

“Securing the State:” James Madison, Federal Emergency Powers, and the Rise of the Liberal State in Post-Revolutionary America¹

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Abstract:

Placing the creation of emergency powers for the internal security of the state at the heart of the framing and adoption of the Federal Constitution, this essay offers a new perspective on the rise of the American liberal state. In the period following the end of the Revolution, domestic insurrections raised serious problems for the new state and federal governments, placing questions of internal security at the center of public authority. I argue that overcoming the difficulties posed by popular rebellion required James Madison and other American statecrafters to deal with a specific problem of statebuilding, one that scholars have largely ignored. Confronting the rebels meant building new federal emergency powers as well as reconciling the expansion of federal power with the ideological traditions of the new republic. These were critical matters in the constitutional deliberations of 1787-1788. I make the case that Madison and his Federalists allies devised a set of solutions to the problem of federal power that the insurrections of the 1780s had posed. Constitutionally, Madison developed a system that made the federal government responsible for suppressing rebellions and granted it wide-ranging authority to act in times of crisis. Institutionally, the Federalists granted the federal government unqualified power to recruit and maintain armies as well as an expansive power to tax and borrow money to pay for them as a way of asserting this new authority. Most important was James Madison's effort to rationalize and justify the new emergency powers. The new provisions ran up against a powerful ideological barrier. They posed serious problems for a republican principle holding that both political legitimacy (or right) and armed force (or might) resided with the people themselves. According to this principle, the might of the people—not the federal government—should

underpin internal security in the republic. Thus, I argue that James Madison engineered an ideological transformation into the nature of republican government—until now inadequately recognized by scholars—to legitimize the new federal security power. Realizing the limits of the classical republican tradition for issues of internal security, Madison carved out a sphere for federal emergency power by dismantling and setting aside the republican principle of right and might, which was grounded in the people themselves. He replaced it with the fundamental tenets of constitutional liberalism, which underscored the primacy of constitutional government, the rule of law, and protection of rights. Granting the federal government emergency powers was, then, intimately connected with the rise of the liberal state in post-revolutionary America.

On February 19, 1787 at a session of the Confederation Congress, James Madison rose to reflect on the federal government's failed attempts to mobilize an armed force to quell the Massachusetts regulation of 1786-1787, commonly known as Shays' Rebellion.² The rebellion first broke out in August and wreaked havoc throughout central and western Massachusetts and neighboring states the following winter. After a series of frustrated attempts to muster the militia and raise an army to repress the "traitorous proceedings" in the fall of 1786, Secretary of War Henry Knox and the Massachusetts authorities, led by the old revolutionaries James Bowdoin and Samuel Adams, decided to invite the central government to claim new powers over domestic rebellion and forcibly put an end to the tumults. But while the central government embraced the idea of a new power, it turned out that Congress was even more powerless to act than the state government and could only observe as the rebellion raged throughout Massachusetts. According to Madison's analysis, the problem of federal power boiled down to constitutional, institutional, and ideological factors. First, "it appeared rather difficult to reconcile an interference of Congress in the internal controversies of a State with the tenor of the Confederation which does not authorize it explicitly, and leaves to the States all powers not expressly delegated." Second, Congress did not possess the fiscal or military capacity to act. It did not control a body of soldiers to deploy and its attempts to request money from its constitutive states to raise a new army were met with indifference. Finally, federal imposition did not accord with republican ideology. It violated

“the principles of Republican Gov.,” noted Madison, which as they rest on the sense of the majority, necessarily suppose power and right always to be on the same side.”³

Madison’s analysis captures well the problem that popular rebellion posed for the nascent United States. The revolutionary war with the British Empire had come to an end, but the formation of an independent American republic generated new tensions and conflicts. Internal challenges to the authority of the new state and federal governments continued, and, in some cases, intensified.⁴ The US had not subdued Native American power.⁵ New domestic insurrections—of farmers, urban laborers, frontier settlers, and slaves—were erupting in multiple locations and threatening state security.⁶ Overcoming these internal conflicts required James Madison and other American statemakers not simply to find ways of giving the federal government special emergency powers but also to make such expansion of federal power consonant with the political ideals of the new republic. Both the enlargement of federal power and its justification were urgent matters in the constitutional deliberations of 1787-1788. In its general contours, this is an argument that has been made before. But scholars of the founding moment have generally not understood the degree to which domestic insurrections both fueled the creation of special federal emergency powers and triggered an important ideological transformation in how Americans thought about their government. This essay is particularly concerned with the latter. It will offer a new perspective on how the framing of the Constitution was part of the story of the rise of constitutional liberalism. Madison, not surprisingly, was at the center of this story.

Scholarship of the early United States generally privileges individual

liberty over state coercion. A distinguished tradition for downplaying the role of government stretches from Louis Hartz and Oscar Handlin, via Bernard Bailyn and Gordon Wood, and through the new social and cultural histories.⁷ Scholarly dismissal of state power owes much to prevailing interpretations of the framing and adoption of Federal Constitution, and particularly the thought of James Madison thereon. The story most frequently told centers on the institutional make-up, or structure, of government itself and highlights liberal restraints and limitations on the exercise of state power such as checks and balances, limited government, the separation of powers, size of the political sphere, and protection of individual rights. Chiefly concerned with the anxiety of Madison and other framers about abuses of legislative power in state and federal governments—problems well illustrated in Federalist papers 10 and 51—scholars have been mostly silent on issues of emergency and internal security.⁸ And, in more general terms, they consistently regard liberal principles simply as antithetical to state power; liberalism is a vehicle for its restraint and limitation. An older literature that considered aspects of early U.S security legislation—most notably the laws of treason—similarly subscribed to the story of increasing constitutional constraints and protection of rights, and saw security provisions as deeply in tension with liberal principles.⁹ New scholarship on the politics of slavery, of course, highlights the importance of security considerations in framing the Constitution but generally confines its exploration to the Founders' anxieties about the possibility of slave rebellions.¹⁰

More recently, new social historians, concentrating on popular agency, have demonstrated that insurgency and rebellion were an integral part of post-revolutionary and early national history. While they have made an invaluable

contribution to our understanding of popular movements and their impact on political change from below, they have had little new to say about state reaction from above. On the one hand, they argue that popular uprisings did not constitute so much a threat to the security and preservation of the federal state as an expression of grievances about the internal arrangements and democratic character of governments in the new republic.¹¹ Insurrection was one way for the people to take back unresponsive governments from the aristocratic elite and make them an instrument of popular sovereignty. On the other, these scholars make the case that elites regarded insurrections as evidence of an excess of democracy and sought to tame it through a Federal Constitution that moved power away from state governments and placed it in a federal government susceptible to elite control through filters on representation, resizing electoral districts, and implementing checks and balances and other limitations on state power.¹² Similarly, a growing scholarly literature on the early American state has itself neglected questions of internal security. These scholars have greatly advanced our understanding of the significance of government in early U.S. history, and this essay owes much to their insights.¹³ Yet, despite a fairly recent burst of interest in the works of Carl Schmitt and Giorgio Agamben and other theorists of emergency powers and “states of exception,” students of state and federal governance in the late eighteenth and early nineteenth centuries, have tended to overlook these issues.¹⁴

This essay tells a different story. Focusing on the framing of emergency powers into the Federal Constitution, I put forward a new argument about the origins of constitutional liberalism and the American liberal state, which it prospectively created. At the center of this story was James Madison’s effort to

rationalize the new emergency powers and reconcile them with the ideological principles of the new republic. Madison's thinking on these issues has hitherto eluded scholars, who usually focus on his concern with legislative tyranny, filtering representation and extending the republic in Federalist 10. Yet, as Madison and his Federalist collaborators sought to endow the federal government with internal security powers, they soon realized that their efforts were imperiled by a republican principle holding that not only political legitimacy (or right) but also armed force (or might) should reside with the people themselves. According to this principle, the coercive force of the people—not the federal government—should underpin and preserve the internal security of the republic. I contend that Madison orchestrated an ideological transformation to overcome these republican objections and expand federal power to issues of internal security. He carved out a sphere for new federal powers by dismantling the republican principle of right and might, which was grounded in the body of the people, and introducing novel elements from constitutional liberalism, which underscored the primacy of constitutional government, the rule of law, and protection of rights.¹⁵ Granting the federal government new emergency powers was in this case not inconsistent with, or restrained by, liberal principles. Rather their creation was intimately connected with the rise of the liberal state in post-revolutionary America.

This essay divides the analysis of federal security powers into four parts. The first section demonstrates that, in the wake of the Revolution, popular rebellion emerged as a new problem of governance and placed questions of internal security at the center of public authority. The second part reconstructs how Madison looked to the experience of ancient and modern confederacies to

find a way to insert special emergency powers into the federal constitutional blueprint. The third section illustrates how constitutional provisions granting the federal government virtually unlimited power to recruit and maintain armies, as well as expansive powers to tax and borrow money to pay for them, created the institutional capacity to assert this new authority. The final part shows that the insertion of new powers to suppress the internal resistance of the citizenry compelled Madison to engineer an ideological transformation that marked the demise of republicanism and the beginning of constitutional liberalism.

I. Puzzling: The Problem of Rebellion

Madison and his Federalist collaborators did not react immediately to domestic insurrections by creating federal emergency powers, for statebuilders must often “puzzle before they power.”¹⁶ As the colonists declared independence and formed new states, popular rebellion was transformed into a new governmental task. There emerged a new political determination to put down insurgencies, as well as a new conceptual framework to analyze the problem they posed.

Previously, the insurrections of ordinary white men had not been perceived as a challenge to the security of governments. On the contrary, colonial elites often tolerated them as a quasi-legitimate element of the social order. In the decade leading up to the Revolution, popular uprisings were, in fact, encouraged. As Pauline Maier has argued, they were viewed as a defensible way to bring attention to grievances once legal channels had been exhausted.¹⁷

But the formation of an independent federal state in America gave rise to new tensions and conflicts. The revolutionary elite realized that the protection of

feeble American sovereignty not only depended on overthrowing the British Empire but also on establishing control, domestically, over the ex-colonial population and guarding against internal threats.¹⁸ An end to internal disorder did not follow the cessation of war after the 1783 treaty in Paris. The sovereignty of the states, individually and united, was soon recognized, internationally, by the powers of Europe.¹⁹ Yet, domestically, the authority of the law was still fiercely contested. As an impressive body of scholarship has demonstrated, the states did not command loyalty, and, in the face of multiple episodes of insurgency, their ability to uphold sovereignty and territorial integrity was uncertain.²⁰ Throughout the 1780s, insurgents defied authority in the fields, backcountries, and streets of Virginia, Massachusetts, New York, New Hampshire and North Carolina, as well as on the trans-Appalachian frontier. Vermont proved successful in wresting sovereignty from New York and establishing itself as an independent state outside of the Union. Western Massachusetts was in a permanent state of civil war and in northeastern parts of the Massachusetts managed to secede, creating the new state of Maine.²¹ Connecticut Yankees in the Wyoming Valley, as well as settlers on the western frontier of Pennsylvania, who later became the so-called Whiskey rebels, successfully deflected the state's authority. Insurgents in Delaware and the eastern counties of Maryland moved to form their own state. On the western frontier of Virginia, Kentucky and Washington and Franklin counties continued to challenge control and authority. The proliferation of such revolts—ranging from frontier independence movements and settler-native conflict to farmers' tax resistance and politics-in-the-streets and to the possibility of slave insurrection—made issues of domestic order and state security paramount in the minds of the revolutionary elite. As a

North Carolina congressional delegate remarked, “the spirit” of insurrection was “epidemic.”²²

No single episode of domestic insurrection illuminates the post-revolutionary reconfiguration of the new governmental problem better than Shays’ Rebellion.²³ The rebellion—an armed uprising in the western counties of Massachusetts—erupted in August 1786 and created chaos throughout the following winter until a quasi-private army funded directly by the mercantile elite in Boston suppressed it.²⁴ Prompted by heavy debts, mounting taxation, and shortage of hard currency, farmers and townspeople west of Worcester County, up to 1,500 strong, resorted to closing courts by force, prevented the execution of laws, and threatened to seize the federal armory at Springfield. The reaction of the Massachusetts government exemplifies the reconfiguration of elite perspective towards popular insurgency. Throughout the winter, the government’s position emerged through a series of proclamations and announcements, circular letters in newspapers, secret reports to Congress, and public reports to the people of Massachusetts. Three key figures—Samuel Adams, Governor James Bowdoin and Secretary of War Henry Knox—played a leading role in forming elite perceptions of the rebellion. Taken together, their written and spoken record created a representation of the rebellion as a treasonable threat to the “safety and well-being of the Commonwealth.”²⁵

Prior to the Revolution, established authorities often submitted to various kinds of popular pressure expressed outside of constitutional channels. But rather than redressing grievances—or seriously considering insurgents’ demands—the Massachusetts General Court passed a riot act; suspended habeas corpus; authorized preventive arrests by state warrant; and tried to raise an

army to subdue forcibly the rebels.²⁶ Governor Bowdoin issued, on September 2, 1786, a proclamation against the initial court closings denouncing the insurgents and their actions as “treasonable” and aiming to “subvert all law and government, dissolve our excellent Constitution, and introduce universal riot, anarchy, and confusion.”²⁷ This statement was followed by a series of General Court and Governor proclamations, reiterating this view. “The purpose of the Insurgents is to annihilate our present happy Constitution.”²⁸ Shortly after Bowdoin's initial announcement, Samuel Adams, a member of the Massachusetts General Court and one of Bowdoin's closest advisors, wrote a circular letter on behalf of a Boston town meeting that he himself had convened and moderated. The letter, which was published in the *Massachusetts Centinel* newspaper, denounced the insurgents as threatening the survival of the Massachusetts and the Union.²⁹ As Massachusetts Governor James Bowdoin frequently emphasized, “strict obedience to the laws ... is so essential to the peace and safety of the Commonwealth.”³⁰

The Massachusetts authorities' reaction to Shays' Rebellion suggests that republican ideology underlay the new problem of rebellion. The authorities argued that republican principles of popular government and majority rule rendered popular insurrection illegitimate and treasonous. According to this line of reasoning, popular insurgency was the natural concomitant of monarchical governments and unnatural to republican ones. Few captured this position as well as Samuel Adams. Insurgency had “servd an excellent Purpose” against the British, when the colonists had been “taxed by Great Britain unconstitutionally and illegally.”³¹ No one had to “regret the Share he may then have had in them.”³² But now, after the Revolution, Americans were “subjected to no laws, but such as

are made by a Legislature of our own election,” and governed by a government of their “own consent, taxed by our own representatives only, and controlled by no authority but what is derived from ourselves.”³³ As Americans now had “constitutional and regular Governments and all our Men in Authority depend upon the annual and free Elections of the People,” insurgency had “become dangerous.” For the redress of grievances it was “happy for us, that under our American Constitutions the Remedy is at hand, and in the Power of the great Body of the People ... due Circumspection and Wisdom at the next Elections will set all right, without the aid” of insurgency.³⁴ Each act of the state was “constitutionally an act of the people” and “Constitutions provide a safe and easy method to redress any real grievances.”³⁵ As a result, Samuel Adams argued that, “in monarchies, the crime of treason and rebellion may admit of being pardoned or lightly punished; but the man who dares to rebel against the laws of a republic ought to suffer death.”³⁶

As the popular aspects of the new American governments were central to the newfound policy of suppressing rebellions, it became imperative to produce an identity between the will of the majority of the people and the state. Insisting that their government was the true expression of the people’s will—and the insurgents only a disgruntled minority—the Massachusetts authorities went to considerable lengths to maintain the identity between state and people throughout the conflict. Expressing its outrage at the insurgents’ claim to represent the people’s legitimate grievances, the General Court announced that “some persons have artfully affected to make a distinction between the government and people, as though their interests were different and even opposite.” To counter the endeavors of the “evil and designing” rebels to

“alienate the affections of the people in general, from those who are concerned in the administration of government,” the Court wrote and distributed a 40-page report.³⁷ Similarly, the authorities wrote letters to be circulated in towns and counties. General Lincoln presented one such letter to the inhabitants of Northampton, in which he insisted that they had little in common with the “regulating party” over their own government.³⁸ The government reasoned that it needed to raise a much larger army—a force of “decided superiority”—for the purpose of “convincing the insurgents that they are not the people, as they affect to call themselves.”³⁹

The Massachusetts authorities argued that the disturbances stemmed from the failure of the insurgents themselves rather than oppressive government. In the 1760s and 1770s, the colonists had been provoked to rebel by an oppressive government, but now the peoples’ character flaws caused the rebellion. The General Court’s report was largely written to turn the tables and convince the public that the rebellion was not the fault of the state but of the insurgents themselves. It exonerated the government of accusations that public maladministration was the source of the rebellion. The government had not failed administratively or politically. The causes of the disturbances lay with the people’s “habits of luxury.” The authorities, thus, turned the concept of dangerous “luxury” against the distraught farmers, claiming that they had spent beyond their means and incurred debts.⁴⁰ It was a corollary to the claim that the fault lay with the insurgents, not the government, that the remedy should be sought in the latter’s reformation and punishment. In the place of redressing grievances—the modus operandi of the pre-revolutionary tradition—the appropriate solution now consisted in a “reformation of manners.” The

insurgents had to learn practices and “principles of industry, sobriety, [and] economy.”⁴¹ Adams recommended “industry and frugality.”⁴² But above all, the new perception of insurrection dictated that the most “vigorous and decisive measures” be taken to “provide for the security of the State.”⁴³ “Vigour, decision, and energy” would “terminate this unnatural, this unprovoked insurrection.”⁴⁴ The Massachusetts authorities sought to quell and suppress the rebellion by armed force.

Not only does the Massachusetts regulation illuminate the reconfiguration of elite attitudes towards popular insurrections. More profoundly, it exposes the problem these revolts posed to the new state and federal governments: the governments did not possess the power to shut them down. After the initial court closings in Worcester, Bowdoin and his advisers instructed local state officials to summon the militia to defend the courts. Generally in favor of the insurgents’ measures, the militia refused to muster, either by “flat denial” or “evasion or delay.”⁴⁵ The loyal militia members who actually came forth did not constitute a sufficient force to check the regulators in Worcester and Springfield in September. Similarly, the General Court found that it did not possess the funds to raise an army to meet the rebels.⁴⁶

In early October the Massachusetts government, thus, sought from Secretary of War Henry Knox the direct intervention of Confederation troops.⁴⁷ But involving the Confederation government in the domestic affairs of the state created formidable constitutional, ideological, and administrative problems. It was unclear whether Congress had the constitutional authority to act. As James Madison pointed out, the Articles of Confederation were “silent” on domestic rebellion and “the hands of the federal authority” were tied.⁴⁸ It was “difficult to

reconcile an interference of Congress in the internal controversies of a State with the tenor of the Confederation which does not authorize it expressly, and leaves to the States all powers not expressly delegated.”⁴⁹ Madison knew the Articles well; they gave the Confederation government no authority over domestic insurrection.

After meeting with Bowdoin and Adams in Boston, Secretary of War Knox told Congress that an “armed tyranny” would be “established on the ruins of the present constitution ... unless the present commotions are checked with a strong hand.” Knox went on to recommend that up to 800 troops be raised and sent to Massachusetts to guard the federal arsenal at Springfield.⁵⁰ After reviewing the report, Congress decided to raise over 1,300 troops. To circumvent the lack of constitutional authority, it suggested that the troops be raised under the pretext of quelling an Indian uprising on the frontier, and conveniently march them through Massachusetts en route. The committee’s report made no reference whatever to the settler rebellion.⁵¹ In a secret congressional report, presented the following day, Congress stated that it was absolutely necessary that the central government put down the insurrection. “The aid of the federal government,” or a “body of troops ... immediately raised under the authority of the United States,” was simply “necessary to stop the progress of the insurgents.” If not, they would not only “subvert the government, and not only reduce that commonwealth [Massachusetts] to a state of anarchy and confusion, but probably involve the United States in the calamities of a civil war.”⁵² The report further indicated that the insurrection should not be mentioned as a reason for sending troops. “The enlargement of the military force,” Madison observed in Congress, was “masked ... with an ostensible preparation against the Indians.”⁵³

Even if Congress could circumvent constitutional restrictions on action by raising a force under the pretext of Indian hostilities, Congress's efforts were ultimately frustrated by ideological and administrative shortcomings. As Madison pointed out, federal intervention seemed to contradict core principles of republican government. Similarly, Congress was unable to mobilize or raise the troops to suppress the rebels. Under the Articles, Congress had no independent fiscal powers of taxation and its attempts to request money from the states to raise a new army failed.⁵⁴ Without the requisitions, Congress dared not put "arms into the hands of men whose fidelity must in some degree depend on the faithful payment of their wages."⁵⁵ Congress could not preserve domestic order.

II. Powering: Granting Authority

The proliferation of a wide variety of internal revolts in the wake of American independence made issues of domestic security and order paramount in the minds of the framers. Yet, as the example of Shays' Rebellion illustrates, the federal government could not act against these insurrections and uphold public authority with the powers given to it by the Confederation. "The U.S. ought to be able to aid the government of particular states in distresses like these" but was without the authority, legitimacy and capacity to do so. In fact, the federal government could scarcely "maintain itself."⁵⁶ James Wilson, who attended the Constitutional Convention as well as the Pennsylvania Ratification Convention, also "lamented that the authority of Congress did not extend to extinguish, entirely, the spark which has kindled a dangerous flame" in other parts of the Union and from sources other than agrarian tax revolts.⁵⁷

In the mid-1780s, the Federalist elite began discussing the need to build a new central power to overcome the internal disorders besetting the new nation and defeat domestic insurgency.⁵⁸ In November 1786, George Washington suggested to James Madison that no “stronger evidence can be given of the want of energy in our government than these disorders” and a “power to check them” was essential.⁵⁹ Madison agreed that the Massachusetts regulation had “furnish[ed] new proofs of the necessity of such a vigour in the General Government as will be able to restore health to any diseased part of the federal body.”⁶⁰ Similarly, Stephen Higginson wrote to Henry Knox that “the insurrection in this State [Massachusetts]” provided strong arguments for “an efficient Government for the Union” with “force enough” to suppress popular rebellions.⁶¹ According to Virginia’s governor Edmund Randolph, the Confederation was deficient because “the Federal government could not check ... a rebellion in any [state] not having constitutional power nor means to interpose according to exigency.”⁶² No “laws in the confederation authorize[d] Congress to intrude troops into a State” and could not “preserve the States against sedition.”⁶³ It was widely deemed necessary to create a power “to support the sovereignty and preserve the peace of the Union ... against domestic insurrections” of all sorts.⁶⁴ To “bring about such an amendment of the federal Constitution” nationally minded elites looked to the constitutional convention that was to be held in Philadelphia in the spring of 1787.⁶⁵ It was the “most favourable circumstances” for “prudent and sagacious men ... to establish a more permanent and vigorous government” to put an end to unruly politics.⁶⁶

If the Federalists agreed that the central government should be endowed with power over domestic insurrection, they did not yet possess a constitutional

blueprint for the construction of emergency powers. Between February and April 1787, a leading Virginian, James Madison, designed one. Madison was well aware of the problems Congress had encountered.⁶⁷ His writings suggest that he wanted clear constitutional authority to govern domestic violence. As he wrote to Edmund Randolph, “an article ought to be inserted [in the constitution] expressly guaranteeing the tranquility of the states against internal as well as external danger.”⁶⁸ Randolph agreed, arguing that the new constitution had to provide “a firm resort against domestic commotion”⁶⁹ and “secure against sedition.”⁷⁰

After a few months of reflection, Madison produced two memoranda analyzing the political problems that plagued the United States. These texts are famous, but the state security sections they contain are seldom scrutinized. In “Vices of the Political System of the U.S.,” Madison designated as the sixth “vice” a want of federal power to “guaranty to the states their Constitutions and laws against internal violence.”⁷¹ In “Notes on Ancient and Modern Confederacies,” Madison reviewed how previous confederacies had dealt with the problem of domestic insurrection. He was most impressed with the history of Switzerland. “Among the Swiss cantons,” Madison noted “it is an essential object ... to preserve interior tranquility by the reciprocal protection of the form of Governmt established in each Canton, so that each is armed with the force of the whole Corps for the suppression of rebellions and Revolts.”⁷² The history of the Swiss confederation “informs us that mutual aid is frequently claimed and afforded.”⁷³ Similarly, Madison recorded that, for Montesquieu, a key advantage of “confederate republics” was that “should popular insurrection happen in one of the States, the others are able to quell it.”⁷⁴

Madison's central proposition was to make the federal government responsible for "supporting the sovereignty and preserving the peace of the Union." Drawing on the example of the Swiss confederacy and Montesquieu's analysis, the proposal granted the central government the constitutional authority to collect the whole civil and military resources of the entire Union and direct it to "maintain the just authority of the laws against those violent invasions of them which amount to insurrections and rebellions."⁷⁵ Madison was intent on creating a power against domestic insurrection as expansive and forceful as possible. It would provide as much "safety" to "constitutional authority" as was not only within the "compass of human probability" but also as within the "compass of human remedies." If any constitutional system could provide "a cure" for domestic calamities of this sort, argued Madison, it was the new federal constitution.⁷⁶

Madison's formulation was set forth in the so-called Virginia plan, which Randolph presented to the Constitutional Convention in the spring of 1787. According to the proposal, responsibility for domestic insurrection had become a major object of the federal government. For Randolph, "the objects of the Union" were "to secure [the Union and individual states] 1. Against foreign invasions: 2. against dissensions between members of the Union or in particular states."⁷⁷ Similarly, Roger Sherman, one of the plan's strongest opponents, defined "the objects of the Union" as "1. Defence agst. foreign danger. 2. agst internal disputes and a resort to force."⁷⁸ The so-called Pinckney plan drew fierce criticism because it did not make provisions for new federal powers to confront domestic violence. Randolph charged that the plan made "no provision agt.internal insurrection" or "for crushing rebellion whenever it may rear its crest" and did

not solve the problem of “the rebellion of Massachusetts.”⁷⁹ As he explained, “when the salvation of the Republic was at stake, it would be treason to our trust not to propose what we found necessary.”⁸⁰ Madison similarly denounced the Pinckney plan for not “securing the internal tranquility of the States.” It “contained no provisions for supplying the defect of the Confederation” in cases such as “the insurrection in Massts.”⁸¹

In the course of the convention, the concern with quelling domestic insurrection crystallized in concrete clauses of the new Constitution. They were connected by a shared rationale and purpose of “emergency,” “safety,” “security,” “defense,” or “self-preservation” of the “state” or “constitutional authority” against “insurrection,” “rebellion,” “sedition” or “domestic violence.” Their aim was to maintain “domestic tranquility,” “publick safety,” “a well-regulated community,” and to “secure the state.”⁸² Taken together, these provisions constitute what we could call the internal security or emergency clauses of the Constitution. The central government was empowered to raise armies, to call forth the militia “to execute the Laws of the Union, suppress Insurrections,” and “guarantee to every State in this Union a Republican Form of Government,” and defend “against domestic violence.” It could suspend “the Privilege of the Writ of Habeas Corpus ... in Cases of Rebellion or Invasion” or when “the public Safety may require it.” It also provided a definition of treason against the United States and granted the President the power to offer pardons. Vesting the power in the executive, as opposed to the legislature, was deemed an important tool of managing rebellion. As Alexander Hamilton explained, “in seasons of insurrection or rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the

commonwealth.”⁸³ Finally, the determination to maintain public order through federal coercion pulsated in the Preamble as the people’s commitment to “insure domestic Tranquility,” a provision comprehending all “breaches of the peace, as well as against all public commotions or general insurrections.”⁸⁴

Many who supported the ratification of the Constitution were drawn to its security clauses. “The expediency of the plan of government,” wrote the editors of the *Virginia Herald* arose “from the provisions which they have so judiciously made for preventing insurrections ... and for procuring obedience to the federal constitution.”⁸⁵ A Mr. Smith of Massachusetts, identifying himself as “a plain man ... living by the plough ... and not used to speak in publick,” spoke of his firsthand experience with the “anarchy” and “tyranny” of Shays’ Rebellion. Knowing “good government by the want of it” he “saw this Constitution [and] found that it was a cure for these disorders.”⁸⁶ Edmund Pendleton considered the Constitution “admirably contrived to prevent Popular Tumults.”⁸⁷ For Pelatiah Webster there could be “no doubt that each State will receive from the union great *support and protection* against the *invasions and inroads* of foreign enemies, as well as against *riots and insurrections* of their own citizens; and of consequence, the course of their internal administration will be secured by this means against any *interruption or embarrassment* from either of these causes.”⁸⁸ An Antifederalist delegate to the Pennsylvania Ratification Convention, by contrast, protested “because, from the power claimed by the new Constitution, Congress will have a right to suppress all “domestic insurrections” in particular states, by which means we shall be deprived of the only means of opposing the laws of this state.”⁸⁹ For another the new powers threatened to deprive the people of their means of “waging war against tyrants.”⁹⁰

Madison's system for domestic emergency is suggestive of how federal-state relations are viewed. It highlights that the momentum of federal power did not necessarily come at the expense of state power. Security of state and central governments was not, in this case, a zero-sum game between proponents of a strong national government and state's rights. Rather, federal and state power could be mutually reinforcing; the one could add strength to the other. While many leading Federalists echoed this interpretation of the new coercive powers, no one articulated it clearer than Pelatiah Webster. For Webster, Madison's system gave "*an establishment, support, and protection to the internal and separate police of each State ... which it could not possibly enjoy in an independent state.*" In this sense, creating new powers over rebellion would not only strengthen the federal government but also augment the "internal police and jurisdiction of each of the particular States."⁹¹

III. Powering: Asserting Authority

Shays' Rebellion not only made it painfully clear that Congress was devoid of constitutional authority but also that it lacked institutional capacity to organize and mobilize the physical force necessary to repress domestic rebellion. The Revolution had swept away virtually all crystallizations of a centralizing state, including the fiscal-military domain that had come to play an important role in controlling domestic resistance prior to the Revolution. The nascent American military establishment, engendered by the war, was similarly dismantled after hostilities ended. As a result, the federal government possessed no institutional repositories of physical force responsive to, and at the disposal of, state officials. The institutions that did persist were principally composed of local, socially

embedded and patriarchal structures of government—including household, town, county and militia—highly responsive to popular will. With coercive force dispersed and responsive to local will, the coercive institutional capacity of state and federal authorities to act against local communities or groups was negligible.⁹²

Furthermore, the federal government had no independent means of recruiting and supplying a new army or laying taxes and borrowing the money to pay for it. Under the Articles of Confederation, Congress could not act independently of the states and depended on their cooperation to raise and fund armies.⁹³ When such cooperation was not forthcoming, as in the case of Shays' Rebellion, the national government was impotent to act. The pretext of Indian war on the western frontier might, albeit imperfectly, circumvent the lack of constitutional authority, but the problem of institutional capacity reduced the federal government to a passive spectator as Shays' Rebellion raged throughout Massachusetts. As the Federalists explained, constitutional authority over domestic rebellion would be “pageantry alone, without an adequate supply of men and money.”⁹⁴ Institutional capacity to assert state and federal authority was the “natural incident to the duties of superintending the common defense, and watching over the internal peace of the Confederacy.”⁹⁵

Through the process of framing and ratifying the new constitution, the Federalists attempted to come to terms with the problem of forcibly asserting the new authority over popular rebellion. The Federalist argument suggests that American sovereignty was raised on a bedrock of coercion. Because they were motivated by a common fear of rebellion against the authority of the law, the Federalist point of departure was the indivisibility of coercion and sovereignty.

The Federalists argued that force and obedience were integral to sovereignty. “No government,” claimed Randolph, could be “stable, which hangs on human inclination alone, unbiased by the coercion.” “Coercion” was “an indispensable ingredient” to a properly constituted sovereignty.⁹⁶ Indeed, it was argued, “the very term, *government*, implies a supreme, controuling power somewhere; a power to coerce, whenever coercion shall be necessary.”⁹⁷ In cases of resistance to the law, the federal government had “a right” to “exact obedience, or punish disobedience” by “force.”⁹⁸ “The public force must be used,” Madison explained, “when resistance to the laws required it, otherwise society must be destroyed.”⁹⁹

To meet the actual institutional imperatives of organizing “the use of physical force” to uphold the law against insurrection, Federalist state makers drew on instruments then available to fiscal-military states.¹⁰⁰ The Federalists argued that the federal government had to possess the unlimited power of military mobilization not only to defend the union against external attacks but also against domestic challenges. Randolph captured the sentiment in the Virginia debates when he claimed that the federal government must have the power to “raise an army to protect her citizens from internal seditions and external attacks.”¹⁰¹ In *The Federalist* 23 through 28, Hamilton, similarly, insisted on the need for unlimited power to “raise armies” to preserve “the public peace as well against internal convulsions as external attacks.”¹⁰² The recent “spirit of revolt” instructed the American people that troops and “military force in time of peace [was] essential to the security of the society.”¹⁰³ James Wilson was even more explicit. After reflecting upon the crisis brought to Massachusetts by Shays’ Rebellion, Wilson claimed that the “power of raising and keeping up standing armies, in time of peace, is essential to every government ... no government can

secure its citizens against dangers, internal and external, without possessing it and sometimes carrying it into execution.”¹⁰⁴ According to Madison, “resistance ... made to the execution of the laws ... ought to be overcome” and if need be it by “regular forces” or a “standing army.”¹⁰⁵

The Constitution also granted the federal government a general and expansive power to tax the American people independent of the states, together with the power to “borrow money on the credit of the United States.” Alexander Hamilton articulated the necessity of an unlimited federal power over taxation and borrowing in connection with domestic rebellion. According to Hamilton, the “chief sources of expense in every government” were “wars and rebellions; the support of those institutions which are necessary to guard the body politic against these two most mortal diseases of society.” Revenue was “the essential engine by which the means of answering the national exigencies must be procured” and “the power of procuring that article in its full extent must necessarily be comprehended in that of providing for those exigencies.” But recent experience had “taught” that the federal government could not rely on the states for revenue, even in cases of national danger when public safety demanded it. The “national defense” against “foreign war and domestic convulsions” thus necessitated an unlimited federal power to lay taxes and borrow money. “A government half supplied and always necessitous” could not “fulfill the purposes of its institution” to “provide for the security ... of the commonwealth.”¹⁰⁶

While it is clear that the Federalists saw the military as an instrument of domestic policy, they did not expect to mobilize a professional army to handle routine policing or even suppress all cases of resistance. On the contrary, they

suggested that the mobilization of physical force would be based on a spectrum of threat. As Hamilton explained “the means to be employed [“in case of sedition or insurrection”] must be proportioned to the extent of the mischief.” “A slight commotion in a small part of a State” could most likely be put down by “the militia of the residue.” But if “the insurrection should pervade a whole State, or a principle part of it,” it would be “necessary to raise troops for repressing the disorder.” The local militia was the first, and preferred, resort. But in cases of larger, more exceptional, insurrections it would be necessary to “raise and maintain a more regular force.”¹⁰⁷

IV. Powering: Legitimizing Authority

The creation of emergency powers for the security of state and federal governments required Madison and the Federalists to contend with ideological problems of legitimation. Revolutionary-era Americans drew upon a wealth of ideological traditions. But within the political realm, republicanism was an influential paradigm, and it dominated elite and popular attitudes on issues of armed force, public order, and the distribution of social power.¹⁰⁸ James Madison and his Federalist allies were hard pressed to make consonant the deployment of federal emergency powers with the republican tradition.¹⁰⁹ As scholars of the modern state have long noted, political power must always be justified in terms of wider social and political beliefs; it is a basic condition for governing and integral to the effective exercise of state power.¹¹⁰ Indeed, Max Weber’s influential definition of the state distinguished it from other societal institutions as holding a monopoly, not on violence *per se*, but on the *legitimate* use of force. For Madison and the Federalists, legitimacy was perhaps the most unambiguous

obstacle facing the creation of federal emergency powers. As Madison observed in Congress at the height of Shays' Rebellion, federal emergency powers seemed to contradict republican theory. Furthermore, the new powers could only be secured through popular consent, by persuading the American public of the necessity and legitimacy of the proposed measures, a legitimacy that had to be secured through the "great national discussion" over the ratification of the new constitution.¹¹¹ The Federalists, then, had to act creatively to reconcile the creation of federal force to coerce right-bearing citizens with the sovereignty of a revolutionary people.

The experience of popular insurrection throughout the 1780s did not accord with republican principles. According to the classical tradition, popular rebellion was the natural offspring of monarchical governments. Republican principles, by contrast, rendered insurrection illegitimate as well as irrelevant. As the former colonies transitioned into a republic, popular insurrection should, therefore, have come to an end. On the one hand, republican governments were based on popular representation and majority rule. They were, by definition, governments of the people themselves, or based on the will of the majority of the community. In republics, only disgruntled minorities would mount rebellions. And they had no right to oppose the legitimate will of the people.¹¹²

On the other hand, the politics of a republic should have rendered insurrection obsolete. According to the classical tradition, public order in republics was underpinned by a principle, which held that "right and might," or political legitimacy and armed force, were conjoined. It meant that the sword and sovereignty were on the same side: both lay with the people. It was an important principle for the make-up of republics, which was to ensure that

power flowed from the great body of the people and that republican governments were dependent on them. Underlying it was the classical idea of the Greco-Roman *polis* or *comitia centuriata*, according to which the popular assemblies were at once civic assemblies of the electorate and musters of the militia. The electorate consisted of those who bore arms and participation in elections was coextensive with participation in the militia—both were the domains of adult white men. The citizenry cast their votes not just through the ballot but also by participating in military musters, enforcing laws, and quelling insurrections. Since Republics spurned standing armies, the citizens constituting the majority of votes also comprised the majority of armed force and the government's main source of military power. Hence, any given government was supported by, and dependent on, the majority of votes as well as the majority of arms.¹¹³ The majority would always prevail regardless of whether it came down to a vote or an armed fight. Insurrections would not wreak havoc or pose a threat to public security any more than a minority of votes could determine the outcome of an election. As James Madison put it, in republics, majorities would not have a reason (and if they did, they would have a perfect right) and minorities would never have the actual armed force to amount a serious challenge to the government.¹¹⁴

Investing the central government with formidable internal emergency powers deviated further still from republican theory. It created an independent source of organized and armed force for the security and support of established governments against their own citizens. This power did not issue from the people, or the electorate-militia, as prescribed by the republican principle of right and might. Rather, it flowed from a centralizing power external to the state

and federal polities and independent of popular will and popular force within each state.¹¹⁵ As the Antifederalists—opponents of the Constitution—argued, the federal government would only be called upon to support state minority governments in their efforts to suppress the majority. If state governments sought federal support to put down insurrections, majorities or large minorities in those states had obviously come to oppose state governments.¹¹⁶ By imbuing established governments with extraordinary force, external to the states and independent of the people, it upset the balance of power between the government and the people. It strengthened rulers at the expense of the ruled. If state governments were supported and maintained by an external armed force, they were much less dependent on the people for their survival and suppression of insurrections.¹¹⁷ With the sword on the side of established governments, the sovereignty of the people would no longer be adequately rooted in their might. The new federal security powers, thus, posed serious problems for republican ideology and the new republican governments, threatening their most sacred claim to be popular governments, dependent on the people. The conservative Baron von Steuben shrewdly picked up on this point. He argued that republicanism was threatened by federal intervention to suppress a rebellion within a state. He asked “if however the numerous militia should coincide in sentiment with the malcontents, and a very small number of respectable gentlemen only should be interested in keeping up the present system of administration, would Congress dare support such an abominable oligarchy?”¹¹⁸ That was precisely what the new central powers threatened to do, von Steuben concluded. The new central powers of coercion threatened to upset the

distribution of power between citizens and their governments and destroy a constitutive element of republican thought.

Republicanism, then, faced a challenge when it came to the design of institutions to secure the state. For James Madison, the republican tradition unrevised could not grapple successfully with the issues arising from public disorder. If the new central powers of coercion were to be reconciled with republican principles, conceptual innovation was required. As the Confederation Congress sought ways to deal with Shays' Rebellion, Madison began devising a plan for legitimizing federal imposition. Madison was troubled by the fact that it was "difficult to reconcile an interference of Congs. in the internal controversies of a State ... with the principles of Republican Govts. which as they rest on the sense of the majority, necessarily suppose power and right to be on the same side."¹¹⁹ In subsequent months, however, Madison discarded this proposition and found a way to legitimize federal intervention. In so doing, Madison set aside a feature that had been central to the classical tradition, the principle of right and might.

Madison's new thinking constitutes an important intervention into the nature and meaning of republicanism. It is, however, absent in the scholarly literature on the topic, due to its preoccupation with Madison's writings on legislative tyranny and its limitation in Federalist papers 10 and 51.¹²⁰ But as Madison himself argued, the Constitution was not only concerned with restraining legislative tyranny or "oblig[ing] government to controul itself." It was also concerned with the creation of state power or "enabl[ing] the government to controul the governed."¹²¹ By moving away from the issues of Federalist 10—of legislative tyranny, representation and the size of the political

sphere—it is possible to identify and illuminate Madison’s ideological innovation with regard to the problem of domestic disorder and federal emergency powers, which was designed to empower and fortify established governments vis-à-vis their own citizens.

The experience of ancient and modern confederations was silent on how to legitimize coercive state power in a polity grounded on popular sovereignty. To create such a legitimation, Madison addressed himself to the core tenet of “republican theory,” which held that republican governments should combine “right and might.” Madison explained that “according to Republican Theory, Right and power being both vested in the majority, are held to be synonymous.”¹²² As a result, it “seem[ed] not to square with the republican theory, to suppose, either that a majority have not the right, or that a minority will have the force, to subvert a government.” If the majority had the right and the minority not the force, rebellion should not be a serious problem of governance in republican polities and, consequently, “the federal interposition can never be required, but when it would be improper” in support of a minority faction.¹²³

“Theoretic reasoning,” however, had to be “qualified by the lessons of practice.” In fact, “a recent and well-known event among ourselves has warned us to be prepared for emergencies of a like nature.” Madison aimed to reevaluate whether “it [is] true that force and right are necessarily on the same side in republican governments.” He argued that they were not, suggesting that might, or physical force, could easily become divorced from right, or legitimacy, even in republican polities. Lessons of practice suggested that “in a trial of actual force, victory [would not] be calculated by the rules which prevail in a census of the

inhabitants, or which determine the event of an election.” The republican unity of right and might threatened to render federal powers illegitimate. But by driving a wedge between right and might, Madison carved out a sphere for legitimate federal action.¹²⁴

Madison employed two levers to pry apart the unity of right and might: minority and majority violence. On the one hand, “according to fact and experience a minority may in an appeal to force, be an overmatch for the majority.” Madison discerned three eventualities in which the minority could overbear the majority. First, a “minor party” could possess a “superiority of pecuniary resources and military talents and experience, or ... secret succors from foreign powers, as will render it superior in an appeal to the sword.” Similarly, “a more compact and advantageous position” could easily “turn the scale on the same side, against a superior number so situated as to be less capable of a prompt and collected exertion of its strength.” Secondly, a “minority of citizens” could become “a majority of persons by the accession of alien residents, of casual concourse of adventurers, or of those whom the constitution of the State has not admitted to the rights of suffrage.” These would “be more likely to join the standard of sedition than that of the established Government.” Thirdly, slavery rendered “republican Theory still more fallacious.” “During the calm of regular government” slaves may have “sunk below the level of men.” But “in the tempestuous scenes of civil violence” they would “emerge into the human character, and give a superiority of strength to any party with which they may associate themselves.”¹²⁵ The presence of slavery thus made white Americans less free.

Majority violence also presented a problem for the republican coupling of

right and might. Here Madison went even further. He argued that “a majority of a state” could also constitute an “illicit combination” for “purposes of violence” and to “subvert the government.” “Majority will” could easily become divorced from “Constitutional right,” and, in such cases, the former was ultimately in the wrong. Even “an insurrection pervading all the States” should be suppressed. No “majority should be left to maintain their cause by a bloody and obstinate contest.”¹²⁶ In other words, a majority of citizens within a state could pose an illegitimate threat to its security if it opposed the state outside the confines of constitutional procedure. In the end, Madison concluded that the new republic faced a serious conundrum: the notion that legitimacy and armed force—right and might—were conjoined had become “chimerical.”¹²⁷

By deconstructing the principle of right and might, Madison argued that classical prescriptions could not underpin public order in the new republic. The principle held that both physical force and political legitimacy issued from the great body of the people and, as a result, that internal insurrection could not become a problem. Minorities would never have the force, and majorities would have a perfect right, to subvert established governments. Madison, however, argued that experience contradicted republican theory and, in practice, the relationship between right and might had broken down. He found that minorities did possess the actual force, and that majorities did not have a legitimate right, to threaten the security of state and federal governments. But if the principle of right and might no longer applied, what was the meaning of republican government? Madison’s analysis suggests that the essence of political legitimacy in republicanism had been transformed into constitutional rule or the rule of law. “Constitutional right” could easily become divorced from “majority will,”

and, in such an event, ultimate legitimacy resided with the constitution.¹²⁸ Certainly, there “could be no impediment to reforms of the State constitutions by a majority of the people in a legal and peaceable mode.”¹²⁹ But if majorities, as well as minorities, rebelled against established governments, “the federal authority” ought to intervene and “protect the State constitutions” and “the federal Constitution.”¹³⁰ The federal government would prevent, by force, “changes affected by violence” by majorities and minorities alike. On it depended “the peace of society and stability of government.”¹³¹ Madison thus replaced the republican principle of right and might with the fundamental tenets of constitutional liberalism—namely, the rule of law, constitutional government, and protection of rights.

Madison’s legitimation was a significant intervention into the nature of republicanism. Disillusioned by limits of the classical tradition for the issues of public disorder, Madison transformed republicanism to save the republic. Madison set the stage for federal emergency powers by replacing the republican principle of right and might with constitutional liberalism. Federal imposition in times of insurrection would be wrong if greater armed force as well as political legitimacy resided in the majority of the people. The minority would not have the force, and the majority would have a perfect right, to subvert the constitutional order. But Madison argued that, in practice, the republican principle of right and might had failed to underpin public order. By replacing classical propositions with new liberal ones, Madison made legitimate the expansion of federal power in times of internal crisis. For granting the federal government emergency powers repaired the broken relationship of right and might and brought armed force and political legitimacy together anew in the liberal constitution.¹³² In

searching for a way to hold together the new American republic under the post-revolutionary challenges of the 1780s, Madison transformed the republican principle of right and might into a liberal one.

This analysis of Madison's effort to frame and legitimize federal emergency powers has significant consequences for understanding the rise of constitutional liberalism in the new United States. This essay has demonstrated how the two were mutually constitutive. On the one hand, federal emergency powers were an important element of the new liberal state. The former aimed to secure, sustain, and uphold state and federal governments against domestic defiance. And they imposed legible institutional and legal limitations on popular and unruly political activity, encaging it within the parameters of the liberal constitution. On the other, constitutional liberalism underpinned Madison's attempt to endow the federal government with special emergency powers. By overcoming classical objections and carving out a sphere for federal power, constitutional liberalism engineered the expansion of the federal government and strengthened it vis-à-vis its own citizens. This analysis suggests that the creation of federal emergency powers—and the expansion of the federal government more broadly—was not necessarily inconsistent with America's liberal characteristics. To the contrary, the federal emergency powers and the formation of the American liberal state were joined at the hip.

V. Conclusion: Madison's Conceptual Transformation

The domestic insecurity of state and federal governments propelled the creation of special emergency powers during the framing and adoption of the Federal Constitution. Constitutionally, Madison looked to the experience of other

confederacies to devise a federal constitutional system for the suppression of internal disorders. Institutionally, the Federalists granted the federal government unqualified power to recruit and maintain armies, as well as an expansive power to tax and borrow money to pay for them, to give the new federal powers effect. Yet, at the core of this process was Madison's effort to rationalize and justify the new powers and square them with the political ideals of the new republic. Republican ideology raised serious objections to the legitimacy of federal emergency powers. The provisions violated the core principle that, in republics, right and might must issue from the great body of the people. It was an important principle for the make-up of republican polities, which ensured that the power flowed from the people themselves. For Madison, however, experience showed that this principle had become highly unrealistic. He argued that minorities could possess force, and that majorities did not have a right to threaten the security of state and federal governments. The internal security of American governments demanded that this popular axiom be discarded and federal power expanded. Madison created a new sphere for federal powers by replacing the republican principle of right and might with the principles of constitutional liberalism. Madison's ideological transformation was not complete in 1789. Subsequent generations of Americans have continued to debate their right to revolution. Yet the constitutional dispensation of 1787 furnished the federal government with the legitimate means to overcome the resistance of both majorities and minorities of its own citizens. Paradoxically, the principles of constitutional liberalism fueled that expansion of federal power.

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² For Shays' Rebellion see David P. Szatmary, *Shays' Rebellion: The Making of an Agrarian Insurrection* (Amherst, 1984); Leonard L. Richards, *Shays's Rebellion: The American Revolution's Final Battle* (Philadelphia, 2002); Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York, 2007); George Minot, *The History of the Insurrections in Massachusetts in the Year 1786 and the Rebellion Consequent Thereon* (Worcester, 1788); Robert A. Gross, ed., *In Debt to Shays: The Bicentennial of an Agrarian Rebellion* (Charlottesville and London, 1993).

³ Worthington C. Ford, ed., *Journals of the Continental Congress, 1774-1789* (34 vols., Washington, 1904-1937), XXX, 720-21. (Hereafter referred to as *JCC*).

⁴ For an overview of the multiple episodes of popular insurrection during the revolutionary and post-revolutionary periods see Christian Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War* (Cambridge and New York, 2009).

⁵ On internal threats facing the U.S. in the 1780s see Francois Furstenberg, "The Significance of the Trans-Appalachian Frontier in Atlantic History," *American Historical Review* 113 (June 2008), 647-677; Fritz, *American Sovereigns*.

⁶ See for example Jeremy Adelman, "An Age of Imperial Revolutions," *American Historical Review* 113 (April 2008), 319-340; Jack P. Greene, *Peripheries and Centers: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607-1788* (New York, 1984).

⁷ Oscar and Mary Handlin, *The Dimensions of Liberty* (Cambridge, 1961); Louis Hartz, *The Liberal Tradition in America: An Interpretation of American Political Thought since the Revolution* (New York, 1955); Bernard Bailyn, *Origins of*

American Politics (New York, 1968), 25, 101-5; Gordon Wood, *Creation of the American Republic* (Chapel Hill, 1969); Gary B. Nash, *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America* (New York, 2005); Jeffrey L. Pasley, *The Tyranny of Printers: Newspaper Politics in the Early American Republic* (Charlotte, 2002); Joanne B. Freeman, *Affairs of Honor: National Politics in the New Republic* (New Haven, 2002); David Waldstreicher et al., *Beyond the Founders: New Approaches to the Political History of the Early American Republic* (Chapel Hill, 2004).

⁸ Wood, *Creation of the American Republic*; Jack Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York, 1996); Lance Banning, "The Practical Sphere of a Republic: James Madison, the Constitutional Convention and the Emergence of Revolutionary Federalism," in *Beyond Confederation: Origins of the Constitution and American National Identity*, eds. Richard Beeman, Stephen Botein, Edward Carter (Chapel Hill, 1987), 162-87; Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New

York, 2010). See also Gwenda Morgan, *The Debate on the American Revolution* (Manchester, 2007).

⁹ Historians of treason legislation have emphasized growing legal protections and the narrowing of treason as a legal category, see Willard Hurst, *The Law of Treason in the United States: Collected Essays* (Westport, 1971); F. M. Greenwood, "Judges and Treason Law in Lower Canada, England, and the United States during the French Revolution, 1794–1800," in *Canadian State Trials: Law, Politics and Security Measures, 1608–1837*, eds. F.M. Greenwood and B. Wright (Toronto, 1996), 241. The few scholars who have dealt with the domestic role of the U.S. military tend to emphasize civilian enforcement of laws. See David E. Engdahl, "Soldiers, Riots, and Revolution: The Law and History of Military Troops in Civil Disorders," *Iowa Law Review* 57 (1971), 39. Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789–1878* (Washington D.C., 1988). See also more recent scholarship Clement Fatovic, *Outside the Law: Emergency and Executive Power* (Baltimore, 2009).

¹⁰ David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification*

(New York, 2009); Paul Finkelman, *Slavery and the Founders: Race and Liberty in*

the Age of Jefferson (London, 1996); Jack Rakove, *Original Meanings*, 337; For a

notable exception see William M. Wiecek, *The Guarantee Clause of the U.S.*

Constitution (Ithaca and London, 1972); *The Sources of Antislavery*

Constitutionalism in America, 1760-1848 (1977). I agree with these scholars that

slavery was on the framers' mind as they framed the emergency provisions. But I

disagree with scholarship that tends to ground the security provisions entirely in

fears of slave rebellion. I contend, in contrast, that the possibility of slave

rebellion was secondary to the more urgent and ideologically contentious

problems posed by insurrections of the citizenry, which were at the center of the

issue of right and might.

¹¹ This also holds true for older histories of "the critical period" which tended to

emphasize the role of Shays' Rebellion. See for example John Fiske, *The Critical*

Period of American History (1888).

¹² See for example Woody Holton, *Unruly Americans and the Origins of the Constitution*; "'Divide et Impera: 'Federalist 10' in a Wider Sphere," *William and Mary Quarterly* 62 (April 2005), 175-212; Terry Bouton, *Taming Democracy* (Oxford and New York, 2007), 145-160; "A Road Closed," *Journal of American History* 87 (December 2000), 855-887; Robert A. Gross, ed., *In Debt to Shays*; David P. Szatmary, *Shays' Rebellion*; Leonard L. Richards, *Shays's Rebellion*; Paul A. Gilje, *Rioting in America* (Bloomington, 1996).

¹³ See Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton, 2015); Ira Katznelson, "Flexible Capacity: The Military and Early American State Building," in *Shaped by War and Trade: International Influences in American Political Development*, eds. Ira Katznelson and Martin Shefter (Princeton, 2002), 82-104; William Novak, *The People's Welfare: Law and Regulation in Nineteenth Century America* (Chapel Hill, 1996); "The Myth of the 'Weak' American State," *American Historical Review* 115 (June 2010), 752-772; Richard John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge, 1995); Brian Balogh, *Government Out*

of Sight: The Mystery of National Authority in Nineteenth-Century America

(Cambridge, 2009); Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York, 2003).

¹⁴ Much like the scholarship on the Constitution cited above, the literature on states of exception associated with Schmitt and Agamben tends to see emergency powers as highly problematic for liberalism and constitutional rule.

Similarly, critics of Schmitt and Agamben tend to view liberalism and emergencies as antithetical. See for example Giorgio Agamben, *States of Exception* (Chicago, 2005); Carl Schmitt, *Political Theology* (Cambridge, 1985); Nomi Lazar, *States of Emergency in Liberal Democracies* (Cambridge, 2009); David Dyzenhaus, *The Constitution of Law. Legality in a Time of Emergency* (Cambridge, 2006).

¹⁵ Liberalism is notoriously difficult to define. I use the concept of constitutional liberalism to refer to the fundamental principles of constitutional government and the rule of law such as checks and balances and separation of powers, popular representation and its instruments (including periodic elections),

limited government, freedom of speech and religion, protection of private property rights, and other institutional mechanisms to prevent state power from becoming despotic. The liberal US Constitution provided the foundation to, and prospectively created, the central state in America as a liberal state based on these principles. For liberal states see John Brewer, *The Sinews of Power: War, Money, and the English State, 1688-1783* (New York, 1989); Ira Katznelson, "Flexible Capacity: The Military and Early American State Building," 82-104; and Gary Gerstle, *Liberty and Coercion*, 1-30.

¹⁶ See Hugh Hecló, *Modern Social Politics in Britain and Sweden: From Relief to Income Maintenance* (2011), 305; Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, 2011), 3.

¹⁷ Pauline Maier, "Popular Uprisings and Civil Authority," *William and Mary Quarterly* 27 (December 1970), 3-35. See also Maier, *Resistance and Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York, 1992).

¹⁸ This was of course not a complete transformation. Most importantly, Americans had never taken kindly to slave resistance, and continued to abhor it after the Revolution.

¹⁹ See for example Eliga H. Gould, *Among the Powers of the Earth: The American Revolution and the Making of a New World Empire* (Cambridge, 2012).

²⁰ Peter Onuf, *Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787* (Philadelphia, 1983), xvii.

²¹ John L. Brooke, "To the Quiet of the People: Revolutionary Settlements and Civil Unrest in Western Massachusetts, 1775-1789," *William and Mary Quarterly* 46 (July 1989), 425-62.

²² Quoted in Fritz, *American Sovereigns*, 49. See also, Onuf, *Origins of the Federal Republic*; Thomas Slaughter, *The Whiskey Rebellion* (New York, 1986); Paul B. Moyer, *Wild Yankees* (Ithaca, 2007); Patrick Griffin, *American Leviathan: Empire, Nation, and Revolutionary Frontier* (New York, 2007).

²³ There is a strong case to be made that the example of Shays' Rebellion is best suited for this purpose. Not because agrarian tax revolts as such preyed more

strongly on the framers' minds than other varieties of insurrection. Rather Shays' was the rebellion largest in size and scope in the postrevolutionary period, and it most painfully exposed the deficiency of state and federal power. It prompted a highly anxious reaction from the most influential members of the Federalist elite. Occurring on the eve of the Constitutional Convention, the example Shays' more than any other was injected into analyses, including that of Madison, of the problem posed by domestic disorder as well as the solutions proposed.

²⁴ Szatmary, *Shays' Rebellion*, 86.

²⁵ Massachusetts and James Bowdoin, *An Address to the good people of the Commonwealth* January 12, 1787 (Boston, 1787).

²⁶ Szatmary, *Shays' Rebellion*, 159.

²⁷ Massachusetts and James Bowdoin, *A Proclamation* September 2, 1786 (Boston, 1786).

²⁸ Massachusetts General Court, *An address from the General Court, to the people of the Commonwealth of Massachusetts* October 30, 1786 (Boston, 1786), 36-38.

²⁹ "Circular Letter to the Several Towns in the Commonwealth," *The Massachusetts Centinel*, September 13, 1786. William Pencak argues persuasively that Adams authored the letter. See William Pencak, "Samuel Adams and Shays' Rebellion," *The New England Quarterly* 62 (March 1989), 63-74; See also Paul M. Thompson, "The Reaction to Shays' Rebellion," *Massachusetts Legal History* 4 (1998), 37-60; John K. Alexander, *Samuel Adams: America's Revolutionary Politician* (Lanham, 2002), 191-214; Maier, *The Old Revolutionaries: Political Lives in the Age of Samuel Adams* (New York, 1980); Henry Knox to the President of Congress, October 1, 3, 12 and 18, 1786, *JCC* XXXI, 739-40, 751-53, 875, 886-88; Henry Knox to George Washington October 23, 1786, in *The Papers of George Washington. Confederation Series*, eds. W. W. Abbot and Dorothy Twohig (6 vols., Charlottesville, 1992-1997), IV, 299. (Hereafter *PGW*).

³⁰ James Bowdoin, *JCC*, XXXII, 93-95; See also Massachusetts and Bowdoin, *Address*.

³¹ "Circular Letter to the Several Towns in the Commonwealth," *The Massachusetts Centinel*, September 13, 1786.

³² Samuel Adams to Noah Webster April 30, 1784, in *Writings of Samuel Adams*, ed. Harry A. Cushing (4 vols., New York, 1908), IV, 305.

³³ "Circular Letter to the Several Towns in the Commonwealth," *The Massachusetts Centinel*, September 13, 1786.

³⁴ Samuel Adams to Noah Webster April 30, 1784, *Writings of Samuel Adams*, IV, 306.

³⁵ Samuel Adams, "Address to the Legislature of Massachusetts," *Writings of Samuel Adams* IV, 369. See also in Samuel Adams to Noah Webster April 30, 1784, *Writings of Samuel Adams* IV, 306. In fact this view emerged in the 1780s as a highly popular argument among the ruling elite. For examples see, Alexander Hamilton, "Federalist 21," in *The Federalist Papers*, ed. Clinton Rossiter (New York, 1961), 140; "Speech of Governor James Bowdoin (September 28, 1786)," in *The Massachusetts Centinel*, September 30, 1786. See also examples in Gordon Wood, *Creation of the American Republic*, 257-390.

³⁶ William V. Wells, *The Life and Public Service of Samuel Adams* (Boston, 1865), 246.

³⁷ Massachusetts General Court, *An address from the General Court*, 38. Isaac

Backus, a Baptist preacher in Middleborough, published an address to the people of New England, reiterating, word for word, the claim of the General Court. See

Backus, *An address to the inhabitants of New-England, concerning the present bloody controversy therein* (Boston, 1787), 4.

³⁸ General Benjamin Lincoln, February 19, 1787, Lincoln Papers, Microfilm Collection, Massachusetts Historical Society.

³⁹ Artemis Ward to James Bowdoin, December 16, 1786, Artemis Ward Papers, Microfilm Collection, Massachusetts Historical Society.

⁴⁰ Massachusetts General Court, *An address from the General Court*, 33, 36. See also Minot, *The History of the Insurrections in Massachusetts*, 9. Further shifting the focus from the government, others speculated that the British had incited the rebellion. Madison and Washington certainly considered that possibility. See Madison to Muter January 7, 1787, in *The Papers of James Madison. Congressional Series*, eds. Robert A Rutland and William M. E. Rachal (17 vols., Chicago, 1975),

IX, 230. (Hereafter *PJM*); George Washington to David Humphreys December 26, 1786, *PGW*, IV, 477.

⁴¹ Massachusetts General Court, *An address from the General Court*, 35.

⁴² *The Massachusetts Centinel*, September 13, 1786.

⁴³ Massachusetts General Court, *An address from the General Court*, 3.

⁴⁴ James Bowdoin, "Speech in General Court," *JCC*, XXXII, 94-95.

⁴⁵ David P. Szatmary, *Shays' Rebellion*, 26.

⁴⁶ *Ibid*, 28.

⁴⁷ Joseph P. Warren, "The Confederation and Shays' Rebellion," *American Historical Review* 11 (1905), 47.

⁴⁸ *JCC*, XXXIII, 721.

⁴⁹ *Ibid*.

⁵⁰ Henry Knox to the President of Congress, *JCC*, XXXI, 887.

⁵¹ *JCC*, XXXI, 891-893.

⁵² *Secret Journals of the acts and proceedings of Congress, from the first meeting thereof to the dissolution of the Confederation* (4 vols., Boston, 1821), I, 268.

⁵³ *JCC*, XXXIII, 720-721.

⁵⁴ Edling, *A Revolution in Favor of Government*, 34.

⁵⁵ *Secret Journals and acts and proceedings of Congress*, I, 269-270.

⁵⁶ Henry Lee to James Madison, October 19, 1786, in *Letters of the Members of the Continental Congress*, ed. Edmund C. Burnett (8 vols., Washington D.C., 1936), VIII, 489.

⁵⁷ James Wilson, "Convention Debates, P.M.," in *The Documentary History of the Ratification of the Constitution*, eds. Merrill Jensen, John P. Kaminski and Gaspare J. Saladino (27 vols., Madison, 1976-), II, 583. (Hereafter *DHRC*).

⁵⁸ On the question of the impact of Shays' Rebellion on the movement for a new constitution see Robert Feer, "Shays's Rebellion and the Constitution: A Study in Causation," *The New England Quarterly* 42 (September 1969), 388-410; Rock Brynner, "Cromwell's Shadow over the Confederation: The Dread of Cyclical History in Revolutionary America," *Proceedings of the Massachusetts Historical Society* 106 (September 1994), 35-52; Szatmary, *Shays' Rebellion*, 120-134;

Richards, Shays's Rebellion, 117-160; Wiecek, *The Guarantee Clause of the U.S.*

Constitution, 17-40.

⁵⁹ George Washington to James Madison November 5, 1786, *PGW*, IV, 331.

⁶⁰ Madison to Muter January 7, 1787, *PJM*, IX, 230.

⁶¹ Stephen Higginson to Henry Knox November 12, 1786, in *Life and Times of Stephen Higginson*, ed. Thomas Higginson (New York, 1907), 704.

⁶² Max Farrand, ed., *The Records of the Federal Convention of 1787* (3 vols., New Haven, 1911), I, 18-19. (Hereafter *Records*).

⁶³ Farrand, *Records*, I, 20.

⁶⁴ Thomas McKean, "Convention Debates", *DHRC*, II, 415.

⁶⁵ Madison to Muter January 7, 1787, *PJM* IX, 230.

⁶⁶ Rufus King to Elbridge Gerry February 11, 1787, *Letters of the Members of the Continental Congress*, VIII, 539.

⁶⁷ See for example the correspondence of Madison with Washington and Lee in November and December 1786 in *PJM*, IX, 167-224, and *PGW*, IV, 357.

⁶⁸ Madison to Randolph April 8, 1787, *PJM*, IX, 370.

⁶⁹ Edmund Randolph, "Letter on the Federal Constitution, October 16, 1787," in *Pamphlets on the Constitution of the United States. Published during its Discussion by the People*, ed. Paul L. Ford (New York, 1888), 261 and 267.

⁷⁰ Farrand, *Records*, I, 20.

⁷¹ James Madison, "Vices of the Political System of the United States," in *PMJ*, IX, 350-352; "Notes on Ancient and Modern Confederacies," in *PMJ*, IX, 5-24.

⁷² James Madison, "Notes on Ancient and Modern Confederacies," in *PMJ*, IX, 10.

⁷³ James Madison, "Federalist 43," 276.

⁷⁴ James Madison, "Federalist 43," 277.

⁷⁵ Alexander Hamilton, "Federalist 28," 179.

⁷⁶ James Madison, "Federalist 43," 277.

⁷⁷ Farrand, *Records*, I, 39.

⁷⁸ Farrand, *Records*, I, 43.

⁷⁹ Farrand, *Records*, II, 273, 263.

⁸⁰ Farrand, *Records*, II, 255-256.

⁸¹ Farrand, *Records*, II, 318.

⁸² Edmund Randolph, "The Virginia Convention, Friday June 6, 1788," *DHRC*, IX, 985.

⁸³ Alexander Hamilton, "Federalist 74," 449. See also James Madison, "Debates," *DHRC*, X, 1379-80. For to "secure the state" see James Wilson, *The Works of James Wilson*, ed., Robert G. McCloskey (2 vols., Cambridge, 1967), II, 663.

⁸⁴ "New York Journal February 7, 1787," *DHRC*, XX, 759.

⁸⁵ "Virginia Herald, October 11," *DHRC*, VIII, 52.

⁸⁶ "Convention Debates, January 25," *DHRC*, VI, 1346-47.

⁸⁷ Edmund Pendleton to James Madison October 8, 1787, *DHRC*, VIII, 46.

⁸⁸ Pelatiah Webster, "A Citizen of Philadelphia. The Weaknesses of Brutus Exposed, 8 November," *DHRC*, XIV, 71.

⁸⁹ "The Protest of the Minority, Pennsylvania Gazette, October 3," *DHRC*, II, 156.

⁹⁰ Patrick Henry, "Debates," *DHRC*, X, 954.

⁹¹ Webster, "A Citizen of Philadelphia. The Weaknesses of Brutus Exposed, November 8," 73.

⁹² Bernard Kohn, *Eagle and Sword: The Federalists and the Creation of the Military Establishment in America, 1783-1802* (New York, 1975); Lawrence D. Cress, *Citizens in Arms: The Army and the Militia in American Society to the War of 1812* (Chapel Hill, 1982); John Shy, "A New Look at the Colonial Militia," *William and Mary Quarterly* 20 (April 1963), 175-185; Don Higginbotham, "The Federalized Militia Debate. A Neglected Aspect of Second Amendment Scholarship," *William and Mary Quarterly* 55 (January 1998), 39-58.

⁹³ See for example Edling, *A Revolution in Favor of Government*, 149-162.

⁹⁴ Randolph, "Letter on the Federal Constitution, October 16, 1787," 264.

⁹⁵ Alexander Hamilton, "Federalist 29," 182.

⁹⁶ Edmund Randolph, "Letter on the Federal Constitution, October 16, 1787," 266.

⁹⁷ "Convention Debates, February 6," *DHRC*, VI, 1457. See also "Convention Debates, February 4," *DHRC*, VI, 1418. Statements such as these are sprinkled over the ratification debates, particularly in Massachusetts, Virginia and

Pennsylvania. For example: "Coercion is necessary in every Government." In

"Debates," *DHRC*, IX, 1009-1010; See also "Debates," *DHRC*, IX, 1169.

⁹⁸ Alexander Hamilton, "Federalist 21," 138-139.

⁹⁹ James Madison, "Debates," *DHRC*, X, 1274. See also, Alexander Hamilton,

"Federalist 28," 178.

¹⁰⁰ Historians of early U.S. military institutions have long pointed out that the

Constitution granted the federal government military power independent of the

states. But the impetus behind the grant of military power is usually seen in

external, or geopolitical, terms. Echoing scholars Charles Tilly and John Brewer,

Max Edling has argued that the fiscal-military powers were granted to the

federal government because of the external pressure of war and the competitive

environment of the international system of states. Similarly, David Hendrickson

has argued that these powers were granted to prevent interstate rivalries among

the former colonies, or the creation of a European state system in America. See

Edling, *A Revolution in Favor of Government*; David Hendrickson, *Peace Pact: The*

Lost World of the American Founding (Lawrence, 2003); Kohn, *Eagle and Sword*;

Cress, *Citizens in Arms*; Charles Tilly, *Coercion, Capital, and European States, AD*

990-1990 (Cambridge, 1990); Brewer, *The Sinews of Power*.

¹⁰¹ Edmund Randolph, "The Virginia Convention, Saturday June 7, 1788," *DHRC*, IX, 1016.

¹⁰² Alexander Hamilton, "Federalist 23," 153-154

¹⁰³ Alexander Hamilton, "Federalist 25," 167. See also Hamilton, "Federalist 26" and "Federalist 28."

¹⁰⁴ James Wilson, "Convention Debates," *DHRC*, II, 576-579.

¹⁰⁵ James Madison, "Debates," *DHRC*, X, 1273; James Madison, "Federalist 41," 257.

¹⁰⁶ Alexander Hamilton, "Federalist 34," 208-209; "Federalist 31," 195; "Federalist 30," 191.

¹⁰⁷ Alexander Hamilton, "Federalist 28," 178-179.

¹⁰⁸ See for example Cress, *Citizens in Arms*, 10-13, 50-55; "An Armed Community: The Origins and Meaning of the Right to Bear Arms," *Journal of American History* 71 (June 1984), 22-42; "Radical Whiggery and the Role of the Military:

Ideological Roots of the American Revolutionary Militia," *Journal of the History of Ideas* 40 (1979), 43; E. Wayne Carp, "The Problem of National Defense in the Early American Republic," in *The American Revolution: Its Character and Limits*, ed. Jack P. Greene (New York, 1987), 20–3.

¹⁰⁹ For republicanism as an ideology based on strong notions of citizenship, military valor, civic religion, and the priority of the collective life, see Andreas Kalyvas and Ira Katznelson, *Liberal Beginnings: Making a Republic for the Moderns* (New York, 2008); J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 2003); Wood, *Creation of the American Republic*. For the plurality of sources of late-18th century American political thought see James T. Kloppenberg, "The Virtues of Liberalism: Christianity, Republicanism, and Ethics in Early American Political Discourse," *Journal of American History* 74 (June 1987), 9-33; and Isaac Kramnick, "'The Great National Discussion': The Discourse of Politics in 1787," *William and Mary Quarterly* 45 (January 1988), 1-32.

¹¹⁰ Katznelson, "Flexible Capacity: The Military and Early American State Building," 82-105; Brewer, *The Sinews of Power*; Michael Braddick, *State Formation in Early Modern England, 1550-1700* (Cambridge and New York, 2000), 10, 68; David Beetham, *The Legitimation of Power* (London, 1991), 10-11.

¹¹¹ For the debate over the ratification see Kramnick, "The Great National Discussion;" and Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York, 2011).

¹¹² Refer to footnotes 33-39.

¹¹³ See particularly Pocock, *Politics, Language, and Time: Essays on Political Thought and History* (Chicago, 1989), 110-121; "Machiavelli, Harrington and English Political Ideologies in the Eighteenth Century," *William and Mary Quarterly* 22 (October 1965), 549-583; R.J. Smith, *The Gothic Bequest: Medieval Institutions in British Thought, 1668-1863* (Cambridge, 1987); Mark Goldie, "The Roots of True Whiggim," *History of Political Thought* 1 (1980), 212-215. See also Bernard Manin, *Principles of Representative Government* (New York and Cambridge, 1997), 46; E. S. Staveley, *Greek and Roman Voting* (Ithaca, 1972).

¹¹⁴ James Madison, "Federalist 43," 276.

¹¹⁵ Ibid; See also *JCC*, XXXIII, 721. Alexander Hamilton, "Federalist 28."

¹¹⁶ James Madison, "Federalist 43," 276; James Madison, "Vices of the Political System of the United States," 350-352.

¹¹⁷ See for example, "Federal Farmer, Letters to the Republican, November 8," *DHRC*, XIV, 29; "Debates," *DHRC*, X, 1274, 1299; "Debates," *DHRC*, X, 1300-1301; "Brutus," *DHRC*, XIV, 301; "Brutus," *DHRC*, XIII, 419; "A Citizen of Maryland," *DHRC*, XVII, 89-92; "Agrippa," *DHRC*, XII, 457-462; "A Ploughman," *DHRC*, VIII, 508. For the Anti-Federalists see Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (Chapel Hill, 1999).

¹¹⁸ Anonymous letter written by Baron von Steuben and printed in New York *Daily Advertiser*, reprinted in John M. Palmer, *General von Steuben* (New Haven, 1937), 339-340.

¹¹⁹ *JCC*, XXXIII, 721.

¹²⁰ Refer to footnotes 9 and 15.

¹²¹ James Madison, "Federalist 51," 347.

¹²² James Madison, "Vices of the Political System of the United States," 350-352.

¹²³ James Madison, "Federalist 43," 276.

¹²⁴ James Madison, "Federalist 43," 276-277.

¹²⁵ James Madison, "Federalist 43," 276-277; See also James Madison, "Vices of the Political System of the United States," 350-352; Max Farrand, *Records*, I, 318.

¹²⁶ James Madison, "Federalist 43," 277; Max Farrand, *Records*, I, 356; *Records*, II, 124.

¹²⁷ James Madison, "Federalist 43," 276-277.

¹²⁸ James Madison, "Federalist 43," 277; Max Farrand, *Records*, I, 356; *Records*, II, 124.

¹²⁹ Alexander Hamilton, "Federalist 21," 140.

¹³⁰ James Madison, "Federalist 43," 277; Max Farrand, *Records*, I, 356; *Records*, II, 124.

¹³¹ Hamilton was even more direct. In *Federalist 19* through *21*, Hamilton argued, without a single reference to majority will, that the authority and "existence of

the State constitutions” and the Federal Constitution were paramount. He spoke of “insurgents” and “usurpers” as illegitimate, and “friends and supporters of the government” as legitimate, but without factoring in the relative size of each faction, that is of which body constituted a majority of citizens. See for example Hamilton, “Federalist 21,” 140.

¹³² Refer to footnotes 85-90 and 104-107.