

# Publius and the Science of the Past

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When Publius in the very first paper of *The Federalist*<sup>1</sup> challenged Americans to make conscious political choices, rather than be subject to chance and drift, he spoke with all the confidence of the new age of science. Yet his opponents, who were inspired by the same science of politics and society, were moved to caution. Both sides were in fact attentive readers of Montesquieu's *The Spirit of the Laws*<sup>2</sup> and like subsequent generations had emerged with quite different interpretations. The argument between the two sides involved nothing less than the sociological possibilities and limits of deliberate political change. It went far beyond states' rights and centralization, and the ways in which authority should be allocated between local and national governments. Then as now federalism had to be considered in terms of the structure and purposes of government.

The federalists took from Montesquieu not only analyses of the history of various forms of government,<sup>3</sup> but also encouragement to design an institutional structure different from any known to the past. Emboldened by the new science of politics, they felt sure they could leave the multiple failures of the past behind them. The anti-federalists were less confident. They found in Montesquieu lessons of social complexity that convinced them of the need to proceed slowly by mending the standing structure.<sup>4</sup>

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1. THE FEDERALIST (J. Cooke ed. 1961) [hereinafter cited to this edition without reference to editor]. I refer to Publius throughout as a single author without considering the possible differences among Hamilton, Madison, and Jay in *The Federalist*. They chose to speak as one person, and so they should be read.

2. MONTESQUIEU, THE SPIRIT OF THE LAWS (T. Nugent trans. 1949).

3. In the course of his discussion, Montesquieu entered into speculations about alternative ruling classes. The best, he thought, was a republican aristocracy, non-hereditary, relatively egalitarian, law-abiding, and above all, moderate; his admittedly idealized picture of England approximated that model. See *id.* at 13-15, 23-24, 49-53, 149-62, 307-15. In 1787 there were many public men in America who could recognize themselves as members of Montesquieu's paradigm class. His work offered justification for their rule, as well as much useful advice about how liberty and stable government might be combined.

4. Both were perfectly valid interpretations of Montesquieu's work. Indeed, Montesquieu had set out to show that men make their own history and that the past could be understood in terms of general and particular causes. He meant to disabuse those who still believed that fate or divine providence dominated mankind. Yet, if he did encourage political action, he also knew its limits. The ways in which politics alter and

## Commentaries on *The Federalist*

In any debate each side depends on the other for the quality of the whole performance and for the issues raised. Publius's excellence, as well as the subjects he discussed, were to a very large extent determined by his intelligent and resourceful opponents. That the two parties were not too far apart, and were able to draw on the same pool of political ideas, only raised the intense seriousness of the discussion. And though Publius often stooped to abusing the motives and character of those who rejected the proposed constitution, he did feel constrained to offer reasoned replies to their objections. It was not an easy task. The uneasiness of the anti-federalists was diffuse. They did not see immediate dangers ahead, but anticipated distant, irreversible consequences.<sup>5</sup> It was Publius who 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.<sup>6</sup> That is why Publius and the federalists generally were perceived as rash and visionary.<sup>7</sup>

The anti-federalists did not share Publius's alarm, but instead focused on the troubles further ahead if the constitution were adopted. Thus Melancton Smith of New York thought that within 25 years the new regime would acquire a set tone; then it might begin to alter the spirit of the people.<sup>8</sup> That there was a constant interaction between the spirit of a government and the character of the people was one of Montesquieu's chief observations, which he illustrated frequently.<sup>9</sup> It was a lesson not lost on Smith, who argued that, given the undemo-

groups interact in society are extremely complicated and the relations between rulers and ruled very delicate. Montesquieu was not one to shirk these difficulties, especially since he believed that not all changes were beneficial. Indeed, he saw France moving toward despotism. Those of his readers who found his theoretical radicalism tempered by practical pessimism were not misled.

5. This is my only disagreement with Cecelia Kenyon's excellent introduction to her edition of anti-federalist writings and speeches. C. KENYON, *THE ANTIFEDERALISTS* (1966). Kenyon argues that the anti-federalists expected *immediate* corruption to befall America. *Id.* at lvi. I can find little evidence of this, but am otherwise deeply indebted to her essay.

6. See, e.g., *THE FEDERALIST* Nos. 4-9, 15, 22.

7. In *The Letters of "Philadelphiensis,"* reprinted in C. KENYON, *supra* note 5, at 69, 71 [hereinafter cited as *Philadelphiensis*], the federalists were denominated "aristocrats, [and] incendiaries" and in *The Letters of "John De Witt,"* reprinted in *id.* at 89, 105 [hereinafter cited as *De Witt*] as "young ambitious minds." Richard Henry Lee described them as "young visionary men." Lee, *Letters of a Federal Farmer,* reprinted in *PAMPHLETS ON THE CONSTITUTION OF THE UNITED STATES* 279, 285 (P. Ford, ed. 1888). Cf. Winthrop, *The Letters of "Agrippa,"* reprinted in *ESSAYS ON THE CONSTITUTION OF THE UNITED STATES* 72, 81 (P. Ford, ed. 1892) [hereinafter cited as *ESSAYS*] (characterizing support for proposed constitution as "rash").

8. *Debates in the New York Convention,* reprinted in C. KENYON, *supra* note 5, at 370, 388 [speech hereinafter cited as Smith].

9. MONTESQUIEU, *supra* note 2, at 119, 293-94.

cratic and centralizing features of the proposed government, it was likely to create, however slowly, a passive population fit for just such a rule.

The remoteness, both social and geographic, of the new government from the general population frightened the anti-federalists more than anything else. The men who would be elected to the House of Representatives from large districts would be far richer, better educated, and abler organizers than most of their electors. How could such atypical men mirror the collective character of their constituencies? Elections could not by themselves mend this gap. Representatives would be far away between elections, gathered in a capital city where they would soon form a political society all their own, with its own manners and interests.<sup>10</sup> The Senate particularly was seen as a dangerous cabal, a "small minority" capable of sacrificing an individual's "dearest rights."<sup>11</sup> The President would be the head and patronage fountain of that far-off society and a high-living court culture was sure to develop around him. It would be a world very different from, and perhaps even hostile to, that of the majority of the people. Thus, George Clinton quoted Montesquieu's marvelous tirade against courtiers in full, and with evident feeling.<sup>12</sup> Any ruler insulated by a court would be unfamiliar with his subjects and thus always potentially despotic.

That this was more likely to happen in a large republic than in a small one was not an abstract mathematical suspicion for either Montesquieu or his anti-federalist disciples.<sup>13</sup> A large population was not likely to have the same mores, and the anti-federalists knew exactly what the great differences were. The North, according to Richard Henry Lee, was given to equality, the South was dominated by a "dissipated aristocracy."<sup>14</sup> How indeed could a single government suit both Georgia and Massachusetts? The climate of the South produced indolent planters, that of the North hard-working townsmen. No one who had read Montesquieu could be surprised by that.<sup>15</sup> Furthermore,

10. See, e.g., C. KENYON, *supra* note 5, at lxxiii n.73 (quoting Patrick Henry); Clinton, *Letters of Cato*, reprinted in *ESSAYS*, *supra* note 7, at 247, 265, 273; *De Witt*, *supra* note 7, at 100; *The Letter of "Montezuma,"* reprinted in C. KENYON, *supra* note 5, at 61, 65-67; Winthrop, *supra* note 7, at 54, 104.

11. *Debates in the Virginia Convention*, reprinted in C. KENYON, *supra* note 5, at 235, 257 (Patrick Henry) [speech hereinafter cited as Henry].

12. Clinton, *supra* note 10, at 262. For Montesquieu's comments on courtiers, see MONTESQUIEU, *supra* note 2, at 24.

13. *De Witt*, *supra* note 7, at 73; Henry, *supra* note 11, at 254; *Philadelphensis*, *supra* note 7, at 73.

14. Lee, *supra* note 7, at 296-97.

15. Winthrop, *supra* note 7, at 64. For Montesquieu's discussion of extended republics and the social effects of climate, see MONTESQUIEU, *supra* note 2, at 126-30, 221-34.

in New England and Pennsylvania there was considerable distaste for slavery. Anti-federalists there were not pleased by the three-fifths ratio that actually favored men “so wicked as to keep slaves.”<sup>16</sup> Any government that suited one of these sections was bound to be unacceptable to the other. One or the other or both would feel repressed, ruled by strangers. To be governed against the grain was a form of dire coercion.<sup>17</sup> Like Montesquieu, the anti-federalists had a fine sense of the subjective aspects of freedom. No man could *feel* secure if he were governed in an unfamiliar manner and by men who did not respect his customs.<sup>18</sup>

The failure of the proposed constitution to provide an acceptable lower house and also to guarantee trial by local juries left the anti-federalists thoroughly dissatisfied.<sup>19</sup> Here they echoed Montesquieu’s conclusions that the people could not be secure without true representation and trial by jury.<sup>20</sup> To be an adequate surrogate for infeasible direct democracy, the legislative assembly must accurately mirror the “general will” of the people.<sup>21</sup> The phrase was Montesquieu’s well before Rousseau made it famous.<sup>22</sup> Trial by juries drawn from the locality, preferably by lot, would assure that judges need only “open their eyes” to pass judgment according to law and custom. This was the “fence to secure . . . innocence” that was essential if individuals were to fear only the office, but never the person of the magistrate.<sup>23</sup>

Finally, there were a host of local and economic interests that would suffer under a changed political order. Commercial and landed interests could not readily be reconciled.<sup>24</sup> The language of self-interests was as common among anti-federalists as among federalists. It had largely replaced the older revolutionary rhetoric of civic virtue as the basis of a free, republican government. Like Montesquieu, most of the anti-federalists looked to commerce, not virtue, as the best source

16. Smith, *supra* note 8, at 375. See also Bryan, *The Letters of “Centinel,”* reprinted in C. KENYON, *supra* note 5, at 1, 23.

17. Clinton, *supra* note 10, at 273-74; Lee, *supra* note 7, at 296-97; Winthrop, *supra* note 7, at 64-65, 91-92. See MONTESQUIEU, *supra* note 2, at 294-95, 297-99, 332.

18. MONTESQUIEU, *supra* note 2, at 151-52; Clinton, *supra* note 10, at 257; Winthrop, *supra* note 7, at 76.

19. E.g., Lee, *supra* note 7, at 315-16; *Debates in the Virginia Convention*, reprinted in C. KENYON, *supra* note 5, at 272-73 (George Mason).

20. MONTESQUIEU, *supra* note 2, at 151-62.

21. E.g., *De Witt*, *supra* note 7, at 107-09; Lee, *supra* note 7, at 288-89.

22. MONTESQUIEU, *supra* note 2, at 153.

23. *Id.* at 153, 184.

24. Winthrop, *supra* note 7, at 121-22; *Debates in the Virginia Convention*, reprinted in C. KENYON, *supra* note 5, at 286 (William Grayson).

of modern political attitudes.<sup>25</sup> They were sure it would unite the states amicably. If they did not want an extensive republic, they also did not want warlike polities like Sparta and Rome. Carthage was a more agreeable model to follow.<sup>26</sup> To the extent that Roman history offered guidance, it was in the form of Tacitus's and Sallust's accounts of imperial decay. Profane and sacred history, with its reminders of Nimrod, Saul, and the Babylonian captivity, told the same tale—do not become an imperial power. This was an argument against political union, but it was more sophisticated than had been the fervent ideology hurled against Britain.<sup>27</sup> Montesquieu had shown the anti-federalists how to use the past as a source of sociological knowledge, not of sermons or of civic feeling. They thought about laws of change and how to adapt them to the contingencies they faced.

Publius simply ignored much of all this. He was convinced that political science had advanced to a stage where it could be used to create new institutions of government so unlike those of the past that history ceased to matter. That science only showed how very different America was from any of its republican predecessors.<sup>28</sup> The new political science could, properly applied, build a self-correcting system of government that would not suffer any of the infirmities that had afflicted the older systems.<sup>29</sup> Odd as it may seem, Publius's master of that science was Montesquieu. Publius did not choose to respond directly to many of the sociological issues raised by his opponents. Perhaps he had no answers, or found the arguments too vague. But most important of all, he simply did not share the worries of the anti-federalists. Quite the contrary, he saw entirely different dangers ahead: 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.<sup>30</sup> These were the calamities that the new constitution was to avert. For, in fact, the dispersal of power was the cause of each one of them. The economic

25. MONTESQUIEU, *supra* note 2, at 316-18; Clinton, *supra*, note 10, at 258; Winthrop, *supra* note 7, at 72-73.

26. Winthrop, *supra* note 7, at 82-83, 93-94. See also A. HIRSCHMAN, *THE PASSIONS AND THE INTERESTS* 60-63, 70-80 (1977).

27. Although I owe much to G. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC* 471-564 (1972), I see very little "virtuous republican" rhetoric among anti-federalists, least of all in the South. The only traces of the "old" ideology that I could find were among some New Englanders, e.g., Winthrop and John De Witt, and those were faint traces. For a full account of that older Whig ideology, see B. BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967).

28. *THE FEDERALIST* No. 14.

29. *Id.* No. 9.

30. *Id.* Nos. 4-8, 10, 15, 22, 43, 48, 49, 63.

torpor induced by local debtor revolts such as Shays's Rebellion<sup>31</sup> and the prospects of commercial friction between rival states were perhaps the most immediate threats, but these were only the beginning of worse possibilities for the Confederation. Unlike Montesquieu and the anti-federalists, Publius had no faith in the pacifying effects of commerce upon republican bellicosity. Commerce was competitive and had already caused several wars. Doubtless there had been as many popular as there had been monarchical wars.<sup>32</sup> Given these apprehensions, Publius found it difficult to assuage fears so completely at odds with his own. The result was a certain discontinuity and imbalance. Publius asked his readers to rely on the "manly" spirit of the people ever ready to defend its freedoms and interests even as he warned of the dangerous passions to which they were given. Elected representatives were to be trusted as the protectors of the rights of the citizen, yet they needed to be checked at every point.<sup>33</sup> It was obviously not easy for Publius to reassure those with whom he disagreed.

In his extraordinary efforts to cope with Montesquieu's inhibiting sociology, Publius resorted to two primary strategies. He presented first a picture of American mores, different from that of the anti-federalists, and then offered an alternate science of stability. Americans were not divided in their sentiments; religion, feeling, and language all combined to create a single nation with compatible manners and ways.<sup>34</sup> Nothing was said about the institutional, social, and economic differences between Georgia and Massachusetts. Moreover, if one turned from mores to interests, the social situation looked completely different. Because economic interests were so numerous and so widely diffused throughout the population, they created social bonds. To advance their interests men formed and re-formed coalitions to make up winning majorities. Because these were so loosely held together and so impermanent, they did not become oppressive. Nevertheless, though the ties of interest might shift and change, they would always be present to hold groups together. In an extensive republic, factions and parties were sources of cohesion, just as surely as they were divisive in a small republic. There was proof, moreover. The multiplicity of religious sects in America illustrated how peace emerged from the prevalence of small, mutually uncongenial groups. When all were free, there was peace in numbers, even among Protestant sects. It was

31. See *id.* No. 6, at 31; No. 21, at 131; No. 25, at 162; No. 28, at 177; No. 74, at 502.

32. See *id.* Nos. 4, 6-8.

33. E.g., *id.* Nos. 10, 26, 32, 41, 48, 49, 63.

34. *Id.* Nos. 2, 14.

a thought that had occurred to Montesquieu and that could now be taken as proven.<sup>35</sup> The commercial interests pursued by sovereign states might lead to war, but private economic interests did not come to such a pass; instead they tended to make for a flexible unity.

Finally, there was a quite different use of the notion of interest that suggested itself to Publius. Electoral politics, as he observed them in New York, did not, in fact, yield legislative assemblies that were miniatures of the society. People voted for those whom they could trust to do the most on their behalf. That usually meant the most successful members of the interest group to which they belonged. Mechanics chose successful businessmen, farmers elected planters, and everyone voted for members of "the learned professions" whose "talents and situation" inclined them to enlarged views and enabled them to balance the competing interest groups. The general will in actuality did not speak through a body exactly like the electorate, but was expressed by agents who represented interests that had already acquired a fair degree of social organization. It worked well enough, especially as no really able persons need be excluded. The most enterprising men could expect to succeed in such a system.<sup>36</sup>

This view of the process of government was clearly designed to replace the anti-federalists' perception of social reality. Where they saw the divisions created by enduring cultural, regional, and ideological ties, Publius saw economic interests cutting across them. As far as electoral politics was concerned that was all that counted. If the thirteen states became a single electorate, they would structure power by voting their pocketbooks and so create a stable political system.

Publius offered less an answer to anti-federalist criticisms than an alternative way of looking at society. To support his propositions, Publius relied far more on a sophisticated psychological analysis of political processes than his opponents, who tended merely to feel gloomy about human nature in general. Such analysis emerged, among other places, in Publius's discussion of the House of Representatives. That it should be composed of rich and well-educated men did not in the least disturb him. Taxation, commerce, and military affairs, the main business of the House, could only be properly managed by men of some degree of superiority. Leadership, not mere fellow-feeling, was required for legislation. To Publius, the fear of large districts was misplaced. They would create a larger pool of suitable candidates for election. The rich and clever, being thinly distributed across districts,

35. MONTESQUIEU, *supra* note 2, at 308-09, 312-13; THE FEDERALIST Nos. 10, 51.

36. THE FEDERALIST No. 35, at 219-22; No. 36, at 222-25.

could not form a cabal, but they would and should be elected in the spontaneous course of events. There was absolutely no cause for worry here, given the psychology of the representatives. They would feel grateful to those who had chosen them and would be eager to please them in the hope of being re-elected. They were not likely to change a system to which they owed all their eminence. And, as they must sooner or later become ordinary citizens again, they would not make life intolerable for those to whose station they must return. Vanity and fear, no less than calculation, would keep a representative faithful to his constituents.<sup>37</sup>

With this psychological perspective Publius could afford to make light of the anti-federalists' fears of a remote legislature and government by men alien to the voters. He was also free to concentrate on the institutional arrangements that would prevent the touted ill-effects of these social circumstances. Federalism was the first and foremost bulwark against decline into a centralized despotism. The numerous powers of the states, the loyalty of their citizens, their considerable part in all federal elections, and the limited number of federal powers were the main arguments. The states had ample resources with which to curb the central government whenever that might be necessary, and no federal government would risk arousing their hostility.<sup>38</sup> The anticipation of antagonism was for Publius one of the strongest political motives, and one of the best. It prevented mischief in advance. It worked powerfully to make the separation of powers an effective system of self-corrective government.

Here Montesquieu's approving remarks were cited to advantage. His chief contribution to the separation of powers theory was to insist on the complete insulation of the judiciary from legislative and executive interference. In Montesquieu's idealized vision of England as a mixed monarchy, the two Houses of Parliament and the king shared power so as to mutually restrain each other in its exercise.<sup>39</sup> It was not their apartness, as some had argued, but their ability to check each other that mattered.

In the new federal constitution the ambition of each department, the desire to protect its special area of authority against the others, was bound to prevent any one department from over-stepping its prescribed bounds. The House's power of the purse, the Senate's role in impeach-

37. *Id.* Nos. 55-57.

38. *Id.* No. 9, at 55-56; No. 17, at 105-08; No. 39, at 254-57; No. 45; No. 46, at 315-23. Cf. MONTESQUIEU, *supra* note 2, at 126-28 (discussing stability of confederate republican form of government).

39. MONTESQUIEU, *supra* note 2, at 151-52.



ment and participation in appointments, the executive's limited veto, would be jealously guarded. The whole would be so constricted that its ability to move beyond the law would be constrained by internal friction.<sup>40</sup> Finally, the Senate and the President would not be likely to enter into collusion. As soon as there was a mistaken decision, the Senators would put all the blame on the President.<sup>41</sup> Both would, after all, live under the scrutiny of the House with its control over the purse. If the latter tended to act in turbulent haste, the Senate, older, wiser, and longer-termed, was there to moderate it. How could despotic rule or a "standing army" emerge from such a system, especially as the House could only vote military supplies for two years? Where would the other departments find the means for such enterprises?<sup>42</sup> Why worry, as did so many anti-federalists, about Georgian soldiers in New Hampshire? There would be no oppressive, expensive army at all. A small House would, moreover, be a particularly democratic body. A large assembly was not only likely to be disorderly, but also to be dominated by an internal oligarchy. Here an ill-considered democratic preference for numerous, small districts would produce an utterly undemocratic result.<sup>43</sup> And indeed this was just the sort of consideration that the anti-federalists overlooked. Unlike Montesquieu, they were so preoccupied with the social roots of political behavior that they forgot its intra-governmental manifestations. The "interior structure of the government" of a republic, as Publius showed, could be either self-correcting or self-defeating.<sup>44</sup> By dwelling on that "interior structure" Publius could both evade and overwhelm his opponents. He had his "energetic" government, free of danger.

Publius's psychology did not imply any faith in the moral fortitude of politicians, though he occasionally made fun of very similar anti-federalist attitudes.<sup>45</sup> Nevertheless, Publius did have confidence in elections. The politician's fear of losing his seat was the best guarantee of republican fidelity. Here the people spoke to good effect and ensured the ultimately republican character of the polity.<sup>46</sup> Elections supplied everything that political probity was too feeble to achieve. The indefinite re-eligibility of the executive would prevent sordid speculation, neglect of duty, and other forms of political depravity.<sup>47</sup>

40. THE FEDERALIST Nos. 47-49, 51.

41. *Id.* Nos. 66, 76, 77.

42. *Id.* Nos. 24, 57, 62, 63.

43. *Id.* No. 58.

44. *Id.* No. 51.

45. *E.g., id.*, No. 46, at 320-23; No. 49; No. 55; No. 56, at 378-81; No. 60.

46. *Id.* No. 39, at 250-53; Nos. 52, 57.

47. *Id.* Nos. 71, 72.

Re-elected presidents might look monarchical, but they would have every incentive to behave democratically. The “interior structure” could put politicians in such a situation that they need only follow their self-interest to promote the public good. Thus, the people as a whole could protect itself against its own worst impulses.

Furthermore, the judiciary as guardians of the constitution would act as an “intermediary” body between the majority and the rights of minorities. The term was, of course, Montesquieu’s, though he had meant the judiciary to protect the citizens against the king, not themselves.<sup>48</sup> The importance of such an intervening power remained the same. For even if the judiciary was as weak and depoliticized as Montesquieu and Publius claimed it was to be, its authority was considerable. The courthouse was the place where the average citizen was most likely to feel the force of government. It was here also that Publius expected the constitution to be defended and interpreted.<sup>49</sup> There were difficulties. As a clever New York anti-federalist, Robert Yates, had noticed, the constitution was a very ambiguous document, and in interpreting it the judiciary could become a super-legislature. Vague law, judge-made law, was certainly not his or Montesquieu’s idea of legal security and protected freedom.<sup>50</sup> Publius shrugged that off by observing that it was usual for judges to legislate in cases involving conflicting laws.<sup>51</sup> That was not very convincing and it was not meant to be. Publius wanted the judiciary to create stability and protect the constitutional structure against encroachment. If the result was judicial legislation that suited him very well.

Energy and stability were Publius’s greatest concerns because his hopes for America depended on them. If “our situation invites, and our interests prompt us, to aim at an ascendant in the system of American affairs,”<sup>52</sup> and if it was really “the fate of an empire”<sup>53</sup> that was at stake, then these qualities really did matter most. Like Benjamin Franklin, Publius believed that the imperial future had begun even before the Revolution and that it could and should now be secured.<sup>54</sup> Here Publius left Montesquieu behind. Grandeur was not the object of Montesquieu’s science. Nor did the anti-federalists look forward to

48. *Id.* No. 78; MONTESQUIEU, *supra* note 2, at 15-18.

49. THE FEDERALIST No. 22, at 143-44; No. 78. See MONTESQUIEU, *supra* note 2, at 153.

50. Yates, *The Letters of Brutus*, reprinted in C. KENYON, *supra* note 5, at 323, 334-50.

51. THE FEDERALIST No. 78, at 524-25.

52. *Id.* No. 11, at 72.

53. *Id.* No. 1, at 3.

54. See Franklin, *Observations Concerning the Increase of Mankind*, reprinted in R. KETCHAM, *THE POLITICAL THOUGHT OF BENJAMIN FRANKLIN* 62-71 (1965).

an empire like that of other nations.<sup>55</sup> Publius, however, was certain that America had outgrown the intellectual and material forms of the old world. The science of the past had taught him to put history aside.

Was he right? The answer is surely that both he and the anti-federalists were right in their worries. There *was* to be a war between the states, and centralization *did* in time come. Perhaps the question is badly posed. The way one might best look at the debate is to see it as a single, joint act of founding the republic. Not the final act of ratification, but the deliberations preceding it made this a political creation unlike any other. Not a mythical great legislator, nor a junto but "a revolution . . . by the intervention of a deliberative body of citizens,"<sup>56</sup> had contrived this new constitution, which surely was "an improvement . . . on the ancient mode of preparing and establishing regular plans of government."<sup>57</sup> It was an improvement to which the anti-federalists had contributed as much as Publius and the majority for whom he spoke so enduringly.

55. *De Witt*, *supra* note 7, at 105; Winthrop, *supra* note 6, at 88-89.

56. THE FEDERALIST No. 38, at 240.

57. *Id.* at 241.

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