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# Constitutional Foundations of the United States Navy

## Text and Context

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**T**HIS ARTICLE EXAMINES the attention the navy received during the debate over the ratification of the Constitution in 1787-1788.<sup>1</sup> It rests on the normative supposition that naval personnel who have taken an oath to uphold the Constitution will have a serious interest in the organic connection between their chosen branch of military service and the document they are sworn to uphold.

Throughout this article, considerable attention will be given to the works of the opponents of the Constitution, the Anti-Federalists. This is because the ratification debate was a real debate, not a foregone conclusion. Today we venerate the Constitution as a sacred text—as James Madison hoped we would.<sup>2</sup> Two hundred years ago there was nothing sacred about it. It was the object of intense scrutiny, profound suspicion, and vitriolic denunciation. Herbert J. Storing, the leading scholar on the Anti-Federalists, argues persuasively that the Anti-Federalists should be considered “founding fathers” of the Constitution along with the men who drafted it at the Philadelphia Convention.<sup>3</sup> His point is that the real “founding” of the Republic took place in the great debate over ratification, as is only fitting for a free people who glory in their traditional reliance on vigorous public argument to settle great political controversies. The immediate upshot of the Anti-Federalist attack was, of course, the Bill of Rights—an accomplishment that of itself warrants the founding father accolade.

For purposes of naval history, however, the significance of the Anti-Federalists was that they set the agenda for the subsequent debates, that naval historians have discussed so ably, over naval policy. This article focuses on the original debate,

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that between Federalists and Anti-Federalists, over the constitutional basis of a navy. In this article I will show how arguments about the navy flowed in the deeper channels of argument about the Constitution itself. In stressing these more fundamental points, I hope to anchor the navy yet more firmly in our constitutional tradition.

### Constitutional Text

Before examining the intricacies of the ratification debate, a brief review of specific constitutional references to the navy is in order. The text of the unamended Constitution refers to the navy sparingly. Article I, section 8 explicitly confers on Congress the power to “provide and maintain a Navy” and “to make Rules for the Government and Regulation of the land and naval Forces.” Article II, section 2 designates the president as “Commander in Chief of the Army and Navy of the United States.” Implicit references to naval affairs can be found in Congress’ powers to “define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations” and to “declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.” Finally, the Constitution, like the Articles of Confederation, affirms a policy of national supremacy vis-à-vis the states in naval affairs. Article I, section 10 provides that “No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”

None of these constitutional provisions was the subject of great controversy during the Philadelphia Convention. The provision to “provide and maintain a Navy” had originally appeared as “to build and equip fleets.” This modest change was accepted unanimously “as more broad and appropriate.”<sup>4</sup>

The commander-in-chief clause elicited some discussion during the Convention, but that centered on whether the president could personally assume command of forces in the field and therefore dealt more directly with the army than with the navy.<sup>5</sup> Indeed, throughout the Convention and the entire ratification debate, the army was a far more controversial institution than the navy. This difference appears in the text of the Constitution, which after giving Congress the authority to “raise and support Armies,” carefully confines this power by adding, “but no Appropriation of Money to that Use shall be for a longer Term than two years.” This limitation was conspicuously absent from the constitutional grant of power to Congress to “provide and maintain a Navy.” The two year limit on army appropriations was due to the historical fears of standing armies in peacetime.<sup>6</sup>

There was no similar fear of a “standing navy.” “Publius”<sup>7</sup> captured nicely the popular sense of this difference when, after acknowledging that standing armies posed serious threats to liberty, he offered a more benign assessment of naval forces: “The batteries most capable of repelling foreign enterprises on our safety, are happily such as can never be turned by a perfidious government against our liberties.”<sup>8</sup>

### Anti-Federalist Support for the Navy

Throughout the ratification debate there was a general tendency for the Federalists, the supporters of the Constitution, to champion the need for vigorous naval forces and for the Anti-Federalists to voice concern. At the outset, however, it is important to recognize that for the Anti-Federalists this was in fact only a general tendency. They did not march in lock-step. Within their ranks there was a cadre of strong pro-navy sentiment, or more precisely, pro-*state* navy sentiment. For example, a Virginia Anti-Federalist writing under the pseudonym “The Impartial Examiner” criticized the constitutional prohibition against states keeping ships of war without the consent of Congress. Virginia and some of its neighboring states were in a situation that “renders a naval force extremely desirable.”<sup>9</sup> “The Impartial Examiner” was unwilling to trust the proposed Congress actually to provide a navy suitable to meet Virginia’s needs. Without discussing the actual state of the Virginia “navy” of 1788 or the limitations on state navies imposed by the Articles of Confederation, “The Impartial Examiner” preferred to reject the Constitution and to let Virginia look to its own naval defense. In taking this position, he did not write in a historical vacuum; during the Revolutionary War, his Virginia and most of the other states as well had raised navies of their own.<sup>10</sup>

“Philadelphensis,” a pseudonymous Pennsylvania Anti-Federalist, complained that the constitutional provision for a standing army would render nugatory whatever theoretical power Congress might have to provide and maintain a navy. There would not be enough money to go around, and the needs of the army would be favored.<sup>11</sup> Indeed, so desperate would the situation become that Americans would be unable to support a policy of neutrality if war should break out between Britain and France. America could call herself neutral but she could not be a neutral *power* “as long as she has no navy.”<sup>12</sup> Lacking a navy, her “trade may be destroyed with impunity; her seamen taken to man the fleets of her enemies, without the possibility of redress; and her government insulted and her cities laid in ashes by her enemies riding triumphant in her rivers and harbours, without being able to help herself, or retaliate.”<sup>13</sup>

This grim scenario would come to pass because there would be no resources available to build a navy—because, in turn, the new government would be so despotic that it “must at least for some years be administered by a standing

army.”<sup>14</sup> To avoid this calamity, Philadelphiensis urged his fellow Pennsylvanians to reject the proposed Constitution and the repression it presaged. If the several states, unencumbered by the Constitution’s strictures against maintaining warships, were left free to develop their own navies, the result would be a wholesome competition that would strengthen the Union as a whole. “There is not,” he foresaw, “the most distant hope, that we ever shall have a navy under this constitution which annihilates the state governments; for, if each state were to retain its *sovereignty*, I am well convinced, that we might have a considerable *fleet* in a few years: The larger states might each build a ship of the line every year, and the lesser states would furnish us with frigates; A noble emulation among the states would be the consequence; one state would vie with another; and public spirited individuals would contribute generously to raise the character of their own state. But this consolidation of all the states into one general government, renders this project impossible; the federal government having an unlimited power in taxation, which no doubt, they will exercise to the utmost, leaves the states without the means of building even a *boat*.”<sup>15</sup>

The contrast between a navy and a standing army was also developed by a Maryland Anti-Federalist who styled himself simply as “A Farmer”: “Let the smallest appearance of a commotion peep out again in any part of the Continent, and there is not a rich man in the United States, who will not think himself or his property safe, until both are surrounded with standing troops.”<sup>16</sup> The “Farmer” argued that the support of such troops was the only public purpose for which the propertied classes would spend their resources. He added with irony: “But then, according to their laudable custom, they must have interest for their advances.”<sup>17</sup> He suggested this would lead to further resentment on the part of the poor. “Commotion is followed by commotion, until the spirit of the people is broken and sunk by the halter, the scaffold, and a regular standing army.”<sup>18</sup> The “Farmer” contrasted these excesses with modest and legitimate military expenses such as defense of the western territory and “that safe and honorable defence, a navy.”<sup>19</sup>

A New York Anti-Federalist, “A Plebeian,” took a different tack in supporting a navy while opposing the Constitution. Supporters of the Constitution cited the perils posed by the Algerines and argued that the proposed Constitution would strengthen the United States in its efforts to cope with this menace. In reply, the “Plebeian” argued that “there are but two ways in which their [the Algerines’] ravages can be prevented”: by treaty and by war.<sup>20</sup> Under the Articles of Confederation, the “powers of Congress . . . are completely competent either to declare war against them, or to form treaties.”<sup>21</sup> The “Plebeian” realized that in either case a good deal of money would be needed—more than could be raised under the Articles of Confederation. He was willing to amend the Articles to increase the revenue capacities of the central government to enable it to

finance important public purposes such as a naval war against the Algerines, if such a war should be deemed necessary.

Thus, the "Plebeian" joins "The Impartial Examiner," Philadelphiensis, and "A [Maryland] Farmer" in a select group of Anti-Federalists numerous enough to establish the point that not all opponents of the Constitution were opponents of naval power as well. On the contrary, one reason this group opposed the Constitution was that they thought it would weaken naval power.

### The Ratification Debate

References to naval power under the Constitution are woven as diverse strands into the fabric of the argument that took place over the Constitution as a whole. Three such interrelated strands can be clearly discerned: fear of foreign wars, simple republicanism, and unlimited naval power.

*Fear of Foreign Wars.* The first substantive argument in support of the Constitution that appears in *The Federalist Papers* rests on the low but solid ground of national survival. Publius feared that if the Constitution were rejected, the United States would be destroyed either by foreign or civil war. He announces that, as a general proposition, "a wise and free people" will give their attention to their own safety before all else.<sup>22</sup> Postponing his discussion of civil war, he addresses immediately the means of avoiding foreign wars. With breathtaking candor, he first examines the embarrassing situations in which Americans are likely to give other nations a just cause for war and concludes that one or more of the thirteen loosely confederated states are more likely to give such cause to a powerful adversary than is the more unified government promised by the Constitution. If, however, the new national government should give another nation just cause for war, its enhanced prestige and power will increase its capacity to settle the matter amicably. The worldly-wise Publius explains that in any case, "it is well known that acknowledgements, explanations and compensations are often accepted as satisfactory from a strong united nation, which would be rejected as unsatisfactory if offered by a State or Confederacy of little consideration or power."<sup>23</sup>

Naval power is addressed directly when Publius takes up the question of the danger of war arising from injustices perpetrated against the United States. A likely occasion of such injustice is the American commercial spirit, which might well provoke European jealousy and invite threats against our shipping interests. The strong national government proposed by the Constitution will be in a better position than the loosely confederated states to raise the armies and fleets necessary to discourage foreign attacks on our commerce.<sup>24</sup>

Publius goes on to develop further arguments about threats to national survival and concludes with the startling comment that "safety from external danger is

the most powerful director of national conduct."<sup>25</sup> He notes soberly that "even the ardent love of liberty will, after a time, give way to its dictates."<sup>26</sup> He warns his countrymen that "to be safe, [nations] at length, become willing to run the risk of being less free."<sup>27</sup>

Publius's purpose in making these grim assessments was to urge his countrymen to provide an adequate defense immediately in order to avoid the necessity of taking more drastic measures later. These drastic measures would include a standing army. Thus Publius tried to beat the Anti-Federalists at their own game of raising the spectre of a standing army. The Anti-Federalists charged that the Constitution would create a standing army, whereas Publius maintained that its modest provision for an army and navy offered the only practical alternative. At a deeper level, Publius rested his argument on the Hobbesian principle that the desire for safety is the most fundamental driving force in politics, more fundamental than the love of liberty itself. The case for naval power is a function of this argument: the capacity to build a national fleet will save Americans from hostile foreign predators.<sup>28</sup>

The most comprehensive Anti-Federalist attack on the need for a navy came at the Virginia ratifying convention, from William Grayson. He spoke in response to Edmund Randolph's contention that if the Union were dissolved, we would never "have a navy sufficient either for our defence or the extension of our trade."<sup>29</sup> Grayson ridiculed the scare tactics of his Federalist opponents with their solemn warnings about "wars and rumors of wars"<sup>30</sup> and their "phantoms and ideal dangers."<sup>31</sup> The Federalists, Grayson maintained, would have one believe that "the Algerines, whose flat-sided vessels never came farther than Madeira, are to fill the Chesapeake with mighty fleets and to attack us on our front."<sup>32</sup>

Grayson also touches on a theme that characterized Anti-Federalist sentiment: the primacy of agriculture over commerce for the America of his day. He argues that "manufacturers, as well as sailors, proceed from a redundancy of inhabitants."<sup>33</sup> Until the western lands are settled, it is pointless to talk about developing a manufacturing capacity and a fleet to support it. Indeed, if the United States were to decide to build a fleet, the decision would incite foreign jealousies and provoke the "powers of Europe, who have West Indies possessions" to "crush us in our infancy."<sup>34</sup>

Grayson would later modify his argument. Instead of denying the need for a navy, he proposed writing naval policy into the Constitution itself with the provision that "no greater number of ships should be had than would be sufficient to protect our trade."<sup>35</sup> This remarkable suggestion undercut his earlier argument that the very attempt to build a navy would invite attacks from established naval powers. How would these powers know that the United States intended to observe the letter and spirit of so restrictive a constitutional provision? If they would crush a nascent American fleet constructed under the proposed Constitution,

why would they show restraint toward a potential fleet simply because it was the creature of a more specifically worded document?

The problem with Grayson's argument as a whole is that he was unclear in his own thinking about the future of commerce in the United States. Although he favored agricultural development over commerce and manufacturing, he would not go so far as to say that the United States would never need a navy. Because he realized that a commercial nation must have a navy of some sort, he proposed a constitutional amendment to restrict the navy to commercial defense in the wistful hope that such a paper guarantee would allay European fears and jealousies.

**Simple Republicanism.** The most fundamental theoretical division between Federalists and Anti-Federalists turned upon the meaning of republicanism. All parties in the ratification debate wrapped themselves in the mantle of republicanism; this was a given. The problem was to decide what it meant to be a republican. The Anti-Federalists urged the "small republic argument" to oppose the proposed Constitution. Following Montesquieu, they argued that republicanism could flourish only in a relatively small geographical area. The reason offered was that republicanism presupposes representative institutions of government and that representatives should resemble their constituents. The Anti-Federalists were unrelenting on this point. George Mason, for example, insisted that to have adequate representation the representatives "ought to mix with the people, think as they think, feel as they feel, ought to be perfectly amenable to them, and thoroughly acquainted with their interest and condition."<sup>36</sup>

The Federalists replied to this argument by challenging directly the authority of Montesquieu and by denouncing small republics as "little, jealous, clashing tumultuous commonwealths, the wretched nurseries of unceasing discord and the miserable objects of universal pity or contempt."<sup>37</sup> As an alternative, Publius offered his famous "extended republic" theory which purported to provide "a Republican remedy for the diseases most incident to Republican Government."<sup>38</sup> Briefly, his point was that the great disease of republics was that their homogeneity tended to encourage disregard for individual rights. The solution to the problem was to develop "an extended Republic" with a broad diversity of economic interests. This diversity would prevent any one interest or group of interests from forming a permanent majority that would crush its opponents. The extended republic would be governed by unstable and shifting coalitions that would permit those who were defeated on a particular tax or tariff bill to fight another day.

What emerged from this debate over representation and republicanism were two competing views of what American government should be. The Anti-Federalists were the conservatives of the day. They wanted above all a government that



was close to the people, and this meant a simple government that relied primarily on the civic virtue of the honest yeoman. The Federalists envisioned a high-toned, energetic, ambitious government that would enable the “better sort” to bring prosperity to all through vigorous governmental support of commerce. The clear-headed Federalists understood that their commercial republic doomed the old-style republicanism of government close to the people. Most of the Anti-Federalists wanted it both ways: they could not resist the sirens of commerce, but they would not abandon their belief in a political order designed to support a simple agrarian economy.

The navy was obviously the darling of the Federalists. It was the indispensable ally of the commercial republic they envisioned: “If we mean to be a commercial people or even to be secure on our Atlantic side, we must endeavor as soon as possible to have a navy.”<sup>39</sup> The link between commerce and a navy is axiomatic; it is not surprising that the most extensive treatment of the navy in *The Federalist Papers* (in number 11) is followed by *The Federalist’s* most extensive treatment of commerce.

The navy, however, responded to another Federalist need as well, a need less well articulated than the case for the commercial republic but no less real. A careful examination of Publius’s treatment of commerce raises some interesting questions about the role of the navy in the mind of the founding fathers. For example, the text makes it quite clear that, for Publius, commercial prosperity was not an end in itself; it was instrumental to higher values of patriotism. The gist of the argument of *Federalist 11* and *12* is that the Constitution should be approved because a more perfect union will improve commerce; nothing surprising here. The next step in the argument, however, is surprising: commercial activity is valued not for itself but because it provides the best source of tax revenues essential to maintain the hard-won independence of the United States. Thus, by an elaborate chain of reasoning Publius links approval of the Constitution of 1787 to maintaining the independence proclaimed in 1776 and achieved in 1783. The connection is the commerce that, flourishing under the new Constitution, will provide the government with the revenue without which a nation “must resign its independence and sink into the degraded condition of a province.”<sup>40</sup>

This instrumental relationship of commerce to political objectives has a direct bearing on Publius’s justification of a navy. To be sure, in *Federalist 11* he develops the conventional argument about naval support for commerce, but he goes much further. He looks forward to the creation of a navy “at a period not very distant” which “would at least be of respectable weight, if thrown into the scale of either of two contending parties.” This would be especially true “in relation to operations in the West Indies. . . . A few ships of the line sent opportunely to the reinforcement of either side, would often be sufficient to decide the fate of a campaign, on the event of which interests of the greatest

magnitude were suspended.” Indeed, Publius’s grand naval strategy emboldens him to state that “we may hope ere long to become the Arbiter of Europe in America; and to be able to incline the balance of European competitors in this part of the world as our interest may dictate.”<sup>41</sup>

Publius’s bold naval vision is not unrelated to commerce, but neither is it confined to that. The tone of his expansive comments suggests that the crabbed, rational self-interest of the economist has yielded to the statesman’s dream of grandeur, and national glory.<sup>42</sup>

This point was not lost on Publius’s foes. From Virginia, Patrick Henry thundered, if “we admit this Consolidated Government it will be because we like a great splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things.”<sup>43</sup> Thus Henry saw the navy as an integral part of the Federalist plan for national grandeur, and he wanted no part of it. “When the American spirit was in its youth,” he scolded, “the language of Americans was different: Liberty, Sir, was then the primary object.”<sup>44</sup> Intoning the Anti-Federalist refrain of simple government close to the people, Henry chided his Federalist foes for aping the ways of Europeans. “The American spirit has fled from hence. . . . It has gone to the people of France in search of a splendid government—a strong energetic Government.”<sup>45</sup> He recalled his countrymen to a simpler form of patriotism. “You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your Government.”<sup>46</sup> If Henry was suspicious of trade, he had nothing but contempt for Federalist-style national grandeur. “Sir, we are not feared by foreigners: we do not make nations tremble: Would this, Sir, constitute happiness or secure liberty?”<sup>47</sup>

“Brutus,” a New York Anti-Federalist, also objected to Publius’s ambitious plan for national grandeur. He saw the hallmarks of a good government as “the preservation of internal peace and good order and the due administration of law and justice.” A people’s happiness depended “infinitely more on this than it does upon all that glory and respect which nations acquire by the most brilliant martial achievements.”<sup>48</sup> Let Europeans have their governments “framed, and administered with a view to arms, and war, as that in which their chief glory consists.” Americans should have a different goal. “We ought to furnish the world with an example of a great people, who in their civil institutions hold chiefly in view, the attainment of virtue, and happiness among ourselves.”<sup>49</sup>

In extolling the virtues of simple republicanism, Brutus did not ignore military needs. Unlike Publius, however, he gave no thought to mighty fleets holding a balance of power between contending European powers. If Americans built a nation that encouraged “respect and submission to the laws” and instilled “a spirit of public and private justice, economy, and industry,” they “need not be under any apprehensions but what they would be ready to repel any invasion

that might be made on the country.” Brutus concluded his minuteman model of military readiness with the sweeping assertion that a “defensive war is the only one I think justifiable.”<sup>50</sup>

Brutus’s comments appeared on 3 January 1788 and brought a swift response from Publius, who wrote two days later, “If we mean to be a commercial people, it must form part of our policy, to be able one day to defend that commerce. The support of a navy, and naval wars must baffle all the efforts of political arithmetic admitting that we ought to try the novel and absurd experiment in politics, of tying up the hand of Government from offensive war, founded upon reasons of state.”<sup>51</sup>

This important statement illuminates earlier remarks by Publius about a navy helping the United States become the “Arbiter of Europe in America.” To this end, the navy must be ready to fight offensive wars as well as to defend American commerce. The difference between Publius and his Anti-Federalist adversaries is striking. Where the latter appeal to simple republican virtue, Publius appeals to reason of state. The future of the United States navy was hostage to this high warfare of principled argument over the future of America.

**Unlimited Power.** When William Grayson developed his anti-naval arguments at the Virginia ratifying convention, he stopped short of saying that the United States would never need a navy. Grayson maintained that settling the western lands was the nation’s first order of business and that there would be time enough to worry about a navy after that arduous task was completed. In response to Grayson, George Nicholas correctly observed that the Constitution does not require Congress to establish a navy but merely empowers it to do so and that, hence, Grayson’s objections to the Constitution were ill-founded. If the Constitution were approved, men of Grayson’s persuasion could continue to oppose the creation of a navy until the opportune moment arose.<sup>52</sup> This was an eminently sensible argument and one that was prescient as well. As a matter of fact, Congress did not get around to establishing a navy department until 1798. Prior to that time the nation’s modest naval activities were administered through the War Department, whose energies were focused primarily on the army.

In response to Nicholas, Grayson replied that he “had no objection to giving Congress the power of raising such a fleet as suited the circumstances of the country” but that he “could not agree to give that unlimited power which was delineated in that paper.”<sup>53</sup> Grayson made thereby an important distinction between congressional power to create a navy and the unlimited character of that power. This distinction was important because it allowed one to oppose a specific constitutional provision for a future navy without necessarily opposing a navy as such. This distinction was commonplace among Anti-Federalists and was grounded in their fear of any kind of unlimited power in the hands of government.

The spirit of the Anti-Federalists' concern over unlimited naval power was captured by a New Hampshire pamphleteer who claimed for himself the pseudonym "A Friend to the Rights of the People." "As to the power of building a navy," he wrote, "it is also left unlimited in the hands of Congress, it is not said, where they shall begin, nor how far they shall proceed, in the exercise of it, they may, if they please, immediately upon the adoption of this plan, lay heavy and burthensome taxes upon the people to build and maintain a fleet of ships, and yet go exactly according to the Constitution."<sup>54</sup>

Luther Martin, one of the few delegates to the Philadelphia Convention who refused to sign the Constitution, linked his concerns over unlimited naval power to what he saw as the dangerous powers the Constitution offered to the president of the United States. In a lengthy address to the Maryland General Assembly, Martin noted that under the proposed Constitution the president would command the officers of the army and navy and that these officers "may be increased without restraint as to numbers."<sup>55</sup> Martin linked these powers to the president's powers to grant pardons, to the absence of a limitation on the number of terms he could serve, and to his crucial role in appointing civilian and military officials. Together this combination of constitutional powers (which included the appointing of naval officers "without restraint as to numbers") led some convention delegates to fear that "the President, as here constituted, was king, in everything but name."<sup>56</sup>

"The Federal Farmer" found the military provisions of the Constitution defective because they failed to forge a sufficiently strong link between the national and state governments and thereby violated his understanding of the principles of federalism. He thought, for example, that federal troops could be raised by requisitions upon the states, but that this could not be done for the navy. "As to the navy, I do not see that it can have any connection with the local governments."<sup>57</sup> For "The Federal Farmer" the only realistic limitations that could be placed on naval power were "the want of employment for it, and the want of monies in the hands of the union."<sup>58</sup> This, of course, would be a purely discretionary limitation on the powers of Congress. To safeguard against abuse, "The Federal Farmer" would require an extraordinary congressional majority of "two-thirds or three-fourths of congress" to approve laws "for building or increasing" the navy.<sup>59</sup>

In calling for an extraordinary majority in naval affairs, "The Federal Farmer" offered an interesting alternative to William Grayson's approach to the problem of unlimited congressional power to "provide and maintain a navy." Grayson, it will be recalled, favored amending the Constitution to limit Congress' naval powers with an explicit provision that "no greater number of ships should be had than would be sufficient to protect our trade." In effect, Grayson would have written naval policy into the Constitution—a policy that would have precluded Publius's grand design of using the navy to make the United States

the "Arbiter of Europe in America." "The Federal Farmer" realized the futility of inserting such specific military directives into a constitution and relied instead on a formal provision for an extraordinary majority of Congress to exercise its inherently unlimited power to provide and maintain a navy.

"Cincinnatus" was a New York Anti-Federalist who misread the naval provision of the Constitution but whose error illuminates the depth of the Anti-Federalist concern over unlimited power.<sup>60</sup> An address by the formidable Pennsylvania Federalist James Wilson provided the context for Cincinnatus's remarks. Wilson had replied to the common Anti-Federalist argument against a standing army by saying that some sort of peacetime military establishment was necessary, for otherwise the government would suffer the embarrassment of first having to declare war before it could raise an army.<sup>61</sup> Cincinnatus found this "a most warlike paragraph." Mocking Wilson, he says, "whether we are to invade Great-Britain, France, Spain, Portugal, or all together, under the new constitution, and with the standing army it has given, you have not been pleased to inform us." He goes on to say that "to do this, a navy will be necessary," but then adds, surprisingly, "and I see no provision for that." Apparently Cincinnatus had overlooked the constitutional power granted to Congress to "provide and maintain a navy." Undaunted, he infers that congressional power to create a navy, "as well as everything else," is included in the broad congressional power to make all laws that are "necessary and proper for carrying into execution" all the powers of Congress itself and "all other powers vested by the constitution in the government of the United States, or in any Department or Officer thereof."<sup>62</sup>

Cincinnatus had read carelessly, but his polemical instincts were sound and quite instructive for our purposes. If Cincinnatus's reading of the Constitution had been correct, i.e., if the Constitution had made no explicit provision for Congress to create a navy, it is virtually certain that Congress could have legitimately claimed an implicit power to do so. As Cincinnatus correctly observes, the "necessary and proper" clause of Article I, section 8 is a vast reservoir of implicit constitutional powers. Because Congress has the power to declare war, it would seem that the power to create a navy would be necessary and proper for the execution of that declaratory power. The same power could also be inferred from the constitutional provision that makes the president "Commander in Chief of the Army and Navy of the United States." The necessary-and-proper clause is not confined to the powers of Congress itself but touches the powers vested by the Constitution "in any Department or Officer." The president's explicit constitutional power to command a navy would seem to confer an implicit power on Congress to create one.

Cincinnatus's erroneous reading of the Constitution suggests that it was not the specifically naval clauses that bothered the Anti-Federalists, but rather the overall structure and power of the new government. Even in the absence of

explicit naval references, Cincinnatus still complained about the navy. He knew a navy was essential to the integrity of the constitutional plan as a whole. His most fundamental misgivings were political, not naval.

Such misgivings were thematic among Anti-Federalists. The navy was but one of several targets of those Anti-Federalists who took aim at unlimited constitutional powers. "The Federal Farmer" placed Congress' expansive powers "to raise and collect taxes" on his list of policy areas which, along with the naval power, should require an extraordinary congressional majority.<sup>63</sup> "A Friend to the Rights of the People"<sup>64</sup> and William Grayson<sup>65</sup> proceeded immediately from their naval criticisms to complaints about the seemingly unrelated question of congressional power over the "District" that would eventually become the "Seat of the Government of the United States." The connection between these two diverse matters was the unlimited character of the grant of constitutional power. The Constitution gives Congress the power to "exercise exclusive Legislation in all Cases whatsoever" over what we have come to know as the District of Columbia. These connections in the Anti-Federalist argument put the case against the navy in its proper perspective. The Anti-Federalists were not anti-naval ideologues; they were political conservatives who grew restive in the face of unlimited grants of power.

Publius knew that the Anti-Federalists' worries over unlimited powers touched a responsive chord in the hearts of his countrymen. The memory of the Revolution was fresh enough to evoke sentiments unfriendly to governmental powers that are open-ended and ill-defined. Time and again in *The Federalist Papers* he returned to this troublesome theme,<sup>66</sup> but his most comprehensive treatment appears in *Federalist 23*. Here his thesis appears unequivocally: "The authorities essential to the care of the common defense are these—to raise armies—to build and equip fleets—to prescribe rules for the government of both—to direct their operations—to provide for their support. These powers ought to exist without limitation: *Because it is impossible to foresee or define the extent and variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite; and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be co-extensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils, which are appointed to preside over the common defence."<sup>67</sup>

So confident is Publius of his position that he states that it rests on a self-evident truth, i.e., "one of those truths, which to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning."<sup>68</sup> Just to be safe, however, Publius spells out his unquestioned principle: "The *means* ought to be proportional to the *end*; the persons, from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained."<sup>69</sup> Such is Publius's self-evident

truth—a truth dramatically different from the famous self-evident truths of the Declaration of Independence. The self-evident truths of those who fashion governments differ from the truths of those who overthrow them.

## Conclusion

In this article we have placed the ratification debate concerning the navy in its constitutional context. Our treatment has not been exhaustive. There were a host of minor issues such as sectionalism, cost, geography, and fears of presidential powers that influenced the debate over the navy as well.<sup>70</sup> The themes we have examined, however—fear of foreign war, simple republicanism, and unlimited power—were the major ones and suffice to present the navy as a creature of the Constitution.

If we view our topic in broad perspective, it is clear that the constitutional argument over the navy was caught up in a much larger argument over the future of America and, indeed, over the very nature of man. There were too many Federalists and Anti-Federalists to attribute individual positions to all the members of one camp or the other, but some broad generalizations on their overall tendencies are in order.<sup>71</sup>

The Anti-Federalists were not naive sentimentalists, but they were far more willing to ground the political order on civic virtue and homogeneity than were their Federalist adversaries. “Centinel” could announce without embarrassment that a “republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided.”<sup>72</sup> Publius’s disagreement was total. In his famous *Federalist 10*, he maintains that “neither moral nor religious motives can be relied on as an adequate control.”<sup>73</sup> As for equality of property, it would be meaningless in the commercial republic he envisioned. He assigned as “the first object of Government” the protection of the “diversity in the faculties of men from which the rights of property originate.”<sup>74</sup>

Publius celebrates diversity—or as we might say today, pluralism. As noted above, diversity of economic interests is Publius’s republican remedy for the great republican disease, a suffocating and repressive conformity. Brutus sees no problem with conformity, which for him is the basis of republicanism: “In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be constant clashing of opinions; and the representatives of one part will be continually striving against those of the other.”<sup>75</sup>

Publius’s vigorous stance on military affairs is grounded in his unflattering view of human nature: “To judge from the history of mankind, we shall be compelled to conclude, that the fiery and destructive passions of war, reign in the human breast, with much more powerful sway, than the mild and beneficent

sentiments of peace; and, that to model our political systems upon speculations of lasting tranquility, is to calculate on the weaker springs of the human character."<sup>76</sup> Publius's reluctance "to calculate on the weaker springs of the human character" led him away from the Anti-Federalists' tendency to rely on virtue and uniformity of opinion. Instead he approached the political problem as one of institution-building. Liberty would be preserved by dividing constitutional power among three great competing branches of government in which "ambition must be made to counteract ambition" and in which "the interest of the man must be connected with the constitutional rights of the place." Thus a constitutional order based on separation of powers would be maintained by a "policy of supplying by opposite and rival interests, the defect of better motives."<sup>77</sup>

Patrick Henry ridiculed the Federalists' reliance on mechanical devices and parchment barriers to check arbitrary government. "There will be no checks, no real balances, in this Government: What can avail your specious imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances?"<sup>78</sup> History has belied Henry's taunts. The constitutional principle of separation of powers has proved to be a remarkably effective and enduring principle of American government. It is a principle that has had a profound effect on the navy and has shaped it as a creature of the Constitution. Throughout its history, the United States Navy has had the difficult task of serving two constitutional masters: the president who commands it and the Congress which provides and maintains it. It has not always been smooth sailing, because Publius's plan of encouraging ambition to counteract ambition has at times succeeded only too well, leaving the navy caught in the middle between president and Congress—just as it was once caught up in the great debate between Federalists and Anti-Federalists.

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## Notes

The author is most grateful for the support and encouragement he received from Naval Reserve VTU 0615 in Washington, D.C., and from the administration and staff of the U.S. Naval Historical Center at the Washington Navy Yard.

1. The stated purpose of this article will trigger a sense of  *déjà vu*  among careful students of naval history. Marshal Smelser devoted a full chapter to this topic in *The Congress Founds The Navy, 1787-1798* (Notre Dame, Ind.: University of Notre Dame Press, 1959; reprint Westport, Conn.: Greenwood Press, 1973), pp. 5-21. See also: Harold and Margaret Sprout, *The Rise of American Naval Power 1776-1918* (Princeton: Princeton University Press, 1944), pp. 19-24; Craig L. Symonds, *Navalists and Antinavalists: The Naval Policy Debate in the United States, 1785-1827* (Newark: University of Delaware Press, 1980), pp. 21-25; and Charles Oscar Paullin, "Early Naval Administration under the Constitution," *Proceedings of the U.S. Naval Institute*, March 1906, pp. 1001-1102. This article differs from its predecessors by bringing a new perspective to a familiar topic.

2. Jacob E. Cooke, ed., *The Federalist* (Middletown, Conn.: Wesleyan Press, 1961, 1987.) See *Federalist* 49, pp. 338-340.



3. Herbert J. Storing, ed., *The Complete Anti-Federalist* (Chicago: University of Chicago Press, 1981), v. 1, p. 3 (hereafter cited as CAF plus three numbers in parentheses (giving Storing's references to volume, author, and paragraph), followed by a Roman numeral volume and an arabic page number). The first of Storing's seven volumes was published separately in paperback under the title *What the Anti-Federalists Were For* (1983).

4. Joseph Story, *Commentaries on the Constitution* (1833), v. 3, pp. 1189-91. Cited in Philip B. Kurland and Ralph Lerner, eds., *The Founders' Constitution* (Chicago: University of Chicago Press, 1987), v. 3, p. 170.

5. CAF (2.4.85) II, p. 67. Remarks of Luther Martin; see note 3.

6. Richard H. Kohn, *Eagle and Sword: The Federalists and The Creation of the Military Establishment in America, 1783-1802* (New York: The Free Press, 1975), pp. 3-6.

7. "Publius" is the pseudonym used collectively by Alexander Hamilton, James Madison, and John Jay as co-authors of *The Federalist Papers*. See note 2. Throughout this article, these authors' desire for anonymity will be respected; they will be referred to as "Publius."

8. *Federalist* 41, p. 275.

9. CAF (5.14.11) V, p. 186.

10. Dean C. Allard, "The Potomac Navy of 1776," *The Virginia Magazine of History and Biography*, October 1976, pp. 411-430.

11. CAF (3.9.22) III, p. 111; CAF (3.9.45) III, pp. 122-123.

12. CAF (3.9.44) III, p. 122.

13. *Ibid.*

14. CAF (3.9.45) III, pp. 122-123.

15. CAF (3.9.29) III, p. 115. Publius did not respond directly to "The Impartial Examiner's" call for a wholesome naval competition among the states. Had he done so, he probably would have denounced it as a virtual invitation to civil war. See *Federalist* 6-8.

16. CAF (5.1.45) V, p. 27.

17. *Ibid.*

18. *Ibid.*

19. CAF (5.1.46) V, p. 27.

20. CAF (6.11.30) VI, p. 144.

21. *Ibid.*

22. *Federalist* 3, p. 13.

23. *Ibid.*, p. 17.

24. Other Federalists shared Publius's worries about naval attacks from hostile foreign powers. See the remarks of Hugh Williamson and Oliver Ellsworth in Paul Leicester Ford, ed., *Essays on the Constitution of the United States* (Brooklyn: Historical Printing Club, 1892), pp. 403 and 141.

25. *Federalist* 8, p. 45.

26. *Ibid.*

27. *Ibid.*

28. The Hobbesian origins of Publius's political philosophy are most apparent in the earlier *Federalist Papers*, which emphasize survival and appeal to fear. The later papers put more emphasis on higher motives of public-spiritedness and stress the norms of republicanism. See Charles Kessler, "Federalist 10 and American Republicanism" in Charles Kessler, ed., *Saving the Revolution: The Federalist Papers and the American Founding* (New York: The Free Press, 1987), pp. 13-39.

29. Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution by the General Convention at Philadelphia* (New York: Burt Franklin, from the edition of 1888), v. 3, p. 79.

30. *Ibid.*, p. 277.

31. *Ibid.*, p. 274.

32. *Ibid.*, p. 277.

33. *Ibid.*, p. 288.

34. *Ibid.*, p. 289. This argument was answered by Mr. Innes. See Elliot, v. 3, p. 635.

35. *Ibid.*, p. 429.

36. CAF (5.17.1) V, p. 257.

37. *Federalist* 9, pp. 52-53.

38. *Federalist* 10, p. 65.

39. *Federalist* 24, p. 157.

40. *Federalist* 12, p. 79.

41. *Federalist* 11, p. 68.

42. For a modest version of the argument that supports naval power on grounds other than defense of commerce, see the remarks of Mr. Duane at the New York Ratifying Convention, in Elliot, v. 2, p. 379. Duane saw a navy as necessary for redressing insults suffered at the hands of other nations. James Madison made a similar argument at the Virginia Ratifying Convention (Elliot, v. 2, p. 309).

43. CAF (5.16.2) V, p. 219.
44. *Ibid.*
45. *Ibid.*
46. CAF (5.16.2) V, p. 212.
47. CAF (5.16.2) V, p. 219.
48. CAF (2.9.86) II, p. 401.
49. CAF (2.9.87) II, p. 401.
50. CAF (2.9.86) II, p. 401.
51. *Federalist 34*, p. 211.
52. Elliot, v. 3, p. 430.
53. *Ibid.*
54. CAF (4.23.3) IV, p. 240.
55. CAF (2.4.86) II, p. 67.
56. *Ibid.*
57. CAF (2.8.218) II, p. 342.
58. *Ibid.*
59. *Ibid.*; CAF (2.8.39) II, p. 243.
60. CAF (6.1.24) VI, p. 22.
61. CAF (6.1.24) VI, p. 16.
62. CAF (6.1.24) VI, pp. 16-17.
63. CAF (2.8.39) II, pp. 242-243.
64. CAF (4.23.3) IV, p. 240.
65. Elliot, v. 3, pp. 430-431.
66. See, for example, *Federalist 8, 24, and 41*.
67. *Federalist 23*, p. 147 (Emphasis original).
68. *Ibid.*
69. *Ibid.* (Emphasis original).
70. Sectionalism was the most important of these themes. It is treated by Smelser.
71. For broad interpretations of the Federalists and Anti-Federalists, see Kessler, *Saving the Revolution*; Storing, *What The Anti-Federalists Were For*; Martin Diamond, "Democracy and 'The Federalist': A Reconsideration of the Framers' Intent," *American Political Science Review*, March 1959, pp. 52-68; and David F. Epstein, *The Political Theory of "The Federalist"* (Chicago: University of Chicago Press, 1984).
72. CAF (2.7.9) II, p. 139.
73. *Federalist 10*, p. 61.
74. *Federalist 10*, p. 58.
75. CAF (2.9.16) II, p. 369.
76. *Federalist 34*, p. 212.
77. *Federalist 51*, p. 349.
78. CAF (5.16.2) V, p. 219.

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I do not believe that ideas move history; people do, and people are products of their time and place. What I have asserted, and assert here once again, is that what people do bears some relation to what they think and feel and believe.

Bernard Bailyn  
*Faces of Revolution*, 1990