

## **MONTESQUIEU AND *THE FEDERALIST*:**

### **A REPUBLICANISM SUITED TO AN EXTENDED TERRITORY**

by

**Paul A. Rahe**

**Can a republic be sustained on an extended territory? Today, the answer *seems* obvious. It did not *appear* to be so obvious, however, in 1787 and 1788 when the American Federal convention met in Philadelphia and the various states within the American union considered whether to ratify the constitution framed and proposed by that convention.**

**The first republics of which we have knowledge were small, and they operated on the presumption that republicanism could not be sustained if the citizens themselves occupied an extended territory. Given their ambition, cities such as Miletus, Athens, Sparta, Corinth, Argos, and Thebes would have profited from a great expansion in the territory in which their citizens resided and from a great increase in the number of their citizens. There was a disproportion between their ambition and the size of the citizen army that they could deploy in time of war. Athens, Sparta, and Thebes – the most ambitious of these cities – compensated for this in various ways: by forming alliances, by drawing on subject populations, by hiring mercenary soldiers, and by paying poor citizens, freedmen, and foreigners to row in their fleets. In every case, their dependence on outsiders turned out to be their Achilles heel, and they were acutely aware of the fact. But none of them responded by admitting outsiders – even longtime residents within their civic territory – into their ranks.**

For this, they had a reason. All of the Greek cities were republics of virtue. They were all martial polities – apt, at almost any time, to find themselves caught up in a desperate struggle for survival. Whether they were governed as democracies or as oligarchies, they operated on the basis of the direct rule of those who counted as full citizens. Within this ruling order, public-spiritedness was a *sine qua non*. If a *pólis* was to sustain itself, it was essential that its citizens be ready and willing to lay down their lives for the political community, and it was no less necessary that – in deliberating in the city’s council and assembly concerning what Aristotle called the advantageous, the just, and the good – they set aside private interest where it was at odds with the public interest and focus their attention with single-mindedness on the common good.

This was a tall order, and they knew it. It required on the part of the citizens a certain forgetfulness of self and even of family, and this the cities sought to produce by way of what they called *paideía*. Human beings are distinguished from the other animals by what the Church Fathers would call *ekstásis* – by their capacity to distance themselves from themselves and to judge themselves from a standpoint external to themselves. Put more simply, they are capable of seeing themselves as others see them and of judging themselves defective. They are capable of feeling shame when in the public eye and even of feeling guilt when alone. When the Greeks reflected on *paideía*, they were less concerned with the question whether those who received it would be educated in the sense of being well-informed and possessed of useful skills than with whether they would be properly formed as citizens. Their focus was what the Germans call *Bildung* – the formation of character – and they sought, by way of the upbringing that the city and the families within it provided to the city’s young, to take advantage of the human capacity for *ekstásis* in such a

manner as to induce the young men of the *pólis* to judge themselves first and foremost with an eye to the services that they rendered the political community. These young citizens had to be habituated in such a manner that they took the honor and glory acquired through public service as a possession that it was worth sacrificing everything else to pursue.

It is, then, no accident that, in the Funeral Oration recorded by Thucydides in the second book of his great history of the Peloponnesian War, when Pericles comes to describe the Athenian *politeía*, using a Greek term that can variously be translated as constitution, regime, and citizenship, he says next to nothing about the structure of the Athenian polity and focuses instead on the Athenian way of life, on the intelligence and public-spiritedness that the Athenians bring to bear in public deliberation, and on the courage that they display on the battle field when they set out to help their friends and harm their enemies. It is customary for modern students of classical antiquity to juxtapose Athens and Sparta, but anyone who compares Pericles' Funeral Oration with the poetry of Tyrtaeus, which the Spartans were wont to memorize and chant wherever they camped, will find the bloodthirsty, martial ethic of the Lacedaemonians echoed in the Athenian speech and, with it, the conviction that the city is a repository of memory with respect to the service in council and in war, in words and in deeds, performed by its citizens.

Aristotle, the supreme expositor of the ethos of the ancient Greek city, argued that the city had to be *eusúnoptos* – easy to see with a single glance about the horizon. What he meant was that the city had to be what some modern scholars call a face-to-face community – polity in which, as he insisted, the citizens possessed a thorough knowledge of one another's characters. Only in such a community could the sense of shame operate with full force. Only in such a community could one properly educate the young in what both Plato

and Aristotle called political or civic virtue. Only in such a community could one instill in them an unfailing dedication to the public good, a willingness to die on the city's behalf, and an eagerness to do it good service in both words and deeds. In a large community, Aristotle implied, in a polity situated on extended territory, where the citizens were virtual strangers, only vaguely aware of one another, if even that, this would be impossible. This is the reason why the Greek cities were so reluctant to naturalize strangers. To do so, they knew, would be to dissolve the ethos that made of the city a *pólis* – which is to say, a republic of virtue.

### Montesquieu

I am not here to argue that the American people in the last quarter of the eighteenth century were steeped in the classics – though some were. I am not here to tell you that they read Aristotle with great care – though a few of them did. What I would assert, however, is that those who played a prominent role in constitution-making both in the states and at the federal level were, nearly all of them, thoroughly familiar with another writer – whose understanding of the ancient city was no less profound than that of the peripatetic.

I have in mind, of course, Charles-Louis de Secondat, baron de La Brède et de Montesquieu, author of *Considerations on the Causes of the Greatness of the Romans and their Decline* and of *The Spirit of Laws*. In the United States today, he is seldom read. I published a book on his thinking recently. When my agent tried to sell the book to commercial presses, he found that none of the editors at those presses had even heard of the man. He is no doubt more often read in France, but my sense is that, even in his native country, he does not receive the attention that is rightly his.

The second half of the eighteenth century Montesquieu bestrode like a colossus. Every major work that he ushered into print quickly found a wide

audience. By 1800, his *Persian Letters*, which first appeared in 1721, had been published in ninety-three editions and had been translated into English, Dutch, German, Polish, and Russian – while his *Considerations on the Causes of the Greatness of the Romans and their Decline*, which was first published in 1734, had appeared in sixty-two editions and had been translated into English, Italian, Dutch, Swedish, Polish, Russian, and Greek. Neither of these bore comparison with Montesquieu's *Spirit of Laws*. This last work was in a self-evident way serious, and enormous it was as well. One purchased it expecting instruction and not diversion – diverting though it might be. And yet, from the moment of its release in the Fall of 1748, it sold like hotcakes. By the end of the century, it had been published in one hundred twenty-eight editions, and it had been translated into English, Italian, German, Latin, Danish, Dutch, Polish, and Russian. To this one can add that, in the period stretching from 1748 to 1800, these three books were published together in editions of Montesquieu's complete works no fewer than thirty-six times.

*The Spirit of Laws* was a publishing phenomenon, and it was much, much more. As the eventful second half of the eighteenth century began, Montesquieu's great work became the political Bible of learned men and would-be statesmen everywhere in Europe, and beyond. In Britain, it shaped the thinking of Edmund Burke, Edward Gibbon, William Blackstone, Adam Smith, Adam Ferguson, John Robertson, John Millar, Lord Kames, and Dugald Stewart among others. In Italy, it had a profound effect on Cesare Beccaria, and in Germany, it was fundamental for Georg Wilhelm Friedrich Hegel. In France, it was the starting point for all subsequent political thought. In America, it inspired the Framers of the Constitution to embrace federalism and the separation of powers, and it provided their opponents, the Anti-Federalists, with ammunition as well. Its impact can hardly be overestimated.

**Montesquieu was born on the 18th of January 1689, at a time in which the Glorious Revolution was underway in England, and he came of age in the course of the War of the Spanish Succession, which lasted from 1701 to 1713. He watched from afar with dismay as England's duke of Marlborough repeatedly annihilated the legions of Louis XIV, the Sun King of France: first at the battle of Blenheim on 13 August 1704, when Montesquieu was fifteen; then – in the brief span of years stretching from 1706, when Montesquieu was seventeen, to 1709, when he was twenty – at Ramillies, Oudenarde, Lille, and Malplaquet.**

**Later, in the commonplace book that he labelled *Mes pensées*, Montesquieu would look back on these events and remark,**

**That day at Blenheim, we lost the confidence that we had acquired by thirty years of victories. . . . Whole battalions gave themselves up as prisoners of war; we regretted their being alive, as we would have regretted their deaths.**

**It seemed as if God, who wished to set limits to empires, had given to the French this capacity to acquire, along with this capacity to lose, this fire that nothing resists, along with this despondency that makes one ready to submit to anything (*MP* 1306).**

**In fact, the situation was even more dramatic. Prior to Blenheim, the French had not lost a major battle in 150 years.**

**For members of Montesquieu's generation, for young Frenchmen who had watched in horror as their country's armies suffered defeat after defeat, the War of the Spanish Succession marked a turning point. In the age of Louis XIV, no one in France bothered to learn English – apart from some of those who lived in the port cities on France's Atlantic coast and were involved in the trade with England. In the aftermath of the Sun King's humiliation on the field**

of the sword, all of that changed. Not only did the young Voltaire, born a few years after Montesquieu, journey to England; he learned the language well enough to be able to begin composing works in it; and he was by no means alone. Montesquieu arrived in London not long after Voltaire left, and both soon thereafter published books inspired by what they had learned.

For Voltaire, the subject addressed in his *Philosophical Letters* was a passing fancy. For Montesquieu, however, this subject was a life-long-obsession – even though, or perhaps because, he found, he dared not address this subject in the volume that he began composing in the early 1730s after his return from England (a volume in which his *Considerations on the Romans* was meant to be a prelude to *Reflections on Universal Monarchy in Europe* and to a third work on England, its constitution, and way life).

Montesquieu was the first to recognize that, at the end of the seventeenth century, a profound and arguably permanent transformation had taken place in European politics. He recognized that, when Christianity ruled out the enslavement of conquered Christians and the sale of their land, it not only altered the law of nations (*ius gentium*). Also, by insuring that grandiose imperial projects would bankrupt those pursuing them, it ruled out the establishment of a universal monarchy in Europe on the Roman model. Montesquieu saw as well that, thanks to technological progress, its impact on exploration and transport, and the attendant growth in trade, commerce had replaced war as the force dominant in international relations; that a well-ordered Carthage could now defeat Rome on the field of the sword; and that, in the wake of the Glorious Revolution, Great Britain – with its separation of powers and its policy of religious toleration, its wholehearted devotion to industry and trade, and its empire over the sea – had come to occupy a pre-eminence that no existing continental power could hope to challenge. That

European monarchy – with its hereditary aristocracy, its ethos of honor, its suspicion of trade, and its appetite for conquest, empire, and glory – could not be sustained in an age in which money had become the sinews of war: this he also knew.

Montesquieu wondered, however, whether the species of government that emerged in England in the aftermath of the Glorious Revolution could itself be sustained in the long run, and it was with an eye to this question that he laid out the argument that had so profound an effect upon statesmen in the United States during and in the immediate aftermath of the American Revolutionary War.

England Montesquieu regarded as “a republic concealed under the form of a monarchy” (*EL* (1.5.19, p. 304). If he devoted a great deal of attention to the history of republicanism in his *Considerations on the Romans* and in his *Spirit of Laws*, it was not because he was an antiquarian. Understanding his own times and the place of England within it was his primary motive. First, he thought, we must come to understand the strengths and weaknesses of earlier republics; then, we must ask whether England is in any way different and what are the consequences of the pertinent differences. Above all, Montesquieu was concerned with the question of territorial extent – for he understood that, to be viable, a polity must be able to command resources sufficient to enable it to fend off attack, and he recognized that, in modern Europe, this could be achieved only by polities of considerable size.

Montesquieu was aware that, in ancient Greece, all of the republics were exceedingly small; and – as he makes evident in the first part of his *Spirit of Laws* – he knew perfectly well why this was the case. He was also aware, however, that classical Rome – although it began as a small *civitas* no larger than an ordinary Greek *pólis* – came in time to rule not only Italy, but Spain,



North Africa, the entire Mediterranean basin, and Gaul, and he recognized that, in the process of doing so, its citizen body became larger and larger and larger until the Roman *respublica* bore hardly any resemblance to a Greek *pólis*.

Republican Rome's expansion, its aggrandizement, its achievement of grandeur is the subject of the first half of his *Considerations on the Romans*, and the main point that Montesquieu seeks to drive home by way of his narrative is that Rome's expansion destroyed the republic. It did so, he makes clear, in the way that the Greeks had in mind when they refused to do what the Romans would later do – naturalize freedmen and other foreigners. In other words, it paved the way for its own ruin by eliminating the cohesion of the citizen body, by destroying its solidarity, by making it impossible for it to elicit from the citizens public-spiritedness and civic virtue, as it once had done, through a civic *paideía*. But it also laid itself low in another fashion – for Rome's expansion required it to confer arbitrary power for extended periods on magistrates called proconsuls who were sent out with legions of soldiers to govern its provinces, suppress rebellions, and defend the borders of the empire, and these proconsuls, leading long-service armies increasingly made up of propertyless soldiers who were only notionally citizens, proved republican Rome's undoing. Rome was, in sum, the exception that proved the rule. It put the strictures laid down by the Greeks to the test, and eventually – as the Greeks predicted would happen – the republic collapsed.

Montesquieu returned to this question in his *Spirit of Laws*. This work is a gigantic book, and it is difficult to know which elements within it are the most salient. There is, however, one passage in which Montesquieu tells us outright that what he is about to say is fundamental to everything else that he says. "I," he writes near the end of the first of the work's six parts, "shall be able to be

understood only when the next four chapters have been read” (1.8.15). Then, in those four chapters, he argues that forms of government are closely related to the size of the territory that must be governed. Republics are well-suited to territories small in extent; monarchies, to territories of intermediate size; and despotisms to territories great in size (1.8.16-19).

“It is in the nature of a republic,” Montesquieu writes, “to possess only a small territory.” In a large, republic, “interests become particular; a man senses then that he can be happy, great, glorious without his fatherland; & soon that he can be great solely on the ruins of his fatherland.” One consequence of such a republic’s size is that “the common good is sacrificed to a thousand considerations; it is subordinated to the exceptions; it depends on accidents.” The situation “in a small” republic is more favorable: there, “the public good is more fully felt, better known, closer to each citizen; the abuses are less extensive there & as a consequence less well protected” (1.8.16).

By way of contrast, Montesquieu adds, “A large empire presupposes a despotic authority in the one who governs.” One cannot deny that “promptness in decision-making is required to compensate for the distance of the places to which orders are sent”; that “fear is required to prevent negligence on the part of the governor or magistrate operating at a great distance”; that, in such circumstances, “law must be lodged in a single head” and that “it must change unceasingly,” for “accidents” really do “multiply in a state in proportion to its magnitude”(1.8.19). This, he does not have to say, was the experience of Rome.

The pertinence of these claims to the situation of the Founding Fathers should be obvious. Especially in modern times, Montesquieu’s stance would appear to mean that republicanism can only be viable in mountainous places such as Switzerland, where the geography virtually rules out the establishment of anything but a tiny states. It is, then, in no way surprising that the debate

between the Federalists and the Anti-Federalists turned to a considerable extent upon the question whether it is somehow possible to establish a viable republic on an extended territory.

The Anti-Federalists tended to cite the chapter in *The Spirit of Laws* asserting that republics must be small (1.8.16). The Federalists made two points in response. First, they argued that the individual states – apart, perhaps, from Rhode Island – were by this standard too large to be republics. And, second, they pointed to the first chapter of the second part of *The Spirit of Laws* (2.9.1), in which, after hinting at the changes effected in Europe’s *ius gentium* by Christianity, Montesquieu observed that, in a world dominated by monarchies of intermediate size and despotisms exceedingly large in extent, small republics might be able to provide for their own defense and make themselves thereby viable if they joined together in federations of polities similar in character. It was Montesquieu that Alexander Hamilton, James Madison, and other Americans first studied when they contemplated the American dilemma.

Federalism was not, however, the only contribution that Montesquieu made to sorting out the problem posed by the establishment of a republic on an extended territory. In *The Spirit of Laws*, Montesquieu devoted two of the longest chapters to the “republic concealed under the form of a monarchy” known as England (2.11.6, 3.19.27), outlining the nature of its constitution and exploring the fashion in which it shaped the mores, manners, and national character of the English. These two chapters are rich in analysis and detail. In one, Montesquieu even drew attention to the fact that England passed on to those in its colonies “the form of its government,” which would bring with it “prosperity,” and there, in a passage that thrilled the American colonists, he predicted “the formation of great peoples, even in the forests to which”

England has dispatched “its inhabitants” (3.19.27, p. ???). But never – in any passage – did Montesquieu say a word regarding the extent of territory to which the English form of government is suited.

Montesquieu’s silence in this regard can hardly be due to an oversight on his part – for he earlier made it clear that this issue is paramount, and, in *The Spirit of Laws*, if not elsewhere as well, it was one of his principles as a writer that “silence sometimes expresses more than any discourse” (2.12.12).

Moreover, at the very end of the book in which he discussed the constitution of England, he wrote, “it is not necessary always to so exhaust a subject that one leaves nothing for the reader to do. The task is not to make him read but to make him think” (2.11.20). The inference that we should draw from Montesquieu’s silence on this particular occasion, and the inference which the Founding Fathers tacitly drew, was that a republic on the English model – equipped with a well-designed separation of its legislative, executive, and judicial powers – can be established in a territory of very considerable extent, as was, in fact, the case with England itself.

The English model, at least as imagined by Montesquieu, had these advantages. It had a unitary executive – vigorous, decisive, and equal to emergencies – and, thanks to the principle of representation, the distinction between executive and legislative functions, and the separation between those two powers, that executive could be held accountable for the damage that he did and for his achievements in meeting such emergencies. Montesquieu was ostentatiously silent regarding the virtue possessed by England’s citizens and those who held office under its constitution, but he made it clear that this separation of powers was reinforced by a system of balances and checks designed to keep officeholders in line. And when asked by an admirer of Bolingbroke whether England would succumb to corruption, he alluded to the

role played within English political life by the ethos of political distrust, by popular *jealousy*, and political wariness.

Montesquieu's modern, commercial republic disguised as a monarchy possessed many of the qualities he associated with the monarchies on the continent. It was "a masterpiece of legislation," a product of chance and prudent artifice. Indeed, one could say of it what he says of monarchy: that, in it, "policy makes great things happen with as little of virtue as it can" and that, "just as in the most beautiful machines, art also employs as little of movement, of forces, of wheels as is possible. The state subsists independently of love of the fatherland, of desire for true glory, of self-renunciation, of the sacrifice of one's dearest interests, & of all those heroic virtues which we find in the ancients & know only from hearing them spoken of." The Americans of the revolutionary epoch paid these passages special heed.

#### The American Solution

Of course, the Americans hedged their bets by embracing both of Montesquieu's principles and by adapting them to the circumstances in which they lived. They established a federation, made up of comparatively small but not radically small republics, but they adjusted the federal principle, producing a government, partly federal and partly national, equipped with a senate elected by the state legislatures and a house of representatives chosen directly by the citizens. They did this, *and* they adopted a separation of powers both within the federal government and within the state governments, compensating for the absence of juridically defined orders with a system specifying that the various officeholders serve for terms of different length, and seeing to it that they represented divers constituencies. By embracing both of Montesquieu's principles, the Americans fortified themselves against the prospect that the sheer size of the territory encompassed by the United States

**of America would occasion frequent emergencies which would eventuate in a massive concentration of power in the central government and a massive expansion of the executive power.**

**This they did, and, of course, they did more. In the tenth number of *The Federalist*, as scholars have repeatedly pointed out, James Madison turned Montesquieu's argument on its head, pointing to the fact that small republics that attempted to instill virtue in the citizens by giving them "the same opinions, the same passions, and the same interests" were often subject to faction, and suggesting that religious and economic diversity on the scale likely in a polity established on an extended territory could actually serve to make it less prone to faction by reducing the likelihood that a majority faction would form. If you think that small republics are viable, just look at Rhode Island, the Federalists warned.**

**in the 1790s, however, after the American republic was established, some of those quite deeply involved in the Founding came to have misgivings. It was in response to the legislative program proposed by George Washington's Secretary of the Treasury Alexander Hamilton that James Madison began thinking about the prospect we now face - "a consolidation of the States into one government" - and the dire consequences that might be attendant on such an eventuality. First, he argued, the "incompetency of one Legislature to regulate all the various objects belonging to the local governments, would evidently force a transfer of many of" those objects "to the executive department." Then, he contended that, if the state and local governments were made subject to the federal government, the sheer size of the country "would prevent that control" on the federal Congress, "which is essential to a faithful discharge of its trust, [since] neither the voice nor the sense of ten or twenty millions of people, spread through so many latitudes as are comprehended**

within the United States, could ever be combined or called into effect, if deprived of those local organs, through which both can now be conveyed.” In such circumstances, Madison warned, “the impossibility of acting together, might be succeeded by the inefficacy of partial expressions of the public mind, and this at length, by a universal silence and insensibility, leaving the whole government to that *self directed course*, which, it must be owned, is the natural propensity of every government.”

In short, Madison revisited Montesquieu’s argument concerning republics and the extent of territory suitable to them. And, at a time when the territory was much smaller than it is now, and the population was not even one-fifteenth of what it is now, he began to worry that the extent of territory encompassed by the United States and the size of its population might be too great. He was, moreover, virtually certain that, if the federal government were allowed to encroach on the prerogatives of the states and the localities. as he believed Hamilton intended, despotism of one sort or another would be the result.

Tocqueville shared these concerns, and he worried that, in the absence of vigorous local government as a training ground for civic agency, the *inquiétude*, the sense of uneasiness natural to liberal democratic man, would turn into an abject, desperate search for security that would transform citizens into subjects and self-reliant women and men into wards of the administrative state. That, I submit, is what we see today. To an ever-increasing degree, our compatriots are subject to what Tocqueville described as “an immense, tutelary power, which takes sole charge of assuring their enjoyment and of watching over their fate” As he predicted, this power is “absolute, attentive to detail, regular, provident, and gentle,” and it “works willingly for their happiness, but it wishes to be the only agent and the sole arbiter of that happiness. It provides for their security, foresees and supplies



their needs, guides them in their principal affairs, directs their industry, regulates their testaments, divides their inheritances.” It is entirely proper to ask, as he asked, whether it can “relieve them entirely of the trouble of thinking and of the effort associated with living.” For such is evidently its aim.

Moreover, “after having taken each individual in this fashion by turns into its powerful hands, and after having kneaded him in accord with its desires, the sovereign

extends its arms about the society as a whole; it covers its surface with a network of petty regulations – complicated, minute, and uniform – through which even the most original minds and the most vigorous souls know not how to make their way past the crowd and emerge into the light of day. It does not break wills; it softens them, bends them, and directs them; rarely does it force one to act, but it constantly opposes itself to one’s acting on one’s own; it does not destroy; it prevents things from being born; it does not tyrannize, it gets in the way, it curtails, it enervates, it extinguishes, it stupefies, and finally it reduces each nation to nothing more than a herd of timid and industrious animals, of which the government is the shepherd.

Tocqueville coined a new phrase to describe this form of government. He called it *soft despotism*. The new and unprecedented “species of servitude” that Tocqueville had in mind was, as he later observed, “regulated, gentle or soft, and favorable to peace,” and he suspected that it could be “combined more easily” than men were inclined to imagine “with some of the external forms of liberty.” He even suggests “that it would be possible for it to be established in the very shadow of the sovereignty of the people.” In this fashion – with the institution of a “unitary, tutelary, all-powerful” government “elected by the citizens” at regular intervals – one might actually satisfy the two contradictory



**impulses found among his contemporaries: the felt “need for guidance, and the longing to remain free.”**

**What this would involve, Tocqueville explains, is a “species of compromise between administrative despotism and the sovereignty of the people,” a corrupt bargain between the ghost of Jean-Jacques Rousseau and that of his erstwhile admirer Anne-Robert-Jacques Turgot, in which the political doctrine of the former is deployed rhetorically for the purpose of legitimizing a law-abiding, steady, reliable despotism on the model of pre-modern China – of the very sort that was espoused in full knowledge of what they were embracing by Turgot’s mentors among the Physiocrats. Under such an arrangement, Tocqueville remarked, pointedly paraphrasing what Rousseau had once said of the English, “the citizens emerge for a moment from dependence for the purpose of indicating their masters and then re-enter,” without further ado, “their former state. They console themselves for being in tutelage with the thought that they have chosen the tutors themselves,” and “they think that they have sufficiently guaranteed the liberty of the individual when they have delivered it to the national power.”**