factional conflict and suggested that the large republic was the primary remedy to the problem. Publius thus laid out the foundation for the claim that that scale and organization of democratic government is the desideratum for its stability or instability. And accordingly, the structure and powers of government were directly correlated to the persistence of factional conflict in a nation. Publius' argument in the *Federalist* suggested that the most important deterrent to faction was the enlargement

⁵ See Wood 502.

of the nation. What Hamilton called “the enlargement of the orbit” for republics may have very well represented Publius’ single most important contribution to the theory of constitutionalism. But this proposal was met with intense opposition. Not only did the notion of the expanded republic challenge almost every major theory of government and republicanism at that time, but there had never been a large republic that had successfully maintained the principles of republicanism in European history.⁶ Publius, therefore, had to show that greater size and popular government were not antithetical notions and that largeness did not necessarily entail despotic governments as Montesquieu had argued in *The Spirit of the Laws*. In order to defend this argument, Publius thus had to confront the contrary claims not merely of ancient and modern history but also the writings of the most celebrated political thinker of the late eighteenth century, Montesquieu.

The authors of the *Federalist* did not rely entirely on *stasis* to explain political instability but, as I noted above, on other factors as well. The second source of instability that they identify is the *corruption* of the political leadership. As a concept in the history of political theory, corruption was described as a pervasive feature not of democratic but of *republican* politics. Indeed Publius traced the origins of the concept to commentaries about Roman republicanism. But he also relied on a modern view of corruption that connoted the usurpation of power and not the classical notion of civic republicanism. The term “corruption” traces its origins to the Latin word *corrumpere*, meaning “to break with.” The concept of corruption itself was used specifically to

⁶ The most well-known exception is the political writings of David Hume.

describe a condition or practice constituting the moral decline or political decay of the Roman Republic. The term also suggested that the state of decline is pervasive rather than isolated. Drawing on the tradition of Roman historians and philosophers starting with Livy through Cicero and Tacitus who describe the destruction of republican ideals and the political conflicts leading to violence and destruction, Publius argued that corruption played a decisive role in the corrosion of a republic.

The idea that corruption is associated with politics and politicians stems from the fact that politics is about “public things” and that politicians have been entrusted with duties involving the protection or allocation of public goods. In contrast to faction that intimates civil war and the collapse of the regime, political corruption suggests a corrosion of constitutional boundaries. In fact, political corruption occurs when an individual or institution has a duty or an obligation within a regime that is inherently public in nature and abdicates political responsibility for private gain. Corrupt politics implies a departure from the public good that represents a deliberate disregard for the public trust. Corruption, which takes on a more liberal meaning for Publius, then suggests an abdication of constitutional responsibility and the refusal to govern one’s actions according to the limits and prescriptions of the public good. It therefore describes corroded public responsibility by political leadership and a pervasive disregard for recognizing one’s constitutional obligations and the inducements which encourage political figures to operate within the appropriate boundaries. In contemporary times, corruption is often confused with change. But corruption is not simply change; corruption is government neglect of public

responsibility in pursuit of private gain and self-aggrandizement. It is not therefore movement away from some romanticized original ideal; rather, corruption is the rejection of public responsibility by skirting the constitutional boundaries designed to uphold it.

Republicanism and corruption share an entangled history in the Western tradition. The annals are full of examples and lessons to avoid. According to Madison's notes from the constitutional convention, fifteen delegates used the term corruption no less than 54 times over the course of the debates.⁷ "When the delegates spoke of corruption at the convention, they did so in a manner that reflected classical republican concerns about dependency, cabals, patronage, unwarranted influence, and bribery."⁸ Publius' study of politics and history takes the notion quite seriously and considers it rather systematically. For Publius, corruption suggests acts in which the self-interest replaces the public interest, which is most often associated with the imbalance of political power. According to James Savage's characterization of the term and its resonance in the American tradition, there was a prevailing belief that "all institutions of government could be the source or the target of corruption."⁹ Corruption, therefore, for Publius suggests unchecked and consolidated power, both of which are structural features that encourage corruption in politics. In fact, when Publius writes that tyranny is the very "accumulation of power," he is describing the effects of structural corruption that destroys the public good. Furthermore, Thomas

⁷ See Savage, James. *Journal of Politics* 56:1 Feb 1994. See also Farrand Vol. I-IV.

⁸ Savage, p. 181.

⁹ See Savage, p. 180.

Pangle observes that the prevention of corruption was the primary cause of the arrangement of power and the procedures of the federal government proposed by the Constitution of 1787.¹⁰

Publius' characterization of corruption as a structural problem also shapes his understanding of another evil of unstable democracies. The *mutability of the laws* is the third source of instability described in Publius' critique of the history of democratic politics. According to Publius, the ability to change the laws could be as threatening as the tyrannical abuse of power by the king. Madison observed that the existing American states had "laws that were hopelessly mutable" and suggested that this threat stemmed from the abuse of liberty proliferating under the Articles of Confederation. In Madison's essay on the "Vices of the Political Systems of the United States," he railed against the diversity and the inconstancy of the laws in the states and across state governments. Moreover, Gordon Wood notes, "Traditional eighteenth century political theory offered a ready explanation for what was happening. The political pendulum was swinging back: the British rulers had perverted their power; now the people were abusing their liberty."¹¹ During the intervening years between the Articles of Confederation and the ratification of the Constitution of 1787, there was growing concern that the popular government that had replaced the rule of the British crown carried its own threats. Describing the new state of disarray as "democratic despotism," Gordon Wood characterized these concerns in

¹⁰ See Pangle, Thomas. *The Spirit of Modern Republicanism*. 1988. University of Chicago.

¹¹ See Wood, p. 403.

the following way: “Power abused ceases to be lawful authority, and degenerates into tyranny. Liberty abused, or carried to excess, is *licentiousness*.”¹² The problem of instability in the 1780s had taken on a new form to suit the popular character of the new government: licentiousness. Publius suggested that the role of the constitution and the political institutions it provided was to protect liberty from all sources of arbitrary power. In the intervening years between the American Revolution and the ratification of the Constitution, Publius observed that the arbitrariness of law-making was no less likely under a popularly based government than under a monarch. Pointing to Britain, Rome, and Carthage as examples, in *Federalist* 63, Publius maintained that the major thrust of power and thereby the most obvious threat to stability rested in the most democratic part of any popularly based government.

Accordingly, Madison argued that the stability of democratic republicanism had to rely on institutions that would encourage stability in the wielding of legislative power. In “Madison’s Theory of Representation in the Tenth Federalist,” Robert J. Morgan argues that Publius wanted representation to serve as the basis of popular government.¹³ Accordingly, he suggests that Publius’ contribution to political theory was to suggest that representation was suitable for democracy and not merely for mixed governments and monarchies. Because of the power of legislatures in a democracy, Publius suggested that representation was particularly suited for democratic governments, and the *Federalist* essentially redefines a republic as a

¹² See Wood, p. 403. Emphasis is mine.

¹³ See *JOP* 36:4 November, 1974, pp. 852-885.

representative democracy. I extend Morgan's argument further to suggest that representation was also particularly suited to deal with the problem of licentiousness and the inconstancy of the legislature that were an important source of instability. In addition to representation, bicameralism, specifically the division of the legislature into two different branches marked by different principles and different modes of elections, the presidential veto, and judicial review emerged as ways of preventing legislative dominance and ultimately political instability. Publius described the supporters of the Constitution in the following manner: "They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state I which they happen to be at any given period, as much more likely to do good than harm; because it is favorable to greater stability in the system of legislation."¹⁴

Finally, Publius' thought cannot be understood unless one considers his ideas about the domestic conditions of a democracy within the context of *international concerns*. Hamilton declared at the constitutional convention, "No Government could give us tranquility and happiness at home, which did not possess sufficient stability and strength to make us respectable abroad."¹⁵ For Publius, there was a direct link between the effects of global conditions and stability at home. The dismal performance of democracies in international affairs was central to Publius' understanding of the history of political thought. According to Madison and

¹⁴ Federalist 73, p. 496.

¹⁵ See Farrand I, p. 402.

Hamilton, the classical model of democracy was unable to address foreign dangers and to respond to changing global conditions. Moreover, the inability of democracies to withstand external threats was even more important in the eighteenth century when monarchy reigned as the predominant form of government and as the most formidable source of military and commercial power in Europe. Publius was no less aware of these conditions and that the survival of the new government would rely on its ability to challenge European preponderance.

Conquest and commerce in international relations were perhaps the two most important factors for understanding the global order. Montesquieu certainly drew a direct correlation between commerce, trade, and representative government. Montesquieu's theory of the federal republic, which ultimately would be reformulated by Publius, was designed to provide protection from foreign threats, while maintaining the integrity of republicanism. As Gerald Stourzh argues, "the interdependence of forms of government and..., of constitution-making and international environment [were] at the very center" of Publius' concerns.¹⁶ According to Drew McCoy, although Madison and Hamilton would later disagree over the means to achieve it, Publius was committed to America participating in "a new, more open international commercial order."¹⁷ Therefore, the functions of commerce, military engagement, and foreign affairs as three of the four primary powers of the federal government cannot be underestimated. The assignment of these powers—together with the fourth power of

¹⁶ See Gerald Stourzh's (1970) *Alexander Hamilton and the Idea of Republican Government*.

¹⁷ See McCoy, p. 121.

taxation—reveals Publius’ understanding that the designation and arrangement of these powers requires that the functions which determine the *stability* of the democracy, whether stemming from domestic or foreign sources, must fall under the federal government because the central government represents the nexus and fulcrum of internal and external politics.

Ancient history and politics taught Publius that the problems threatening a government were of two general sorts: internal and external. Yet in addition to *stasis*, corruption, mutable laws, and changing global conditions, Publius saw another way that instability shaped the fate of democracies. This source, Publius claimed, stemmed from an inadequate understanding—by both the ancients and Montesquieu—of the means to address external threats and its effect on the stability of domestic politics. Whereas the ancient and modern accounts of politics and history saw confederation as providing the ability of democracies to respond to externalities, Publius saw this solution as fundamentally flawed. According to Publius, the emergence of confederation produced problems that emphasized the instability intrinsic to popular governments and which had ultimately failed to address the challenges posed by foreign threats. According to the *Federalist*, each of the four sources of instability identified by the ancients rested on the question of *confederation*, which both ancient and modern political theory, according to Publius, understood only imperfectly.

Publius described the ancient Greek city-states as forming confederations in which independent city-states participated in democratic style decision-making in

matters of commerce, finance, foreign policy, or some combination thereof.¹⁸ Publius identified two recurring trends that emerged from this mode of organization: first, intense competition and conflicts often emerge between members; and second, in many cases, a powerful dissenting city-state or republic could refuse to comply without recourse. “It happened but too often, according to Plutarch, that the deputies of the strongest cities, awed and corrupted those of the weaker, and that judgment went in favor of the most powerful party.”¹⁹ According to Publius, who pondered these recurring trends, the failure of the classical city-states and alliances were the result of these very delinquencies.²⁰ “I shall content myself with barely observing here, that of all the confederacies of antiquity, which history has handed down to us, the Lycian and Achaean leagues, as far as there remain vestiges of them, appear to have been the most free from the fetters of that mistaken principle, and were accordingly those which have best deserved, and have most liberally received the applauding suffrages of political writers.”²¹

¹⁸ Typically each member of the confederation had a vote equal to all others; most decisions were made by either rule of the majority or by consensus.

¹⁹ Federalist 18, p. 111.

²⁰ He does qualify his argument with the Lycian and Achaean leagues. According to Polybius, as a result of the success of the Achaean confederation, the entire Peloponnese during the height of the Achaean League could be considered a single polis. But later Publius argues that the fates of these confederations were no different from the others. See Federalist 18, p. 113. Ultimately, the Lycian league was subsumed into the Roman power and fell peril to a natural disaster. In order to avoid Sparta’s invasion, the Achaean league became a subordinate ally of Macedon.

²¹ See Federalist 16, p. 99. Publius is speaking specifically of Polybius and Montesquieu. According to Polybius, as a result of the success of the Achaean confederation, the entire Peloponnese at its height could be considered a single democratic polis because each member state enjoyed equal rights and league decisions were based on agreement and not the dominance of a particular member or group of members. See Polybius’ *Histories*, Book II. Montesquieu’s observations mirror Polybius’ analysis.

But Publius later argued in *Federalist 45* that both the Achaean league and the Lycian confederacy fell as a result of the “incapacity of the federal authority to prevent the dissensions, and finally the disunion of the subordinate authorities.” The fact that each was ultimately subsumed by another imperial power made “these cases...the more worthy of our attention, as the external causes by which the component parts were pressed together, were much more numerous and powerful than in our case; and consequently, less powerful ligaments within, would be sufficient to bind the members to the head, and to each other.”²² History also showed that the more powerful republics tyrannized over less powerful city-states under the ancient confederal councils: Athens, Sparta, and Thebes tyrannized the other Greek city states in succession; and the Roman Empire often used the internal fighting of foreign confederations to its advantage.²³ “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.”²⁴ And, ultimately, as a result of the disadvantages of confederation, ancient Greece fell to the intrigues of foreigners.²⁵ “Such were the consequences of the fallacious principle, on which this interesting establishment was founded. Had Greece, says a judicious observer on her fate, been united by a stricter confederation, and persevered in her Union, she would never have

²² *Federalist 45*, p. 310.

²³ See *Federalist 18*, p. 111.

²⁴ *Federalist 18*, p. 112.

²⁵ By 336 BCE, Philip of Macedon had conquered most of Greece, including Athens. While Sparta was not taken, the Macedonians severely weakened it. Publius argues that Plutarch suggests that the Macedonian triumph over Athens and Sparta was a direct result of the Greeks’ inability to effectively unite. Publius also refers to Montesquieu’s summary of events.

worn the chains of Macedon; and might have proved a barrier to the vast projects of Rome.”²⁶ Publius concluded Federalist 18 with the following: “I have thought it not superfluous to give the outlines of this important portion of history; both because it teaches more than one lesson and because, as a supplement to the outlines of the Achaean constitution, it emphatically illustrates the tendency of federal bodies, rather to anarchy among the members, than to tyranny in the head.”²⁷

Publius reminded his audience that experiments with federations continued into modernity, even after the disappointing failures of antiquity. Publius observes that the modern European federations each evolved from monarchies and aristocracies; yet the destinies of these confederations were no less tumultuous and fated than the ancient ones. Furthermore, the monarchical and aristocratic features of modern federation contribute to their dubious distinction as republics in Publius’ view. Turning to the German confederation, Publius pointed out the challenges to federal power posed by the feudal lords. “The members of the confederacy are expressly restricted from entering into compacts, prejudicial to the empire, from imposing tolls and duties on their mutual intercourse, without the consent of the Emperor and Diet; from altering the value of money; from doing injustice to one another; or from affording assistance or retreat to disturbers of the public peace.”²⁸ The executive of the German federation had various constitutional prerogatives: veto power, make appointments, confer titles, found universities, provide reasonable benefits to member

²⁶ See Federalist 18, p. 113.

²⁷ Federalist 18, p. 117.

²⁸ Federalist 19, p. 119.

states, collect and assign public revenues, and provide overall security. Yet even this impressive list of constitutional rights and responsibilities was crippled, according to Publius, by a reliance upon independent sovereigns, which compromises compliance, national security, and domestic peace. As a result, “the history of Germany is a history of wars between the Emperor and the Princes and States; of wars among the Princes and States themselves.”²⁹ German politics “was at length negotiated and dictated by foreign powers” and the Germanic constitution became a victim of foreign interference, which encouraged the bickering and anarchy for their own advantages.³⁰ Unable to mobilize its army quickly or to maintain order, the Germanic confederation was a failure: “each circle is the miniature picture of the deformities of this political monster.”³¹ Members of the confederation regularly reneged on their responsibilities, used the confederation as a platform for conquest, and otherwise became participants in factious bickering.

Publius went on to describe Holland as a confederation of equal and autonomous aristocracies.³² The most important decisions—military affairs and foreign and fiscal policies—are made under a rule of unanimity and the express consent of each province’s constituency. Yet Dutch politics was riven with discord, jealousy, ineffectiveness, foreign influence, and overall instability—all of which, on

²⁹ Federalist 19, p. 119.

³⁰ Federalist 19, p. 120.

³¹ Federalist 19, p. 121.

³² Federalist 20, p. 124. According to Publius, each province determines the length of office for those who comprise the 50-person States General. Some are life-long members; others hold short-term offices of 1, 3, or 6 years; while others serve at the pleasure of their province.

Publius' reading, was a result of the foreign influence on the Dutch Republic.³³ Because of the weakness of its confederal institutions, often the unitary monarch assumed powers beyond its constitutional mandate. As a result, Dutch stability was actually the result of disbanding the confederate authority and the assumption of power by a monarch.³⁴ “[These] unhappy [Dutch] seem to be now suffering from popular convulsions, from dissensions among the States, and from the actual invasion of foreign arms, the crisis of their destiny. All nations have fixed their eyes on the awful spectacle.”³⁵ Publius placed Poland on the list of failed federations that became a victim of foreign states which encouraged the bickering and anarchy for their own advantages. “Equally unfit for self-government, and self-defense, it has long been at the mercy of its powerful neighbors; who have lately had the mercy to disburden it of one third of its people and territories.”³⁶ Furthermore, while acknowledging the stability of the institutions of the Swiss canton federation, Publius did not put much stock in its virility as a constitutional government.³⁷ “They have no common treasury—no common troops even in war—no common coin—no common judicatory, nor any other common mark of sovereignty.”³⁸ The cantons exhibit no discernable cohesiveness, and they are divided on the question of religion. As a result, each has sought separate foreign alliances with rival powers aligned with their respective

³³ Publius references specifically the Treaty of Westphalia of 1648.

³⁴ Federalist 20, p. 127. Publius warns, “Tyranny has perhaps oftener grown out of the assumptions of power, called for, on pressing exigencies, by a defective constitution, than by the full exercise of the largest constitutional authorities.”

³⁵ Federalist 20, p. 128.

³⁶ Federalist 19, p. 122.

³⁷ Virility may not be far out of line here. Publius seeks a constitution with manly virtue.

³⁸ Federalist 19, p. 122.

Catholic or Protestant affiliation. Moreover, as “the history of Switzerland clearly proves, we might be in amicable alliance with those States without adopting this Constitution. Switzerland is a Confederacy, consisting of dissimilar Governments...that Confederate Republic has stood upward of four hundred years; and although several of the individual republics were democratic, and the rest aristocratic, no evil has resulted from this dissimilarity, for they have braved all the power of France and Germany during that long period.”³⁹

“We have seen in all the examples of ancient and modern confederacies, the strongest tendency continually betraying itself in the members to despoil the general Government of its authorities, with a very ineffectual capacity in the latter to defend itself against the encroachments.”⁴⁰ According to Publius, the stability of the failed confederations of modernity and antiquity were compromised for two reasons: first, infighting among multiple governmental authorities; and second, the dispersal of important central powers to provincial and state authorities. To address these tendencies, Publius replaced the confederation with a federal form of government, the federal republic. Publius borrowed the term ‘federal republic’ from Montesquieu who recognized the need for smaller states to agree to join into a larger state in order to benefit from the international strength of a monarchical regime which large republics can provide. “Composed of small republics, it enjoys the goodness of the internal government of each one; and, with regard to the exterior, it has, by the force of

³⁹ See Patrick Henry’s Speech before the Virginia Ratifying Convention on June 5, 1788 in Elliot, *Debates* III.43-64.

⁴⁰ Federalist 45, p. 310.

association, all the advantages of large monarchies.”⁴¹ The federal republic “is an agreement by which many political bodies consent to become citizens of the larger state that they want to form. It is a society of societies that make a new one, which can be enlarged by new associates that unite with it.”⁴² However, while Montesquieu applauded ancient Greece, Holland, Germany, and the Swiss leagues for their appreciation of the model of the federal republic, Publius found these examples wanting and argued that the United States would benefit from these lessons and provide an example of a stable and authentic federal republic.

Publius framed the question of stability as a *structural* choice between a Federal Constitution and a Confederacy of independent and sovereign state governments. “The question, therefore, whether this amount of power shall be granted or not, resolves itself into another question, therefore, whether or not a government commensurate to the exigencies of the Union, shall be established, or in other words, whether the Union itself shall be preserved.”⁴³ And for the authors of the *Federalist*, the differences were considerable. Publius compared the weakness and eventual dissolution of the confederacies of antiquity to their shared characteristics with the United States government under the Articles of Confederation. The “evils that we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building which cannot be amended otherwise than by an

⁴¹ Montesquieu, II:9:1.

⁴² See the *Spirit of the Laws*, Pt II:9:1.

⁴³ Federalist 41, p. 308.

alteration in the first principles and main pillars of the fabric.”⁴⁴ Based on this evidence, Publius, therefore, would insist that the notion of confederation was an erroneous constitutional model that threatened political stability. Publius argued that the world’s experiences with confederal governments reveal a sacred truth: “a sovereign 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 polity, by substituting *violence* in place of law, or the destructive *coertion* of the *sword*, in place of the mild and salutary *coertion* of the *magistracy*.”⁴⁵ The state of affairs under the Articles of Confederation was an empire within an empire, or perhaps more precisely expressed, empires within an empire. The problem as Publius saw it was that the national government had no genuine authority, only suggestive; and its recommendations could be variously respected or disregarded at the whim of any state government.

The problem as the Antifederalists saw it was the exact opposite: The Pennsylvania Minority pointed to the monopoly of congressional power over the purse and the sword as emblematic of the central government’s threat to the authority of state governments as well as the declared supremacy of federal authority. Yet Publius insisted that the supremacy of federal authority did not amount to the complete erasure of state authority.⁴⁶ For example, writing on the right of the states to collect revenue, Publius argued, “An intire consolidation of the States into one complete national

⁴⁴ See Federalist 15, p. 93.

⁴⁵ Federalist 20, p. 129.

⁴⁶ See Madison’s letter to George Washington dated April 16, 1787 in the *Papers of James Madison*.

sovereignty would imply an intire subordination of the parts; and whatever powers might remain in them would be altogether dependent on the general will. But as the plan of the Convention aims only at a partial Union or consolidation, the State Governments would clearly retain all the rights of sovereignty which they before had and which were not by that act *exclusively* delegated to the United States.”⁴⁷ The fact remains that for Publius the constant danger was that the parts may usurp the authority of the whole—as it had throughout ancient and modern history. For this reason, an extended federal republic was less likely to succumb to the dissension of the states. Publius argued that federalism was essential to warding off threats to stability. Yet neither the ancients nor the moderns—and particularly the Antifederalists—understood that democratic republicanism and a new model of federalism could provide the possibility for stability that had unattainable in democracies throughout history, in his view.

Although referring to the constitutions of the various states as prototypes for American democratic federal republicanism, there was no practical evidence prior to Publius’ writing that either democracies or republics were stable—at least not according to the *Federalist*. In fact, the empirical and theoretical claims suggested that there was little reason to expect stability in popular regimes. Yet Publius made the radical claim that democracy (or perhaps more accurately, popular rule) was not only preferable, but capable of *perpetual* stability, both despite of and as a result of the lessons of ancient and modern history and politics. “But why is the experiment of an

⁴⁷ See Federalist 32, p. 200.

extended republic to be rejected merely because it may comprise what is new? 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?”⁴⁸ Publius insisted above all that the project before them was a study and application of the formation of democratic republics.

According to the *Federalist*, the modern examples either never truly attempted this (specifically Holland, Renaissance Venice, and Germany) or did so imperfectly (in the case of the Swiss Cantons and England). The ancient models were much more legitimate popular models in this respect. Yet the ancients had failed in maintaining stability. For Publius, the ancients could not achieve political stability, and the modern examples had abandoned the principles of democracy. “It remained for the British colonies, now United States, of North America, to add to these examples, one of a more interesting character than any of them: which led to a system without an example ancient or modern, a system founded on popular rights, and so combining a federal form with the forms of individual Republics, as may enable each to supply the defects of the other and obtain the advantages of both.”⁴⁹ Publius argued that this required the replacement of the traditional notion of confederacy, which was founded in ancient and modern models, with the federal republic whose structural

⁴⁸ See *Federalist* 14, p. 88.

⁴⁹ See Madison’s “Sketch Not Finished Nor Applied” in *James Madison, Writings*. Published by the Library of Congress.

arrangements were designed to protect against the vulnerability of democracies to international aggression and to maintain the principles of democracy without declining toward instability. “In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans ought to be our zeal in cherishing the spirit and supporting the character of federalists.”⁵⁰

The need for democracies to sustain their stability in the face of faction, corruption, mutable legislation, and aggressive international competitors formed the basis of Publius’ creation of a new mode of political organization of alliance, the federal republic. This is borne out not merely in their published work, but in the preparation that preceded it. Gordon Wood confirms that for the year that transpired between 1785 and 1786, James Madison began an extensive study of ancient and modern confederacies. “Madison’s studies pointed out the fundamental weaknesses of mere confederations composed of independent states, forming a nerveless whole that was threatened from without and torn by popular convulsions from within.”⁵¹ Against ancient wisdom and Montesquieu’s teachings, Madison concluded that confederations were prey to instability. The traditional institution, known as the confederation, Publius insisted, had been designed to withstand the challenges of changing global conditions, but it had ultimately failed. Describing the city-states of antiquity as acquiring one species or other of democratic governance and as forming

⁵⁰ Federalist 10.

⁵¹ See Wood p. 472.

confederations to protect themselves from unforeseeable dangers, Publius suggested that both attempts were failures because of the inability to appreciate the effects of confederation on democratic instability.⁵² Publius' attack on confederation amounted to an attack of one of the most celebrated notions in political thought; and the Antifederalists roundly challenged this critique. Relying on Montesquieu's teaching on democracy and the prevailing wisdom that confederation was inherent to democratic politics, the opposition suggested that Publius had gone seriously awry. But for Publius, while confederation emerged as a solution to the problem of posed by the necessity for democratic states to defend themselves in international affairs, confederation produced other problems that threatened its stability. Drawing on the purposes of confederation articulated by the accounts of the ancients and Montesquieu, Publius' argued that the history of democracy indicated there was an inherently structural problem with confederation that remained to be resolved.

Montesquieu's political teachings in their view thus had to be revised in favor of an extended republic. But in many respects, Publius' most challenging task was to prove that an extended federal republic was not paradoxical to the spirit of ancient or Montesquieuan republicanism and represented a vast improvement over the small republic. It also would allow the United States to escape the instability of the past and present. In a letter to Thomas Jefferson, Madison asserted that the Constitution would "prove, in contradiction to the concurrent opinion of the theoretical writers, that this

⁵² This argument is the central argument of Federalist 16.

form of government must operate not within a small but an extensive sphere.”⁵³ Yet although the *Federalist* challenged this aspect of *The Spirit of the Laws*, Montesquieu remained central to Publius’ defense because, according to Publius, the problem of instability required the reconciliation of democratic republican habits and customs with the strength of a monarchy and modern political history. Publius argued that the extended federal republic established by the Constitution reflected Montesquieu’s suggestion that democracies could exercise the external fortitude of monarchy without violating the spirit of republicanism.

There is strong evidence that the problem of instability emerged as a recurring theme of democratic theory from the earliest times in Western political thought. Indeed, the idea of democracy itself arose as an answer to the question of a particular kind of instability. Similarly, the assimilation of democracy in modern political theory began with the study of instability in the thought of Montesquieu and others, reaching its preeminent articulation in the writings of Publius. This dissertation seeks to evaluate how the notions of “democracy,” “republic,” and “federalism” were reshaped in American political thought by tracing their emergence to a specific understanding of the problem of instability in the political thought of Publius. I thus want to assert that Publius’ consideration of the problem of instability in ancient and modern Western political thought resulted in a new understanding of federalism, republicanism, and democracy that came to inform the American regime.

⁵³ See his letter dated October 24, 1787 in the *PJM* Vol. 10.

1.3. What's New in the *Federalist*: Perspectives and Debates

The question of the pervasiveness of republicanism and liberalism in American political thought often overshadows Publius' concern for instability as an enduring problem in late eighteenth century politics. The characterization of the United States system of government by Louis Hartz as a Lockean democracy produced a decades-long debate over the ways that competing ideological ideas have shaped American political thought. Upon its 1955 publication, *The Liberal Tradition in America* launched a scholarly dispute over the dominance of liberalism and republicanism in American political thought that lasted a generation. Bernard Bailyn (1967), Gordon Wood (1969), J.G.A. Pocock (1975), Quentin Skinner (1978; 1998), Drew R. McCoy (1989), Judith Shklar (1990; 1991), Joyce Appleby (1992), Paul Rahe (1992), Lee Ward (2004), Lance Banning (1998), and Colleen Sheehan (1992; 2004) take up the question of whether the American founding represented a break from or remained in continuity with the ancient republican tradition. Judith Shklar, Karen Orren (1991), and Rogers M. Smith (1999) also point out that Hartz ignored how competing narratives of tyranny, race, gender, and class have shaped the development of American political theory and practice. Yet Hartz's claims that American political thought was "exclusively liberal" and the ensuing discourse over the sources of the American tradition may ignore the role of instability in shaping Publius' theory of democracy. Therefore, I see Publius' concern for instability as essential to understanding the philosophical traditions that influenced the political theory of the *Federalist*.

Gordon Wood (1969), who objects to Hartz' evaluation of the essential liberal America, admits that the ratification of the Constitution marks "the end of classical politics." While the revolutionaries gained much from studying the politics of antiquity, the American 'republic' developed into a combination of somewhat classical, but increasingly Christian theological, Scottish empirical, and European Enlightenment thinking, he argues. According to Wood, the teachings of classical antiquity particularly resonated with the generation of the American Revolution, but this reverence did not extend to the slightly younger cohort instrumental to framing the Constitution. The American resistance against England was couched in a language, which accused the king of abusing power and violating the central tenets of liberty. "Politics, in other words, was still commonly viewed [by the revolutionaries] along a classic power spectrum that ranged from absolute power in the hands of one person on the one end, to absolute power or liberty in the hands of the people at the other end."⁵⁴ These notions were largely rooted in a historical understanding that power corrupts and threatens the public good. That the revolutionaries labeled the king a tyrant stemmed from an understanding of tyranny gleaned from the lessons of classical antiquity. "Politics was nothing more than a perpetual battle between the passions of the rulers, whether one or a few, and the united interest of the people—an opposition that was both inevitable and proportional."⁵⁵

But the creation of the Constitution one decade later marks an important shift in the philosophical tradition. For Wood, while the language of republicanism was

⁵⁴ See Wood, 19.

⁵⁵ See Wood, p. 18.

employed, the founding generation had at best a partial and *selective* view of antiquity, a view that only emphasized the decline and corruption of republics.⁵⁶ “The sacrifice of individual interests to the greater good of the whole formed the essence of republicanism and expressed for Americans the idealistic goal of their Revolution.”⁵⁷ In the years after 1776, it was the Lockean social contract, which increasingly provided the means to achieving their goal and became meaningful to the construction of the current American political system. Wood argues that the Lockean contract resonated for the framing because it was formed on the basis of individuals entering into an agreement with one another instead of an arrangement between the ruler and the ruled.⁵⁸ “Tyranny was now seen as the abuse of power by any branch of the government, even, and for some especially, by the traditional representatives of the people.”⁵⁹ Furthermore, the Lockean contract evoked the liberal use of self-interest and consent, which redefined the political tradition as a rational and commercial moment.

J.G.A. Pocock’s *The Machiavellian Moment* challenges both Hartz’s and Wood’s claims of a strict departure of American republicanism from the republicanism of antiquity. Pocock argues that features of the Constitutional founding trace back to the Renaissance Florentines, making the founding of the United States a direct extension of the Renaissance’s debt to the ancient republic. He argues that the notion of the republic itself is indebted to the Aristotelian polis. Aristotle provides us

⁵⁶ See Wood, 51.

⁵⁷ See Wood, 53.

⁵⁸ See Wood, 601.

⁵⁹ See Wood, 608.

with the philosophical grounding for understanding the causal process of political life, and he expresses this notion through his understanding of the polis. “It had a beginning and would consequently have an end; and this rendered crucial both the problem of showing how it had come into being and might maintain its existence, and that of reconciling its end of realizing universal values with the instability of circumstantial disorder of its temporal life.”⁶⁰ A significant part of Pocock’s project then is to show how this specific feature of ancient republican thought influenced the English republican constitution and how these moments shaped the creation of the American republic. Machiavelli becomes central to Pocock’s formulation of the English republic as Pocock must demonstrate that Machiavellian and English principles immigrated and spread in the new republic across the Atlantic. Pocock attempts to show that while there was a change in the technical vocabulary, the basic tenets of republicanism survived. “The ancient equation of change with degeneration and entropy thus held fast; what was new in the situation was that it could now be defined not as sheer disorder, but in terms of intelligible social and material progress. The antithesis of virtue ceased to be *fortuna*, but became corruption instead.”⁶¹ Despite the advent of trade as a defining characteristic of political, economic, and cultural life in England, Pocock rejects Lockean notions of consent—particularly the notion of money as an expression of consent in exchange—to explain how finance bolstered the sustainability of a commercial state, one that carried over to the United States. According to Pocock, Locke cannot provide a response to the discursive

⁶⁰ See Pocock, 3.

⁶¹ See Pocock, 402.

language of the period since pamphleteers and commentators used *classical* paradigms and not liberal ones to express the need for as well as resistance to financial and political changes. Pocock argues that Britain in the 17th century and America in the eighteenth century saw financial and moral corruption as threats to virtue and to stability, evoking both Machiavelli's theory of *fortuna* and antiquity's understanding of corruption to address tyranny, the loss of liberty, and chaos. Rejecting Wood's argument that American politics marks a transition from the citizen to self-interested individualism, from politics as republic to a politics as mediator of ever developing and conflicting needs, passions, and powers, Pocock argues that classical antiquity's framing of the relationship between virtue and corruption remains central to shaping American political thought through the ratification of the Constitution.⁶²

Judith Shklar agreed that liberalism was an important narrative for the establishment of the American political tradition; however, she saw liberalism as a product of modernity competing with another product of modernity: tyranny. In what best can be described as a 'liberal republicanism'—with the emphasis on the liberal modifier—Shklar shows how so-called republicans like Bolingbroke, Harrington, and especially Montesquieu took up the republican concern with tyranny using the lexicon of liberalism: “Montesquieu did for the latter half of the eighteenth century what Machiavelli had done for his century, he set the terms in which republicanism was to be discussed.”⁶³ Identifying him as one of the most often quoted thinkers during the eighteenth century, Judith Shklar's reading of *The Spirit of the Laws* indicated that the

⁶² See Pocock, 527.

⁶³ See Shklar's article in *Machiavelli and Republicanism*, page 265.

problem of the ancient republic was that it had no place in the modern world. In fact, the problem of modernity was that the republic was a defunct notion in a new Europe characterized by large states and diffused and rapidly changing cultures.⁶⁴ If the idea of the republic were to remain relevant, it would require a new face to fit the modern world. “The model for Europe now was a commercial, extensive, non-military representative democracy...ruled by legislation, not mores.”⁶⁵ Modern constitutionalism represented a battle of a liberalism that rejects cruelty and a tyranny that uses it. Other scholars like Joyce Appleby, Harvey Mansfield, and Martin Diamond confirm that, for better or for worse, the American political model of political life that shaped the imagination of Publius was one which created an economic identity of the free individual.

However, Lance Banning and Colleen Sheehan suggest that the brand of American republicanism set forth by Publius had elements of both classical republicanism and liberalism, and the rejection of the former in favor of the latter ignores a fundamental part of the American enterprise. “[Madison] was as dedicated to a thoroughly republican regime as to a lasting federal union, and nearly all of his concerns were vitally affected by this issue.”⁶⁶ Banning is skeptical that either the American Revolution or the ratification of the constitution represents a departure from classical or neo-classical concepts of political society. Believing that Madison (and by extension Publius) was a republican seeking to perfect democracy means that he

⁶⁴ Shklar, 265.

⁶⁵ See Shklar, 265.

⁶⁶ See Banning, 155.

places an emphasis not simply upon rights, but also upon popular sovereignty. “At a minimum, it can be shown conclusively that he was no *so* modern that he thought that countervailing institutions and a multiplicity of interests comprised a sufficient basis for a republic—and that many of his most distinctive contributions will be missed if we assume that he was choosing modern liberty in place of early revolutionary precepts and the neoclassical [view].”⁶⁷ In support of this notion, I show that Publius alternately borrowed *and* departed from both classical antiquity and from modernity by asserting that democracy was a central question for modern political theory. Yet in terms of framing instability as a concern for popular governance, the ancients do the bidding. Even Publius’ more ‘modern’ sensibilities were devoted to the ancient concern for instability. Essentially, a sensitivity to ancient politics and history led Publius to privilege popular government and to *sustain* one. James Madison and Alexander Hamilton were men who were classically conditioned; this conditioning would shape their use of classical symbolism and their models of governmental life that were most concisely expressed in the *Federalist*. Therefore, the question of instability was critical to the decisive influence of the classics in framing Publius’ understanding of the problems facing a democracy.

⁶⁷ See Banning, 216.

1.4. Publius' Contribution to Democratic Theory

In my dissertation, I show that democratic politics can address the problem of instability. I define democracy in very general terms as a system in which political power is shared by the citizens and used in ways that reflect the will of the people. The use of “democracy” to describe the structure of power of American constitutionalism may seem problematic, particularly when the authors of the *Federalist* papers did not claim to be democrats. Although I place considerable emphasis on the relationship between instability and democracy in the writings of Publius and on the significance of the Greek tradition to this undertaking, it is difficult to deny that notions of “republic” and “republican” shaped the language of the period. *Federalist* 39 roundly rejects the description of the new federation as a “democracy” in favor of the term “republic.” Furthermore, Publius specifically defends the proposed Constitution as a *republican* document rather than a democratic one. “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.”⁶⁸ Yet I would suggest that the historical distinction between democracy and republicanism was called into question by Publius himself when he redefined the classical concept of a republic or the mixed regime as representative democracy. Ultimately then, the difference between a democracy and a republic for Publius was that in a republic the people

⁶⁸ *Federalist* 39, p. 250.

directly and indirectly appoint representatives to carry out the powers of government. But the essential idea of a popularly based politics subsists in Publius' idea of a republic.

Montesquieu and various other thinkers from antiquity and modernity shared the general belief that a republic could take the form of either an aristocracy or a democracy. Montesquieu defined a republic in the following manner: "Republican government is that in which the body, or only a part of the people is possessed of the supreme power."⁶⁹ But Publius suggested that a republic could not be aristocratic.⁷⁰ He claimed that the difference between a democracy and a republic was clear: "In a democracy, the people meet and exercise the government in person; in a republic they assemble and administer it by their representatives and agents."⁷¹ "Democratic" meant that the extension of suffrage was equally distributed among white male property owners. It was fairly well known that in eighteenth century American rhetoric, 'democracy' and 'republic' took on different, and sometimes even contradictory, meanings. This fact notwithstanding, it was Publius who helped to establish the basis for conflating their meanings in American public discourse because he founded his theory of republicanism on democratic principles. Publius argued that the Constitution formed a representative government founded on principles which were "wholly popular, and founded at the same time wholly on that principle."⁷² The

⁶⁹ See Charles Louis de Secondat, Baron de Montesquieu, *The Spirit of the Laws*, Part I, Book II, Section 1.

⁷⁰ There is evidence that Hamilton and Madison may have differed regarding this issue.

⁷¹ Federalist 14, p. 84.

standard by which the ‘republic’ is to be judged is fundamentally democratic due to Publius’ insistence that the central government derive its power from the people: “the ultimate authority, wherever the derivative may be found, resides in the people alone; and that it will not depend merely on the comparative ambition or address of the different governments, whether either, or which of them, will be able to enlarge its sphere of justification at the expense of the other.”⁷³ Challenging the prevailing view of modern political theory, Publius insisted that any legitimate form of republicanism was a democratic not an aristocratic one, which required that power was shared and accountable to the electorate.

Therefore, when Publius took up the argument in the *Federalist*, democracy and the threats posed by instability remained his central concerns. For this reason, he drew heavily on the thought about democracy and instability that he found in the history of political theory and particularly its origins in the thought of ancient Greece. Publius’ examples of democracy are drawn not from representative models of democracy but from the direct democracies of classical antiquity. It was through an examination of these democracies that he came to confront the problem of instability.⁷⁴ By tracing the study of instability to its ‘origins’ in ancient Greece, we can better understand the relationship between instability and democracy in Publius and thus at the heart of the American experiment. Although the notion of the stable democracy no longer seems to us to be a radical or an impossible idea, Publius’

⁷² See Federalist 14.

⁷³ See Federalist 46, p. 316.

⁷⁴ See Federalist 14, p. 84.

defense of the Constitution of 1787 represented the first modern argument that stability and democracy were compatible. When Publius explored the idea of instability within the history of the Western tradition, he suggested that instability was a constituent characteristic of democracy, indicating that democracy was inherently unstable. Yet an alternative analysis of this history juxtaposed to Publius' interpretation shows the following: while instability has long been a concern in political thought, it was not synonymous with democracy in the history of its political thought as Publius suggested that it was.

From antiquity to early modern times, the relationship of stability and regime-type has been recognized as highly significant. In a manner similar to the political theorists who predate "him," Publius recognized the connection between regime-type and political instability. Thucydides, Plato, Aristotle, Polybius, Machiavelli, Hobbes, Locke, Hume, and Montesquieu all considered this question. In this dissertation I examine the conceptual history of instability from which Publius drew his interpretation. I first develop the thesis that the study of instability was prevalent in the accounts of Greek, Roman, and European politics and history and that these accounts provide the framework for understanding how instability was studied. I then show that Publius' understanding of this history was used in his defense of the Constitution of 1787. My dissertation examines the role of instability within the Western political tradition by juxtaposing ancient and modern political narratives with Publius' articulation of the concept of a stable democracy in the *Federalist*. The ancients set the terms for addressing how democratic communities may confront the

instability that constantly threatens them. *The Spirit of the Laws*—the most frequently cited political treatise of the 1780s—shows how the arrangement of powers defines governments and determines their stability or instability. Publius argued that there was a direct relationship between political institutions and the capacity to respond to threats to democracy. Drawing upon his own interpretation of ancient and modern ideas, Publius suggested that instability can be eliminated as a principal concern for popular governments by restructuring institutions in order to assimilate the lessons of ancient democracy to modern politics.

It may seem peculiar to look to early United States history in order to understand the threat posed by instability to politics as the founders of the United States led a revolutionary campaign to *disrupt* political stability, not to protect it.⁷⁵ The American Revolution, of course had not attacked stability; indeed they had celebrated the idea that democracy was a credible and preferable alternative to monarchy. What made this campaign for political change extraordinary in its time was that the American colonists were rebelling against a government that was widely considered the model of good government in the eighteenth century and was in many ways the pinnacle of the political aspirations of the Enlightenment. The English constitution generally was seen as the freest government in the world and the best practical application of the modern ideals of liberty, equality, right, and law. Yet the champions of the American cause of independence viewed the English government as corrupting the principles of free government. Declarations of American independence

⁷⁵ For this reason, one might argue that they were counter-revolutionaries.

and language inspiring the necessity and common sense of rebellion were shaped by the belief that vaunted English constitutionalism had degenerated into tyranny. The founders recognized a fundamental incongruity between monarchy and democracy, or what they would call republicanism; this incongruity ultimately devolved into a contest over the proper designation of political power. The American Revolution suggested that government must be designed to allow for broad participation; this belief represented the founders' rejection of the prevailing notion that monarchy and aristocracy could contribute to the cause of liberty, equality, and legitimate government. The Americans would not tolerate a government in which the king possessed the largest share of political authority and an aristocracy was granted considerable legal and political privileges. These notions were antithetical to political liberty, which required a popular share of political power, broad participation, and the protection of rights. Essentially, the revolutions overthrew a monarch in order to create a republic. The American Revolution intended to destabilize an old world of kings and privilege and to create a different world with a new politics.

Ten years after the independence, the newly formed United States of America faced a new challenge. No longer were they faced with the binary choice of the king or the people (the republic). By the late 1780s, the debate over politics had become a debate over the threats to popular governments. The writing and ratification of the Constitution of 1787 was a second revolution of Anglo-American politics—of sorts. Whereas the American Revolution of the mid 1770s rejected the disdain for popular participation and liberty so characteristic of monarchy and resurrected the idea of a

confederated republic in its place, Publius saw the new constitution as a marked rejection of the instability of a confederacy of republics in favor of the federal republic that blended the strengths of monarchy and democracy. This second revolution deeply troubled the Antifederalists. That Publius' republicanism suggested a departure from the received wisdom made even more difficult the task of defending the Constitution as laying out a democratic republic that also guaranteed stability. In this dissertation, I show that arguments over federal and state power and the protection of individual rights are bound up with a concern for the meaning of instability, which was central to the debates between Publius and his opponents over the Constitution. The debate between the Federalists and the Antifederalists was a debate over whether the Constitution sacrificed democratic principles for stability. Antifederalists feared the encroaching nature of government power, and in general, they saw the Constitution that Publius supported as a repudiation of democracy and a return to something akin to monarchy. The criticisms made by those opposed to the Constitution were many and varied, but the basic objection was its transferal of power from the states and the people to the central or federal government. The Antifederalists were repulsed by Publius' insistence that federalism was based on the notion that, "If individuals enter into a state of society the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers entrusted to it by its constitution, must necessarily be supreme over those societies, and the individuals of whom they

are composed. It would other wise be...not a government; which is only another word for POLITICAL POWER AND SUPREMACY.”⁷⁶

For the opposition, the Constitution represented a shift away from republican ideas since the most important powers rested in the central government. The argument over the Constitution was an argument over which arrangement of power would best protect the people against the ills of instability. Moreover, the disagreement between the Federalists and the Antifederalists was a disagreement over the transference and accountability of power that the Constitution would bring about and the effect of this reorganization on stability and democracy. Specifically, the Antifederalists saw the centralization of power as a threat to the power of the states, which they believed to be the home of democracy. Publius and the Federalists, on the other hand, saw the states as the places of factional injustice and as a threat to the power of the federal government, and thus as the seat of *stability*. Yet Publius maintained that by establishing a federal government with ties to the states and to the people, granting this government executive, legislative and judicial powers, and giving the federal government supremacy over the states, stability could be protected without destroying the basic principles of popular government. For Publius the most prevalent danger always was that the parts might usurp the power of the whole—as had been the case historically in Publius’ view. “If we review the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of

⁷⁶ See Federalist 33, p. 207.

the whole.”⁷⁷ Publius argued that decentralized power was ineffective over an extensive political territory of the sort that characterized the United States of his time. *Federalist 45* cites the vulnerability of political power to the vicissitudes of the many. Stability for Publius would only be possible if the federal government had complete and decisive authority in areas requiring ‘uniformity,’ even if such structural changes were contrary to earlier notions of what was necessary for government in a democratic republic.

Publius argued that the matters which fall entirely under the supreme authority of the federal government were those matters of general concern to all states, namely taxation, commerce, foreign affairs, and military conflict. Therefore, functions, such as defense, internal order, and international trade were the responsibility of the federal government. Accordingly, the powers exclusive to the federal government were the powers to tax foreign trade, to raise and maintain an army, and to manage foreign policy. The precise problem with the Articles of Confederation for Publius was that its ‘democratic’ institutions did not promote stability because its general government lacked political power specifically to secure order, to protect against foreign threats, and to create and maintain the conditions for economic happiness. “In America, from a like cause, the government of the Union [has] gradually dwindled into a state of decay, approaching nearly to annihilation”.⁷⁸ Alternatively, a federal government with legislative, executive, and judicial powers could “move on uniform principles of

⁷⁷ See Madison’s remarks on the New Jersey Plan during the Constitutional Convention. Madison cites the examples of the ancient Amphycyonic and Achaean leagues and the modern Helvetic, Germanic, and Belgian confederations.

⁷⁸ See *Federalist 30*, p. 188.

policy—It can harmonize, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each.”⁷⁹

According to Publius, in the interest of unity and stability, the functions that fell under the control of the individual states were more appropriate to the federal government. Publius queried, “Who so likely to make suitable provisions for the public defence, as that body to which the guardianship of the public safety is confided—which, as the center of information, will best understand the extent and urgency of the dangers that threaten—as the representative of the whole will feel itself most deeply interested in the preservation of every part...?”⁸⁰ Publius insisted that power under a federal system must be energetic enough to protect democracy and guarantee stability. “The question, therefore, whether this amount of power shall be granted or not, resolves itself into another question, therefore, whether or not a government commensurate to the exigencies of the Union, shall be established, or in other words, whether the Union itself shall be preserved.”⁸¹

1.5. Conclusion: The Undeniable Authority of Publius

Considered rash by the Antifederalist opposition, the Federalists—and specifically the writers of the *Federalist*—predicted the young republic’s future destruction under the Articles of Confederation as a result of foreign threats, the lack of international prominence, deteriorating financial and economic conditions, and

⁷⁹ Federalist 4, p. 21.

⁸⁰ See Federalist 23, p. 149.

⁸¹ Federalist 41, p. 308.

internal conflicts. For Publius, one of the central problems facing the young democracy was the dangerous effect of decentralization and the arrangement of government power on political instability. I suggest that these issues continue to form the basis of how we understand the formation of democracies and the constitutions governing them. While Publius is certainly considerably removed from the task of statecraft in the twenty-first century, his contribution to understanding the effects of political and social institutions on stability remain relevant. Publius and the Antifederalists disagreed about the relationship between democracy and stability and about whether the Constitution of 1787 involved a trade-off between the two. In this project, I argue that the concept of instability is antithetical to the realization of democracy, that democracy and stability are complementary notions, and that the democratic tradition that we are familiar with emerged from an understanding of the sources of instability.

The *Federalist* makes an important argument about the possibility of stability in a democracy. “Stability in Government is essential to national character, and to the advantages annexed to it, as well as to that repose and confidence in the minds of the people, which are among the chief blessings of civil society,” Publius wrote.⁸² But are stability, federal power, and democracy as coherent as the *Federalist* suggests? The Antifederalists did not think so. Publius’ arguments in support of the federal republic were framed in terms of instability, but the Antifederalists saw the arrangement of federal power the Constitution established as the true threat to democracy. The

⁸² Federalist 37, p. 234.

Antifederalist ‘Agrippa’ argued, for instance, that the “true bond of union was a sense of mutual interest and mutual obligation, not governmental strength.”⁸³ The contest between Publius and the Antifederalists suggested that the dispute over the Constitution was a contest over the historical and political arguments about instability, over the definition of federalism, and over the implications of both these for democratic politics. Ultimately, the Antifederalists were not convinced of Publius’ solution, and the Antifederalist objections constituted a significant and direct challenge to Publius’ understanding of the relationship between democracy and instability. Publius, while helping to establish the idea of democracy at the center of modern political theory, also advanced a view of democracy that represented an idea inconsistent with the concept as it had been understood since antiquity.

Although the *Federalist* is recognized as one of the most concise articulations of an important national issue, its intended audience was a local one—the people of the State of New York.⁸⁴ Yet Publius was deeply influenced by the works of political, social, and economic thinkers as well as engaged in a national and intellectual dialogue about the best institutions, mores, and practices for a modern democratic republic. Further, participation in a larger intellectual debate was balanced by the pressing and immediate desire to “sell a Constitution.” In other words, it cannot be forgotten that the very practical task facing the framers of the Constitution—and

⁸³ See Storing’s summary of the objections of “Agrippa” in Vol. I, p. 24. Also, an Antifederalist writing under the name of “Brutus” argued that the legislature was far too “heterogeneous and discordant” to achieve the unity the Constitution purports. See the “Essays of Brutus” 2.9.16 in Storing Volume II, Part 2.

⁸⁴ The decision to write a series of papers was due to local resistance to the new Constitution drafted in Philadelphia in 1787.

specifically Publius—was to support a plan which demonstrably respected both local and state interests and institutions, as well as established a new federal union. The first lines of Federalist 1 are a call to duty: “After an unequivocal experience of the inefficacy of the subsisting Federal Government, you are called upon to deliberate on a new Constitution for the United States of America.” The imperative is undeniable. The course of these public deliberations would determine whether or not the Union will be preserved. At every opportunity, Publius emphasized the fact that the existence and preservation of liberty, prosperity, happiness, and state sovereignty depend on the stability made available by the new Constitution. The choice for Publius was clear: adopt the new Constitution and create a stable democracy *or* seal the fate of a dismembered union and doom the country to failure. Publius asks one of the oldest questions in the history of political thought: *What is a good government?* Political philosophers writing long before Publius had implied that the best forms of governance were typically secure, stable, and long-lasting ones. Publius posed the following question: Given the opportunity, can a people establish a stable democracy? While hitherto political constitutions were the results of “accident and force,” the people of New York, and the American citizens of the twelve other states generally, had the rare opportunity to employ “reflection and choice” in order to create a new model of stable *and* popular government.

The decision to sign the 85 essays included under the pseudonym Publius reflected the desire to emphasize the centrality of the republican-founder-citizen as the impetus for the choice for ratification, facing the people of New York. Hamilton

realized the necessity of launching a public defense of the Constitution's merit and selected the name "Publius" because the name of the co-founder of the Roman Republic would hold deep resonances to his reading public. For instance, a number of at least the educated Anglo-Americans of the late eighteenth century would have been well familiar with Plutarch's *Lives*. In his description of the parallel lives of the ancient Greeks and Roman, Plutarch analogized Solon the founder of the Athenian democracy with Poplicola, or Publius Valerius Publicola—as friends of the people. At least the most educated of the late eighteenth century American audience who read the Federalist essays would have recognized the attempt to associate the founding of an American republic with the founding of the Roman republic. While the similarities were not exact, in each instance a *Publius* assisted in wresting the republic from the king. Of course, the American Publius had not single-handedly wrestled the United States from the King. But the memory of the Revolution remained resonant ten years after independence from Britain. And in many respects, Publius' defense of the Constitution represented wresting modern political theory from the king. The decision to write under the name Publius then was also intended to connect the support of the Constitution with the spirit of the American Revolution. To extend the analogy further, the Roman Publius had to defend himself against the charges of monarchical intentions, just as the American Publius would in his support of the Constitution of 1787. Therefore, the name Publius held a deep historical context and relevance as someone devoted to a politics friendly to the people's interest and will and one that would protect such a politics from instability.

For both Hamilton and Madison, modern political theory had all but rejected democracy; and the Antifederalists and the history of republics had condemned popular governments to chaos and obscurity. Yet despite a dismal view of the history of democracy, Publius would show that the Constitution of 1787 could solve the pervasive political problem of instability. In this dissertation, I explain the contribution made by Madison and Hamilton, collectively as Publius, to solving the problem of instability. Although the project examines early American political thought, I have not launched a study of the founders, who include a group as broad as the British colonials, the American revolutionaries, the Loyalists, the Federalists, and the Antifederalists. The political theory of the *Federalist* remains my primary focus as Publius represents the most concise and authoritative account of the complex problem of instability written in the last two hundred years. Further, Hamilton and Madison do not differ when describing the sources of instability, and they share similar views on the lessons of ancient and modern history in this respect. Since the feasibility of the new experiment relied on addressing the problem of instability, Publius' defense of the Constitution of 1787 employed an analysis of the history of ancient and modern politics and an assessment of the prospects for popular government in the modern world.

Without question, Hamilton and Madison were on the same side of the debate in 1787 and were prepared to defend the role of the Constitution in securing stability and popular government. With respect to examining the relationship between instability and democracy in the history of political thought, the *Federalist* may be the

most comprehensive articulation of the sources of instability facing democratic politics of the last 200 years, and he certainly was the foremost articulation of the problem of instability for modern democracy. Soon after Publius secured New York's ratification of the Constitution, a famous rift soon emerged between Hamilton and Madison that helped to create the first party system.⁸⁵ Yet despite this rupture, Publius spoke with one voice in support of the ability of the Constitution to tackle political instability. Even Hamilton's political adversary Thomas Jefferson confirmed that "the book known by the title of 'The Federalist,' [is] an authority to which appeal is habitually made by all, and rarely declined or denied by any as evidence of the general opinion of those who framed, and of those who accepted the Constitution of the U.S. on questions as to its genuine meaning."⁸⁶ Only briefly and where it is appropriate, I address the argument between Hamilton and Madison, but only as it relates to their disagreement within the context for considering the sources of instability. The subject of my dissertation may allow future scholarship to better illuminate their dispute, but I would suggest that the disagreements that precipitated the political animosity between Alexander Hamilton and James Madison do not detract from understanding their mutual treatment of the question of instability in the political theory of Publius.

⁸⁵ John Jay wrote five papers, *Federalists* 2, 3, 4, 5, and 64. The opening essays enumerate the failings of the Articles of Confederation to secure against foreign influence and the final latter essay defends the Senate. Although Jay's essays confirm my argument about the role of international affairs in political instability, he on the whole had a very minor role in writing the collection of essays in the *Federalist*.

⁸⁶ Quoted in Clinton Rossiter's Introduction to *The Federalist Papers* (New York: New American Library, 1961). I replaced "being" with "is."

In this dissertation, I trace Publius' role in understanding the concept of instability and the contribution of the *Federalist* to securing a place for democracy in modern political thought. Specifically, how does the study of instability shape Publius' understanding of and contribution to the Western political tradition? And how does Publius' legacy shape contemporary views of the notion of the stable democracy? These are the questions that inform my project. In order to address them, first, I evaluate the sources in the Western tradition that Publius read which speak to the enduring concern with instability and which help us to understand democracy in the context of modern political concerns. And second, I determine how Publius employed this tradition in his defense of the Constitution of 1787 in order to provide a prescription for the practices and institutions of a stable democracy.

In Chapter 2, I argue that instability was an ancient concern and that the notion of rule by the many emerged as a response to the threats posed by *stasis*, corruption, the mutability of the laws, and challenges to the republic in the international arena. The problem of instability was critical to the decisive influence of the classics in framing Publius' understanding of the problems facing a popular government. By tracing the conceptual history of instability, I juxtapose the ancient accounts of democratic life with Publius' interpretation of these accounts, which he used to defend the Constitution of 1787. James Madison and Alexander Hamilton were classically educated; this education would shape their use of classical symbolism and their models of governmental life that were expressed in the *Federalist*.

Chapter 3 evaluates *The Spirit of the Laws* in the context of ancient lessons and modern sensibilities and provides an interpretation of Montesquieu's contribution to understanding the relationship between instability and democracy facing Publius and his contemporaries. Taking exception with most contemporary evaluations of Montesquieu's liberalism, I argue that Montesquieu's discussion of regime change was analogous to the narratives from classical antiquity that described the sources of instability. Furthermore, I suggest that Publius and the Antifederalists disputed the sources and remedies of political change Montesquieu described. I show that questions over stability, democracy, and power shaped the debates between Publius and the opposition over Montesquieu's political teachings. And I interpret Montesquieu in order to explain how he addressed the problem of instability in democracies and to discern how Publius and his opposition used Montesquieu's teaching on instability and democracy to assert their competing claims.

Chapter 4 shows that Publius' defense of the Constitution relied on his view of the problem of instability in democracies, which he drew from the lessons of classical antiquity and the challenges posed by Montesquieu's political teachings. To this end, I demonstrate that Publius' arguments in the *Federalist* address the sources of instability, yet Publius also challenges the lessons of ancient and modern politics regarding the scope of the problem of instability. Rejecting the modern view and his own dismal portrait of ancient history, Publius insisted that, by establishing a new federal republic, popular rule was not only preferable, but capable of perpetual stability. This new federal republic marked Publius' departure from his ancient

predecessors and from Montesquieu. According to the *Federalist*, the expanded republic, the separation of powers, challenges to legislative dominance, assigning certain powers to the central government, and the new federal republic correspond to each of the sources of instability facing a democracy and would perpetually erase instability as a problem for popular government.

Chapter 5 examines the implications of Publius' understanding the role of political institutions in addressing the problem of instability and addresses Publius' contribution to our understanding of the possibility of the compatibility of stability with democracy in the 21st century. In this chapter, I take up competing contemporary views regarding Publius' contribution to instability as a question of political theory. A comparison of the views of Sheldon Wolin, Martin Diamond, and Robert Dahl concludes my analysis of Publius' understanding of the conceptual history of instability, of his argument that the Constitution defies history and makes possible the compatibility of democracy with stability, and of the crucial role that democracy plays in addressing the sources of instability. I ultimately argue that an evaluation of the concept of instability will provide a better understanding of how the notion of the stable democracy was shaped and that the sources of instability contribute to understanding the task of democratic theory in the twenty-first century.

2. Classical Narratives of Instability

2.1. The Question of Publius' Classical Education

Bernard Bailyn (1967) charged that the employment of classical authorities by the founders was mere “window dressing,” arguing that their use of the ancients was false pretense for creating a new and more liberal conception of democracy. Referring primarily and almost entirely to the revolutionary generation of the 1760s and 1770s, Bailyn argued that the founders were amateur public intellectuals at best. Their occupations as lawyers, ministers, merchants, and plantation owners were far more illustrative of their day-to-day concerns than was their penchant for pamphleteering. This fact made them practical men with practical concerns—not academics and intellectuals who meaningfully employed ancient events and classical analogies to explain and justify complex contemporary events and circumstances. While Bailyn acknowledged the founders' general knowledge of classical antiquity, which included the thought of individuals as variable as Homer, Herodotus, Thucydides, Plato, Aristotle, Demosthenes, Polybius, Plutarch, Epectitus, Cicero, Tacitus, Seneca, Livy, Sallust, and Cato, he questioned whether they had any profound knowledge of the

ancients. Citing colonial accounts which suggested that these diverse authors equally provided the founders with an undifferentiated background in esteeming civil liberty, Bailyn argued that the very differences distinguishing these historians and commentators suggested that the founders' knowledge was "superficial" at best.

He insisted that the American colonials knew well only one period in ancient history: the unrest of Rome from the first century BCE to the establishment of the empire by the 2nd century. This for Bailyn meant that the intellectual leaders among the colonists were at best familiar with Plutarch, Livy, Cicero, Sallust and Tacitus—each chronicling the turbulent history in the collapse of that republic. Like Plutarch and Cicero before them, these colonists, according to Bailyn, similarly lamented the corruption of their present age against the idyllic virtue of time past. The colonists were denouncers of British corruption just as the historians and philosophers of old were denouncers of Roman corruption. But pointing out what he calls "striking incongruities and contradictions," Bailyn argued that the revolutionaries were propagandists and that the origins of American government stemmed from an active distrust of power—a distrust that arose out of modern sensibilities, not ancient ones. The American revolutionaries wanted to "preserve political liberty threatened by the apparent corruption of the [British] constitution."¹ Ultimately, for Bailyn, it was not the classical critique of corruption that shaped American political culture and practice, but rather the Enlightenment that provided the primary sources of early American political and social aspirations as the revolutionaries closely identified with early

¹ See Bailyn 1967, 19.

liberal Whigs, such as Trenchard and Gordon who were perhaps second only to John Locke in their influence over the American founders. In fact, Bailyn insisted that the knowledge of Roman corruption was made available to Americans by a translation of Tacitus provided by none other than the liberal Thomas Gordon, who conveniently transformed the ancient Tacitus into a modern British Whig.

Bailyn's attempt to view the Revolution and early American thought generally as products of the Enlightenment stemmed from the peculiar character of the American Revolution. According to Bailyn himself, the British constitution was central to eighteenth century Enlightenment political thought. In fact by most accounts—including the most celebrated author of the late eighteenth century Montesquieu—the British government was considered the best and freest constitution in the world. Its constitution played a dominant role in political theory. Many authors praised the British for balancing the power of the king with the Parliament and for protecting individual liberty. The British American colonists, however, told a different story. The revolutionaries saw Britain as a corrupt, tyrannical, and bloated empire. Perhaps more importantly, the Americans believed that monarchy itself was the mortal enemy of liberty. Yet herein rests the crucial problem with Bailyn's claims: Monarchy dominated seventeenth and eighteenth century political thought. Therefore, the truly extraordinary aspect of the American Revolution was that it challenged the stronghold of monarchy on modern politics and Enlightenment thinking. The American Revolution suggested that government should be democratic, or at least accountable to the popular will, and that a just government was necessarily congruent

with liberty.² It set the stage for ripping the notion of republicanism out of the firm grasp of monarchy and aristocracy and declaring that republicanism required democracy at its foundation. The triumph of the American Revolution turned eighteenth century political thought upside down because the context of political theory during that time was primarily monarchical. But the historical source of democracy was ancient, and it was from classical antiquity that Publius drew the means to justify the countervailing political system of democracy.

Gordon Wood (1969) helps to clarify the importance of the classical education for the framing period. Wood argues that the Federalists of the 1780s were increasingly worried about the role of class conflict, which suggests the influence of classical antiquity.³ Even if the revolutionaries were precisely the haphazard republicans that Bailyn described, Forrest McDonald suggests that the subsequent generation of framers were much more serious in their exploration and use of the ancient texts and arguments. Both Wood and McDonald agree that during the years spanning 1776-1787, “an increasing number of public men took the trouble to learn about the history of republics and to study the writings of theorists of republicanism.”⁴ The most popular sources, according to McDonald and Wood, were Cicero, Livy, and Tacitus among the Romans, and Demosthenes, Aristotle, Polybius, and Plutarch among the Greeks. In fact, McDonald, Wood, and even Bailyn argue that Plutarch’s

² Yet the Declaration does not specify that a government had to be a democracy.

³ I do not mean to overstate the issue, as I recognize that there were other sources of factional conflict beyond class, including and especially, religious, regional, and property (agricultural, manufacturing, shipping, etc.) differences.

⁴ See Forrest McDonald 1986, 67.

Lives was central to American literary culture in the decade leading up to the ratification of the Constitution.⁵ That the ideas presented in Publius' use of classical antiquity contributed significantly to the development of a new Constitution in America cannot be doubted. Furthermore, not only do Americans during this time draw heavily on ancient thought in general during this time; it is also clear that Publius and his contemporaries were quite familiar with the ancient tradition of political philosophy—at least sufficiently to recognize its importance for understanding the problem of instability facing popular governments.

While I agree with Bailyn that, according to the founders, ancient politics had demonstrated that all governments inevitably collapse, I find Bailyn's contention that the founders, and particularly Publius, only had a limited knowledge of ancient history and politics inconsistent with the account of ancient political history found in the *Federalist*. Although Gordon Wood challenges Bailyn's claim about classical politics and the American founding, Wood's conclusion about the ratification marking "the end of classical politics" draws on Bailyn's argument that the exclusive inspiration for early American political thought was the founders' concern for the steady encroachment of public power upon private liberty that emerged out of the Whig tradition. Because of Wood's focus on the ideological dimensions of the debates over revolution and ratification, Wood too dismisses the central relevance of the classical

⁵ Each suggest that only the more learned actually read Plutarch. Mainstream audiences learned Plutarch from secondary sources like newspaper articles, plays, and the like. It is for this reason that Bailyn wants to suggest that the ancient references were mere window dressing. Wood, McDonald, and I disagree with Bailyn on this point.

paradigm to the problem of instability. While ideology was not entirely absent from either the debate over a new Constitution or Publius' defense of the new Constitution, the argument that popular governments could address the sources of instability was a classical idea that shaped the ways in which these ideological debates emerged during the ratification debate and immediately following ratification.⁶ Exploring the meaning of the classics is not within the scope of this project. Instead, I want to demonstrate the importance of the ancients, not for the whole of this tradition, but for the authors of the *Federalist* which I contend is the central source for the American theory of government.

In order to begin to come to terms with Publius' understanding of the problem of instability in democracies, it is necessary to show how and where Publius, that is, Hamilton and Madison, turn to Thucydides, Plato, Aristotle, Polybius, Cicero, Plutarch, and Tacitus to understand ancient Greek and Roman history and politics. On the basis of ancient politics and history, I develop a framework for understanding the sources of instability. I further argue that the ancient narratives of political life indicated that instability was an enduring political problem, but Publius suggested that instability was specific to democracies and not to politics in general, despite ancient narratives indicating otherwise. In other words, while the applicability of the classics was decisive for Publius' understanding instability, Publius' interpretation of democracy as inherently unstable was a misinterpretation and actually deeply at odds

⁶ For more on this, see Elkins and McKittrick's *The Age of Federalism: The Early American Republic 1788-188* and Banning's *The Sacred Fire of Liberty: James Madison and the Founding of the American Republic*.

with ancient accounts. For Bailyn, this inconsistency is explained by the founders' pedantic knowledge of the classics, which meant that the influence of antiquity on early American political thought should be rejected and distrusted. I do not dispute the point that Publius in some respects misunderstood the ancients, yet I maintain that Publius' basic understanding of the problem of instability and the role democracies play in addressing this problem comes from an extensive knowledge of antiquity. Therefore, I suggest that Publius' misinterpretation does not detract from the significance of ancient politics and history to Publius' understanding of instability as a pervasive political problem.

2.1. The Relevance of Classical Antiquity for Publius

Unlike most analyses of the classical influence upon the founding and framing periods that tend to focus on the revolutionary tradition or the Federalists and the Antifederalists or on figures like Thomas Jefferson and John Adams, I consider the classical influences on Hamilton and Madison as the primary authors of the *Federalist*, who use the defense of the Constitution to chronicle the sources of instability and the role popular governments play in addressing them.⁷ This is not to deny that the American Revolution, the Antifederalists, and leading intellectual and political figures like Adams and Jefferson were influential for Publius, and specifically for James

⁷ See Douglass Adair (1943), Joyce Appleby (1992), Bernard Bailyn (1967), Forrest McDonald (1979), and Gordon Wood (1969).

Madison. For instance, although John Adams and Thomas Jefferson were on assignment in Europe during the Constitutional Convention and during the publication of the *Federalist* papers, there was continuing discussion during this period and the years leading up to ratification between Adams and Jefferson and between Jefferson and Madison regarding the prospect of a new constitution for the United States.⁸ Jefferson shipped copies of Polybius' writings from France to James Madison. In a letter to Thomas Jefferson dated October 24, 1787, Madison acknowledged his receipt of Polybius from Jefferson and wrote that the destruction of the Achaean League supported the need for the American confederacy to have a strong central government.⁹ And John Adams argued that Polybius' *Histories* "were in the contemplation of those who framed the American constitutions."¹⁰ Furthermore, Polybius was one of the central sources of John Adams' *Defense of the Constitutions of the United States of America*.¹¹ It is also well documented that Thomas Jefferson and John Adams both read Thucydides and Tacitus.¹² John Adams told his friend and frequent correspondent that reading these two historians was like "reading the History of my own Times and my own Life."¹³ According to Richard Gummere (1962), "In

⁸ Although Franklin was a participant at the convention, he was less vocal because of his age and failing health. Moreover, there is little evidence of any long-sustained or direct contact between Benjamin Franklin and the men writing in defense of the Constitution under the pen name Publius.

⁹ "That of the Amphycyons is well known to have been rendered of little use whilst it lasted, and in the end to have been destroyed by the predominance of the local over the federal authority. The same observation may be made, on the authority of Polybius, with regard to the Achaean League." See *James Madison, Writings*. Jack N. Rakove, editor. Library of America.

¹⁰ Quoted in *The Founders and the Classics*, Carl Richard, pp. 135-36.

¹¹ See Chinard, p. 42.

¹² T. Jefferson's letter to John Adams dated January 21, 1812, the former wrote that he read Tacitus and Thucydides instead of the periodicals. He also included Euclid and Newton.

¹³ John Adams' letter to Thomas Jefferson dated February 3, 1812.

the reading lists of Jefferson, Adams, Madison and others we note almost...every Greek or Latin author of importance.”¹⁴

The pages of the *Federalist* and the Convention Debates provide ample descriptions of instability, citing Athenian politics, the Greek confederacies, and Roman republicanism and imperialism. Furthermore, it is important to note that among the audience at the convention were individuals like James Wilson, a classical scholar who taught Latin at the College of Philadelphia and who “traced the causes of and effects of every revolution from the earliest stages of the Greek commonwealths down to the present time.”¹⁵ In fact, among the primary founders, Jefferson’s erudition was second only to James Wilson who argued at the convention that bicameralism would allow the United States to avoid the instability of the ancient republics and confederacies.¹⁶

My concern is not how the new modern teachings “competed” with the ancient ones, but rather how the Greco-Roman tradition shaped the creation of the Constitution. The formative influence of modernity and the Enlightenment in contributing to the formation of American political culture during this period are undeniable; but when it comes to the specific issue of instability, it was the ancient tradition which contributed most to shaping Publius’ description of the problem. McDonald shows that while Locke’s teaching was in accordance “with the goals of the Patriots of 1776,” the task of framing of the Constitution required a different approach.

¹⁴ See Gummere’s “The Classical Ancestry of the Constitution,” p. 5.

¹⁵ See Farrand, III, p. 92. Wilson also warned that too much central power would result in a tyranny challenging that of the Roman emperors. See Farrand, I p. 157.

¹⁶ See Farrand, I, 151, 153.

“Perhaps that helps to explain why, after the only edition published in America during the colonial period (1773), there was no new American printing of the *Two Treatises* for 164 years.”¹⁷

It would be a mistake to assume that the founding generation did not have modern sources to call on. The most viable alternative source that points out the problem of instability for democracies was David Hume. It seems likely that he exercised some influence on the framers in this regard. Ralph Ketcham (1957) points out the striking similarities between Madison’s *Federalist* 10 and Hume’s theories of government and the role of factions outlined in Hume’s “Of the First Principles of Government,” “Of Parties in General,” and especially “Idea of a Perfect Commonwealth.”¹⁸ Moreover, in his famous essay “That Politics May Be Reduced to a Science,” Douglass Adair made clear that Hume studied history in order to understand the “constant and universal principles” of human nature, which would allow lawmakers to predict the effects of political science on “man in society.”¹⁹ Adair argued that Madison’s analysis of the problem of faction and Publius’ defense of the large republic echoed Hume’s critique of small republics. But Adair also confirms that Hume’s description of the turbulence of democracy was an “ancient dilemma that Madison knew well,” which was “*restated* by Hume.”²⁰ It is difficult to

¹⁷ MacDonald, p. 66.

¹⁸ See Ralph Ketcham’s “Notes on James Madison’s Sources for the Tenth Federalist Paper” in the *Midwest Journal of Political Science*, Vol. 1, No. 1 (May, 1957), pp. 20-25.

¹⁹ Quoted in Douglass Adair’s “That Politics May be Reduced to a Science” reprinted in *Fame and the Founding Fathers*, p. 96.

²⁰ See “That Politics May be Reduced to a Science” reprinted in *Fame and the Founding Fathers*, p. 99. Emphasis is mine.

deny that Publius used a modern explanation to explain the decline of the ancient world. But I would suggest that classical antiquity provided an essential source of Publius' understanding of how factions caused instability in democracies. Using ancient categories, Publius saw the problem of instability with an eighteenth century, Anglo American lens, and he used modern conditions to provide a contemporary interpretation of antiquity. Even Forrest McDonald who sees the republicanism of the intermediary period (1776-1787) as giving rise to at least two separate schools—a more puritan and classical school and a more agrarian and modern school—acknowledges that erudite, dilettante, traditional, and individualistic “republicans” alike all shared a fascination with the *mortality* of such regimes. It is this matter of mortality which concerns this project and supports the connection between early American thought and ancient political theory.

During the time of the creation and ratification of the Constitution of 1787, the historians and philosophers of classical antiquity were central to the patterns employed by Publius in shaping the need for a new constitution. According to the number of ancient references cited during the constitutional convention and in the *Federalist*, classical history and politics not only dominate roughly the first quarter of each, but also the manner in which the ancients were undertaken dealt primarily with the problem of instability. Moreover, during June, the first full month of the convention where the reliance upon classical antiquity is heaviest, Hamilton and Madison dominated the discussion, a further indication of the significance of classical politics and history to their concerns. By June 28, 1787, after a month in which members cited

ancient examples, Benjamin Franklin insisted that the employment of ancient models was useless, challenging the use of “those ancient republics which contained the seeds of their own dissolution” and among these and modern governments “none of their Constitutions [are] suitable to our circumstances.”²¹ The constant references to the ancients during the convention were met with hostility by others as well. Charles Pinckney challenged at one point the parallels to the ancients, observing that neither the institutions of Solon nor the militarism of Sparta nor the Patricians and Plebeians of Rome could be found in the United States.²² Yet the use of ancient examples continued for a few more days; Madison was forced to remind the convention delegates that “the History and fate of the several Confederacies modern as well as Antient [demonstrated] some radical vice in their structure.”²³ The ancients served as the core precedents available in the foundation of a federal republic in their view, serving as the basis of models to both imitate and to correct.²⁴

Gummere (1962) argued that Aristotle’s *Politics* was inescapable to the eighteenth century student of politics. College of New Jersey (Princeton) Professor and President John Witherspoon’s lectures in political theory have notes from Aristotle’s *Politics*.²⁵ Madison recommended this text as well as Plato’s *Republic* for

²¹ See Farrand I, p. 451.

²² See Farrand I, June 25, 1787, p. 401.

²³ See Farrand I, p. 485, June 30, 1787.

²⁴ While it is difficult to assess how much of Publius’ argument is rhetorical, his argument was crucial to overturning the Articles of Confederation. Therefore, we must take his arguments seriously.

²⁵ Witherspoon was Madison’s teacher at Princeton. See his lecture notes in the *Papers of John Witherspoon*, Rare Books and Manuscripts Division, Firestone Library, Princeton University. John Witherspoon, a Scot, also apparently knew David Hume and taught Humean moral philosophy as apart of his lectures.

books on politics for congressional use.²⁶ Madison biographer Ralph Ketcham argued, “what has been often overlooked is that in the eighteenth century, before young scholars read the great contemporaries, they read the classics: Plato, Aristotle, Thucydides, Tacitus, Homer, Virgil, and Cicero.”²⁷ In 1762, James Madison likely started his training in virtually every classic in Latin under the tutelage of Madison’s first teacher Donald Robertson, who led one of the most prestigious preparatory schools in the South. By 1767, Madison was well-versed in Latin and had working knowledge of Greek.²⁸ Records show Madison purchased copies of texts by Virgil, Horace, Tacitus, among others. He also made purchases of Greek texts by Plutarch, Thucydides, and Plato. Madison copied in Latin passages and phrases from Cicero’s *De Officiis*, Seneca’s *Letters*, Tacitus’ *Annals*, and others into his commonplace book.²⁹

A classical background remained a prerequisite of American education at least until the end of the eighteenth century. As a matter of fact, upon reviewing his application, Madison’s teacher John Witherspoon refused to accelerate Alexander Hamilton’s course of study at the College of New Jersey because Hamilton could not demonstrate “the ability to write Latin prose, translate Virgil, Cicero, and the Greek

²⁶ See “Review of Books” in *PJM* January 23, 1783, Vol. 6, p. 76-77.

²⁷ See Ketcham, p. 68.

²⁸ Madison’s Papers confirm this view. See *PJM*, “Notes on a Brief System of Logick,” Vol I, p. 33: “Furthermore, if Robertson gave the course in 1767, Madison by then was amply prepared to employ the Latin and Greek words with which these notes are sprinkled.” The editors of Madison’s Papers note that Madison was “well versed in Latin and acquainted with at least a few Greek words.” See p. 35. Moreover, Madison’s “A Brief System of Logick,” which lack organization and originality according to the editors, was composed sometime between 1766 and 1772 and was written in the format of a Platonic dialogue.

²⁹ See Editorial Notes to Volume I in the *Papers of James Madison*, pp. 5-6. See also his “Commonplace Book” in Vol. I, and especially ff83.

gospels, and a commensurate knowledge of Latin and Greek grammar” prior to matriculating.³⁰ Although Hamilton enrolled in King’s College instead, he would later require his son to study Latin in earnest.³¹ Hamilton’s knowledge of Latin is difficult to assess, but among the effects of his personal library dated 1773 are twenty-seven books on ancient and medieval history and philosophy.³² And by 1778, Hamilton had demonstrated his ease with applying the lessons of ancient history by expressing his aversion to the weaknesses of the Greek confederations.³³

I argue that Hamilton and Madison were not passive recipients of ancient history, but rather each demonstrated the ability both to differentiate the nuances of this history as well as to interpolate precepts of ancient politics that extend from the founding of Athens and Sparta to the fall of the Roman republic and the emergence of the early Roman Empire. Historian Gummere wrote in “The Classical Ancestry of the United States Constitution” that the Greek and Roman sources were “frequently cited” during the constitutional convention and in the *Federalist*, arguing that the writings of Aristotle, Cicero, and Polybius among the ancients figure most prominently in the constitutional debates. He declared, “Their testimony underlies all the suggested patterns of the new Republic.” “The framers of the Constitution did not merely echo or imitate this ancient material: they applied it to the task in hand and transmuted it

³⁰ See Carl Richard’s *The Founders and the Classics* where he provides an analysis of the founders’ classical education.

³¹ *Ibid.*, p. 35.

³² See PAH, Vol I “List of Books,” p. 42.

³³ See essay in the *Continentalist* in 1781. See also the PAH, Vol II.

into workable form.”³⁴ During the convention debates, Madison is described in the following manner: “Mr. Maddison in a very able and ingenious Speech, ran through the whole Scheme of Government,--pointed out all the beauties and defects of ancient Republics; compared their situation with ours wherever it appeared to bear any analogy, and proved that the only way to make a Government answer all the end of its institution was to collect the wisdom of the its several parts in aid of each other whenever it was necessary.”³⁵

When Madison was forced in the debates to confront Montesquieu’s praise of the Lycian League, he used Polybius as a first hand source to refute the claim that the confederation was stable.³⁶ Furthermore, Polybius was taken as the leading authority on the triumphs and failures of the Greek city-states. Gilbert Chinard (1940) insisted that Polybius and Cicero were largely the primary sources of the constitutional debates over the problems of several proposed political institutions.³⁷ For example, Hamilton and Madison cite Sparta, Rome, and Carthage in support of the importance of a Senate.³⁸ Federalist 63 refers directly to the “testimony of Polybius” regarding function of the senate in ancient politics. Moreover, in order to gain some sense of their audience, James Monroe, arguing *against* the need for a drastic re-structuring of the Articles of Confederacy, quoted at length passages from Polybius on the Achaean

³⁴ See Gummere, p. 5.

³⁵ See Farrand, I, p. 110. Although Madison kept the most detailed records of the debates, the outlines and notes of Hamilton and others confirm Madison’s account of this speech.

³⁶ See *Writings of James Madison*, pub. By Congress (Philadelphia 1865) I, 293ff. Farrand I, p. 110.

³⁷ See “Polybius and the American Constitution” in the *Journal of the History of Ideas*, Vo. 1, No. 1 (Jan. 1940).

³⁸ See Farrand I, pp.421-424. See also Federalist 63.

League to the chamber.³⁹ Gummere also argues that Plutarch, Demosthenes, Thucydides, Sallust, and Tacitus provide influence in shaping the need for a Constitution. And Gummere points out that while Plato was noticeably absent from the debates, he is indirectly present in the background, particularly in shaping the influences of Aristotle and Cicero.⁴⁰

Publius traced the democratic reforms of Solon in Athens through the time of Demosthenes when the polis ultimately collapsed under the pressures of Macedon. In the *Federalist*, Madison made reference to Minos, Zaleucus, Lycurgus, Romulus, Aratus, Draco, Solon, Demosthenes, and Amphyction as lawgivers and statesmen whose constitutions, while admirable, relied upon the greatness of one individual and ultimately fell to political instability. *Federalist* 18 is entirely devoted to the Greek confederacies and references the *Third Philippic* of Demosthenes.⁴¹ In *Federalist* 38, Madison, writing as Publius, provided lessons from accounts of lawmakers from Plutarch's *Lives* in order to defend the legitimacy of the constitutional convention. Standing up to critique of his assessment of the Amphytionic council, Madison quoted Plutarch's life of *Themistocles*.⁴²

Furthermore, Hamilton was well-known for his admiration of Plutarch. In order to provide some psychological insight into his political and personal motivations

³⁹ See Elliott III, p. 209-211.

⁴⁰ Plato's name is never mentioned during the convention debates.

⁴¹ Cooke identifies the author as Madison, but notes that Hamilton provided assistance. This conclusion is consistent, as Hamilton's speech on June 18, 1787 before the constitutional convention draws heavily on the *Third Philippic* and complements *Federalist* 18. See Farrand I, p. 307.

⁴² See Farrand I, p. 441. Plutarch's *Themistocles*. Madison declares before the convention, "The Lacadaemonians insisted on excluding certain smaller nations, in order that they might tyrannize over them."

and aspirations, Douglass Adair (1955) noted Hamilton's proclivity towards Plutarchian pseudonyms, which included Phocion, Tully, Camillus, Pericles, as well as Publius Valerius.⁴³ Adair suggested that Hamilton often selected names of figures that were not easily led by the passions of the people and would stand up to them even in the face of opposition. Hamilton copied the lives of Demosthenes and Numa into his pay book in 1776; and his son listed Plutarch and the classical enthusiast Alexander Pope among his father's favorites. Passages from Plutarch on founders of republics which included Theseus, Romulus, Lycurgus, and Numa Pompilius can also be found in Hamilton's papers.⁴⁴ And in the years subsequent to ratification when Hamilton and Madison found themselves on opposite sides of the political divide, Madison assumed the pseudonym of Tacitus' imperial challenger and martyr Helvidius Priscus to oppose Hamilton. Furthermore, Hamilton called the leaders of the Whisky Rebellion of 1794 the new "Catilines"; and he became Pericles in declaring the imperial supremacy of the United States.⁴⁵ Hamilton wrote in "The Vindication," "Every republic at all times has its Catilines and Caesars."⁴⁶ In "The Objection," he insisted: "It has been aptly observed that Cato was the tory—Caesar the whig of his day. The former frequently resisted—the later always flattered the follies of the people. Yet the former perished with the republic, the latter destroyed

⁴³ See "A Note on Certain of Hamilton's Pseudonyms" in *The William and Mary Quarterly*, 3rd Series, Vol 12, No. 2, Alexander Hamilton: 1755-1804.

⁴⁴ See the *Papers of Alexander Hamilton*, Columbia University Press, Volume I, pp. 390-407.

⁴⁵ See D. Adair's essay on Hamilton's use of Pseudonyms. In Federalist 6, Hamilton criticizes Pericles for inciting the Peloponnesian War.

⁴⁶ *PAH*, XI: 463. Hamilton suspected Jefferson of being a Jacobin. During the period following ratification, the debate between the Federalists and the Republicans was viewed in terms of the debate among the French over the Revolution.

it.”⁴⁷ No doubt, Hamilton’s decision to sign the *Federalist* as Publius was a testament to the influence of Plutarch’s writing to its authors as well as its audience.

Indubitably, the classics had a decisive influence in shaping Publius’ claims about the possibility of establishing a modern stable democracy. Years after its ratification, Madison referred to the Constitution as “the best legacy ever left by law givers to their country and the best lesson given to the world by its benefactors.”⁴⁸ I suggest that Madison and Hamilton used the lessons of ancient history and politics as the basis for advocating for the establishment of a stable democracy in the eighteenth century. Publius wrote, “I am not unaware of the circumstances which distinguish the American from other popular governments, as well ancient as modern;...it may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention.”⁴⁹ Yet while the ancients laid the groundwork for understanding instability as regime change or regime collapse, Publius’ understanding that the chief problem with democracy was its inherent instability was the result of a flawed understanding of the teaching of classical antiquity. Publius’ merely saw from his study of ancient commentators that democracy was synonymous with disorder and violence. Yet the ancient accounts did not suggest that instability was a problem specific to democracy. Instead, the ancient narratives help us to understand the challenges popular governments face in addressing instability as a political problem.

⁴⁷ PAH XII:252. J.E. Cooke, Ed.

⁴⁸ See Madison’s article on “The Government of the United States” in the *National Gazette*, February 6, 1792.

⁴⁹ See *Federalist* 63, p. 426.

From his examination of ancient history and politics, however, Publius added a fifth source of instability in democracies which he attributed to confederation. The persistence of the ancient model of confederation as a model of democracy left ancient and modern majoritarian politics doomed to failure in Publius' view. Yet Publius in no way altogether dismissed the ancient teachings. Despite Publius' interpretation of the ancient accounts, the ancient narratives remained prescient to eighteenth century American politics and Publius' defense of the Constitution of 1787.

2.3. Classical Explanations of the Sources of Instability

The idea of political instability is quite ancient and in the West appears certainly as early as Solon. It is a theme in the history narrated by Thucydides; a central topic in Plato's *Republic*; and a central element in Aristotle's *Politics*. Thucydides' description of the period of stability under the brief rule by the Five Thousand in 411 BCE closely resembled the fictional stable polis constituted in Plato's *Laws* by the Athenian stranger. Accordingly, Plato's division of the city of 5,040 in the *Laws* was remarkably similar to Cleisthenes' establishment of the ten administrative *demes* or tribes, which were a part of the democratic reforms instituted to address the pervasive problem of instability in the Athenian polis.⁵⁰ Further, Aristotle's political science represented the first culmination of these precedent

⁵⁰ See Plato's *Laws* 753b. Plato also—as does Thucydides—suggests that the citizen-soldier is valuable to stability: part of what destroyed Persia was its reliance on professional mercenaries.

examples as it was an analysis of the causes of constitutional change, as well as a prognosis of what preserves a good constitution.⁵¹ A concern that is consistent in the reforms of statesmen Solon and Cleisthenes and in the narratives of Thucydides, Plato, and Aristotle was the problem of instability. My suggestion that addressing the political problem of instability remains crucial for each of these ancient figures is confirmed by Ralph Ketcham who writes, “[Thucydides’] accounts of the excesses and evils of revolution, and the depravities of human nature attending it, were essentially reflected in the discussions of revolution in the eighth book of Plato’s *Republic* and the fifth book of the *Politics* of Aristotle.”⁵² In Madison’s “Notes for Essays for the *National Gazette*,” he made reference to Plato’s *Laws*, Aristotle, and Thucydides. In his outline, Madison notes, “The best provision for a stable and free Govt is not a balance of powers...but an equilibrium of interests and passions of the Society itself.”⁵³ Ketcham also confirms that Thucydides, Plato, and Aristotle recalled the descriptions of *stasis* in Madison’s vision of the United States under the Articles of Confederation. According to Ketcham, Madison would have made such connections with ease: “It is not difficult to picture the images which might have come to the minds of men like James Madison, students of the classical writers, as they heard of the uprising of Daniel Shays in the winter of 1786-87.”⁵⁴

⁵¹ See *Politics* V.

⁵² See Ketcham, p. 70.

⁵³ See the *PJM*, Vol. 14 “Notes for the National Gazette” December 19, 1791 to March 3, 1792, pp. 157-169. Although the argument could be made that Madison did not read the *Laws*, but relied on Montesqueiu’s reading, Aristotle certainly did.

⁵⁴ See Ketcham, p. 70.

The principal meaning or denotation of the Greek word *stasis* is “civil war,” but its connotation is “faction”—referring literally to “men who stand together.”⁵⁵ These related meanings of *stasis* recur throughout the history of ancient Greece, and particularly in the pervasive class conflict of this time.⁵⁶ Indeed, it was in describing such class conflict that Thucydides gave *stasis* its notoriety. He wrote, “*Stasis* gave birth to every form of wickedness in Greece.”⁵⁷ Indeed it was Thucydides’ account of the *stasis* that was manifest in the public debates and violent conflicts during the Peloponnesian War that led Hobbes to argue that instability was a feature of democratic rule, and it would appear that Publius agreed, even though there is little evidence that Hobbes was a primary source for Madison or for Hamilton. When insisting on a more permanent Senate, Madison said of democracy, “Democratic communities may be *unsteady*, and be led to action by the impulse of the moment.”⁵⁸ Hamilton also warned against the dangers of mob-rule under the Articles of Confederation at the New York ratifying convention.⁵⁹ While the events of the times may have provided ample support for their view, Hamilton’s and Madison’s interpretation of the classics provided the intellectual framework in which to convey

⁵⁵ See Rahe, p. 165n8.

⁵⁶ This is not to suggest that class conflict is exclusive to Greece. Indeed, both cities experienced both. However, based on the classical texts, class conflict was a pervasive feature of Greek politics. Similarly, an overwhelming majority of the cases of corruption are recounted by Roman historians and philosophers. I tend to follow this scheme.

⁵⁷ *History* III [83].

⁵⁸ See Farrand I, p. 430. Emphasis is mine.

⁵⁹ See the PAH.

their views. It was perhaps for this reason that Publius declared that even if every Athenian had been a Socrates, the *ecclesia* still would have been a mob.⁶⁰

However, this specific connection between democracy and *stasis* is problematic as *stasis* may be endemic to all forms of political life. The very emergence of the Greek polis gave rise to conflicts over the relationship between power and citizenship once the integration of a distinct community replaced tribal and familial ties as the principal mode of political organization.⁶¹ Between the eighth and sixth centuries BCE, *stasis* was rife in Athens which had been governed by every form of government that was conceivable at that time, including monarchy, aristocracy, oligarchy, and tyranny, but not democracy. Struggles between and among the rich and the poor and contests for power and supremacy among Athenian nobles caused these regime changes. In an effort to deal with the tremendous strains on the regime brought about by these economic and political disparities, Solon attempted to establish political stability by providing economic relief to the impoverished masses and constructing political institutions which offered opportunities for a greater share of citizens to participate in decision-making.⁶² This was an effort to move the oligarchic regime in the direction of democracy. Each citizen was assigned membership in one

⁶⁰ See Federalist 55.

⁶¹ The plays of Aeschylus and Sophocles deal with the conflicted transition between family, kinship, and politics. See particularly the *Oresteia*, *Seven Against Thebes*, and *Antigone*. The first chapter of Aristotle's *Politics* also decisively establishes the polis as the most sovereign community, having more authority than subordinate communities like households, villages, and religious organizations. See his *Politics* 1252a.

⁶² In addition to erasing debts and outlawing the enslavement of Athenian citizens, Solon declared that membership in elite and selective circles like the Aeropagus would be based on property, not birth, and he allowed every male Athenian citizen a seat in the assembly. See "Solon" in Plutarch's *Lives*.

of four classes based on wealth, and class assignment served as the basis of determining eligibility for various levels of political participation.

By broadening political participation to all free male citizens, Solon's reforms marked the beginning of democracy in Athens. Solon's created a representative Council of 400 to check the power of the Aeropagus, the council of elder aristocrats. However, Solon ultimately could not solve the problem of *stasis* in Attica. Three *staseis* or factions emerged in the years after the establishment of Athenian democracy. According to Herodotus and Aristotle, these factions represented citizens of the different Attican territories (hill, plain, and coast) and threatened the stability of the Athenian political system. Pisistratus, a leader of the "populist" hills faction and a prominent aristocrat, declared himself tyrant of Athens by seizing power in Athens. After his coup in 560 BCE, Pisistratus fashioned himself as a champion of the people by distributing confiscated lands to the poor, reducing the power of the wealthy aristocrats, and funding public religious and cultural edifices. After Pisistratus' death and a brief period of rule by his son Hippias, Cleisthenes, a prominent aristocrat, assumed power and instituted further democratic reforms. In order to avoid factional disagreements and to cut across family cleavages, Cleisthenes established the Council of 500 and replaced the four tribes created by Solon with ten demes, which redistributed families and classes among the ten administrative districts.⁶³

⁶³ Publius would later encourage the same sort of strategy in a different context. While American society was less "tribal," Publius suggested cross cutting property with other interests in American society.

In this case democracy was not seen as the cause of *stasis*, but as the solution to *stasis*. Democratic reforms in Athens were instituted in order to prevent *stasis* from destroying the polis. Although the democratic reforms broadened participation in the polis in order to prevent tensions from devolving into civil war, Athens continued to experience conflicts over power in the centuries to follow. *Stasis* remained a threat to the Athenian demos because the expansion of citizenship, which provided political rights to the economically dispossessed, gave the people the impetus to fight against economic inequality using political means.⁶⁴ When Thucydides described the threats to ancient Greece, he picked up the problem of *stasis* as a problem facing a polis that is democratic and generally a Greece that is struggling with the role of democracy in the polis.

Accordingly, Thucydides' description of the class-based factional conflict in Corcyra characterized *stasis* as "a state of utmost confusion" due to pervasive and intense competition and violence between the democrats and the oligarchs.⁶⁵ As a result, actions were "disorganized" and dislodged from standards of law and justice; he writes, "No sort of order was kept in anything."⁶⁶ Thucydides' account of the civil war in Corcyra inspired Thomas Hobbes to describe the historian as hostile to democracy.⁶⁷ Yet while Corcyra was a violent expression of *stasis*, it was in no way

⁶⁴ The Old Oligarch's "The Constitution of the Athenians" suggests that democracy in Athens was a war of the masses against the rich and the good.

⁶⁵ *History of the Peloponnesian War* III [69-85].

⁶⁶ *History* III [77].

⁶⁷ In my view, Hobbes oversimplifies Thucydides' view of democracy. While there is evidence in the speeches of Pericles and Cleon that he is troubled by the tendency of democracy at times to lack introspection and to become beholden to monarchical leadership and demagoguery, there is also evidence in the speeches of Diodotus and Nicias that Thucydides thinks that democracy has the capacity

an anomaly. The Peloponnesian War was a violent manifestation of two different and competing ideas about the organization of the polis that were in operation at the time: rule by the many, on one hand, and rule by the few, on the other.⁶⁸ In Thucydides' view, the Peloponnesian War was more accurately a regional manifestation of the problem of *stasis*, or the *internal* war that plagued the Greek world. The opening lines of Plato's *Laws* also draw a close relationship between *stasis* and politics. One of the questions the Athenian stranger poses is whether the statesman should be more concerned with foreign or domestic war. Both the Cretan and the Lacadaemonian confirm that *stasis* is the most dangerous kind of war—that is, the danger that must be guarded against first and foremost by any lawgiver of any regime.⁶⁹ Kleinias says, “Why, right here, stranger, is the first and best of all victories, the victory of oneself over oneself; and being defeated by oneself is the most shameful and at the same time the worst of all defeats. These things indicate that there is a war going on in us, ourselves against ourselves.”⁷⁰

Likewise, Aristotle saw *stasis* in the polis as a problem of class struggle between democracy and oligarchy. At the time of his writing, democracy and oligarchy were the two most common forms of constitution in Greece; further, democracy and oligarchy were the widespread source of conflict in the ancient world. These two factors were the major reasons why democracy and oligarchy were given

to recognize divergent opinions and to adjust to a changing political universe.

⁶⁸ See also Pericles' war speech in Thucydides' *History* I [140-142].

⁶⁹ See Plato's *Laws*, 628a-b.

⁷⁰ See Plato's *Laws*, 626e. It is not surprising that the Dorians live in a war-like society where the problem of *stasis* would be ever present.

the most attention in the *Politics*. According to Aristotle, *stasis* occurred as a result of competing ideas about justice, namely the distribution of property and power.⁷¹ Within an oligarchy and a democracy, each party, the rich and the poor, has hostility toward the other because each suspects that the one is only interested in its own advantage. As a consequence, there is internal conflict over power beyond what law and convention permit. The disturbance of inequality in the Aristotelian sense occurs when one person or group has disproportionate power, making it easy to disregard law and moderation. Among the causes of *stasis*, profit and honor are the most common and they actually also act as catalysts that intensify all of the other differences that lead to *stasis*.⁷² Aristotle wrote that the rich are the most dangerous instigators of instability: because of their acquisitive spirit, they fight both the poor and each other.⁷³

As Thucydides tells the story, *stasis* was pervasive throughout the Greek World during the Peloponnesian War. The cities were rent by violence and deceit, and shattered by terror, all the consequence of the pursuit of unbridled self-interest. In contrast to Thucydides who was more concerned with the dangers of oligarchies, Aristotle devoted more attention to the democratic constitutions, which he saw as equally dangerous. He first describes the types of rule by the people, then how they can be designed, and finally how they can be sustained. Aristotle argued that the ‘first’ democracy—which I read as the archetype, or first principle, of democracy—is

⁷¹ See Aristotle’s *Politics* V.1 1301a28-38.

⁷² See Aristotle’s *Politics* V.3. The other causes of *stasis* include hubris, preeminence, fear, contempt, and disproportion. He also writes in V.7 1307a25-27, “For the only stable thing is equality according to merit and the possession of private property.”

⁷³ See Aristotle’s *Politics* IV 1297a11-13 and V.1 1302a8-15 on the vices of the rich and Book IV 1296a9-21 on the vices of the poor.

based on equality. The use of equality as the *arche* or principle of democratic life reminds us that when equality is disrupted, *stasis* results.⁷⁴ But disputes over conflicting notions of arithmetic equality versus geometric equality were a source of the *stasis* that ensues between the rich and the poor, in Aristotle's view. The rich want arithmetic power in proportion with their wealth, and the poor want arithmetic power in proportion with their numbers. For Aristotle, equality meant *isonomia*, or political equality for equals: the distribution of political power between the rich and the poor should be *equally* proportional. In other words, the rich and the poor must have roughly the same power—that is, essentially enough power to balance the ambitions of the other class. “For the law in this democracy says that there is equality when the poor enjoy no more superiority than the rich and neither is in authority but the two are similar.”⁷⁵ Neither group should comprise so considerable a majority such that it can exercise political power strictly in its own interest. Aristotle recognized *stasis* as a conflict of an economic and social nature, rather than simply political. He suggested that the emergence of a predominant middle class could prevent the rich and the poor from pushing the government to extreme oligarchy or to extreme democracy, respectively.⁷⁶ A democracy comprised of a dominant middle class citizenry was the most stable form of government.

⁷⁴ According to Machiavelli, a part of the greatness of Rome was its ability to tolerate inequality, whereas Florence relied solely upon inequality. In this case, I am referring to the Greek case.

⁷⁵ See Aristotle's *Politics* IV.4 1291b31-33.

⁷⁶ See his *Politics* IV.7.

Balancing the tensions that existed between the classes shaped politics in the Roman Republic. According to the Greek historian Polybius, the Romans invented checks and balances in order to subdue the struggle at first between “new money” plebeians and “old money” patricians over the distribution of power. Polybius argued that republicanism in Rome brought stability at long last by placing an end to the endless cycle of regime change caused by class conflict.⁷⁷ “The mixture was so effective that it was impossible even for a native to determine whether the procedure was aristocratic (senate), democratic (people), or monarchical (consuls).” Regarding Roman institutions, Polybius wrote, “When one part, having grown out of proportion to the others, aims at supremacy and tends to become too dominant...none of the three is absolute...the purpose of the one can be counter-worked and thwarted by the others, none of them will excessively outgrow the others or treat them with contempt...any aggressive impulse is sure to be checked.”⁷⁸ The emergence of the mixed constitution balanced the virtues associated with the monarchical element, the aristocratic/oligarchic element, and the popular/democratic part.

Yet Publius recognized that the mixed constitution only exposed and fueled the pervasiveness of class conflict and instability in political life. For example, such narratives led Alexander Hamilton to declare that the republicanism of Rome’s mixed constitution was fictitious and proved that “the only distinction which remained at Rome was, at last, between rich and poor.”⁷⁹ Although the purpose of a large middle

⁷⁷ See Polybius, *Histories* VI.11.12.

⁷⁸ Polybius, *Histories*.

⁷⁹ See Farrand I, p. 432, June 26, 1787.

class was to stabilize democratic politics, ultimately disputes over the balance of power between the classes remained a dominant influence over politics. The narratives of the Roman republic taught Publius and the framers that Roman politics were ultimately destroyed by the deadlock and tumult of the mixed constitution. Starting in the last century BCE and for the next two hundred years, a class of historians and political commentators emerged who openly question the veracity of Rome's mixed constitution. These commentaries, which chronicled in vivid detail the effect of class conflict and elite ambition, would form the basis of the Anglo-American interpretation of Roman republicanism.

Cicero, Sallust, Plutarch, and Tacitus' accounts of corruption inform Publius' understanding of corruption as a source of instability and emphasize the problem of the greed among aristocrats and other political elites. Gordon Wood agrees, "Writing at a time when the greatest days of the Republic were crumbling or already gone, pessimistic Romans—Cicero, Sallust, Tacitus, Plutarch—contrasted the growing corruption and disorder they saw about them with an imagined earlier republican world of ordered simplicity and Arcadian virtue and sought continually to explain the transformation."⁸⁰

Cicero particularly admired the spirit of the Roman mixed constitution as did Polybius before him. "I consider the most effective constitution to be that which is a

⁸⁰ See *The Creation of the American Republic*, p. 51. Taking a cue from Wood, I do not directly provide an interpretation of Livy's contribution to the theory of stasis. His *History of Rome* chronicles the early history of the republic until the reign of Augustus. I would argue that this chronology might suggest for Livy a noticeable shift in the institutions and norms governing the Roman state. But I do not mean to dismiss Livy or his follower Machiavelli.

reasonably blended combination of the three forms,--kingship, aristocracy, and democracy.”⁸¹ Yet he, unlike Polybius, lamented the growing chasm between the Roman ideal and its reality, which Cicero observed in the rising greed and ambition of members of the aristocracy and other political elites. For Cicero, the degeneration of Roman republicanism was a direct reflection of a degeneration of prestige and character in the republic.⁸² Corrupt politicians and an immoral aristocracy were threatening the republic. Also suggesting that the instability of the regime begins with the corruption of its leaders, Sallust’s observations of the impoverishment of the aristocracy, the rise of an extravagant commercial class, and the use of fraud and manipulation by members of the political elite reiterate Cicero’s accounts.⁸³ Both record the habits of politicians who encouraged conspiracies favoring their individual interest over the interest of the republic and who often employed political maneuvers to serve personal gain. Cataline’s challenge to the Senate’s authority was a product of the corruption of morals and valor and the luxury and vice that dominated public life.

Like Cicero, Sallust noted the avarice and ambition of the elites were the first indicators of corruption and the ensuing collapse of republican institutions. Sallust’s *The Conspiracy of Catiline* chronicled the use of fraud and manipulation by aristocrats for their personal gain. The ambition of Catiline represented the manipulative acts of the patrician as the product of a corrupt age. Sallust narrated how aristocratic greed was used to manipulate the impoverished masses. He wrote of Catiline’s exploitation

⁸¹ See Cicero’s *Republic* II, 41 and *Laws* III, 28.

⁸² See Cicero’s *Philippic* 10.

⁸³ See Cicero’s *Laws* III.31.

of the people, “poverty, added to the resentment which they felt about their [the aristocracy’s] ways, made them eager for revolt.”⁸⁴ This evaluation echoed in Plutarch’s description of the Catiline episode: “In Rome, itself, there were most alarming revolutionary tendencies, the result of the unequal distribution of wealth...only a spark was needed to set everything on fire.”⁸⁵

The consequences that were most alarming about the Catilinian conspiracy for Cicero, particularly, were the intense conflicts within the Senate over political offices that were leading to the eclipse of the Senate as a legitimate republican institution. The Catiline conspiracy of 63 BCE underscored the threat posed by greedy and ambitious individuals who threatened to usurp the Senate’s legitimacy.⁸⁶ Yet for Cicero, the return of republicanism in Rome was possible and required the restoration of mixed government in which each of the different orders would possess a representative body appropriate to its virtue with the most important power resting in the Senate as the truly wise and naturally aristocratic body.⁸⁷ Although the personal ambitions of political elites, the excesses of Catiline, and later the disputes between the Emperor and the Senate were paradigmatic instances of the corruption destabilizing Rome, Cicero maintained that the course of corruption could be delayed by returning to the mixed constitution, as he insisted that obligation to the republic might restore political stability.⁸⁸

⁸⁴ See *Conspiracy of Catiline* pp. 196; see also pp. 199-200.

⁸⁵ See Plutarch’s *Lives*, “Cicero.”

⁸⁶ See Cicero, *The Four Orations Against Catiline*.

⁸⁷ See Cicero’s *Laws*, III.24-25, 28, 38.

Tacitus also recognized the particular instance of the conspiracy of Catiline as emblematic of Roman corruption. Tacitus pessimistically chronicled the resonance of the problem of *stasis* as an effect of the ambitions of elites. Just as Aristotle warned that fraud and force are the means by which *stasis* occurs, Tacitus drew a direct relationship between the avarice of the political leadership and political instability, depicting the inversion of morals by the elites as a feature of corruption, borrowing heavily from Thucydides' analysis of *stasis* in the *History of the Peloponnesian War*.⁸⁹ Tacitus' description of the corruption of Rome is among the most vivid pictures of savagery and atrocity in the ancient world.⁹⁰ Thucydides description of *stasis* as 'words changing meaning' and as violent and malicious deceit, terror, and the pursuit of unbridled self-interest are used by Tacitus to describe the corruption of the Roman Republic. Like Thucydides description during the Peloponnesian War, the actions of the political elite described by Tacitus were without logic—that is “lawless” and “mindless”—destructive, variable, and utterly unpredictable. Furthermore, Tacitus' account of corruption demonstrated that language could be used as a tool of fraud and control. Politics became the sport of career conspirators, as members of the upper classes deceitfully cooperated with and plotted against one another and the emperor in

⁸⁸ See “Marcus Tullius Cicero” in the *History of Political Philosophy*, where James E. Holton writes that Cicero believed that the “strength of a regime lies in its relative stability.” I understand this to embody the Stoic belief that some level of stability is possible even in a world that we cannot entirely control.

⁸⁹ See Tacitus' *Histories* 2.38 and the *Annals* 3.26.2. See also Aristotle's *Politics* 1290a1-30, 1296a20 on the internal conflict between the rich and the poor plaguing polises; see *Politics* V.4 1304b7-18 on the tools of *stasis*.

⁹⁰ See *Histories* 4.1.1. He also provides a scathing critique of Nero's atrocities in the *Annals* 13.25.2 and 15.58.2-3.

order to achieve political gain.⁹¹ The laws of the 1st century, like the treason trials under Tiberius, were instituted as instruments of corruption used to serve personal ambition, to carry out personal vendettas, and to exploit class rivalry. The rivalries between the elite families led to violent acts toward other members of the aristocracy, as well as toward the people. Tacitus' *Annals* are full of examples of the principate's use of tools of corruption—bribery, deceit, and violence—both in war and during peacetime—in its conflicts over power.⁹² His descriptions of the leadership's cooperative and subversive acts revealed the features of corruption that reflect the spirit of republican instability.

The problem, Publius argued, was that Roman politics relied on the supremacy of predominant power in its policy-making. This reliance encouraged the encroachment of political power and intense competition over power, which resulted in tyranny and instability in Rome. According to Publius, the nature and sources of corruption in ancient Rome indicated that stability crucially depended on understanding that “where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution, are subverted.”⁹³ These lessons were articulated in Publius' discussion of the means for avoiding instability in the *Federalist*.

⁹¹ See an example of this in his description of the nobles' “manipulation” of Augustus in the opening pages of *Augustan History* 1.2.1 and 1.7.1.

⁹² See the first chapters of the *Annals* 1.10. See also 3.44.3 where Tacitus' descriptions of the treason trials are congruent with Thucydides' and Sallust's accounts of stasis.

⁹³ See *Federalist* 47.

In addition to corruption, the third source of instability that the ancients recognize was the mutability of the laws. This was considered a pervasive problem of the democratic governments under the Articles of Confederation, Madison and Hamilton argued. One of the faults of the state governments noted by Madison was the multiplicity and the mutability of their legislation.⁹⁴ Furthermore, on the convention floor arguing in favor of a permanent and aristocratic house of the legislative branch, Hamilton declared the following: “The people are *turbulent* and *changing*; they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second, and as they cannot receive any advantage by a change, they therefore will ever maintain good government. Can a democratic assembly who annually revolve in the mass of the people, be supposed steadily to pursue the public good? Nothing but a permanent body can check the imprudence of democracy. Their *turbulent* and *uncontrolling* disposition requires checks.”⁹⁵ Hamilton and Madison seemed to echo Plato’s remarks regarding the “turbulent” impulses of the people in order to convey their concern with the mutability of the laws. “Not only Theoretical writers [such] as Plato, but more practical ones...remark that the natural rotation in Government is the abuses of...the licentiousness of Democracy...Many examples...show this tendency,” Madison wrote.⁹⁶ This reference is a direct allusion to Book VIII of the *Republic* in

⁹⁴ Farrand I, p. 318. He also criticizes the state laws for injustice and impotence. See also his “Vices of the Political System of the United States” in *PJM*.

⁹⁵ Farrand I, p. 299. Emphasis is mine.

⁹⁶ See *PJM*, “Notes for the National Gazette, December 19-1791-March 3, 1792” in Vol 14, p. 162. Madison may suggest that according to Aristotle, public opinion restrains licentiousness. See Colleen

which the character Socrates provides a theory of the degeneration of regimes, explaining how an aristocracy becomes a timarchy, which in turn becomes an oligarchy, then a democracy, and ultimately a tyranny.

Yet there is a distinct difference between the accounts of Plato and those of Madison and Hamilton regarding the relationship between instability and democracy. Although Madison and Hamilton observed the pervasiveness of instability in ancient democracy as a feature peculiar to democratic politics, Plato had not suggested that instability was inherent in democracies. In Book VIII, Socrates reminds Glaucon that constitutional change had been a political problem at least since the time of Homer. Even the best constitution must confront the problem of instability because “not even a constitution such as [the good constitution] will last forever. It, too, must be face dissolution.”⁹⁷ Plato believed that instability was a feature of politics in general and that it posed a threat to *any* regime, even the best one. In contrast to Madison and Hamilton, Plato had not argued that instability was peculiar to democracy.⁹⁸ Rather he had addressed the way that instability licentiousness persists in the democratic polis. Moreover, Plato also seemed to recognize that the solution to the political problem of instability relied on knowledge peculiar to democratic politics. For example, Socrates says of democracy, “It’s also a convenient place to look for a constitution...[because] it looks as though anyone who wants to put a city in order, as we are doing, should

Sheehan’s “The Politics of Public Opinion: James Madison’s Notes on Government” in *The William and Mary Quarterly*, 3rd Ser., Vol 49, No. 4.

⁹⁷ See 546e.

⁹⁸ It is possible, of course, that Madison and Hamilton believed that other forms of government—other than democracy—were unstable. But as their task was to address the problem of instability in popular government, they provide little or no commentary regarding this matter.

probably go to a democracy.”⁹⁹ Since the problem described in the *Republic* is the constant decline of regimes, Plato suggested that stability could be compatible with a democratic constitution.¹⁰⁰

Although Plato suggested that democracy held the best prospect for stability, any stable democracy must practice restraint in its lawmaking. Socrates argues that we find all kinds of people—the aristocratic, the timarchic, the oligarchic, the democratic, and the tyrannical—in any city and, most of all, in the democratic one. According to Plato, democratic politics was shaped by different kinds of individuals striving for the power to rule the city.¹⁰¹ Since each of these ‘persons’ co-exists in the polis, whichever manner of person has power in the city will legislate policies that reflect their will. For example, the oligarch will distribute titles and goods according to wealth, the democrat according to equality, and so on. Plato suggested that democratic law-making was liberal and mutable in ways that were dangerous to the polis’ very existence as a democracy.¹⁰² In other words, a democratic polis must be cognizant of the ways that its law-making capacity poses a threat to its stability. The Athenian democracy was unstable, according to Plato, because its legislation was mutable.¹⁰³ Therefore, ultimately, the problem with a democracy was not that it was a

⁹⁹ See VIII 557d.

¹⁰⁰ He makes the same argument in the *Laws*.

¹⁰¹ See Book VIII 547b-c.

¹⁰² Rahe argues that Athens was an illiberal democracy. I disagree with his reading and will take his argument up later in this chapter.

¹⁰³ For Plato not only do the aristocrat who loves justice, the timocrat who loves honor, the oligarch who loves money, the democrat who loves license, and the tyrant who loves power co-exist in the polis, but each *also* co-exists within each person. Although Socrates never directly refers to Athens, Plato, of course, is a citizen of a democratic polis and the action of the *Republic* takes place in Athens.

democracy, but that it lacked the self-restraint, the will to control its lawmaking powers, which led to instability.

Therefore, when Socrates describes instability in the polis, he provides an illustration of the *many kinds* of people and characters that exist in the city-state: the good, the wellborn, the wealthy, the licentious, and the ambitious. Plato believed the cause of change in the polis was a consequence of not understanding the effects of this multiplicity. Plato spoke of the effect of the lack of restraint on mutable laws. “The whole mob of humanity lives with a lack of moderation because of their ignorance or their lack of self-mastery or a combination of both.”¹⁰⁴ For Plato, changes in laws were consequences of license in the polis, which made instability imminent in democratic Athens because its politics was subject in equal measure to the disorderly whims of people in equal measure to the disordered passions of the people. Plato was concerned with the failure of efforts to enact good and lasting laws and the inevitable collapse of the regime.¹⁰⁵

Publius drew parallels between Plato’s diagnosis of the problem with licentiousness to the mutable laws of the state governments under the Articles of Confederation. For Publius, the legislature in a popular government was the most democratic part and accordingly the most likely to be unstable. Regarding the Athenian democracy, Publius declared, “What bitter anguish would not the people of

Therefore, it is not unlikely that Plato offers both a critique and a resolution to the problems facing Athenian politics.

¹⁰⁴ See Plato’s *Laws* 734c.

¹⁰⁵ Book X of the *Laws* deals directly with the relationship between change and stability, and according to the Athenian, stability *can* permit change.

Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing on the same citizens hemlock on one day and statues on the next.”¹⁰⁶ Regarding the American states in the 1780s, Madison pointed to a similar vice: “the mutability of the laws of the states.” He argued that the state laws were much too easily repealed or superseded, and that the laws they passed often their own laws, the laws of other states, as well as the laws of the general government. He also often criticized them for inconsistently enforcing their laws. Finally, Madison assailed the government under the Articles of Confederation for encouraging the most ambitious and self-interested individuals to assume public office to the destruction of the general good.¹⁰⁷

According to Publius, the very foundation upon which government rested should not be vulnerable to the threat of “irregular and mutable legislation,” which was a source of political instability.¹⁰⁸ For this reason, the “Constitution requires adoption *in toto* and *for ever*,” Publius argued.¹⁰⁹ Stability required that the basic structure of government *endures*, and it was the Constitution as a stable and foundational governing document which is to provide this basis. Publius wrote, “Stability, . . . , requires, that the hands in which power is lodged, should continue for a

¹⁰⁶ See Federalist 63.

¹⁰⁷ See Madison’s “Vices of the Political System of the United States” April 1787 in *PJM*. Madison expresses concern over the use of property inequality and religious differences as tools of oppression of minorities.

¹⁰⁸ See Federalist 37.

¹⁰⁹ See Madison’s Letter to Hamilton on July 20, 1788.

length of time the same.”¹¹⁰ And there was no other source of instability in his view than the legislative power to change the law. This was why legislatures, which possessed the political authority to change the laws, had the greatest propensity to instability.

In addition to the problem of mutable legislation, the fourth source of instability that shaped Publius’ political thought was the notion that democracies throughout history had been unable to respond effectively to changing international conditions. This concern was traced to ancient thought and experience, and the role of the constitution in protecting against external sources of instability found support in studying Greek and Roman history, Publius argued. In fact, the threat of foreign intrigue was one of the more salient issues around the Constitutional debate. “As lessons which claimed particular attention, [Madison] cited the intrigues practiced among the Amphyctionic Confederates first by the Kings of Persia, and afterwards fatally by Philip of Macedon and afterwards no less fatally by Rome.”¹¹¹ On the treatment of foreign affairs, Polybius was read by Publius and the framers of the Constitution as an authority on the weaknesses of the Greek city-states and the superiority of Rome.¹¹² In a letter dated March 1786 to Thomas Jefferson who had shipped Madison copies of Polybius, Madison wrote of his fear “of having the same

¹¹⁰ See Federalist 37, p. 234.

¹¹¹ Madison in Farrand I, p. 319. These qualities also extend to the interference on modern confederacies like the Swiss Cantons, Germany, and the Belgian Republic.

¹¹² See Polybius, *Histories* vi, chaps 4-6, particularly.

game played on our Confederacy by which Philip of Macedon managed that of the Grecians.”¹¹³

Ancient history, particularly as it was chronicled by Polybius, provided a comparative study of the ability of various regimes to triumph over their enemies. Polybius’ history of Rome compared its defeat of Macedon in the 160s BCE with the destruction of Carthage by Rome in 146 BCE, which allowed Polybius to contrast the weaknesses of Greek politics and the strengths of the Roman constitution. He attributed Rome’s triumph as a global empire to the superiority of its constitution. According to Polybius, Rome achieved greatness in large part because of its ability to successfully respond to the challenges and changes of the world order, particularly its ability to defeat its nemesis and rising super power Carthage, which Polybius noted had already begun the decline into instability before its defeat by Rome.¹¹⁴

Supported by ancient accounts, Publius argued that changes in international conditions were virtually unavoidable. A government thus must have the fortitude to respond to the changing world landscape to avoid regime collapse. Federalist 18 is full of examples from ancient Greek history, “The contest of the Greeks always afforded a pleasing opportunity to that powerful neighbor, of intermeddling in their affairs.” In fact, Publius suggested that Rome in part was able to conquer the Greek city-states because the latter sought “recourse to the dangerous expedient of introducing the succour of foreign arms. The Romans to whom the invitation was

¹¹³ See *PJM*.

¹¹⁴ See Polybius’ *Histories* 6.10.12-14, 6.11.1 and 6.51.3.

made, eagerly embraced it.” Ultimately, after years of impotence, “imbecility and distraction,” “the arms of Rome found little difficulty in completing the ruin which their arts had commenced.”¹¹⁵ The ancient failures also extend to the fates of modern confederacies, records the *Federalist*. Of Poland, Publius wrote, “Equally unfit for self-government, and self-defense, it has long been at the mercy of its powerful neighbors; who have lately had the mercy to disburden it of one third of its people and territories.”¹¹⁶

Publius used these ancient examples to warn against inadequately confronting international conditions and to draw parallels to the United States in the late eighteenth century by emphasizing militarized threats from European nations as well as from the indigenous societies who challenged the legitimacy of the United States.¹¹⁷ Publius also broadened considerations of global affairs beyond acts of war to include the arena of commerce. Hamilton argued that while Rome depended largely upon military might for its greatness; the United States would rely upon fortitude in war and commerce in order to prevent acts of foreign intrigue.¹¹⁸ But while ancient narratives were full of examples of acts of war instigated by foreign entities, they offer significantly less on the specific role of commerce in shaping international conditions.

¹¹⁵ See *Federalist* 18, especially pp. 115-116.

¹¹⁶ *Federalist* 19, p. 122.

¹¹⁷ I take this matter up in Chapter 4.

¹¹⁸ Hamilton argues before the convention, “Neither the manners nor the genius of Rome are suited to the republic or to the age we live in. All her maxims and habits were military: her government was constituted for war.” Some like Mansfield and Rahe will take this to mean that Hamilton is making a value judgment about Rome as a martial society. I would suggest considering that Hamilton is concerned less about Rome and argues that American government should not be *solely* constituted for war, for the late 18th century is a time in which governments must be constituted for commerce, as well.

Indeed, commerce emerged as a defining characteristic of European modernity. In fact, In *Federalist* 10 Madison expressed his hope that commerce would encourage attachments across property, state, religious, and regional lines. Hamilton too understood that commerce was providing a new context for governments to act on the world stage.¹¹⁹ Although it was not a defining characteristic of the ancient understanding of the sources of instability, commerce as a “new” feature of changing international conditions that allowed Publius to speak to the role of changing global conditions in eighteenth century American politics. Madison’s “Vices of the Political System of the United States” assailed the actions of state governments for encroaching on federal authority in international matters related not merely to war and peace but to trade as well.¹²⁰ Among his grievances were state protectionism with respect to commerce; the production of state currencies; the refusal to recognize the currencies of other states; currency manipulation by states; the passage of debt laws that benefit the state of origin and impaired other states; and the “lack of concert” regarding foreign matters that require it, of which commerce figured prominently.

The ancient accounts suggested that the capacity to respond to international pressures depend on the confederal principle. However, Publius suggested that confederation was itself a source of instability since it caused “mutual jealousies, fears, hatreds, and injuries...which itself ended in ruin.”¹²¹ Differences between the

¹¹⁹ Madison seems to suggest that commerce can overcome *stasis* caused by class conflict; Hamilton seems to emphasize commerce as a part of international politics. This difference might explain the disagreement between Hamilton and Madison that explodes in the years after ratification.

¹²⁰ See the “Vices of the Political System of the United States” in the *PJM*.

¹²¹ See *Federalist* 18, p. 112.

Greek city-states were fueled by contests over power. These contests led to a series of conflicts including the Peloponnesian War. These wars ultimately left the Greek cities susceptible to exploitation by Philip of Macedon. According to Publius, “Such were the consequences of the fallacious principle, on which this interesting establishment was founded. Had Greece, says a judicious observer on her fate, been united by a stricter confederation, and preserved in her Union, she would have never worn the chains of Macedon; and might have proved a barrier to the vast projects of Rome.”¹²²

Aristotle’s *Politics* represented an attempt to justify on theoretical grounds the confederation of the ancient Greek world, and one of the most important aspects of his analysis of different constitutions was a study of how a democratic politics might become stable. This is why, for example, he argued in Book VII, Chapter 7 that Greece “remains free and governs itself in the best manner and at the same time is capable of ruling all, *should it obtain a single regime*.”¹²³ The singular regime Aristotle advocated was a confederation of mixed constitutions. But Richard Kraut (1997) questions Macedon’s influence on this vision since Aristotle’s express central concern was the internal composition of the city. According to Kraut, Aristotle never explicitly mentioned the tension between Athens and Macedon in either the *Nicomachean Ethics* or the *Politics*—nor does he discuss the emergence of Philip’s power. The only possible reference is found in Book IV where Aristotle referred to an

¹²² See Federalist 18, p. 113.

¹²³ See also Aristotle’s *Politics* Book VII.7 1327b29-33. Emphasis is mine Here Aristotle extols the strength of Greeks over non-Greeks. He also is suggesting that its strength will be further bolstered by crating a federative constitution. This may be another indirect reference to Macedon, as Philip formed the League Corinth for this very purpose.

anonymous “only one man” who respected the merits of each city-state’s internal administration.¹²⁴ However, I suggest that the possibility of the irrelevance of the polis in the face of a changing political context played an important role in Aristotle’s writings, and that this fact may indicate that his response was more deeply influenced by the hegemony of Macedon than Kraut allows.

For Aristotle there was a one-size-fits-all elastic model for governance of the Greek polises—the confederation. Aristotle suggested that confederation was a flexible model of democracy that was both suitable to the enduring problems of all polises as well as responsive to the particular cultural and political history of the individual city-state. The flexibility inherent to Aristotle’s theory of confederation may well have been a response to a new mode of the political community on a large scale introduced by Philip II of Macedon. At the time of Aristotle’s writing, Athens had experienced a period of relative internal stability, yet the imminent threat to the stability of the polis was the growing hegemony of Macedon and this considerably influenced Aristotelian political science. After studying well over one hundred polises, Aristotle’s solution to the instability as rule by the many *parts*, which served as the basis for a viable and stable political confederation of city states to respond to the challenges facing the self-sufficiency of the individual polis.

¹²⁴ See *Politics* 1296a38-40. Despite his argument that Macedon figures little in Aristotle’s political theory, Kraut convincingly argues that this is a reference to Philip II. There is evidence that Philip sought to “globalize” the Greek World, and he largely allowed the individual city-states to determine their own internal organization. Philip was established as the ‘hegemon’ of the League of Corinth, a federation of Greek city-states who united against the Persians. Yet I would not want to imply that Aristotle was entirely an apologist for the conquests of Macedon.

But according to Madison and Hamilton, the problem of political organization experienced by the ancients, by modern politics, and by the United States in the 1780s could be traced to a common denominator: confederation. While Aristotle saw confederation as the solution to foreign pressures, Publius argued that confederation exacerbated instability because it weakened the general government by granting sovereignty to its constituent governments—it was an *imperium in imperio*. For Publius, internal conflicts were consequences of the parts usurping the authority of the whole as had been the case throughout ancient and modern history. “If we review the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole.”¹²⁵ Hamilton pointed to the Amphyctionic Council to express the problem of confederation: “The national government cannot long exist when opposed by such a weighty rival [as state interests].” Likewise, Madison challenged the notion that a federal government was a compact of sorts between states as component members. And he insisted that overindulging the states with power permitted the part to encroach upon the whole: “—if we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. [Madison] then reviewed the Amphyctionic and Achaean confederacies among the antients,...tracing their analogy to the U. States...--in the tendency of the particular members to usurp on

¹²⁵ See Madison’s remarks on the New Jersey Plan during the Constitutional Convention. Madison cites the examples of the ancient Amphyctionic and Achaean leagues and the modern Helvetic, Germanic, and Belgian confederations.

these authorities; and to bring confusion and ruin on the whole.”¹²⁶ According to Publius, the precise problem with ancient, modern, and American confederation was that their general governments lacked the ability to withstand constituent rivalries, to protect against foreign threats, and to create and maintain the conditions for stability.

Furthermore, Hamilton and Madison found the most vivid accounts of what they saw as the problem with confederation as a source of instability in Plutarch’s *Lives* and Demosthenes’ *Third Philippic*. “The *contentions*, not the coalitions of Sparta, Athens, and Thebes, proved fatal to the smaller members of the Amphyctionic Confederacy.”¹²⁷ Madison in *Federalist* 18 devoted the entire essay to lack of balance and the disunity of the ancient confederacies. “The more powerful members instead of being in awe and subordination, tyrannized successively over the rest. Athens, as we learn from Demosthenes, was the arbiter of Greece for seventy years. The Lacadaemonians governed it twenty-nine years; at a subsequent period, after the battle of Leuctra, the Thebans had their turn at domination.”¹²⁸ Dissension among the parts is also a threat to the basic tenets of collective rule: “History shows that their decrees were disregarded, and that the stronger states, regardless of their power, gave law to the lesser.”¹²⁹ Further, according to Madison, what makes confederation a source of instability was less its threat to the smaller and weaker parts, but that the confederation would be wracked with conflict between the larger parts as was the case with Rome

¹²⁶ See Madison’s speech June 19, 1787 Farrand I, p. 317.

¹²⁷ Madison, in Farrand I, p. 449, June 28, 1787. Emphasis is mine.

¹²⁸ See *Federalist* 18, p. 111.

¹²⁹ See Farrand I, p. 296.

and Carthage, Sparta and Athens, Prussia and Austria, France and England.¹³⁰ Plutarch provided accounts of the more powerful members of the Amphyctionic Council competing in order to manipulate outcomes in their favor.¹³¹ “This piece of history proves at once the inefficiency of the union; the ambition and jealousy of the most powerful members, and the dependent and degraded condition of the rest. The smaller members...had become in fact, satellites of the orbs of primary magnitude.”¹³² Ultimately, the enmity of Athens and Sparta plunged the entire Greek world into war, which according to Publius, resulted in more ruin than the threats posed by the ‘foreign’ Persians.

2.4. Conclusion: The Role of the Classics in the *Federalist*

Tracing the conceptual history of instability allows us to understand both Publius’ reliance and variations on the ancient framework in defending the Constitution of 1787. Instability in ancient Greece was shaped by experiences with *stasis*—factions and class conflict—volatile changes in the laws, foreign threats, and Greek disunity. Moreover, the history of Rome demonstrated that the misuse and consolidation of power corrupted politics and led to instability.¹³³ What Publius interpreted from the extant observations of Athenian democracy, from the debates

¹³⁰ See Farrand I, p. 456 remarks by Madison.

¹³¹ See Federalist 18.

¹³² Federalist 18, p. 112.

¹³³ See J. Peter Euben’s essay on “Corruption” in *Conceptual Change*, p. 224.

between the ancient Greeks over oligarchy and democracy, and from the historical and philosophical analyses of the Roman Republic are the sources of instability and the changing conditions—in both predictable and unpredictable ways—of the political order. But the task of creating a stable democracy was not introduced to the history of politics by Publius as the *Federalist* suggests.

In Papers Nine and Ten, Hamilton and Madison argued that political history had suggested that instability was endemic to democratic politics and that modern political theory had concluded that the sources of instability could not be treated without destroying the central tenets of majority rule. Hamilton wrote of modern political theory that “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.”¹³⁴ Yet in spite of these admonitions and the dismal narratives of past and prospect, Publius represented the Constitution of 1787 as consciously framing a government to produce stability in order that “the endless cycles of history could finally be broken.”¹³⁵ In other words, Hamilton and Madison suggested that the United States could create political institutions that would counteract the threats posed by *stasis*, corruption, mutability of the laws, and international conditions, i.e., all of those factors that ancient political history and theory thought were endemic and fatal

¹³⁴ See *Federalist* 9, p. 51.

¹³⁵ See p. 614 in Gordon Wood’s *The Creation of the American Republic 1776-1787*.

for democracy. These threats framed how Publius understood instability in popular regimes as a problem and the Constitution of 1787 as its solution.¹³⁶

The argument that I have developed here is at odds with positions defended by a number of important scholars. Paul Rahe, for example, argues in his formidable tome *Republics, Ancient and Modern* (1992) that while the framers were well familiar with ancient thought and history, they did not draw on classical antiquity in formulating the institutions for the American republic. Tracing the history of republicanism in the West, Rahe insists that republicanism is divided into three distinct periods, that of the ancient republic, the early modern republic, and the American republic. He associates early modern republicanism with Machiavelli, Hobbes, and Locke and claims that these theorists respond to the failures of the ancient republic and to changes in modern conditions. American republicanism in his view draws on early modern republican ideas, not archaic ancient notions. Rahe is unimpressed by most modern and contemporary analyses of ancient republicanism because of the fact that today's scholars tend to describe antiquity using modern values and norms instead of describing the ancients in the manner in which they understood themselves. Rahe, however, may be also guilty of the same offense. While Rahe and Pocock, for that matter, are right to argue that the theory of republicanism is Aristotelian in principle, I suggest that the Athens and Sparta Rahe describes are largely the Athens and Sparta that trouble Aristotle and inspire Aristotle's new idea of politics. According to Rahe, Athens and Sparta, for example, were the classic

¹³⁶ See Federalist 9, p. 51-52.

exemplars of ancient republicanism, but this is not entirely obvious. In fact, one might maintain that Sparta and Athens were not republics in the Aristotelian sense at all. It is highly unlikely that Aristotle intended Sparta as the model for his politeia since he was critical of the Spartan constitution and characterizes Lacadaemonia as altogether a kingship, an aristocracy, an oligarchy, a democracy, *and* a tyranny.¹³⁷ Moreover, Polybius long ago argued that Rome's triumph as a global empire was largely due to the superiority of its constitution—something that the Greeks and most notably Lycurgus' Sparta had *failed* to achieve in his view.¹³⁸ Rahe's argument does not address the crucial role of Polybius in the argument developed by Hamilton and Madison. Aristotle's ideas of a stable republic were never achieved by the city-states of ancient Greece because they ultimately were unable to survive in the changing international conditions of the ancient world. I have shown that there is compelling evidence that the fate of the democracies of Greece suggested to Publius the need for a larger republic, more like Rome, that could survive on a world stage with other powerful nation states and that this insight shaped the argument about instability in the *Federalist*.

While Rahe is careful to distinguish republicanism across periods of its history, he surprisingly does not discuss the emergence of Rome and the differences in its

¹³⁷ See Aristotle's *Politics* 1270b14, 17-25. Polybius' *Histories* (6.3-10) and Plato (*Laws* 691d-e) also seem to have trouble accurately describing the Spartan constitution. But Aristotle's view of Sparta is ambiguous as he later compares its constitution to politeia, even if there is an apparent difference between the Spartan constitution and Spartan reality. See the *Politics* 1294b13-41.

¹³⁸ The ancient historians disagreed on this point. For example, Plutarch suggested that Lycurgus had been successful in establishing a stable constitution.

political organization compared to that of the city-states of ancient Greece.¹³⁹ In an earlier article on the expression of “the political” in classical antiquity, Rahe addresses some of these concerns and suggests that “politics lost its dignity” when the polis declined under the dominance of Macedon and Rome as did the idea of the polis as ‘the men who comprised it and shared in a common way of life’.¹⁴⁰ But his attempt to use Aristotle’s thesis that “man is a political animal” to defend the idea that the Greeks considered politics the core human activity does not properly place Aristotle’s notion of the “political” within the context of the eclipse of politics threatening ancient Greece. Aristotle’s *Politics* was not a feeble attempt to reclaim a nostalgic notion of “the political” as Rahe seems to suggest, but rather an attempt to *reinvent* the meaning of “the political” and thereby of the polis within a changing context which required both “local” and “global” politics—both of which Aristotle thought should respect the component heterogeneity and *isonomia*, or equality for equals, of its various parts, including and especially, households, men (citizens), and polises. This reinvention of the political would serve as the ground for Aristotle’s (ultimately unsuccessful) attempt to shape the meaning of Greek *homonoia*. The problem of ancient politics as Aristotle saw it was that Greek *homonoia* was weak, which is why three books of his *Politics* address constitutions in which this particular weakness is prevalent.¹⁴¹ What Aristotle refers to as ‘likemindedness’ not only concerns the relationship of the

¹³⁹ Rahe suggests that Macedon and Rome represent the eclipse of politics as the rise of these cities overshadows the life of the polis. Rahe also argues that the triumph of Christianity under the Holy Roman Empire is what ultimately brings ancient republicanism to an end.

¹⁴⁰ See Rahe’s “The Primacy of Politics in Classical Greece” in the *American Historical Review*. p. 268.

¹⁴¹ Kraut argues that Books IV-VI deal with such constitutions. See page 432.

component parts to one another as well as towards the overarching polis, alliance, or federation, but sets the terms for political dissent and required that internal disagreements “take place against a backdrop of trust and consensus” and concern the details, but not fundamental practices nor constitutional precepts that warded off the dangers of instability.¹⁴² And such endeavors are by no means foreign to Publius, at all! I therefore disagree with Rahe’s claim that ancient politics and political thought were relatively unimportant for constitutional thought among the Anglo-Americans and want to suggest as I have shown above that the textual and biographical evidence suggest otherwise.

The most challenging counterargument to my position, is the claim that Publius saw the modern model of republicanism as distinct from and superior to the ancient model because its emphasis on commerce. This in his view was what they believed rendered the American republic likely to be more peaceful and stable than ancient republics. This argument is one taken up in one way or another by scholars as diverse as Gordon Wood, Joyce Appleby, J.G.A. Pocock, Paul Rahe, and Harvey Mansfield, Jr., who all assert that the significance of commerce to the modern world decisively influenced either the creation of *or* the decline of republicanism in the United States. According to Rahe, since the ancient ‘republics’ were militaristic and religious, the strict unity required to maintain martial virtue demanded the inculcation of “like souls”—which is how Rahe translates *homonoia* or likemindedness.

¹⁴² See Aristotle’s *Ethics* VIII 1.1155a22-26 and 1167a30-32 on *homonoia*. See also Kraut’s *Aristotle* p. 468 on the role of disagreement under *homonoia*.

Moreover, the Greek reliance on honor and unity “incurs the clear and present danger of *stasis* and it insures the eternal prevalence of war.”¹⁴³ Rahe argues that Greek politics had to be designed for war because of ever-present foreign dangers and because of the demands and fragility of unity for the ancients. Since the Greeks privileged political over social, economic, and familial associations, citizenship and liberty were wrapped up with the life of the polis, and the Greeks disdained the appearances of difference and individuality in public spaces.

Quite unlike the ancient republic, according to Rahe, the American republic was a commercial republic—and one that did not rely on the public virtue of ancient republicanism and replaced Rahe’s interpretation of Greek *homonoia* with the modern introduction of representative governments that place emphasis upon private virtue and the importance of heterogeneity.¹⁴⁴ According to Rahe, Publius and the framers benefited from a new modern world rooted in commerce that had replaced the martial world of antiquity, thereby providing new possibilities for stability. Rahe describes Alexander Hamilton as the “most brilliant” of the founders, but he ignores the relevance of Hamilton’s preoccupation with the instability of the Union as bound up with ancient concerns over “importance,” “self-sufficiency,” and “an habitual attachment of the people.” Instead, Rahe emphasizes that especially for Jefferson and Madison, “independence,” “diligence,” and “frugality” replaced “courage” and

¹⁴³ See Rahe, p. 57.

¹⁴⁴ To be fair, Rahe positions Sparta as the quintessential ancient republic and admits that Athens is less militaristic and more commercial than her Lacadaemonian counterpart. Although Athens never completely eclipses the individual and the family, it is ultimately a “military, moral, and religious community” according to Rahe, who quotes Benjamin Constant to support his claims.

“martial vigor” in discourses on virtue, which becomes increasingly private, not public. However, Rahe does not address the fact that internal and foreign wars as well as a strong military were considered an essential public good under the Constitution of 1787 nor do his arguments square with Hamilton’s criticism of the argument that commerce encouraged pacifism and Hamilton’s belief that it served as a source of militarized conflict just as jealousy and corruption had. In the *Federalist*, he writes the following: “Has commerce hitherto done any thing more than change the objects of war? Is not the love of wealth as domineering and enterprising a passion as that of power and glory?”¹⁴⁵ This is a lesson that Hamilton learned in part from the history and politics of antiquity. Indubitably, Hamilton worried about the tensions between rich and poor, few and many, commercial interests and agrarian interests—which he thought that commerce intensified not attenuated. The “inequality of property constituted the great & fundamental distinction in Society”—this was a lesson Hamilton learned from the history and politics of antiquity.¹⁴⁶

I agree with Rahe that commerce was relevant to late eighteenth century America. However, I disagree with Rahe’s argument that Publius demonstrated that there is a trade off *specifically* between the practice of politics in the ancient sense and the emergence of modern commercial societies, as I see no evidence to support that particular framework in either the *Federalist* or in Hamilton’s and Madison’s speeches at the Convention. To illustrate his point, Rahe looks to Benjamin Constant’s speech

¹⁴⁵ See *Federalist* 6, p. 32.

¹⁴⁶ See *Farrand I*, p. 424. See also p. 432.

on the ancients and the moderns to show that in modern times the ‘new’ threat to the idea of “the political” was “the economic.” Rahe thus overstates the issue. Hamilton and Madison did not believe that commerce was new to politics. But they both recognized that addressing the problem of instability in democracies would require the recognition of the influence of commerce on the sources of instability. The recognition of the importance of commerce thus came to shape the way in which Publius and his contemporaries understood the lessons of antiquity. That is, their conception of the effects of modern commerce influenced the discourse over the Constitution by providing a context for understanding the sources of instability they derived from their investigations of antiquity—*stasis*, corruption, mutable laws, changing global conditions, and—at least for Publius—confederation.

3. Montesquieu on the Question of Instability

3.1. What to Make of Montesquieu

That Charles-Louis de Secondat, Baron de Montesquieu was the most significant modern political thinker in the closing decades of the eighteenth century is without question.¹ Referring to over 300 works, Montesquieu's *The Spirit of the Laws* would provide a rich grounding in the history and analysis of constitutions for the framers of the Constitution. Articulating instability as a modern problem and recommending solutions suitable to modern politics and constitutionalism, Montesquieu's definitive treatise provided Publius and his audience a contemporary context for studying instability as a pervasive political problem. The study of instability was central to shaping the theory of modern constitutionalism advanced in *The Spirit of the Laws*, and Montesquieu's observations in this respect relied on the sources of instability which trace their origins to classical antiquity.

¹ See Shklar, p. 160 of "A New Constitution for a New Nation" in *Redeeming American Political Thought*. See also Donald S. Lutz's "The Relative Influence of European Writers in Late Eighteenth-Century American Political Thought," *APSR* (78) 1984 pp.189-98.

I interpret *The Spirit of the Laws* against the ancient framework to show that his theory of the separation of powers, his concern for liberty, and his support of confederation were direct responses to the problem of instability and show an explicit debt to classical antiquity. The close analysis of *The Spirit of the Laws* undertaken in this chapter establishes Montesquieu as a political theorist principally concerned with monarchical politics who uses the ancient concern with instability to chronicle the sources of and remedies for regime change. It is important to demonstrate the truth of this claim given Montesquieu's influence both on Publius and on the Antifederalist. The argument of this chapter in a certain sense is thus largely a prolegomenon that is necessary to set the stage for understanding the contest between Publius and the Antifederalists over the Constitution since their debate was at heart a disagreement about what to conclude from Montesquieu. I suggest that the argument over Montesquieu in the context of the ratification debate represented a rendering of ancient concerns resonant to the political discourses of the eighteenth century. Therefore, evaluating democracy in *The Spirit of the Laws* requires interpreting Montesquieu's assessment of the ancient polis, the Roman republic, and the English monarchy at least insofar as his analysis of these governments is concerned with the sources of and remedies for instability.² I argue that Montesquieu was concerned with the ancient problem of instability, that he analyzed instability using the ancient

² Shklar writes that the Roman Republic and the English mixed constitution were the sole models of free government. "The famous chapter on the English constitution in *The Spirit of the Laws* is in fact a comparison between England and Rome as two examples of free states." See p. 192 in *Redeeming*. I have added the ancient polis with these to broaden Montesquieu's description of more democratic governments.

framework, and that he offered solutions to the sources of instability that provide the theoretical context for understanding the argument of the *Federalist*.

However, the argument that the problem of instability was significant to Montesquieu's political theory and that ancient ideas influenced him challenges the prevailing view that describes Montesquieu as quintessentially a modern liberal democratic political theorist. In this chapter, I show that the characterization of Montesquieu's contribution as essentially modern and liberal should be qualified. According to the view held by Judith Shklar, Publius' defense of the Constitution of 1787 and *The Spirit of the Laws* suggested that the Constitution represented an institutional structure "different from any known to the past."³ Therefore, the Anglo-Americans' reliance on Montesquieu translated into a reliance on liberalism which rejected the ancients in favor of modern political science. From this point of view, it seemed as if Madison and Hamilton abandoned both ancient examples and ancient theory in favor of Montesquieu as "the master of the new science of politics."⁴ If this were true, it would mean that the Constitution represented a different notion of government and politics than that of the Greeks. Moreover, understanding this new notion would require being particularly attentive to liberal freedom and the effects of a commercial society on government. Both of these provide the basis for a kind of

³ See Shklar's "Publius and the Science of the Past" in *The Yale Law Journal*, Vol. 86, No. 6, pp. 1286-1296.

⁴ See "Redeeming American Political Thought" in the *American Political Science Review* Volume 85, No. 1. March, 1991, p. 5.

stability that was essentially modern and decisively independent of ancient sensibilities.

According to this view, even Montesquieu's nods to antiquity indicate his rejection of it. For instance, Shklar noted that Montesquieu described the habitual Roman propensity to war and the "manipulative skills of the Senate, especially in matters of religion and foreign policy."⁵ These characteristics of Roman politics were direct results of the fact that the laws of Rome reflected the spirit of war. Moreover, Thomas Pangle argues that Montesquieu expressly advocated the creation of modern commercial republics, and *The Spirit of the Laws* was a guidebook for their establishment. Pangle interprets Montesquieu as replacing the small war-like republics of classical antiquity with an emerging large commercial society represented by England in the eighteenth century. Shklar and Pangle suggest that Montesquieu's fascination with Rome was not unusual for modern thinkers beginning with Machiavelli. Montesquieu, however, was not an uncritical admirer of Rome. According to Shklar, "Montesquieu not only moved from medieval to modern constitutionalism; he also turned the classical notion of the mixed constitution into the more adaptable theory of the separation of powers."⁶ This means for scholars like Shklar and Pangle that Montesquieu rejected the ancient model of the mixed regime and its spirit of war and expansion and embraced the modern commercial republic for its spirit of liberty and for insisting on the establishment of independent judicial

⁵ See Shklar's *Montesquieu*, p. 51.

⁶ See Shklar's *Montesquieu* p. 112.

power—or what Montesquieu describes as “executive power over those things depending on civil right,” from legislative power and the executive power to enforce.⁷ Therefore, Montesquieu’s theory of constitutions founded a modern democracy based on the separation of powers instead of a mixed regime.

The depiction of Montesquieu as rejecting the ancient model rests on the contention that *The Spirit of the Laws* defended a notion of civil liberty, i.e., the view that it is necessary to protect the individual from government power. For Shklar, Publius and Montesquieu’s understanding of individual rights and commerce made their undertaking both modern and liberal by definition. Because Montesquieu’s political theory provided a defense of individual rights, Shklar argued that Publius learned from Montesquieu that the end of government was “political stability without the oppression of individuals.”⁸ Harvey C. Mansfield, Jr. also describes Montesquieu’s influence on Publius as a modern and liberal one. Describing Montesquieuian liberty in terms of interests and economic motivation, Mansfield suggests that Montesquieu’s political theory—particularly his writings on the separation of powers—represented the high point in the role of the “interests” in modern Western politics.⁹ For Mansfield, the politics of self-interest solved the “permanent political problem” of the conflict between the lofty aspirations of human reason and the knavish seduction of human passions.¹⁰ The concept of interest and the

⁷ See II.11.6.

⁸ See her *Redeeming American Political Theory*, p. 160.

⁹ See his article in *Political Theory* entitled “Self-interest Rightly Understood” Vol. 23, No. 1. (Feb. 1995).

¹⁰ *Ibid*, p. 48.

notion of self-interest rightly understood are modern ideas which suggest that liberal governments, by allowing individuals to serve their personal goals, can prevent human depravity and serve the public interest. Mansfield's narrative emphasizes the modern understanding of interest since it is precisely during modernity, in his view, when a shift occurs in understanding the possible compromise between reason and the passions in political life. Montesquieu, according to Mansfield, showed us that political societies encourage public and private interests, which the political and civil laws direct in order to prevent the passions from producing instability.¹¹

Thomas Pangle also views Montesquieu as strictly a modern political philosopher, particularly as one who supports the political theory of economic freedom rooted in natural right. Pangle's Montesquieu rejects the ancient models because of the uniformity he saw in Sparta and Rome in favor of securing individual liberty in the modern commercial republic. Beginning with the premise that the Declaration of Independence was a modern and liberal moment inspired by Locke, Pangle argues that Montesquieu's influence on the Constitution of 1787 was an extension of the revolutionaries' commitment to natural rights articulated in Locke's *Second Treatise*. "The chief purpose of Montesquieu's study of the forms of government is to discover how and to what extent each serves man's freedom or security."¹²

¹¹ See also Albert Hirschman's *The Passions and the Interests*. Mansfield does not seem to believe that interests cause instability.

¹² See Thomas Pangle's *Montesquieu's Philosophy of Liberalism* p. 45.

However, while the protection of individual rights and the spirit of commerce were key facets of Montesquieu's contribution to liberal ideas, there is no reason to believe that liberty and the protection of commerce were his *only* concerns. Montesquieu constructed a political theory based on the establishment and permanence of what he called 'moderate' governments: monarchies and republics. *The Spirit of the Laws* was a treatise about threats posed to governments that protect individual rights because such governments allow their citizens to live in a society that can be preserved.¹³ Liberty may inspire his understanding of the complexity of instability as a problem for modern politics. But the language of freedom and liberty was used to articulate concerns about the problem of instability. Furthermore, equality, political power, and confederation also numbered with liberty among his concerns for the problem of instability. Therefore, the suggestion that Montesquieu was only concerned with liberty is overstated as the problem of regime change is also central to his arguments.

Montesquieu's descriptions of regime change in ancient and modern politics were tales of caution to the monarchies of early modern Europe. His chronicles describing pervasive political change inspire his theory of constitutionalism and the modern political theory from which Publius would draw. Moreover, Montesquieu's description of instability as regime change is crucial to understanding his debt to antiquity and his influence on Publius and the Antifederalists. While Montesquieu's

¹³ 2.11.5. Montesquieu says, "All states have the same purpose in general, which is to maintain themselves."

formative influence on contemporary liberal political institutions is indubitable, his views on democracy and instability demonstrate that he is also sympathetic to the ancient descriptions of regime change. In this respect, Montesquieu is absolutely crucial for understanding how the problem of instability was viewed during the American ratification debate. Montesquieu suggested that instability continued to be a problem for modern politics, and *The Spirit of the Laws* provided the context for understanding this fact. Both Montesquieu and “the ancients denied the possibility of permanent states and considered regime decline and revolution to be intractable aspects of political life.”¹⁴ Montesquieu’s description of regime change corresponds in a number of ways with the ancient view of instability.¹⁵ In what follows I will expand on Krause’s claims by evaluating the role of ancient history and politics on modern sensibilities in order to trace the trajectory and sources of instability in Montesquieu’s *The Spirit of the Laws*. I study his teachings about freedom and equality, the separation of powers, the limitations on government authority, and political organization within the context of the pervasive problem of instability and evaluate how this ancient problem arrives at its modern expression.¹⁶

¹⁴ See Krause, p. 702. My argument lies directionally closer to Sharon Krause who asserts that “Montesquieu occupies an unusual position in this history of ideas because he was a modern thinker (and a liberal one) who believed in the inevitable tendency of every regime to decline.”

¹⁵ Krause warns that Montesquieu did not agree with the ancients completely in the direction and characterization of regime change.

¹⁶ See Pangle (1973), Shklar (1987), Cohler (1988), and Mansfield (1993).

3.2. Montesquieu's Definition of the Ancient Problem of Instability

When Montesquieu described instability, he considered it in terms of a government changing from a moderate government—some form of monarchy or republic governed respectively by honor or by equality—to a despotic government. This type of regime change for Montesquieu was the model of instability. Montesquieu's topology is similar to that of Aristotle that likewise organized a constitution by virtue of its status as a moderate government. (I.e., kingship, aristocracy, and polity were moderate and superior to the analogous extreme forms: tyranny, oligarchy, and democracy.) Drawing on Aristotle's distinctions, Montesquieu describes the ways in which republics and monarchies are transformed into despotic governments. The notion of liberty, which Shklar, Mansfield, and Pangle see as Montesquieu's central contribution to the history of political thought, was inextricably linked to whether a constitution was a moderate one. Montesquieu believed that protecting liberty was necessary for political stability. The creation and maintenance of moderate governments should be understood in the context of a concern for instability. *The Spirit of the Laws* chronicled the sources of regime change over time in order to provide a proscription for preventing—or at least delaying—the transformation of moderate governments into despotic ones. Moreover, as a modern theorist, Montesquieu applied his analysis predominantly to the study of monarchy, and his analysis of republican governments was used to understand the ways that monarchy could avoid the path to despotism. Montesquieu recognized, as had Plato

and others, that instability was not a problem specific to any one form of government; the challenge posed by regime change was applicable to all constitutions.

Not only do the ancients and Montesquieu talk about regime change in comparable terms, but they view this change as the result of *instability*. Montesquieu's topology groups governments according to the arrangement of power, which allowed him and his audience to recognize the standards governing particular constitutions in order to detect the kind of change that leads to instability. Yet one of the most striking features of Montesquieu's topology is that it associates aristocracy with democracy. The chapters in *The Spirit of the Laws* that refer to Athens, Rome, and at times Sparta, are used in order to describe the characteristics of republics, which he describes as constitutions in which the "body of people" or "a part of the people" governs. Accordingly, republics, he writes, are of two types: aristocratic and democratic. But the exact difference between an aristocratic republic and a democratic republic is less clear as Montesquieu's arguments develop. Ultimately, the "good" aristocracy more closely resembles a democracy, and the "good" democracy curves towards an aristocracy, which reveals Montesquieu's debt to the Aristotelian polity, the moderate blending of the many and the few, as a model for political stability.¹⁷

¹⁷ Montesquieu wrote that voting by lot is the nature of democracy; voting by choice is the nature of aristocracy. Since the prior is a ridiculous notion, democratic reformers have integrated methods of voting by choice into their constitutions. See 1.2.2. He also supports that magistrates serve for a brief period of time—preferably no longer than one year. Furthermore, any permanent laws must be subject to public votes. See 1.2.3.

Montesquieu suggested that the difference between a democracy and an aristocracy could be qualitatively little or great depending on the proportion of the body of people who possess political power and whether, how, and for what duration the governors are drawn from the populace. Accordingly, Montesquieu did not object to collapsing the distinction between democracy and aristocracy, indeed, he actually encouraged it. He expressed optimism about blending democracy and aristocracy—i.e., democracies should be more aristocratic; aristocracies should be more democratic. The implication of this notion suggests that Montesquieu did not consider change along the democracy-aristocracy continuum as *necessarily* an indication of regime change, because in his view democracies and aristocracies share in varying degree the same nature—the nature of a republic.¹⁸ Yet he cautioned aristocracies from moving in the *opposite* direction: “The more an aristocracy approaches a democracy, the more perfect it will be, and to the degree it approaches monarchy the less perfect it will become.”¹⁹ Movement from an aristocracy to a monarchy was dangerous because it seriously disrupted the arrangement of power. Democracies and aristocracies draw their authorities from the equal power of the citizens in the republic. (For Montesquieu, republics could be aristocratic or democratic.) However, monarchies are ruled by honor, an entirely different governing principle. Therefore, when one is granted or seizes “exorbitant” power—such as a citizen of the republic assuming monarchical or despotic power—the laws of a republic do not have the capacity to

¹⁸ He later qualifies his description of Rome explaining that it was most like a republic in its early days. See I.2.3.

¹⁹ I.2.3.

address it, which leads to great offenses and ultimately to instability as Montesquieu understood it—regime change.²⁰ This, he wrote, was the problem with Rome. It had started as a republic. But Rome became a government that acquired the natures of three types of government: a republic, a monarchy, and a despotism, and this confusion led to instability.²¹ Montesquieu’s concerns about changes in the structure of a government, therefore, were not significantly different from the ancient narratives of regime change in which the causes of constitutional change were studied and addressed.²²

For the ancients, instability “had been at the very centre of the classical theory of historical cycles which had envisaged only one course of change, corruption followed by political transformation.”²³ Sharon Krause argues that in contrast to the ancients, regime change did not necessarily signal decline in Montesquieu’s view—this sets him at odds with the ancients who tended to think that change was a *certain* sign of instability.²⁴ Although Montesquieu acknowledged the inevitability of regime change, he also suggested regime change posed a pervasive challenge to modern constitutionalism, and he applied this belief to formulate a theory of modern monarchical power. Yet Montesquieu’s account of England also revealed his deep

²⁰ See I.2.3. See also his *Considerations on the Causes of the Greatness of the Romans and Their Decline*, Chapter 11.

²¹ I say “weak” monarchies because Montesquieu argued that there were no true monarchies in classical antiquity. They were all in one way or the other republics. Some apparently were simply not very good ones.

²² See Aristotle’s *Politics* V. Aristotle, I have argued, represents the first culmination among the ancients of tackling the problem of regime change in the polis.

²³ See Shklar’s *Montesquieu* p. 63.

²⁴ See Krause’s “The Uncertain Inevitability of Decline in Montesquieu” in *Political Theory* 30:5. October 2002.

ambivalence regarding the ability of modern political governments to avoid instability, a view that Krause confirms. Montesquieu wrote of the British Constitution: “Since all human things have an end, the state of which we are speaking will lose its liberty; it will perish. Rome, Lacedaemonia, and Carthage have surely perished. This state will perish.”²⁵

Montesquieu’s *The Spirit of the Laws* saw correlations between the problem of instability in modern politics and classical antiquity where shifts in basic political principles undermined the practice of democracy and republicanism, which Montesquieu described as the loss of public virtue in the ancient regimes. The principle of democracy is virtue, he wrote. “Virtue, in a republic, is a very simple thing: it is love of the republic; it is a feeling and not a result of knowledge; the lowest man in the state, like the first, can have this feeling.”²⁶ According to Montesquieu, the love of the city rests on a commitment to equality. While aristocratic republics may not be as completely virtuous (or egalitarian) as democracies, they at least restrain their ambition “for the sake of the republic.”²⁷ Modern monarchy is founded on a sense of honor, and the despotic government employs and is motivated by fear. For Montesquieu, the principles of the three governments did not have to describe the actual condition of a government, but it referred to what *normatively* motivates the society. “This does not mean that in a certain republic one *is* virtuous, but that one *ought to be*; nor does this prove that in a certain monarchy, there is honor or that in a

²⁵ II.11.6.

²⁶ I.5.2.

²⁷ See Cohler p. 12.

particular despotic state, there is fear, but that unless it is there, the government is imperfect.”²⁸ The imperfection of a moderate government was a symptom of its collapse. Montesquieu’s *The Spirit of the Laws* was written to warn republics and monarchies of the signs of immoderate government, so that they might prevent them.

For instance, the loss of virtue doomed Athens, Carthage, and Rome as the citizens ignored public freedom and demanded citizenship rights without loving the city.²⁹ Public goods served the individual instead of individuals serving the public good. The glory of Athens was its reliance on democratic virtue, but the shame of Athens was its vulnerability to ambition. By the time Macedon rose as a threat, Athens had lost its virtue, and “Philip was feared as the enemy not of liberty but of pleasures,” Montesquieu wrote.³⁰ He saw the consequences of the loss of the republican spirit residing in the fact that once “one was free under the laws, [now] one wants to be free against them.”³¹ The city becomes a “cast-off husk, and its strength is no more than the power of a few citizens and the license of all.”³²

Although Montesquieu showed some ambiguity in his description of the nature of the government of England by implying that England embodied the structures of all three of the moderate governments: democratic republics, aristocratic republics, and monarchies, England was in his view a monarchy, not a republic.³³ However,

²⁸ I.3.11.

²⁹ I.3.3. Montesquieu describes how the Carthaginians turned on Hannibal when he suggested making personal sacrifices to protect the city-state from Rome.

³⁰ I.3.3.

³¹ I.3.3.

³² I.3.3.

³³ He writes, “The monarchies we know do not have liberty for their direct purpose as does the one we have just mentioned.” See II.11.7.

Montesquieu's observations of England provided hope for Publius about how democracy might emerge in *modern* times.³⁴ In Montesquieu's *Philosophy of Liberalism*, Thomas Pangle also uses Montesquieu's descriptions of the English king and parliament to argue that the foundation of modern democracy had practical foundations in England. Pangle writes, "By comparing the Roman and the English political systems he explained the difference between these two forms of free government, and showed why the latter was more stable."³⁵ However, I suggest that Montesquieu did not believe that instability was a problem specific to republics or even to democratic republics. The stability of England as a contemporary model seemed more practical given the context of concerns for modern European politics of monarchy. But Montesquieu's description of the classical model served as the basis for understanding how *monarchy* might address the sources of instability that had plagued ancient politics. The English constitution did not impress Montesquieu because of his concern for republics, but because of Montesquieu's concern for *monarchies*. Montesquieu's description of the English system provided the institutional practices concerning how a form of democracy could exist and become stable under modern conditions. Accordingly, Montesquieu's consideration of English government is in this respect essential to understanding Publius' defense of the modern stable democracy in the *Federalist*.

³⁴ Shklar argued that Montesquieu's description of the democratic republic indicated that he believed that the conditions for *ancient* democracy no longer exist.

³⁵ See Pangle p. 112.

Protecting the stability of monarchy was central to Montesquieu's analysis of democracy and republics.³⁶ But the difference between monarchy and democracy also marked an important distinction between Montesquieu and the political thought of classical antiquity. Montesquieu helps to articulate the concern for rendering monarchy stable in the context of modern conditions; and the ancient accounts contribute to understanding the ways to address the problem of instability for the politics of democracy and republicanism in ancient Greece and Rome, respectively. The ancient model was useless in Europe because the modern model of monarchs and the competition for world conquest had created a new context for understanding the sources of instability. Furthermore, since the ancients understood neither monarchy nor nobility—even Aristotle's description of a kingship was either a despotism (in the case of Persia) or a republic (in the case of Sparta) according to Montesquieu.³⁷ Montesquieu had expressed skepticism about transforming the spirit of England into a republican one: "It was a fine spectacle in the last century to see the impotent attempts of the English to establish democracy among themselves. As those who took part in public affairs had no virtue at all, as their ambition was excited by the success of the most audacious one and the spirit of one faction was repressed only by the spirit of another, the government was constantly changing; the people, stunned, sought democracy and found it nowhere. Finally, after much motion and many shocks and

³⁶ See also Cohler pp. 5-7.

³⁷ Roman constitutional thought treats monarchy as unacceptable. But this may not mean that they did not understand it.

jolts, they had come to rest on the very government that had been proscribed.”³⁸ According to Montesquieu, the attempt at a form of democracy in England had failed, but it was prompted by the need to address a new and modern threat to political stability—the burgeoning power of the modern monarch who threatened the liberty of the people.

Montesquieu’s observations of English politics expressed in *The Spirit of the Laws* formed the basis for the subsequent creation of the modern republic. According to Pangle, Book 11 of *The Spirit of the Laws* marked the beginning of a discussion of a new idea of government that was distinct from the consideration of the central traditional constitutions (republics, monarchs, and despotisms), and England was the exemplar of this new non-traditional form of government.³⁹ I suggest that although Montesquieu provided a different context for understanding government and the challenge of instability, he also recognized that instability would remain a pervasive problem in modern times. For instance, in *The Spirit of the Laws*, Montesquieu suggested that the obsession with wealth that had overtaken English society was threatening the stability of the government.

For Montesquieu, instability was not simply the result of replacing one form of government with another as Plato and Aristotle suggested, but rather the often

³⁸ I.3.3.

³⁹ But I would suggest that this may signal for Montesquieu a *weakness* of the English constitution rather than its strength as the peculiar nature of the English constitution meant that it had neither virtue (the spirit of democracies and republics) nor honor (the spirit of monarchies) for its purpose. As a result, the English valued only wealth and luxury, and its government existed to feed English vanity and self-indulgence. Montesquieu wrote, “The political men of Greece who lived under popular government recognized no other force to sustain it than virtue. Those of today speak to us only of manufacturing, commerce, finance, wealth, and even luxury.” See I.3.3.

incremental change from a “moderate” to an “extreme” government—what Krause calls “the loss of politics altogether and the rise of an anti-political form of organization.”⁴⁰ A monarch recognizes his power as public and political; a despot believes that he alone constitutes the political and treats the country as his property. As a result, despotism destroys politics. Despotisms are extreme governments and doomed to instability for this reason. According to Montesquieu, the difference between moderate and extreme governments was typified in the difference between monarchy and despotism. It was precisely this change from a moderate government—in this case, a monarchy—to an extreme government—a despotism—that Montesquieu wanted governments to avoid.

According to Anne Cohler, moderate governments impose limitations on its power and offer space within limitations for the exercise of individual liberty. “The problem in establishing and preserving these moderate governments is how to keep them from dissolving into some universal and thus despotic, principle.”⁴¹ Liberty is only possible under a moderate regime. Krause argues that Montesquieu described a democratic republic, an aristocratic republic, and a monarchy each as moderate constitutions because their principles would permit liberty. For this reason, regimes that change from moderate to immoderate may not actually be unstable in the ancient sense we have been discussing, in her view. Krause describes a change from a democratic republic to an aristocratic republic to a monarchy as a change in “political

⁴⁰ See Krause, p. 709.

⁴¹ See Cohler, p. 191.

virtue;” these transformations are thus changes in the guiding principle of the government. But a change from any of these moderate governments to a despotic government marks a change in what she characterizes as a change in “moral virtue.”⁴² “For Montesquieu, there is no significant moral gain or moral loss in the transition from a moderate republic to a moderate monarchy, or vice versa. Thus, the corruption of a republic (for instance) could very well be a morally meaningless event. Yet if its corruption should lead to despotism, the moral meaning would be clear.”⁴³

If Krause is correct, Montesquieu would permit monarchies to become democracies and make it possible for democracies to become monarchies. But when Montesquieu described instability, he was not merely describing changes in the form of government, but he also was suggesting that regime change started with changes in political values. Instead of being driven by normative purposes such as a desire for equality or honor, Rome aimed at conquest, and Britain pursued luxury. Montesquieu suggested that war, empire, and luxury led to instability, and he observed these ancient problems in modern politics. Furthermore, Montesquieu thought that modern monarchies should preserve their principles even while undergoing changes that were constitutional improvements. For example, he described the attempt of England to establish a democracy as “impotent,” lacking virtue and exalting audacious ambition.⁴⁴ Pangle uses the term “portentous” to describe the constitution of England. Just as

⁴² See Krause, p. 706.

⁴³ See Krause, p. 708. When Krause speaks of Montesquieu’s view of moral corruption, she does not mean it in the way that the Romans described it. Rather, she is arguing that for Montesquieu moral corruption is change from a politically moderate regime to a politically immoderate regime.

⁴⁴ I.3.3. Anne Cohler argues that this is a reference to Oliver Cromwell.

Montesquieu denied Polybius' idealized account of Rome and described the greatness of Rome in terms of slow decay, Montesquieu also saw the English system as an admirable government undergoing decay because of the changes in its political values.

Montesquieu insisted that changes in a government should not contradict the principles upon which the government was established: "A state can change in two ways: either because its constitution is corrected or because it is corrupted. If the state has preserved its principles and the constitution changes, the latter corrects itself; if the state has lost its principles when its constitution starts to change, the constitution is corrupted."⁴⁵ If a monarchy becomes a democracy, the society risks a government structure ill-suited to its habits and manners because the loss of the principles of a government signals corruption and instability. It seems that changes in the principle of a government indicated whether regime change would destroy the government and its laws. Changes in the arrangement of power must align with the values of the society; otherwise, such changes lead to instability.

3.3. Montesquieu's Version of the Sources of Instability

The description of the ancient problem of instability soundly reemerges in Montesquieu's framing of the means of addressing the sources of instability in modern times. Montesquieu's comparison of different types of constitutions provided a coherent account of the ways the sources of instability arise in democracies and

⁴⁵ II.11.13.

republics. His prognosis for the ancient problem of instability can be understood in the context of the four sources of instability, and this shaped his solution for how monarchies could avoid instability by maintaining their status as moderate governments. Since the study of instability during antiquity was related to the study of democracy, Montesquieu had to rely on the ancient experience with democracy and constitutionalism to understand the problem of instability as regime change from a moderate to an extreme form of government. While Montesquieu suggested that instability was a problem for all moderate regimes, he also recognized that certain problems were expressed differently in a democracy than they were in a monarchy. As the sources of instability were explained and their remedies were addressed, it becomes clear how issues specific to democracy shape the problem of instability and how challenges pervasive to any moderate regime influenced Montesquieu's political theory.

Thucydides, Plato, and Aristotle suggest that *stasis* arises as a result of competing ideas about the distribution of property and power. *Stasis* arises as a result of unequal distribution of property of power. Similarly for Montesquieu, there were two types of equality to which a democratic republic must pay attention: equality of wealth and equality of power. Aristotle argued that *stasis* erupts in democracy when democracy's first principle—its *arche*—is upset. Montesquieu suggested that the instability of the democratic republic begins with the destruction of the equality that is its principle of government. The *arche* of Aristotle's definition of democracy was equality of power and wealth; and the principle of Montesquieu's democratic republics

was also equality of power and wealth, and Montesquieu used similar terms when he wrote about the destruction of equality in aristocracies.⁴⁶ There are other compelling reasons to associate Montesquieu's descriptions of democratic republics with aristocratic republics when considering his concern for equality. Democracies arguably may represent the standard of republicanism for Montesquieu—rarely could he describe a republic or an aristocratic republic without using as his foundation the principles, purposes, and practices of a democratic constitution first. This signals yet another indication of his debt to the ancients. He argued that while the principle of a democratic republic was equality; the principle of an aristocratic republic was moderation based on equality (public virtue).⁴⁷ “Love of the republic in a democracy is love of democracy; love of democracy is love of equality,” he writes.⁴⁸ Since Montesquieu argued that each regime will decline as a result of its principle of government, democracy declined when its spirit of equality eroded. “A republic animated by the spring of political virtue therefore must avoid both inequality and the spirit of extreme equality if it is to preserve itself.”⁴⁹ Accordingly, Montesquieu argued that the virtue that maintains a democratic constitution is its commitment to *moderate* equality. At the same time, he encouraged aristocratic republics to be moderate enough to respect the principle of *equality*. Together, these notions express Montesquieu's republican principle of *moderate equality*. The corruption of the

⁴⁶ Although aristocratic republics do not rely as heavily on equality, aristocracies must respect equality among those who share power. The added rigor for democratic republics is because a greater scope of people shares power.

⁴⁷ II.3.4.

⁴⁸ II.5.3.

⁴⁹ See Krause p. 705.

principle of moderate equality resulted in either the one extreme of inequality or the other of excessive equality.

Krause argued that Montesquieu urged all governments toward moderation; accordingly, democratic republics should avoid both inequality and *extreme* equality. But in order to understand Montesquieu's warnings about the presence of inequality and extreme equality, we must understand what Montesquieu meant by equality. The first form of equality he considered in *The Spirit of the Laws* was the distribution of wealth in a society. In his view, equality is necessary to republics because it is suitable for small territories. "It is in the nature of a republic to have only a small territory; otherwise, it can scarcely continue to exist. In a large republic, there are large fortunes, and consequently little moderation in spirits: the depositories are too large to put in the hands of a citizen; interests become particularized; at first a man feels he can be happy, great, and glorious without his homeland; and soon, that he can be great only on the ruins of his homeland."⁵⁰ Equality requires that portions should be small and moderate, which means, as Shklar puts it, that "Montesquieu believed that [the government] had the responsibility to prevent extreme poverty."⁵¹ When they founded Sparta and Rome, respectively, according to Montesquieu, Lycurgus and Romulus distributed the lands equally. Yet Montesquieu's theory of the commercial society permitted a modicum of luxury as long as it stemmed from the spirit of equality and frugality. "Luxury is also proportionate to the size of the towns and above all the capital, so that luxury exists in a compound ratio to the wealth of the

⁵⁰ II.8.16.

⁵¹ See her *Montesquieu* p. 108.

state, and the inequality of the fortunes of individuals, and the number of men gathered together in certain places.”⁵² Any inequality found in a democracy should be based upon equality and frugality. “Every inequality in a democracy should be drawn from the nature of democracy and from the principle of equality.”⁵³ Toward this end, Montesquieu encouraged the creation and promotion of the middle class and establishing limits between the least and the greatest in wealth to “make each poor citizen comfortable enough to be able to work as others do” and to “bring each rich citizen to a middle level such that he needs to work in order to preserve or to acquire.”⁵⁴ Democracy relied on the talents and happiness of the middle class.⁵⁵

There is no doubt that Montesquieu recognized the effect of commerce on the economy and culture of Europe in the eighteenth century. But while he understood commercial culture, he did not worship it. Montesquieu noted, “One can say that the laws of commerce perfect mores for the same reason that these same laws ruin mores. Commerce corrupts pure mores, and this was the subject of Plato’s complaints; it polishes and softens barbarous mores, as we see everyday.”⁵⁶ First, he recognized the pacific effects of commercial wealth, but he also expressed concern that commerce makes individuals too narrowly self-interested.⁵⁷ Second, he recognized as did many of his contemporaries that commerce and navigation would forever change the modern

⁵² I.7.1.

⁵³ I.5.5.

⁵⁴ I.5.6.

⁵⁵ I.5.3.

⁵⁶ IV.20.1.

⁵⁷ See IV.20.2. “We see that in countries where one is affected only by the spirit of commerce, there is traffic in all human virtues and all moral virtues; the smallest things, those required by humanity, are done or given for money.

landscape, noting the pacific qualities that accompany a culture's participation in global commerce. Yet Montesquieu suggested that the laws that describe the relations among citizens, what he calls the civil laws, may need to monitor how commerce affects a society. "But if the spirit of commerce unites nations, it does not unite individuals in the same way. We see that in countries where one is affected only by the spirit of commerce, there is traffic in all human activities and all moral virtues; the smallest things, those required by humanity, are done or given for money."⁵⁸ For this reason, he suggested that monarchs and nobles residing under a monarch should have limited participation in the commercial economy.

Since commerce is more amenable in democracies and affects its principle equality and accordingly equality concerns political virtue, commerce has an important political dimension. Pangle and Shklar, therefore, are correct to point out that Montesquieu saw the most hope for modern commerce in democratic societies. Yet the caveats Montesquieu expressed should not be overlooked. "Certainly, when democracy is founded on commerce, it may very well happen that individuals have great wealth, yet that the mores are not corrupted. This is because the spirit of commerce brings with it the spirit of frugality, economy, moderation, work, wisdom, tranquility, order, and rule. Thus as long as this spirit continues to exist, the wealth it produces has no bad effect. The ill comes when the excess of wealth destroys the spirit of commerce; one sees the sudden rise of the disorders of inequality which had

⁵⁸ IV.20.2.

not made themselves felt before.”⁵⁹ This meant that the laws of a commercial society should promote and enhance the equality that political virtue requires and the frugality that the spirit of commerce encourages. “Love of democracy is also love of frugality. As each one there should have the same happiness and the same advantages, each should taste the same pleasures and form the same expectations; this is something that can be anticipated only from the common frugality,” Montesquieu added.⁶⁰

The second source of instability that concerned Montesquieu was the sort that related to a notion described by the ancients: the corruption of power by the political leadership. When Montesquieu addressed corruption, he expressed a concern for intense conflicts over political power. For Montesquieu, these contests threatened both the relationship between the government and the governed as well as the relationship among the governors, as ancient and modern history demonstrated—which were a sure sign of instability. A corrupt political leadership wants only to command others and to obey no one, which encourages hatred, jealousy, and vice in the republic. These are the very tools of corruption described by the ancients and employed by the Roman leaders during the fall of the republic. Montesquieu suggested that virtue implies respecting political power in order to maintain the stability of a democracy because it is “where the one who sees to the execution of the laws feels that he is subject to them himself and that he will bear their weight.”⁶¹ Corruption occurred when political power is absolute and assumes the characteristics

⁵⁹ I.5.6.

⁶⁰ I.5.3.

⁶¹ I.3.3.

of the despotic government. While despotisms are corrupt by nature, republics only become corrupt when the citizens forfeit the rights and responsibilities of political power by insisting on an extreme equality that eclipses politics. Paraphrasing Aristotle's *Politics*, Montesquieu showed that precisely how this inequality encourages the arrogance, jealousy, and vice that corrupts cities.⁶²

Montesquieu's description of the governors sharing power was analogous to the ancient concern for corruption. Two governments provide the primary case studies of Montesquieu's analysis in this respect: the ancient republic of Rome and modern kingdom of England. Montesquieu described the nature of government in terms of the arrangement of political power. The nature of government was defined by the arrangement of sovereignty and the relationship the particular sovereign or multiple sovereigns in a republic has or have with its constitutional sovereignty. What the ancients failed to understand, in his view, was that political power was not merely about who had power, but how the powers of government were assigned to institutions with legislative, executive, or judicial functions. This meant for Montesquieu that in a moderate government, the sovereign king or body recognizes that political power has different tasks that are defined by its function and are limited by its accountability to the other sites of political power.

Sharon Krause suggests that Montesquieu's praise of the English constitution stems from its recognition of the kinds of powers that exist in any state and their relationship to one another. "In each state there are three sorts of powers: legislative

⁶² I.8.3.

power, executive power over the things depending on the right of nations, and executive power over the things depending on civil right.”⁶³ This is the strength of the English government and the novelty of modern constitutional ideas in his view. The core of Montesquieu’s theory of monarchy is that when it is absolute it becomes despotic. “Unless there is a very wide dispersal of power it does not maintain its constitution, and is in danger of shifting toward either a republican or a despotic order, the latter being the more probable alternative now.”⁶⁴ This required re-arranging monarchical power, which is a decidedly modern notion.⁶⁵ Montesquieu’s argument is summed up in Harvey Mansfield’s *Taming the Prince*, which traces the development of monarchy to executive power as a modern project beginning with Machiavelli and ending with Publius’ defense of the constitution.⁶⁶

For Montesquieu, the ancients did not understand the balance of powers in the way that modern politics had come to understand it—and England in particular. The stability of any regime, especially a monarchy according to Montesquieu, required distinguishing the executive and legislative powers (of the king) and creating an independent judiciary. Herein rests the core of his difference from the ancients: the very notion of the separation of powers was born out of the problem of the power of

⁶³ II.11.6.

⁶⁴ See II.11.6.

⁶⁵ This, in my view, is largely the subject of Mansfield’s *Taming the Prince*. In this text, beginning with Machiavelli, he chronicles the development of monarchy to executive power throughout the history of modern political thought.

⁶⁶ Where I would depart from Mansfield’s reading is the suggestion that Publius’ contribution to political thought is that the Constitution represents the culmination of the modern project of prescribing limits on executive power.

princes.⁶⁷ It was precisely for this reason that the ancients—while understanding the importance of balancing the orders of a society—could have no sense of the separation of powers as a rule of political stability. “The ancients, who did not know of the distribution of the three powers of the government of one alone, could not achieve a correct idea of monarchy.”⁶⁸ The ancients found stability by balancing the orders of the society—not the powers of the government.⁶⁹ The balance of power in the ancient sense was a system of shared power between the people and the oligarchs—polity. Insofar as the ancients understood some notion of the separate powers of government (executive, legislative, judicial), the balance of power had little to do with their powers relationship to one another, but rather the sharing of power between the many and the few.⁷⁰

Montesquieu noted that it is Polybius who suggested that the superiority of the Roman constitution encouraged the institutionalization of the orders of society—consuls, patrician senate, and plebian assembly. Polybius associated the institutionalization of the orders of society with the powers of government. Yet Montesquieu suggested that this does not prevent instability and actually resulted in the devolution from a moderate regime to a despotic regime. Montesquieu recounted the instability of Rome as the failure of each—one order represented by the senate, the

⁶⁷ Clearly, there is a debt here to Machiavelli.

⁶⁸ II.11.9.

⁶⁹ See II.11.11. Cohler also makes this argument. See her p. 18.

⁷⁰ See Pangle, pp. 118-9. He also suggests that the notion of different government powers is found in Aristotle, although Aristotle did not think that a balance of these functions was required. In other words, one body could exercise two or all of these functions.

other represented by the plebeians—to properly check the other.⁷¹ He also compared the despotism of the tyrant with the violence of the republics of Italy as governments where political power was united. “Observe the possible situation of a citizen in these [Italian] republics. The body of the magistracy, as executor of the laws, retains all the power it has given itself as a legislator. It can plunder the state by using its general wills; and, as it also has the power of judging, it can destroy each citizen by using its particular wills.”⁷² Therefore, even without the presence of the “despotic prince,” a republican constitution can exhibit the qualities of a despotic government. The notion of power that is separated and accountable is largely what separates a moderate government from a despotic one because where legislative, executive, and judicial powers are joined, instability ensues.

Montesquieu noted that the principle of government derives from its nature; therefore, the habits, values, and practices of a democratic regime should require equality of political power.⁷³ Yet according to Mansfield, Montesquieu’s theory of the separation of powers suggests that Montesquieu believed that for a democratic republic specifically, the nature of its government and the principle of its government were fundamentally at odds.⁷⁴ Any democracy founded on the principle of equality of power and wealth would be unstable. However, while Montesquieu believed that ultimately the decline of any government occurs as a result of its inherent nature and principle, there is no reason to believe that this trajectory is specific to democracies for

⁷¹ See II.11.15-18.

⁷² II.11.6.

⁷³ See I.2.2.

⁷⁴ See Mansfield p. 228.

Montesquieu and that the theory of the separation of power was peculiar to Montesquieu's characterization of democracy. In fact, Montesquieu saw separating political power as a useful means to sustain monarchy as well. Therefore, I would amend Mansfield's conclusion that for Montesquieu "a democracy does not have to behave democratically to be a democracy" by noting that the separation of powers is necessary to protecting any government from corruption.⁷⁵

Montesquieu's description of power not only addressed the ways that the arrangement of the powers of government causes instability, but also warned of the encroaching nature of political power and its effects on regime change. It is in Montesquieu's discussion of the need to limit power that served as the basis for his understanding of liberty. This was central to how protecting liberty was linked to preventing instability. The problem of liberty was the modern expression of the concern for the mutability of the laws because both notions suggested the need to set limits on the extent of political power. Just as the problem of the mutability of the laws was a problem of license and self-restraint; similarly, the concern for liberty between the ancient category of the mutability of the laws and Montesquieu's theory of liberty was that liberty was the solution to the ancient problem of unlimited power and license. The problem with Rome, Montesquieu believed, was that the people came to love "license." Montesquieu wrote, "The principle of democracy is corrupted not only when the spirit of equality is lost but also when the spirit of extreme equality

⁷⁵ See Mansfield p.223. He comes to this conclusion because Montesquieu writes that the people are not fit for the discussion of public business and should delegate this responsibility to representatives.

is taken up and each one wants to be the equal of those chosen to command. So the people, finding intolerable even the power they entrust to the others, want to do everything themselves: to deliberate for the senate, to execute for the magistrates, and to cast aside all the judges.”⁷⁶ The result was the wielding of exorbitant legislative power, including granting the senate the right to appoint a dictator with limitless power who could wield executive power and judge cases in Rome.⁷⁷ Montesquieu recounted how the legislative bodies gave themselves the military power, how the consuls made “violent acts rather than judgments.” Furthermore, Montesquieu saw the modern problem of unrestrained power as a problem for monarchy. Similarly, for the European monarchies, he thought that the executive should have limits set with respect to its political power. This was how a monarchy protected liberty.

Montesquieu understood the importance of setting limits in order to protect individual freedom. His example of this notion is the constitution of England. He wrote of England, “The monarchies we know do not have liberty for their direct purpose as does the one we have just mentioned.”⁷⁸ The reason that he described England as having liberty as its purpose was that its government was aware of the need to restrain political power. Since Montesquieu wrote that liberty was not inherent to democratic or republican governments, what made the English system more stable and highly regarded by Montesquieu was that it provided a space of

⁷⁶ I.8.2.

⁷⁷ II.11.16-18. The appointment of a dictator in Rome was only for a limited amount of time before the Senate resumed its authority.

⁷⁸ II.11.7.

personal liberty.⁷⁹ Montesquieu admired the liberty of England's constitution: "England is free because it provides security for every individual. It is republican or even democratic because it gives sovereignty to the people."⁸⁰ "For Montesquieu, the purpose or nature of government in general was the creation of security, or freedom, for its citizens—freedom from domination and from threat of death or attack by other men," Pangle argues.⁸¹ In Montesquieu's chapter entitled, "What liberty is," he wrote, "It is true that in democracies the people seem to do what they want, but political liberty in no way consists in doing what one wants. In a state, that is, in a society where there are laws, liberty can consist *only* in having the power to do what one should want to do and in no way being constrained to do what one should not want to do."⁸² He asserted that liberty was only present "when power is not abused."⁸³ And for Montesquieu, preventing the abuse of power required understanding the limitations of government power. The relationship between liberty and the limits of power was what brought Montesquieu to comment on the English constitution. The reason, he suggested, that England has liberty for its "direct purpose" was because its government takes seriously the limits of political power.

Montesquieu suggested that one look at the limitations placed on political power in order to determine whether a government secures liberty. Montesquieu's concern for the mutability of the laws should be considered within the context of a

⁷⁹ See II.11.6.

⁸⁰ See Pangle p. 116.

⁸¹ See Pangle p. 49.

⁸² II.11.3. Emphasis is mine.

⁸³ II.11.4.

continuum that places liberty at the moderate point and the lack thereof on one extreme and what Montesquieu called unrestrained power, or “license,” on the other. Montesquieu wrote, “No word has received more different significations and has struck minds in so many ways as has *liberty*.”⁸⁴ He noted that there are a variety of definitions associated with the term: for some, it means the ability to remove an appointed tyrant; for others, it is the right to elect leaders; for some it guarantees the right to take up arms and to employ violence; among certain groups, liberty is being governed by the laws of one’s nation. He remarked that republicans associate liberty with republics; and monarchs associate liberty with kingdoms. And democracies describe liberty as political power in the hands of the people. Montesquieu took exception to each of these definitions. Although political liberty exists only in moderate governments, not all moderate governments have liberty. For example, “democracy and aristocracy are not free states by their nature.”⁸⁵ Liberty requires a degree of independence from government that is possible when power is not abused. There was a direct relationship between the presence of liberty and limits on power in Montesquieu’s view. The other aspect of Montesquieu’s theory of liberty was that liberty can be defined with respect to the constitution and liberty can be defined with respect to the citizen. “In a state, that is, in a society where there are laws, liberty can consist only in having the power to do what one should want to do and in no way

⁸⁴ II.11.2.

⁸⁵ II.11.4.

being constrained to do what one should not want to do.”⁸⁶ The former directly regards the limitation of government power. The second regards the “opinion each one has of his security” and describes one’s disposition to live without fear of others.⁸⁷ It is this latter dimension of liberty that predominantly shapes the understanding of Montesquieu expressed by Judith Shklar and of Thomas Pangle, where the first uses citizen liberty to defend the protection of one’s civil rights and the latter uses it to protect one’s property rights. They each also describe liberty in a way that suggests that the liberty of the constitution (i.e., the nature of government, e.g., the separation of powers) functions in service of the liberty of the citizen. For this reason, they each agree that personal liberty requires an independent judiciary.

Mansfield attributes to Montesquieu the notion of a completely independent judiciary, and Shklar confirms this claim: “The central and continuous theme of *The Spirit of the Laws* is that the independence of the courts of law more than any other institution separates moderate from despotic regimes.”⁸⁸ The independent judiciary effectively limits the ability of the monarch to threaten liberty. For Montesquieu, stability required restraint, particularly by the strongest power of government.⁸⁹ When the predominant source of power is not limited the result is a loss of liberty and instability ensues because unchecked government power will encroach on political liberty. The liberty of the citizen that Montesquieu described shapes Shklar’s and Pangle’s understandings of Montesquieu’s liberalism: the liberty of the citizen is

⁸⁶ II.11.3.

⁸⁷ II.11.6.

⁸⁸ See her *Montesquieu*, p. 81.

⁸⁹ He does not require that power is equally shared, however.

security and the citizen's perception of her protection from government power. The liberty of the citizen, therefore, is determined by limits on political power and laws protecting civil liberty.⁹⁰ These liberties describe individual protection from arbitrary laws and judgments of treason and cruel and unusual punishment, from accusations of heresy and witchcraft, from charges of homosexuality which he describes as "crimes against nature," to practice political dissent, to enjoy the freedom of thought, of speech, and of the press.⁹¹ In addition to the protection of these individual liberties, Montesquieu also railed against the inequitable collection of taxes, the tax burden on poor provinces, the lack of accessibility of public goods, and the use of public monies to hire troops or to fund alliances that benefit the monarch. Such civil laws constituted abuses of citizen liberty in his view.⁹² In addition to the sources of instability posed by internal political problems, Montesquieu also recognized the *effects of global context on instability*. Few theorists since Machiavelli had taken so seriously the relationship between domestic affairs and international conditions. In *The Spirit of the Laws*, Montesquieu argued that global conditions numbered among the factors in regime change, because a regime's treatment of foreign people and land would eventually affect the nature and principle of its constitution. Montesquieu believed that commerce, particularly, would play an important role in international affairs, which is why it is not surprising that he is often viewed as a proponent of modern international commerce. Montesquieu believed that commercial relations between nations led to

⁹⁰ II.12.2.

⁹¹ These protections are described at length in the section on the liberty of the citizen II.12.

⁹² II.13.14-17.

peace. “Two nations that trade with each other become reciprocally dependent; if one has an interest in buying, the other has an interest in selling, and all unions are founded on mutual needs.”⁹³ Montesquieu suggested that international trade encourages common mores and good relations. This optimistic evaluation of the effects of modern commerce on international relations lends itself to his general characterization as the French Adam Smith because Montesquieu recognized the role of commerce in promoting peace and prosperity between nations.

Above all, Montesquieu recognized the advantages of free trade as a possible alternative to the two international activities traditionally employed by states in both past and present times: war and expansion. In Book I, Montesquieu established the *right of nations*. The right of nations requires that peaceful nations do the most good and warring states do the least harm. But Montesquieu was most concerned by the application of the right of nations when it comes to the relations of warring states within the context of international commerce. He declared that war was equivalent to a natural right of a state when it is waged for its own preservation, arguing that international relations are relationships of force, not of freedom. Montesquieu insisted that this right to war was most legitimately the right of small states because they face the constant threat of foreign attack. Yet he made it very clear that the purpose of war is preservation, never glory, servitude or utility. The activity that derives from war is conquest, according to Montesquieu, which is often a consequence of war. When one nation conquers another, there are three alternatives for the victor: to govern the

⁹³ IV.20.2.

conquered region according to the laws of the victor; to destroy the government of the conquered; or to kill the conquered people. Rome, he wrote, employed the latter.⁹⁴ But he referred to ‘we’—which I take to mean eighteenth century West European monarchs and republics—*appear* to take the more civilized option by subjecting the conquered to the laws of the government. Yet the reader is urged to question “how much better we have become?”⁹⁵ Not only did he deny the right of the conqueror to kill unless the circumstances stem from natural necessity and preservation, but Montesquieu also questioned whether conquering countries truly provide the mechanisms for the conquered to become subjects. He wrote that democracies are the least equipped to be conquerors, but if a democracy should conquer a land, it must be a democracy and it should avoid lands that cannot be democratic because a democratic republic becomes a despotic government to its subjects.⁹⁶ The conquest of a republic results in the collapse of the separation of powers in its extended territories. One ends up with despotic magistrates—the very definition of tyranny.⁹⁷ He was also concerned with the imperialistic conquests of monarchies, warning that this leads to despotic power as well. Monarchy can spread its dominion within limits—in ways that honor the principle of its constitution, which requires that it preserve the social institutions of captured people. Since despots tend towards expansion, monarchies and republics should not display this characteristic. “A large empire presupposes a despotic authority in the one who governs. Promptness of resolutions must make up for the

⁹⁴ II.10.3. Here he exaggerates.

⁹⁵ II.10.3.

⁹⁶ II.10.7.

⁹⁷ II.11.19.

distance of the places to which they are sent; fear must prevent negligence in the distant governor or magistrate; the law must be in a single person; and it must change constantly, like accidents, which always increase in proportion to the size of the state.”⁹⁸

Montesquieu conducted an evaluation of commerce as an alternative to war and to conquest. Among the most peculiar features of *The Spirit of the Laws* are Montesquieu’s evocation of the Muses and the opening epitaph by Virgil on the lesson of Atlas that prefaces his comments about commerce.⁹⁹ But this idiosyncrasy should not lead us to conclude as Pangle does that this represented Montesquieu’s view of the inviolability of commerce.¹⁰⁰ Rather, the dedications and the reference to the “torrent” of which the author addressed suggest that commerce is not at all sacred, but a power that is potentially destructive. Montesquieu recognized the undeniable power of international commerce. “Commerce has spread knowledge of the mores of all nations everywhere; they have been compared to each other, and good things have resulted from this.”¹⁰¹ The result of commerce is peaceful relations between nations engaged in trade, creating a mutual interdependence.¹⁰² However, although Montesquieu recognized the advantages of commerce, he does not use it as the basis to pit ancient politics against modern politics. His criticism of ancient regimes was a

⁹⁸ I.8.19.

⁹⁹ See the Preface of IV.20.

¹⁰⁰ Pangle writes of this preface, “By identifying the study of commerce with the study of the natural origins of things, Montesquieu links commerce with his teaching in Books I and XVIII about nature as a whole and the nature and true origins of man. The new understanding of man’s origins leads to a new understanding of commerce as the answer to the natural human needs.” See his *Montesquieu’s Philosophy of Liberalism*, p. 201.

¹⁰¹ IV.20.9.

¹⁰² IV.20.2.

criticism of war, not a criticism of classical antiquity because he also described and preferred Athens as an example of a commercial republic to the military republic of Sparta. In this respect, Montesquieu agreed that Rome shares more in common with Sparta: “The Romans were never notable for jealousy over commerce. It was as a rival nation and not as a commercial nation that they attacked Carthage.”¹⁰³ Yet while Montesquieu acknowledged that commerce (together with navigation) opened up the world, he expresses skepticism that commerce has improved modern constitutionalism and international conditions because commerce has the capacity to foster both equality and inequality. “Liberty of commerce is not a faculty granted to traders to do what they want; this would instead be the servitude of commerce”¹⁰⁴ According to Montesquieu, the activity of traders must be regulated in order to protect the liberty of commerce. Montesquieu advised that commerce is best suited for governments by the many because of its political implications and its ability to affect the lives of the people of the state.¹⁰⁵ Since democratic republics are guided by the principle of political virtue (equality), they should be less susceptible by design to luxury. Although commerce was regulated and protected by the laws of England, he criticized the English government for allowing its nobility to participate in commerce. The consequence was that commerce became the ruling passion of the English ending in the confusion of political liberty with participation in commerce.¹⁰⁶ He noted that England, France, and Holland benefited more than any other nation in the world, yet

¹⁰³ IV.21.14.

¹⁰⁴ IV.20.12.

¹⁰⁵ IV.20.4.

¹⁰⁶ III.19.27.

dedicated their expenditures not to public goods and to the citizens who need them but to raise armies and to increase military campaigns instead. For Montesquieu, while navigation brought about the European discovery of the Americas and parts of Asia and Africa and revealed an entire world, this new world introduced merely new territories and dimensions to the problem of despotism and domination. The “petty” Spanish prince was able to expand his dominion to the west. And what soon emerged was a competition among the European nations for domination. “Europe carries on the commerce and navigation of the other three parts of the world, just as France, England, and Holland carry on nearly all the navigation and commerce of Europe.”¹⁰⁷ “The Portuguese dealt in the Indies as conquerors.”¹⁰⁸ When the Dutch later dominated the Portuguese in commerce, Holland imposed the same spirit of conquest and domination. Furthermore, when Charles acquired additional European lands, he inherited an empire: “the universe expanded and a new world obedient to him appeared.”¹⁰⁹ Commerce which had begun as an alternative to war and conquest could also produce war and conquest.

Although Montesquieu discouraged governments from expanding territorially, international threats would likely induce a government to act in a way that is at odds with the spirit of its laws. This is why he expressed concern over the imperial designs of European monarchies and of the Roman republic; he feared that imperial practices signaled a change into a despotic constitution. Montesquieu believed that

¹⁰⁷ IV.21.21.

¹⁰⁸ IV.21.21.

¹⁰⁹ IV.21.21.

international conditions shaped a government's constitution and that a stable government had to be constituted in a way that allowed it to withstand international conditions while maintaining its nature and principles. Although Montesquieu did not subscribe to the ancient view that the vulnerability of the city was a consequence of unpredictable changes in international conditions, he did believe that it is the nature and principle of governments by the many that renders it vulnerable to international conditions. "If a republic is small, it is destroyed by a foreign force; if it is large, it is destroyed by an internal vice."¹¹⁰ Krause argues that for Montesquieu, "tensions internal to the [republic] make it intrinsically unstable."¹¹¹ Moreover, the changes that would affect a republic's stability would be practices that were at odds with the nature and structure of its government. "It is in the nature of republics to have only a small territory, but it is necessary for them to expand. This contradiction contributes to the intrinsic instability of republican governments."¹¹² Since the threat of foreign attack often requires expanding the borders of a republic, the defense of the republic simultaneously protects it and causes republican decline. Conversely, "what made Lacedaemonia last so long is that, after all its wars, it always remained within its territory."¹¹³ It is not international conditions that make a democratic regime unstable. It is the un-republican acts of a government that would threaten changes in its constitution. Rome's insatiable appetite for territory destroyed its constitution. Yet while Sparta sought no lands and fought only in defense, it relied on war to maintain

¹¹⁰ II.9.1.

¹¹¹ Krause, p. 711.

¹¹² Krause, p. 712.

¹¹³ 1.8.16.

its republican spirit whereas Rome relied on war to fuel its love of conquest. Military might and imperialism were threats to a republic not factors which strengthened it. “This dual drawback taints democracies and aristocracies equally, whether they are good or whether they are bad. The ill is in the thing itself; there is no form that can remedy it.”¹¹⁴ He used Rome and Sparta to support arguments. The former sought to spread its empire indefinitely; the latter saw war as its only purpose.

This enduring problem facing republics found its solution in the confederation. As Aristotle before him, Montesquieu encouraged such governments to devise a structure with the internal advantages of republics and the external advantages of monarchies: what Montesquieu called a federal republic. “Such associations,” Montesquieu wrote, “made Greece flourish for so long. By using them, the Romans attacked the universe, and with their use alone, the universe defended itself from the Romans.”¹¹⁵ “Because of [the federal republic], Holland, Germany, and the Swiss leagues are regarded in Europe as eternal republics.”¹¹⁶ However, Montesquieu did not cite Sparta and Rome to point out the problem of war specific to ancient politics. In fact, he believed that the ancient notion of confederation translated nicely into a federal republic of republics and might prevent the demands of international conditions from destroying the constitutions of federal republics, citing the Lycian League, “a model of a fine federal republic,”¹¹⁷ “Composed of small republics, it enjoys the goodness of the internal government of each one; and, with regard to the

¹¹⁴ II.9.1.

¹¹⁵ II.9.1.

¹¹⁶ II.9.1.

¹¹⁷ II.9.3.

exterior, it has, by the force of the association, all the advantages of large monarchies.”¹¹⁸ Montesquieu attributed the relative international success of the city-states of ancient Greece to the federal republic. While Montesquieu did not require equal power among the member republics, the federal republic should be comprised of governments of similar natures and principles. “This form of government is an agreement by which many political bodies consent to become citizens of the larger state that they want to form. It is a society of societies that make a new one, which can be enlarged by new associates that unite with it.”¹¹⁹ The federal republic provided internal stability as well as external strength while allowing the republic to maintain the structure of a democratic republic and the principle of one, as well.

3.4. Conclusion: Debating Montesquieu

Montesquieu’s writings about democracy in *The Spirit of the Laws* relied on the concepts and principles of the ancients. Classical antiquity provided the basis for the way in which Montesquieu, Publius, and his Anglo-American contemporaries understood the relationship between democracy and instability. Yet in some respects, the claim may seem contradictory as Publius was not defending a constitution for an ancient democracy or for a modern monarchy. Publius was defending the possibility of establishing a democracy—a form of government that had not been philosophically

¹¹⁸ II.9.1.

¹¹⁹ II.9.1.

considered since antiquity. Modern political history and theory discussed struggles both to establish and to restrain monarchs, images of European discovery and its quest for world power and superiority, and the prospects for securing political power while protecting the liberty of the enfranchised citizenry. While Montesquieu used the politics and history of democracy and republics to illuminate the ancient problem of instability for his time, it is in the context of modern politics and its challenges that the study of instability in *The Spirit of the Laws* should be understood, which might suggest that Montesquieu, as a political theorist primarily concerned with European monarchy, had only limited resonance for Publius and his contemporaries. Yet to the contrary, perhaps more than any other work by a single author, *The Spirit of the Laws* was directly cited by Publius to advance the possibility of a stable democracy in the late eighteenth century—to the consternation of the Antifederalists who saw Montesquieu as the hero of their cause. Because Montesquieu’s contribution to the American experiment in democracy was a source of conflict—since he spoke both directly to and past the problems specific to the United States—his understanding of the problem of instability allowed Publius to make an argument for the Constitution of 1787 that was bolstered by Montesquieu’s ability to speak to the concerns of modern constitutionalism and by his inability to speak to those facing a modern democracy operating in the contemporary context of European monarchical politics.

The arguments between Publius and the Antifederalists circulated around debates over Montesquieu regarding the very possibility of stability and the capacity of a constitution over an extensive republic to remain democratic and stable. Among

other forms of government (monarchy, despotism, and aristocratic republics), *The Spirit of the Laws* chronicled, interpreted, and compared the advantages and defects of democracies. Publius and the Antifederalists found different lessons in Montesquieu on the establishment of a democratic constitution, and they disputed the sources and remedies of instability that the French philosopher described. For the Antifederalists, the Constitution of 1787 represented a transformation from a democracy to any combination of aristocracy, monarchy, or a hybrid form of a republic, a monarchy, and a despotism. They viewed these changes as defying Montesquieu's insistence that changes in a government should not contradict the principles upon which the government was established. The words of Montesquieu seemed prescient to the Antifederalists: "A state can change in two ways: either because its constitution is corrected or because it is corrupted...If the state has lost its principles when its constitution starts to change, the constitution is corrupted."¹²⁰ The Antifederalists ultimately believed that the Constitution replaced a government structure that was ill suited to American habits and manners.

For example, Melancton Smith of New York warned that the wisdom of Montesquieu showed that the large republic of the new Constitution would end in its ruin.¹²¹ Furthermore, where the Antifederalists learned from Montesquieu to pay attention to moral and social conditions, Publius believed that his treatise showed that the degeneration of political institutions was the most relevant signal of decline. The

¹²⁰ II.11.13.

¹²¹ See his speech before the New York Ratifying Convention on June 20, 1788 in *The Essential Antifederalist* 6.12.

Antifederalists also maintained that the United States was too large and heterogeneous for the federal republican government Publius supported and doubted that a strong central government could suit states as different as Georgia and Massachusetts. The Antifederalists cited Montesquieu's teachings on republicanism, confederation, corruption, virtue, participation, and liberty in their resistance to the Constitution. "It was thought to have been demonstrated, historically and theoretically, that free republican governments could extend only over a relatively small territory with a homogenous population."¹²² The opposition believed that Publius' support of the Constitution represented "threats to four cherished values: to law, to political stability, to the principles of the Declaration of Independence, and to federalism."¹²³ This made the opposition to Publius skeptical that a large republic could be rendered stable without threatening the central tenets of republicanism. The Antifederalists used Montesquieu to insist that each of these principles were central to the stability of democratic republics.

During the framing debate, there was a pervasive concern with the possibility of government resorting to tyranny to govern an extensive territory. For example, Herbert Storing pointed out that the opposition to Publius argued that "it was the extensive territory of the Roman Republic that produced a Sylla, a Marius, a Caligula, a Nero, and an Elagabalus."¹²⁴ Most, if not all of, the Antifederalists shared a

¹²² See Storing Vol. I, p. 15 of "The Small Republic" in *What the Antifederalists Were For*.

¹²³ See Storing, Vol I, p. 7.

¹²⁴ See "A Farmer" 7 March 1788 in *The Complete Antifederalist*.

suspicion of government power on freedom.¹²⁵ A member of the Antifederalist opposition wrote, “I presume that the liberty of a nation depends, not on planning the frame of government, which consists merely in fixing and delineating the powers thereof; but on prescribing due limits to those powers, and establishing them upon just principles.”¹²⁶ Freedom expressed as a fear of tyranny serves as the premise for the Bill of Rights. To the contrary, Publius believed that the Constitution as a document of enumerated powers provided individual rights protections.¹²⁷ Dismissing Publius’ assertion that a rights guarantee was unnecessary, the Antifederalists insisted otherwise.¹²⁸ Furthermore, Montesquieu contributed to the belief that the growth and future of modern commerce provided a different context for understanding the relationship between individual rights and political stability. Publius, like Montesquieu, believed commerce, freedom, and stability were companion ideas, and Montesquieu prompted Publius to conclude that the “best commercial regime would appear to be some sort of democracy.”¹²⁹

Ultimately, Montesquieu invited governments to question their capacity for moderation and their capacity for despotism within the context of addressing the problem of instability. Despite his central interest in constraining the authority of

¹²⁵ He writes, “The framers of the Articles of Confederation, misled by the vigor and good sense displayed by the people during the war, made the ‘amiable mistake’ of thinking that the Americans needed no government.” See *What the Antifederalists Were For*, p. 71. Even if Storing meant that the Antifederalists believed no federal government was necessary, I suggest that this view is still erroneous. By his own admission, most Antifederalists agreed that modifications were necessary to the Articles of Confederation, but did not agree with a complete overhaul of central government authority that they recognized in the Constitution.

¹²⁶ See the *Impartial Examiner* in Storing’s collection of Antifederalist writings 5.14.4.

¹²⁷ See “Bill of Rights” in *What the Antifederalists Were For*.

¹²⁸ See “Bill of Rights” in *What the Antifederalists Were For*.

¹²⁹ See Shklar p. 108 in *Redeeming*.

kings, Montesquieu provided the blue print for reviving the ancient concern for how a democracy might be maintained. These lessons provide both Publius and the Antifederalists with a wealth of terrain upon which to assert their competing claims. Montesquieu's theory of the stable democracy articulated concerns for equality, the separation of powers, liberty, commerce, and the federal republic that correspond to ancient views of *stasis* as class conflict and corruption, the mutability of the laws, changing international conditions, and the need for confederation. When she described Montesquieu's influence on Madison and Hamilton, Judith Shklar declared, "Intellectually, Publius followed Montesquieu to the last."¹³⁰ But the Antifederalists found much in Montesquieu to challenge the Constitution's capacity to provide stability, as well. The arguments they employed stem from Montesquieu's response to the ancient sources of instability and his version of the very nature of instability, itself. In its objection to the new federalism of Publius' Constitution, the *Address of the Minority of the Pennsylvania Convention* refer to Montesquieu's teachings on the federal republic, "We dissent, first, because it is the opinion of the most celebrated writers on government, and confirmed by uniform experience, that a very extensive territory cannot be governed on the principles of freedom, otherwise than by a confederation of republics, possessing all the powers of internal government; but united in the management of their general, and foreign concerns."¹³¹ Melancton Smith challenged the premises advanced by Publius and the Federalists in support of an

¹³⁰ Shklar's *Redeeming American Political Thought*, p. 169.

¹³¹ See Storing III.11 "The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to Their Constituents.

experimental federalism and cited Holland and Germany as successful *Montesquieuan* inspired models of stability. “He begged...to remind...that Montesquieu, with all the examples of modern and ancient Republics in view, give it as his opinion, that a confederated Republic has all the internal advantages of a Republic, with the external force of a Monarchical Government.”¹³² The Constitution, it was feared, would render the internal republican governments of the states powerless. This fear found its voice in the Antifederalist claims of Robert Whitehill of Pennsylvania, Patrick Henry of Virginia, and Luther Martin of Maryland. “The states have to be preserved because they are the natural homes of individual liberty.”¹³³ The Antifederalists were concerned that there were not enough constraints on the legislative and executive powers to prevent usurping the political authority of the state governments. This would make the federal government more like a monarchy and without checks on its power, the quasi-monarchy would soon become a despotism. On the whole, the Antifederalists were suspicious of central government as a threat to liberty. The demand for a Bill of Rights stemmed from this premise and echoed Montesquieu’s concern over political rights that protect the liberty of citizens.¹³⁴ Patrick Henry declared that he believed the tyranny of the governors was far more threatening than the “licentiousness” of his neighbors. “I say that a declaration of those inherent and political rights ought to be made in a BILL OF RIGHTS, that the people may never lose their liberties by construction. If the liberty of the press be an

¹³² See speech of June 20, 1788. See also *Spirit* II.9.1.

¹³³ See Farrand I, 340-1 (June 20, 1787). See also Storing’s Brutus VII, 2.9.87 in *The Complete Antifederalist*.

¹³⁴ See A Maryland Farmer in Storing V:1.15.

inherent political right, let it be so declared, that no despot however great shall dare *to gain say it.*”¹³⁵

The Antifederalists also were influenced by Montesquieu’s suggestion that even slight changes in a constitution can signal corruption.¹³⁶ They saw in the new Constitution a rejection of democratic republicanism in favor of an aristocratic republic to replace it, which represented a fundamental shift in guiding political principles. The length of term of office for elected federal officials was one example of the problem as they saw it. “In every magistracy, the greatness of the power must be offset by the brevity of its duration. Most legislators have fixed the time at a year; a longer term would be dangerous, a shorter one would be contrary to the nature of the thing.”¹³⁷ Cecilia Kenyon confirmed that the Antifederalists saw the Constitution as aristocratic in intent. Furthermore, the objection of Melancton Smith to the Constitution was that a central government would create a passive citizenry and elevate a richer and more aristocratic class of politicians drawn from the elites—leaving the most democratic parts of society out of political decision-making. Although Montesquieu thought that aristocratic republics were moderate and stable governments, the challenges over the aristocratic nature of the new Constitution revealed a concern expressed by Montesquieu that the nature of the constitution should compliment the habits and mores of the citizenry and that aristocracies could easily become corrupted into monarchies. “This Government will commence in a

¹³⁵ Centinel I. See in Storing II:7.25.

¹³⁶ See I.8.14.

¹³⁷ See I.2.2.

moderate Aristocracy; it is at present impossible to foresee whether it will, in its Operation, produce a Monarchy, or a corrupt oppressive Aristocracy; it will most probably vibrate some Years between the two, and then terminate in one or the other.”¹³⁸ Patrick Henry said of the Constitution that it “squints toward monarchy.”¹³⁹ The 5th Letter of Cato refers to it as “*an imperfect aristocracy* bordering on monarchy.” Furthermore, eventually “the progress of a commercial society [towards] luxury,” “inequality,” the lack of restraint, and ambition will bring “a Caesar, Caligula, Nero, and Domitian in America, as the same causes did in the Roman empire.”¹⁴⁰ The Antifederalists’ use of Montesquieu to reject the Constitution challenged the thesis that Madison and Hamilton could be characterized as unquestionably faithful disciples of *The Spirit of the Laws*. Yet it is undeniable that Montesquieu’s view of the ancient problem of instability would prove central to the formulation of Publius’ response.

¹³⁸ George Mason’s speech in Storing Vol. 5:17.

¹³⁹ See Storing Vol 1, p. 37 and Vol. 5:16.

¹⁴⁰ See the 5th Letter of Cato in Storing Vol. 5:10.

4. Publius the Problem of Instability and Its Solutions

4.1. A Shared Tradition

Judith Shklar noted that Publius worried of the following dangers in American democracy: “the tyranny of the majority, turbulent popular legislatures, the absence of self-sufficient and authoritative leadership, conflicts among the states, and lack of prestige in the eyes of the world.”¹ Shklar concluded from these accounts that Publius’ defense and the ratification of the Constitution of 1787 were essentially modern and liberal undertakings and that the articulation of these problems corresponded to the problem of concentrated power expressed in *The Spirit of the Laws*. Yet in addition to the modern concerns Shklar mentions, I would suggest that Publius’ concern for democracies and the issues expressed by Montesquieu indicated a debt to classical antiquity. Publius’ understanding of the problem of instability in democracies responds to the lessons of classical antiquity and the challenge posed by Montesquieu’s political teachings. In this chapter, I will demonstrate that the ancients provide the framework for understanding the sources of instability. I will argue that

¹ See Shklar’s “Publius and the Science of the Past” in *The Yale Law Journal*, Vol. 86, No. 6, p. 1290. In support of this, she cites Federalists 4-8, 10, 15, 22, 43, 48, 49, and 63.

Montesquieu, by supplying the received view of the separation of powers and the federal republic, was a shared authority and controversy for Publius and critics of the Constitution. Finally, I will prove that Publius' defense of the extended republic, the separation of powers, bicameralism, federal powers, and the notion of the federal republic were articulated in the *Federalist* as the remedies to address the sources of instability that plagued democracies for centuries.² Publius defended the Constitution of 1787 as the conscious framing of a government for stability, so that as Shklar argued "the endless cycles of history could finally be broken."³

The problem of instability is consistent throughout the *Federalist*. In *Federalist 9*, Publius wrote, "It is impossible to read the history of the petty Republics of Greece and Italy, without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions, by which they were kept in a state of perpetual vibration, between the extremes of tyranny and anarchy."⁴ The idea of stability itself, particularly as it pertains to its viability in a democratic republic, is critical to the decisive influence of the classics in framing Publius' understanding of the problems facing popular government. Publius clearly recognized that only a democratic republic would be acceptable to the Americans, but he believed that the new constitution would also have to do what no other republic had done before, and that is combine republican freedom with stability. "Among the difficulties encountered by the convention, a very important one must

² But I do not mean to suggest that instability was Publius' only concern.

³ See p. 614 in Gordon Wood's *The Creation of the American Republic 1776-1787*.

⁴ See *Federalist 9*, p. 50.

have lain in combining the requisite stability and energy in government, with the inviolable attention due to liberty and to the republican form.”⁵ They took their guidance here from Montesquieu’s *The Spirit of the Laws* and from their own experience living under republican governments in the various states, Both of which provided advice on how democratic governments could exhibit the fortitude of kingdoms while maintaining their internal democratic principles. Montesquieu had also reinforced for the Anglo-Americans the relevance of liberty and the role of commerce to the problem of instability. But according to Madison’s own admission, even the wise Montesquieu had not attempted to create an *immortal* political system, he only had detailed historical and contemporary errors in such endeavors.⁶ Publius turned to ancient Greece and Rome to examine how democracy and popular government, specifically, end in regime change. Publius concluded from these accounts that instability was an inherent characteristic of democratic societies and that the Constitution of 1787 would accomplish what ancient and modern history and politics had not by eliminating instability as the central problem of modern democratic politics. An understanding of the sources of instability prompted the framers to establish political institutions designed in order to prevent regime change *forever*.

Publius suggested that adjusting the principles of modern European monarchical politics would make a viable democracy possible by solving the problem of instability that had plagued the democratic governments of the past. Publius

⁵ See Federalist 37.

⁶ See Madison’s “Spirit of Governments” in the *National Gazette* February 20, 1792.

worried specifically that majority government would constantly be in danger of collapse and that it would become a dangerous source of tyranny as it had in the ancient world. Publius also realized that a commitment to democratic republican government was the center of the American political tradition. Yet he suggested the fate of democracies and the emergence of a theory of modern democracy relied on understanding how the sources of instability were shaped by modern conditions and the habits and culture of the states. “[The friend of popular government] will not fail, therefore, to set a due value in any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils have, in truth, been the mortal diseases under which popular governments have everywhere perished.”⁷ Publius argued that stability would no longer rely upon luck, accident, or peculiarity as had been the trend of popular governments past and present.⁸ “The science of politics, however, like most other sciences has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients.” Publius listed the modern innovations of separation of powers and checks and balance on legislative power and adds the extended republic.⁹ His confidence in these institutions stemmed from his belief that they would protect the democratic republic from threats to its stability and helped to preserve the rights of individuals and minorities.

⁷ Federalist 10, p. 56.

⁸ See Federalists 18 and 19.

⁹ Federalist 9, p. 51.

The problem of instability, therefore, must be placed at the center of the debate over the Constitution of 1787. Both Publius and his Antifederalist opponents believed that the challenge of instability often translated into the need to prevent tyranny. Although they arrived at different and opposing conclusions, Publius and the Federalists as well as the Antifederalists drew upon the same ancient events and figures to articulate their disparate concerns. For the Antifederalists especially, protecting the citizens from tyranny meant protecting liberty. “The anti-models the founders encountered everywhere in their classical reading left them obsessed with conspiracies against liberty, particularly when hatched by monarchs and demagogues.”¹⁰ Not surprisingly the assumption of names of classical figures by writers engaged in public debates in the period of the constitutional debates was not merely stylistic pretension, but an attempt to draw analogies between the past and the present. Alexander Hamilton frequently employed pseudonyms of ancient figures and assumed the name of Publius Valerius whom Plutarch described as one of the two co-founders of the republican government of Rome.¹¹ An Antifederalist likewise assumed the name of the Roman Republic’s second co-founder, Brutus, who worked with Publius Valerius to expel the last Roman monarch. Other Antifederalists also used pseudonyms of historical figures well known for defending the Roman Republic. “In a similarly serious vein during the constitutional debates the Antifederalists

¹⁰ See Richard, p. 85.

¹¹ Alexander Hamilton copied large passages from Plutarch on founders of republics like Theseus, Romulus, Lycurgus, and Numa Pompilius. See the *Papers of Alexander Hamilton*, Columbia University Press, Volume I, pp. 390-407.

compared the Federalists with Roman emperors”.¹² Antifederalist critics became historical figures like (Marcus Junius) Brutus, Cassius, and Cato the Younger who would be identified by contemporaries as individuals who defended republicanism against the demagoguery of Julius Caesar and Mark Antony; it was understood that the Antifederalists were representing themselves as defenders of the American republic against the threats posed by the Federalists and their proposed Constitution. “Steeped in a literature whose perpetual theme was the steady encroachment of tyranny upon liberty, [the founders] became virtually obsessed with spotting the early warning signs of impending tyranny, so that they might avoid the fate of their classical heroes.”¹³ Patrick Henry argued that the primary role of republican government was to protect the liberty of the people first and the stability of the government second; and he criticized the Federalists for their willingness to sacrifice the former for the sake of the latter.¹⁴ Furthermore, the Antifederalists believed that the Constitution created a complex government that threatened Montesquieuian political virtue (equality) and divorced the actions of political leadership from public responsibility, resulting in the subtle implementation of a centralized aristocracy with *concentrated* legislative, executive, and judicial powers. The Antifederalists’ suspicion of the Constitution as aristocratic and/or monarchical corresponds to Montesquieu’s concern for regime change. This charge was a formidable allegation—one that posed the most serious

¹² See Richard, p. 89.

¹³ See Richard, p. 8.

¹⁴ See Herbert Storing’s *The Complete Antifederalist*, Volume 5, Part 2 on Patrick Henry 5.16.2.

threat to the prospect of ratification.¹⁵ For this reason, in addition to demonstrating that the Constitution could protect the republic from the fateful path toward instability, Publius was equally compelled to defend the Constitution as not merely republican, but as *democratic*, as well. This decision and the articulation of the argument advanced were founded on a belief in the inherent instability of democratic government which was central to Publius' argument.

Publius not only maintained that the version of republicanism embodied in the Constitution was a *democratic* republicanism, but he also suggested that any authentic republic was necessarily a democratic one.¹⁶ Publius drew on Montesquieu's claim that democracies and aristocracies shared the same nature and that the best republics had democratic tendencies.¹⁷ Further, that the Constitution had to be republican was consistent with the culture, character, and habits of the people. This view is confirmed by Anne Cohler who argued that the framers believed that: "Americans begin with the assumption that mankind's capacity for self government must be the basis of their government."¹⁸ For Publius, English politics were limited because of its reliance upon ranks and orders of society—its essential character was monarchical, not republican. Publius soundly rejected the idea of a republic as balancing a democracy, a monarchy, and an aristocracy; instead, he argued that *all* powers of a republic must be accountable to the people. Publius argued that the democratic character of American

¹⁵ At least, it was a serious threat to ratification in New York.

¹⁶ Women, blacks, native Americans, and the non-propertied were denied the right to vote and the right of citizenship. Furthermore, the apportionment of votes in the House of Representative was assigned based on the notion that black slaves were only 3/5 of a person.

¹⁷ See *The Spirit of the Laws* I.2.3.

¹⁸ See Cohler, p. 150.

society required that the Constitution be a democratic republican one. For Publius, the Constitution was consistent with Montesquieu's argument that popular sovereignty determines whether the republic is democratic or not.¹⁹ Accordingly, a *democratic* republic required that each branch derive power directly or indirectly from the people, and not hereditary castes of society.²⁰ Since the Constitution drew its power from the people, Publius insisted, it was wholly popular. "The genius of republican liberty seems to demand on one side, not only that all power should be derived from the people, but that those intrusted with it should be kept in dependence on the people, by a short duration of their appointments; and that even during this short period the trust should be placed not in a few, but a number of hands."²¹

But the Antifederalist opposition insisted that the Constitution represented a change in the pre-existing principles and nature of republican government, because it was precisely Montesquieu who insisted that corruption occurred when the character of the governors changed.²² *The Letters of the Centinel* expressed a deep suspicion that the new Constitution "would be in practice a permanent *aristocracy*" fearing above all that "*despotism* is the *worst* and the most to be *dreaded*."²³ The development that Centinel and other Antifederalists feared would move the government from an aristocracy to a monarchy to despotism stemmed from Montesquieu's suggestion that the acts of despotism soon follow when aristocracies

¹⁹ See *The Spirit of the Laws* I.2.1.

²⁰ See Federalist 39. It is important to note that Hamilton during the Constitutional Convention debates showed expressed support for shared power between classes.

²¹ See Federalist 37.

²² Shklar expresses this most concisely. See her *Montesquieu* p. 63.

²³ See *Letter of the Centinel*, No. 1, October 5, 1787.

tend toward monarchies.²⁴ It was, therefore, not difficult to draw a connection between the description of the despotic government as corruption from a moderate to an extreme government in *The Spirit of the Laws* and the Anglo-Americans' fear of the new Constitution masquerading as republicanism, masking monarchy, and resulting in despotism. These are without question concerns for political instability. Gordon Wood (1969) describes Anglo American view of the American Revolution in terms of a Montesquieuian reformation—what he calls a moral reformation from a colonial monarchy under George III to a republic. Americans saw themselves as triumphantly revolting against a corrupt despot. Yet unlike Publius, the Antifederalists saw the prospect of the ratification of a new Constitution as a counterrevolutionary movement—back towards monarchy or aristocracy. This would explain why Montesquieu became the most significant political theorist in the 1780s. His theories of regime change distinguished forms of change that were moral and constitutional corrections from those that led to political decay—and the line distinguishing these trajectories spoke directly to the concerns of the Anglo-Americans. Unlike their Antifederalist contemporaries, Wood writes that Publius, at least, did not believe that the Whiggish fear of government was relevant to American politics in the late 1780s. Always believing America was a republic, Publius insisted that “no other form would be reconcilable” to the Anglo-American spirit.²⁵

²⁴ The Antifederalists likely drew this conclusion from I.2.3 in *The Spirit of the Laws*. In I.3.4, Montesquieu wrote, “But it is easy for this body [aristocratic government] to repress others as it is difficult for it to repress itself. Such is the nature of this constitution that it seems to put under the power of the laws the same people it exempts from them.”

²⁵ See Federalist 39.

Despite the professed inherent character of democratic republicanism in the United States, the Americans faced a serious constitutional problem, Publius argued. The sole examples of republican greatness were the unstable ancient models; and the modern models were either insignificant, in the case of the Italian republics, or fraudulent, in the case of the Dutch and English republics. Publius reminded his audience that the celebrated modern republican examples cited by his contemporaries often ran afoul of the true meaning of republicanism, particularly the frequently praised governments of Holland and England. “Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic.”²⁶ Moreover, in the same essay Publius wrote, “The government of England, which has one republican branch only, combined with a hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics.”²⁷ But the lack of popular accountability in all aspects of government failed to pass the republican muster in Publius’ view. “In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations.”²⁸ The reason Publius could emphatically deny the republicanism of England and of Holland, yet affirm the republicanism of the proposed Constitution of 1787 was his proverbial nod toward Montesquieu’s insistence on the role of habits and values in shaping the principles of a

²⁶ See Federalist 39.

²⁷ See Federalist 39.

²⁸ See Federalist 43.

government's constitution: "the authority extends no further than to a GUARANTY of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed."²⁹ For this reason, Publius declared the following: "If the plan of the Convention therefore be found to depart from the republican character, its advocates must abandon it as no longer defensible."³⁰

The Anglo-Americans saw themselves as emerging out of the corruption of monarchy. The enmity between king and people was an idea that took hold during the American Revolution and represented the rejection of the compatibility of republicanism with the ancient mixed constitution or the modern mixed monarchy. Republicanism for the founders of the American political system relied on the equality of political power, a notion that Montesquieu suggested in *The Spirit of the Laws*. For Publius and the American public, republicanism implied that liberty was antithetical to arbitrary power, which required an inherently democratic spirit. While the mark of the republic was liberty, the threat to the republic was the abuse of power because the abuse of power ultimately resulted in instability. The *Federalist*, then, represented the opportunity to shape the meaning of democratic republicanism against the predominance of the king in the theory and practice of modern politics and the pervasive threat of instability in ancient democracy. While the American Revolution had "killed the king," the ratification debate forced the Americans to consider what kind of republic would govern them. Publius, in his defense of the republicanism

²⁹ See Federalist 43.

³⁰ See Federalist 39, p. 251.

established under the Constitution, would argue for the need for stability in the new republic and would show how a federal government was necessary to this goal.

Applying knowledge of the internal and external threats to democracies and republics over time and their dangers to the existence of the United States, Publius maintained that the Constitution would protect against them. Publius used the vocabulary of instability employed by writers of ancient and modern history and politics when he spoke of the “agitation” and “vibration” between “tyranny” and “anarchy” and the problem of “license” that characterized the activities of the state legislatures. According to the *Federalist*, the ancient and modern history of democracy and republicanism had been a history of instability. The Constitution was designed in light of this history, and Publius presented an argument rooted in the history of political theory to demonstrate that the problem of democracy relied on institutions established to address the various sources of instability. In addition to the separation of powers—made popular by Montesquieu’s authoritative treatment of regime change—legislative checks, and other institutions that Publius described as “modern,” Publius advanced a new and counterintuitive remedy to the problem of instability: increasing the size of the state. And in this respect, Publius challenged the ancient and modern experience with democracy and republicanism. The ‘old’ and ancient model of confederation had succeeded in avoiding the issue of size as it relied on the arrangement of power between smaller political units. Publius debunked this view of organization and the notion of confederation in general. This change was in fact, a revolution in the world of ideas and it forced Publius not only to demonstrate

that this new scheme would prevent instability, but also that contrary to the general view of things increasing the size of the regime was not likely to push the state into monarchy, aristocracy, or despotism.

4.2. Publius and the Sources of Instability in Democracies

One of the best-known and often cited discussions in the *Federalist* is the description of factions in the tenth paper. A faction is defined as “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.”³¹ Publius identified the fundamental problem of popular government as the disruption caused by factions in public affairs. Scottish Enlightenment social and moral thinker David Hume is often cited by scholars such as Douglass Adair as the source of Publius’ ideas about faction and his proposed solution to the problem..³² Although there is no reason to deny the importance of Hume, it is important to see that Madison’s reading and reception of Hume is situated within a larger concern with the ancient notion of *stasis* as a source of political instability. Despite the fact that Publius made reference to the instability of Athens in the opening paragraphs of the tenth paper, no one has explicitly linked Publius’ concern for factions to the ancients’ descriptions of the problem of *stasis*. Publius argued that

³¹ See *Federalist* 10, p. 57.

³² See his essay “That Politics May Be Reduced to a Science” in *Fame and the Founding Fathers*.

faction is the most frequent cause of tyranny in a popular government because of the decisive policy making powers of majorities inherent to democratic politics.³³ Because all political power is derived from the people, government can become the vicious tool of majorities. In Federalist 10, Publius expresses a concern for faction as a threat to instability under popular governments.

Long before Publius' defense of the Constitution, British loyalists (in expressing their objections to Thomas Paine's *Common Sense*) recognized that republics "had always been torn to pieces by faction and internal struggles."³⁴ In the mid 1770s, these anti-Revolutionary Tories and the British across the ocean both warned that a break from the monarch toward a republic would result in factional conflict. And a decade after the American Revolution, John Adams spoke this 'truism' in July of 1787, describing the republic in the late 1780s as in a "critical period" because of the simmering factional conflicts brewing throughout the states.³⁵ Gordon Wood confirms the general sentiment among Anglo-American public: "the measure of a free government had become its ability to control factions."³⁶ Publius shared this view: "The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this

³³ See Madison's speech at the Virginia Ratifying Convention on June 6, 1788. See also Federalist 10.

³⁴ See Wood 94.

³⁵ Quoted in Wood p. 393.

³⁶ See Wood 502.

dangerous vice.”³⁷ The ratification discourse, therefore, revealed the “essential” struggle “between two social groups *of* the people themselves.”³⁸

The struggle of factions translates into the ancient problem between the few and the many, a saga that played out throughout the various states. Publius understood that every community divided itself into the few and the many and that “if either of these interests possessed all the power, it would oppress the other.”³⁹ For Publius the faction of the many posed the most dangerous threat to republican government because of the very nature of democratic governments, since by design, minority factions could not convulse republican democracies. Publius’ fear of majority faction stemmed from a concern with the need to protect minority groups and interests.

There are many different explanations for Madison’s concern with faction in this paper. Reading the tenth paper as expressing Madison’s concern for the personal economics of the social elite and class conflict, Charles Beard’s *An Economic Interpretation of the Constitution* catapulted Federalist 10 to number among the most significant essays in American political thought. He argued that Publius and the Federalists were wealthy land-owners who wanted to secure their personal property rights against the power of property-less majorities. Although in the 100 years since the work was published numerous scholars have found Beard’s evaluation wanting, reading the incarnation of faction in the *Federalist* in correspondence with the ancient concern for *stasis* as class conflict actually provides considerable weight to Publius’

³⁷ See Federalist 10, p. 56.

³⁸ See Wood 503. Emphasis is mine.

³⁹ Wood 554.

concern for class struggle.⁴⁰ Class conflict was certainly relevant to the Anglo-Americans.⁴¹ Class antagonisms for the Middle and Northern states were more traditional or classical, if you will—between debtors and creditors. Certainly in New York, whose people were Publius’ intended audience, Hamilton noted that the richer class sought a “government of the union able to protect them against domestic violence and the depredations which the democratic spirit is apt to make on property.”⁴² The major factions were the commercial, professional, and large land holders on one side and the small farmers in debt on the other. In Delaware where two major factions both supported the Constitution, the citizens disagreed about the Revolution as well as how debt laws, paper money, and taxation would benefit the wealthy and the struggling poor. Massachusetts became notorious during this period for its inability to compete with cheaper British goods, international trade restrictions, high public and private debt, all of which culminated in Shays’ Rebellion.⁴³

Without ignoring the practical economic concerns and interests surrounding the ratification debate, it seems incontestable that Publius cared for more than merely protecting the assets of the wealthy. In his description of factions, Publius demonstrates the complexities of the problem of class conflict for the 1780s Anglo-

⁴⁰ See Adair (1951) “The Tenth Federalist Revisited” in *The William and Mary Quarterly*, 3rd Series, Vol 8, No. 1; Yarborough (1979) “Republicanism Reconsidered: Some Thoughts on the Foundation and Preservation of the American Republic” in *The Review of Politics*, Vol. 41, No. 1; Morgan (1974) “Madison’s Theory of Representation in the Tenth Federalist” in *The Journal of Politics*, Vol. 36, No. 4.

⁴¹ In the decade following the Revolution, they saw the proliferation of property confiscation of the poor and struggling classes, paper money manipulation, and debates over debt relief. For two different views on this issue, see the following: Charles Beard’s *An Economic Interpretation of the Constitution* (1913) and Forrest McDonald’s *We the People: The Economic Origins of the Constitution* (1958).

⁴² See his “Conjectures on the New Constitution” in the *PAH* IV:275-76.

⁴³ See *Ratifying the Constitution*. Eds. Michael Gillespie and Michael Lienesch.

Americans. Publius pointed to *property* as the most salient source of faction in majority governments. In the critique of the problem of rule of the many, Publius placed emphasis on the instability that results from the ancient notion of *stasis*, which arises from conflict between the classes. The source of political conflict in 1780s Anglo America was how property influenced majority-minority conflicts.

Madison insisted throughout the *Federalist*, during the convention debates, and in his correspondence during this period that the most serious conflict facing the United States was the struggle between the northern non-slave holding states and the southern slave-holding states.⁴⁴ Considerable skepticism was communicated on both sides of the debates over whether states so characteristically different could unite under a more decisive central government. In Madison's view, the heart of their struggle *was* economic. Madison was worried about economic factions not because he wanted to shield the rich from the poor as Beard suggested, but because he wanted to protect the landed class (typically of the South) from the merchant and manufacturing classes (generally of the North). This sympathy would largely contribute to Madison's dispute with Hamilton in the years immediately following ratification. Madison wrote that the most "common and durable source of faction" arose from the "various" and unequal distribution of property. Beard's seminal work emphasized quantitative inequality, but this may be something of an overstatement of Madison's recognition of the struggle between the propertied and the property-less. Madison's primary concern was clearly how the *varied* distribution of property produces inequalities and unjust

⁴⁴ Madison is largely dismissive of claims of the large/small state problem.

majority outcomes. “The first object of government,” he declared, “is the protection of the *different* and *unequal* faculties of *acquiring* property.” Madison expressed far *less* concern over the conflict between haves and have-nots, than he did about how the diverse methods of obtaining property led to the over-taxation—both direct and indirect—of certain forms of property over others. At the time of Publius’ writing, the wealth of America was largely distributed among three classes: the landed class, the merchant class, and the manufacturing class. The latter two were gaining increasing significance and dominance; the former was surely to become a threatened minority particularly when it came to federal issues of commerce and revenue/taxation that under a republic would be subject to decisions by majorities. “Every shilling with which they over-burden the inferior number, is a shilling saved to their own pockets.”⁴⁵ Madison described other sources of factional disagreement, including debt legislation, restrictions on foreign imports, duties on exports, and methods for taxing property all in terms of how they affect different ways of acquiring wealth.⁴⁶ The concern for property in Federalist 10 does not fundamentally express Madison’s concern for the struggle between the rich and the poor, but instead it expresses his concern for the conflicts between groups with different kinds of property.

There is a relationship between republicanism and faction in *The Federalist* that is similar to the ancient Greek notion of the inevitability of *stasis* in the democratic polis. “The history of almost all the great councils and consultations, held

⁴⁵ See Federalist 10, p. 60.

⁴⁶ For example, in South Carolina where slaves represented the bulk of the property, citizens’ support of a federal government was predicated on laws that protected the ownership and distribution of slaves, tax-free exports, and highly restricted regulations on commerce.

among mankind for reconciling their discordant opinions, assuaging their mutual jealousies, and adjusting their respective interests, is a history of factions, contentions, and disappointments; and may be classed among the most dark and degrading pictures which display the infirmities and depravities of the human character.”⁴⁷ While the expression of faction differed according to specific circumstances, factions generally were inherent to rule by the many and manifested themselves in terms of the faction of the many and the faction of few. Publius, and Madison specifically, explained the emergence of class conflict as the result of socio-economic differences that were themselves the consequences of variety of talents that is the precondition of political society. This account represented a departure by Publius from both the ancients and Montesquieu who each suggested that faction or class struggle as an expression of *stasis* was a direct consequence of political decisions regarding the just distribution of property.⁴⁸ Diversity, Publius suggested, is a consequence of liberty, which produces faction, which is in turn a source of instability. For Publius the inequality of property was a fact of American society. Before the constitutional convention, Hamilton remarked, “It was certainly true that nothing like an equality of property existed: that an inequality would exist as long as liberty existed, and that it would unavoidably result from that very liberty itself.”⁴⁹ Moreover, the “commerce and industry” of the late eighteenth century would increase the “difference of property.” It was the responsibility of government to protect the diversity of property that results from

⁴⁷ Federalist 37, p. 238.

⁴⁸ See I.7.2 and I.8.2 in *The Spirit of the Laws*.

⁴⁹ See Farrand I, p. 424, 432.

liberty—specifically the rights of property.⁵⁰ “The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.”⁵¹ One purpose of a constitution designed to solve the problem of stability was to control the oppression of one group by another. The goal, therefore, of the Constitution was to prevent the many—from whom all power derives--from— causing harm or injury to the few and ultimately to itself. “It is of great importance in a republic...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.”⁵² In particular, Publius was responding to the fear that a central government with the power to tax—as the Constitution set forth— might overtax certain forms of property to the benefit of other forms.⁵³

For Publius, there were only two methods to protect a society from the instability caused by factional conflict: destroy liberty or extend the domain of popular rule. It of course may not be insignificant that Publius did not directly take up Montesquieu’s suggestion of moderate equality in the distribution of wealth among democratic republic citizens. He also rejected the classical notion of assigning political power according to wealth, referring to “theoretic politicians” who equate

⁵⁰ See Federalist 10, p. 58.

⁵¹ Federalist 10, p. 59.

⁵² See Federalist 51.

⁵³ See Federalist 21 and 35.

political equality with moral and economic equalities.⁵⁴ The reason Publius seemed to accept if not embrace social and economic inequalities was that it could not be addressed without threatening liberty. This fact made a departure from Montesquieu and classical antiquity necessary. Moreover, despite Montesquieu's direct confrontation with the possibly adverse effects of commerce on a society, Publius was largely silent on whether commerce would intensify disparities between the haves and the have nots, even though he acknowledged the threat posed by commerce to those who hold their property in land.

Publius was well aware that the notion of the extended republic flew in the face of the received wisdom—republics were supposed to be small, according to Montesquieu, and history seemed to bear this out. The Antifederalist outcry was unwavering in this respect. Yet for Publius a small republic encouraged instability because of its inability to prevent majority faction. Publius' solution to the problem of instability in republics was to enlarge the scope of social, political, cultural, and economic life to use the number and variety of interests in a society to serve the public interest. No particular religious, economic, regional, or ideological interest could form a majority that would encroach the liberty of an enfranchised minority. "Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of

⁵⁴ Madison and Hamilton did not originally agree about this. Hamilton thought that providing representation to each of the major economic sectors might prevent conflicts. Madison, however, disagreed.

the majority.”⁵⁵ Publius sought to unify the states under an extended republic by extending the scope of the central government. This extension dislodged the political power of the central government from the minutiae of particular concerns—and factions, which arise from what is particular and immediate, either remain particular and local or must acquiesce to other particular and local concerns in order to acquire access to political power. Publius argued that the enlargement of the orbit was a modern innovation that would accommodate size and complexity to republics—despite the writings of theorists suggesting the contrary. According to the claims of the *Federalist*, the large republic best addresses the problem of faction. Publius challenged the notion that size and republicanism were antithetical, resting his arguments on the notion that the large republic helped to solve faction as a central problem of political stability.

Factional conflict was only one source of instability discussed by Publius. Corruption, particularly political corruption also played a role in his account. According to Polybius, the Roman mixed constitution was able to bring an end to the factional struggle between the classes through a system of shared political power. Yet Cicero, Tacitus, Sallust, and others witnessed the destruction of the Roman constitution and observed a new problem causing the collapse of the republic, which they describe as moral corruption. Tracing Publius’s characterization of political corruption to Thucydides’ description of *stasis* at Corcyra and to Aristotelian theories of the polis, J. Peter Euben argues that “corruption implies decay, where the original

⁵⁵ See Federalist 51.

or natural condition of something becomes infected. Euben writes that the term “corruption” in the Roman Republic possessed an “extended meaning of political decline” which resonated during the American Revolution. If the infection goes far enough the infected body begins to decompose until unrecognizable.”⁵⁶ Publius used the Roman example as a warning to the new republic, but Publius emphasized the legal and political dimensions to the problem of corruption rather than the moral dimensions that Cicero, Tacitus, and Sallust also examined as a part of the problem.⁵⁷ The term political corruption itself echoes in American public discourse throughout the second half of the eighteenth century and was a constant catch phrase during the constitutional convention.⁵⁸ Furthermore, according to Robert Morgan (1974), the association of faction and corruption with a kind of *stasis* is appropriate as the founders viewed these notions as “twin evils.”⁵⁹ Euben confirms Morgan’s view as well, “In a corrupt society each part pretends to be the whole; each interest to be the common one; each faction to make its view and voice exclusive.”⁶⁰ Publius and his contemporaries believed that the American republic was particularly vulnerable to political corruption, as it was precisely this type of corruption that had been an insoluble source of instability for republics. Further, English monarchical and

⁵⁶ See J. Peter Euben’s “Corruption” in *Conceptual Change and the Constitution*, Eds. Terence Ball and J.G.A. Pocock, p. 222.

⁵⁷ The Roman historians also saw moral corruption as an important cause of the destruction of the republic. The significance of *Cato’s Letters* cannot be loss, even though it was more popular during the American Revolution.

⁵⁸ See James Savage’s article in the *Journal of Politics* (1994). See also Farrand, Volumes I-IV.

⁵⁹ Morgan, p. 876.

⁶⁰ See Euben’s “Corruption” p. 223. Considering their different views on American democracy, the fact that Euben and Morgan agree on this issue is not inconsequential.

parliamentary corruption certainly was not a distant memory in the 1787 republican consciousness. This description of corruption as decay and decline from an idyllic condition also shapes the Antifederalist challenges to Publius. The Constitution of 1787 was seen as a sign of political decline from the republicanism of the Revolutionary fight against monarchy and its corruption. The change from an emphasis on state legislatures to a central representative Congress made the Antifederalists skeptical that the new scheme would keep the government responsible to the people. They argued that the Constitution itself was a dangerous document with corrupt intentions.

Drew McCoy (1980) describes the American Revolution as a reaction against “the decay and corruption that had overtaken so much of the Old World.”⁶¹ The Americans saw their political enterprise—the founding of a democratic republic—as an act of resistance against a corrupt monarchy. Yet while Publius and the Federalist were once solely suspicious of the king’s power, now they became increasingly suspicious as well of the state legislatures. “The people, it seemed, were as capable of despotism as any prince.”⁶² Whereas the 1770s Anglo-Americans lamented the despotism of the crown, in the 1780s Publius railed against the despotism of the populace, Wood concludes. The convention delegates used the term “corruption” in order to express concerns over bribery, bloated influence, and patronage.⁶³ Publius accused the state legislatures of “drawing all powers into its impetuous vortex,”

⁶¹ See Drew McCoy’s *The Elusive Republic: Political Economy in Jeffersonian America*. Chapel Hill: University of North Carolina Press p. 48.

⁶² See Wood p. 410.

⁶³ According to Savage, Madison’s notes record its use by 15 delegates at least 54 times.

thereby assuming all powers of government.⁶⁴ Moreover, Publius argued that the Articles of Confederation granted the Confederate Congress complete legislative, executive, and judicial power. The task of the new Constitution would be to reverse this concentration of power, which Publius described as “the very definition of tyranny.”⁶⁵

The structural weaknesses of the central constitution and the limitless acts of the state governments were analogous to the very corruption described in Montesquieu’s *The Spirit of the Laws*. Echoing the French theorist, Publius insisted, “where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution, are subverted.”⁶⁶ When Montesquieu addressed the problem of corruption, he took up the notion as a feature of an unbalanced mixed regime. Although he recognized that there were three distinct and independent functions of government—executive, legislative, and judiciary—Montesquieu used mixed monarchy as the constitutional framework for understanding the arrangement of these powers. But Montesquieu left the difference between the ancient (Aristotelian) notion of the mixed constitution and the separation of powers unexplained. As a result, the applicability of Montesquieu’s theory of the separation of powers to a democracy was left largely unsettled because Montesquieu used the British constitution as his model. Furthermore, in Federalist 47, Publius suggested that Montesquieu could not,

⁶⁴ See Federalist 48.

⁶⁵ See Federalist 47.

⁶⁶ See Federalist 47, p. 326.

therefore, resolve the relationship between the separation of powers and checks and balances within the context of a popularly based regime.⁶⁷

“Divide et impera, the reprobated axiom of tyranny, is under certain qualifications, the only policy, by which a republic can be administered on just principles.”⁶⁸ The solution to the problem of *stasis* that results from corruption in a democracy, Publius insisted, was that power is “divided, balanced, checked, and put back together in a constitution whose end can best be described as...self-government itself.”⁶⁹ It was generally accepted by parties on both sides of the debate that the separation of powers was not only desirable, but necessary; however, there was considerable disagreement over *which* institutional arrangements properly would prevent corruption. In words that echo those of Montesquieu, Publius wrote, “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.”⁷⁰ According to Montesquieu, a separation of powers was particularly necessary between the executive and legislative branches of any government to prevent one branch from tyrannizing over the other branch. Therefore, the branches should not be joined nor power concentrated. “For this reason, that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments

⁶⁷ Publius suggests that even the state legislatures do not reflect the strict maxims of separation of powers.

⁶⁸ See Madison’s letter to Jefferson on October 24, 1787 in *PJM*.

⁶⁹ See Cohler, p. 168.

⁷⁰ Federalist 47, p. 324.

should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time.”⁷¹ Yet Publius faced vehement protests from Antifederalists who were not convinced of the existence of a separation of powers within the parameters set by the Constitution. Patrick Henry frequently compared the usurpation of power in the Constitution to the despotism of George III.⁷² Therefore, the first challenge facing Publius in his defense was defending the plan for the separation of powers expressed in the Constitution; the second challenge was to insist that the Constitution could maintain the separation it purported to introduce.

Publius’ response to these attacks hinged on an alternative view of the source of corruption within democratic republics. The collective wisdom of the eighteenth century stemmed largely from theories regarding the prevention of monarchical abuse and instability. Yet it clearly was not the dangers of monarchical abuse that most concerned Publius. And ancient and modern history bore out his suspicions: “One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that they are chosen by ourselves. An ELECTIVE DESPOTISM was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others.”⁷³ What was different about the

⁷¹ See Federalist 48.

⁷² See Henry’s speeches in Storing Vol V:16.

⁷³ See Federalist 48.

assault against corruption for the Anglo-American political system was that it faced the threat of democratic despotism versus a hereditary or monarchical one. Whereas the threat posed by George III and his parliament was the usurpation of power by the executive, the threat posed under the Articles of Confederation was the usurpation of power by the legislatures. “In *republican* government, the *legislative* authority necessarily predominates.”⁷⁴ Publius challenged Antifederalist claims that the Constitution represented a return to a corrupt monarchy and argued that the Constitution was written to correct the *legislative corruption* experienced in the decade following the founding of republican government. The founders “seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.”⁷⁵ Since the Articles of Confederation gave the legislature too much power, the task of the new Constitution was “to unite a proper energy in the Executive and a proper stability in the Legislative departments, with the essential characteristics of Republican Government.”⁷⁶ Because the legislature presents the greatest threat to the stability of democratic republics, Publius sought the solution to this problem by strengthening the other two branches of government.

The Constitution of 1787 strengthened the powers of the executive and judiciary to check the democratic penchant for constantly changing the laws. Publius

⁷⁴ See Federalist 51. Emphasis is mine.

⁷⁵ See Federalist 48. While this is generally true, the Declaration of Independence spells out not the abuse of power by the monarch alone, but by the king’s parliament as well.

⁷⁶ See Federalist 47.

argued that the solution to the potential instability posed by the legislative branch is to check its power. This is the role of the judicial branch. “And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.”⁷⁷ Liberty, Publius declared, requires an independent judiciary as Montesquieu instructs.⁷⁸ Judges are essential to limiting legislative authority to ensure that the legislature does not pass laws contrary to the Constitution. Furthermore, the “standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body.”⁷⁹ Believing as Montesquieu did that the judiciary was “the weakest of the three branches,” it is the body least susceptible to corruption as it holds no power to enforce or to legislate. But the lifetime appointment granted the judiciary independence from executive and legislative encroachment and the power to maintain the boundaries of the legislature’s constitutionally-prescribed powers.

What Pangle and Shklar describe as the American distrust of power is actually an American suspicion of the *corruption* of political power—the usurpation of legislative, executive, and judicial power in one department. Antifederalist comparisons to the Constitution as the re-crowning of George III were met by Publius’

⁷⁷ See Federalist 78.

⁷⁸ See Federalist 78, p. 523.

⁷⁹ See Federalist 78.

with the insistence that usurpation of power was a structural feature of a political system. This explains why monarchs concern themselves with the executive concentration of power and republics with the concentration of legislative power. “All observations founded upon the danger of usurpation, ought to be referred to the composition and structure of the government, not to the nature and extent of its powers.”⁸⁰ Publius argued that it is the defect of a constitution that encourages its corruption. “Tyranny has perhaps oftener grown out of the assumptions of power, called for, on pressing exigencies, by a defective constitution, than by the full exercise of the largest constitutional authorities.”⁸¹ The biggest concern to government was for one department to assume the powers of another without the institutional constraints to prevent this corruption as had been the chief cause of corruption in Rome. Accordingly, “the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others.”⁸² The maintenance of the separation of powers was the subject of Federalist 51: “To what expedient then shall we finally resort for maintaining in practice the necessary partition of power among the several departments, as laid down in the constitution?”⁸³ The answer that Publius provided was one that rests on structuring the three powers of government such that each of its parts has “the means

⁸⁰ See Federalist 31, p. 197.

⁸¹ See Federalist 20, p. 127.

⁸² See Federalist 51, 349.

⁸³ See Federalist 51, p. 347.

of keeping each other in their proper places.”⁸⁴ This required that power in a republic was arranged in a manner in which the pursuit of usurpation by one branch was resisted by constitutional arrangements that strengthen conventionally weak branches in democracies—the executive and judicial branches—and arrangements that weaken the stronger legislative branch, by granting the other branches some portion of its powers.

For Publius, the best constitution arranged powers such that they were both balanced and shared in order to prevent corruption. When power was concentrated into one branch of government, this encouraged corruption and threatened stability. The separation of powers was designed in order to prevent corruption and instability. While acknowledging that a strong executive was fundamentally counterintuitive to republican government, for the sake of stability, it becomes necessary, Publius argued, to bolster the executive with a legislative veto in order to offset legislative dominance.⁸⁵ Yet he maintained that this conferral of power to the President does not pose a danger *because the political system is a democratic republican one*: “the admission of the President into *any share of a power which ever must be a dangerous engine in the hands of the executive* magistrate, is an unpardonable violation of the maxims of republican jealousy.”⁸⁶ The presidential veto did not constitute such a violation because this legislative power did not represent the complete transfer of

⁸⁴ See Federalist 51, p. 348.

⁸⁵ See Madison’s speech at the Constitutional Convention on the Revisionary Powers on June 6, 1787. Conversely, the “history of all Governments demonstrates that the Executive is the branch of power most interested in [foreign] war and must prove to it. [The Constitution] has accordingly with studied care, rested the question of war, in the legislature.” Madison to T. Jefferson on April 2, 1798.

⁸⁶ See Federalist 38. Emphasis is mine.

authority to the executive and the executive sanction could be overridden by the legislature.

The Antifederalists were not convinced. Richard Henry Lee, for instance, called the Constitution “a most formidable combination of power.”⁸⁷ They saw the Constitution’s plan for the separation of powers as an affront to the very teachings of Montesquieu as the document did too much blending and collapsing the distinctions that “expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.”⁸⁸ The separation of powers required that the three powers of government—executive, legislative, and judicial—be separate and distinct. They were alarmed by what they saw as the dangerous combination of senatorial and presidential powers. “Together the president and Senate held all the executive and two-thirds of the legislative power, and jointly they appointed all the civil and military officers.”⁸⁹ The Pennsylvania Minority cited the perilous eclipse of the powers of the central government, pointing to the Senate as a body with legislative, executive, and judicial powers and the reliance of the President upon the Senate to approve his appointments and treaties. This authority would make the Senate and the President as dangerous as George III, which threatened the very premise of the revolution as an assault, not only on monarchy, but on the usurpation of political power. To this charge, Publius responded by challenging the claim of the Antifederalists that the separation of powers designed by the Constitution contradicted

⁸⁷ See Lee (Va) in Elliott’s *Debates* III, p. 58, 491.

⁸⁸ See Federalist 47.

⁸⁹ See Wood p. 521.

the teachings of Montesquieu. There was a shared sense among his public that Montesquieu *appeared* to have viewed the British Constitution as the model of the doctrine of the complete separation of powers.⁹⁰ To test the validity of this claim, Publius conducted an investigation of the British model. “On the slightest view of the British constitution we must perceive, that the legislative, executive and judiciary departments are by no means totally separate and distinct from each other.”⁹¹ Publius showed that the monarch had influence over the wielding of legislative and judicial powers in England. On Publius’ reading of Montesquieu, there was no evidence that the legislative and executive departments “ought to have no partial agency in, or no controul over the acts of each other.”⁹² Ultimately, the separation of powers depended on the fact that the *entire* power of one department ought not fall under the auspices of a department that possesses the *entire* power of *another* sort. For example, “were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul, for *the judge* would then be *the legislator*.”⁹³

Publius’ arguments that the Constitution would prevent the factional conflict and corruption which led to instability by extending the scope of the federal government and separating its power provided the transition into his confrontation with *the mutability of the laws* as a source of instability in democratic republics. For Publius, the very act of legislating posed a serious threat to the stability of the

⁹⁰ I have argued previously that Montesquieu seems suspicious that the British are realizing their constitutional ideals.

⁹¹ See Federalist 47, p. 325.

⁹² See Federalist 47, p. 325.

⁹³ See Federalist 47, p. 326.

republic. Madison wrote, “The absence of wisdom and steadiness in legislation, was the grievance complained of in all our republic.”⁹⁴ Mutable legislation was perceived as particularly egregious at the level of state government. Wood identifies issues surrounding state licentiousness as the overarching topic of 1780s Anglo American intellectual debates.⁹⁵ In his “Vices of the Political Systems of the United States,” Madison lamented that the state “laws were hopelessly mutable, detailing his list of grievances against the states for the proliferation and inconstancy of the state laws, particularly with regard to printing money, currency manipulation, tariff laws against other states, and debtor or creditor relief policies.”⁹⁶ He had even unsuccessfully advocated for congressional checks on state laws before the ratifying convention. In Federalist 63, Publius, using Britain, Rome, and Carthage as examples, argued that the major threat to power in *any* government wholly or partly republican stemmed from the most democratic part and their ambition to change the laws. Hamilton and Madison in their speeches before the convention assailed assemblies as turbulent, uncontrollable, and unsteady.⁹⁷ The primary cause of this source of instability in Publius’ view was the legislative power to change the law. This was why the legislative branch, as the branch with the power to change the law as well as the branch that most directly drew its authority from the many and was itself the most numerous and therefore the most diverse, had the greatest propensity for instability.

⁹⁴ See Madison’s Letter to Caleb Wallace on August 23, 1785 in the *PJM*.

⁹⁵ See Wood, p. 411.

⁹⁶ See *PJM*, Vol. 9. At the convention, Madison advocated a constitutional provision allowing the federal government to strike down unjust state laws. This proposal was not supported by the convention delegates. See his June 8, 1787 speech in Farrand I.

⁹⁷ See Farrand I, p. 299, 430.

What was required was a way to prevent the power of law-making from compromising the stability of the republic. “The thrust of Madison’s theory is that the stability of the political system depends chiefly upon the stability of the legislature.”⁹⁸

“Law is defined to be the rule of action; but how can that be a rule, which is little known and less fixed?”⁹⁹ Whereas the problem of corruption signaled an abuse of power, the problem of mutable legislation indicated a problem of the abuse of liberty. The term “licentiousness,” which had been used by Plato in the *Republic* to describe the actions of democracies echoed in the pulpits, speeches, and personal correspondence in the years following independence. “All the mobbing, the conventioning, all the actions of popular legislatures, seemed to indicate that the people were fast running wild into ‘anarchy and licentiousness.’”¹⁰⁰ The rhetoric of the period suggested a correlation between licentiousness and regime change. The abuse stemmed not from king and tyrant, but from the people themselves. While democracy was taking hold in America, so was instability through the constant activity of its representative assemblies. “The revised laws have been altered—realted—made better—made worse; kept in such a fluctuating position, that persons in civil commission scarce know what is law.”¹⁰¹ The very democratic assemblies which were created to preserve justice and liberty were instead the sources of instability and confusion. Furthermore, it was not the absence of law that was creating instability, but the *proliferation* and *inconstancy* of it. “We daily see laws repealed or suspended,

⁹⁸ See Morgan p. 881.

⁹⁹ See Federalist 62.

¹⁰⁰ See Wood, p. 403.

¹⁰¹ See “Address to the Council of Census” in Vermont, February 14, 1786 in the *PJM* Vol. 8.

before any trial can have been made of their merits, and even before a knowledge of them can have reached the remote districts within which they were to operate.”¹⁰² In Federalist 48, Publius called the lawmaking of the state legislatures “impetuous.” The flurry of state legislation, which was motivated by legislative predominance, made instability seem imminent.

Publius stressed the propensity of such governments towards legislative predominance. According to Publius, the errors of the government under the Articles of Confederation and of the governments and theories of ancient and modern times were that they did not properly recognize “the danger from legislative usurpations; which by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.”¹⁰³ Because in a democracy, wrote Publius in Federalist 48, the legislative department presents the greatest threat of encroachment, it is precisely this form of power that must be carefully checked through constitutional practices. Using the states of Virginia and Pennsylvania as examples of unchecked legislative power, Publius argued that legislatures more than any other branch of a republican government most often violate and overextend themselves beyond the prescriptions of its constitution.¹⁰⁴ For this reason, constitution had to be protected against the legislative propensity to change the laws. The Constitution—the very foundation upon which stability rested—should not be defenseless against the

¹⁰² See Madison’s “Vices of the Political Systems of the United States” (April, 1787) in the *PJM* Vol. 9.

¹⁰³ Federalist 48, p. 333.

¹⁰⁴ See Federalist 48, p. 338.

instability of “irregular and mutable” laws passed by the legislative branch.¹⁰⁵ Publius wrote, “an irregular and mutable legislation” requires remedy which necessitates correcting the “vicissitudes and uncertainties” of the legislatures.¹⁰⁶

For Publius, precisely because the legislative branch of a popular government was the most democratic and accordingly the most unstable, a significant remedy to legislative usurpation as a source of political instability was needed. Publius placed great confidence in bicameralism’s division of the legislature into different houses with different compositions and characters as a means to prevent the turbulence of republican legislatures. The solution was “to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit.”¹⁰⁷ It was the existence of two houses with “opposite interests” that contributed to “the Roman republic [attaining] the utmost greatness,” and Publius further confirms that no “long lived republic” did not have a senate.¹⁰⁸ The examples of bicameralism set by long-standing republics like Sparta, Carthage, and Rome indicate that the institution of two legislatures wards off the turbulence of the other ancient examples and prove “the necessity of some institution that will blend stability with liberty.”¹⁰⁹ Yet among the purposes of government is to protect the very liberty that may destroy it. Publius

¹⁰⁵ See Federalist 37.

¹⁰⁶ See Federalist 37, p. 234.

¹⁰⁷ See Federalist 51.

¹⁰⁸ See Federalists 34 and 63.

¹⁰⁹ See Federalist 63.

defended bicameralism as a mechanism to ensure the prevention of the concentration of power in legislative hands.

Publius argued that bicameralism altogether combined the strengths and attenuated the weaknesses of the House of Representatives as the most democratically-based chamber and the Senate as the smaller and more experienced one. “The mutability of the public councils arises from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in government...[Even] a new continual change even of good measures is inconsistent with every rule of prudence and every prospect of success.”¹¹⁰ Publius saw the establishment of a Senate as the means to introduce the establishment of a federal Senate as the means to introduce “permanence,” “steadiness and wisdom,” and “stability” to mutable legislation. In fact, Hamilton declared that the Senate contributed “strength and stability.” “There are few positions more demonstrable than that there should be, in every republic, some permanent body to correct prejudices, check the intemperate passions, and regulate the fluctuations, of a popular assembly.”¹¹¹

However, the Antifederalists maintained that the Senate by its composition, its mode of elections, and its attributes of wisdom and experience, bore a resemblance to the aristocracy of England’s House of Lords and ancient Rome’s patrician Senate. Therefore, the use of the categories framed by the ancient mixed regime continue to

¹¹⁰ See Federalist 62.

¹¹¹ See Hamilton (NY) in Elliot’s *Debates* II, p. 301 and 316.

shape the debate over bicameralism which downplayed Publius' insistence that the Senate also provided a mechanism for state representation at the federal level. Publius invoked the ancient and Montesquieuan language of "checks," "balance," and "control necessary for political stability. But the Antifederalists insisted that the bicameral Congress was only remotely democratic as it attenuated the people's capacity for self-government.¹¹² Yet Publius would insist that neither order nor rank, but simply the representatives of the people and "the concurrence of separate and dissimilar bodies is required in every public act" in order to prevent mutable laws from causing instability.¹¹³

Faction, corruption, and the mutability of legislation were the sources of internal instability of democratic politics. And the institutions formed to address this instability were based on domestic concerns and practices. Yet Publius also recognized the role of foreign threats on a stable democracy. The recognition that constitutional arrangements and international conditions were necessarily interdependent was clear in American democratic republican public discourse as early as Thomas Paine's *Common Sense*. According to Montesquieu, republics had to be especially concerned with both internal political institutions and international conditions. Gerald Stourzh (1970), who analyzed the influence of Hamilton's political theory on shaping American political thought, wrote, "The classical philosophers had proclaimed the normative primacy of internal policy, while admitting the actual

¹¹² See Smith (NY) in Elliott's *Debates* II, pp. 246-47 and Monroe and Henry (VA) in *Debates* III, pp. 218-19, 164-65.

¹¹³ See Federalist 63.

primacy of foreign policy.”¹¹⁴ And the threat of foreign influence on the republic was no less significant issues to the United States in 1787. In a statement that echoes the sentiments of Montesquieu, Hamilton declared, “One of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption.”¹¹⁵ The received wisdom of the eighteenth century described the republican governments as constantly on the defensive against foreign threats while simultaneously recognizing the impact of commerce on global affairs. Therefore, the political theory of the *Federalist* cannot be fully appreciated unless one considers Publius’ ideas about the constitution within the context of the pressing international concerns of the time. For example, both Hamilton and Madison, in their speeches before the constitutional convention, spoke about the danger of foreign influence on the fate of republics. Hamilton declared that, “One of the weak sides of republics was their being liable to foreign influence and corruption.”¹¹⁶ Madison drew on the histories of ancient Greece, the Swiss, Germany, and the Belgian republic to show the persistent ruin of republics by foreign intervention.¹¹⁷ Publius’ primary concern was the threat posed to American democracy by European domination, and Hamilton and Madison both made statements against European ambition in the world, particularly as it influenced the stability and success of the newly established American democracy.

¹¹⁴ See p. 132.

¹¹⁵ See *Federalist* 22.

¹¹⁶ See Farrand I, June 18, 1787.

¹¹⁷ See Farrand I, June 19, 1787.

Nothing was more desired than that every practicable obstacle should be created to oppose instability at the hands of foreign intrigue.

Judith Shklar asserted that Publius “saw utter disaster around every corner threatening the thirteen states. Military danger from abroad, corruption by foreign agents, and war among the states were immediate dangers in his view.”¹¹⁸ The precise problem with the Articles of Confederation for Publius was that its ‘democratic’ institutions did not promote stability because its general government lacked the sovereign authority to secure order and to protect against foreign threats, or to create and maintain the conditions for economic happiness. “In America, from a like cause, the government of the Union was gradually dwindled into a state of decay, approaching nearly to annihilation.”¹¹⁹ Before the convention, Madison declared, “A rupture with other powers [countries] is among the greatest national calamities; it ought, therefore, to be effectually provided, that no part of a nation shall have it in its power to bring them on the world.”¹²⁰ Alternatively, a national government could “move on uniform principles of policy—It can harmonize, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each.”¹²¹ Publius’ conception of Union required mechanisms of central government and administration. In fact, a central argument of the *Federalist* is that the functions that fell under the control of the individual states would be more appropriate to the

¹¹⁸ See Shklar’s “Publius and the Science of the Past” in *The Yale Law Journal*, Vol. 86, No.6 (May, 1977), p. 1287.

¹¹⁹ See *Federalist* 30, p. 188.

¹²⁰ See Farrand I, June 19, 1787.

¹²¹ *Federalist* 4, p. 21.

federal government in the interest securing unity and stability. Publius asked, “Who so likely to make suitable provisions for the public defence, as that body to which the guardianship of the public safety is confided—which, as the center of information, will best understand the extent and urgency of the dangers that threaten—as the representative of the whole will feel itself most deeply interested in the preservation of every part...?”¹²² The federal government was critically necessary to provide security against foreign threats to America’s existence as a free and stable government. Therefore, the most important powers in the state for maintaining security are those that regulate commerce, foreign negotiations, and war—each of which is required for a stable democracy.

For domestic and internal purposes, the federal government centralizes the identified key functions, protects a market economy, and serves as the primary mechanism of enforcement for these purposes. “I believe it may be laid down as a general rule, that [the people’s] confidence in and obedience to a government, will commonly be proportioned to the goodness or badness of its administration.”¹²³ Ultimately, for Publius, a central government is a superior safeguard for the general and common interest, which also requires that the Union command respect abroad. It is considered equally important, in addition to domestic fortitude, that the United States have the ability to compete with and establish itself as an equal to England, France, Spain, and other European powers. “How can it ever possess either energy or

¹²² See Federalist 23, p. 149.

¹²³ Federalist 27, p. 172.

stability, dignity or credit, confidence at home or respectability abroad?”¹²⁴ This goal becomes doubly important due to Europe’s exploitation of territories neighboring the US at the time. “Let the thirteen States, bound together in a strict and indissoluble union, concur in erecting one great American system, superior to the controul of all trans-atlantic force or influence, and able to dictate the terms of the connection between the old and the new world!”¹²⁵ In the eighteenth century the New World was still a battleground for European interests. For that reason, the United States could not afford to be an insignificant nation as the argument was made that America would become caught in the crossfire of states due to the “arrogant pretensions of the European” States.¹²⁶

The most practical and rehearsed argument in favor of the new government was that greater union would strengthen its ability to wage war successfully against internal and foreign threats. Anne Cohler confirms that the dangers described by Publius included, “foreign intervention,” “foreign alliances,” and “the destruction of commerce.”¹²⁷ It is no surprise, therefore, that the two primary functions that were designated as falling under the sole jurisdiction of the central government under the Constitution of 1787 were commerce and foreign policy. Montesquieu had been well aware of the relationship between trade, international conditions, and the nature and principles of government. Drew McCoy insists that Madison was committed to

¹²⁴ See Federalist 30, p. 191.

¹²⁵ See Federalist 11, p. 73.

¹²⁶ Federalist 11, p.72.

¹²⁷ See p. 155.

America's participation in a "new, more open international commercial order."¹²⁸ And Stourzh confirms that "the interdependence of forms of government and...of constitution-making and international environment is at the very center of concern for Hamilton."¹²⁹ Moreover, "the eighteenth century, even more than the previous one, was profoundly aware that the center of gravity of international politics had shifted from the possession of raw military force to the disposition of wealth."¹³⁰ Montesquieu, of course, believed that commerce posed a possible alternative to war and expansion—both of which he viewed as detrimental to republican stability—as Rome's expansion and empire had previously demonstrated. But Madison and Hamilton, while recognizing the importance of commerce on international conditions, suggested that trade would serve as the new terrain upon which nations, and their republic specifically, would engage in war and expansionism on the world stage. In addition to the political and commercial threats posed by Britain, Madison and the Southern states were increasingly antagonistic toward the Spanish, who by 1784, had openly refused the Anglo-Americans the right to navigate the Mississippi River and to obtain access to consumer markets in New Orleans. Madison, particularly, saw international commercial growth as interdependent with domestic agricultural expansion—which would provide farmers a privileged position in exporting raw materials to foreign manufacturers. In fact, it is precisely American foreign and commercial policy that loomed large in the disagreement that divided the principal

¹²⁸ See McCoy, p. 121.

¹²⁹ See p. 153.

¹³⁰ See Stourz, p. 142.

authors of the *Federalist* in the years following ratification. Madison, using English reliance on the American agricultural industry for raw materials and the purchase of British manufactured luxury goods, wanted to implement a policy of discrimination against Britain for its restriction of American goods in international markets.¹³¹ Hamilton, taking British dominance of international politics and economics as a given, sought to beat the British at their own game by developing American domestic manufacturing industry on a scale competitive with Britain. Essentially, it was the differing views regarding the shape of international conditions and the appropriate foreign trade policy that caused Publius' internal disagreement soon after the Constitution was ratified. Yet at the heart of the debate between Madison and Hamilton was the recognition that the inability to respond to international conditions would cause political instability.¹³²

Stability, according to Publius, required that the federal government have complete and decisive authority in areas requiring 'uniformity.' This 'kingly authority' was necessary for three reasons: first, it decisively establishes the supremacy of the general government; second, it provides control over the "vicissitudes of state policy"; and third, it checks majority tyranny in the states.¹³³ Publius argued that the matters which fall entirely under the authority of the federal government are those matters of general concern to all states, namely taxation,

¹³¹ Drew McCoy's *The Elusive Republic: The Political Economy in Jeffersonian America* for the best explanation of Madison's plan to bolster American participation in international commerce.

¹³² The argument could be made that Hamilton understood this better than Madison.

¹³³ See Madison's letter to G. Washington on April 16, 1787.

commerce, and military conflict; accordingly, protection against instability required the power of the Union government to regulate trade, to maintain a standing army, and to levy and borrow taxes.¹³⁴ “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”.¹³⁵ Unless, the federal government was able to tax the people directly, discord and contention between the general government and the many parts and between the many parts themselves would be invited. Moreover, the authority to levy taxes provides the support necessary to protect the Union from external threats. The sole purpose of roughly the first half of the *Federalist* was to insist on “the need to provide for the common defense brings along an array of powers to the federal government, particularly the power to raise and maintain an army and the power to tax directly.”¹³⁶

Federalist 14 warns of the impending sources of instability facing the Americans, describing foreign threats from the British, French, and Spanish as well as the hostile indigenous societies, commercial incongruities and disruptions, and internal threats from rising militia activity. Publius’ defense of the Constitution is a defense of its establishment of a union government with supreme sovereignty, a government with the stability to protect the citizens and the states from factions and foreign and internal militias. Publius identified safety—an expression of stability—as the most necessary object of a government, which required security against foreign danger and domestic

¹³⁴ See *Federalist* 56.

¹³⁵ See *Federalist* 30, p. 188.

¹³⁶ See *Cohler* p. 149.

insurrection.¹³⁷ The challenge facing Publius was whether a “union under an efficient national Government affords the best security.”¹³⁸ In other words, can the proposed Constitution of 1787 provide the stability that the ancients sought and that Montesquieu recommends? The answer to this question was where Publius and his opposition disagreed. The Antifederalists objections were founded on the premise that Publius and the Federalist supporters extended Montesquieu’s advice that democratic republics take on monarchical characteristics in their military conduct to virtually every aspect of political activity. Although federal powers were viewed as essential to stability, the history and creation of the United States made the Anglo-Americans particularly skeptical about the possibility of their abuse. The availability and exercise of military power by the executive was a particular concern. The American public, and the Antifederalists especially, were wary of the power of the chief executive becoming the tyrannical power of the king. For this reason, Patrick Henry echoed the sentiments of many of his Antifederalist colleagues when he uttered that the constitution “squinted toward monarchy.”¹³⁹ The Antifederalists also strongly objected to the fact that that functions, such as defense, the maintenance of internal order, and the regulation of international trade were without qualification, in their view, assigned to the central government. The exclusive rights to the federal government to tax foreign trade, to raise and maintain an army, and to manage foreign

¹³⁷ See Federalist 3, p. 14.

¹³⁸ Federalist 3, p. 14.

¹³⁹ Henry’s suspicions may have been well-founded. Hamilton’s plan for the Constitution was a more monarchical plan. But Hamilton rejected his plan to support the Constitution, which was more democratic and republican.

policy attacked the very heart of the Antifederalist understanding of republicanism—despite Publius’ insistence that each of these exclusive functions was exercised by entities that were answerable in one way or other to the many states and/or the people themselves. In a heartfelt speech deploring the proposed change, Henry argued that ratifying the Constitution would sacrifice liberty for majesty.¹⁴⁰ Setting himself against the Federalists, Henry appealed to the state ratifying convention on the basis of its more democratic sensibilities: “The first thing I have at heart is American *liberty*; the second is American Union; and I hope the people of Virginia will endeavor to preserve that Union” by protecting liberty. Henry’s plea was perhaps the most poignant voice of the opposition of the issue confronting the Anglo-Americans during this period: the *mortality* of democratic governments throughout history. Patrick Henry expressed the concern that the Constitution’s supporters’ answer to the problem of democratic instability was to protect stability at the expense of democracy. To be fair, Henry used the term “liberty,” but it is used in the context of government by the many and popular participation—both of which are fundamentally democratic ideals. Henry’s doubts echoed throughout the states and his was a challenge that Publius took up directly by insisting that the congressional powers to tax and to regulate commerce, to declare war, to raise armies, and to authorize military expenditures were powers stripped from the executive and assigned to the legislature, as the most direct representative of the people, reflecting the Constitution’s commitment to democratic ideals. “The POWERS are not too extensive for the OBJECTS of federal

¹⁴⁰ The word Henry uses is “splendor.”

administration, or in other words, for the management of OUR NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess.”¹⁴¹

4.3. The Struggle over the Structure of the Federal Republic

According to the *Federalist*, “No government any more than an individual will long be respected, without being truly respectable, nor be truly respectable, without possessing a certain portion of order and stability”.¹⁴² For Publius, order and stability were functions of political organization. And the need for these ingredients would cause him to challenge both the received wisdom of classical antiquity and the teachings of Montesquieu regarding the structure of democratic stability. Montesquieu the great muse of the American framing period wrote extensively on the effect of a republic’s international activities on internal stability. The lesson of antiquity that resonates in *The Spirit of the Laws* is that polities and democratic republics must be structured so that they can defend themselves against changing international conditions and foreign threats, respectively. “If a republic be small, it is destroyed by a foreign force; if it be large, it is ruined by an internal imperfection.”¹⁴³ Montesquieu’s solution was a confederate republic. But Publius was ultimately

¹⁴¹ See Federalist 23.

¹⁴² See Federalist 62, p. 422.

¹⁴³ See Montesquieu’s *The Spirit of the Laws* I.9.1.

dissatisfied with Montesquieu's conclusion. The concern about confederation stemmed from Publius' knowledge of ancient and modern politics and history in which the parts of the confederation encroached on the authority of the whole. "We shall find in them [this] same tendency."¹⁴⁴ Madison concluded that confederation was a source of instability, as various *Federalist* essays would indicate.

Gordon Wood notes that for the year between 1785 and 1786, James Madison began an extensive study of ancient and modern confederacies. "Madison's studies pointed out the fundamental weaknesses of mere confederations composed of independent states, forming a nerveless whole that was threatened from without and torn by popular convulsions from within."¹⁴⁵ In papers 16-20, Publius cites at length the failures of the confederations and federal republics of ancient and modern politics and history. This analysis led Publius to conclude that confederation as a model of democracy was deeply flawed. In *Federalist* 15, Publius predicted "impending anarchy over the horizon" due to the defects of confederation and blind devotion to *imperium in imperio*. Believing that the confederation suffered from structural defects, Publius denied that government under a confederation is a government at all.¹⁴⁶ As a result, "the intervals between foreign wars were filled with domestic vicissitudes, convulsions, and carnage."¹⁴⁷ Publius compared the weakness and eventual dissolution of the confederacies of antiquity to their shared characteristics

¹⁴⁴ See Madison's remarks on the New Jersey Plan during the constitutional convention. Madison cites the examples of the Amphictyonic and Achaean leagues and the modern Helvetic, Germanic, and Belgian confederations.

¹⁴⁵ See Wood p. 472.

¹⁴⁶ Publius writes in *Federalist* 15 "We have neither troop nor treasury, nor government."

¹⁴⁷ See *Federalist* 18.

with the United States government under the Articles of Confederation. The “evils that we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building which cannot be amended otherwise than by an alteration in the first principles and main pillars of the fabric.”¹⁴⁸ Understanding the flaws of ancient and modern models of constitutionalism and of the confederation was central to understanding Publius’ argument. Publius argued that the world’s experiences with confederal governments reveal a sacred truth: “a sovereign 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 polity.”¹⁴⁹ The state of affairs under the Articles of Confederation was indicative of this trend, and the problem as Publius saw it was that the central government was a victim of confederation as a form of political organization.

Publius wrote that among the primary challenges facing the convention was combining stability and liberty “to the Republican form.” The received wisdom confirmed that stability—which Publius equated with energy—“is essential to that security against external and internal danger.”¹⁵⁰ Although, in Publius’ view, stability, which requires that power is lodged in the same hands “for a length of time,” and liberty, which relies on popular support and a brief duration of power for numerous magistrates, appeared to be dichotomous, the debate over ratifying the Constitution

¹⁴⁸ See Federalist 15, p. 93.

¹⁴⁹ Federalist 20, p. 129.

¹⁵⁰ See Federalist 37, p. 233.

should not be framed in terms of stability or energy versus democracy or liberty. According to the *Federalist*, reconciling these notions “to the Republican form” is directly connected to the constitutional restructuring of separating tasks appropriate to the federal and state governments, assigning the functions of legislative, executive, and judicial branches, and balancing the stakes of large and small states—which was the very task of the convention. On these grounds, the Constitution should be accepted because it was able to reconcile stability and liberty despite the “contending interests and local jealousies” relevant to its formation.¹⁵¹ Therefore, by denying that stability and democracy were mutually exclusive, Publius altered the terms of the debate from a question of sacrificing the principles of democracy to stability to the need for a structural correction of the Articles of Confederation since “the existing Constitution is founded on principles which are fallacious;...and we must consequently change this first foundation, and with it, the superstructure resting upon it.”¹⁵²

Judith Shklar noted that Publius here departed from Montesquieu, observing that “energy and stability were Publius’ greatest concerns because his hopes for America depended on them.”¹⁵³ Because confederation was a form of democratic politics and was, therefore, intrinsically weak, according to Publius, a new political organization suited for democracy had to be formed in order to make it compatible with strength and stability. Warning that it would be “unwise” and “dangerous” to

¹⁵¹ See *Federalist* 37.

¹⁵² See *Federalist* 37.

¹⁵³ See Shklar’s “Publius and the Science of the Past” in *The Yale Law Journal*, p. 1295.

continue union in the form of confederation, Publius suggested that the Constitution accomplished the difficult task of combining the stability and energy of monarchy with the liberty and equality of democracy. Because government under the Articles of Confederation did not establish the political organization necessary to secure stability, the liberty and equality that democracy and republicanism require were a constant threat. Admitting the difficulties involved in determining the line dividing federal authority from state authority, Publius maintained that because the Constitution was crafted by a convention of statesmen, the American federal republic established institutions that respected the enfranchised local, state, regional, national, religious, and economic concerns and interests that characterized the United States. The political institutions of the Constitution, therefore, blended proportional representation and equality to meet the respective interests, opinions, ambitions, and factions of the citizenry.

Perhaps Publius' most challenging task was to prove that the Constitution was not contradictory to the spirit of ancient or Montesquieuan republicanism, but represented instead a vast improvement that would allow the United States to escape the instability of past republics and the current republic under the Articles of Confederation. Montesquieu was particularly relevant to understanding the solution to the problem of political organization because Publius had to revise Montesquieu's theory of republics and confederation in his defense of the Constitution's *federal republic*. Publius argued that the transformation of the United States from a weak and unstable confederation to a viable federal republic would finally accomplish this task.

Federalist 51 represents Publius' full refutation of Montesquieu's version federal republic. In this paper, Publius attributes for the first time the name "federal republic" to the government established by the Constitution. Whereas Montesquieu had assigned the confederate government only the power of war, Publius saw the federal republic as a comprehensive solution to the problem of political instability that could replace the antiquated confederation of antiquity and the republic laid out in *The Spirit of the Laws*. The federal principle established by the Constitution finally rendered a republic practicable, according to Publius. In addition to providing security from foreign threats, the federal republic also realized a Montesquieuan system of internal checks suited to protect a democracy. Publius suggested that a federal republic protects the people from the arbitrariness, oppression, and tyranny that had characterized monarchies and democracies ancient modern. "And happily for the *republican cause*, the practicable sphere may be carried to a very great extent by a judicious modification and mixture of the *federal principle*."¹⁵⁴

Since confederations had not only failed, but were themselves a source of continuing instability, a new political system was necessary to break the long and sorry history of republican instability and ruin. "The question, therefore, whether this amount of power shall be granted or not, resolves itself into another question, therefore, whether or not a government commensurate to the exigencies of the Union, shall be established, or in other words, whether the Union itself shall be preserved."¹⁵⁵

¹⁵⁴ See Federalist 51.

¹⁵⁵ See Federalist 41, p. 308.

But the Antifederalists rejected Publius' argument that a structural change was necessary to preserve the United States, from internal and external dangers. Patrick Henry retorted, "The Confederation; this same despised Government, merits, in my opinion, the highest encomium: It carried us through a long and dangerous war: It rendered us victorious in that bloody conflict with a powerful nation: It has secured us a territory greater than any European Monarch possesses: And shall a Government which has been thus strong and vigorous, be accused of imbecility and abandoned for want of energy?"¹⁵⁶ Publius and the critics of the Constitution were joined in an intense and divisive debate over the crafting of the republic to meet the internal and external dangers facing democracies. The Antifederalists insisted that the United States should abide strictly by the requirements of the federal republic advanced by Montesquieu in the *Spirit of the Laws*. Publius suggested that confederation and the 'old' notion of the federal republic were outdated and inadequate when it came to the problem of confronting instability in democracies.

Ironically, Montesquieu's theories of instability as regime change spoke directly to the American experience. Yet where Publius viewed the Constitution as correcting the excesses of democratic instability, the Antifederalists worried that the Constitution would only encourage instability—specifically, a regime change from a democracy to some variety of aristocracy or monarchy. Ultimately, the Antifederalists were convinced that the attempt to have a single government rule such a vast territory could only end in despotism, as the central government sought to establish uniform

¹⁵⁶ Speech of Patrick Henry before the Virginia Ratifying Convention June 5, 1788 in Storing, V:16.

principles of legislation for a people with r different interests, habits, and customs. “Instead of being thirteen republics, under a federal head, [it] is clearly designed to make us one consolidated government.”¹⁵⁷ Similarly, the Pennsylvania Minority pointed to the monopoly of congressional power over the purse and the sword as emblematic of the central government’s threat to the authority of state governments as well as the declared supremacy of federal authority. “This was a leading principle of the revolution and makes an essential article in our creed.”¹⁵⁸ The Antifederalist made the same argument against the new federal republic as Publius made against the confederation, “concurrent” governments cannot last, since one will ultimately destroy the other.

Taking up the vocabulary of instability, Publius maintained that in federal systems the great danger is never tyranny, but anarchy. Publius saw federalism as a form of democracy, which made the federations more likely to dissolve into chaos in his view. He wrote of the “tendency of federal bodies more towards anarchy among the members than to tyranny in the head.”¹⁵⁹ Publius recognized the challenge of two sovereignties coexisting under one government. This would be a central obstacle for Publius. In the *Federalist*, he maintained that the federal and state governments act in different manners and for different purposes: the former addresses common and national concerns; the latter is attentive to local and particular concerns and attachments. “The federal and state governments are in fact but different agents and

¹⁵⁷ See Richard Henry Lee’s *Letters from the Federal Farmer in Pamphlets*, ed. Ford, p. 282. See also Storing V:6 “Letter of Richard Henry Lee to Governor Edmund Randolph.”

¹⁵⁸ See Agrippa’s essay IV in Storing IV:6.

¹⁵⁹ See Federalist 18.

trustees of the people, constituted with different powers, and designed for different purposes.”¹⁶⁰ As a result, the federalism of the Constitution was particularly suited to the large American republic.

Where Publius found Montesquieu the most helpful was in his assertion that the task of democracy was to reconcile republican habits and customs with the strength of a monarchy. Montesquieu remained relevant to Publius’ defense because addressing the problem of instability required the reconciliation of democratic republican habits and customs with something like monarchy. Yet Montesquieu’s political teachings had to be revised in favor of a different kind of federal republic. Against charges that the Federalists and the Constitution were pro-monarchy, Publius insisted that the Constitution was not a monarchical document, rather it appreciated the success of monarchies and addressed the pervasive problems that plague democracies by uniting “public strength with individual security.”¹⁶¹ For Publius, the new constitution would bring to an end the instability of a confederacy of republics in favor of a centralized republic that blended monarchical and democratic elements. Publius sought to make democracy stable. But America’s confrontation in the late eighteenth century with the ancient problems of faction, corruption, and mutable legislation coupled with the dearth of a theory of democracy in a world of kings and conquest tested the possibility of stability in the young American democracy.

¹⁶⁰ See Federalist 46.

¹⁶¹ See Hamilton’s speech before the constitutional convention on June 18, 1787 in which he juxtaposes the difficulties of democracies and republics to the remedies offered by the British monarchy.

The federal republic advocated by Publius would successfully protect the United States from internal and external sources of instability. Unlike Montesquieu's federal republic that was founded on the political theory of modern monarchy, Publius' federal republic was founded on a political theory that was essentially democratic and republican *which would provide stability*. In this respect, the ancient examples are particularly significant to understanding the underlying problem Publius faced and the proposed solution laid out in the argument of the *Federalist*. The ancient confederations had achieved at least some measure of greatness, whereas the modern republics had been relatively minor players in a world dominated by despotic European monarchs. The ancient theory and practice of democracy was rich and brilliant albeit fated and tumultuous. But the modern theory and practice of democracy was riddled and eclipsed by the theory of absolutism and princely power. Montesquieu was ultimately a theorist of monarchical power; and his theories thus had limited application to the American case and had to be accommodated accordingly. "Therefore, if we were to take his ideas on this point [republics and world affairs] as unquestionably true, we would either take refuge in the arms of monarchy or split ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord and the miserable objects of universal pity or contempt."¹⁶²

The *Federalist* suggests that the federal republic did not completely eliminate the authority of the states when circumstances made them "subordinately" useful and

¹⁶² See Federalist 9.

that the federal republic of the Constitution is the solution to the most pervasive, formidable, and enduring sources of instability. The great danger, therefore, to democratic republicanism was not the national powers granted to a federal government, rather it was granting these powers and creating a governmental structure unable to wield them and unable to secure democracy against the sources of instability which endanger it. The federal republic—one that challenged ancient constitutionalism and Montesquieu's view of republicanism—would provide the remedy the Americans and future democracies sought. Publius' confidence in the future of the stable democracy did not, of course, square with the history of popular rule. Whereas ancient democracies and republics—most notably Athens, Sparta, Carthage, and Rome—had achieved some level of world renown, their decline had been caused by internal discord, foreign corruption, or the excessive extension of empire. Conversely, the modern republics had been primarily petty and minor players in world history. But neither the road to doom nor the road to obscurity would satisfy the authors of the *Federalist*, particularly given that a revolution had been codified in Philadelphia, one which would have extensive and wide-ranging effects.

5. Democracy as the Solution to the Problem of Instability

5.1. Ancient Politics and the Formation of Modern Democracy

Publius employed an extensive study of ancient and modern history and politics in order to defend the establishment of a modern democracy. Publius viewed the instability experienced under the Articles of Confederation as a consequence of neglecting the lessons of the past and ignoring the role that modern circumstances would play in the present and future of democracy. A unique combination of ancient and modern lessons was particularly relevant to Publius' argument for the following reasons: first, the concept of political instability traced its origins to the democracies and republics of classical antiquity; second, instability as a political concern remained a persistent problem of early modernity; and third, it was thought that only monarchical government could solve the problems of instability under modern conditions. Publius challenged this last presupposition. Together, these factors contributed to Publius' placing democracy at the center of political study and inquiry. Therefore, beginning with the *Federalist*, monarchy was replaced by democracy as the central question of modern constitutional theory.

In this dissertation, I have argued that the authors of Greek and Roman classical antiquity, as well as Montesquieu's *The Spirit of the Laws*, served as the primary sources for Publius' claim that democratic republican government could solve the political problem of instability. At the same time, Publius painted a portrait of the inherent instability of ancient democracy that ignored the role popular government played in addressing the problem of instability in classical political life. For instance, I argued in Chapter 2 that Publius was mistaken to suggest that ancient democracy was *inherently* unstable, because the ancient Greek narratives had not rendered democracy impracticable. Rather, these commentators had assessed and evaluated the successes and failures of democracies and republics in addressing the sources of instability. As a matter of fact, consistent with the accounts of Plato, Aristotle, Plutarch, and Polybius, the politics of ancient Greece and Rome were attempts to prevent *stasis* from causing instability in the ancient polis. Although Greek democracy was not entirely successful in eradicating the problem of *stasis*, the point is not lost. The democratic reforms in ancient Athens were designed to address the problem of class conflict; and the Aristotelian polity, which was designed in part to address the problem of *stasis*, was the prototype of the Roman Republic.¹ In fact, when Polybius praised the Roman constitution, he cited the ability of its mixed regime to avoid the class conflicts the ancient Greeks had not.

The history of ancient popular governments proved that *stasis* remained a persistent problem of politics and manifested itself most vividly in the struggle

¹ See my Chapter 2.

between the rich and the poor over political power. According to Publius, even the Romans had been unable to avoid conflicts between the classes. Narratives of factional conflict led Alexander Hamilton to declare that the ability of the mixed constitution to solve the problem of instability was fictitious and proved that “the only distinction which remained at Rome was, at last, between rich and poor.”² Moreover, Roman politics confronted a new problem that expanded and reshaped the understanding of the sources of instability and taught Publius that another threat to stability emerged in republics: political corruption.³ Ancient politics and history also demonstrated that instability threatened democracy in other ways: the problem of the mutability of the laws, which arose from the specific privilege of legislative power in majority governments; and changing global conditions, which challenged the ability of a democracy to respond successfully to emerging foreign threats.

The central claim of this dissertation challenges the view that classical antiquity had only a marginal influence in shaping early American politics and specifically the political theory of the *Federalist*. Historians and political theorists of the last 50 years, who include Bernard Bailyn, J.G.A. Pocock, Gordon Wood, Judith Shklar, Martin Diamond, Harvey Mansfield, Paul Rahe, Joyce Appleby, and Sheldon Wolin, have suggested in different ways that early American political thinkers abandoned the political teaching of classical antiquity and that this disregard was

² See Farrand I, p. 432, June 26, 1787.

³ Publius’ assessment of Roman political corruption was also shaped by the analogies Trenchard and Gordon drew between ministerial corruption in the mixed monarchy and the degeneration of the Roman constitution.

exemplified in the ratification of the Constitution of 1787. In this dissertation, I have traced the path of Publius' understanding of the central problem of republican government to concepts that find their basis in ancient thought. Publius' defense of the Constitution not only demonstrated a desire to modernize an ancient form of government. Publius also relied on the ancient accounts to understand the problems that instability posed to popular governments throughout history.

Stasis, corruption, the mutability of legislation, and the pressures of international politics were problems facing both ancient politics (and particularly democracy) as well as politics in the eighteenth century. The ancient notions of mixed constitutions and confederations offered partial solutions to the problem of *stasis* and external threats. But the ancients did not offer practical remedies for the legislative mutability that plagued classical democracy or for the corruption that was endemic to ancient republics. Ultimately, ancient democracy and the classical republic failed because of their inability to surmount these problems. According to Publius, the problem of instability traced its origins to classical antiquity, and it persisted as a political problem into modern times as factional conflict, corruption, inconstant legislation, and changing global conditions found their expression in the struggle of the Anglo-Americans to democratize their regime. Publius' defense of the Constitution represented an advance because it addresses all four of these notions.

When Publius turned to contemporary history and theory for his understanding of instability, he found that the problem with most of early modern regimes was that they privileged the very form of government that the Americans fought to overthrow.

In fact, according to the ratification discourse between the Federalists and the Antifederalists, the danger that the United States would revert to monarchy was tantamount to the danger of a return to tyranny. Of course, the modern political theory available largely indicated otherwise. The writings of virtually every seventeenth and eighteenth century thinker, with the exception of Rousseau, chronicled the myriad problems posed by the king, but (except for Rousseau) they rejected democracy as antiquated and impractical.⁴ Furthermore, Publius found that ancient history and politics provided a theory of democratic politics that was largely absent from modern accounts. According to the *Federalist*, even Montesquieu's observations, the most celebrated political authority of Publius' time, echoed modernity's antiquated view of viability of small-scale democracy and traditional confederation. Democracy, according to the prevailing sentiment of modern political thought, was ill-suited to modern conditions.⁵ Yet despite Montesquieu's apparent dismissal of democracy, Montesquieu's recognition of the problem of instability in modern politics gave *The Spirit of the Laws* a distinctive place in modern political ideas. While his theories were ultimately eclipsed by his concern for monarchical governments, Montesquieu helped moderns, and certainly Publius, to understand the sources of instability. Because of American ambivalence toward *The Spirit of the Laws*, Montesquieu's

⁴ Even though Locke is considered a champion of liberal democracy in contemporary times, his infamous *Second Treatise*, while challenging the divine right of kings, never sought to overturn the British monarchy, only to check its power with an aristocratic and propertied representative parliament. Rousseau alone openly challenged the sea of monarchies surrounding his idealized account of the Republic of Geneva.

⁵ The Antifederalists had a different view. They saw the future of modern democracy in *The Spirit of the Laws*. Rousseau may not be an exception, after all, as his small republic was a reaction against the large-scale politics characterizing modern conditions.

thought on this issue was the central point of conflict between Publius and the Antifederalists, at least on questions of instability and how the constitutional design of a democracy might resolve it.

In Chapter 3, I discussed the modern treatment of *stasis*, corruption, mutable legislation, and international competition in Montesquieu. In many respects, Montesquieu picked up where the ancients left off by offering solutions to the problems of *stasis* and the dangers from external enemies. In these accounts he borrowed heavily from ancient theory. His advice to democracies to rely on moderate equality of power and wealth and on a federal republic of confederated and independent republics revealed his continued reliance on the ancient paradigm to address the problems faced by modern democracies. Yet his characterizations of Roman corruption and the problem of unrestrained law-making authority were used ultimately to speak to modern concerns over monarchical power. The corruption of the Roman elites became the corruption of the monarch; and mutable legislation was transformed into the arbitrary and unbridled nature of the king's executive power. It remained for Publius to apply Montesquieu's theory of the separation of powers to tackle the problem of political corruption for modern democratic government.

Publius' defense of the Constitution of 1787 confirmed his understanding of how the sources of instability were manifest within the specific context of American politics. Publius proposed solutions to each of these sources of instability as they were framed by ancient, modern, and American politics and history. Publius believed that the prospect for a new theory of politics was possible so long as "an attentive

consideration” was applied to the politics and history of ancient democracy, modern monarchy, and the American political experience. Publius suggested that in spite of the dismal view of the past and the intolerable state of present politics, democracy could succeed and avoid the persistent problem of instability.

The ancient notion of *stasis* was expressed as Publius’ concern for the role of faction in destabilizing American politics. While the ancient concern for class differences, like those manifested by Shays’ rebellion in Massachusetts, remained the most pervasive source of faction described in the *Federalist*, Publius also recognized that conflicts between slave and non-slave states, various Christian religious sects, diverse regional habits and ways of life, socio-economic distinctions and modes of acquiring property were internal sources of *stasis* that were products of modern life and that were highly salient to the Anglo-American experience. Publius suggested that the various sources of factional differences existing in the United States were evident in the frequent changes and egregious contradictions in state laws. Yet Publius also believed that a strengthened federal republican government would prevent the diversity of factional interests from resulting in instability. While faction had caused disorder in the democracies of the past, Publius suggested that the effects of faction could be avoided by creating conditions—under the extended republic—that would complicate the ability for one interest to achieve a level of consistent salience and power that could be used to destabilize the political system. Since political power at the federal level relied on agreement between complex and diverse interests, it would be less likely for one interest or group of interests consistently to dominate the

political landscape. Further, it would allow minority interests to affect the political alternatives through coalition and compromise.

Publius relied on a unique combination of ancient and modern history and politics to understand the threat posed by corruption to the problem of instability. The memories of British corruption that fueled the American Revolution remained salient for Publius and his contemporaries. For the former British American colonists, *Cato's Letters* correctly criticized the interference of the British government with individual freedom. The leaders of the revolution used Trenchard and Gordon to draw analogies between the destruction of Rome by self-serving politicians and the corruption of free market enterprise by Court officials. Although Publius did not cite *Cato's Letters* in his defense of the constitution, when Publius and his contemporaries spoke about corruption, they communicated a similar concern for the threats posed by unchecked government power.⁶ Publius also relied on the Roman narratives of corruption, which show the dangers of moral corrosion, to establish the need to separate political power in order to insure stability. Yet Publius also recognized that ancient Rome had never found a solution to the problem of political corruption. Plutarch, Livy, and Cicero had hoped that a return to the original integrity of the mixed constitution might restore political order. But ultimately, moral and political corruption had contributed to the destruction of the Roman republic and its transformation into an empire.⁷ The problem of corruption acquired a slightly different context in modern political theory

⁶ It cannot be forgotten that *Cato's Letters* were formative for the revolutionary period.

⁷ Once even the attempt to maintain the original constitution had been abandoned, Rome's moral corruption only grew worse. Tacitus narrates this decline.

as it was largely used to describe the corruption of monarchs and co-conspiratorial political elites. Publius challenged both the ancient notion of the mixed regime and the modern view that the separation of powers was an institution distinctively designed to limit the power of monarchs. Instead, Publius would show that the separation of powers could prevent political corruption in a popular government, as well. By organizing the political powers of a popular government into executive, judicial, and legislative branches, Publius believed that popular governments could avoid the threat posed by political corruption.

In addition to decrying the corruption of the British monarchy as a threat to liberty, the Americans had challenged the lack of checks on the king's executive power. Under popular government, the Americans soon discovered that "an excess of power in the people was leading not simply to licentiousness but to a new kind of tyranny, not by the traditional rulers, but by the people themselves—what John Adams in 1776 had called a theoretical contradiction, a democratic despotism."⁸ By 1787, the notion of democratic despotism did not seem contradictory at all. In fact it was precisely the term that captured the dilemma of a democracy that would not show self-restraint. Publius saw this problem in the context of American politics as the threat posed by legislatures to democratic governments. Under the British monarchy, the power of the executive presented the most imminent threat. Under the Articles of Confederation, the power of the legislature presented the most imminent threat. Publius soon recognized an essential lesson from ancient and modern history and

⁸ See Wood, p. 404.

politics: the cause of instability for any government will lie in the predominant mode of power. While Publius' knowledge of modern political theory and the American experience under British rule had demonstrated the importance of checks on kingly power, ancient history and politics and the mutability of state laws under the Articles of Confederation pointed to the dangers presented by the lack of legislative checks. Publius argued that the sources of instability are likely to arise from problems in the strongest and predominant group or branch of government in any political system. The biggest threat to the young American democracy was posed by the ability of state legislatures to change the laws. Accordingly, it was the concern for mutable legislation that caused Publius to oppose the volatility of state legislatures. The lack of restraint on the activities of the state legislators allowed the most powerful branch of government the complete authority to determine and to change the laws protecting commerce, property rights, foreign relations, security and liberty. The constant legislative mutability in the states threatened the supremacy of the rule of law and the security of liberty. While Publius believed that the establishment of modern democracy ultimately would secure liberty, he also recognized that democracy was not without its challenges in this respect. For Publius, the problem of mutable legislation was tantamount to the destruction of liberty. This insoluble problem was exacerbated by the multiplicity and contradictions inherent in the state laws under the current system. Only the new constitution could restrain the abuses to liberty for which the state legislatures were responsible.

In addition to the internal sources of instability shaped by *stasis*, corruption, and unchecked legislative power, the ability of a democratic republic to defend itself from external threats and to respond effectively to global conditions remained an enduring problem. Ancient political theory and Montesquieu's *The Spirit of the Laws* recognized that successful constitutional design not only depended on addressing internal problems and concerns, but also on providing the ability to respond effectively to global conditions. Ancient and modern history and politics had consistently revealed that world affairs were influenced by war, conquest, and trade. And the success of the American experiment in democracy required that its constitution provide the capacity to respond to these issues. The task, then, of establishing a democracy required an effective method for addressing the ways war, conquest, and commerce affected internal stability. Montesquieu had hoped that the advent of trade in the modern world, by creating global interdependence, might pacify the desire for war and empire. Yet he also recognized that commerce could also serve merely to change the nature of war and empire in the modern world. Publius expressed doubts that commerce would change the vicious reality of international affairs, since the state of global conditions in the eighteenth invited another confrontation between democracy and monarchy. It was for this reason that three of the four federal powers—war, commerce, and foreign relations—addressed the need to deal with international affairs. The central government's power over foreign relations, the

military, and commercial regulation directly corresponded to the ability to ward off the threats posed by war, conquest, and commerce, respectively.⁹

According to Publius, Montesquieu seemed to have little hope that democracy could avoid foreign threats and influence. Both ancient and modern history and politics had shown that democracies were vulnerable. In *The Spirit of the Laws*, Montesquieu argued that one of the primary difficulties facing a democratic republic was its weakness in the global arena because democracies lacked the fortitude and energy to defend themselves from being exploited by monarchy and despotic governments. When Publius turned to classical antiquity, he found that the ancient experience also supported this view. For Publius, the weakness of the polis was confirmed when the Greeks were unsuccessful in resisting the Carthaginian and Roman empires.

Publius concurred with the ancient and Montesquieuian accounts regarding the fundamental nature of the problem—traditional democracy was no match for monarchy and tyranny in world politics. But the *Federalist* articulated a much different solution than the one the ancients and Montesquieu offered. History and politics confirmed for Publius that American democracy ultimately would fall into monarchy or despotic government *unless a viable solution was introduced*. The solution, offered by classical antiquity and *The Spirit of the Laws*, that democracies form confederations was insufficient. Instead, Publius saw Montesquieu's federal republic and the ancient confederations, which were designed to enable democracies

⁹ Although it was not exclusive to the central government, even the federal power to tax was linked to the need for establishing the authority of the federal government to execute this authority.

to defend themselves against foreign threats, as an additional and *fifth* source of instability. Publius argued that political disorder was inherent in confederations. Although Montesquieu's justification for the federal republic was to design an organization that would allow a democracy to exercise the energy of a monarch on the global stage, according to Publius, the traditional federal republic had failed to address the problem of international competition in the past and had created an endogenous source of instability—the confederation. The problem with the confederation was that it was designed to address the isolated problem of external sources of instability, but it also created internal problems that it was incapable of addressing. According to Publius, neither the ancients nor the moderns had recognized that the conflict between central and local governments was an enduring source of instability in confederated democracies. The proposal of a central government to protect against external threats ignored the fact that this political organization must address how the relationship between multiple local powers and singular central power affected political stability. For Publius, the central issue was that the local governments should not be in the position to usurp the powers of the central government, as local authorities had throughout the history of ancient, modern, and contemporary American confederations. Because the nature of power under a traditional federal republic was decentralized, the greatest threat to stability was posed by the local powers, Publius argued. The solution, therefore, was a new form of political organization capable of protecting the central power from encroachment by state and local governments.

While each of the traditional sources of instability—*stasis*, corruption, mutable legislation, and international competition—were observable in ancient and modern history and politics, Publius’ insistence that confederation was an additional source of instability seemed entirely unfounded to his critics. In fact, the Antifederalists decried Publius’ conclusions on virtually every point, including the value of the extended republic, the need to establish exclusive federal powers, and the threats posed by the states. At times, I question that Publius did not view instability as a more pervasive political problem instead of a challenge exclusive to democracies. Yet Publius’ contribution remains important for us because he clearly demonstrated that internal and international factors were pervasive threats to democratic politics; and he suggested that stability required creating and protecting democracy from these threats. Essentially, Publius relied on ancient and modern political thought to understand the challenges facing a modern democracy. For this reason, Publius’ arguments are an authoritative source for understanding the notion of instability that pervades contemporary discourses.

5.2. The Problem of Instability and Publius, a Contemporary Debate

In this dissertation, I claim that the *Federalist* represents a decisive shift in understanding the relationship between instability and democracy. Publius’ defense of stable democracy emerged out of a tradition of studying the sources of instability that

was central to the history of politics in ancient Greece and Rome and continued in Montesquieu's *The Spirit of the Laws*, which chronicled the rise and fall of democracies, republics, and monarchies. I have argued that the *Federalist* is a part of a long history in the Western tradition of political theory of understanding the sources of political instability. Ultimately, Publius claimed that the Constitution established institutions that addressed instability and held the prospect of realizing democracy in the modern world. Yet Publius' arguments have produced a series of debates regarding whether the American democracy is truly democratic.

Proceeding from the claims in the *Federalist* that democracy was an inherently unstable form of government, Sheldon Wolin argues that there is a trade off between democracy and stability and that Publius chose the latter. The nature of the choice facing the citizens of the various states "was between the order promised by a new system of central government and the existing state of anarchy, as the *Federalist* saw it, in which the former colonies were governing themselves."¹⁰ According to Wolin's view of Publius, unless the problem of democracy could be solved, "the dismemberment of the Union' and 'the violent death of the confederation' would surely happen."¹¹ Stability was the primary concern articulated by Publius, and democracy presented a challenge to this goal. Highly skeptical of Publius' profession of confronting the "problem" of democracy, Wolin suggests that the purpose of the constitution was never to frame a democracy, but rather to resurrect a constitutional

¹⁰ See Wolin, "Democracy without the Citizen" in *The Presence of the Past*, p.180. It is worth noting that Wolin makes reference specifically to Madison with respect to this issue, not Publius.

¹¹ See Wolin, *The Presence of the Past*, p. 110.

authority that set limits on the people's power in the name of stability. For Publius, stability was the goal of a constitution; and democracy presented an obstacle to this goal. "[The constitution] is a design for administration rather than democracy. When democracy is settled into a *stable* form, such as prescribed by a written constitution, it is also settled down and rendered predictable. Then it can become the stuff of manipulation."¹² Wolin suggests that the contemporary association of democracy with stability should be attributed to Publius' fear of democracy, not his desire to improve it. Publius not only encouraged the association of democracy with instability, but also claimed to resolve it by replacing the very idea of democracy with an entirely different mode of government—constitutionalism. As a result, the Constitution of 1787 became synonymous with power designed to use the supposed need for stability as an argument to achieve certain outcomes and to prevent others. And the goal, therefore, of Publius' understanding of constitutional power was stability, not democracy. Wolin argues that the *Federalist*, therefore, by eschewing the inherent complexities of democratic politics, presented the Constitution as a simple choice: stability or democracy. The nature of the choice facing the citizens of the various states "was between the order promised by a new system of central government and the existing state of anarchy, as *The Federalist* saw it, in which the former colonies were governing themselves. In a later number of *The Federalist*, the choice was further

¹² See Wolin, *Politics and Vision*, p.602. Italics are mine.

sharpened when Publius contrasted the republican system embodied in the Constitution with the idea of a pure democracy.”¹³

In order to demonstrate that there is an inherent paradox in the American theory of the stable democracy, Wolin traces the history of Western political thought and points out the antagonism between democracy and stability that goes back as far as the philosophy of classical antiquity. According to Wolin, Plato was the first theorist of stability because he was the first to formulate politics as a stable and ordered “‘system’ of interrelated functions” shaped by a prescribed hierarchy.¹⁴ Plato’s description of the politics of Athens emphasized the disadvantages of instability and started a tradition in which democracy was viewed as a reviled and unmanageable form of government. “Conflict and change, revolution and faction, the dizzy cycle of governmental forms—these were not the invention of philosophical fancy but the stuff of Athenian political history. Moreover, the dimension of ‘politics’ had been further broadened by the establishment of democratic institutions and practices during the fifth century.”¹⁵ “The intensity of factional strife, the conflict between social classes, and the loss of confidence in traditional values had worked to create a situation where the political order appeared forever to tremble on the brink of self-destruction.”¹⁶ Since Platonic philosophy associated the very notion of politics itself with instability and sought to dislodge politics from the turbulence of human

¹³ See Wolin, “Democracy without the Citizen” in *The Presence of the Past*, p.180. It is worth noting that Wolin makes reference specifically to Madison with respect to this issue, not Publius.

¹⁴ See Wolin, *Politics and Vision*, p.31.

¹⁵ See Wolin, *Politics and Vision*, p.37.

¹⁶ See Wolin, *Politics and Vision*, p.38.

interactions, Plato's defense of the good constitution was that the variability of democratic politics may be replaced by the constitutionalism of stability, and Publius' defense of the Constitution of 1787 should be understood in these terms, Wolin writes. For Publius, instability was weakness. "Weakness was thus associated with difference—the different governments of the separate states, different policies on commerce, taxation, money, militias, and debtors. Difference presented a problem because it did not comport with the [Federalist's] conception of power."¹⁷ Publius defined stability as the goal of democratic politics and as the purpose of modern constitutionalism.

According to Wolin, Publius manufactured a problem of instability in order to replace the democratic constitutions that emerged after the American Revolution. Constitutionalism was embraced by Publius because Publius evaluated politics against the success of political institutions in serving the "necessity" of stability, primarily, and the realization of democracy, secondarily. According to Wolin, then, American democracy is inconsistent with democratic theory. He argues, "democracy is an ephemeral phenomenon" that defies the attempts by the Platonic political tradition and Publius to settle it and to render it stable. "The argument from [Publius' view of] historical experience was intended to suggest that democracy, instead of representing a modern type of politics, was something of an anachronism because it was unsuited to the size and scale of New World politics. New World politics would have to deal with an 'enlarged orbit' of government, and hence it could not practice a politics...proper

¹⁷ See Wolin, *The Presence of the Past*, p. 92.

to a small-scale democracy.”¹⁸ Wolin denies that Publius used modern conditions to make the ancient notion of democracy viable in the late eighteenth century. Lacking any reverence for the past, the *Federalist* contrasted the hope of the new federal republic embodied in the Constitution with a disenchanted idea of classical democracy. Publius’ use of size and concentrated power, which Wolin identifies as the “two natural enemies of democracy,” to control the instability of democracy reveals Publius’ intent to privilege stability over democracy.

I, like Wolin, believe that Publius’ most significant contribution was recognizing the role of democracy in solving the problems of political instability under modern conditions. For this reason, Wolin is absolutely correct to single out Publius for serving a critical role in “connecting ancient democracy to the democracy of his day and both of them to the democracy of ours.”¹⁹ I agree with Wolin’s criticism that Madison (Publius) flagrantly attacks the institutions of ancient Athenian democracy in order to promote the new modern democracy embodied in the Constitution of 1787.²⁰ However, Wolin singles out Publius for a different reason than I do. Wolin sees a fundamental antagonism between Athenian democracy and American democracy that I do not accept. Wolin criticizes Madison’s choice to demonize the Athenian participatory democracy and to deride what Wolin sees as the “Athenian-style” politics practiced by the American states and localities under the Articles of Confederation. Indeed, Publius had not recognized that ancient democracy, however

¹⁸ See Wolin, p. 94.

¹⁹ See his “Norm and Form” in Athenian...FINISH P. 32.

²⁰ I would not extend my criticism to Publius’ assessment of the state governments under the Articles.

flawed, had been established to *solve* the sources of instability, not to create them. But I do not believe that Publius had to sacrifice an ancient conception of democratic politics for an altogether different and modern one. Rather, I question the negative depictions of ancient democracy in the *Federalist* because of Publius' failure to acknowledge the challenges shared between the theorists and statesmen of democracies, ancient and modern. The connection, therefore, between ancient, modern, and contemporary democracy suggests that each represents the attempt to eradicate the problem of instability in politics.

Contrary to Wolin, Martin Diamond argued that the *Federalist* had not implied that there was a tradeoff between democracy and stability. Instead, Publius suggests that democracy can be modified to protect against the threats of instability and *remain democratic*. Diamond maintained that democracy remains at the heart of Publius' concerns. While he did not deny that Publius expressed skepticism about the decision-making ability of the many, Diamond insisted that what drove Publius' understanding of democracy was a concern for preventing bad outcomes by majorities. Although bad decision-making was not exclusive to popular governments, Publius' commitment to republicanism, which Diamond argued was fundamentally democratic, revealed a devotion to the principles that drove the American Revolution as well as the requisite wisdom to protect popular governance from destroying itself as had been the history of democracies and republics prior to the time of Publius' writing. Diamond defended Publius not only as a central figure of democratic theory of the last 500 years, but also

as a faithful disciple of the democratic ethos that drove the colonists to revolt against Great Britain.

Diamond argued that the Constitution was not a reaction to, but rather lied in continuity with the democratic principles of the Revolutionary period. According to Diamond's reading of the Declaration of Independence, good government rests on two principles: consent of the people and the security of individual rights. It is important to note that good government does not specifically require stability according to the Declaration; and in fact, it doesn't even require democracy. Good government only requires that the people consent to the laws that govern them and that certain rights are guaranteed. Diamond suggested that Publius took the ideas embodied in the Declaration and turned it into sound *democratic* governance through the procedures and institutions established by the Constitution. For Publius, a democracy and a republic are two species of popular government. The problem as Diamond saw it was how to attend to the problems of democracy while still being faithful to the principles of consent and popular government. For Diamond, there is a tension between the people as sovereign and political stability, the latter of which is most threatened by the vulnerability of fundamental and individual rights (such as the right to property) of the former. This was a tension ultimately for the Constitution to solve. Publius set out to demonstrate that the Constitution provided the "true" principle of democratic governance.²¹

²¹ See Diamond's essay on the *Federalist* in *The History of Political Philosophy*, p. 662.

“In contrast to monarchy and aristocracy (or as we might now say dictatorship and totalitarianism), democracy had never been able to achieve strong and stable government.”²² Federalism and republicanism, under a system of separation and balance of powers, were attractive because each was designed in order to respond to the challenge of instability that had historically plagued political life, and especially democratic life, for centuries. One of the central questions addressed by Publius was the following: “Is the aggregate power of the general Government greater than ought to have been vested in it?”²³ The answer for Publius was clearly “No”, and Diamond agreed. A new federalism was necessary in order to administer those key functions of government that address “the extremes of external and internal danger.”²⁴ Publius’ worried—which was an assessment that Diamond shared—that economic and commercial interests and goals make a democracy vulnerable to disorder, threatening popular consent and the protection of individual rights. “For example, in a list of the four ‘principal objects of federal legislation,’ three (foreign trade, interstate trade, and taxes) deal explicitly with commerce. The fourth, the militia, also deals with commerce insofar as it largely has to do with the prevention of ‘domestic convulsion’ brought on by economic matters.”²⁵ Diamond’s reading of Publius was reminiscent of the ancient tradition of diagnosing the problem of life in the city-state: political instability is the result of the struggle for power between the classes. “*The problem*

²² Ibid, p. 10.

²³ Federalist 41, p. 268

²⁴ Diamond, “Democracy and the Federalist,” in the *APSR* (1959), p.62.

²⁵ Diamond, “Democracy and the Federalist”, p.63.

for the friend of popular government is how to avoid the ‘domestic convulsion’ which results when the rich and the poor, the few and the many, *as is their wont*, are at each others’ throats.”²⁶ In order to prevent this conflict from threatening the stability of the Union, the branches of government that administered these fiscal, commercial, and military functions, which are particularly vulnerable to the vagaries of democratic politics, had to be designed in order to attenuate this potential instability.

Therefore, the description of Publius as antidemocratic was a reflection, Diamond argued, of a “questionable modern approach” to democracy, which consistently denied or ignored the dangerous propensities of majority rule. Furthermore, in order to make Union compatible with popular governance, Publius matched the former with a “special” form of the latter, republicanism. The aim of legislative power in the traditional sense of republicanism as the institutionalization of the mixed regime was to balance the authority of the aristocracy and the common people. But this idea was rejected by Publius, “To what expedient then shall we finally resort for maintaining in practice the necessary partition of power among the several departments, as laid down in the constitution?”²⁷ In a pure democracy without the appropriate checks, Diamond argued, it would be dangerous to entrust the necessary functions of a Union government to the people. This would be the precise definition of instability. According to Diamond, the key to the balance of power thesis was to assign power in government, not according to class, but according to function

²⁶ See Diamond, *The History of Political Philosophy*, p. 675. Emphasis is mine.

²⁷ See Federalist 51, p. 347.

and selection. And the challenge, of course, was that in a democratic regime, the legislature naturally dominates.²⁸ “The executive and judiciary must have the means and personal motives to resist the legislature.”²⁹ For example, Diamond suggested that the elevation of the executive and downgrading the legislature was a mechanism to make democracy possible under a Union. Believing that a democracy must control itself, Diamond argued that the constitution provides constraints so that the dangerous passions of majorities become muted within the institutions and procedures outlined in the Constitution. Political outcomes, therefore, approach—even if they do not reflect—the wisdom and justice that good governance requires.

Diamond argued “the whole of our national experience thus becomes a way of judging the Founders’ principles, of judging democracy itself, or of pondering the flaws of democracy and the means to its improvement.”³⁰ While Publius’ theory of the stable democracy is put to task by the challenges both of contemporary critics and events, Diamond suggested, these problems of democratic theory and practice were actually shared by Publius and expressed in his ideas about democracy. “Our major political problems today are problems of democracy; and as much as anything else, the *Federalist* papers are a teaching about democracy.”³¹ Diamond confirmed that stability was a foremost concern for Publius’ theory of politics. When Publius asked “How is democracy possible?,” the “possibility” of democracy that Diamond

²⁸ See *Federalist* 48, p. 334.

²⁹ See Diamond, *The History of Political Philosophy*, p. 671.

³⁰ Diamond, “Democracy and the *Federalist*”, p.61.

³¹ Diamond, “Democracy and the *Federalist*”, p.53.

described is strongly bound up with the question of stability. Yet the path to the stable democracy presented constant obstacles because the relationship between democracy and stability had always been a tenuous one, Diamond claimed. The *Federalist* boasts that its version of the stable democracy is an experiment and a lesson in statecraft. Therefore, establishing a stable popular regime in a nation in need of one became just as important as introducing a new model of governance to the globe that connects the lessons of the ancient world to the innovations of the modern world.

Although Diamond was unimpressed, as I am, by assessments that the Constitution and the *Federalist* were fundamentally antidemocratic, Diamond ignored the significance of self-government, ancient democracy, and stability to Publius' arguments about popular government. Diamond argued that Publius, and particularly Madison in Federalist 10, primarily focused on the threats democracies posed to personal property, self-interest, and individual rights and advocated institutional checks against democracy to prevent majority abuses. Yet I suggest that Publius' had not believed that democracy was incompatible with liberty; rather, Publius' contribution to modern political theory proved that individual liberty *required*, and was not incompatible with, a democratic form of government.³² In Federalist 1, Publius insisted that liberty and government "can never be separated." Publius saw the opportunity to shape the meaning of civil liberty within the context of democracy, since the conception of liberty in modern times had been associated with checking the

³² Moreover, the Antifederalists insisted on a Bill of Rights, and Madison would agree, because they—especially the Antifederalists—feared the monarchical tendencies of the new federal republic.

power of monarchs. Publius' need to frame a modern democracy suggested that the security of liberty was twofold: ensuring popular participation *and* securing private rights. Banning's *The Sacred Fire of Liberty: Madison and the Founding of the Federal Republic* also convincingly dismissed Diamond's assessment of Madison. Banning conceded that Madison worried about conflicts between the many and the few, but Banning insisted that Madison had not feared majority rule. Rather, Madison believed that the Constitution would encourage the many and the few to transcend their immediate interests and pursue the public good. I would agree that Diamond fails to appreciate the fundamental role of democracy in solving the problems—like majority-minority factions—which threaten the stability of the political community.³³ When Madison advocated shifting certain functions from the states to the federal government, he was not communicating a fear of democracy. Instead, he recognized that the Constitution would allow the effective exercise of functions that properly belonged in the hands of the federal government, which would act in accordance with popular sentiment and the public good. Madison's vision of liberty included more than self-interest and individual property rights. The notion of self-government was inextricably linked to Madison's commitment to liberty—and to stability, in my view.

While Robert Dahl agrees that democracy and stability are not antithetical, Dahl challenges both Diamond's contention and Publius' theory of the constitutionalism is that democracy requires modification in order to achieve stability.

³³ Colleen Sheehan also suggested that Madison believed that public opinion had elevating effects and would promote stability, as well.

Instead, Dahl suggests that securing democratic majority rule actually increases stability and prevents instability. Contrary to Wolin, Dahl suggests that the relationship between stability and democracy is a positive one, and he challenges the argument that democracy is inherently unstable. Dahl responded to Wolin that only a “fanatic” would completely sacrifice stability in order to maximize popular sovereignty. “So far as I am aware, no one has ever advocated and no one except its enemies has ever defined democracy to mean, that a majority would or should do anything it felt.”³⁴ Furthermore, similar to theories of monarchy and oligarchy, any democratic theory provides mechanisms to restrain its governors. But this restraint, Dahl maintains, is not particular to democratic politics, as claimed by Diamond, who suggested that democracy peculiarly required constraint. When it is suggested that the people rule, this was never meant to suggest that democracy operates without a healthy degree of moderation, Dahl argues. Direct democracy is and should remain solely an ethical and theoretical approach to politics, but it is not a practical model of democratic governance. Dahl asked, “What are the necessary and sufficient conditions for maximizing democracy in the real world?”³⁵ The goal of democracy is popular sovereignty and political equality. Within the limits of stability, what is the practicable sphere of democratic governance? Dahl suggests that what makes democracy impossible and unstable is direct democracy, which is prone to manipulation by factions and the corruption of political elites. According to Dahl,

³⁴ See Dahl, *A Preface to Democratic Theory*, p. 36.

³⁵ Dahl, *A Preface to Democratic Theory*, p.64.

stability rests on democratic practices that promote popular sovereignty and political equality, including periodic checks by the citizens through regular and frequent elections. These practices protect the need for a prevailing consensus about shared democratic values, which are crucial to stability. Because participation on a large scale was not possible in contemporary society, Dahl argues that Publius had to re-think what was practicable for a modern democracy. For Dahl, direct participation is not feasible for democracy on a large scale, and the size and complexity of modern politics render the model of the polis irrelevant. Since the nature of political conflict was based on the formation of groups based on interest, group politics formed the basis for participation in a modern democracy, he argues. The institutional arrangements of a democracy that will promote stability must set conditions in which power is shared, checked, bartered, and contested by different groups. Yet the fundamental and classical notion that democracy is the constitutional form given to the notion of equality for the many is never sacrificed.³⁶ Dahl suggests that the governing principle of democracies, ancient and modern, is not direct political participation, but political equality. Although ‘democracy’ during Publius’ time suggested *direct* participation, the modern alternative to direct democracy was representative democracy. Accordingly, for Dahl, a modern democracy consists of two key features: first, a constitution that establishes a representative democracy; and second, a pluralistic politics that is bolstered by competition and cooperation between politically equal minority interest groups.

³⁶ Dahl borrows directly from Aristotle.

Ultimately, Dahl concurs with Publius' assessment that modern democracy was impractical within "the narrow bounds of the polis."³⁷ Dahl further suggests that this break with ancient democracy does not compromise a basic commitment to democracy as an ethical approach to politics. But the demands of large and diverse territories and populations defy the utility of the insular Greek polis, he argues. Likewise, Wolin and Diamond suggest that modern democratic political theory represented a complete break with the democracies of classical antiquity. And despite their disagreement over the democratic proclivities of Publius, Wolin and Diamond both agree that stability was antagonistic, or at least problematic, for democratic politics. Yet I challenge Wolin, Diamond and Dahl by arguing that classical antiquity suggested that democracy, and popular government generally, could address the problem of instability. Further, insofar as Publius' defense of the Constitution relied on ancient history and politics, there remains at least one critical connection between ancient and modern democracy; and the notion that democracy can secure political stability remains true in contemporary political life.

The debate between Wolin, Diamond, and Dahl suggests that contemporary political discourse praising democracy may be in a state of hopeless contradiction. On one hand, in the abstract, democracy is the leading political aspiration; on the other, in concrete terms, democracy is the most difficult form of government to secure. Moreover, on the whole, the supreme fear expressed by Publius and the Antifederalists alike was reverting back to a monarchy or aristocracy. Publius and the Antifederalists

³⁷ See Dahl's *Democracy and its Critics*, p. 23.

knew that the security and stability of America relied on a government in which the people ruled. I would suggest, therefore, that instability must be antithetical to democratic politics and that democracies actually offer the best conditions for political stability, if they are properly organized. Diamond and Dahl recognize the threats of *stasis* and argue that majority-minority conflict or interest group competition is a way to prevent factional politics from creating unjust and illiberal practices. But neither shows how democracies create the conditions for eradicating the problems of instability. Wolin provides the most serious treatment of the concept of instability in ancient politics; however, he, in contradistinction to me, views instability as a productive exercise in revolution and change rather than a set of problems that destroy democratic politics. None of these theorists address the concept of instability in any systematic way, and they fail to account for the role of democratic politics in addressing the challenges of corruption, mutable legislation, and global conditions that have shaped democracy from ancient to recent times.

I do not believe that establishing that there is a decisive break between ancient democracy and modern democracy is necessary or helpful for understanding the establishment of a stable democracy. I have shown such a rupture to be largely anachronistic and theoretically inaccurate. Accordingly, I refuse to conclude whether Athenian democracy is better or worse than American democracy. Instead, I would suggest that much more is at stake than these incongruous comparisons. My evaluation of instability suggests that a “good” democracy should effectively address the practical problems of *stasis*, corruption, mutable legislation, and changing global

conditions. Therefore, instability should be understood as a series of problems with different solutions. I want to argue that we must see the necessary mutuality of democracy with stability throughout the history of political thought, against the modern impulse to assume otherwise. The supreme challenge of political theory is to tackle the enduring question of political life while avoiding the fallacy of anachronistic conclusions. The relevance of Athenian democracy to American democracy rests, I think, in the fact that we can learn from the history of Athenian democracies some of the lessons that are crucial to establish stability. The history of democracy shows that modern democracy emerged in the aftermath of the unsuccessful attempts of monarchy, aristocracy, and oligarchy to govern well. Despite historically inaccurate views of democracy and debates over the authenticity of democratic practice in contemporary times, the prevailing belief is that democracy restores freedom, justice, and equality; and to that list, I would add stability.

5.3. Conclusion

The premise that instability is inherent in democracies is a deeply flawed assumption. Alternatively, I would suggest that democracy is a solution to instability and that the success of a democracy relies on its practical ability to address the ways that *stasis*, corruption, mutable legislation, and global conditions emerge within a political society. By viewing the problem of instability as a problem with different solutions, we can develop a theoretical and practical means to speak definitively about

the formation and maintenance of stable democracies in the twenty-first century. I would suggest that democracies require credible commitments to political institutions which protect against threats to stability. For these reasons, well-formed democracies encourage stability and do not promote instability. Stability and democracy are, therefore, productive and complementary political principles. It is inaccurate to speak of democracies as inherently unstable or to assume that there is a tradeoff between democracy and stability. Democracy is a form of government that was created to address the sources of instability; and the history of democracies ancient and modern confirm this view. Moreover, I would suggest that democracy continues to provide the best solutions to the problems of *stasis*, corruption, mutable legislation, and the challenges of changing global conditions that we face in the world today.

Few would dispute my praise of democracy. Yet as democracy has become more widely acclaimed, democracy has been more difficult to define. For instance, despite the profound disagreement between theorists who vary as widely as Wolin, Diamond, and Dahl, ironically, each advances arguments inspired by democratic principles. The difficulty in reconciling their views as common to a theory of democracy suggests that the ascription of labels like “democratic” and “antidemocratic” would be even more difficult to assess for historians and philosophers who lived centuries and millennia ago. To avoid abuses, I have deliberately avoided assigning antidemocratic labels to the ancient, modern, and contemporary thinkers discussed in this dissertation. It is my belief that the purpose of ancient history and Montesquieu’s *The Spirit of the Laws*, each chronicling the rise

and fall of democracies and republics, was not to show the inherent instability of democracies and republics or to decry the establishment of democracies and republics, but rather to help posterity to understand the problems that a popular constitution must address. Therefore, ancient democracy and Publius' defense of the first modern democracy allow us to take a conceptual approach to framing governments capable of addressing the sources of instability.

My concern in this dissertation has been to describe the role democracy plays in addressing the problem of political instability. The inspiration for this project was to address the conceptual accuracy of one of the most often-used terms in contemporary international affairs: the stable democracy. Although democracy is a much used and abused term, stability—or rather instability—is no less so. Current debates and discussions over the political means to achieve stability led me to question the relationship between democracy and stability. My examination afforded an understanding of the origins of modern democracy in the *Federalist*, which often referred to the instability of ancient Greece. Because of perceptions of inherent instability, the democratic polis had not often been an object of praise. Publius had sought to resolve the tension he saw between democracy and stability in the association of popular rule with *stasis*, corruption, mutable legislation, and the incapacity of democracies to withstand external threats. I wanted to show that the origins of democracy in ancient Athens have figured significantly in Publius' formulation of the relationship between democracy and instability. Yet I deny that Athens represents a purely negative experience from which Publius and we should

draw. Up until the mid twentieth century, the attacks on democracy were attributed to dastardly interpretations of ancient politics, philosophy, and history. While few would deny that the Greeks invented the ideas of democracy and politics, equally few would recognize that democratic politics was invented by the ancients to address the sources of instability confronting them. Some of the most effective critiques of ancient Greek democracy arose from ancient Greek commentators examining the capacity of the polis to address the sources of instability. These critics, among whom Plato and Aristotle number foremost in my view, were not seeking to destroy popular government, but merely to sustain it. Therefore, I cannot accept the charge that democracy is inherently unstable. This characterization fails to recognize that democracy encourages stability and can effectively address the problems of faction, political corruption, mutable legislation, and complex world affairs.

My objective has been to take up prevailing assumptions about the relationship between democracy and instability. I have argued that democracy is the best form of government to address the problem of instability. Further, in this crucial respect, the circumstances surrounding the emergence of Athenian democracy remain absolutely relevant for understanding the establishment of the American political system. A study of ancient and modern history and politics suggests that popular governments—as distinguished from monarchies, aristocracies, and oligarchies—can effectively tackle the sources of instability. As a matter of fact, the democratic reforms in Athens were instituted in order to prevent factional conflict from destroying the polis. Although their efforts were not entirely successful, these lawmakers recognized, as

Aristotle had, that *stasis* was frequently the result of inequality and that broadening political participation was the means to remedy it. The historical and political evidence shows that democracy encourages stability and can effectively address the problems of faction, political corruption, mutable legislation, and complex world affairs.

This dissertation seeks to make a contribution to the idea that thinking historically about democracy and political concepts like instability may help strengthen political theory and political science. It is my hope that the study of the sources of instability holds relevance to the establishment of stable democracies. I have advanced a method for explaining instability as a series of problems that are pervasive in politics. Because of my interest in democracies and my belief in the importance of democracies in addressing political instability, I have taken a course in which democracy is treated as a means to respond to the various ways that instability can arise. The notion of a shared social identity as well as a shared agreement on the basic principles and values of what constitutes a democratic society form the basis for any political community upon which democracy could arise. Perhaps, on some level, a reverence for a democratic constitution that can combat the pervasive ills of faction, corruption, unchecked power, and international conditions is what ultimately makes stability possible.

Ultimately, I have suggested that Publius worried about instability and that his understanding of instability, which had ancient foundations, significantly shaped his democratic theory. Publius' defense of the notion of stable democracy chiefly

emerges out of a tradition of studying the sources of instability that began in ancient Greece and Rome and continued in Montesquieu's *The Spirit of the Laws*, which chronicled the rise and fall of democratic republics and monarchies. Publius' defense of the Constitution set into motion a course of events that would shape democracies and theories of democracy throughout the world for the next 200 years. As a result, the *Federalist* has shaped the prevailing acceptance of the possibility of stable democracies. I have shown at length that Publius' essential political problem was to adapt democracy to modern conditions and to alter the prevailing view of instability in popular governments. Publius' defense of the Constitution reflected the practical demands placed on a world dominated by monarchs because confronting monarchical preponderance was absolutely necessary for the stability of a modern democracy. Today, the political landscape has changed, because the world of monarchs is not the world in which we operate in the twenty-first century. In fact, under contemporary conditions, democracies may be in the best position to respond to the internal and external conditions shaping the political environment because of the growing dominance of democracies in global affairs. Yet despite the rising legitimacy of democratic governments in the world, the problem of instability has not lost its relevance.

The attempt to trace the concept of instability within the democratic tradition faces a number of difficulties, however, not least of which is the magnitude of its history. I have suggested that the *Federalist*, although flawed, marked the modern culmination of democratic theory and practice. The study of democratic politics may

be understood as the attempt to solve the various expressions of the causes of instability, because a democracy is the best form of government for doing so. In the 21st century world where democracy has become the standard of global political legitimacy, the problem of instability is no less relevant than it was when the ancient democracies were threatened by empire or the American founders by monarchy. Although political science continues to struggle with the consequences for political equality in a world of vast inequalities of wealth, access, and power, confederation has made a comeback in domestic politics and regional politics. What was class conflict for the ancients might be religious conflict in the Iraqi government. What was corruption in Rome might be the domination of 'strong man' presidents in the Russian Federation. What was the dizzying flurry of legislative activity under the Articles of Confederation might be the burgeoning proliferation of executive power in the United States. And what was global vulnerability to monarchy in Montesquieu's view of democracy might be the sea of hostility that orbits the State of Israel. The problem of instability is a problem that democracies can solve. Instability as a political concept should not be relegated to some level of abstraction or to the pre-modern, pre-liberal world. Rather, instability should be understood as a set of practical problems, not simply as a theoretical idea, because the difference between instability, on one hand, and democracy and stability, on the other, is embedded in the complex realities of political life.

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Biography

Shanaysha Furlow Sauls was born on December 24, 1978, in Norfolk Virginia. Raised in St. Mary's County, Maryland, she benefited from the love, discipline, and support of her father C.W. Furlow and her mother Mary Furlow. After graduating from Leonardtown High School in 1996, Shanaysha attended the University of Maryland as a Banneker/Key Scholar and majored in Government & Politics and English Language and Literature. Under the guidance of the political theory faculty, she completed an honors thesis on Jean-Jacques Rousseau, and she graduated Phi Beta Kappa in May of 2000. As a graduate student at Duke University, Shanaysha was a Duke Endowment Fellow and earned a Graduate Student Fellowship from the National Science Foundation. She also served as co-president of the Society of Duke Fellows and the Association of Graduate Students in Political Science. She has been married since 2002 to an exceptional individual, Edward Sauls, Jr. They have three children: Maya, Sydney, and Edward. Shanaysha owes her accomplishments and sanity to her spouse, children, parents, and siblings. She is grateful for the training and assistance of the political science faculty at Duke. Shanaysha received her PhD from Duke University in May of 2008.