

# THEORY AND PRACTICE IN THE FOUNDING OF THE REPUBLIC\*

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Those serious, though natural enmities, which occur between the popular classes and the nobility, arising from the desire of the latter to command, and the disinclination of the former to obey, are the causes of most of the troubles which take place in cities; and from this diversity of purpose, all the other evils which disturb republics derive their origin.

Niccolò Machiavelli, *History of Florence*, Bk. III

## I

A recent interpretation of Montesquieu's contribution to the founding of America argues that the disagreement between Federalists and Antifederalists is of negligible importance. Traditionally, Montesquieu has been held to have contributed to the founding principally through the doctrine of separation of powers. In rejecting that view, this argument does not maintain that separation of powers has been misunderstood in Montesquieu—though that argument is possible. Rather, it is urged that separation of powers, was an administrative necessity, and thus historically determined. Thus is Montesquieu rejected, without question as to what he meant to say or as to how he was understood by Federalists and Antifederalists.

The problem in part arises from the difficulty of Montesquieu's principal work, *De l'Esprit des lois*. It offers the critic an extremely difficult task: to derive the schematic form of a government from a work that, in the final analysis, offers only a picture of its character. The honest critic will only reconstruct the characterization. If, however, one is confronted with an immediate political task as well as the interpretive task, honesty is insufficient. Federalists and Antifederalists—as critics—confronted this difficulty. A possible approach is to limit one's appraisal to the first two sections of *L'Esprit des lois*, where some dicta as to form and mechanisms can be found. Yet those sections form an incomplete statement, particularly as they are followed by a middle section which develops a definitive characterization of the republic. Still, the founders were forced to focus their attention on the first two sections—Antifederalists still more so than Federalists. Montesquieu, therefore, would seem to have left them behind—and perhaps even to have misled them—as he moves to a consideration of *the* republic. But whether that could justify the argument that Montesquieu's understanding is not that of the regime can only be determined by judging that understanding in the light of the founding.<sup>1</sup>

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<sup>1</sup> Such investigation suggests that the determinist view is not an entirely accurate portrayal. The Federalists, in particular, demonstrate an attachment to modern virtue (which will be developed below with respect to Montesquieu). In essay 35 Publius demonstrates the essential form of the problem by presenting the interests of commerce and agriculture, with the learned professions interposed, as the essential form of the discussion about representation and, hence, the modern republic. The Antifederalists well understood the republic as the best form of government; they did not understand that it only became possible in a

In the course of this attempt to avoid an all too rigid interpretation of Montesquieu and separation of powers, the new interpretation succeeds in eliminating Montesquieu (more precisely, denying the importance of theory in the founding of regimes) from any serious discussion of politics in the American regime. Its success, moreover, is qualified: it depends on the notion that the response to circumstance or history—impelled by the circumstance itself—is the only justification of such response. Events or history alone can explain political action. Political speech is ancillary. Now this may be true, but it could only be shown to be true by consulting, in this case, the speeches of the Framers and the writings of Montesquieu. Were it possible, in determinist terms, to say that history *qua* history has a single, dominating principle, that principle would be the primacy of practice as a precondition for the understanding of human action. Nonetheless, there is a legitimate question as to the ability of history to describe events or actions without the existence of prior understanding of the characteristics or moral qualities of such events or actions. This would seem to suggest that, in fact, history must be preceded by philosophy or theory: history must be Herodotean inquiry.

But that alone would suggest that history consists only in the sounding of general or theoretical principles. History exists not *qua* history, but *qua* moral possibility. This says more than that theory must precede practice; this says that practice is impossible without theory. Unless, therefore, philosophy must be held to be commonly practiced, there must be another possible conclusion. Revelation provides one such possibility, yielding definitive descriptions of the characteristics or moral qualities of events or actions and thereby permitting the judgment of such events or actions in the absence of inquiry. This arrangement works well, permitting history *qua* history to exist for just so long as there occur no events or actions that may be adjudged beyond the judgment of revelation—or divine legislation.

The problem is prefigured in Montesquieu's *L'Esprit des lois*, a complete understanding of which turns on an understanding of the last eight books—the practical books. The opening of book XXIV (the first of the practical books) announces that the

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confederal republic. They never moved much beyond considering the usefulness of a confederal republic as a defensive matter; the salutary effects of government would all come from the various small states. The federation would not be a new structure—human convention drawn from first conventions—but a superstructure. This, of course, meant that that structure was removed but one step from the state of nature and all too close to the awful truths of that state. Among other questions, Antifederalists questioned whether moderate government could be installed in such a large territory—understanding that it is moderate government that secures liberty. The general welfare was to be secured through a virtuous citizenry—a virtue based on commerce, indeed, but a commerce based on agriculture still more than on manufacture. With such principles, Antifederalists concluded that the only possibility for liberty (and a virtuous citizenry) would come through the confederal arrangement they also called a complex consolidation. Federalists, too, presented an argument in terms of principles, including the basic principle that the phenomenon of representation is an independent good, though it is true that it may initially result from an extensive territory. It is the contention of this essay that such principles did, indeed, inform the political decisions made by the founders. Both Federalists and Antifederalists referred their principles to Montesquieu. If nothing more, this must mean that their principles can, to a great extent, be understood in terms of their understanding of Montesquieu. Conceding that, it should then be possible to determine whether Montesquieu, as he understood himself, was rightly understood by one or the other, or both.

author will unfold the proper manner in which to study human things and that he will demonstrate that the possibility of providing men “the best political laws and the best civil laws” is dependent upon such study. This strikes one’s attention sharply because book XXIV is entitled “The laws, in the relationship that they have with the religion in each country, considered in its practices, and in itself.” In this book, however, there will be things that are true only in “a human sense.” The author pleads that he is not a theologian and that he will speak, therefore, not of the best religion, but of the best laws.

It may be possible to explain the historical books, and hence the practical books, through rigorous analysis and close comparison of the *History of Florence*<sup>2</sup> with those books. I am not presently capable of making that analysis, but some things do appear at first glance that may be of more than passing significance. Each author seeks to present the history of his regime—for Machiavelli, the city of Florence, and for Montesquieu, the country of France. But their histories are very different, even where the same facts are material. The history of Florence moves through men (though sometimes reluctantly—“with these idle princes and contemptible arms, my history must therefore be filled” [I, 3, end]); the history of France moves through laws (though the impact of greatness must be admitted—under Charlemagne “l’empire se maintint par la grandeur du chef: le prince étoit grand, l’homme l’étoit, davantage” [XXXI, 18, beginning]).

Again, considering the fate of the empire after the death of Charlemagne, Machiavelli lays the blame for its disintegration to the discords among the grandsons: “the Emperor Charles died and was succeeded by Louis (the Pious), after whose death so many disputes arose among his sons that at the time of his grandchildren France lost the empire” (I, 3, end). Fortune, then, paved the way for the empire’s destruction as she bred, at differing occasions, the forces of strength or of weakness.

But Montesquieu saw the “cause principale de l’affoiblissement de la seconde race” to be less the absence of a Charlemagne to settle the discords of Lothar, Louis, and Charles than the changes made in the constitution left by Charlemagne and Pepin. Had Charlemagne made such changes ruin would also have followed. The changes occurred, it is true, as an outgrowth of the Battle of Fontenay. But it was that portion of the treaty which permitted free men to choose their seignors that brought ruin (XXXI, 25, middle).

Thus it appears that the laws made by regimes maintain their force at the expense of other possibilities and in disregard of fortune.

The history of Florence—a history of returns and reverses—takes one from her origins to her current “imbecility.” It is a history into which Machiavelli “descends” (I, 3; end). The history of Florence is of periods—specific events, alliances, and intrigues.

The history of France, on the other hand, takes one from France’s first constitutions to her developed constitution. It is a history of practices and ordinances (“cold, dry, insipid and hard writings [which] must be read and devoured as the fable says Saturn devoured stones” [XXX, 10-12]). It is a history of laws, presented by Montesquieu “rather as [he has] envisaged them than as [he has] treated them” (XX, 1).

History, Montesquieu argues, is a particular force—particular to a civilization and thus to its institutions (XXVIII, 23-XXX, 14). Men have positive or negative effects on

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<sup>2</sup> Niccolò Machiavelli, *History of Florence* (New York: Colonial Press, 1901).

their laws or institutions, and change may result, but that change would invariably result from such effects, however arrived (XXXI, 18, 25, 32). For Montesquieu, history can exist only to establish continuity (XXX, 10-12). And the first step in establishing that continuity is to know perfectly one's ancient laws and morals. It is only through these that events and actions have meaning. (XXX, 15). He does not address the question or place of self-interest in specific acts or events related in his history. Machiavelli relates his interest entirely in terms of self-interest. If history must show continuity, it would appear that interest must not be its basis. Where self-interest is absent or controlled, one ascends; where it is present and uncontrolled, one descends.

It would be unfair, however, to speak of Machiavelli as interested only in the unfolding of selfish conflicts. A discussion of the history of conflicts of interest necessarily points beyond itself to a discussion of the disinterested—this is true even if the discussion beyond only concludes that disinterested behavior is impossible or, at best, unreasonable. Nowhere is this better attested than in a history of interested conflicts that occur in a religious context. As revelation is presumed to supply the basis for questions subject to the judgment of religion, to discuss such questions in terms of interests is to undermine revelation—and thus to point beyond. Such discussion is human and prepares the human judgment of the divine.

Montesquieu urges that religion be judged, politically speaking, in terms of its conformity to law—that is, *logos* (XXIV, 1). Such an inquiry, therefore, argues a basis for history other than revelation and superior to it. Machiavelli joins—or, indeed, has led—Montesquieu in establishing the principle of a reasonable judgment of the church.

In the first book of the *History of Florence*, Machiavelli portrays the Church's influence (he says the pope's, for he speaks of men, not of laws or institutions) in the decline of Italy. He demonstrates the absurdity of its policy of hiring arms to fight in its behalf and of its attempt to extend its temporal dominance. The pontiffs he holds responsible for nearly all the barbarian inundations, each occasion of which was an instance of pontifical aggrandizement (I, 3, beginning).

As religion in the city must yield to law in Montesquieu, religious principalities must undergo the struggles of interest in Machiavelli. Further, to speak of the ascendance of the religious principality is, *ipso facto*, to speak of the decline of the city. A history which describes such an occurrence, therefore, describes—to the extent that it is human—a decline. The actions of men are determinants of laws and institutions, and what separates the history of Florence from the history of France is the fact that only certain men with certain interests can effect certain changes: “If we only consider the evils which arise to a republic or kingdom by a change of prince or of government; not by foreign interference, but by civil discord (in which we may see how even slight variations suffice to ruin the most powerful kingdoms or States), we may then easily imagine how much Italy and the other Roman provinces suffered, when they not only changed their forms of government and princes, but also their laws, customs, modes of living, religion, language, and name” (1, 2, beginning).

“Frequent changes” of this nature (IV, beginning) render a history of men necessary and introduce Fortuna as the Clio of that history. “Imperfectly organized” republics require “for their welfare the virtue and the good fortune of some individual

who may be removed by death or become unserviceable by misfortune,” and “a good, wise, and powerful citizen appears” but seldom. A good republic would have “good laws for its basis and good regulations” for enforcing them. It would not, therefore, require the wise man to balance its contending forces. Most, if not all, histories will be histories of men and contending forces. A history of laws may be written only for that government which properly “may be called free.” It would appear, therefore, that the *History of Florence* and the history of France differ only in that the one is written for an “imperfectly organized” republic and the other for a perfectly organized republic. And the latter must be understood only in terms of the claim presented for it: in the history of laws, the laws have been presented as they were envisaged rather than as they were treated.

Practice, it would seem, may be informed by theory, but only insofar as it is “good practice” or the practice of the “good regime,” which decidedly is not the divine regime. To the extent that the practical books of *L’Esprit des lois* are informed by theory, it is likely that it is the theory of the republic as finally developed in books XIX and XX. But if this be correct, Montesquieu, in proposing that the construction of the good republic is dependent upon the ability to study human things—religion, laws, and the “history” of human creation—properly indicates that theory or philosophy may be born among or in the contemplation of the imperfect. Put another way, to construct the good regime, one must study the imperfect as if it were or contained the perfect (see the first eight books of *L’Esprit des lois*). That the theoretical books come before the practical books, therefore, can be justified only by the fact that the theoretical books are preceded by the truly historical books—those that treat of ancient regimes.

When Montesquieu suggests that one must study the things of politics politically, he means that political things must be given their fullest signification (XXIV, 1). And if it be true that it is the legislator’s task to teach and make the laws (XXIX, 19), then the history of laws begins with the legislator. For if history is truly that of human creation, it is he who judges history, and he who must be questioned (XXVIII, 3-4). Thus the practical books begin with the character of the laws and their relation to the best regime, and then discuss the legislator’s task; they conclude with a history of the laws.

## II

An understanding of the American founding—and the problem of political theory therein—necessarily commences with the American legislators. In Montesquieu’s terms this is to focus upon what they did and said as distinguished from the background that underlay their actions. A Beardian analysis is out of place because what background and interests give to political decisions is fully contained in the products of such decisions. Such things are, as it were, at the bottom. A discussion of the competing interests that led to the fateful treaty concluding the Battle of Fontenay cannot obviate the necessity of dealing with the treaty and the changes that ensued on their own terms.

The problem of political theory—as formulated by Montesquieu—is the suggestion that what is at the bottom of political practice is unmentionable. That private interest is glaringly present in Machiavelli serves to heighten its glaring absence in Montesquieu. And there is a similar muteness in Montesquieu with respect to the corollary of private interests: individual rights. This position must necessarily inform a

discussion of the American founding, wherein the founders split on the question. Among Antifederalist founders private interest was important but was not so obviously discussed. Among Federalist founders individual rights were important but were not so obviously discussed. Each side is properly silent about only half of what Montesquieu treats as unmentionable. In the suggestion that the study of the “perfectly organized” republic is a study of a history of laws, Montesquieu maintains, *ipso facto*, that the problem of interest—hence, individual rights—has been accounted for in a manner transcending or, indeed, obviating the need for further reflection.

The problem—in the discussion among the founders and in *L’Esprit des lois*—is set in terms of a discussion of the circumstances of the regime. Among these the most important, troublesome, and frequently recurrent is the question of combining a republican government with an extensive territory. With this question every other issue is immediately connected in a manner that makes it appear architectonic in scope and effect.<sup>3</sup>

This result is in agreement with the principal problem to be resolved: the nature of republican government in the modern world. An extensive territory serves to distinguish the ancients from the moderns, but it does not answer finally the question as to the form of republican government. Montesquieu seeks to provide that answer. Federalists and Antifederalists presented rival answers.

Though it has been differently argued,<sup>4</sup> it is clear that the founders drew their arguments from opposing conceptions of the nature and possibility of republican government. Professor Kenyon holds that the Federalist-Antifederalist dispute is really a dispute about the possible kinds of federalism. But most Antifederalists agreed with “An Old Whig” that the lessons of history and philosophy teach “that a republican government can exist only in a narrow territory.”<sup>5</sup> Although it is admittedly possible that one may speak of size and circumstance in explaining federalism, problems arise not from a federal correlation with extent, but from a republican correlation with extent.

One can neither reject consideration of the possibility of republican government nor take it as given. To show the possibility of the republic in the new world, it is necessary to demonstrate why it could not exist in the ancient world. One must show the differences between ancient and modern histories. As Rome’s greatness depended on curious circumstances,<sup>6</sup> so did the chance for the existence of the republic. In the modern world, all hinges on the capacity to dominate such circumstance, and giving a circumstance an architectonic role serves to detach the new world from a world of architectonic principles.

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<sup>3</sup> William Allen, “Montesquieu. The Federalist-Antifederalist Dispute” (Ph.D. diss., Claremont Graduate School, 1972).

<sup>4</sup> Cecelia Kenyon, *The Antifederalists* (New York: Bobbs-Merrill, 1966).

<sup>5</sup> Morton Borden, ed., *Antifederalists Papers* (East Lansing, Mich.: Michigan State University Press, 1965-67), nos. 18-20.

<sup>6</sup> Montesquieu, *Considérations sur les causes de la grandeur des Romains et de leur décadence*.

Though one would seem to be dealing with polarities among the Founders, they seem clearly to form a single pole with respect to one other: the *polis*. It is apparent that both Federalists and Antifederalists discussed the means of establishing a republic well in excess of 10,000—not to mention 5,040—citizens; and they intended to do so without exterminating or exiling everyone above ten years of age. Their dispute over size was not that of bigger vs. smaller; it was rather that of calculation. When, therefore, Professors Kenyon and Borden suggest that Antifederalists were animated by ancient ideals,<sup>7</sup> one could be confused. In both cases, their attempt to realize the republic is—as with Montesquieu—an attempt to exceed ancient limitations.

The first eight books of *L'Esprit des lois* develop the concept of the ancient republic, and it is this that must initially be set against the Founders' adumbrations of the general principles of the republic. With such principles the Founders permit a discussion of mechanisms. They are not so given to historical analysis as Montesquieu; he reaches a discussion of modern possibilities through a discussion of ancient mechanisms. This difference need not be accounted for merely by the fact that Montesquieu's political objective is not so immediate as their own. For him the birth of political philosophy must be re-created. There are, therefore, two republics. The first is found among the ancients—in a consideration of first things. The second is to be found in the modern world (IX, 1).

That with which Publius begins is that with which Montesquieu ends: modern virtue and its basis. Publius' position will be indicated below. Initially, Montesquieu's prescription must be presented in order to reveal the hideout of private interest.

As suggested above, the design of *L'Esprit des lois* is of importance. This design, however, would appear to point beyond the immediate purpose of this essay. I am capable of developing it only insofar as exposition of Montesquieu's political prescription is constrained to follow it. If one does not count the preface, there appear to be two main sections of eight books each, one main section of nine books, and two transition sections of three books each. The section of nine books is central and is introduced by the transition section that ends with the famous book containing the chapter on the English constitution. It is by virtue of this relationship that that oft-quoted chapter is here read as introductory rather than conclusive. Montesquieu suggests this as well through his interpretation of Socrates' efforts in the *Republics*.<sup>8</sup>

Montesquieu reminds the reader of the purpose of the first eleven books (principally to demonstrate ancient limitations) in the central number of the last eleven books: in chapter 23 he advises that “a large state (a), having become accessory to another, weakens itself and even weakens the principal state.” In footnoting this passage (in particular, the expression “large state,” which does not say precisely the same thing as does the passage taken as a whole), he indicates several earlier passages that dealt with the extent of a regime's territory. Of these citations (twelve), exactly half are contained in

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<sup>7</sup> Kenyon, *Antifederalists*, Introduction; Borden, *Antifederalists Papers*, Introduction.

<sup>8</sup> V, 6; XI, 6. The treatment of the English constitution—analogueous to Socrates' treatment of the Spartan constitution—should yield a statement as to Montesquieu's purpose that is analogueous to the statement as to Socrates' purpose.

the first section and half in the second section, which begins to detail those means which the ancient regimes could employ to remedy their defects and to indicate the first distinctions between ancients and moderns: representation and largeness. But the citations encircle those passages (IX, 1, for example) which hold that a small republic will perish unless it joins a federation.

The passages would seem to be admonitions to the king of France to restrain his appetite for conquest were it not for the fact that some do refer to the problems of republics, and specifically (VIII, 16) indicate that they must be small. It is possible that a dual purpose is involved: the king of France should not seek to establish a “universal monarchy;” and a discussion of the size of states is a convenient means of considering ancient republics.

Again, the passage to which the footnote is attached does not speak of the problem of particular states’ exceeding the limits of form. It speaks rather of states’ (any states) attaching themselves to other states. And the citation, to repeat, is placed not at the end of this passage—where it should be if meant to apply only to France—but after “large state,” suggesting a more general application. To return the reader to these passages, therefore, is to return him to the distinctions of ancients and moderns.

In the first section of *L’Esprit des lois*, it is established that there are only three separate principles that may inform regimes. These are simple principles; in fact, one discovers them by consulting the “least instructed men” (II, 1; III, 1). They are, in fact, passions. Fear motivates despotism; honor—a false honor—motivates monarchy; and, curiously, the passion of virtue motivates the republic. This virtue is also called a renunciation of self.

This formulation would suggest the absence of reason in the establishment of governments, but Montesquieu has opened his treatise with the explanation that it is indeed reason which makes man incapable of perfectly obeying the laws of nature and propels him into error (I, 1; V, 14 and preface). In other words, because human nature is more than beastly one can expect more than the beastly. Yet if it is more, it is only so with regard to the rational factor—which, because of error, is seldom prudently pursued and which, because of the need for intentionality, is seldom favored by chance (V, 14).

The presence of intentionality in the formation of governments would necessitate the presence of a legislator from the earliest moment. Montesquieu avoids the difficulties inherent in that position by arguing the existence of a natural desire for association (I, 2). This natural desire makes accident the presiding officer over first societies. The point is emphasized in the refutation of Aristotle’s history of kingship. The refutation consists of two parts: paternal rule is not the historical basis of ruling (I, 3), and paternal rule is not the pattern for monarchical power (V, 8).

Paternal rule is little more than historical accident—an accident that is irrelevant since paternal rule is most useful in that government (a republic) where it is least likely to appear accidentally (the laws attempt to add it there) (V, 7). Political societies begin not among relatives linked by their relationship but, archetypically, among the unrelated. Political power, under such conditions, is a question of political association—that is, of several families. The defective natural association, assuming that an effective such association ever existed, would be transformed by the addition of politics. A legislator



must have been present, in however limited a form, at the initial transition. It is the fact that monarchy is intentional which distinguishes it from despotism.

The republic is the intentional form of government *par excellence*, for it is based upon wanting to be a citizen. Its motive force is self-renunciation—a decision to be something other than what one is (III, 2, 5). To want to be a citizen is to want to have a city, and to want to have a city is to want to be virtuous—to love the city. This virtue is a sentiment within the reach of every man. It is not knowledge; it is opinion, and, ultimately, a passion. And it is a passion which, among ancient republics, required for its indulgence the forgoing of other passions.

This passion, according to Montesquieu, is a substitute for more particular or individual passions: it is general, it is public. As fewer particular passions can be satisfied, this general passion is all the more accessible. It is, in a sense, created by humans as a result of the imposition of social, religious, or political order (V, 2). It serves, therefore, as a higher or ultimate passion which undermines the effect of the ordinary passions. For this reason, Montesquieu can say that political virtue is self-renunciation. It is renunciation of what Hobbes designated as our real selves.

Of the two forms of ancient republics, aristocratic and democratic, only the latter was perfect. It alone could boast that equality necessitated by virtue (II, 2-3; V, 8). It is alone that form in which republican virtue—hence, equality—can be perfected. In a regime that requires self-renunciation as few temptations to ordinary passions as possible should be presented. That means that the differences among men must be negligible. In fact, all “inequalities [are to be derived] from the nature of the democracy and the principle of equality itself” (V, 5). Such a state must limit commerce and the possibility of gain (V, 6), since gain, by definition, cannot be contained within the framework of equal distribution. And where commerce does enter a democracy, it must be held to a “commerce of economy” in order to avoid the real enemy of equality: luxury (V, 6). Individual happiness and “good sense” is dependent on a mediocrity of talents and fortunes in a republic (V, 3).

At this point Montesquieu speaks of the perfection of ancient republics, taking them as they *could* be. The implication is that such governments are always possible because their principles are always viable. What distinguishes the ancients from the moderns are different intentions or choices, not different possibilities. This is amply demonstrated when Montesquieu states that most ancient peoples lived under governments which “have” virtue for their principle. The peoples are past; the principles are perpetual.

These ancient republics were the recipients of “singular institutions” (IV, 5). The unusual was necessary because their governments were formed to alter the usual. The task of the legislator has been that of dealing with man’s most basic and intransigent desires (IV 5), and “singular institutions” are the means to that end. “These kinds of institutions” can be instituted in the republic, where virtue is the principle, but only in a small state like the towns of Greece (IV, 6). They require a general education and the raising of all citizens as though they were all brothers and sisters and mothers and fathers (IV, 6).

But, for all that, all ancient regimes are corruptible—monarchy and despotism by

their inherent defects.<sup>9</sup> The corruption is entirely a matter of bad founding and refounding (VIII, 12). That which is defective in the principle of the regime leads to its decline. As noted above, that which corrupts the principle of the republic is luxury (VIII, 2-5). To avoid that danger a republic must be small (VIII, 16, 20).

Montesquieu closes the first section with the apparent notion that only the small republic is capable of escaping corruption. This establishes two principles: that the republic offers the possibility for a lasting regime, but that the ancient republic never achieved that goal. The second principle is developed in the next section, which begins with the announcement: “If a republic is small, it is destroyed by a foreign force; if it is large, it destroys itself by an interior vice” (IX, 1).

Montesquieu opens the second section with the notion that no republic can exist except in a federated form. This means that a republic could never have been considered truly viable in the forms heretofore examined. In that sense, this is a clear break with the past, but in the sense that it is an attempt to discover a “useful mean” for making past virtues a part of a viable and enduring regime, it is a modern undertaking. This contradiction is further emphasized by the fact that the remedy—the federated republic—is itself a human construction, i.e., it is put together from things which humans had made.

The federated republic is then twice removed from nature, as nature was understood by the “state of nature” theorists. The break with the past is also a break with the present: Montesquieu holds that the state once removed from nature is inherently a state of war; the republic is destroyed either from without or within. He thus presents an alternative: the conventions already created out of an imaginary state of nature may be perfected. There is in this a superficial resemblance to, the ancient view, and it suggests that the confederated republic is introduced more as introduction than conclusion, an introduction to consideration of the best regime.

This interpretation is supported, first, by a picture of the federation which sharply diverges from the accepted description (IX, 3). The “beautiful confederated republic” chosen as exemplar, Lycia, seems, in the description, almost like a single regime or administration rather than a gathering of independent cities. Further, this section opens by extolling the virtues of the confederal republic and closes by extolling the virtues of England. The suggestion is that it is the republicanism—in a new setting—that warrants examination. And, were that not enough, Montesquieu focuses the reader’s attention on the contrast between the benefit accidentally derived from confederations by the ancients (IX, 1) and the necessity for intentional confederation among the moderns.

The confederation described by Montesquieu is one that must be created, unlike others, for the specific purpose of perpetuating republicanism. It suffers, therefore, certain constraints, among them, that all confederates must be republics (IX, 2). The need for intentionality imposes a need for control of circumstances (IX, 13). That the ancients were unintentional in this respect Montesquieu decrees, when he describes the “best form of government ever imagined by man.” That government was neither ancient Sparta nor ancient Rome. It was a form of monarchy among the barbarian Germanic tribes. There,

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<sup>9</sup> It should also be noted that no modern counterpart is offered for either, suggesting that the distinction between ancients and modern offers them no salvation.

says Montesquieu, is where the history of intentional good government begins (XI, 8).

The Germans began as free and democratic. They became several small monarchies after conquest and separation. These monarchs then assembled to deliberate on common affairs and were thus representatives. They tempered their rule and offered a simulacrum of political liberty. In “Aristotle’s Manner of Thinking,” one, distinguishes regimes by things of accident: virtue and vice. That which distinguishes is the constitution and not the quality of rule (XI, 9). The well-run government is the well-formed government. Then he adds that the English system is based on the barbarian government. From the Germans it is possible to trace the origins of the modern English republic. As Sparta drew her laws from Crete only to have them perfected by Plato, the English laws are drawn from the German tribes only to be perfected—it is argued—by Montesquieu (XI, 6).

In considering ancient laws, Montesquieu begins with their establishment and ends with their corruption. He begins with that which would corrupt the laws of the modern republic. The modern system, too, is perishable, but through mechanical defects (abrogation of separation of powers) (XI, 6). Unlike the ideal republic of Plato, whose corruption is almost insensible, the cause of the decline of the English republic can be precisely known. More exactly, its essential characteristic, liberty, can be studied to see how it might be lost, and also how it might be established. Unlike Harrington, Montesquieu has recognized true liberty and constructs a true state (XI, 6). That liberty consists of the power to be virtuous, and that, virtue is modern (XI, 2-4).

Montesquieu concludes the second section by discussing England, not as a model but as the source of that liberty, or virtue, which animates the modern republic. In his teaching, an understanding of liberty in its several variations foreshadows the emergence of the requisites of the republican form. Discussion of England serves to introduce discussion of this liberty, with a focus on political liberty, strictly defined. What follows is a portrait of the republic. Political liberty is the necessary condition of the civil liberty which the citizen exercises. It exists, therefore, in the constitution (XI, 6). Its creation is as dependent upon limiting abuses of power as it is in granting power to do the limited. This is accomplished by using power to check power, that is, in the arrangement. It depends on the legislator.

The citizen exercises civil liberty, and Montesquieu’s central section commences with a discussion of it. It is defined as safety, or as the opinion the citizen holds of his safety (XII, 1-2). The most basic form of safety is physical safety, and it is with the body that the bulk of this section is concerned. Civil liberty is based on private interests, and this fact is best seen in its opposite, slavery—the ignoring or destruction of the private—the slave has no will (XV, 1, 7). Montesquieu argues that no one has an interest that requires slavery.

Only after a lengthy discussion of civil liberty (or the demands of the body, including the effects of various climates and the means employed in providing sustenance) may consideration of the best laws be undertaken. This consideration begins with distinctions between laws, morals, manners, etc. The principal distinction, however, is that between interior—and hence non-governable—and exterior—and hence governable—conduct (XIX, 16-17, 19, 20). Those things attaching to the body and its

passions provide a surer basis for the formulation of laws. In fact, citizens will more readily be induced to do great things by their passions than by reason (XIX, 27).

This can be explained, to a large extent, by the fact that citizens will be individualists, which can only mean caring for their private interests rather than public interests, and that their nation will be commercial, “free of destructive prejudices.” Wealth and heavy taxes will be introduced, and men of limited fortunes will be industrious. Individual interests will multiply greatly, and conflicts between them will multiply. Positions of power will be greatly distinguished; men will be less distinguished. Men will be esteemed by “real qualities,” and those are only two: wealth and personal merit. And there will be luxury, though based on “real needs” rather than vanity (XIX, 27). The men in this regime will be occupied wholly by their interests.

This regime will further distinguish itself by including all men and basing itself on a predisposition in favor of reason. Men will reason in error—they will, in fact, calculate—but it is the reasoning, not its end, that is important. Reasoning brings liberty to a free nation (XIX, 27). It is the forming of opinions—or calculations—about one’s safety that is particularly protective of the favored position of reason and thereby of the regime. As the opinions must undergo as frequent and extensive changes as private interests, the process could be perpetual if the principle of the regime is maintained. To understand the principle of this regime one must consider its basis, commerce, in terms of its relationship to the three possible principles.

It is of note that the book which develops the “free nation” is followed by the book which develops commerce in a “free nation,” the final book of the central section. But no mention of principle is made in the former. In the final chapter of the book on a free nation, the word “republic” does not occur. Since it is advertised as further treatment of the regime treated in book XI, where “republic” is used twenty-eight times (seven in chapter 6), this omission is all the more striking: the word “republic” is absent in the one chapter in which it appears that the character of the republic is to be most fully developed. It is still more surprising because Montesquieu suggests a correlation between his “republic” and that of Plato.<sup>10</sup> Having substituted his for that of Plato, he then drops the republic and its principle altogether.

This paradox is solved in two ways. First, the free nation of book XIX, chapter 27, is indeed a republic. This is clear from the following book, which demonstrates that the commerce described in this chapter is only possible in a republic and, ultimately, in a modern republic (XX, 3-4, 9, 12, 23). Why, then, was it necessary to avoid mention of the republic in the chapter that most openly speaks of the pursuit of private passion and

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<sup>10</sup> Bk. V. This correlation helped to explain the position of aristocracy in his scheme: aristocracy is perfect only as it approaches democracy, the true republic, since the two are clearly different regimes. The difference between the two strongly resembles the difference between the *Republic* and its resultant aristocracy after it has been corrupted. This is Aristotle’s criticism of Socrates’ presentation: the reason for the corruption is unclear; we do not see the one state becoming the other, as in all the other examples. To the extent that the corrupted version of the ideal state is just that, there must be a principle of movement between them which demonstrates this coming into being. Montesquieu accounts for these factors by denominating the two regimes as examples of the republic, and demonstrating how the more corrupted version can be perfected. If it can be perfected, this process can only move in the direction of being more republican. That which it approaches, then, must be most republican. Montesquieu removes the obscurity of Socrates; then he allows the republic to disappear altogether.

its place in the regime? The response provides the second solution.

A return to the ancient republic or, more specifically, to what remains of it, once it has been corrected,<sup>11</sup> suggests the solution. What remains is the attachment to the regime, *l'amour de patrie*, without the actual necessity for self-renunciation. That singular passion, virtue, is no longer exclusive of all the other passions. Indeed, excellence is now based on them. But those very passions upon which the regime must be based are most effective not when consciously reflected upon (men will reason in error) but when sublimated to the exercise of sovereignty (as indeed they were sublimated, for differing reasons, among the ancients).

A politics of the beastly must not be beastly politics: this would seem the true gloss on the statement that a free people can be led by their passions to great things even against their true interests. This assertion can be true only if the fact that men are acting on the basis of interest is not disclosed to them. Their interests must be operative but unmentionable. *L'amour de patrie* may only be *l'amour proper*—but it must sound like *l'amour de patrie*.

When the discussion turns to interest proper, the “republic” cannot be mentioned, although this is the true understanding of its principle, virtue and hence equality. It is only this equality which permits ancient and modern republics to bear the same name. Equality is, however, imperfect in the one and perfect in the other; that which unites the two also divides them. The ancient republic grants equality to all citizens; the modern republic grants citizenship to all. This necessitates differing standards of judgment in these contrasting regimes, as indicated by the fact that the ancient citizenship is constructive while the modern is receptive. Modern citizenship thereby conveys those unmentionable rights—the corollaries of interest—while ancient citizenship provides the occasion for greatness to those who can or would be great. Therein lies the meaning of Aristotle’s defense of the natural slave; therein lies the meaning of Montesquieu’s assertion that Aristotle proves nothing.

Finally, the effort Montesquieu makes to heighten the differences between books XIX and XX (the final books of the central section) suggests that they must be read together if one is to appreciate those differences. The introduction to the former explained that its subject was of great extent; the latter is deemed to be limited. In the metaphors of each introduction contrasts also appear: in book XIX, Montesquieu moves—he moves to the right, slides, pierces, and makes light; in book XX, he is moved—“I want to flow on a tranquil river, carried along by the torrent.” In the one he is creative; in the other he is a historian. What book XIX brings into open discussion is hidden again in book XX.

Book XX once again speaks of virtue, of modern virtue, “*humanité*,” and of the fact that its place is in the modern republic. It speaks less of interest or passion, except to show its connection with “exact justice” in the commercial republic. In short, Montesquieu retakes the high ground, dissociating his regime from brigandage on the one hand and “those moral virtues” that induce men to renounce self-interest on the other.

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<sup>11</sup> If, in the modern world, the republic loses its size (smallness), it follows that it loses the corollaries of that size—i.e., singular institutions such as the community of goods, constant attention of each citizen toward every other citizen, etc.

Commerce, he says, corrupts pure morals but it perfects barbarian morals. It is a civilizing influence, curing the destructive prejudices of pure morals and bringing gentle morals. It is this course, a course of prudent modernity, which he extols. The modern republic, in short, must encourage acquisitiveness, but what it must praise is the peacefulness, civility, gentility—*humanité*—for which it is responsible. Books (IX and XX differ so greatly only because they go together.

To say that commerce is the necessary condition of the modern republic obscures the issue of the nature of the confederal republic mentioned above. But it is the understanding of the necessity for a confederal republic—eliminating, as it does, a state of war—which permits the discussion of a modern republic and its necessary condition, commerce. A confederation of republics based on “those moral virtues” will not do. The only non-commercial republic of consequence to have ever existed perished from the very moment at which it tried to survive without plying the arts of a warrior state. Rome failed to provide its citizens with that which Montesquieu says must be assured: subsistence, food, comfortable clothing, and a healthful way of life (XXIII, 19).

The confederal republic established must have a separation of powers to avoid tyranny, since only this separation can bring about the multiplicity of interests essential to the republic’s virtue. A regime based on majority rule cannot include more than the majority in the exercise of sovereignty (a pursuit of interests) unless it denies to the majority the right to govern totally or—what is the same thing—to hold power.

Only the commercial republic is capable of becoming the public-interest state. That, then, is the basis of the confederal republic. It was a response to the inner weakness of the large republic and the exterior weakness of the small republic. From its initial consideration, Montesquieu moves to consideration of the republic of singular institutions and of the commercial republic. Legislators, he indicates, create singular institutions in small republics to compensate for what they lack in commercial possibilities insofar as provision must be made for the general welfare (XX, 3, 23; II, 2; V, 3-4, 6).

The legislator’s purpose is to create happiness inside the city while maintaining sufficient exterior power to be secure. That purpose is served by the combination of a confederal and a commercial republic. Thus the turn away from the ancient city is complete, if we understand the happiness of which Aristotle speaks to consist in virtuous activity. The happiness provided by the legislator of prudent modernity concerns itself with such activity understood as the Epicurean goal of satisfaction. Such a legislator engages in the construction of ordinary institutions dedicated to the singular purpose of peacefulness: Ultimately, the new virtue is merely the love of peace, and the good city knows no other good life.

### III

The Antifederalists, in the elaboration of their principles, cited Montesquieu as their authority. But in the areas of principal concern, with a few exceptions, they arrived at opposite conclusions. Each, for example, argues the necessity of commerce for establishing the best regime. Montesquieu, however, describes that commerce as one of economy, based on manufactures and trade. What is offered by the Antifederalists is one

of sufficiency, based on agriculture. Thus the equality of the Antifederalists' regime is not the same as Montesquieu's description of the best city. It is the equality of yeoman farmers, uncluttered by notions of redistribution of income and other industrial offshoots.

Similarly, the Antifederalists' position, which argues that government is to lead the vicious to virtue, fails to take account of Montesquieu's reference to virtue and vice as accidental matters, outside of the fundamental discussion of politics. Government in Montesquieu's terms is not created for the repression of vice. He does not reject the natural law thesis upon which the Antifederalists base their position, but he denies that the moral distinctions to which it gives rise are the necessary basis of political judgments.

It is not, therefore, anomalous that the free people of book XIX will be led by their passions rather than their reason. Their love for the state is first lowered to a passion and only thereby raised to a virtue. The good regime will not repress or punish vice; it will manipulate it in such manner that it is useful to the state. This may be what Montesquieu means when he says that the laws suppose citizens to be good.

As to the necessity of representation, the Antifederalists agreed with Montesquieu. They considered it an essential element of salutary government. But representation must be open, and its essential foundation is equality. And, finally, its proper manifestation is as true a representation of classes as possible. Given such representation, the Antifederalists believed that the danger of the development of separate interests between ruler and ruled could be avoided. But with respect to the republic, Montesquieu states that the positions of power will become greatly distinguished as a direct result of the effect of commerce and the extreme proliferation of interests. And it is this effect that is guaranteed by and guarantees the equality of the regime. Montesquieu argues that the regime is maintained by the arrangement of offices. But this does not mean the arrangement of classes—in terms of rendering them distinct—and the direct representation of interests. His republic calls for a confounding of classes. This is still, it may be argued, an arrangement. The point is conceded, but one notes that it is not the arrangement sought by the Antifederalists.

The Federalists are more often to be found in agreement with Montesquieu, though occasionally disagreeing on matters of significance. Initially, their ability to appreciate the defining characteristics of the regime's circumstances laid the foundation for this agreement. In its absolute form, Montesquieu's dictum with respect to territory led the Federalists, properly, to decide that government would be impossible; hence the intent of Montesquieu must have been directed to something less damaging for the prospect of human affairs. They reasoned that the principle of representation ameliorated this difficulty.

This conclusion was reached through consideration of the fundamental question of governing, not of its extent, but of its nature. When Montesquieu states as a general rule that small states must be republican, mediocre states, monarchic, etc., he seems only to be saying that one can discover its essential nature in its classical locus. When he says that a small republic is destroyed from without, etc., he is suggesting that the durability of the republic cannot depend on recreating the classical locus. In other words, a change in the nature of republican government to remove its handicaps removes the strictures of

size as well as its fundamental incapacity. The Federalists concluded with Montesquieu that under a system in which the people held all powers “all would be lost.” This constitutes their parting glance at ancient democracies. Tiny agricultural republics uniting the citizens in single bodies for the management of affairs were rejected as tyrannical. In fact, so long as the people hold the greater power of legislating, they are the holders of all the powers of government. This is why the legislative power is seen as greatest. Although it is true that a people may commit themselves to the hands of governors because of an extensive territory, the Federalists held such action to be an independent good. It remains only to adduce the basis of a regime so constituted.

Montesquieu’s view of the *negociant* and the political officer as natural allies and the Federalists’ view of the manner in which compromises and coalitions of interests form the stuff of republican politics combine in a concept of political knowledge as reflected in interested behavior. The attempt to build homogeneity through a proliferation of interests, therefore, unites the theories of Montesquieu and Publius.

Publius argues that the American states will become more like each other, not because all will be reduced to a common denominator but because all will be raised to an equal level of interested behavior. Montesquieu holds that a general mediocrity will exist wherein the poorest must work to survive, the richest to conserve. The multiplication of interests will serve to attach all to the general interest. It is, at bottom, this trade and finance that must be instituted if the representation is to be effective.

The Antifederalists appear to have fully appreciated the modern predisposition to provide for the body, but they approach that task more directly than either Montesquieu or Publius. Their call for a wider representation—specifically, for representation of the middle class, though it is often aimed at all or most “interests”—is based on the assumption that the protection of equality and individual rights must be an open affair. This may require the acknowledgment that men have private interests, but that is part of the bargain. Reminding men of their rights is not viewed as reminding them of their passions. In that sense, the regime is not to be protected by noble lies or wise men; it is to be protected by its motive force, equality as derived from natural law. Indeed, government exists specifically to enforce whatever limits there are to the pursuit of happiness.

The Federalists reasoned in terms of satisfying private interests, and they were not ashamed of discussing the place that interests occupy in human affairs. Yet they were reluctant to discuss the fact that the establishment of government on the basis of interest vests a right in citizens to pursue their passions. They posited the fact of such behavior as the occasion for instituting government but discreetly treated government as existing independent of such behavior. The confounding of classes that was created treated equality as the elimination of distinctions between rich and poor while creating the distinction of interests. As not all interests can be equal, the multiplicity of interests represents an inequality. Yet that inequality exists only between specific interests and is drawn from the regime’s equality itself. It is this inequality created by equality that renders necessary a silence as to rights: this is so because it is impossible for government to enforce, equally, every limit on the pursuit of happiness.

That Federalists and Antifederalists must jointly be considered the Founders of



America—thus uniting their contrary positions—is appropriate. Together they present a complete interpretation of the regime. With respect to that about which one should be mute in founding and maintaining regimes, they either follow and are properly silent or reject, on the basis of an older prudence, the prudent modernity of Montesquieu. Whether one accepts the one or the other is dependent upon the extent to which the problem of political theory is seen to be embodied in the American founding.

If virtue is the answer to the problem of the possibility of modern republican government, if this virtue consists of that excellence particular to the pursuit of private interests, understood as love of one's country or whatever makes such excellence possible, if an extensive commerce is the basis of such a constitution, then Montesquieu's dictum that small republics suffer an incurable defect and large republics a curable defect is readily understood. A constitution can prudently control the form and nature of that to which it alone applies. The virtue of a republic's citizens can not be a guarantee of the virtue of those of its neighboring regimes. Small republics are prey to conquest, and this, says Montesquieu, is incurable. Large republics can, of course, provide for their defense if they are sufficiently virtuous to avoid the internal defect of dissension. They can only be thus virtuous in a commercial republic, identifying their virtue with their immediate interests. The public-interest state speaks not to the interest the citizens hold in the city, but to the interest the public nurtures in the citizen.