

"Securing the State:" Public Coercion, Constitution-Making and the Problem of
Rebellion in the Post-Revolutionary United States, 1786-1788

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“I have often supposed a Declaration of Independence would be accompanied by a declaration of high treason ... Can we subsist—did any State ever subsist—without exterminating traitors?”

- *Joseph Hawley, Continental Army Officer, July 1776*¹

On February 19th 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 1786-87, 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 deficiency of federal power was threefold: constitutional, institutional and ideological. 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.” Secondly, Congress did not possess the fiscal or military capacity to act. It did not control a body of soldier 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

¹ Joseph Hawley to Elbridge Gerry 17 July 1776, James T. Austin ed., *The Life of Elbridge Gerry with Contemporary Letters* Vol. I (Boston, 1828), 206.

² For Shays’ Rebellion see David P. Szatmary, *Shays’ Rebellion* (Amherst, 1980); Leonard L. Richards, *Shays’s Rebellion* (Philadelphia, 2002).

principles of Republican Gov. 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 succinctly captures the difficulties that popular rebellion posed for the nascent United States. The revolutionary war with the British had come to an end, but insurrection still raged through the sinews of the continental interior.⁴ The declaration of 1776 and the first state constitutions announced a new national model of sovereignty but it did not automatically solve problems of political obligation and tensions between center and periphery. On the contrary, independence in the name of the new nation was widely perceived to yield to the very same propensities to disintegration as the empire it sought to replace.⁵ The preservation and safety of U.S. sovereignty hinged not only on overcoming Native American power and Old World imperial encroachments but internal challenges as well.⁶ Insurrection – from below and from the periphery – was perhaps the main source of threat to state security in the trans-Atlantic world of the late eighteenth and early nineteenth centuries.⁷

Overcoming the difficulties posed by popular insurrection required American statemakers to deal with a full-blown problem of state-formation. Confronting the rebels meant building legal-constitutional authority, institutional capacity and ideological legitimacy. These were critical matters in the constitutional deliberations of 1787-1788. Drawing on a set of old and new practices, understandings and properties of sovereignty, the Federalists framed a set of solutions to the problem of federal power that the insurrections of the 1780s had erected. In so doing, they transformed a passion for social

³ James Madison, *Journals of the Continental Congress* Vol. 33 (Washington, 1936), 720-21.

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 See Jack P. Greene, *Peripheries and Centers: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607-1788* (Athens, GA, 1990).

⁶ On internal threats facing the U.S. in the 1780s see Francois Furstenberg, “The Significance of the Trans-Appalacian Frontier in Atlantic History,” *American Historical Review* 113 3 (2008), 647-677. Christian Fritz, *American Sovereigns*. See also, John Fiske, *The Critical Period of American History, 1783-1789* (Boston, 1888).

⁷ See for example Jeremy Adelman, “An Age of Imperial Revolutions,” *American Historical Review* 113 2 (2008), 319-340; Jack P. Greene, *Peripheries and Centers*.

order and indivisible sovereignty into a new central coercive power for securing state and central governments against domestic turmoil.

Most conventional histories of the early republic tend to privilege liberty over security, restraint of power over its growth.⁸ A distinguished tradition for downplaying the significance of state power stretches from Louis Hartz and Oscar Handlin, via Bernard Bailyn and Gordon Wood, and through the new social history. More invested in what the founding generation thought about government than actual state practice, the story most frequently told centers on the institutional make-up, or structure, of government itself and highlights constitutional restraints and restrictions on state power such as federalism, checks and balances, the separation of powers, the rule of law and protection of individual rights. Chiefly occupied with the partisan conflict between the Federalists and the Antifederalists (and later, the Republicans), historians have not explored matters of domestic security as a meaningful part of the story.⁹ Even scholars who have pursued aspects of state security legislation tend to subscribe to this one-dimensional story of growing liberty and constitutional constraints, sometimes characterizing the early national period as an “age of free security.”¹⁰ Historians of treason legislation emphasize growing legal protections and the narrowing of treason as a

⁸ For exceptions see William Novak, *The People's Welfare: Law and Regulation in Nineteenth Century America* (University of North Carolina Press, 1996); ‘The Myth of the “Weak” American State’; Richard John, ‘Governmental Institutions as Agents of Change: Rethinking American Political Development in the Early Republic, 1787-1835,’ *Studies in American Political Development*, 11 (Fall 1997), pp. 347-380; Gary Gerstle, ‘The Resilient Power of the States across the Long Nineteenth Century’, Lawrence Jacobs and Desmond King (eds.) *The Unsustainable American State* (Oxford and New York: University of Oxford Press, 2009), pp. 61-87; Max Edling, *A Revolution in Favor of Government*; Brian Balogh, *A Government Out of Sight. The Mystery of National Authority in Nineteenth-Century America*; Ira Katznelson, ‘Flexible Capacity: The Military and Early American State building’, Ira Katznelson and Martin Shefter (eds.), *Shaped by War and Trade: International Influences in American Political Development* (Princeton: Princeton University Press, 2002), pp. 89. However, these scholars have not dealt with the relationship of state and popular violence.

⁹ Oscar and Mary Handlin, *The Dimensions of Liberty* (Cambridge, Mass., 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); Pauline Maier, ‘Popular Uprisings and Civil Authority in Eighteenth-Century America,’ *William and Mary Quarterly* 27 1 (1970), 3-35;

¹⁰ J. Willard Hurst, *The Law of Treason in the United States: Collected Essays* (Westport, CT, 1971).; F. M. Greenwood, ‘Judges and Treason Law in Lower Canada, England, and the United States during the French Revolution, 1794–1800,’ *Canadian State Trials: Law, Politics and Security Measures, 1608–1837*, ed. F.M. Greenwood and B. Wright (Toronto, 1996), 241.

legal category. Historians of the U.S. military usually locate its development as a response to Atlantic geopolitical rivalry, westward expansion and Indian wars, and neglect the domestic spurs to its growth.¹¹ The few who have actually dealt with the military's domestic role tend, in addition to rehearsing the Founders' careful circumscription of state power, to emphasize its corollary, that of civilian enforcement of laws.¹²

More recently new social historians, concentrating on popular agency from below, have demonstrated that insurgency and rebellion was 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, they have had little to say of state reaction from above.¹³ Largely replicating previous histories, these Neo-Progressive scholars argue that popular uprisings did not constitute a threat to the security and preservation of the state as much as an expression of grievances about the internal arrangements, or institutional structure, of legislative assemblies. Popular violence was a response to what was perceived as a usurpation of state legislatures by the moneyed elite and a resulting defect of majoritarian democracy. Similarly, elite reaction to

¹¹ See for example 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)

¹² 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); Frederick T. Wilson, *Federal Aid in Domestic Disturbances, 1787-1903* (New York, 1969); Richard D. Poll and Ralph W. Hansen, "'Buchanan's Blunder': The Utah War, 1857-1858," *Military Affairs* 25, 3 1 (1961), 121-31; Charles Fairman, *The Law of Martial Rule* (Chicago, 1930). See also literature on civil-military relations, for example, S.C Nielsen and D.M. Snider eds., *American Civil-Military Relations: The Soldier and the State in a New Era* (Baltimore, 2009); S.P. Huntington, *The Soldier and the State* (Cambridge, 1951).

¹³ See for example W. Holton, *Unruly Americans and the Origins of the Constitution* (New York, 2007); D. P. Szatmary, *Shays' Rebellion* (Amherst, 1980); W. Hogeland, *The Whiskey Rebellion* (New York, 2006); L. L. Richards, *Shays's Rebellion* (Philadelphia, 2002); P. Newman, *Fries's Rebellion* (Philadelphia, 2004) and 'The Federalists' Cold War', *Pennsylvania History* Vol. 67, No. 1, (Winter 2000), pp. 63-98; Brynner, "Fire Beneath Our Feet"; "Cromwell's Shadow over the Confederation" L. Tisse, *The American Counterrevolution* (Mechanicsburg, 1998); P. Maier, *From Resistance to Revolution, 1765-1776* (New York, 1972) and *Ratification: The People Debate the Constitution, 1787-1788* (New York, 2010); *American Scripture: Making the Declaration of Independence* (New York, 1992); T. Bouton, 'A Road Closed', *The Journal of American History* Vol. 87, No. 3 (Dec., 2000), pp. 855-887 and *Taming Democracy* (Oxford and New York, 2007), pp. 145-160; T. Slaughter, *The Whiskey Rebellion* (New York, 1986); G. Nash, *The Unknown American Revolution* (New York, 2005); P. A. Gilje, *Rioting in America* (Bloomington, 1996); P. B. Moyer, *Wild Yankees* (Ithaca, 2007).

popular protest – constituting an effort to “tame democracy” – consisted in placing limitations on state power within federal and state polities alike and creating limitations on democratic participation through filters on representation. The moneyed elite, the story goes, placed “the democratic genie back in the bottle” by constraining, checking and balancing state power. But this is a flawed argument. If the moneyed elite responded to popular uprisings by placing limits on state and federal governments to make them even more unresponsive to popular will, then protesters, who were driven to action by the unresponsiveness of government to begin with, should have escalated their extralegal efforts rather than terminated them. In other words, elite reaction should not have quelled popular rebellion, or “tamed democracy,” but fanned “the flames beneath [elite] feet.”¹⁴ Although it is more presumed than researched, the view that Americans reacted to popular insurrection by creating a government that could restrain majoritarian democracy in state legislatures has become commonsense.

This essay tells a different story. Placing domestic security of the state at the heart of the debate over the framing and ratification of the Constitution, I argue that American statesmen were not merely concerned with protecting their nascent citizens from government. Motivated by domestic turmoil, they were more fundamentally occupied with statebuilding, or creating a forceful government to “control the governed” and “secure the state.”¹⁵ These statesmen did not react right away, for statebuilders must often “puzzle before they power.”¹⁶ Part I (“Puzzling”) demonstrates how, in the wake of the Revolution, popular rebellion emerged as a new problem of governance, marking a decisive shift from colonial perceptions. Through an analysis of the labyrinthian political and legislative process of claiming and coercing obedience at the center of public authority, Part II (“Powering”) then illustrates how American statebuilders responded to the new problem by building coercive powers for securing state and central

¹⁴ James Wilson, *DHRC* Vol II, 576-579.

¹⁵ James Madison, *Federalist 10*; James Wilson, *The Works of James Wilson* Vol 2, ed., Robert G. McCloskey (Cambridge, 1967), 663.

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. See also Michael Mann, *Sources of Social Power* Vol. II, 472-473.

governments. I argue that they built this technological and conceptual apparatus by the means of constitution-making. As a technology, constitution-making served a threefold function. First, new articles on insurrection, violence, treason, and other forms of disloyalty translated the central state's political claims into legal-constitutional authority. Second, articles granting the central state unlimited power to recruit and maintain armies as well as unlimited power to tax and borrow money to pay for them created the institutional capacity to assert this new authority. And finally, as a discourse, constitution-making supplied statebuilders with a bundle of arguments, discursive strategies and images to formulate legitimate sovereign claims to allegiance – the obligation of citizens to obey – and the right to forcibly suppress internal resistance. The legal, institutional and ideological powers were inherently connected. As Virginia's Governor Edmund Randolph put it, the one power would be “pageantry alone” without the other two.¹⁷

Finally, I argue that the central powers over popular rebellion were a constitutive element of the making of a liberal central state in America.¹⁸ The new powers were central to what Michael Mann has called the caging of political and social relations, or the integration of civil society into the state. By identifying an intellectual and institutional nexus between public coercion and political representation, I argue that, paradoxically, the new liberal state intimately connected popular sovereignty and political representation with the power to coerce rights-bearing citizens. The creation of central powers of coercion was, then, not calculated to “put the democratic genie back in the bottle.” On the contrary, public coercion shared a foundational relationship with the rise of distinctly liberal and democratic features of the American polity.

¹⁷ Edmund Randolph, “Letter on the Federal Constitution, 16 October 1787,” Paul L. Ford ed., *Pamphlets of the Constitution*, 195.

¹⁸ 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’, Ira Katznelson and Martin Shefter (eds.), *Shaped by War and Trade: International Influences in American Political Development* (Princeton: Princeton University Press, 2002); Patrick Joyce, *The State of Freedom: A Social History of the British State Since 1800* (Cambridge and New York, 2013).

Puzzling: The Problem of Rebellion

The creation of central powers of coercion in post-revolutionary United States exemplifies a truism of state-formation: state power is always “preceded by its ideologies.”¹⁹ As the colonists declared independence and ratified constitutions, popular rebellion was transformed into a whole new problem of governance. Previously, the practices and thoughts of popular insurrection had not been perceived as a challenge to the security of the state. On the contrary, elites usually tolerated and accepted popular insurgency as a quasi-legitimate element of the social order. Its societal role was even formalized in political theory. As Pauline Maier has argued, popular uprisings were viewed as a legitimate way to bring attention to grievances once legal channels had been exhausted.²⁰

But the creation of democratic and sovereign polities engendered a new political will to respond to, and a clear conceptual framework to analyze, the problem of rebellion. The revolutionary elite realized that the protection of American sovereignty not only depended on overthrowing the British Empire, but also on establishing control, domestically, over the colonial population. Continental army officer Joseph Hawley succinctly articulated this challenge when he argued that the Declaration of Independence should be “accompanied by a declaration of high treason.”²¹ As a result, the state governments, together with Congress and its continental army, sought to gather old and new arguments, tools and technologies of sovereignty for the purpose of integrating the population into the state, or securing control over sympathetic as well as apathetic, or potentially loyalist, parts of the colonies.²²

¹⁹ Michael Mann, *Sources of Social Power* Vol II, 472-473.

²⁰ Pauline Maier, “Popular Uprisings and Civil Authority”. See also Maier, *Resistance and Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York, 1992);

²¹ Joseph Hawley to Elbridge Gerry 17 July 1776, James T. Austin ed., *The Life of Elbridge Gerry with Contemporary Letters* Vol. I (Boston, 1828), 206.

²² On the relationship between Congress and the new states, see Jack Rakove, *Original Meanings*, 165-175. The example of treason laws, militia drafts and oaths of allegiance collaborates Rakove’s account of state-Congress relations. The states often reacted to policy recommendations posed by Congress, including creating new constitutions, or sought Congress’ permission before adopting policy.

Scholars have long identified the most obvious ways of integrating the population into the nascent polity, that is the various instruments of popular representation such as the creation of autonomous legislative assemblies, elections, public opinion and political parties.²³ But they have largely ignored the no less important mechanisms of exacting – by manipulation and coercion – the allegiance and consent of the colonial population. Throughout the Revolution, these included militia drafts, treason laws and loyalty oaths. The militia’s main role, throughout the conflict, was not to win battles but to mobilize, coercively, the indifferent majority to minimal military action. Once they had been persuaded or trapped into local marauding against the British or Loyalist neighbors, there was no turning back: they were rebels against the crown.²⁴ Fearing “disaffected persons” who “ow[ed] allegiance to the [United States],” the states all enacted and enforced treason laws, riot laws as well as laws against lesser offences such as disloyal utterances and traffic with the enemy.²⁵ On the request of Congress, the states devised and administered loyalty oaths for all residents to swear for the purpose of forcing mobilization of a disinterested population. The loyalty oaths were supposed to coerce civilians into taking sides in the conflict and declare themselves in favor of the new American states.²⁶ If, previously, the colonists had tolerated and even promoted popular insurgency, now they asserted the right of the new American governments to forcibly repress rebellions in the name the security of the state.

The succession of hostilities after the 1783 treaty in Paris did not put an end to internal dissension. The sovereignty of the states, individually and united, may have been recognized, internationally, by the powers of Europe. But, domestically, the authority of the law was still fiercely contested. As Peter Onuf has argued, the states did not command loyalty and, in the face of multiple episodes of insurgency, their ability to

²³ For critical treatments, see Ira Katznelson, ‘Flexible Capacity: The Military and Early American State building’, Ira Katznelson and Martin Shefter (eds.), *Shaped by War and Trade: International Influences in American Political Development* (Princeton: Princeton University Press, 2002), 86; Michael Mann, *Sources of Social Power* Vol II, 472-473.

²⁴ John Shy, “A New Look at the Colonial Militia,” 47-59.

²⁵ James Willard Hurst, *Laws of Treason in the United States*, 67-69.

²⁶ Harold M. Hyman, *To Try Men’s Souls: Loyalty Tests in American History* (New York, 1982), 80-81, 85.

uphold sovereignty and territorial integrity was uncertain.²⁷ Throughout the 1780s, insurgents wreaked havoc in the backcountries of Virginia, Massachusetts, New York, New Hampshire and North Carolina. 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 the northeastern parts of the Massachusetts attempted to separate and then did, creating the new state of Maine.²⁸ 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 defy control and authority. As a North Carolina congressional delegate remarked, "the spirit of making new States [was] epidemic."²⁹

No single event epitomized the post-revolutionary reconfiguration of the problem of rebellion more than Shays' Rebellion. The rebellion – an armed uprising in the western counties of Massachusetts – erupted in August 1786 and wreaked havoc throughout the following winter until a quasi-private army funded directly by the mercantile elite in Boston suppressed it.³⁰ 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 forcibly closing down courts, preventing 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

²⁷ Peter Onuf, *Origins of the Federal Republic*, xvii.

²⁸ John L. Brooke, "To the Quiet of the People: Revolutionary Settlements and Civil Unrest in Western Massachusetts, 1775-1789," *William and Mary Quarterly* 46 (1989), 425-62.

²⁹ Quoted in Christian Fritz, *American Sovereigns*, 49. See also, Peter Onuf, *Origins of the Federal Republic*; Thomas Slaughter, *The Whiskey Rebellion*; Paul B. Moyer, *Wild Yankees*.

³⁰ Paul Szatmary, *Shays' Rebellion*, 86.

– 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” and an illegitimate affront to popular, representative government.³¹

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 even 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.³² Governor Bowdoin issued, on 2 September 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.”³³ 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.”³⁴ 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.³⁵ As Massachusetts Governor James Bowdoin frequently emphasized, “strict obedience to the laws ... is essential to the peace and

³¹ James Bowdoin, *Address*, Jan 1787, 171.

³² David P. Szatmary, *Shays’ Rebellion*, 159.

³³ *Massachusetts Archives*, Vol. 189, 3-4.

³⁴ General Court, *Address*, 36-38.

³⁵ *Massachusetts Centinel*, 13 September 1786. See also another letter of Adams denouncing the rebellion in similar terms, *The Independent Chronicle*, 24 August 1786). See also, William Pencak, “Samuel Adams and Shays’ Rebellion,” *The New England Quarterly* 62 1 (1989), 63-74; Report of Henry Knox to Congress 1, 3, 12 and 18 October 1786, *Journals of the Continental Congress* Vol. 31, 739-40, 751-53, 875, 886-88; Henry Knox to George Washington 23 October 1786, *PGW* Vol. IV, 299.

safety of the Commonwealth.”³⁶

The Massachusetts authorities’ reaction to Shays’ Rebellion also demonstrates that democracy was central to the new problem of rebellion. They argued that republican principles of democracy, or political representation and majority rule, made popular insurrection illegitimate and treasonous. According to this view, 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.”³⁷ No one had to “regret the Share he may then have had in them.”³⁸ 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.”³⁹ As Americans now had “constitutional and regular Governments and all our Men in Authority depend upon the annual and free Elections of the People,” it 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 Wisdrom at the next Elections will set all right, without the aid” of insurgency.⁴⁰ 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.”⁴¹

³⁶ Bowdoin, *Address*, January 1787, 171. For the centrality of allegiance and obedience to sovereignty see Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge and New York, 2009).

³⁷ Adams in *Circular Letter to the Several Towns in the Commonwealth* (Sept. 13, 1786) in *Massachusetts Centinel*, Sept. 13, 1786.

³⁸ Samuel Adams to Noah Webster, WSA, 134.

³⁹ Samuel Adams in “Circular Letter to the Several Towns in the Commonwealth” (Sept. 13, 1786) in *Massachusetts Centinel* Sept. 13, 1786:

⁴⁰ Samuel Adams to Noah Webster, WSA, 134.

⁴¹ Samuel Adams, *Address to the Legislature of Massachusetts*, Jan 16, 1795. In fact this view emerged in the 1780s as a highly popular argument among the ruling elite. Examples include: Alexander Hamilton’s statement that as “the whole power of the government is in the hands of the people” there was no justification “for the use of violent remedies in partial or occasional distempers of the State ... the natural cure for an ill administration, in a popular or representative constitution, is a change of men” through elections in Alexander Hamilton, *Federalist 21*;

Not only did “regular and constitutional Governments” rendered insurrection “dangerous” and “treasonous,” but also republican governments could not work without the suppression of opposition to the laws by disgruntled localities and factious minorities. As the Massachusetts General Court declared “in a republican government the major part must govern: if the minor part governs, it becomes an aristocracy: if everyone opposes at his pleasure, it is no government, it is anarchy and confusion”.⁴² Reflecting on Shays’ Rebellion, John Quincy Adams echoed this sentiment, arguing that “opposition to the acts of a majority of the people is rebellion to all intents and purposes.”⁴³ The different “parts of the State” simply had to “submit to the controul” of representative legislatures.⁴⁴ 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.”⁴⁵

As the representative and 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 people and the state. Insisting that the government itself was the true defender of the people’s safety – and their decisions the true expression of the people’s will – 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

Similarly, James Bowdoin, Governor of Massachusetts, believed that “every complaint, or grievance, that can be offered ... is, from the nature of the constitution, redressible by the General Court” and “all other modes of redress are anticonstitutional, and a very dangerous tendency” in James Bowdoin, “Speech of Governor James Bowdoin (Sept. 28, 1786),” in *Mass. Centinel*, Sept. 30, 1786. See also various examples quoted in Gordon Wood, *Creation of the American Republic*, 257-390.

⁴² Samuel Adams in John K. Alexander ed, *WSA*, 276.

⁴³ VII, 1607

⁴⁴ *General Court Address*, 28-29.

⁴⁵ Samuel Adams in John K. Alexander, ed *WSA*, 276.

in the administration of government,” the Court wrote and distributed a 40-page report.⁴⁶ 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.⁴⁷ 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.⁴⁸ Most strikingly, 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.”⁴⁹

The Massachusetts authorities argued that the disturbances stemmed from the failure of the people themselves rather than oppressive government. The “virtue which is necessary to support a Republic”⁵⁰ had declined. In the 1760s and 1770s, the colonists had been provoked to rebel by British oppression, but now the rebellion was caused by licentiousness by the people. 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. Economical and frugal in its operations, the General Court's report concluded that no fault lay with the administration of government. The government had not failed administratively or politically. The cause of the disturbances lay with the people's “habits of luxury.”⁵¹ Similarly, Samuel Adams insisted that the insurgents had only themselves to blame. They had spent beyond their means, incurred debts and lived luxuriously.⁵² Further shifting the

⁴⁶ *General Court, Address*, 38.

⁴⁷ Isaac Backus, *Address*, 4.

⁴⁸ Lincoln, 19 February 1787, Lincoln Papers, microfilm, MHS.

⁴⁹ Artemis Ward to James Bowdoin, 16 December 1786, Artemis Ward Papers, MHS, microfilm collection.

⁵⁰ *General Court Address*, 36.

⁵¹ *Ibid*, 33, 36.

⁵² *Massachusetts Centinel*, 13 September 1786. Writing in 1788, the first historian of the rebellion, George Richard Minot, seconded the state's articulation suggesting that “the delinquency” was not with the government but with “the people themselves.” See George Minot, *The History of the Insurrections in Massachusetts* (Worcester, 1788), 9.

focus from the government, others speculated that the British had incited the rebellion.⁵³

It was a corollary to the claim that the fault lay with the insurgents and not the government that the remedy should be sought in the latter's disciplining 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.”⁵⁴ Adams recommended “industry and frugality.”⁵⁵ 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.”⁵⁶ “Vigour, decision, and energy” would “terminate this unnatural, this unprovoked insurrection.”⁵⁷ Instead of seeking to redress grievances according to the pre-revolutionary tradition, the Massachusetts authorities sought to quell and suppress the rebellion by force.

Not only does the Massachusetts regulation illuminate how popular rebellion emerged as a new problem confronting the state; it also demonstrates that the state did not possess the means to manage it. 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.”⁵⁸ 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.⁵⁹ In early October it consulted with Secretary of War Henry Knox. They sought the aid of the Confederation and the direct intervention of federal troops.⁶⁰ But involving the federal government in the domestic

⁵³ Madison and Washington certainly pondered that possibility. See Madison to Muter, 7 January 1787, *PJM*, 230; Washington to David Humphreys Dec 26, 1786, *PGW* Vol. IV, 477.

⁵⁴ *General Court Address*, 35.

⁵⁵ *Massachusetts Centinel*, 13 September 1786.

⁵⁶ *General Court Address*, 3.

⁵⁷ *Ibid*, 2.

⁵⁸ David P. Szatmary, *Shays' Rebellion*, 26.

⁵⁹ *Ibid*, 28.

⁶⁰ Joseph P. Warren, “The Confederation and Shays' Rebellion,” *The American Historical Review* 11 (1905), 47.

affairs of the state created formidable legal-constitutional, conceptual 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.⁶¹ 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.”⁶² According to the Articles of Confederation, the federal government only possessed powers “expressly delegated” and the Articles gave no authority over domestic insurrections. The third Article could possibly offer some hope, declaring that they states had “enter[ed] into a firm league ... for their common defence ... binding themselves to assist each other against all force ... made upon them.” But even if this Article could be stretched to include domestic disturbances, the provision limited the power to act to other states, not the federal government.

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.⁶³ After reviewing the report, Congress decided to raise a little 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 northern frontier, and conveniently march them through Massachusetts en route. The committee’s report made no reference whatever to the settler rebellion.⁶⁴ 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,

⁶¹ James Madison, *Vices of the Political System*

⁶² *Journals of the Continental Congress* Vol. 33 (Washington, 1936), 721. See also Madison, *Vices of the Political System.*”

⁶³ *Ibid*, 162-4.

⁶⁴ *Ibid*, 186-188

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.”⁶⁵ The report further indicated that the insurrection should not be mentioned as a reason for sending troops. As Madison pointed out in Congress, “the enlargement of the military force“ was “masked ... with an ostensible preparation against the Indians.”⁶⁶

Even if Congress could circumvent constitutional restrictions on action by raising a force under the rubric of an Indian threat, Congress’s efforts were ultimately frustrated by administrative shortcomings. It was unable to mobilize or raise the troops to suppress the rebels. The central problem was money. Congress dared not put “arms into the hands of men whose fidelity must in some degree depend on the faithful payment of their wages.”⁶⁷ Under the Articles, Congress had no independent fiscal powers of taxation or resource-extraction and had to rely on voluntary requisitions from the states for its expenses.⁶⁸ Once Congress decided to raise the army, it requested funds from the states. Only Virginia proved willing to supply its share of the funds. Congress was unable to raise an army to preserve the internal peace.

Powering: Granting Authority

Shays’ Rebellion revealed the inability of the central government to act against domestic insurrection. “The U.S. ought to be able to aid the government of particular states in distresses like these” but was without authority, legitimacy and capacity. In fact, it could scarcely “maintain itself.”⁶⁹ 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

⁶⁵ *Secret Journals of the acts and proceedings of Congress, from the first meeting thereof to the dissolution of the Confederation* Vol. III (Boston, 1821), 252-254.

⁶⁶ *Journals of the Continental Congress* Vol 33, 721.

⁶⁷ *Secret Journals and acts and proceedings of Congress* Vol. III, 252-254.

⁶⁸ Max Edling, *A Revolution in Favor of Government*, 34.

⁶⁹ Henry Lee to James Madison, 19 Oct 1786 in *LMCC* VIII, 489

flame” in other parts of the Union.⁷⁰ The federal government could not uphold public authority with the powers given to it by the Confederation.

The documentary record provides abundant evidence that, in the mid-1780s, the nationalist elite began discussing the need to build a new central power and authority to govern domestic insurgency. 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.⁷¹ 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.”⁷² 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.⁷³ 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.”⁷⁴ No “laws in the confederation authorize[d] Congress to intrude troops into a State” and could not “preserve the States against sedition.”⁷⁵ It was widely deemed necessary to create a power “to support the sovereignty and preserve the peace of the Union ... against domestic insurrection.”⁷⁶ To “bring about such an amendment of the federal Constitution” the nationalists looked to the constitutional convention that was to be held in Philadelphia in the spring of 1787.⁷⁷ It was the “most favourable circumstances” for “prudent and

⁷⁰ James Wilson, *DHRC* Vol II, 583.

⁷¹ Washington to Madison, 5 November 1786, *PGW* Vol. IV, 331.

⁷² Madison to Muter, 7 January 1787, *PJM*, 230.

⁷³ Stephen Higginson to Henry Knox 12 November 1786, *Life and Times of Stephen Higginson*, ed. Thomas Higginson (New York, 1907), 704.

⁷⁴ Max Farrand, *Records*, Vol. I, 18-19.

⁷⁵ Max Farrand, *Records*, Vol. I, 20.

⁷⁶ McKean, *DHRC* Vol II, 415.

⁷⁷ Madison to Muter, 7 January 1787, *PJM*, 230

sagacious men ... to establish a more permanent and vigorous government” to crush unruly politics.⁷⁸

While the Federalists widely agreed that the central government should be endowed with power over domestic violence, they did not yet possess a constitutional blueprint for the construction of a coercive apparatus. Between February and April 1787 a leading Virginian, James Madison, produced the actual constitutional design of the apparatus for control of domestic violence. Madison was well aware of the problems Congress had encountered.⁷⁹ 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.”⁸⁰ Randolph agreed: the new constitution had to provide “a firm resort against domestic commotion”⁸¹ and “secure against sedition.”⁸²

After a few months of reflection, Madison produced two memoranda analyzing the political problems that plagued the United States. Here Madison laid out the blueprint for the new powers over domestic rebellion. These texts are rightly famous, but the state security sections they contain are rarely mentioned. 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.”⁸³ But in devising a constitutional design, Madison drew on the experience of other confederations, past and present, as well as the writings of Montesquieu. In “Notes on Ancient and Modern Confederacies,” Madison reviewed how previous confederacies had

⁷⁸ Rufus King to Elbridge Gerry 11 February 1787, LMCC VIII, 539. For more examples on the link the American elite established between the Constitutional Convention in Philadelphia and Shays’ Rebellion see Szatmary, *Shays’ Rebellion*, 160-66.

⁷⁹ See for example the correspondence of Madison with Washington and Lee in November and December 1786 and January 1787 in *PGW* and *PJM*; and Randolph’s correspondence with Madison and other Virginian delegates to Congress in *Papers of Edmund Randolph* (microfilm collection at University of Virginia Library).

⁸⁰ Madison to Randolph 8 April 1787 in *PJM*, 370; See also Edmund Randolph, “Letter on the Federal Constitution,” 159-167.

⁸¹ Edmund Randolph, “Letter on the Federal Constitution,” 193.

⁸² Max Farrand, *Records*, Vol. I, 20.

⁸³ James Madison, *Vices of the Political System Notes on Ancient and Modern Confederacies*

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 Government established in each Canton, so that each is armed with the force of the whole Corps for the suppression of rebellions and Revolts.”⁸⁴ The history of the Swiss confederation “informs us that mutual aid is frequently claimed and afforded.”⁸⁵ 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.”⁸⁶

Madison’s central proposition was to make the central government responsible for “supporting the sovereignty and preserving the peace of the Union.” Drawing on the example of the Swiss confederacy, 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”⁸⁷ in isolated localities, individual states or the entire Union. 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 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.⁸⁸

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. According to Randolph “the objects of the Union” were “to secure [the Union and individual states] 1. Against foreign invasions: 2. against

⁸⁴ James Madison, *Vices of the Political System*.

⁸⁵ James Madison, *Federalist 43*.

⁸⁶ James Madison, *Federalist 43*.

⁸⁷ Alexander Hamilton, *Federalist 28*

⁸⁸ James Madison, *Federalist 43*.

dissentions between members of the Union or in particular states.”⁸⁹ Similarly, Roger Sherman, one of the plan’s strongest opponents, had no problem with Randolph’s definition of the “the objects of the Union” and defined them in a fashion quite similar to Randolph’s as “1. Defence agst. foreign danger. 2. agst internal disputes and a resort to force.”⁹⁰ The so-called Pinckney plan drew fierce criticism because it only repeated the battery of powers already lodged in Congress by the Articles of Confederation and 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.”⁹¹ 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.”⁹² 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.”⁹³

Subsequently, 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 “safety,” “security,” “defense,” or “self-preservation” of the “state” or “constitutional authority” against “insurrection,” “rebellion,” “sedition” or “domestic violence.” Taken together, they constitute what we could call the state security 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 to offer pardons. Giving the executive, as

⁸⁹ Max Farrand, *Records* Vol. I, 39.

⁹⁰ Max Farrand, *Records* Vol. I, 43.

⁹¹ Max Farrand, *Records* Vol. II, 273, 263.

⁹² Max Farrand, *Records* Vol. II, 255-256.

⁹³ Max Farrand, *Records* Vol II, 318.

opposed to the legislature, the power to offer pardons 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.”⁹⁴ Finally, the passion to maintain public order through public 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.”⁹⁵

Many who supported the ratification of the Constitution were drawn to its state security clauses. “The expediency of the plan of government,” wrote the editors of the *Virginia Gazette* arose “from the provisions which they have so judiciously made for preventing insurrections ... and for procuring obedience to the federal constitution.”⁹⁶ 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 the Massachusetts regulation. Knowing “good government by the want of it” he “saw this Constitution [and] found that it was a cure for these disorders.”⁹⁷ 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.”⁹⁸ 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

⁹⁴ Alexander Hamilton, Federalist 74. See also James Madison, Virginia Ratification debates, 1379-80

⁹⁵ *DHRC* Vol. XX, 758.

⁹⁶ *Virginia Gazette*, *DHRC* Vol. XIII, 372.

⁹⁷ Smith, *DHRC* Vol. IX, 1346-47.

⁹⁸ *DHRC* Vol. XIV, 71.

“domestic insurrections” in particular states, by which means we shall be deprived of the only means of opposing the laws of this state.”⁹⁹

Madison’s system for domestic security has implications for how we view federal-state relations. It reveals the importance of the central government in defending the authority of the law against insurrection, maintaining “domestic tranquility,” “public safety” and “a well-regulated community.”¹⁰⁰ It complicates the view, espoused by a burgeoning literature that tends to inflate the strength of the states and minimize that of the central government. The new state-republics of the post-independence period are characterized as powerful juggernauts or leviathans, but the nascent central government is portrayed as weak, inconsequential or merely concerned with foreign affairs.¹⁰¹ These scholars conflate authority with capacity, or what the states were allowed to do with what they could actually accomplish. Madison’s system suggests that while the new state constitutions invested their governments with wide-ranging discretionary authority, they lacked the capacity to uphold it. In Michael Mann’s terms, the states may have scored high on despotic power but they scored lower on infrastructural power.¹⁰² Thus, statemakers looked to build a forceful, albeit carefully limited, federal government with the power to secure the state governments and public order within them.

Madison’s system also highlights that the momentum of federal power did not necessarily always 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

⁹⁹ Pennsylvania Ratification, 156.

¹⁰⁰ Edmund Randolph, *DHRC* Vol IX, 985.

¹⁰¹ See for example William Novak, “Common Regulation: Legal Origins of State Power in America,” *Hastings Law Journal* 45 4 (1994), 1061-97; *The People’s Welfare: Law and Regulation in Nineteenth Century America* (Chapel Hill, 1996); Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union* (Charlottesville, 2009); Karen Orren, “Officers’ Rights: Toward a Unified Field Theory of American Constitutional Development,” *Law and Society Review* 34 4 (2000), 873-909; Markus D. Dubber, “‘The Power to Govern Men and Things’: Patriarchal Origins of the Police Power in American Law,” *Buffalo Law Review* 52 4 (2004), 1-66; *The Police Power: Patriarchy and the Foundations of American Government* (New York, 2005); Max Edling, “Mongrel Kind of Government”.

¹⁰² Michael Mann, *Sources of Social Power* Vol I., 15-33.

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."¹⁰³

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 exacting obedience and managing allegiance 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 coercion 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.¹⁰⁴

Even more importantly, 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

¹⁰³ Pelatiah Webster, DHRC, XIV, 73. For a similar view, see also Peter Onuf, *Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787* (Philadelphia, 1983), 186-208.

¹⁰⁴ 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 (1963), 175-185; Don Higginbotham, "The Federalized Militia Debate: A Neglected Aspect of Second Amendment Scholarship," *William and Mary Quarterly* 55 1 (1998), 39-58.

states and depended on their cooperation to raise and fund armies.¹⁰⁵ 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 ultimately 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."¹⁰⁶ Institutional capacity to assert public authority was the "natural incident to the duties of superintending the common defense, and watching over the internal peace of the Confederacy."¹⁰⁷

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 exemplifies a truism of state-formation: 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. They argued that force on the one hand, and obedience on the other, was integral to sovereignty. "No government," claimed Randolph, could be "stable, which hangs on human inclination alone, unbiassed by the coercion. "Coercion" was "an essential ingredient" to a properly constituted sovereignty.¹⁰⁸ Indeed, it was argued, "the very term, *government*, implies a supreme, controuling power somewhere; a power to coerce, whenever coercion shall be necessary."¹⁰⁹ In cases of resistance to the law, the federal government had "a right" to "exact obedience, or punish disobedience" by "force."¹¹⁰ "The public force must be

¹⁰⁵ See for example Max Edling, *A Revolution in Favor of Government*, 149-162.

¹⁰⁶ Edmund Randolph, "Letter on the Federal Constitution, 16 October 1787," 195.

¹⁰⁷ Alexander Hamilton, *Federalist 29*.

¹⁰⁸ Edmund Randolph, "Letter on the Federal Constitution, 16 October 1787," 193.

¹⁰⁹ Stillman, *DHRC Vol V*, 1457. See also *DHRC Vol. 5*, 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." Corbin, *DHRC Vol. IX*, 1009-1010; See also Grayson, *DHRC Vol. IX*, 1169.

¹¹⁰ Alexander Hamilton, *Federalist 21*

used,” Madison explained, “when resistance to the laws required it, otherwise society must be destroyed.”¹¹¹

To meet the actual institutional imperatives of organizing “the use of physical force” to uphold the law against insurrection, Federalist state makers sought to assemble elements from a transnational repertoire of institutions and practices of coercion. They sought, in other words, to draw on technologies then available to fiscal-military states.¹¹² 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.”¹¹³ 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.” According to Hamilton, there could be no “limitation of that authority which is to provide for the defense and protection of the community ... in any way essential to the formation, direction, or support of the national forces.”¹¹⁴ The threat of domestic insurrection and “the spirit of revolt,” “instructed” the American people that troops and “military force in time of peace [was] essential to the security of the society, and that it

¹¹¹ James Madison, *DHRC Vol IX*, 1274. See also, for example, As Alexander Hamilton insisted, “the idea of governing at all times by the simple force of law ... has no place but in the reveries of those political doctors whose sagacity disdains the admonitions of experimental instruction.” in Alexander Hamilton, *Federalist 28*

¹¹² 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, thus downplaying domestic factors. See Bernard Kohn, *Eagle and Sword*; Lawrence D. Cress, *Citizens in Arms*; Max Edling, *A Revolution in Favor of Government*; “A Mongrel Kind of Government,” in Peter Onuf and Peter Thompson eds., *State and Citizen. British America and the Early United States* (Charlottesville and London, 2013), 150-177; Max Edling, *A Revolution in Favor of Government*; Charles Tilly, *Coercion, Capital, and European States, AD 990-1990* (Cambridge, Mass., 1990); John Brewer, *The Sinews of Power: War, Money, and the English State, 1688-1783* (New York, 1989).

¹¹³ Edmund Randolph, *DHRC Vol IX*, 1016.

¹¹⁴ Alexander Hamilton, *Federalist 23*.

[was] therefore improper in this respect to control the legislative discretion.” “An army” would have to be raised to quell rebellion and invasion alike.¹¹⁵

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.”¹¹⁶ Madison was more hesitant to articulate a connection between the fiscal-military powers and domestic insurrection but nevertheless stated that “resistance ... made to the execution of the laws ... ought to be overcome” and if need be it by “regular forces” or a “standing army.”¹¹⁷ “Constitutional barriers” could not oppose “the impulse of self-preservation.”¹¹⁸

The Constitution also granted the federal government a general and unlimited 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

¹¹⁵ Alexander Hamilton, *Federalist 26*. See also Hamilton, *Federalist 28*.

¹¹⁶ James Wilson, *DHRC Vol II*, 576-579.

¹¹⁷ James Madison, *DHRC Vol IX*, 1273.

¹¹⁸ James Madison, *Federalist 41*

necessitous” could not “fulfill the purposes of its institution” to “provide for the security ... of the commonwealth.”¹¹⁹

Federalist state makers 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 by the extent of the mischief.”¹²⁰ “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.”¹²¹

Powering: Legitimizing Authority, Reinventing Republicanism

Creating central coercive powers for the security of state and federal governments required statebuilders to contend with conceptual problems of legitimation. They had to reconcile the deployment of public coercion with republican principles.¹²² As scholars of the state have pointed out, legitimacy is integral to the effective exercise of state power.¹²³ Max Weber’s influential definition of the state, for example, distinguished the state from other societal institutions as holding a monopoly, not on violence per se, but on the

¹¹⁹ Alexander Hamilton, *Federalist 31; 34; 30*.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² For republicanism as a conceptual matrix or a universe of discourse, 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); and Gordon Wood, *Creation of the American Republic*.

¹²³ John Brewer, *The Sinews of Power: War, Money, and the English State, 1688-1783* (New York, 1989); Michael Braddick, *State Formation in Early Modern England, 1550-1700* (Cambridge and New York, 2000), 10, 68; Ira Katznelson, ‘Flexible Capacity: The Military and Early American State building’, Ira Katznelson and Martin Shefter (eds.), *Shaped by War and Trade: International Influences in American Political Development* (Princeton: Princeton University Press, 2002).

legitimate use of force.¹²⁴ Political power must always be justified in terms of wider social and political beliefs; it constitutes a basic condition for governing.¹²⁵ For the Federalists, legitimation was perhaps the most formidable barrier facing the creation of public coercion. Not only did they seem to contradict republican principles. But also the new central powers would only be secured through popular consent, or 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 debate” over the ratification of the new constitution.¹²⁶ The Federalists, then, had to invent a new conceptual template for reconciling the creation of public force to coerce right-bearing citizens with the sovereignty of a revolutionary people.

The experience of popular insurrection throughout the 1780s generated profound problems for republican principles. According to the classical tradition, popular rebellion was the natural offspring of monarchical governments. As the former colonies transitioned into a republic, popular insurrection should have come to an end – much like the monarchy itself. Republican principles of popular representation and majority rule rendered insurrection illegitimate as well as irrelevant. On the one hand, as republican governments were, by definition, governments of the people themselves, or based on the will of the majority of the community, only disgruntled minorities would mount rebellions. As a result, insurrections were not only illegitimate but also represented a violation of the legitimate will of the people.¹²⁷ On the other hand, the possibility of insurrections should have become irrelevant to state security. In republican polities, where standing armies and other institutions of organized coercion were spurned, the citizens constituting the majority of votes also comprised the majority of physical force; republics conjoined “right and might.” Possessing only a minority of coercive power, insurrections could not possibly pose a threat to public security any

¹²⁴ See also James Sheehan, “The Problem of Sovereignty in European History,” 4.

¹²⁵ David Beetham, *The Legitimation of Power* (London, 1991), 10-11.

¹²⁶ For the debate over the ratification see Isaac Kramnick, “The Great National Discussion?: The Discourse of Politics in 1787,” *William and Mary Quarterly* 45 (1988), 1-32; and Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York, 2011).

¹²⁷ See footnotes 37-41.

more than a minority of votes could determine the outcome of an election. Majorities would not have a reason, and minorities would never have the actual force, to amount a serious challenge to the government.¹²⁸

Similarly, investing the central state with formidable coercive powers posed serious problems for republican principles. It created a force external to the state politics in support of the established government without regard to its popular support.¹²⁹ By imbuing established government with outside and extraordinary force, regardless of whether this government was in agreement with popular will, it threatened to destroy a constitutive elements of republicanism, or divorce legitimacy and organized coercion (right and might). If state governments required federal support to put down rebellions that certainly had to mean that majorities or large minorities in those states had come to oppose state governments.¹³⁰ 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.¹³¹ The new federal powers, thus, posed problems for republican ideology and the new republican governments, threatening their most sacred claim to be governments of the people. The conservative Baron von Steuben shrewdly picked up on this point. He argued that republicanism was threatened by federal imposition 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?”¹³² That was precisely what the new central powers threatened to do, von Steuben concluded. The new central powers of coercion threatened to turn the nascent republic into an aristocracy.

¹²⁸ For this formulation, see James Madison, *Federalist 43*.

¹²⁹ James Madison, *Federalist 43*; *Journals of the Continental Congress* Vol 33, 721; Alexander Hamilton, *Federalist 28*.

¹³⁰ James Madison, *Federalist 43*; *Vices of the Political System in the United States*.

¹³¹ See for example Agrippa, *DHRC* Vol. XII, 457-462.

¹³² 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.

Republicanism, then, faced a serious challenge when it came to the design of institutions to secure the state. 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. No one discerned this problem more clearly than James Madison. As the Confederation Congress sought ways to deal with Shays' Rebellion, Madison began devising a plan for legitimizing federal imposition. At a session of the Continental Congress in February 1787, 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."¹³³ In subsequent months, however, Madison discarded this proposition and found a way to legitimize federal intervention. In so doing, Madison modified existing republican ideas, arguments and justifications and set aside a feature that had been central to the classical tradition, that is the unitary concept of right and might. Madison's new thinking constitutes a significant intervention into the nature and meaning of republicanism, one that scholars have ignored, distracted by the preoccupation with Madison's thinking about checks and balances and filters on representation.

The experience of ancient and modern confederations was silent on how to legitimize public coercion in a polity grounded on popular sovereignty and representation. To devise such a legitimation, Madison addressed himself to the core tenet of "republican theory," which held that republican governments should combine "right and might," or that, being grounded in majority will, control of physical force was the natural concomitant of republican governments. Madison explained that "according to Republican Theory, Right and power being both vested in the majority, are held to be synonymous." As a result, Madison continued, it "seem[ed] not to square with the republican theory, to suppose, either that a majority have not the right, or that a minority

¹³³ Madison's "Notes on Debates" 19. February 1787, *Journals of the Continental Congress* Vol 33, 721.

will have the force, to subvert a government.” According to this view, rebellion should not be a 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.

“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.” Was “it true that force and right are necessarily on the same side in republican governments?” Madison 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 trail 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.¹³⁴

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, but 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

¹³⁴ James Madison, *Federalist 43*.

level of men. But “in the tempestuous scenes of civil violence” would “emerge into the human character, and give a superiority of strength to any party with which they may associate themselves.”¹³⁵

On the other hand, majority violence presented a problem for the republican coupling of right and might. Here Madison went even further. The unity of right and might was not merely threatened by powerful minorities but also by majorities. Madison argued that “a majority of a state” could also constitute an “illicit combination” for “purposes of violence” and to “subvert the government.” In other words, 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 notion that legitimacy and majority number – right and might – were conjoined in republican polities had become “chimerical.”¹³⁶

But what, then, was the meaning of republicanism? In deconstructing the unitary concept of right and might, Madison had introduced arguments calculated to divorce republican legitimacy from majority will. Madison’s analysis suggests that the essence of republicanism had been transformed from majority will into constitutional rule, or constitutional liberalism.¹³⁷ “Constitutional right” could easily become divorced from “majority will,” and in such cases ultimate republican legitimacy resided with the constitution. “The federal authority ought to protect ... the State constitutions” and by extension “the federal Constitution.”¹³⁸

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. Certainly, Hamilton maintained, there “could be no

¹³⁵ James Madison, *Federalist 43*; *Vices of the Political System*; Max Farrand, *Records*, 318.

¹³⁶ James Madison, *Federalist 43*.

¹³⁷ For a recent account of the relationship between republicanism and liberalism in the late 18th century, to which this essay is in debt, see Andreas Kalyvas and Ira Katznelson, *Liberal Beginnings*.

¹³⁸ James Madison, *Federalist 43*; Max Farrand, *Records* Vol 1, 356; Max Farrand, *Records* Vol 2, 124.

impediment to reforms of the State constitutions by a majority of the people in a legal and peaceable mode.” But the federal government would prevent, by force, “changes affected by violence” by majorities and minorities alike. “Toward the preventions of calamities of this kind, too many checks cannot be provided.” On it depended “the peace of society and stability of government.”¹³⁹

Madison’s legitimation was a significant intervention into the nature of republicanism. Realizing the limits of the classical tradition for issues of public order, Madison transformed republicanism in order to save it. Madison carved out a sphere of federal power by changing the meaning republicanism into constitutional government. If ultimate legitimacy resided in majority action, then federal imposition would be illegitimate. The minority would not have the force, and the majority would have a perfect right, to subvert the constitutional order. But if the constitutional order was the ultimate embodiment of republican legitimacy, it was perfectly republican to grant the federal government the power to secure it against illegitimate majority and minority extra-constitutional threats. These transformations produced constitutional liberalism. In searching for a way to secure republicanism, Madison had arrived at a liberal cure.

Conclusion

The security of American state and central governments was not self-evident but engendered a contingent, conflicted and ultimately incomplete process of state-formation. At the core of this process was the desire of Federalist state makers, in the process of framing and ratifying the Constitution, to create legal, institutional and conceptual powers to control popular insurrection. These coercive powers of the central government were new to the United States but were assembled from a set of new as well as old properties of sovereignty. Constitutionally, Madison looked to the experience of other confederacies. Granting the federal government the authority to repress popular rebellion, the new Constitution would increase the power not only of the central

¹³⁹ Alexander Hamilton, *Federalist 21*.

government but augment the authority of the states as well. Institutionally, the Federalists drew on the technologies of the 18th century manifestation of the fiscal-military state to give the new central authority effect. Through an independent and unlimited power to tax, borrow money and raise armies, ample resources could be mobilized by the central government to suppress insurrections. And conceptually, James Madison's work to legitimize the federal coercive powers was a transformative intervention into the nature of republican ideology. Madison offered a new formulation of the problem of rebellion and, in so doing, transformed the meaning of republicanism into constitutional liberalism.

Taken together, the problem of rebellion and new central powers of coercion were a constitutive element of the creation of a liberal central state in America. They contributed to what scholars have referred to as the bringing of civil society into the state, or the caging of political and social relations. As scholars have pointed out, civil society was brought into the fold of the state, or caged, by the way of popular sovereignty and political representation.¹⁴⁰ But that is only half the story. I have argued that the population was equally integrated into a new liberal state through the creation of coercive powers. Liberal constitutional rule was raised on a bedrock of coercion. On the one hand, democracy was central to the problem of rebellion and the coercive powers to which it gave rise. Not only did statebuilders use political representation to justify the suppression of insurrections, but also representation could only be made possible by creating a power capable of forcibly upholding the laws of central legislatures against unruly minorities and disgruntled localities. On the other hand, the new federal powers sought to put an end to all forms of popular political action outside of, or external to, the parameters of the constitutional order. In so doing, the state set legible jurisdictional and institutional boundaries of, or caged, civil society, establishing effective control over it. Paradoxically, the new liberal state fundamentally connected popular sovereignty and

¹⁴⁰ Ira Katznelson, 'Flexible Capacity: The Military and Early American State building', Ira Katznelson and Martin Shefter (eds.), *Shaped by War and Trade: International Influences in American Political Development* (Princeton: Princeton University Press, 2002), 86; Michael Mann, *Sources of Social Power* Vol II, 472-473.

representation with the power to coerce rights-bearing citizens. This suggests a moral ambivalence beneath the formation of the liberal state in America. The creation of federal powers of coercion was not calculated to “put the democratic genie back in the bottle.” On the contrary, public coercion shared a foundational relationship with the rise of distinctly liberal-democratic features of the American polity.

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