

THE HAPPY EMPIRE: ARISTOTLE, PUBLIUS, AND THE AMERICAN REGIME

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For here we do not have a lasting city, but we are seeking the city which is to come.
Hebrews 13:14

“ . . . in truth all fall short of the most correct regime.”
Aristotle, *The Politics*

A wave of triumph swept through North America as the war of the American Revolution came to an official conclusion in 1783. Although this was the moment when the war came to the proper diplomatic conclusion, the former British colonies in America were already living under a new regime. The now independent United States of America operated under their own constitutions in addition to the weak and skeletal structures of the Articles of Confederation which were ratified in 1781. As the weaknesses of this form of government became alarmingly apparent, many leaders of the revolution and the Continental Congress, known as “Founders,” called for a convention to amend the Articles. It is at this convention in Philadelphia in 1787 where Founders would then become “Framers” as they all took up the burdens of the lawgiver and framed a new constitution for America. Once this new Constitution of the United States of America was signed on 17 September 1787, it was then sent to the conventions

in each individual state for ratification. By no means, however, was ratification certain. The authors of the new constitution needed to defend the law they gave to their people. It is to this end that the great American contribution to the study of politics was written.

Writing in defense of the new Constitution, James Madison, John Jay, and Alexander Hamilton set out to convince the people of the state of New York to ultimately ratify the document. Writing collectively under the name “Publius,” these men wrote a total of 85 essays that would eventually become published as one work known as *The Federalist*. In the process of writing, however, Publius goes on to make much more than an argument simply for one state to ratify the 1787 Constitution. In fact, what Publius does write does not represent a legal treatise of the sort that one might expect at all. Instead, the *Federalist* is an astute and thoughtful commentary not only on human nature, but also the state of politics as a science in the waning days of the 18th century. Additionally, Publius formulates bold assertions regarding what is happening in America, assertions that seemingly set apart the United States as the New World beacon it has come to be known.

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What is happening in America, Publius argues, is a tremendous break from the Old World and a claim of modern government to defend the God-given rights of all men. Like much of those of the Founding generation, Publius too has no reservations in ushering in the *Novus ordo seclorum*, or “New Order of the Ages.” In fact, Publius goes to great lengths to show the separation of the United States from the past declaring that for the first time in history men can choose self-government for themselves and their posterity, rather than being dependent upon accident, force, or even fraud to determine their way of life. Even Alexis de Tocqueville comments on the desire and necessity to create a “new” political philosophy after he witnesses American democracy. He argues that “A new political science is needed for a world altogether new.”¹ In addition to this significant moment for human history, Publius then relates what he calls the “many advances” in the science of politics over time. Through the experience and the necessity gained through intellectual movements such as the Scientific Revolution and the Enlightenment, Publius claims that aspects of politics now unique to the American Constitution have either been discovered or perfect in their primitive form if known to the ancients at all. Among these advances are what can be considered to be foundational concepts to the American regime, including the doctrine of separation of powers, legislative checks and balances, judges who hold their office during good behavior, the representation of the people in a legislature through elections, and lastly an “enlarged orbit” intended on diffusing the passionate impulses and factious desires of the people. Publius rejoices as a result. No longer are people subjected to the original sin of the failed and “petty” republics of

ancient Greece and Rome. For once they failed for various reasons, it was thought that man, in fact, could not rule himself and the vast chasm of the Dark Ages insured that he did not.

Now, with these advances, it is possible for man to govern himself once more and, Publius would claim, it is happening here in America. In the process of hoping for the success of such a “new” approach to politics, it is interesting that Publius seems to identify the problem of past societies, especially those in the Old World. Wars have been waged, continents have been plundered, and blood has been spilt all in the name of striving for the best life and the greatest society. The states of North America, he notes, cannot fall victim to the vices of continental Europe by not uniting under this new constitution simply because it is not perfect and does not suit their every fancy. Publius implores his readers to ask themselves

Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, weaknesses and evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age, and adopt as a practical maxim for the direction of our political conduct, that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?²

From this reflection, it is fairly obvious why Publius demonstrates a certain disdain and rejection of the old world and the “petty,” ancient republics. The question that then

¹ Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop, (Chicago: Chicago University Press, 2000), 7.

² Publius. *The Federalist*. Ed. Jacob E. Cooke. (Middletown, Connecticut: Wesleyan University Press, 1961), #6, 35.

risers pertains to the accuracy of these assertions Publius makes. After all, Greece had the wisdom of Plato and Aristotle at hand and Rome had Cicero in combination with those prior Greek philosophers. As Publius is, in a sense, writing a political treatise-like-commentary, is there really nothing to be gained from Aristotle, widely considered to be the father of “political science?” Despite the pre-modern flavor to the American regime, this is not necessarily how it was universally understood by Americans. Renowned historian Gordon Wood even notes that “For Americans the mid-18th century was truly a neoclassical age.”³ Another prominent academic, republican scholar J. G. A. Pocock, even goes so far as to suggest that the American Revolution was less “the first political act of revolutionary enlightenment,” but rather “the last great act of the Renaissance.”⁴ As a result, it is clear that there is not rue consensus on how to view this strange and new happening that was occurring in America. To be sure, however, it does not seem that what was taking place may not be wholly new as Hamilton claims. While there is no doubt that the fledgling independent states exacted a precise and clear divide between the New World and the Old, the separation between the political philosophies of the ancients and the moderns are not as clear. Essentially, American became the New World battlefield, were the hard-fought “Battle of the Books” was to be waged. In this “neoclassical” age it set the scene for the ancients to withstand the usurping “army” of modern ideas.

³ Gordon Wood, *The Creation of the American Republic*, (Chapel Hill: University of North Carolina Press, 1969), 49.

⁴ J. G. A. Pocock, “Virtue and Commerce in the Eighteenth Century,” *Journal of Interdisciplinary History*, vol. 3, no. 1, (Summer, 1972), pp. 119-134, 120.

Yet, the charge made to the ancients remains. If the republics of the past were nothing but failures, it stands to reason that there should be some sort of an explanation as to why, what went wrong? What knowledge was made available to the men of antiquity? As Aristotle is the father of political science, it would not be too implausible to consult his own political treatise—the *Politics*—in an attempt to answer these questions and ultimately compare Aristotle and Publius. Based upon an understanding of the universality of ideas and nature itself, if Aristotle is correct, Publius and Aristotle would match up in some way. As King Solomon observes in the book of Ecclesiastes, “The thing that hath been, it *is that* which shall be; and that which is done *is that* which shall be done: and *there is no new thing* under the sun.”⁵ Right is right. This is not to say that a comparison is merited because Publius or other Framers made such an analysis as it is more to do with intellectual curiosity. The main purpose for this endeavor is first to come to a better understanding of both subject of comparison by showing the utmost demonstration of human dignity in seeking to understand past men and women as they understood themselves. If this is to be achieved, it will more than likely show that there is never much separating the present from the past no matter how desperately it may be hoped. The time has now come to embark upon this comparative adventure. If history is to be any measure for what will be found, the connections between the old and the new—Aristotle and Publius will be apparent and ripe for investigation. It is here at the start of this study that no truer words can be spoken than those of T. S. Eliot who observes that “What we call the beginning is often the end / And

⁵ Ecclesiastes 1:9, *Holy Bible: Authorized King James Version*. (Oxford: Oxford University Press, 2008), 751.

to make an end is to make a beginning.”⁶ If the universal standards of truth hold true, this will certainly be the case.

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When Publius outlines the many great advances in political science in *The Federalist* 9, the very first innovation he lists is “the regular distribution of power into distinct departments.”⁷ The impression left by the author, in this instance Alexander Hamilton, may seem to any modern reader that the past governments and civilizations of antiquity merely roamed the earth as one stupendous rabble, legislating with the right hand and adjudicating with the left. This would be altogether fitting as readers of history can be filled with nothing but “sensations of horror and disgust” at the thought of the upended and “petty republics of Greece and Rome.” Yet, Hamilton may not be entirely accurate with his statement. “Petty” past republics may have been, but the line grandly drawn in the sand has been crossed by partisans on either side of the contest, old and paltry as well as new and advanced alike. Aristotle demonstrates the general haze surrounding this particular progression. The distribution of power may in fact be a modern advance, but the distribution of those powers into distinct departments may not actually be as modern as Publius claims.

It is quite clear that such a desire for the distribution of powers is a political advance stemming from larger, historical examples. After all, Publius explicitly contrasts this particular moment in time with prior Greek and Roman governments. It would be rather different if Publius had traced these “modern” political advance-

ments from politically philosophic examples. The explanation for what is being attempted in America cannot be completely philosophic. Politics implies conflict. No political philosophy, however great, can ever be implemented to the very letter of its content. The clamoring of humanity cannot be detailed in a legal treatise. It is the philosophers who are content with theory alone, not the men of the city. Any bit of conjecture must therefore be supported by a pragmatic element. As in many cases concerning politics, the practical element in question is that of history. When antiquity beckons men to reflect on its lessons, a judgment must be made concerning the acts of history as well as its actors. Without such judgment, history itself is deprived of its principled function and debased to the relative merits of value. It can be argued that history provides the practicality that removes the unproven speculations of political philosophers.

Nevertheless, if Aristotle is to prove to be valuable, it must be understood that he actually begins from the very same political genesis as Publius: an understanding of humanity. As a result, it would necessarily follow that both authors would strike similar points one way or the other and even employ similar language. Regarding the separation of powers, the mode in which Publius chooses to speak on the subject is not all that different from idea of differing parts of a regime as described by Aristotle. Is one entirely different from the other if they attempt different means to achieve the same end? The claim of “the regular distribution of power into distinct departments,” by one political scientist, Publius, would more than likely be preceded by the father of political science, Aristotle.

Regrettably, this is not generally held to be so. Many scholars claim a vast chasm separates Athens and Philadelphia, a chasm far greater than any ocean. As it will

⁶ T. S. Eliot, “Four Quartets: Little Gidding,” *The Complete Poems and Plays*, (New York: Harcourt Brace & Company, 1980), 144.

⁷ Publius. *Federalist*, #6, 51.

eventually be presented, the “distribution of power” as seen in the *Politics* is not the modern mode of distribution of powers. While this is certainly true, it is the opinion of well-known scholars that some great anachronism is being committed by politicians who claim the pure parts of antiquity for what can only be described as the base political innovations of modernity. Yet, in many ways, this serves only as a larger disservice to the political science of Aristotle and his memory. They believe that the men at the time of the American Founding incorporated Aristotelian themes in their works only as a result of misunderstanding the difference between the “mixed regime” of Aristotle and the “separation of powers” theory purported by Montesquieu.⁸ A great anachronism is indeed being perpetrated; however, it is not by those who see connections found in the *Politics* and America, but from these modern commentators who seek to impose their will on the past. Their interpretation of how the foolish founders so ineptly understood Aristotelian political science has no place in any serious study, unless that is the topic itself. In some ways it makes more sense for Hector of Troy to lecture on the moral philosophy of Aristotle than for men of this century to hold the minds of the great men who came before them in flippant disregard.⁹ Of course, there

are large, inherent differences between the figures of Aristotle and Publius as there are perhaps even greater differences in their respective works. Yet this is not the argument of modern scholarship.

In a strange sense, these scholars, most notably Allan Bloom and Martin Diamond, agree with Hamilton, but for different reasons. For Hamilton, the disparity between the ancients and the moderns is a cause for elation; for these other great thinkers, it is a sordid lament. They mourn the sacrifice of the higher life in America to common needs. The political science of Publius is far removed from Aristotelian principles thus spurring Bloom to a pointed critique of the uninspiring foundation upon which American society is based. The fact that Americans obey “the law because they made it in their own interest,” is but one of the reasons he cites Leo Strauss in agreement with the notion that “the moderns, ‘built on low but solid ground.’”¹⁰ Again, another facet of their interpretation is that a similarity of language does not imply a deeper relationship to any degree. The lengths to which modern academics go to create this overt distinction is troubling as they do not wish simply to provide a rough sketch of their respective variations. Not only are there differences, they claim, but the political science of the *Politics* and *The Federalist* are also irreconcilably dissimilar. Essentially, the argument is that there is nothing redeeming to be found in the American Constitution. Therefore, no traces of redemption could possibly be found in the political science in the commentary defending that very Constitu-

⁸ Martin Diamond. “The Separation of Powers and the Mixed Regime,” in *As Far as Republican Principles Will Admit*. Ed. William A Schambra. (Washington, D.C.: The AEI Press, 1992), 60. Here, Diamond is referring to John Adams when he writes “What then was this idea of the mixed regime as it was so vividly available to the Americans of 1787, such as John Adams (who never succeeded in disentangling the old mixed regime from the separation of powers in his mind)?”

⁹ William Shakespeare. *Troilus and Cressida*. (New York: The Folger Shakespeare Library, 2007), 87. Here, in Act II, scene 2, Hector is chastising Paris and Troilus saying that on the issue of returning

Helen they “Have glozed—but superficially, not much / Unlike young men, whom Aristotle thought / Unfit to hear moral philosophy” (2.2.174-176). The anachronism in this instance is the presence of Aristotle at a time Aristotle himself considered “Ancient Greece.”

¹⁰ Allan Bloom. *The Closing of the American Mind*. (New York: Simon & Schuster, 1988), 167.

tion. *The Federalist* and the *Politics* are separated by more than time. Aristotle and Publius are of two different worlds.

A closer analysis and a deeper respect for political thought will nonetheless reveal this assertion to be false. The first task of this inquiry is not only to have a hunger to understand the authors as they understood themselves, but also a similar hunger to understand Aristotle as he was understood by Publius. Such scholars ought to know that the inevitable conflict and intrinsic messiness of politics ensures that a pure dichotomy found within politics—if there ever existed such a thing at all—is extraordinarily rare. In the end, it would not seem logical that the founders of the United States and the framers of its Constitution were faced with only the two choices of the mixed regime of Aristotle or the contemporary schematic of separation of powers, where if there were any links to be found between the two, it was only a result of academic failing and confusion. Lines between one political concept and another are so invariably blurred that they can hardly be distinguished from others. Nonetheless, it is hard to erase all connections and similarities when both concepts are derived from a great, universal principle that weathers the passage of centuries. Other concepts, namely those of subjective value, simply melt and wither once the rains come: this is to say the Progressive schemes of the early twentieth century saw preceding moments in history as mere footstools of necessity. In the case of “the regular distribution of power into distinct departments,” the roots stretch into the ancient grounds of the once great city of Athens, where at the autochthony of its first citizens, the land simultaneously begat Western Civilization.

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When endeavoring upon a broad study of the theory of separation of powers, it does indeed carry the illusion of a wholly modern advance. Nonetheless, the underpinnings which are strikingly evident in the *Politics* can certainly prove that the answer, in true Aristotelian fashion, can more than be found somewhere about the middle of these two modes. Central to understanding the specifics of the argument presented by Publius and Aristotle is a thorough investigation of the concept of separation of powers loosely and generally considered by both. It would prove effective to begin with that of *The Federalist* as it is upon this work that the weighty burden of proof lies. Following that explanation, it must be seen whether or not there are similarities to be found in the work of Aristotle. Only then can any further consideration into the particulars of the distribution of power be justified.

Traditionally, the general discussion of the doctrine of separation of powers is designated to *The Federalist* Nos. 47-51. It is in No. 47 that Publius is faced with the task of explaining how the “general mass of power allotted” to the proposed government is to be distributed.¹¹ It is evident and understood that such a separation would be made into three “branches”: the legislative, executive, and judicial departments. At first blush, it is important to note that Publius is immediately identifying a need for that great “mass” of power to be divided. Power cannot merely be granted. It must also be invested. As a result, the men at Philadelphia in 1787 did not see fit to have such an investment to be in one individual or one body. Historically, these same men absolved themselves from both a powerful king and a potent legislature. Politically, Publius makes it clear that “The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many,

¹¹ Publius. *Federalist*. 47. 323.

and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.”¹² The purpose for separation becomes immediately clear—to avoid tyranny. The question that then remains is whether or not the separation of powers either supports liberty in a negative fashion or positively diminishes tyranny.

In either case, Madison does not provide much of an explanation as to why there are three departments that are chosen rather than any other number. The particular answer to this question is fairly simple. This form of separation is a natural, human desire and tendency. Additionally, this pattern was revealed to the Framers in a book that was most certainly read by them. Within the pages of the Bible, it appears to be the preferred delineation of power by God. In Isaiah chapter thirty-three, verse twenty-two, the Prophet writes “For the LORD *is* our judge, The LORD *is* our lawgiver, The LORD *is* our king; He will save us.”¹³ This implicit knowledge of a tripartite separation of duties in law is further alluded to in the Declaration of Independence. Here, Jefferson outlines these three functions of government through phrases such as the “Laws of Nature and of Nature’s God,” that the principles of the Declaration are enforced through “a firm reliance on the protection of divine Providence,” and by making their general appeal “to the Supreme Judge of the world.”¹⁴ The fourth reference to God in the Declaration of Independence, the idea of God as the “Creator” who endows men and women with inalienable rights, has no human or political equivalent. Only God can be creator. Nonetheless, man can exercise facets of the legislative, executive, and

judicial offices. These allusions, however, reflect the idea of a natural separation found in law as well as the notion that only God is capable of wielding all three parts simultaneously.

Returning to the issue at hand, the way in which *The Federalist* 47 proceeds is cause for the most interesting inquiry. It is worthy to note that as Publius begins to address the distribution of power throughout the elemental parts of the government. He lists as one of the principal objections to the new Constitution “is its supposed violation of the political maxim, that the legislative, executive and judiciary departments ought to be separate and distinct.”¹⁵ Should this charge prove to be entirely true, it would largely change the conception that the “regular distribution of power into distinct departments” was actually employed in the framing of the Constitution. Additionally, it questions the belief that ancient political constructs are not implicit in the new Constitution as well. After all, it is the anti-federalist author Brutus to whom Madison responds.¹⁶ Nevertheless, Publius argues that a distinct separation is present within the proposed government. In light of the persuasive purposes of *The Federalist*, it is still rather strange that a defense for the separation of powers in the proposed constitution must be made at all. From this approach, it shows that there was considerable doubt by some as to the truth of the claims of separation. Perhaps doubt is not accurate. It may be that there is some confusion as to the nature of separation and the blending of departments in the Constitution. It may be

¹² Ibid., 324.

¹³ Isaiah 33:22, *Holy Bible*, 795.

¹⁴ “Declaration of Independence.” 4 July 1776. *Teaching American History*. Ashbrook Center. <<http://teachingamericanhistory.org/library/index.asp?document=1>>.

¹⁵ Publius. *Federalist*. 47. 323.

¹⁶ Brutus. 10 April 1788. *The Anti-Federalist Papers*. Ed. Ralph Ketcham. (New York: Signet Classics, 2003), 335. Brutus actually gives the very maxim to which Madison refers and adds that although it may not always be practical done, the “separation of these powers should be sought as far as is practicable.”

that Brutus confused the new republic with ideas similar to that of a British style mixed regime—or that of Greek political philosophy. What is in the proposed Constitution that raises doubts concerning the levels of separation?

In addition to the criticism that there is no separation in the Constitution, it is also argued that the Framers in Philadelphia exposed critical parts of the branches. As a result, each branch would destroy the other because of a disturbance in the equilibrium between them. Were both of these charges true to any measure, Publius contends that the seriousness of such a revelation would ensure that “no further arguments would be necessary to inspire a universal reprobation of the system.”¹⁷ It is interesting, but not entirely surprising, that the success of the document could be determined by this question. Following the war of the Revolution and the vicious Articles of Confederation, the consolidation of power was a serious concern to many throughout the ratification debate, especially in the South. The concern at the time was over the apparent “blending” of powers. It seemed that tyranny was lurking in the wings as the executive could veto actions by the legislature or that the new Senate would serve as judge in the event of an impeachment. To make their constructs more palpable, Publius appealed to authority. The author who provided them with the most insight into the separation of powers is the Baron de Montesquieu. Numerous times throughout the whole of the *Federalist*, Montesquieu is cited as the “oracle” that the Framers consulted or the “great political critic” who guides and informs. For the purpose of this examination, the understanding held of Montesquieu will be in the context of the *Federalist* in the capacity the authors employ him in their argument. It can be said that the greatest influence the French thinker had upon Pub-

lius was the concept of separation of powers. Or, as Publius states, “If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying, and recommending it most effectually to the attention of mankind.”¹⁸ By explaining how and why Montesquieu arrived at his understanding, Publius is able to show that what appears to be an incomplete separation of powers is actually an intentional mixing of powers.

Continuing the subject of separation of powers in the *Federalist* 48, Publius makes clear the reason for such an intentional blending of powers and form. Complete and absolute distinction between the three branches would be just as tyrannous as having a chronic overlap of powers between them. Both situations are but two extremes on the same scale. One jeopardized an over-concentration of power, risking the possibility of one person or one branch wielding simultaneous powers of the different bodies, and the other would leave each branch unchecked and unaccountable. The latter point is the topic of *Federalist* 48. The claim is “that unless these departments be so far connected and blended, as to give to each a constitutional control over the others, the degrees of separation...essential to a free government, can never in practice, be duly maintained.”¹⁹ This important distinction is one aspect that sets apart the political science of Publius from other political theories of the time. While the concept may exist in the treatises of John Locke and in the Bible, the delineation of specific powers in a republic is not sufficiently detailed. Where there is a clear understanding, such as in the works of Montesquieu, Publius, as well as the Framers at Philadelphia, had chose to deviate from the pre-modern conventions of Locke and Montesquieu for the sole purpose of blending powers to create a

¹⁷ Publius, *Federalist*, #47, 324.

¹⁸ *Ibid.*, 324.

¹⁹ Publius, *Federalist*, #48, 332.

constitutional “check.” This will be explained in greater detail as the concept of an executive office is explored. Nonetheless, this does not confer among each branch a conflicting or overreaching influence over another.

Publius is clear in saying that each branch will exercise its own power: the legislature will legislate, the executive will execute legislation, and the court will hear disputes between opposing councils. It is in the aftermath of the actions of each branch that one may check another. For example, the executive has a hand in legislating as he can veto any bill passed by the Congress. While this form of mixed powers is not true in every instance, it stands as a general rule. In the end, any blending of powers does not and should not inhibit the overall administration of the respective powers of the different departments. This is the method adopted in the new constitution as a result of a broad understanding of the nature of power as “an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it.”²⁰ To get the appropriate balance correct requires a great deal of skill and political knowledge. One cannot simply deprive the branches of powers to ensure security as one branch would seize upon even the smallest of power vacuums; this is not necessarily out of a lust for power, but by the sheer necessities and demands of nature. Therefore, the most artful way to guarantee a balance would be to construct three powerful and robust branches that actually control one another as a result of its own power and knowledge of the similar power of the other departments. While the method is clear, *The Federalist* identifies that “the next and most difficult task, is to provide some practical security for each against the invasion of the others.”²¹

When balancing the degree to which one department blends with another, prudence continues when facts cannot. The implementation of any system of government is where theory meets practice.

Again, as in all things temporal, a choice between methods must be made. One of the most obvious choices to secure one branch against another is the idea of complete enumeration—painstakingly marking the precise boundaries of power. The great problem with any recorded or codified list is that it implies that at one time the opposite opinions of the list were true. In this case, to enumerate that the executive could not do a particular action that would mean that the executive could and a piece of paper just says “no, he cannot.” This is what *The Federalist* shows many of the states to have done in their own constitutions, specifically with an emphasis on the dangers of a powerful executive. Nonetheless, this idea is quickly pushed aside by Publius as he calls these detailed listings as nothing more than mere “parchment barriers.” He then proceeds to prove his meaning by citing the states of Virginia and Pennsylvania and to show how these two large states suffer from this very problem. In the end, Publius argues that there must be more than simply saying there are limits in order to actually have limitations among the different departments.

Another viable solution to prevent the encroachments of one department from another is by physically impeding those departments from doing so. In *Federalist* 49, the famous “Notes on the State of Virginia” by Thomas Jefferson is cited, specifically as Jefferson writes ““that whenever any two of the three branches of government shall concur in opinion, each by the voices of two thirds of their whole number, that a convention is necessary for altering the constitution or *correcting breaches of it* a conven-

²⁰ Ibid., 332.

²¹ Ibid., 232.

tion shall be called for the purpose.”²² The implication of calling for another constitutional convention is that the fate of the government would be handed back to the people. To the extent that the rightful origin of power is the people alone, Publius is in agreement with the author of the Declaration of Independence. This is true as it is from the people that the branches of the government received their power in the first place. Therefore, “it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of government; but also,” adds Jefferson, “whenever any one of the departments may commit encroachments on the chartered authorities of the others.”²³ This, of course, is fairly reasonable. How else could coequal branches delineate boundaries between themselves?

The truth of this sentiment is what makes it difficult to say that it is altogether objectionable. As mentioned before, there are clear limits to the extent to which Publius agrees with Jefferson. This does not mean that this option should be closed to the people—Publius writes to the contrary notion that “a constitutional road to the decision of the people, ought to be marked out, and kept open, for certain great and extraordinary occasions.”²⁴ Furthermore, Publius states that because each branch is so thoroughly mixed with the responsibilities of the others, in some ways, an encroaching department would be indirectly moving against itself. The vested interest of each department, therefore, rests in the quick resolution of any problem or conflict. What Jefferson advocates is for the deconstruction of government at every change in the breeze, thrusting the great task of reform into the hands of the populace on mere whims. Such

democratized action would lead to unending, popular zeal. Stability would crumble. It is an unequivocally un-republican suggestion, depriving all sense of reverence and longevity from the law.

Reverence and longevity are, for Publius, tied directly to the wisdom and freedom found in every stable government. Were change to occur regularly, “every appeal to the people would carry an implication of some defect in the government,” and worse still, “frequent appeals would in great measure deprive the government of that veneration, which time bestows on everything.”²⁵ The hope that government would be capable of handling such issues on its own is a matter of confidence. Jefferson demonstrates this larger implication. He finds the defect to rest in the construct of the government, whereas Publius identifies the defect to be in the constant tinkering of the Constitution and the potential “reverence” of the constitution by the people to fade. To prove his point, Publius enlists the many ancient and new examples. If the United States were simply a nation of philosophers, every enlightened mind would venerate the law out of their lofty natures. “But,” Publius writes, “a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato.”²⁶ Like many thinkers before, Publius too has come to the realization that what is the best possible scenario is not the most likely. A more accurate understanding would be to say that the idyllic nation, preferably that of philosophers and philosopher kings, is simply impossible to have altogether. Plato himself admits this, albeit indirectly, as the city in which these kings rule is but a city of theory and in speech.²⁷ Nevertheless, the young republic is filled with men and women of all

²² Qtd. in Publius. *Federalist*. #49, 339.

²³ *Ibid.*, 339.

²⁴ *Ibid.*, 339.

²⁵ *Ibid.*, 340.

²⁶ *Ibid.*, 340.

²⁷ Plato, *The Republic*. Trans. Allan Bloom. 2nd Ed. (New York: Basic Books. 1991), V. 475d, 155.

kinds. As Publius famously declares in *Federalist 55*, “In all very numerous assemblies, of whatever character composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.”²⁸ Though there are philosophers among the many, they by no means constitute a race. A constant appeal to the people over constitutional matters would incite their passions and jeopardize the delicate experiment of self-government. As a result, Publius believes that it would be far from prudent to continuously multiply the same experiment. Therefore, the task is then the purpose of maintaining what Publius calls the “constitutional equilibrium of the government.” As opposed to passion, this is done through the other facet of man: reason.

If continual appeals to the people would spark a passionate response, then the other way to prevent the encroachment of one department into the others would be through reasonable discourse and moderated action. Publius, among others, is quick to note how all the factors ought to relate to one another. Were the opinions of the people to rule over constitutional changes, the “*passions* therefore not *the reason*, of the public, would sit in judgment. But it is the reason of the public alone that ought to controul and regulate the government. The passions ought to be controuled and regulated by the government.”²⁹ From this understanding, one important lesson is drawn. Publius does not wholeheartedly dismiss passion or even its role. To attempt to remove the passions of man entirely would be an unnatural act, let alone an impossible one. Nature has not provided humanity with this ability. The method employed by Publius with regards to passion is insightful in light of this inability. Veneration is not simply a matter of reason.

In addition to reason as a means to the veneration of the laws, the passions too must be attached to the regime. Whether it is a result of ordering the passions in relation to virtue and reason or the result of a great, noble lie, the passions ought to be directed. Often times, reverence is not a rational affiliation at all but rather an irrational attachment. Much like the “noble lie” in *The Republic*, where Socrates explains that men and women came from the ground of their city and were mixed with the various metals of the earth, Americans too must possess a similar link to their continent.³⁰ Therefore, it seems wholly adequate to paint the images on public buildings that carry such titles “The Apotheosis of Washington,” or sing “American” hymns like “America the Beautiful.” We watch our Fathers become gods and hail our affections to “Columbia.” None sing to the Constitution and men do not pray to ask God to bless the Declaration of Independence. The sentiments of “this land is your land, this land is my land,” and the desire to “crown thy good brotherhood,” are passionate pleas and irrational sentiments. Publius makes full use of both reason and passion by relying on them to achieve balance in the regime rather than disregarding one or the other. Any concept of the separation of powers would be meaningless if the Constitution went without such veneration.

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Lastly, in *Federalist 51*, the particular question as to how the American Constitution addresses the concept of the separation of distinct departments is finally answered. Publius recognizes the “only” answer can be to move past the insufficient exterior controls for which many advocate, and turn,

²⁸ Publius, *Federalist*, #55, 374.

²⁹ *Ibid.*, 343.

³⁰ Plato, *Republic*, III. 414b – 415d, 93-95.

instead, to the internal workings of each department. By looking inward, the actual manager of each branch would be found in the shared elements of the branches themselves. To do this sufficiently, however, each department must have a will of its own. This “will” would ideally be developed out of its enumerated duties and sense of responsibility. Without possessing a will, the department would be aimless and would almost certainly contravene the position of its coequal departments. Publius then reveals that this is not necessarily the complete plan but only one part. Were each department to possess a totally independent and unaccountable will, it would require the members of each branch to be far removed from the process of appointing the members of the others. As a result, the branches of government would then need to turn to the only remaining source of legitimate authority: the people. The immediate problems that arise from this method of appointment are that the people would not necessarily be able to select those who possess the needed qualifications for the particular job in mind. Secondly, this would prove to be detrimental as some appointments, such as those of the judiciary, are based upon a system of permanent tenure and must not be dependent upon the group or body that places them in office. The holders of such offices need not worry about appeasing those who invested them with their authority.

From this explanation of selection, the solution is provided to the questions surrounding the separation of powers. Each department must maintain some level of independence for operation and functionality. There must also be some simultaneous, internal method of checks and controls commonly present among all departments. In many ways, the method devised by the Framers at Philadelphia is an even deeper mixing and middling of governments in the traditional sense of Aristotelian moderation

by adding more layers of moderation upon naturally existing, and distinctive structures. Nevertheless, Publius introduces the important aspect of ambition, which merits larger consideration. “The great security against a gradual concentration of the several powers in the same department,” that Publius advocates, “consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist the encroachments of the others.”³¹ Essentially, if each branch is given the means, they will naturally oppose any move against their authority and power.

The outright dependence upon external means, as many of the Anti-federalists advocated, would serve only as a target to subvert, providing no more defense against interlopers than did the Maginot line. Interest is the powerful safeguard harnessed by the Constitution. This internal machine serves as a defense, which each individual carries with him. It is in his interest to ensure that his power is protected and preserved. With this suggestion, Madison is describing the great tension that exists in those who hold office. It is the interplay between identity and function. This is part of the great advancement of which Hamilton speaks in *Federalist* 9. Under the new constitution, “Ambition must be made to counteract ambition,” and the members of each department must defend their function while creating an identity.³² This creates a tension between the members of government to defend and preserve their identities through the functions of their offices. This tension is, more or less, intentional and forced in some regard. There must be a contest between members and if they do not defend themselves, they will be overpowered by some other department. Developed with care and wisdom, this approach is not simply a shot in the dark. There is reason

³¹ Publius, *Federalist*, #51, 349.

³² *Ibid.*, 349.

for its suggestion based upon thousands of years of history as well as an understanding of human nature.

While this concept of political function appears to carry all the trappings of modern design, and it very well is. It is a much older idea espoused long before the Anglo peoples, but, is it a base theory in light of lofty ancient political theory? That remains to be seen. The focus on “interest” may actually imply more than a veiled understanding of selfishness. Granted, this approach works as long as a department does not willfully give its powers away to some other branch or administrative bureaucracy. It is in the interest of the legislative body and its members to hold the function of their vested office as the instrument of their preservation. It would seem that even the man who is devoted to higher ends would be forced to concern himself with things such as political preservation. It is for this very reason that the Platonic ideal of the “philosopher king” becomes an impossibility. This is not to say that he would fail to protect his interests, but rather he would never allow himself to get involved in the political carnage that accompanies the practical matters of the city. Consequently, Publius argues that the “interest of the man must be connected with the constitutional rights of the place.”³³ In other words, the personal interest of, for example, a senator is directly tied to his identity as a senator, and he secures responsibilities that prove to be advantageous through constitutional means unique to his station. Were another to violate those same constitutional means, he would be, in a sense, ultra sensitive to such an encroachment.

This internal system of control is what Publius calls an “auxiliary precaution.” It is interesting to note the larger implications of a term like “auxiliary precaution.”

Auxiliary certainly shows that ambition inhibiting ambition is not the primary means of security. For that matter, “security” may even be too strong of a word as it is simply referred to as a “precaution.” The intrigue of the word “precaution” is that self-interest does not serve as some bulwark against the potential ills one department would wreak upon another. Rather, it is a means of prevention—an eternal sentinel of constitutional authority. Additionally, as the second task of framing a government is to “oblige it to control itself,” the overall approach of the Framers was positive. It is positive in the sense that the seemingly base emphasis placed upon interest actually encourages positive action rather than negative inaction or even reaction. Infused with this positive motivation, each department is encouraged to act and exercise its constitutional powers in a good way. If those abilities go unused, they will almost certainly be seized by another department. Interestingly enough, this method of acting on positive impulses does not leave much room for lengthy deliberation. As a result, many of these positive actions will be passionate as well. Therefore, it is positive, passionate, and sometimes irrational action that is being used to defend and preserve a rational order. The equilibrium of the departments rests on this understanding of how human beings act by nature. The precaution outlined by Publius shows that each department is to be given “the necessary constitutional means,” to prohibit encroachments. Consequently, the constitutional means are the enumerated powers and actions found in the Constitution. It is an enumeration that encourages positive action, with some limitation, towards the ends of government, or, more specifically, the ends of good government.

To expound, Publius then outlines what is quite possibly the most distinguishing attribute of the American regime. Simultaneously, it is the ultimate separation

³³ Ibid., 349.

of powers. This is the concept of federalism. Whereas other republics have followed the model detailed by Publius, (where the people surrender power to one government and being spared from tyranny by dividing that power into distinct departments,) he argues that the new Constitution allows for an American transcendence far beyond this classical republican construct. In the United States, the power surrendered by the people is not given to one government and then dispersed among the branches, but rather the surrendered powers of the people are, first and foremost, partitioned between two separate governments: the national government and the state governments. Only then is power invested between distinct departments. This federalism gives rise to what Publius calls a “double security” to protect “the rights of the people.” The second consideration of interest to Publius is how one section of society may guard against the other. This is an important observation. To acknowledge that “Different interests necessarily exist in different classes of citizens,”³⁴ is to acknowledge the difference between the separation of powers and a natural division among the people and society as well. It is curious as to why this appears in a conversation concerning the separation of political power into different departments. After all, these two separations are not the same concept, nor are they dealing with the same division. Perhaps there are some similarities between the two. Perhaps their relationship is inextricable. The question of class is, in fact, central to the Aristotelian concept of separation and division. His understanding as well as its relation to Publius will be explained in the subsequent part of analysis. Nevertheless, Publius completes his broad survey of the separation of powers with his belief that in, America, this separation among parts of society will be controlled through the diffusion of these interests

among themselves. In some ways, just as the ambition of those in the national government would counteract itself, so too would the ambition of the people.

From this general presentation of the Constitutional separation of powers as understood by Publius, it is clear that much has remained unsaid and even unexplored. It does, however, provide an understanding of the advances originally claimed by Hamilton in *Federalist* 9. For Publius, the concept of separation of powers in the Constitution of the United States is presented in the form of adding layers of separation onto that which is already naturally separated. It is an act done with the care of individual liberty in mind. Furthermore, it encourages action as the main mode of the defense of any branch, while arguing that the new Constitution moves beyond inaction. As ambition is to counteract ambition, is there an ancient counterpart to be had? The task now is to consult Aristotle and his work *The Politics*. It is through this consultation that a more specified knowledge of the actual “distinct departments” will be made available; however, Aristotle does not explicitly declare a corresponding doctrine of separation of powers. As a result, the relation between Publius and Aristotle, if there is such a relationship, will be seen through a comparison of the concepts and descriptions of the different parts of government. The purpose of any comparative endeavor is to build a greater knowledge of those subjects that are investigated. Simultaneously, comparative politics is possibly the greatest tool made available to political science. Comparative politics ventures to judge political orders based upon the merit of its principle in relationship to other political orders. Yet the greatest task of any comparative study is ultimately to compare the regime to the universal and eternal standards of truth. Could political science ask for a better aid in its search for the best way of life? In many

³⁴ Ibid., 351.

ways, *The Politics* itself is more of a comparative enterprise than is the *Federalist*. Although the latter is not a political treatise, the former invokes a comparison of regimes in a like manner as Publius concerns himself with the past republics of Greece and Rome as well as the various constitutions of the American states. To gain a greater understanding of how the works of these two authors interrelate, it is important to begin with the most “political,” that is to say practical sections of *The Politics*. Nonetheless, the words and the concepts of Aristotle are not going to be bent or bandied about to conform to some particular view. The truth shall bear its fruits and be applied where it can be. Torturing the words will lead to further confusion. Clarity is the goal. Where Aristotle and Publius agree, it will be admitted. Where Aristotle and Publius diverge, it will be admitted. Let us now turn to Aristotle and his presentation concerning the “separation” of powers as recorded in the *Politics*.

* * *

Despite the conceptions of the best cities and the best societies throughout the development of political philosophy, Aristotle had no trouble identifying the fact that area inhabited by politics rests squarely between “right” and “wrong,” thus making for an abysmally gray landscape. It is for this reason that Aristotle presents the student of politics with the “political” or “practical” books of his treatise. They are to serve as a supplemental guide to philosophy when reality saw fit to interrupt the perfection of conjecture and contemplation. The “practical” books in question are books IV, V, and VI. The technical nature of these three books contributes to the reputation Aristotle has gained as the “father” of political science. The main thrust of these particular books is for the reform of regimes that actually exist.

The previous three books deal with larger, philosophical issues. Book I, for the most part, actually precedes that which is political. It concerns itself with the pre-political affairs of the household and economics. The desire for self-sufficiency and the satisfaction of natural inclination causes men to converge at the city or *polis*. Aristotle even goes so far to make a clear distinction between the content of Books I and II that he writes that he will essentially “make another beginning to the argument.”³⁵ He does so as Book II addresses the varying views of what could be considered the “best regime,” and book III deals with the city in relation to the regime. As a result, the next three books are devoted entirely to the regime that exists in reality. The last two books, VII and VIII, focus on the education and, subsequently, what is considered to be the “best regime.” As Aristotle addresses the already existing regimes apart from the best regime, it is clear that the regimes which already exist can rarely be considered to be the best. Consequently, this calls attention to the goal of reform in books IV, V, and VI. Aristotle thus positions these three books in a systematic order. By placing them before the last two, he is showing how actual regimes function when they come into contact with human beings, who although are by nature political, are by no means politically adept.

There are inherent difficulties in trying to achieve the best regime. Aristotle notes early on in book IV that “For one should study not only the best regime but also the regime that is [the best] possible, and similarly also the regime that is easier and more attainable for all.”³⁶ The final books of *The Politics*, therefore, serve as a sort of goal for existing regimes and books

³⁵ Aristotle, *The Politics*. trans. Carnes Lord, (Chicago: University of Chicago Press, 1985), 1260a22, 54.

³⁶ *Ibid.*, 1288b37-39.

IV, V, and VI show how to remedy and adjust those existing regimes towards that which has been deemed to be the best. Why is the concept of reform and correction of any value to the American Founding and constitutionalism? Without reform in the context of the existing constitution, reverence and veneration of the law would be impossible to establish. Without correction, time would outpace the law and there would be no consequences for those who, while innocent of violating its letter, are guilty of assaulting its spirit. The question raised prompts other inquiries. What is a Founding? Does America have a true Founding? In a technical sense, America did indeed undergo a founding of its own. In the political sense as well as the Aristotelian sense, America did not undergo a true founding in 1776, let alone in 1787. As previously explained, the American Founding was a re-founding especially by the time Publius is writing. This does not, however, cheapen the great feat of the United States or its Founders.

Calling attention to the question at hand, the consideration of the separation of powers, is there a corresponding concept in *The Politics*, one that precedes the modern advance in political science? To this end, book IV provides an answer. Interestingly enough, book IV is often ignored. It possesses neither the philosophical intrigue of book III nor the excitement of the “book of revolutions,” book V. Even the commentary on the *Politics* by Thomas Aquinas is left unfinished just as he completes his reflection of book III. Book IV, however, provides a program of moderation, reality, and achievability. Here, the best possible way of life is presented. Possible is the imperative word. In this regime, the “best life” can still be achieved, just not on the large, philosophic scale of the “best regime.”

In many ways, the claim of achieving the best “possible” way of life is mark-

edly novel. Aristotle strikes an entirely different tone in his approach to political science than those philosophers who preceded him as well as his overall approach to the study. This is what distinguishes him from all those who came before him and opened the study for others to adopt similar modes and methods. As is seen in the works of Plato and Xenophon, Socrates became the first man “who brought down philosophy from the heavens, placed it in cities, introduced it into families, and obliged it to examine into life and morals, and good and evil,” as Cicero famously asserted.³⁷ Yet, the conceptions of ‘the good’ or, more specifically “the good regime” that can be garnered from Plato in the *Republic* actually surpass specific men or women and leave the practical, day-to-day, and political life without any guide to access that “good” so that the best way of life may actually be reached. Aristotle emphasizes the best possible way of life in light of what is actually the “best” or the “good.” The *Politics* is a guide for finding the best way of life in that it is the pursuit of the “good” in light of the particular circumstances.

Every theory regarding the greatest idyllic regimes, be it the Platonic “city in speech,” the Marxist “workers’ paradise,” or the Hegelian “end of History,” has one significant tie that binds it to the others. Simply put, they have never existed nor will they ever. This does not remove the importance of considering the contents of the “city in speech” but mostly ensures that a regime, which is fancifully unattainable by human standards, does not become the focus and end of human action rather than a relative measure for what can be achieved. After all, one must know the “good” if he is to do right by its standards in any particular moment. Aristotle goes further in his under-

³⁷ Cicero, *Tusculan Disputations*. Trans. Charles D. Yonge. (New York : Harper & Brothers, 1877), V.IV.12, p. 166.

standing of “the good” as he claims in the *Nicomachean Ethics* that “Every art or applied science and every systematic investigation, and similarly every action and choice, seem to aim at some good; the good therefore, has been well defined as that at which all things aim.”³⁸ Essentially, if every science is directed towards some good and has that which is good as its end, it would, therefore, be necessary to have some mechanism to guide those sciences towards that end. Aristotle then asserts that “This good, one should think, belongs to the most sovereign and most comprehensive master science, and politics clearly fits this description.”³⁹ He claims that politics is the supreme science, and it is the most architectonic science. This is to say that every query, action, or choice is found under the science of politics. It even makes use of the great arts of rhetoric and military command. The primacy of politics can be seen in its end. If the *télos*—end or purpose—of politics is ownership of the good, the “master science” must, therefore, develop means to reach that purpose. In order to develop the best means possible to achieve the good, the means must be derived from the end itself. If the end is building a ship, it is not enough to simply cut the wood. There is a particular method of cutting wood that serves the specific function of ship building just as there is a way to cut wood to build a house. As a result, politics must develop appropriate means to reach the good. Politics must develop means that guide the city. It “determines which sciences ought to exist in states,” and furthermore “legislates what people are to do and what they are not to do, its end seem to embrace the ends of the other sciences. Thus it follows that the end

of politics is the good for man.”⁴⁰ Everything regarding men, women, and children is underneath this master science of politics. Politics is what decides what should be done in light of all that can be done.

Aristotle thus established a mode of inquiry, that is to say comparative inquiry, between the types of regimes that exist. The Aristotelian model enabled successive political thinkers to philosophize and ponder, to think in generalities as well as specifics. Comparisons allowed for theories to be tested. Over thousands of years, it proved to be a solid and dependable model for the study of regimes and human beings. In fact, this form of political inquiry even made possible the eventual shift away from the fundamental principles of the Aristotelian method. It is in *The Prince*, the infamous treatise by Niccolò Machiavelli, that a clear and deliberate break with ancient Aristotelian thought can be seen. Spectacularly, Machiavelli does so in the very first sentence. “All states,” writes the Florentine master, “all dominions that have held and do hold empire over men have been and are either republics or principalities.”⁴¹ No more should man consider the many, various regimes of Aristotle. No more will the conceptions of oligarchy, monarchy, kingship, democracy, aristocracy, and, above all, polity hold to be true. There are no more regimes than the two listed. As a result, the comparative project involving existing regimes is, perhaps, one of the greatest contributions to politics by Aristotle. Nonetheless, book IV also shows the nature of separation in politics in that Aristotle provides an account of all regimes and their various “parts.” It is a way that is remarkably akin to the explanation of the national

³⁸ Aristotle, *Nicomachean Ethics*. Trans. Martin Ostwald. (Upper Saddle River, NJ: Prentice Hall, 1999), I.I.1094a.

³⁹ *Ibid.*, I.I.1094a27-29.

⁴⁰ *Ibid.*, I.I.1094b

⁴¹ Machiavelli, Niccolò, *The Prince*. Trans. Harvey C. Mansfield, (Chicago: University of Chicago Press, 1998), 5.

government of the United States and its various “branches.”

For the sake of clarity and directness, the particular section where Aristotle makes his distinction in book IV will be the subject of preliminary examination. While the entirety of book IV supports the claim made in the particular chapter in question, it will be explained after the premise for Aristotelian separation is established. Whenever the specific comparison between Aristotle and Publius is made, book IV, chapter 14 is almost always mentioned exclusively. It is here that Aristotle claims that there are three parts to every regime. It is typical for different commentators to dismiss the comparison altogether by mentioning that the difference in time and context simply invalidate a desire to compare the two. Paradoxically, it does not seem that this claim, that Aristotle and Publius are hardly relatable in this regard, can be made unless they are truly compared. To dismiss such a comparison is simply denying the means to determine whether or not there is a legitimate connection that merits a comparison. Some authors do not even reference a possible comparison or connection.⁴² Others simply gloss over the section, noting that there is not much more that can be said about these three parts of the regime. Altogether, analysis of the regime and its parts has been rather limited in their scope almost as if it were taken for granted. Furthermore, to approach this subject in a direct fashion will demand an explanation regarding the various principles upon which the claim of three existing parts to the regime rest.

Aristotle writes that every regime consists of three parts. He then adds that “As long as these [parts] are in fine condition, the regime is necessarily in a fine condition.”⁴³ This expands the importance of the

parts of the regime. They are not merely arbitrary facets to regimes, they are controlled and established parts of every regime, good and bad alike. These parts are the common thread that runs through every regime. As a result, the regime as a way of life is determined and defined by the form these parts take. The three parts of a tyranny will look different than the three parts of a republic even though the three parts comprise the same function in every regime while being altered in form. From this understanding, it is not surprising that these three parts are often considered to be the “soul” of the regime—a reflection of the soul possessed by human beings. This overarching concept of the regime and its parts—as well as its understanding—is vital to understanding the conception of regime held by Aristotle as well as the larger, comparative project. Consequently, such an examination is only fruitful if the best can be understood—best in the sense of the ideal regime envisioned by Aristotle and how the three parts appear to be in that scenario.

Essentially, it becomes a question of regimes or *politias*. To end with the blanket concept of “regime” is to ignore the central inquiry of *The Politics* and the greater political task of finding the best way of life. If the concept of the three parts to every regime does indeed apply to every regime, then it is reasonable to assert that the best understanding of the three parts of the regime can be seen in the study and understanding of the best way of life. If Aristotle is correct, then the particular regime in question is in fact the best because the three parts of the regime exist in their individually superior forms. In the end, the question of separation of “powers” as understood by Aristotle appears in three forms: the first is the explanation regarding the three forms he describes. The second form is the understanding of the question of separation through the scope of regimes generally speaking. The third and

⁴² Mary P. Nichols, *Citizens and Statesmen*. (Savage, Maryland: Rowman & Littlefield Publishers), 99.

⁴³ Aristotle, *Politics*, 1297b39.

final form involves an explanation of *polity* or the best regime specifically. Evaluating the model of power, separation through this method is important and necessary as the type of regime is inextricably linked to the form and extent of separation between departments.

It is in chapter fourteen of book IV that Aristotle states that there are “three parts in all regimes.” He then lists the parts in question, writing that “one is the part that is to deliberate about common matters.” The second part is what Aristotle deems to be connected with what he calls “offices” or magistracies, as it appears elsewhere. When Aristotle says offices, he elaborates his meaning by adding this pertains to “which offices there should be, over what matters they should have authority, and in what fashion the choice of [persons to fill] them should occur.” Lastly, Aristotle considers the third part of every regime, which is the “adjudicative” part.⁴⁴ From this simple presentation, it can be quite easy and rather tempting to quickly draw the link from this Aristotelian list to the separate “parts” of the American regime as outlined in Articles I, II, and III of the Constitution. This connection has been suggested before and, likewise has simultaneously been rejected. The only way to verify if any connection exists at all is through an inquiry into the specific parts. What is meant by “deliberative element?” What is the full implication of these “offices” that are mentioned? To begin, the explanation of each part by Aristotle will be given, followed the analysis of each part that is analyzed by Publius in the *Federalist*. To complete the investigation of the theory of separation of powers, the mixed regime, as understood by Aristotle, will also be examined.

What frames this approach is just as important as its contents. The idea and con-

cept of “power” as understood by any modern onlooker does not exist within the pages of the *Politics*. This is a result of the simple fact that the notion of power in relationship to politics finds itself to be filed within the contemporary political vernacular—that is if one excludes its use at times of war. No man asked at the time of Aristotle “Who has power?” or even “Who has what power?” Such questions would absurd to ask. There was no power, per se, but rather “authority.” The term authority is arguably preferable to “power”—even in the modern usage—as there is much to be implied from the word itself. Power is a word that denotes ability. If a man has the power to perform a particular act, such as stealing a loaf of bread, he can accurately assess that he does, in fact, have the power to do so. This may be linked to the fact that he could overpower the vendor and steal the loaf or even quickly snatch the loaf and escape because he is faster than those who wished to stop him. As was done in the young American republic, liberty was granted and defined thus providing a check on power. A man could do anything he wished to do in America as long as he was at liberty to do so. The presence of “authority” in Aristotelian political philosophy, however, shows that there are inherently controlled roles for the branches or “parts” of the regime. The modern conception implies that there is some raw, finite block of power and it must be distributed between these vaguely natural constituent parts. For Aristotle, it is the understanding that the deliberative authority can only ever have one particular definition. As a part of the regime, legislative deliberation as a principle does not need to be “vested” into a deliberative facet; its authority simply is. This same standard extends to the remaining two parts of the regime as well.

The balance between the three parts is an internal balance in each individual part—there is no great effort to balance the

⁴⁴ Ibid., 1297b41-1298a3.

external relationship between the three. The bond that exists between the deliberative, magisterial, and adjudicative elements of the regime reflect the relationship between the individual citizen and the regime generally speaking. Every man must order his soul and do so correctly to achieve proper balance, so too must the regime be ordered in a correct way. Part of achieving that balance is dependent upon the balance of the citizens themselves. Ordered souls will inevitably contribute to the ideal and ordered regime. This is one of the main reasons that the suggestion by Aristotle, of there being three parts to every regime, is often interpreted as if Aristotle is referring to these parts as “soul elements.” In effect, it is argued that he applies them to the regime as if it possessed a soul like the men and women who embody the regime as a way of life. This connection can be seen in that the elements of the regime are themselves based upon particular circumstances, incorporating material considerations as well as the specific make-up of the political community when determining the balance of any singular element. Subsequently, if the political community constitutes the mixed regime hoped for by Aristotle, so too would be the parts of the regime. Again, this is true in that it represents the relationship between individuals and the regime. It is not enough to establish a mixed regime, hoping that the other various parts of the whole follow suit. The separate parts themselves must be the same. Therefore, Aristotle—understanding the importance of properly mixing the “soul” of the regime—suggests the lawgiver or statesmen be well versed in these supremely practical considerations. As Harry V. Jaffa observes “it means knowing how to add a touch of oligarchy to a democratic legislature, or a touch of aristocracy to an oligarchic judiciary, or a touch of democracy to an oligarchic magistracy.”⁴⁵ This

⁴⁵ Jaffa, Harry V. *The Conditions of Freedom*,

means to apply the art of balance—something practiced and embraced by the American lawgivers at Philadelphia. It was not necessarily enabling the existing regime in that an oligarchy would have an oligarchic legislature, but rather, according to Aristotle, a tempered and curbed oligarchic deliberative element.

Furthermore, it has been frequently noted by many learned scholars from Mary P. Nichols to Martin Diamond that direct parallels between the three “soul” elements of the regime and the modern “branches” of government outlined in the American Constitution are incorrect at best and, at worst, are academically dishonest. Yet, the attempt to find common ground between the concepts of politics is not done to “take-on” these tremendous and erudite academics. It is not to pin a badge of ancient honor upon the American figure. This purpose of this endeavor is to discover truth. It is not to try to levy claims about the United States that are not true in hopes of making this modern polity something it is not. In this particular instance, however, a parallel between the ancient and modern conception of “branches” and “elements” can be made. One must be incredibly careful when doing so nonetheless. There are two eminent flaws when making a comparison. The first is finding that the two examples contrast on the surface and should be altogether discarded as conceivably similar concepts. The second results from the overeager scholar and his zealous attempts to forge a connection that is either not as strong as he has led others to believe, or it does not exist at all.

Concerning the relationship of elements and branches, what then is actually being discussed? Is Aristotle giving a completely enumerated version of legislatures as they would appear in all forms? Or are chapters fourteen, fifteen, and sixteen of book IV

(Baltimore: Johns Hopkins University Press, 1975), 64.

describing the functions of these three parts of the regime? Arguably, there are some connections to be found between the American “deliberative” branch and what is described in the *Politics*. If it were exactly as described by Aristotle, there really would not be much to dispute. Nevertheless, simply because connections made between functions of parts discussed Articles I, II, and III of the Constitution and chapters fourteen, fifteen, and sixteen of book IV can be made, that is not to say that Congress as an institution is equal to the Aristotelian deliberative element. What Congress represents, as it will be seen and argued, is a form employing radically different means through a modern identity to fulfill the end and function of balanced, deliberative bodies desired by Aristotle.

Aristotle does indeed start with what he refers to as the deliberative element of the regime. The authority that is found in this part, Aristotle contests, extends to “war and peace, alliances and their dissolution, laws, [judicial cases carrying the penalties of] death or exile or confiscation, and the choosing and auditing of officials.”⁴⁶ For any group of a deliberative nature, this litany is impressive regardless of time. The demands from this part of the regime are great. With such widespread authority—as Aristotle uses “authority” rather than “power” à la Publius—and tasks, it could be easy for that authority to be abused. To this end, Aristotle is clear as to how that should be divided, if it should be divided at all. Again, the specific plan for the best practicable regime appears in the concept of polity. Therefore, the various forms of division suggested by Aristotle in this particular section are merely possible divisions. How the division occurs determines, in part, the particular classification of the respective regime. Nonetheless, Aristotle concludes that it is the entire citizenry that

must deliberate. Nowhere does the concept, mention, or even consideration of “representation” appear. This is a fundamental inconsistency between the “deliberative” essences of the American Constitution explained in the *Federalist* and the political science of *The Politics*. As it will be seen, however, this does not necessarily mean that everyone in the city or *polis* participates in deliberation. When Aristotle say “all the citizens,” what does he mean? Does he mean all people? All adults? Moreover, this gives rise to the conversation and the determinants that define the understanding of “citizen.”

Either way, Aristotle firmly suggests that the authority inherent to the deliberative part ought to be partitioned in one of the following ways. He writes, “It is necessary either that all these sorts of decisions be assigned to all citizens, that all be assigned to some of the citizens...or that some of them be assigned to all of the citizens and others to some.”⁴⁷ This is interesting as Aristotle is now focusing on the particular divisions within one third of the parts of a regime. This division between all in some would thus seem to be made on some level of qualification or some limitation similar to the kind of qualifying criteria for being a citizen. In some respects, even though Publius identifies “the representation of the people in the legislature by deputies of their own election”⁴⁸ as the fourth discovery of the modern science of politics, the underpinnings for this extension of liberty can be seen in how Aristotelian separation of “authority” relates to the *Federalist* separation of powers. Of course it cannot be directly traceable or, to any extent, exact. Such a precise fitting would betray a sort of manipulation of either Publius or Aristotle by the one who made such a claim; additionally, it is equally incoherent to migrate

⁴⁶ Aristotle, *Politics*, 1988a4-6.

⁴⁷ *Ibid.*, 1298a7-11.

⁴⁸ Publius, *Federalist*, #9, 51.

to the other extreme and disconnect the two writers entirely from one another. This would essentially be judging the Greek *polis* for not being America and similarly condemning for the United States for falling short of a Greek city like Athens. To say that the two are the same is no better than to assert that there is not a tie to bind even the smallest of compatible concepts.

Nevertheless, Aristotle insists, to be clear, that in the various scenarios in which “all” decide concerning “all,” this is the most popular, democratic, and, in so doing, equal approach to the deliberative structure of the regime. From this principle, Aristotle provides a list to the various modes in which “all” can be said to participate in all decisions. These modes thereby qualify as democratic in their form, whereas the particular cases were merely “some” decide on all are inherently oligarchic. This oligarchic form, Aristotle explains, can arise out of various circumstances be it election or a system of succession. If virtue was seen as a qualification in any way for obtaining a position of deliberative authority, it would then be an aristocratic form of deliberation. Of the democratic versions that Aristotle discusses, there is one in particular that is worth exploring in further depth, beyond the principle, and focusing on the particulars of the matter. Of the democratic forms of deliberation, the fourth and last listed suggests that it is when “all meet to deliberate on all matters, while the offices decide on nothing but merely making preliminary decisions.”⁴⁹ This final form, Aristotle believes, is the closest of all forms of democracy to appear to have some resemblance to “dynastic oligarchy and tyrannical monarchy.” What this means is that “all” will certainly deliberate on “all” including the preliminary decisions made by the offices and magistracies. This form serves to contrast another form of deliberative organization that is

mentioned: that is where all deliberate on some, while the offices deliberate on some.

What Aristotle is showing by contrasting these two forms is how important the organization of the parts of the regime is in determining what form the regime itself takes. Furthermore, it shows how large of a role the deliberative element takes in that process of determination. There is a way in which the fourth possible form of democratic deliberation is similar to the tyrannies of the one and the few: if all deliberate and decide on all with absolute and unchecked authority, it simply becomes the tyranny of the many. In this particular instance, tyranny is the common denominator between deliberative forms. Conversely, the contrasting form where all deliberate on some and the offices decide on some, is far more complex and far more conducive to justice as well as balance. Aristotle defines this alternative mode as when

all [decide] together, but meet only with a view to the choosing of officials, legislation, what concerns war and peace, and audits, while in other matters deliberation is carried out through offices arranged to deal with each sort of thing, and the offices are chosen from all by election or by lot.⁵⁰

In this form, the deliberative duties are split between the deliberative element and the offices that consist of men of the deliberators choosing.

In the spirit of honesty and candor, the intentional meaning Aristotle intends for this passage is not explicitly clear to the reader, but as it exists, it is his duty to examine and analyze what the Philosopher has expressed. A conjecture must be posited out of academic duty. From this assertion, it is possible that such a form of deliberation

⁴⁹ Aristotle, *Politics*, 1298a29-31.

⁵⁰ *Ibid.*, 1289a19-24.

can mirror that of any cleverly crafted modern system of a deliberative body. Why, after all, must deliberative authority necessarily have to be limited and centralized to “all” discussing all? In this instance, “all” is still the primary body of deliberation, yet they prescribe to the offices certain duties chosen by some means. The temptation to extend this understanding of deliberation to the model that appears in the United States Constitution will be fleshed out but not until a full understanding of deliberation can be gleaned from the *Politics*.

The most significant and useful piece of information that can be seen from this of shared deliberative duty between all and the offices is the way those who are naturally intended to be deliberators are in fact not deliberating on every matter as they would in most other forms. Furthermore, another mode even suggests that the offices are involved in the deliberation process for the sole reason that “it is necessary to have knowledgeable persons ruling.”⁵¹ The authority that can be found within the deliberative element of the regime is being divided and actually extended to another part of the regime. This is an important fact in that there is a specific purpose for choosing to do so. In the case of government and the form of politics, it is often the case that a certain form was chosen in light of the others as it was deemed to be the best for all people based upon certain circumstances.

Whereas the principle of the deliberative element is applicable to all people at all times, it is the particular form the deliberative element takes that is most reflective of the time it was chosen. After all, deliberative form is relative to the regime. All things being equal, forms change based upon the shifting of the identical parts contained within every form. The slightest of tinkering can cause one particular form to

prevail over another, perhaps akin to the theory of isotopes held by a chemist. It is a balance between the universal and the particular. If the situation is accurately assessed, balance will certainly be achieved. The importance of the particular balance in light of the universal is that the part of the regime in question, in this case the deliberative element, will automatically be balanced with the others as it itself is balanced. Again, it is important to note that this is pertaining to the parts of the regime or *politea*, not the city or *polis*. It is ultimately the regime that provides an end for the city.

The end of this chapter of the *Politics* is significant. While providing the various functions and roles that different deliberative bodies could take in the diverse number of regimes, general and universal lessons can be drawn from the given particulars. It would seem rather useless to the modern reader to even concern himself with these formative “schematics” of possible regimes unless he is a founder or re-founder who desires to replicate one of them. The deliberative form is necessary to perform the concerns of the city: war and peace; the formation and dissolution of alliances; the creation of laws; matters of exile and seizure; and finally the choosing of officials. Of these five essential matters, the most important—by far—concerns the deliberation over the laws. As law is the most important, the proper formation of a strong body of deliberation is of great consequence. These schemas, outside circumstance, serve to represent what is to be done if the most advantageous deliberative element can be achieved in democracies, oligarchies, or polities. There must be balance. Without balance within the deliberative element, the other two parts of the regime could in fact be disrupted, especially if the imbalance rests in the deliberative. The power of deliberation is reiterated to the reader in the last two lines of the whole chapter. Aristotle

⁵¹ Ibid., 1298a28.

is careful to note what is being risked in the formation of any regime as well as its constituent “soul” parts.

Of the three parts of the regime, the deliberative part is actually the “authoritative element of the regime.”⁵² Aristotle does not provide a direct reason as to why the deliberative element is the most prominent and authoritative. By nature, it is the strongest or at least the most desirous of acquiring strength. Perhaps it is related to the seriousness of the deliberative tasks. It is also likely that the shape of this element is the one element that is most representative of the regime itself. Most likely, it is due to the fact that—whether it is an aristocracy, oligarchy, or democracy—those few or many wish to serve in their interest through the use of the deliberative element. If this is true, then there is no reason why the statesman or lawgiver must approach the organization of the deliberative body with the utmost care and further increases the importance of balance within that body. Nonetheless, is there any reason to believe that this conceptual understanding of the deliberative element by Aristotle should transcend time at all?

If what Aristotle says is true, then there are more than enough reasons for transcendence, especially when it is applied to the forms and institutions of the United States. Indeed, there is much to be compared to the American system, despite their obvious differences. After providing a fuller analysis of Aristotle and his position of the three parts of the regime and Book IV as a whole, then the comparative element will be introduced. Lastly, Aristotle ends chapter fourteen and leaves the reader to realize the overall task of deliberation is that of reasoning with other human beings—a task worthy of perfecting and important enough to arrange in a variety of ways to ensure that its purpose is fulfilled. It is a task that is

solely dependent on the intellect of those involved as well as the active use of the logos of each man. Three thousand years removed from Aristotle, the people of the modern era regard the question of who ought to deliberate with the greatest attentiveness and with great care. They are right to do so. The subject of deliberation will most certainly be taken up once again, but first let the study continue through Book IV in the *Politics* and the Aristotelian analysis of the various “offices” and magistracies of chapter fifteen.

* * *

Following the deliberative element, Aristotle lists the offices as the second part of every regime. This is the element that administers the city and the decisions of the deliberative body. In modern terms, these offices would be identified as the part embodying “executive” authority. Yet, while what is detailed here in book IV could loosely be considered descriptions of various “executive” institutions, to speak in those terms is slightly misguided and far more direct than Aristotle ever is in his consideration of this concept. More or less, to take the passage concerning the offices at face value is to conclude that the idea of the executive is missing altogether. Nevertheless, this passage does indeed maintain relevance to explaining the executive. After all, everything in life must have a beginning and a point of origin from which it grows. Out of this fundamental understanding of offices, it is arguable that the modern executive has developed. A fuller explanation of this development and an overall analysis of the executive will be given when Aristotelian principles are compared to the office of the president in the *Federalist*. Despite all this, the absence of a fully developed and vigorous executive in the *Politics* of Aristotle remains conspicuous. This ab-

⁵² Ibid., 1299a1-2.

sence, however, does not ignore his previous explanation of “kingship over all,” even though it is ideal, but ultimately unachievable.

Aristotle lists another form of kingship, however, and that form is the kingship of tyranny, found amongst barbarians.⁵³ Additionally, it is worth noting that a king would not simply wield the authority of the “offices” element of the regime but rather all three parts simultaneously. Aristotle may also be silent on this issue due to his understanding of how kings have acted in the past. A king is a very strong representation of what a modern man would call an executive, and while that concept did not exist for Aristotle and his Greek companions, they were well aware of kings and their behavior. It would be hard to imagine that, with the mention of a king, many ancient Greeks did not shudder as they reminisced stories they were told of the maniacal King Agamemnon. After uniting all the Greeks under his rule, he made war with Troy. To the Greeks, this was kingship. Agamemnon was the sole deliberator, sole administrator, and sole judge in all things.

This concept of tyrannical kingship and seeming concentrated “power” is so foreign to Greek impulses and fundamental political principles that Aristotle ironically quotes Euripides from his play *Iphigenia at Aulis* in that “it is fitting for Greeks to rule barbarians.”⁵⁴ As it turns out, Euripides himself is employing irony. When these words are uttered by Iphigenia, it is after Achilles fails to convince her to leave or at least let him defend her. She is urged to leave because she is about to be offered up as a sacrifice to the goddess Artemis by King Agamemnon—Agamemnon being her father. After rebuffing the offers of Achilles, Iphigenia reassures her mother that it is

better for her to be sacrificed so that she can be seen as a savior to the cause of Greek honor, as the army may then sail for Troy. It is in this context that she asserts “And it is but right, mother, that Hellenes [Greeks] should rule barbarians, but not barbarians Hellenes, those being slaves, while these are free.”⁵⁵ The irony, of course, is found in her sentiment. Although she is willing to submit to her sacrifice for seemingly noble reasons, there would not be much that separated the Greeks from the barbarians once her life has been ended in the name of Greek honor and revenge. The sacrifice itself is a barbarous act, befitting of a barbaric people. Therefore, “it is fitting for Greeks to rule barbarians.”

This, to Aristotle and others, is the “executive” who holds all three “soul” elements of the regime in its hands alone. As a result, anything that tended toward this direction was a perversion of the ideal, yet unachievable, kingship that Aristotle outlines earlier in the *Politics*. Most likely, however, the role of the executive is absent simply because it is not yet developed as an idea. What is found in book IV, chapter fifteen is merely representative of the executive impulse that would eventually be expounded upon by rulers with larger dominions and philosophers with lower aims. What Aristotle describes is the concept as it existed, not necessarily as it should be in all places at all times—but rather a political adaptation of the basic principle—or impulse—to particular circumstances.

The picture of good kings and bad kings like Agamemnon is loosely a part of what Harvey Mansfield has called the “pre-history of executive power.”⁵⁶ From the

⁵³ Ibid., book III, ch. 14, 1285a17-20.

⁵⁴ Ibid., 1252b8-9.

⁵⁵ Euripides, *Iphigenia at Aulis* in *The Plays of Euripides* vol. II, trans. Edward P. Coleridge, (London: George Bell and Sons, 1907), 437.

⁵⁶ Harvey C. Mansfield, Jr., *Taming the Prince*, (London: Collier Macmillan Publishers, 1989), 23. This work is an extensive study of the “executive

roots of the barbarian kings of antiquity to the contemporary rulers of the Greek city-states, Aristotle observed a changing and developing executive impulse. As tutor to Alexander the Great, Aristotle witnessed the combination of wisdom, rule, and martial strength. Yet even Alexander did not completely centralize political rule in his person but rather maintained existing institutions and the provincial satraps to govern Persia.

From the conquests of Alexander, the concept of empire governed much of the West for hundreds of years. The Roman Republic, once governed by a Senate and ruled through the power of their civilization, eventually became the Roman Empire governed by their god-Emperor. When the Western half of the empire collapsed in A.D. 476, the now medieval West was divided, and leadership became local. Despite the valiant attempts to revive imperial unity under the Holy Roman Empire, authority and rule remained at a localized level. Territories fell under the rule of local lords. In the feudal system, the law was truly “of the land” as property denoted authority and wealth. The lord was served by countless vassals, which included his knights, men-at-arms, and the serfs. These vassals were at the complete disposal of the lord—regardless if was service in battle, heavy taxation, or a demand for percentages of crops. Simultaneously, there was still a concept of executive power outside of the landed gentry.

When the rule of these lords became insufferable and unsustainable around 1500, the shift in local power began. The general trend on the European continent was for the strengthening and expansion of a central executive authority to check and combat the power of the feudal nobility. This mere “check,” however, grew into a more overt plan for centralization as the technological

power.” He too speculates why the *Politics* does not mention the executive.

advance of gunpowder removed the outright dependence of a king on his nobles. Peasants could now serve the king in the armed forces with little training. Serfs could become soldiers, and with some instruction, kill a well-trained and battle-seasoned knight. With a standing army in place, the executive-king was dependent upon taxes for its subsidy and with that necessity followed the rise of tax collectors and the underpinnings of a functioning bureaucracy. This development is largely characteristic of what a modern reader would consider modern “executive power” as well as its origins. This is especially true of the French monarchy. England, conversely, saw the power of its king slowly submit to the scrutiny of the English nobility, providing for a greater sense of equilibrium. Nonetheless, the power of the English king still provided a check upon the landed gentry.

Then, in the early sixteenth century, two great political, religious, and philosophical events took place—one of them seismic and the other more subtle in nature. First, in December of 1513, Niccolò Machiavelli wrote to Francesco Vettori that he had finished what would become one of the most infamous books of politics: *The Prince*.⁵⁷ This was the subtle landmark that would surreptitiously develop throughout history. The second, more raucous event was the Protestant Reformation that is marked as beginning only four years later on 31 October 1517 in Wittenberg, Germany. It was in this single stroke that the trappings of what would become seen as the modern executive power were observed, calculated, and quantified.

At its heart, *The Prince* is a concentrated account of executive authority as the initial impulse developed through the ages. It is through history that the executive im-

⁵⁷ Niccolò Machiavelli to Francesco Vettori, 10 December 1513 in *The Prince*, Machiavelli, trans. Mansfield, 110.

pulse identified in *The Politics* matured and aged in various regimes. As a result, what Machiavelli quantifies in *The Prince* is only novel in terms of its philosophic departure from Aristotelian tradition and its subtle nuances. In other words, the concept of which Machiavelli philosophizes is not new. Machiavelli was the father of the “modern” doctrine of executive power. Furthermore, he rejected the theoretical conjecture of politics practiced by those of the classical tradition and relied upon the reality of what he could examine and observe for himself. Machiavelli was an empiricist: his political theory rested upon sense and experience. In fact, in the dedicatory epistle that precedes the text of *The Prince*, Machiavelli writes to Lorenzo de’ Medici that

For just as those who sketch landscapes place themselves down in the plain to consider the nature of mountains and high places and to consider the nature of the low places place themselves high atop mountains, similarly, to know well the nature of peoples one needs to be prince, and to know well the nature of princes one needs to be of the people.⁵⁸

In light of the many fascinating concepts that occur in this passage, the point to be made in the present context is that central to the Machiavellian program is observation and perspective. This is why Machiavelli will rely on contemporary examples to demonstrate his philosophy. Additionally, the historical examples of ruthless men he provides to prove his precepts are further evidences of his reliance on fact and observation. History, therefore, suggests that many of the strategies presented in *The Prince* were available to men before 1513. As a result, it is accurate to assert, as Harvey

Mansfield does, that “many persons we would now call “Machiavellian” lived before Machiavelli.”⁵⁹ Yet, if what can rightly be considered Machiavellian before the existence of the namesake, what is different between Machiavelli and Aristotle? The precise difference may be best summarized again by Mansfield. He writes that it is one thing to note that Machiavellians predated Machiavelli, “But to grasp all the devices, to practice them on a regular basis, in a systems of institutions, and with a clear conscience—there’s the rub.”⁶⁰ In a sense, it is the particular nuance of concentration that makes Machiavelli different and pioneering. Similarly, it is also worth noting that Machiavelli here establishes another bold and fundamental departure from Plato and his student Aristotle. This reaction against antiquity appears in the formulation that there are only two natures in politics: the first being the nature of the people and the second, the nature of the prince. No other distinction exists inside this modern construct. Either something is of the people, or it is of the prince. The distinction is not between the people and one of the many ruling offices as Aristotle suggests but rather of one person. Whereas Aristotle identifies a certain base quality to the “odium” of executing and decides that it would be best to distribute that burden among many offices, Machiavelli establishes that it is not only preferred, but also necessary for all executive power to be concentrated and gathered in one person—the prince. Lastly, the main difference between Machiavelli, and therefore the modern conception of the executive, is in the terms he used to define the function of the executive role. For Machiavelli, it is the harsh but exacting language of “execution.”

⁵⁸ *Ibid.*, 4.

⁵⁹ Mansfield, *Taming*, xvii.

⁶⁰ *Ibid.*, xviii.

Consider how businesses and corporations use the same modern political language of “executive” as in the CEO—chief executive officer. It is interesting because economics is actually pre-political according to the organic development of the *polis* described by Aristotle and is, therefore, subordinate to the political community. While it is subsidiary the political community of the *polis* and the *regime*, it still finds refuge in the family, which is patriarchic according to Aristotle. Consequently, the idea of “execution” can be played out when compared to the family which is a top-down constructed relationship; it is focused on survival and merely living. Yet, when men form a political community to live well, according to Aristotle, the regime that is formed will employ “offices” or *archai* to fulfill the natural executive impulse. This is to say that Aristotle viewed the role to be that of “rule” or “ruling” rather than brute execution by one person. If the terminology of Aristotle is to be applied to business as was the language of Machiavelli, the difference can be seen clearly. Running a corporation has and never will be referred to as “ruling” a company, even if that may be what is occurring. In few words, “rule” invokes political realities. When reading book IV, chapter fifteen of the *Politics* of Aristotle, it is imperative that these two major differences concerning the executive be kept in mind; for Machiavelli, the concentration of executive to an individual and his preference for execution over rule makes all the difference.

As stated earlier, the second major even that occurred in the early 16th century was the Protestant Reformation, which began in October of 1517, almost exactly four years after Machiavelli completed *The Prince*. Sparked by Martin Luther’s emphasis on “priesthood of all believers,” the Reformation had significant ramifications concerning the role of executive power

as the Reformation spread throughout Europe. This was especially true in a kingdom like England. When Henry VIII came into disagreement with the Pope and the Roman Catholic Church, he was, in 1534, able to sever the tie between England and Rome rather easily due to the weakness of the papacy. History shows that Henry was not necessarily spurred by Lutheran ideas, but rather that the larger actions of the Reformation made the success of his actions to be more possible. Furthermore, Henry was able to rely on the support of those who favored the ideas of the Reformation. The actions of men like Henry VIII and the various German princes demonstrate the political significance of the Reformation. Henry VIII was arguably far more powerful after he broke himself and his kingdom away from the authority and influence of the Pope.

Nevertheless, it is not the act of throwing off Catholic governance that exemplifies the centralization that created the modern executive; rather it was what Henry VIII did after that. Henry not only broke ties with Rome but also named himself the head of the Church of England. He did not simply cast off papal authority and leave the situation in that condition; he went a step further. The executive power finally cast aside the only institution that historically superseded kings. Kings now established themselves as heads of both church and state. This notion of temporal over spiritual authority is even evidenced in Catholic nations, such as France, and even in the text of *The Prince*, though it was completed before 1517.

When reflecting upon the great lengths made by Cesare Borgia—the son of Pope Alexander VI—to consolidate his power, Machiavelli claims that Borgia did all that he could possibly do to ensure such consolidation. He makes the point, however, that Borgia was only able to do so because

of the security and assistance provided to him by his father, the Pope. Once Alexander died, however, Borgia could no longer rely on aid from his father, but he did have the advantage of being in the position to virtually choose the next Pope. As he chose the man who would become known as the “Warrior-Pope”—Julius II—Borgia found that this Pope would not let him do as he wished like his father once had, even though Borgia chose Julius. Despite this misstep, it is not merely the specific choice of Julius as Pope that Machiavelli criticizes, he goes farther. Rather, Machiavelli notes that “One could only accuse him [Borgia] in the creation of Julius as pontiff, in which he made a bad choice; for, as was said, though he could not make a pope to suit himself, he could have kept anyone from being pope.”⁶¹ On the surface, it appears that Machiavelli is critical of Borgia for choosing Julius II rather than any one of the other contenders for the papacy; however, when Machiavelli writes that “he could have kept anyone from being pope,” he is suggesting that Borgia failed to see the true power of his position. Rather than viewing his power as one of choice, which is to say choosing one man to be Pope, Machiavelli argues that Borgia should have not chosen anyone to be Pope at all, thereby eliminating a possible challenge to his power and authority. As a result, it is clear that even in the configuration of the Catholic structure, the executive is advised to have a controlling and independent influence over religion and its institutions.

From these two major events, the modern executive as a tangible entity solidified into its being. The development began from the primary and natural impulse for implementation briefly discussed by Aristotle and seemingly never ends. The concentration of executive power as understood by Machiavelli marked a significant departure

from the old Aristotelian mold. It is in light of these differences that any analyses of Aristotle and his “offices” must be understood. Moreover, it is the conception held by Aristotle that is, in some ways, far more interesting due to the absence of any “executive” function—an absence so evident that it may teach the modern reader more about the executive impulse through its conspicuousness than the overt barrages found in *The Prince*.

The fact that Aristotle is largely silent concerning the executive form is precisely why his view should matter on the subject. While he speaks to what can be linked to executive power in Book VI, Aristotle only mentions it in the capacity of guards, bailiffs, and other like positions. Here, in book VI, chapter eight, Aristotle is describing what he calls “superintendents” of various parts of the city as well as town managers, treasurers, and court supervisors. Yet, the office that Aristotle describes as not only the “most necessary,” but also the “most difficult,” is that which is “connected with actions taken against persons found guilty...and with the guarding of prisoners.”⁶² As a result, the reader is left with a rather negative and distasteful opinion—or “odium” as Aristotle says—of the administrators. Interestingly enough, the “offices” he discusses are not offices of choice or specific and unique to the various forms of regimes. They are, in fact, offices of necessity. Based upon the assertion that “Without the necessary offices it is impossible for a city to exist,” Aristotle believes that necessity can be improved upon and that good government can be achieved as he continues to assert that “without those that relate to its good arrangement and order, it is impossible for it to be finely administered.”⁶³ As a result, all regimes must have these offices as

⁶¹Machiavelli, *Prince*, 33.

⁶² Aristotle, *Politics*, 1321b40-1322a1.

⁶³ *Ibid.*, 1321b5-8.

all regimes will have revenues, all regimes include townships, and all regimes have prisoners. Even the most virtuous regime will have these functions, and it will need these necessary offices. The “odium” described by Aristotle derives from the fact that the necessity of these offices implies a certain baseness to the executive impulse. It is the very word “necessity” that shackles the offices of every regime with this odium. As these offices are necessary, every regime must have them and many of them are unalterable in their nature. For example, the harsh, petty tyrannies must have guards for prisoners and so too must the virtuous aristocracies. They are essentially ignoble offices universal to all regimes. In the end, Aristotle implies that the “odium” of the offices lies in their necessity.

Additionally, Aristotle continues to say that in addition to the necessity of certain offices, he mentions the importance of having a “good arrangement” of more noble offices to ensure a more “finely administered” regime. These include generals and military commanders. Overall, these are the overtly “political” offices that can reflect the particular regime in which the office exists. Even though these offices are necessary, they can escape the general odium applied to all offices and achieve a noble status through politics. Every regime has military offices as they are necessary, yet even though the office itself is not necessarily shaped by the regime, the office can serve its function of either military conquest or defense for the preservation and perpetuation of its corresponding regime. More or less, what is good for the military office is good for the regime, and the reverse holds true as well. He then concludes by explaining that there are also religious offices, meaning priests and superintendents, who are connected with sacred things. Even though these political and religious offices are nobler than the offices of necessity, they

all exhibit a commonality. All of these “pre-historical” executive offices embody the compulsory nature that is required of politics in some form. This compulsion is natural as it is necessary if judgments and deliberations are to carry any significant meaning.

It is worth noting that this compulsory authority is not concentrated into the hands of one man but rather divided among numerous offices—well over ten offices. Even among those listed there are subdivisions, including the guarding of prisoners, perhaps so the “odium” of the duty does not completely affect one person. This is another significant and symbolic example of the Machiavellian departure from Aristotelian political philosophy. Aristotle rightly entitled his political treatise *Politika* or *Politics*—concerning the *polis* (city) and the *politeia* (regime). Machiavelli, however, announces the main focus of his well-known work, *The Prince*. This marks a great shift in how the loose administrative duties found in the *Politics* were understood as compared to the modern executive. It is a shift from the concept of rule to that of execution and from stability to energy. This shift will be further explored with the comparison of the executive power as it is described by Publius.

Rule itself is demonstrated by the word Aristotle employs for “office”: *archai*. This is a variant of the more commonly known *archon*, such as council of twelve archons who infamously ruled Athens. By using this word, Aristotle is literally saying that the second part of the regime is the “ruling” or “initiating” position.⁶⁴ Again, there are many *archai* to fulfill this role. What does appear in book VI, however, is the enumeration of various, particular offices and possibilities based upon the regime relative to its form and size. In the original passage that contained the three parts of every regime found in chapter fourteen, the offices are treated without

⁶⁴ Nichols, *Citizens*, 120.

much detail. The basic principle and impulse of the executive function is introduced in book IV simply as “the part connected with offices—that is, which offices there should be, over what matters they should have authority, and in what fashion the choice of [persons to fill] them should occur.”⁶⁵ All of the suggestions and possibilities found in book IV are ultimately outgrowths of this fundamental formulation.

Aristotle continues to lay the foundation in chapter fifteen in the same book and notes this part of the regime involves many differences including the number of offices there ought to be, their authority, individual tenure of office and other like things. He does not immediately embark upon a judicious enumeration to address every difference. Rather, this task is left to the statesmen of each city, who can then make the appropriate arrangements and determine “how many modes can exist, and then fit the sorts of offices to the sorts of regimes for which they are advantageous.”⁶⁶ Similar to the deliberative element, the offices will be determinative and reflective of the regime. To make these decisions is no easy task. Even though the statesman or lawgiver may be capable, this does not mean that it will be done so simply or even perfectly. Time and experience expose what is practicable and achievable. Results reveal what the specific forms of offices can produce in light of the desired form of regime. If inconsistencies should arise, changes can be made in the number and function of the offices.

With regard to the size of the regime and its offices, the larger the regime, the more offices there will be. There are more people to serve and more people to govern. A single office would, therefore, have a single task. Smaller regimes will necessarily have fewer offices. Among those offices,

many of them would then be brought under only a few people. On a more specific level, each regime would yield some offices that are peculiar to itself. Consequently, if regimes can produce their own unique offices, then it stands to reason that any regime can limit the use of some offices found in other regimes. Even though Aristotle is simply providing possible modes and structures of offices in light of an underlying principle, the offices found in any particular regime are intrinsically important. This is due to the important fact that the internal balance of the magisterial element of the regime is entirely dependent upon the offices unique to each regime. Aristotle asserts that though a deliberative council may be popular, the preliminary council made up of offices would be oligarchic. He continues to charge that “there should be something of this [latter] sort which takes care of preliminary deliberation for the people, so that they can pursue their occupations,” and is, as a result, oligarchic in nature due to the few people who comprise the preliminary council.⁶⁷

Aristotle is clear that the intended function for the preliminary council is to serve as a “counter” to the council. It is a layer that is added to balance the offices as a collective part of the regime. Furthermore, this passage shows that there is ultimately a limitation to participation in politics. There are men in the regime who must be chosen as preliminary councilors so that others may live their lives, fulfill other duties, and work. While Aristotle remarks that all citizens deliberate as part of all regimes, it is in explaining the part concerning the offices that the reader learns that all do not participate in the role and function of the *archai*. All do not participate in the initiating positions of the regime; there are those who do rule and initiate on behalf of the people

⁶⁵ Aristotle, *Politics*, 1297b42-1298a3.

⁶⁶ *Ibid.*, 1299a13 and 14.

⁶⁷ *Ibid.*, 1299b32-34.

in general. Lastly, Aristotle presents various ways that the selection of those in office is to take place. These modes of selection also represent the form of the regime.

After providing fourteen possibilities of how men are to select others for the offices of the city, which he then divides among five separate categories, Aristotle concludes this chapter and section by simply leaving the subject, claiming that there are “so many [offices] in number,” which are distinguished from one another “in accordance with the regimes.”⁶⁸ It is not until the third practical book—book VI—that the notion of the offices or the “executive impulse” will be mentioned again as. After examining the part of the regime containing the magistracies, the theoretical description of them is found in the passage in book IV. The theoretical presentation thus implies that the concerns the offices address are both necessary and sufficient conditions for their existence.

As a result, the executive impulse evident in the *Politics* merely exists and must be appropriated. This impulse is a shared concept with modern political philosophers, specifically Machiavelli, who simply concentrated that impulse and outfitted it with “powers” that are not naturally found in relation to this part of the regime. Additionally, if the *archai* element is a necessary condition for any regime and any city to exist, then every political community must address this part in their own particular fashion. How this necessary foundation is theorized and implemented in the American regime is certainly worth considering—that is, if it can be compared at all.

* * *

Aristotle then concludes book IV with his chapter concerning the third part of every regime—the adjudicative part. It is in

chapter sixteen that Aristotle addresses the various modes and forms that embody the judicial sense of the regime. Right away, Aristotle writes that the differences that can be found between the various courts are derived from the three defining principles of from whom the selection is made, the purpose of the court, and their manner of selection. He reiterates these defining principles in his assertion that “By ‘from whom’ I mean whether [they are selected] from all or some; by ‘on what,’ how many kinds of courts there are; by ‘in what manner,’ whether by lot or election.”⁶⁹ In truth, there is not a great deal to be said concerning the courts for two reasons: the first being that Aristotle himself does not speak to any extended length concerning the courts and the second is that there is no significant barrier to understanding how Aristotle speaks of the adjudicative element of the regime. The eight courts listed in this chapter are representative of the general forms of courts found in almost every society, including the following: courts pertaining to homicide, audits, private individuals, officials, foreigners, and even common matters. This is extremely relatable to the modern reader as court systems today largely reflect this original Aristotelian formulation. This is most likely due to the significant fact that the role of the courts and judicial part of the regime is only half connected to the actual regime. The other half of the judging element is essentially the half that removes itself from the regime so that it may adequately pass judgment. This is the half the adjudicative part that every judicial aspect found in various regimes has in common with all other regimes. The concept of discriminate separation by those who judge is underscored by the use of the word *krisis*,⁷⁰ which carries the implication of “separation.” By separation, Aristotle means

⁶⁸ Ibid., 1300b5-7.

⁶⁹ Ibid., 1300b15.

⁷⁰ Mansfield, *Taming*, 64.

that the judge appeals to a standard that is apart from himself and apart from the regime. Of all the parts of the regime, the adjudicative part is the most easily translatable into the modern conception as this notion of judicial extraction is principally vital to the justice of the courts. It is an enduring concept that is not dependent upon any particular regime, but rather the judicial principle of extraction transcends regime altogether. Distance between the judge and the regime is also important in that it the judge could not act in his own interest as easily as he could without that distance. He must separate himself from the regime specifically, as the regime is a reflection and institutional development of his interest. Therefore, they cannot simply pass judgment based upon what is good for the regime, for that indirectly serves as a judgment of personal interest. Rather, the good adjudicator should judge according to what is necessary for the regime, based upon the needs of all or regimes—including the needs of the best regime.

In the case of the particular eight courts to which Aristotle referred, there are three that he classifies as “political” and the remaining three are identified as “non-political.” The non-political courts are made up of homicide courts, courts pertaining to aliens—foreigners, and those regarding what Aristotle calls “small transactions.”⁷¹ As he continues with the political courts—which includes the court of audit, injury to the public, matters sensitive to the regime itself, officials as well as privates disputations with punishment, and lastly large contracts of private men—Aristotle provides his understanding as to why it is vital to chose the noble man as judge of the political courts. He asserts that “It is in connection with these [political courts] that factional conflicts arise when matters are not finely

handled, and revolutions in regimes.”⁷² Good political judges will help in maintaining a stable regime. Stability, as a result, likely requires flexibility and the possibility to reform. This is why the particular individual that has been chosen to be a judge is more important than those who are necessarily chosen to deliberate. Furthermore, there is much that any one particular judge must know. First there is knowledge of the regime and its statutes that a judge must have and then there is the standard to which he appeals to outside of the regime itself. This, as stated before, is something to the effect of the law of nature as it appears in the form of the best regime. On non-political levels, this is largely understood as justice generally speaking as a judge must first have a proper teleological understanding of human beings before homicide can be ruled against.

For the purposes of this study, the Aristotelian position on the adjudicative element of the regime ends. When comparing this third part of the regime with its American counterpart, it will be done so according to the analysis given above. Nevertheless, the courts serve a necessary and rather isolated role in all regimes. As in the case of the deliberative and “offices” part of the regime, the adjudicative part does, to some degree, both reflect and help shape the regime in which it exists. The method of choosing judges is shared with the deliberative element in this manner in that it follows the notion of all selected from all being democratic, all selected from some being oligarchic, and lastly the case in which part are selected from some and the other part from all is characteristic of both polity and aristocracy. The deliberative element, in conjunction with the offices of the regime, is defined by its action and principled impulse; however, the judging element is defined by

⁷¹ Aristotle, *Politics*, 1300b33.

⁷² *Ibid.*, 1300b38-40.

its detachment. It is internally balanced as a part by measuring the level of its detachment from the regime. Furthermore, the adjudicative part of the regime as well as the subsequent act of judging differs from the identity and function of the other two parts. This difference is due to the fact that one accepts the outcome of judging as the ruling comes from an appeal from outside the regime. Nature and justice command great sovereignty over adjudicative actions and affairs. Conversely, the actions of the deliberative element and the various offices must be accepted by the people out of the necessity of having a functioning regime and submitting to the rule that ensures that what must be done is done. While it is important to have a working understanding of the parts of the regime, it is also important—and perhaps more so—to know how Aristotle speaks of the character of regimes and how the best regime ought to appear in light of the regime that is the most practicable. The three parts of the regime, however, represent a greater point to be found in the *Politics*, one pertaining to the much grander conceptions implied by the central concern of the regime.

* * *

By examining what Aristotle defines as the three parts that are found in every regime, it is easier to compare what are considered to be their modern counterparts. In such a comparison, the three ancient “soul” elements of the regime would be examined in relation to the modern doctrine of separation of powers of the three American “branches” of government. Through this analysis, the deliberative element is representative of a defining and authoritative part of the regime. Inasmuch as it is ultimately shaped by the regime, the way in which it is balanced does, in part, determine the type of regime. Essentially, the deliberative

element is necessary to perform and address the concerns of the city and simultaneously effectuated through the various *archai*, or “offices.” When Aristotle speaks of the offices, it is here that the greatest difference between the ancient and modern conception between the “parts” of government can be seen. The great schism that the philosophy of Machiavelli caused between Aristotelian tradition and modern advances is clearly demonstrated in his theories regarding executive power. In the analyses of the deliberative part and the *archai*, they both contain notions that would be foreign to Aristotle in their modern presentation. In terms of “deliberation” Aristotle provides not knowledge of representation or even popular will, while in the American regime they are inseparable to the deliberative body. For the offices, Aristotle is far more concerned with rule than “execution.” Nonetheless, what Aristotle provides in the *Politics* is a practical blueprint grounded in principle. It is from this timeless standard that the development of those principles can be traced or a departure from them obvious. As a result, all conceptions of these regime parts do indeed find their roots in Aristotle, and for a comparative project to be successful and meaningful, one strand of commonality is all that is often needed.

The question that should naturally follow the explanation of the parts of the regime would most likely pertain to the nature of the regime itself. It is not enough simply to explain the parts of the regime. Only when the regime and its parts are collectively examined can a truer and fuller outlook be formed. It is important to note that while the study of the parts of the regime was from book IV of the *Politics*, the specific chapters the parts are discussed are in the last chapters—chapters fourteen, fifteen, and sixteen. As a result, there are thirteen other chapters before these three that build up to those concerning the three

elements. It was necessary to describe the character and nature of the parts of the regime before explaining the regime in general as the parts can be used to check how they fit in the larger understanding of the regime. Therefore, an inquiry into the rest of book IV is not only helpful, but extremely necessary. The primary views towards regimes or *politeia* will be derived solely from book IV of the *Politics* and supplemented with other books as well. The purpose of drawing exclusively from book IV is to ensure that there is greater fidelity to the context of the last three chapters in relation to the first thirteen. An analysis of book IV of the *Politics* will show there is a coherent and significant body of thought concerning the regime and its study. Finally, the philosophical Aristotelian argument showing the connection between all regimes—ancient and modern—will be introduced. In presenting what will be called “Universal Regime Theory,” modernity is found in a position where it can never truly outrun that which came before its own time. The practical philosophy concerning the regime as both the ordering of offices and as a way of life encompasses all regimes that are, have been, and will ever be. No city is without a political community and no political community is without a regime. Through this understanding of book IV, the overall construction of the regime and its functioning parts will be laid out so a principled comparison can be achieved between the ideal regime of Aristotle and the American order described by Publius.

* * *

As Aristotle begins book IV, he takes what appears to side-step the trajectory he established in books I, II, and III. Book III ends with a discussion of the best regime: not in a general sense, but specifically in the sense of the origins of the best regime.

Aristotle notes that it is now time to address the best regime “in what manner it accords with its nature to arise and to be established.”⁷³ The many volumes of Aristotelian scholarship and analyses of the *Politics* have devoted a considerable number of pages to interpret this break in form from the argument pursued by Aristotle leading up to book IV. This is mostly due to the fact that the discussion of the best regime arises out of a discussion of many erred regimes. Keeping the larger argument of Aristotle in mind, this approach does, in fact, make more sense than is often attributed to this formulation. Book IV will argue how the best regime comes to be. Aristotle charges that the best regime, in reality, comes from two deviant forms of regimes. Therefore, it is no coincidence that his investigation of the best regime begins where his analysis of deviant regimes ends. The principles Aristotle establishes in the first three books are thereby applied to existing regimes in hopes that they may eventually be reformed into a *polity*—that is to say what Aristotle identifies as the best regime which he describes as the most citizens sharing in the duties associated with rule.

Books IV, V, and IV focus on reform and revolution; that is to say revolution properly understood. They differ greatly from the philosophic tone that dominates the first three books of the *Politics*. Book IV, the first “practical” book, as a result, does not begin with a great question such as “what is the *polis* [or city]” as does book III, but rather forges a new purpose for the reformer, statesmen, or lawgiver: one not solely concerned with the higher truths of philosophy, but one which seeks to apply those truths in a seemingly less elevated role and forced to confront daily politics and its realities. It is in book IV that Aristotle presents another significant concept that merits comparison

⁷³ Ibid., 1288b3-4.

to the American regime and that is the achievement of the best and thereby most practicable regime that is the best for the most people. This is what Aristotle calls *polity* which is also known as the “mixed regime.” As will be seen, the comparison of the mixed regime to the political institutions in the United States becomes a greater interest as the American regime simultaneously seeks to establish a sense of institutional polity within the existing forms of three separate powers. Furthermore, the original Aristotelian exposition of polity—based upon economic class and wealth—exists in the American regime (and all regimes for that matter) as well.

Before the analysis proceeds, however, there are significant questions that must be answered including the fundamental inquiry of “what is a regime?” How does the regime come to be? What is the regime in relationship with the *polis*; and many more. The first definition of “regime” that Aristotle can be found early in book III. “The regime,” he writes, “is an arrangement of a city with respect to its offices, particularly the one that has authority over all [matters]. For what has authority in the city is everywhere the governing body, and the governing body is the regime.”⁷⁴ From this definition, it is clear that the city, or *polis*, precedes the regime. It is from the word *polis* after all, that the name of the work the *Politics* derives. The Greek title *Politika* literally means “the affairs of the *polis*.” Nevertheless, Aristotle does not stop with the city. Much of the book pertaining to the affairs of the city is devoted to understanding the application of a regime to a specific city as a city is also a political community, or *koinônia politikē*. The city is different than any other type of community or relational structure—such as the family or township—even though the city is the last “community” in the organic procession of

communities and partnerships that begin with the family. The reason the city can rightly be called a political community is because it is at the level in that organic procession that allows man to finally have those things that will make him self-sufficient. He is therefore free to satiate his natural inclination as a “political animal” and associate in the “affairs concerning the *polis*.” By being free from necessity, man can therefore transcend necessity, engage in politics and fulfill his nature. As Aristotle surmises, “The partnership arising from [the union of] several villages that is complete is the city. It reaches a level of full self-sufficiency, so to speak; and while coming into being for the sake of living, it exists for the sake of living well.”⁷⁵ Therefore, the city exists by nature, but this natural occurrence does not describe, inform, suggest, or even conjecture how the individuals of a particular city may act, what it is they love, who rules, or even if these citizens are “living well.” The necessary and natural forces that bring about the *polis* cannot answer these questions. Only by investigating regimes and how they pertain to cities can these concerns be sufficiently addressed. This the claim Aristotle forwards at the beginning of book III as “For one investigating the regime—what each sort is and what its quality—virtually the first investigation concerns the city, *to see what the city actually is*.”⁷⁶ The difference between the city and the regime cannot be overstated. The regime reveals to an observer how the city ought to be understood. It provides characteristic description of the multitude of citizens that comprise any particular *polis*. In a sense, the regime can be dramatically presented as the soul of a city. Before Aristotle can address this greater understanding of the regime (as he eventually will do in book IV) he must first explain the first

⁷⁴ Ibid., 1278b-8-12.

⁷⁵ Ibid., 1252b27-30.

⁷⁶ Ibid., 1274b31-33. Emphasis added.

definition he gives to regime in that the regime—*politeia*—is defined by the ordering of the various “offices.”

In book III, Aristotle presents what he considers to be the six principle types of regimes. Of those six regimes, three are considered to be “correct” regimes and the remaining three are classified as “deviant” regimes that are corresponding reciprocals of the three correct regimes. Aristotle provides a summary view of the correct regimes at the end of book III in chapter 18, asserting that

of these [correct regimes] that one is necessarily best which is managed by the best persons, and that this is the sort of regime in which there happens to be one certain person or a whole family or a multitude that is preeminent in virtue with respect to all the rest, [and this is a multitude] of persons capable of being ruled and of ruling with a view to the most [choiceworthy] way of life.⁷⁷

The basis for the principle types of regimes identified by Aristotle are, as he claims, can be classified as the one, the few (family), and the many. In their correct formulations, Aristotle calls them monarchy, aristocracy, and polity. According to the description of these regimes, what allows them to be considered correct is their “preeminence” of virtue. The charge is that a correct regime, though the criteria for those who rule is different, do rule in the interest of the *polis* as a whole. A deviant regime, conversely, would rule only in the interest of a specific part of the *polis*. In relation to the correct regimes, Aristotle explains the three principle deviations as “tyranny from kingship, oligarchy from aristocracy, democracy from polity. Tyranny is monarchy with a view to

the advantage of the monarch, oligarchy [rule] with a view to the advantage of the well off, democracy [rule] with a view to the advantage of those who are poor,” and concludes by arguing that “none of them is with a view to the common gain.”⁷⁸ A significant and contrasting point to make is that every correct regime is alike in the sense that they are each defined by virtue. Conversely, each deviant regime is unique in its differences. In the end, every political community, that is to say every *polis*, has a regime. For Aristotle, the regime of a city would ideally come about as a result of deliberative choice; however, the first “city” to claim its regime came about through deliberation would not come into existence for another 2000 years.

With this understanding of regimes and various *poleis*, book IV becomes the focus of analysis once again. As the “best” regime will eventually be explained in books VII and VIII, Aristotle embarks upon the “practical books” to show how these six foundational regimes operate in practice. Book IV shows how the philosophy of the regimes moves beyond conjecture and is applied to reality. With this application, the particularities of circumstances give way to seemingly innumerable varieties of each principle form of regime. Therefore, Aristotle shows that there is no regime that exists in the pure, abstract form, but rather that the regimes that exist are distinguished by varying degrees of one another. Since there are these many varieties of the principle forms, each city may thereby have a regime that is in complete accord with the character and spirit of the people of the city. As a result, there is no guarantee that the best possible regime is achieved by all cities. Somehow, there may also be regimes that have been formed that do not match the spirit of the people, but erected through some means of

⁷⁷ Ibid. 1288a32-38.

⁷⁸ Ibid., 1279b4-10.

force or fraud—language that would eventually be employed by Publius in the *Federalist*. In order to ensure that a *polis* will receive the best possible regime as well as one that is in harmony with the people, there must be a one who is both knowledgeable of the particulars of the *polis* and able to abstract himself from those particulars and guide a political community to the best possible regime. The role here described is that of a statesman who acts with what Aristotle calls “practical wisdom,” or *phrōnesis*—as opposed to *sophia* or theoretical wisdom (i.e. *philosophy*). In the preliminary chapters of book IV of the *Politics*, Aristotle provides a description of what is required of the “good legislator” or “political ruler.”

The book itself begins in an interestingly vague manner, charging that the one who wields an expertise of some “thing” is the one to make decisions regarding that “thing.” As an example, Aristotle provides the model of the gymnastics trainer and notes that the trainer ought to know what is best for individual bodies: what is harmful to some may be advantageous to others, etc. Moreover, the athletic trainer must have a working understanding of the best possible training method for the finest and naturally able athlete while simultaneously knowing what to prescribe to the majority of people who do not necessarily equal the athlete of renown. Aristotle uses this example to relate to the task of the lawgiver with respect to the regime. Just as the athletic trainer is to be the one with the most knowledge for different programs for not only the best body, but also the most common, so too must the lawgiver understand the theory of the “best” regime. Aristotle writes that “with regard to the regime, it belongs to the same science to study what the best regime is, and what quality it should have to be what one would pray for above all, with external

things providing no impediment.”⁷⁹ Essentially, Aristotle is defining the true purpose of what modernity has called political science—it is the quest for the best way of life. Yet, in the search of the best way of life, the countervailing forces of reality and human nature collide with what is the best, limiting its achievability despite holding knowledge of the best. This does not mean that men should resign themselves when they fall short of achieving the best regime, but rather they should adjust their focus to get as close to the best as one can, essentially establishing the best possible regime. After Aristotle provides the description of “political science,” he immediately continues in arguing its practical function. He asserts that part of this “science” requires knowing “which regime is fitting for which [cities]—for it is perhaps impossible for many to obtain the best, so neither the one that is superior simply nor the one that is the best that circumstances allow should be overlooked.”⁸⁰ It is clear that the best “possible” regime is to be considered in light of the outright “best” regime even though the best regime cannot always be received. For the legislator to focus solely upon the “best” regime would be no better than hoping for the impossible. Inasmuch as the best Platonic cities of *The Republic* are helpful for the student of politics to know, half of the lesson Plato teaches is to know that they are unattainable. Aristotle makes a similar assertion in his presentation of the “best” regime. Just as the perfect communism in *The Republic* asks men to live like a city of gods, the “best” regime in the *Politics* asks men to establish the City of God. Nonetheless, what does Aristotle mean by adding the remark that the best possible regime should not be “overlooked?” It is rather strange to note that the best possible regime could be overlooked even though it

⁷⁹ *Ibid.*, 1288b21-24.

⁸⁰ *Ibid.*, 1288b24-27.

is known that the best regime is actually impossible to achieve. What Aristotle means, however, is actually an observation that while the best regime is not reached, that by no means implies that the best possible regime has not been reached either. There are people in various *poleis* that are without a regime that reflects their character—they are without a regime that is “fitting” to them. Perhaps this may even be a larger reflection upon human nature in that where a city to consist of the best men, they would be befitting of the best regime.

Nevertheless, circumstances ultimately affect the regime and prohibit the absolute best from being achieved, but this does not exclude the possibility of achieving the best “possible.” What Aristotle calls “circumstances” are, in reality, the things “concerning the *polis*” which is to say politics, or *politikas*. When Aristotle proclaims in the *Nicomachean Ethics* and later echoes in the *Politics* that “Since in all the sciences and arts the end is some good, it is the greatest and primary good in that which is the most authoritative of all; this is the political capacity,” he means that the supreme and architectonic role of politics over all things does, in fact, apply to all things—even the regime. Politics is, first and foremost, the affairs of the city. Politics is the grind of the *polis*. Thankfully, politics does not end there, with that hopeless and abysmal view of the “supreme” science. The men of the city can be saved through hoping to find the regime that is the best possible and they can with the help of the wise lawgiver, the man of practical wisdom, or *phrōnesis*.

A practical example of this was Solon of Athens and the laws he gave to his city. As far as practical wisdom is concerned, Solon was so attuned to man and his nature to know that the purpose of the law is not to constrain action without purpose and to inhibit wrongful action. He believed that

laws can actually shape and change individuals and alter the attitude of a people. Even though there is a certain constraining power found within written law, Solon holds to the ultimate belief that true and good laws ought to produce true thoughts and right actions if those under those laws are to be properly shaped by them. Furthermore, as Solon is aware, if this is the end of law, the only way in which this may be achieved is if he “fit his laws to the citizens, that all should understand it was more eligible to be just than to break the laws.”⁸¹ By tailoring the law to the men it will rule, some steps to compensate and, perhaps, remedy the shortcomings of human nature can be taken. Not surprisingly, however, men do not like to be told of their inherent perversity and it can be no wonder that no one heeded the speeches of wise men but simply allowed the fools of the city decide on all things. The larger implication of Solon fitting his laws to the people of Athens was that Solon himself had an accurate and working understanding of the people and their character. If he effectively wrote laws for them he must have, presumably, known them. Yet this is not to say that if there was some base aspect of the Athenian people, Solon would have encouraged such action in the law to ensure an exact “fit.” In doing the opposite, Solon would have discouraged such action entirely. The ability to stand outside the regime is the mark of the statesman. At the same time, as he was also the lawgiver, he ought to have used his practical wisdom to impress himself and right virtues upon the city so that he could guide them towards the proper ends of the regime.

Solon was then chosen archon with “the rich consenting because he was wealthy, [and] the poor because he was

⁸¹ Plutarch, *Lives*, trans. John Dryden, (New York: The Modern Library, 2001), 109.

honest.”⁸² Moreover, Solon was empowered by the people not only to arbitrate an agreement between factions, but also to be the lawgiver of the city. It is here that Plutarch demonstrates his own knowledge and use of practical wisdom as he generally asserts that even before Solon ever gave Athens a single law, he was already a man of great reputation and repute. It takes a well examined life to achieve such greatness and a well-ordered soul to keep it. It was only because Solon was already a great man that he was able to do great things. One does not merely do a great thing to become a great man.

As it was already said, Solon was well aware that law ought to fit the people it governs. To this, it was without question that the Draconian laws of blood and punishment ought to be done away with as such laws do nothing but to condemn any action—good or bad. The purpose of law, as understood by Solon, was to be a guide to that which is good and direct that goodness towards the city for the benefit of all. Evidently, Solon seems to understand the difference between theoretical and practical aspects of the rule of law. Ultimately, theories should be conformed to reality. If a theory of law wishes to conform reality to its own precepts, that theory may only be implemented through force. From this understanding, it is no surprise that Plutarch notes that “when he [Solon] was afterwards asked if he had left the Athenians the best laws that could be given, he [Solon] replied, ‘The best they could receive.’”⁸³ Here, Solon provides a remarkable demonstration of the Aristotelian position which states that the lawgiver ought to act with prudence and “should try to see both what laws are best and what are fitting for each of the regimes. For laws should be enacted—and all are in fact enacted—with a view to the regimes,

and not regimes with a view to the laws.”⁸⁴ Solon knew the people of Athens and thus gave them laws befitting of their regime. The laws are meant to preserve the regime which is a reflection of the *polis*. Additionally, to ensure that the laws may always be fitted to the city, Solon established his laws for one hundred years so they may be changed if needed in the event of a regime change. If the Athenian regime changed, then the laws must follow. The laws must match the people they rule so that they may truly be ruled and, as Aristotle argues, “For where the laws do not rule there is no regime.”⁸⁵ Thus, there is no regime without law and there is no political community or *polis* that is without a regime. This is why Aristotle would say that any man who lives outside of the city is either a beast or a god.

In light of these actions, the people of Athens would not be without a regime that was relative to their character and fitting for their city had not Solon given acted in the way he did. Had Solon set out to give Athens the best regime, the *polis* would arguably have been better off without any regime at all as striving to achieve unachievable perfection will always lead to disaster and misery. Based upon this understanding, it is no surprise that Aristotle advises “For one should study not only the best regime but also the regime that is [the best] possible, and similarly also the regime that is easier and more attainable for all.”⁸⁶ Therefore, the only way to know the best possible regime in relation with the best regime is by having a working understanding of all the possible alternatives to the best as each is dependent upon particular circumstances. As book IV continues, Aristotle revisits his enumeration of the six principle regimes in their correct and deviant forms. He remarks that as kingship and

⁸² Ibid., 114.

⁸³ Ibid., 115.

⁸⁴ Aristotle, *Politics*, 1289a11-14.

⁸⁵ Ibid., 1292a31-32.

⁸⁶ Ibid., 1288b37-39.

aristocracy have already been addressed to some length, the time has now come to address the regime of polity “which,” he remarks, “is called by the name common [to all regimes].”⁸⁷ In addition, the three deviations of the correct regimes, tyranny, oligarchy, and democracy, must also be discussed. It is not a coincidence that polity, a correct regime, is to be shunted to book IV with the three deviant regimes as Aristotle notes that polity or *politeia* is the very same name used when talking about the common name “regime”—*politeia*. Polity is *politeia* and regime is *politeia*. Additionally, it is no surprise that polity will be discussed with the deviant regimes as polity is what Aristotle calls a “mixed regime,” or what is commonly called “mixed government” and even more so a “mixed constitution.”

Before the analysis of book IV can proceed, however, one important question remains to be answered and that concerns the purpose or intent for the instruction provided by Aristotle with regard to the regime. After all, he is writing with a view to the regimes that already exist. What good does a political philosophy espousing the particular virtues of one regime over the other do for a regime that already exists? It must be remembered that the intended project for existing regimes is that of reform. Through reform, only then can a political community hope to achieve the best regime possible. Consequently, it is clear that a regime can come about through only one of two ways: the first way is at the true founding of a city and the second way, which the majority of modern regimes have come about as a result, is through what can be called a “re-founding.” It is through this concept of re-founding that the process of Aristotelian reform takes place. With the ratification of the American Constitution in 1787, the United States falls squarely in this

category of “re-founded” regimes. Yet, this is not to degrade the accomplishments of the men at Philadelphia or, for that matter, any project of reform. In fact, it is quite the opposite. Aristotle is adamant that “to reform a regime is no less a task than to institute one from the beginning, just as unlearning something is no less a task than learning it from the beginning.”⁸⁸ The reformation of a regime is, in essence, the unlearning of a regime. The task of reforming the regime is in the fact that the people of the city must effectively turn away from their old habits and culture as a new regime develops. Reforming a regime depends upon a complete change of the political community. Simultaneously, as the regime is reformed, so too is the *polis* undergoing similar reformation. As a result, it is important to read Aristotle and his reflections as a guide to reforming existing regimes. As stated before, this political philosophy is inherently practical and meant to be applied to reality. This is a significant departure from the philosophical explanations provided in books I-III. Aristotle provides a picture of how regimes with an eye on their potential for being the best practicable to achieve.

Book IV, states Aristotle, will seek to distinguish the following: the varieties of democracies and oligarchies; “which [regime] is the most attainable and which the most choiceworthy after the best regime;” and, lastly, which regime is best for most cities.⁸⁹ Now the regime, as previously mentioned, is the arrangement of offices and institutions in the city as well as the distribution of rule between the offices. In this book, Aristotle addresses the three deviant regimes as well as one correct regime, that being polity. When a specific type of regime is examined, the differentiation between regimes occurs when considering who it is

⁸⁷Ibid., 1289a36-37.

⁸⁸ Ibid., 1289a3-5.

⁸⁹ Ibid., 1289b10-20.

that rules, their end in ruling, and what separates the ruler or rulers from the rest of the political community. The correct regimes are all alike in their end to rule in the common advantage of all in the political community, while their respective deviations differ in that each ruling group of the city rule solely in the interest of their groups. It is because of the differences between tyranny, oligarchy, and democracy that their rule is more worth investigation as the analysis of one correct regime is essentially and analysis of the other two as well. Tyranny, therefore, is one person ruling in their own interest. When explaining oligarchy and democracy however, it is worth noting that there is more to their distinction than simply “the few” and “the many.” The correct regimes of aristocracy and polity virtually share the same distinction on who rules. The defining difference then is to be found in the interests and ends of oligarchic and democratic rule. Aristotle identifies that interest to be based upon wealth and its distribution. He explains that democracy is marked by the “free and the poor” have the authority to rule and do so in their interest. In a similar fashion, oligarchy is denoted when those with wealth and are of a “better” pedigree and rule to the advantage of the few. After explaining the many varieties of both oligarchy and aristocracy, Aristotle then turns to the next regime for analysis which is polity or *politeia*—the regime that shares the name for the general category of “regime.”

In turning to polity, Aristotle initially remarks upon the rarity of polities that actually exist and how much more focus is instead placed upon the other types of regimes. When considering polity, it is important to note the general direction that polity leans as some polities more clearly resemble democracy, while other tend to resemble oligarchy (which is also then generally referred to as “aristocracy”). It is

because of the confusion of polity as another regime that also attributes to the observation that polity is often overlooked as a regime. Polity is susceptible to this type of confusion for a reason, nonetheless. It can, at times, be confused for either democracy or aristocracy as polity is not and intrinsically pure form of a separate regime, but, rather, a mixed regime as previously stated. Aristotle describes this peculiar type of regime in simple terms: polity is a mixture between oligarchy and democracy. The most striking thing about this claim is that polity, one of the three “correct” regimes is, in fact, composed of two deviant regimes. Generally speaking, polity is the regime that is identified by Aristotle as the best possible regime and the regime that can be achieved by the majority of cities.

This regime differs greatly from the best regime “simply” represented in book VII. As a result, polity allows the most freedom for the development of individual ideas. Philosophers are free to philosophize and artisan types are free to live as they choose. Polity is a fair and equal regime and it is the best possible regime in that those who rule do so in the interest of the entire political community. Furthermore, all citizens get a turn to rule; thus adding maximum participation in the regime as a reason why polity is the most preferable form compared to the best regime simply. Again, however, polity is a rare and uncommon regime as the mixture of oligarchy and democracy must be well blended. “In a polity that is finely mixed,” writes Aristotle, “[the regime] should be held to be both [oligarchy and democracy]—and neither.”⁹⁰ This mixture is important to achieve so that no one feature of the polity is more noticeable over the other. Another defining characteristic of polity is how the combination of two opposing and contentious “regimes” relates to one another. Again, this is where

⁹⁰ Ibid., 1294b30-35.

the craft of the legislator or lawgiver is necessary. As polity is the ideal regime, the people of the city must be persuaded to undertaking the reform of their regime. The task of persuading them to do so is much easier as all will be able to participate in the reform “[by the fact that it rises directly] out of those [regimes] that exist.”⁹¹ Even if the oligarchic and democratic parts of the political community can be persuaded to reform their regime into a polity of some form this does not imply that it will be finely mixed. As polity is understood by Aristotle to be the best possible regime, that is to say governed by particulars and circumstance, it stands to reason that existing polities do not resemble this “pure” and ideal form of a regime that is principle understood not to be a pure form of anything. There will be differences that exist within a polity and circumstances that serve as its defining features and that is exactly the point of polity. It is polity that recognizes the differences between individual men and women. By recognizing differences in individuals, every polity is, therefore, different. This understanding returns the discussion to the importance of the finely mixed regime.

Aristotle reiterates that the “defining principle of a good mixture of democracy and oligarchy is that it should be possible for the same polity to be spoken of as either a democracy or an oligarchy, and it is clear that it is because the mixture is a fine one that those who speak of it do so in this way.”⁹² The true beauty of polity lies in the fact that can weave together and utilize the variety of ends that permeate the *polis*. In a sense, this is a form of equality in that despite the difference of various parts of the political community, they are equal in spite of their difference and will, at some point, share in the rule of the regime. Equality

despite difference is essential to polity as a homogeneous unit cannot even be called a *polis* as Aristotle remarks in book II of the *Politics*. He writes that “the city is made up not only of a number of human beings, but also of human beings differing in kind: a city does not arise from persons who are similar,” as a city differs from an alliance.⁹³ In many ways, this is why polity is simultaneously considered to be both the best possible regime and the regime appropriate for most cities. Polity is the regime that is regarded to be the best as Aristotle concludes that none of the parts of the city would hope to live under any other regime. It would seem that oligarchs and democrats alike are content with the regime known as polity and are, as a result, stable regimes.

In the end, polity is still a mixture of two bad regimes. The result is that it does not deal directly in virtue as the two regimes that comprise polity are defined as being without virtue; however, there are still factors that influences and limits the vices of oligarchy and democracy. The first has already been mentioned and that is the act of mixing the regime itself where their bad tendencies are weighed against the others. The second factor concerns the constitutional order of polity. This means that there are limits to what people of this regime may, in fact, do. This “constitutional sense” serves as a constant check and balance on the various interest within the political community. From this explanation of the “best possible” regime, it hardly seems to be a correct form of regime as Aristotle claims. This is a result of the constitutional framework of polity as it does not actively seek to promote virtue, but is rather merely content with limiting vice. By exchanging virtue for a simple check on vice, wealth and individual freedom can then be emphasized and even nourished. This is not to imply that the

⁹¹ Ibid., 1289a1-3.

⁹² Ibid., 1294b15-20.

⁹³ Ibid., 1261a22-25.

promotion of virtue is somehow left completely out of polity. In fact it is quite the contrary. Whereas it is not true virtue, the moderating effects of polity produce something that only resembles virtue. Where true virtue added to the mix, the polity would then become what Aristotle calls an “aristocratic” polity. Without true virtue, the regime is then referred to as either a democratic polity or an oligarchic polity. But what can be made of this “simulated” virtue? How does it arise and what is its significance? The impression of virtue in polity is developed from the constitutional demands placed upon the people in the regime. To some extent, there are voids in the regime that must be filled. To some extent, the oligarchic must act like a democrat and a democrat must act like an oligarch. This is how true mixture takes place in polity after all.

Essentially, these constitutional obligations force the men of the political community to act with a consideration towards a “rival” political interest and rule on behalf of others. In the *Politics* this is known to be virtue, but, again, it is only artificial in its nature as it politically forces men out of constitutional necessity to only be inclined towards virtue. As a result, the chance to live the virtuous life falls to the individual alone. This is what Harry V. Jaffa means when he notes that since men in polities are merely predisposed to virtue, “aristocracy can begin to flourish upon the soil of polity.”⁹⁴ Polity enables the groundwork for true virtue to take root, regardless if it is one day at the level of the regime itself, or simply remains at the level of the individual. This concept of “the soil of polity” is identified by Plato as well. In *The Republic*, Socrates speaks of the eventual degeneration of the “best city” which is ruled by philosophers. He then concludes that if the best regime cannot be had, then men may as well

live in what he calls the “fairest” regime that provides men with the license to live as he individually pleases. Here, Socrates is actually endorsing what he identifies as democracy. He even goes so far as to call it the “sweet regime.” What is most interesting in this passage of the dialogue, however, is the observation that Socrates goes on to make. Much to the bewilderment of Adeimantus—his interlocutor—Socrates claims that a democracy is “a convenient place to look for a regime.”⁹⁵ Adeimantus responds by asking him why this is so and Socrates responds by saying

Because, thanks to its license, it contains all species of regimes, and it is probably necessary for the man who wishes to organize a city, as we were just doing, to go to a city under a democracy. He would choose the sort that pleases him, like a man going into a general store of regimes, and, once having chosen, he would thus establish his regime.⁹⁶

Even though Socrates is speaking explicitly about democracy while Aristotle speaks of polity, this same impulse and hope for some nobler regime to emerge out of the fertile soil of popular government is apparent. Socrates hopes that the license of democracy will ultimately result in the re-founding and reform of the city and Aristotle might suggest to Socrates that polity may not be a bad choice of regime for the man in the “general store” to choose.

In fact, Aristotle and Socrates seem to realize the important tension that rests in the question of how to make popular government good. For Socrates, “popular” government would ultimately allow a more virtuous regime to come about as one of the available “species” of regimes could ulti-

⁹⁴ Jaffa, *Conditions*, 63.

⁹⁵ Plato, *Republic*, 557d.

⁹⁶ *Ibid.*, 557d.

mately take root. For Aristotle, he presents the popular rule of polity as the best possible regime even though the freedom it provides could lead to an infusion of virtue into the polity itself. Aristotle favors polity because it allows the magnanimous men of the city to be magnanimous and the contemplative man to be contemplative—unimpeded and uninterrupted. These sentiments of popular rule giving way to the natural development of virtue are shared by others as well. Lastly, there remains an argument to be made about the universal nature of all regimes that polity makes available to any and all regimes. In the same spirit of Socrates who recognizes that the very regime of “democracy” simultaneously contains “all species of regimes,” a similar argument can be made for the view of regime held in the *Politics* of Aristotle, based upon his understanding of polity, specifically, and “regime,” generally. As will be explained, this understanding of regime will come to characterize what will be called “Universal Regime Theory.” First, however, let us briefly conclude the final remarks Aristotle makes concerning polity.

Despite the benefits of polity, it is not always going to be achieved as a regime. In the process of reform, a political community can begin to form a regime that while it is not exactly a polity as understood by Aristotle, it is on the “border” of polity. Essentially, this is what is known as the “middle class regime.” The difference between this regime and polity is that polity is an actual combination of oligarchy and democracy and this middle class regime is a moderation or “mean” position between two vices—or, in this case, two deviant sections of the *polis* (political community). To demonstrate his point, Aristotle references his prefacing work to the *Politics*, the *Nicomachean Ethics*. In this work, Aristotle posits that “the happy life is one in accordance with virtue and unimpeded, and that virtue is a mean, then the middling sort of

life is best—the mean that is capable of being attained by each sort of individual.”⁹⁷ The striking implication that this assertion bears is that Aristotle believes that this understanding of the “middling” way of life can be applied to the *polis* and the regime as well. It is in this great observation that Aristotle presents the second definition of the term “regime.” The first, if it can be recalled, is that a regime is the effective ordering of political offices. In conjunction with the concept explained in the *Ethics*, Aristotle is clear that the defining principle of mean “must also define virtue and vice in the case of a city and a regime;” therefore, this also defines a regime, “for the regime is the way of life of a city.”⁹⁸ From this clarification, the reader is now proficient in the fundamental definitions of *politeia*, or regime and that a regime is both the ordering of offices as well as the way of life of the city.

To continue with this concept of the “middling way of life,” it must be understood in the context of the mixed regime. On the “border” of polity lies the mixed regime that is essentially the interests of oligarchy and democracy moderated by a middle class. This falls in accordance with what Aristotle identifies as the three parts to every *polis*. These are inherently different from the previously identified three parts of the regime. These three parts, the parts found in every city, are the well off, the poor, and the middle class. As a result, Aristotle notes the importance of the middle class to balance both the rich and the poor. There is nothing that is intrinsically virtuous about the middle class that leads to this moderation, however. The effects and benefits of the middle class are a direct result of the necessity of responding to external forces. The middle class cannot afford to estrange either group as the middle class partially shares in the feelings

⁹⁷ Aristotle, *Politics*, 1295a34-38.

⁹⁸ 1295a38-40.

of both. They do not tolerate the envy of the rich by the poor and simultaneously have distaste for the arrogant and domineering attitude of the rich. As a result, the middle class shields the rich from the poor and the poor from the rich. Since the middle class is neither rich nor poor, they are therefore not inclined to be envious or arrogant. In a sense, the middle class then serves as a sort of equalizer between the two factional poles. By establishing this “middling” of classes, it is clear that this is the most effective means to eventually establishing a polity. Then, Aristotle even suggests that it would be best for the legislators of the city to also come from this middle class.⁹⁹ As he has suggesting before, the best rulers are also the more virtuous. Therefore, it is interesting that Aristotle might be implying that virtue is not always to be found in the realm of true aristocrats, but rather in the ideal mean of the “middling” classes. Without over emphasizing the importance of the moderation of the middle class, Aristotle concludes his reflections of this step towards polity.

* * *

Eventually, the reader finds himself at the original point of departure—book IV, chapter fourteen of the *Politics*, where Aristotle asserts that there are three parts to every regime. Before transitioning into the implicit comparisons between the philosophies of Aristotle and Publius, an intrinsically fascinating question must be addressed. It is a question that addresses the fundamental understanding of the regime and is entirely speculative in nature. Nonetheless, the evidence for such a proposition has presented itself and it is worth noting. When Aristotle first addresses the correct regime of polity in book III, chapter seven, he notes that “when the multitude governs with a view to the common advantage, it is called

⁹⁹ Ibid., 1296a18 &19.

by the term common to all regimes, polity.”¹⁰⁰ It is quite clear that there are two assertions found in this statement. The first is that polity rules to the common advantage and the second is that polity is called by the very term that is “common” to all regimes. The second assertion is the one that can be seen as the most curious. What Aristotle is referring to in this business concerning the name common to all regimes is literally the words or, more accurately, word he uses. When Aristotle speaks of “regimes” or a “regime” in a general manner, he uses the Greek word *politeia*. Additionally, when Aristotle concerns himself with the specific regime “polity,” he uses the same word—*politeia*. This is an incredibly confusing situation and one can only speculate as to why Aristotle would use the generic name of regime for a specific type of regime. The inverse could even be applied as well: why would Aristotle use the name of a specific regime for the name used for the general term? Carnes Lord, one translator of Aristotle into the English language, has made the distinction between the two possible usages of *politeia* by translating the general categorical usage as “regime” and the specific form as “polity.” It is this translation that has been referenced throughout this particular analysis. Lord is one of the first translators to go to such great lengths to show this key distinction, while many other translations have rendered the general use of *politeia* as “constitution” and the particular use as “democracy.” In the end, there must be an explanation for this confusion. There must be a purpose for the sacrifice of clarity on behalf of a point Aristotle wished to make, but not explicitly. This use of language will be returned to soon enough, but first there must be some explanation before the analysis can move forward. While not immediately evident, the nuance and subtlety of the argument Aristotle pre-

¹⁰⁰ Ibid., 1279a37-39.

sents can arguably lead to what can be called Universal Regime Theory.

Essentially, this theory asserts that Aristotle indirectly implies that every regime that has existed, does exist, or will ever exist contains within it not only the forms of every possible regime, but also the fundamental form of regime universal to all regimes. This concept of every regime within any regime even applies to deviant regimes. The way in which every type regime is contained within an existing regime is in varying degrees. For example, an aristocracy still contains within it democratic impulses, but those impulses are simply rendered insignificant in relation to the great emphasis placed upon the aristocratic elements of the regime. This understanding partially stems from the argument that tyranny is mentioned as another possible regime by Aristotle.¹⁰¹ Of the six principle regimes, tyranny is listed as the deviant form of monarchy. Tyranny is hardly discussed at all as a regime in book IV, possibly due to the fact that while listing tyranny as a regime, Aristotle states that of all the regimes, tyranny is the “least a regime.” Nevertheless, he is instant upon including tyranny in the discussion of the regimes and does not forget to explain tyranny as a regime later in book IV after his discussion of polity. Here, in chapter ten, Aristotle remarks that tyranny “may have its part in the inquiry, since we placed it too among the regimes.”¹⁰² This, however, is not the only translation of this passage. While Lord and countless others render this passage much in the same way, Harvey C. Mansfield notes that another translation—that he attributes to Thomas Taylor—can read something to the effect of “we admit that it [tyranny] has a certain

share in regimes.”¹⁰³ In effect, this translation moves beyond the translation provided by Lord and asserts that tyranny is not only another regime simply, but also that it is a part of every regime. Yet, it is clear that the other five principle regimes still exist as monarchy, aristocracy, polity, oligarchy, and democracy despite that fact that tyranny could possibly be a part of them all. This assertion rests in the fact that at some point, every regime compels a citizen to act in some way.

If Mansfield is correct that tyranny as regime does, in fact, exist in every regime, then the implication is that it is entirely possible for every one of the other regimes to simultaneously be a part of the remaining regimes in the same way that tyranny is initially showed to be. For example, monarchy, though identified as a monarchy—the rule of one for the advantage of all—not only contains elements of tyranny, but also elements of aristocracy, polity, oligarchy, and democracy. The particular regime is still described as monarchy though based upon the arrangement and balance of its three parts—universal to all regimes as previously explained. Again, assuming Mansfield is correct, this is a significant addendum to the traditional understanding of the Aristotelian concepts of regimes. However, this serves as only a part of the argument of Universal Regime Theory. After all, tyranny, while appearing in every regime, is not implicit in the literal understanding of regime.

It is here that the previous discussion of Aristotle and his use of the *politeia* can be revived. In addition to tyranny being a part of every regime, Aristotle is clear that the elements of the rich and poor are a part of every *polis* as mentioned in the explanation

¹⁰¹ Ibid., 1293b29.

¹⁰² Ibid., 1295a3.

¹⁰³ Mansfield, *Taming*, 49. See esp. note 3 of ch. 3. Also consider his similar essay in *Natural Right and Political Right*, 172.

of the middle class. As a result, the interest of the well off takes root in oligarchic designs and the interests of the poor inhabit democratic forms. Based upon the constructs of each *polis* determined by these indicators of wealth, it is therefore implied that democracy and oligarchy are the basic regimes from which other regimes then later form. Since these are deviant forms of regimes they cannot be tolerated as ruling regimes and must, therefore be moderated. Not by the best regime, but rather by polity—the best “practicable” regime previously examined. Therefore, if oligarchy and democracy can be said to exist in every regime and if they exist simultaneously and do not overpower one another, than it stands to reason that they cannot, in fact, exist as separate, factious regimes. They consequently exist in their mixed form, which is polity. Subsequently, it makes perfect sense for Aristotle to use the same word for both “regime” as well as “polity.” Every polity is a regime and every regime contains within it the elements of polity—his best practicable regime available to political communities. Polity is not only demonstrative of the best regime and truly embodies the “essence” of regime, but also it is a part of all regimes.

This concept of Universal Regime Theory is especially important when the original design for book IV of the politics is considered. As it is with a view toward reform, every regime should have hope as all the tools and material for achieving the best regime circumstances will admit can be found within the already existing regime. If Aristotle and his philosophy is true in this manner, then the larger comparison to the American regime becomes all the more interesting; for regardless of their intentions, the Framers of the United States Constitution created a regime that contained every other form of regime—thereby littering their document with the universal observations

made by Aristotle more than 2000 years before its conception.

* * *

Until now, the arguments of both Publius and Aristotle have just been presented and explored. These analyses arose out of the central question of how these two great political thinkers ought to be thought of in conjunction with the other. Additionally, the overall purpose of this comparative endeavor was to discover whether or not the “modern advances” of the American regime were as new as Publius claimed them to be in *Federalist* 9. For Hamilton, these advances should be hailed by modern men and women as it has allowed mankind to transcend the “petty” natures of the republics of antiquity. The “newness” of the American political advances is also acknowledged by a variety of American intellectuals—perhaps most notably Allan Bloom—yet, they see no cause for celebration. Indeed, there were advances in the modern construction of regimes and that is exactly the process. The “Moderns,” they would say, spurred political advancement into upholding doctrines of “power,” while readily abandoning the great aspects of the ancient regime including virtue, honor, and true freedom. They see these modern advances and the subsequent regimes they influenced as an entirely new breed, developed from one great act of political, evolutionary speciation.

Scholars like Bloom and Diamond would not agree with the final understanding held by Hamilton with regards to these modern advances. Despite his claims that many of them are “wholly new”—as to which ones, he does not identify—Hamilton does offer that some have simply “made their principle progress towards perfection in modern times” which serves as an echo of his earlier sentiment that they “were either

not known at all, or imperfectly known to the ancients.”¹⁰⁴ This argument has already been presented and both arguments, ancient and modern, underwent analysis to see if this claim by Hamilton is true. Were some of these advances mere continuations of ancient concepts in any way? Or does every one of them contain the degenerative taint of pre-modern political philosophy? To answer these questions, an adequate comparison between the ancients and moderns would seem to be fitting, but what to compare? Just as the *Federalist* centralizes many of the opinions in support of the new American constitution, the *Politics* of Aristotle proves to be the most comprehensive reflection on politics by an ancient author.

The purpose of arriving at this point in the analysis is to finally undertake this comparative task. From the beginning, however, it was never the intention to lay out an exhaustive and tedious comparison between the Aristotelian and American regimes. Publius or even the Framers of the Constitution make no claims to consulting Aristotle as a guide to drafting the Constitution. As a result, it is slightly illogical to make a direct comparison between the two subjects as a direct adaptation of Aristotelian political theory was never the goal. Even if an exact representation of a regime that is presented in the *Politics* was produced to the letter, the political realities of the real world would either prevent such exactness or soon render imperfect such an exact creation.

Nevertheless, just because there may be no direct ties between the *Politics* of Aristotle and the United States Constitution does not mean that a comparison cannot be made. Granted, historical records show that many of the Founders and Framers had, of course, read Aristotle and were familiar with his works, there is nothing that suggests that as lawgivers in Philadelphia any of them

dutifully consulted the “father of political science” for direct application. As a result, this comparison will directly reflect the nature of the two analyses. When investigating Aristotle and his *Politics*, much was said in terms of the various political “impulses” he identified as a philosopher. Essentially, the argument for this comparison rests upon the notions that if Aristotle is correct in his theories and believed to be true, then the fundamental political truths that he identifies will transcend his own time. These eternal truths can then be seen throughout history and in every regime, regardless if any explicit attempt to infuse Aristotelian political science into that regime was made. If Aristotle is correct, his ideas will simply “be.” This is not to say that they will always be evident or overtly recognizable, but they should be there. In a sense, the real appearance of the eternal and universal nature of the core theories found in the *Politics* is remarkably similar to the observation of family that the great Russian author Leo Tolstoy makes at the beginning of his work *Anna Karenina*. In the very first sentence Tolstoy writes that “All happy families resemble one another, but each unhappy family is unhappy in its own way.”¹⁰⁵ If Aristotle is correct, all regimes will resemble each other in some way. If Aristotle is correct, the American regime will resemble the foundational political assertions of regimes in the *Politics*. Aristotle does not need to be explicitly consulted if he is correct as his precepts will essentially “be” in a regime. Even if the Framers sought to implement the most Lockean and Hobbesian regime, there could be nothing to prevent the emergence of Aristotelian principles. As a result, the following comparison will not, as previously mentioned, be comprehensive.

¹⁰⁴ Publius, *Federalist*, #9, 51.

¹⁰⁵ Leo Tolstoy, *Anna Karenina*, trans. George Gibian, (New York: W. W. Norton & Company, 1970), 1.

It will, however, reflect the Aristotelian essence of politics and show through a few important examples that such a comparison can and should be made. For both Aristotle and Publius, the concept of separation of powers was chosen to be the point for comparison as an attempt to narrow the overall focus. Nevertheless, broader comparisons concerning the American regime will be made as well. In light of the fact that the evidence shows that a comparison can be made, it will prove to be important the foundational differences between Aristotle and Publius be briefly explained.

* * *

To begin, by introducing a study of an ancient philosopher in the context of America the traditional philosophic comparisons are not necessarily set to the side, but are challenged. In America, the philosopher of choice is unquestionably the early-modern English philosopher, John Locke. “Americans,” according to Allan Bloom, “are Lockean,” in that there is “no longing for a nonexistent Eden”—an Eden that may perhaps configure itself into something like the “best” regime outlined by Aristotle.¹⁰⁶ Ironically, the same position is held by many “anti-Lockeans” who believe the presence of radical, modern Lockean philosophy did not deny the fundamental Hobbesian problem—despite alternate means to solve it. As a result, the American Founding and Framing adopted a “low, but solid” approach, and it is, therefore, out of the question to suppose the cosmic goals of Aristotelian political philosophy can even be considered.

It would seem that a comparison between Aristotle and Publius could only gain a shred of legitimacy if Aristotelian philosophy can be proven to contain an understanding of natural rights or even a theory of natural right. This is important to

serve not only as an acknowledgement of Lockean philosophy but also a clear link to the main principle of the Declaration of Independence. Although it is not directly stated in the *Politics*, Aristotle does provide an explanation of what is known as “natural right” in his work entitled *Rhetoric*. Here, Aristotle writes that it will be well “to make a complete classification of just and unjust actions,” and continues by saying

We may begin by observing that they have been defined relatively to two kinds of law...By the two kinds of law I mean particular law and universal law. Particular law is that which each community lays down and applies to its own members: this is partly written and partly unwritten. Universal law is the law of nature.¹⁰⁷

It is this particular law that protects man within the *polis* and the universal law that secures for him his ends in relation to the regime. This is done through the means of the particular law of the community. The great implication of this understanding, however, is that the very universal law that Aristotle regards as the “law of nature” is arguably the same “Laws of Nature and of Nature’s God” identified in the Declaration of Independence.

Now that Aristotle has, to some degree, come to meet Publius and the other philosophy of the Founding “halfway” so to speak, it would be equally reasonable for Publius to do the same for the theory of the *Politics*. Just as Aristotelian philosophy does contain a sort of foundational common ground with an idea like natural right, the ideas of the *Federalist* should contain a reciprocal tie to Aristotle and his foundational claim of politics. Again, among the

¹⁰⁶ Bloom, *Closing*, 167.

¹⁰⁷ Aristotle, *Poetics and Rhetoric*, trans. S.H. Butcher, (New York: Barnes and Noble, 2005), I.13.1373b.

important claims about politics made in his extensive study of politics, another important claim can be found in the *Nicomachean Ethics*. It has been previously explained that Aristotle believes that “Every art or applied science and every systematic investigation, and similarly every action and choice, seem to aim at some good; the good therefore, has been well defined as that at which all things aim.”¹⁰⁸ Aristotle, like Publius, begins to talk about the role of the sciences very early in his work. Essay nine in the *Federalist* and book I in the *Ethics*—which is arguably the first volume to its companion work, the *Politics*. Essentially, if every science is directed towards some good and has that which is good as its end, it would, therefore, be necessary to have some mechanism to guide those sciences towards that end. Aristotle then asserts that “This good, one should think, belongs to the most sovereign and most comprehensive master science, and politics clearly fits this description.”¹⁰⁹ The claim is that politics is the supreme science, and it is the most architectonic science. It “determines which sciences ought to exist in states,” and furthermore “legislates what people are to do and what they are not to do, its end seem to embrace the ends of the other sciences. Thus it follows that the end of politics is the good for man.”¹¹⁰ Everything in the *polis*, including the regime, is underneath this master science of politics.

The question that then arises is where the supremacy of politics in the Aristotelian sense could even be found in the American regime or, more importantly, the *Federalist*? Publius answers this question with a resounding “yes.” In the very same words where Publius declares the purpose of their larger project, this is made clear. In the

very first essay of the *Federalist*, Publius remarks that

It has been frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force.¹¹¹

The link to Aristotle may not be obvious at first. Before Publius began to write the *Federalist* and even before the convention at Philadelphia was held, the thirteen independent states were a member of a loose confederation; before that, they were thirteen British colonies. The men and women in these former colonies did not actually undergo a literal “founding,” but rather a re-founding brought about by revolution. There was no clean slate to physically found a new regime from the beginning—there was no state of nature to be had. British customs were present and the larger effects, and evidence of previous regimes were manifest in the former colonies as veritable and individual ways of life. When the Convention convened in 1787, the Framers were looking to establishing a regime over those that previously existed. Therefore, when Publius states that man can establish “good government from reflection and choice,” he is making the existing culture and the existing ways of life subordinate to the master science and political choice. From this emphasis, it is clear that the *Federalist* views politics to be the supreme science as well. This is a strong bond between Publius and Aristotle.

¹⁰⁸ Aristotle, *Ethics*, I.I.1094a.

¹⁰⁹ *Ibid.*, I.I.1094a27-29.

¹¹⁰ *Ibid.*, I.I.1094b

¹¹¹ Publius, *Federalist*, #1, 3.

The previous concept of understanding the Constitution as part of the overall “re-founding” of America is also important for understanding the relationship between Publius and Aristotle. To assert that the United States underwent a re-founding in no implies that what the Founders accomplished in 1776 and the Framers achieved in 1787 is somehow insignificant. In fact, this assertion seeks to bolster their acclaim as statesman rather than to diminish it. In book I of the *Politics*, Aristotle remarks that “the one who first constituted [a city] is responsible for the greatest of goods.”¹¹² The prevailing implication is that the *polis* is a good creation as it fulfills the natural impulses of man as a “political animal” and that the first “founder,” whoever he is, is the greatest benefactor of humanity. It is clear that Aristotle does not know who this person is and is, therefore, open to speculation. To many scholars, it could be Theseus, Hercules, or even a Mesopotamian king. To the Jew and the Christian, the first person to found a city is just so happens to be a Mesopotamian—that is to say Cain, the son of Adam and Eve. Cain, who in the aftermath of committing fratricide, founded the city of Enoch, which he named after his son.¹¹³ Essentially, this is to show the fact that true foundings are almost always ancient and obscure. Very rarely are there clear instances of cities being erected and regimes being established in any clear fashion. As a result, almost any conception of a founding is really a re-founding based upon pre-existing cities and their regimes. Even then, many of these governments and nations are simply results of what Hamilton calls “accident and force” and have merely come into being through fortuitous forces. Yet, it is with the rational force and power of choice that the Americans have decided

to relegate their future to a political question.

Consequently, as stated before, the fact that the United States undergoes a re-founding in 1787 is not meant to undercut the contribution of the Constitution as Aristotle is clear that “to reform a regime is no less a task than to institute one from the beginning.”¹¹⁴ In fact, the reform and stability of existing regimes is the main thrust of books IV, V, and VI of the *Politics* of Aristotle. Cities are always meant to be moving ever closer to the best practicable regime, with “the” best regime to serve as their guide. From this, it is evident that the lawgivers gathered in Philadelphia certainly had a hard road to forge moving forward, and Publius is seen leading the advance in the following months.

This concept of the re-founding of the United States is further developed in the very pseudonym employed by the authors of the *Federalist*. When Alexander Hamilton, John Jay, and James Madison choose a *nom de plume* to hide their identities and write as one author, they chose the name of “Publius” after the Roman statesman Publius Valerius, Publicola (literally “people lover”). The real Publius, Publius Valerius, was made famous not as the founder of Rome (Romulus) or even the defender of the Roman Republic (Brutus). Publius Valerius, according to the ancient historian Plutarch, was the leader in the founding of the Roman Republic—or, stated differently, the re-founding of Rome from a monarchy to a Republic. It is with this historical figure in mind that the Publius of the *Federalist* sets out to convince the people of New York to ratify the new Constitution.

Now that some significant similarities and connection between the two understandings of “regime” have been made, it now remains to address their fundamental differences that no amount of explanation

¹¹² Aristotle, *Politics*, 1253a30.

¹¹³ Genesis 4:17, *Holy Bible*, 5.

¹¹⁴ Aristotle, *Politics*, 1289a5.

can change. These dissimilarities are truly a result of the difference of time as well as modern conceptions of government. As this study seeks to compare Aristotle and the *Federalist* through the modern advance of the separation of powers, it is very clear from this view that there are rather important concepts that appear in the American regime that do not in the *Politics*. From the onset, it is obvious that a foundational pillar of the American regime is the notion of representation. There is virtually no corresponding concept forwarded by Aristotle. This is a truly modern advance as Hamilton claims. However, this does not completely rule out the concept of exclusion in politics in the ancient city. After all, when Aristotle speaks of deliberation, he says that “all citizens” participate in that act. Were all citizens to deliberate in the United States, that would mean in the figures of today that some 2.1 million people would participate in deliberation; however, this is not the only way to think of the concept of representation and the purpose it serves. It must be considered, for example, what Aristotle means when he says that “all citizens” deliberate. In the Greek *polis*, it made a certain amount of logical sense that “all citizens” should take part in deliberation. After all, there were not many people in the city, as a result, there were even fewer people of the city that qualified to be “citizens.” Essentially, if there ever arose the need for Aristotle to employ a concept such as representation in a Greek *polis*, it would more or less seem to him that the city was therefore incapable of achieving the best practicable regime as it was composed of far too many people. As a result, the overall size of the city plays a part in the role representation plays.

Additionally, if the assertion that “all citizens” deliberate can be revisited, it must be noted that citizenship in an ancient Greek city was incredibly limited and most likely comprised only of a very limited number of

individuals, also making the need for representation irrelevant. The interesting factor in this consideration of citizenship is that of limitation. In light of the small group of males that can deliberate as citizens, there are many others who inhabit the city that cannot—including women, children, aliens, and slaves. Therefore, in a sense, these citizens are, in some sense, deliberating on their behalf, not necessarily in their interest, but what the citizens decide through deliberation affects everyone, including non-citizens. The point that is made through this demonstration is that even though “representation” does not appear in the *Politics*, the notion of limiting those who can deliberate still exists. For example, if America fully replicated “all citizens” deliberation, every citizen (2.1 million) would deliberate, while that number, as has been said, is far smaller in the Greek *polis*. Yet, not all citizens in the United States participate in deliberation—only 435 of them do as a result of representation. Even the fact that only citizens eighteen years of age and older can vote shows a limitation on deliberation. In a sense, some facet of deliberation is always limited for both Aristotle and the American regime. In the American formulation, the limitation occurs through representation and limiting suffrage to citizens who are of eighteen years of age and older. These are the limitations imposed in America in light of the large citizenship. Conversely, Aristotle promotes a relatively small citizenship which, in essence, serves the same purpose of limitation in his theory. Furthermore, when speaking of polity, Aristotle addresses the contributions made by the oligarchic part. In that oligarchy represents the interests of the “few,” Aristotle notes that one of the main contributions it makes to polity is “making offices elected.”¹¹⁵ This shows the element of limitation in that even

¹¹⁵ Ibid., 1294b12.

the citizens themselves are limited when they chose those who will fill the various offices of the city.

Another major difference that also pertains to representation is how representative government interferes with the three parts of the Greek *polis* presented in the *Politics*. By the three parts of the *polis*, this refers to the poor, the middle class, and the rich. For Aristotle, the best practicable regime of polity virtually rests upon the understanding that the middle class will moderate the interests of the rival factions of the rich and the poor. For that matter, the fact that Aristotle divides the city into these three parts based upon wealth comes into agreement with the similar sentiment found in one of the most famous essays of the *Federalist*—essay 10. “But the most common and durable source of factions,” writes Publius, “has been the various and unequal distribution of property,” and that “Those who hold, and those who are without property, have ever formed distinct interests in society.”¹¹⁶ The main difference between the *Federalist* and the *Politics*, however, is in how these factions and interests are managed. Aristotle, as has been noted, seeks to employ the middle class to moderate the passions and interests of the rich and the poor and shield them from one another. It is from this moderate task that Aristotle ultimately builds his plans for polity. In the United States, there is not political representation based upon property and wealth. There are no rich, poor, or middle class designated representatives in Congress, only representatives for all people. The Americans, then, seem to have added another layer of balance onto the moderating equation proposed by Aristotle. Rather than simply depend on the middle class to moderate, the United States Constitution relegates this task to the representative. As the divisional layers of rule in the Greek *polis* is based

upon class, the division of representation (and thereby rule) in the United States is regional—that is to say state by state and particular Congressional “districts,” the representative of that region must therefore simultaneously represent the interests of the poor, middle class, and the rich and moderate all three desires in his person. He must do this regardless whether he, the representative, is personally rich, poor, or from the middle class; if he wishes to keep his job, anyway. From this explanation, the class distinctions did not disappear as a natural division in the United States; it simply was further diffused by the institution of regional representation and moderated by the corresponding representative in the interest of poor, rich, and middle class alike.

After speaking of what Aristotle calls the deliberative element of the regime, it would seem fitting to proceed to address the remaining two parts of the regime in relation to the corresponding parts of the American “separation of powers,” the presidency and the court. Comparing the office of the President should prove to be very interesting as the president is denoted as the “executive” branch and wields the executive power—the very concept that does not appear in the *Politics* of Aristotle. Part of the larger comparison between what Aristotle defines as the three “parts to every regime” and the three branches of government in the American Constitution is the relationship with one branch or part to the others. For Aristotle, this is spoken of in terms of balance, especially in the sense that the internal balance of one part will automatically translate into the its external balance with the other two. As Publius shows in the *Federalist* 47-51, the branches of government are defined, first and foremost, by their separation and then by their external balancing. What arises out of the comparison then deals with the general characteristics of the

¹¹⁶ Publius, *Federalist*, #10, 59.

three parts of government which shows that the American “branches” differ from the Aristotelian spirit of balance as it slowly becomes deteriorated or corrupted in the American system. To show this general principle, however, there must be a more detailed presentation concerning the executive, even though Aristotle does not speak of any office comparable to the executive. Therefore, it is important to remember the executive “impulse” identified by Aristotle and its subsequent development throughout history.

* * *

The specific tasks, duties, and roles of the president are outlined within the second article of the Constitution. Before the broad question concerning the nature of executive power can be answered, a solid foundation establishing the necessity of the executive powers in the United States Constitution must be laid. Under the old regime—the Articles of Confederation—no such capacity existed and problems soon developed. As Publius embarked upon the task of persuading the people of New York to ratify the Constitution, part of that task entailed informing the people of the failures of the Articles. Publius begins *Federalist* 21 by directly addressing the inherent problems derived in the absence of an executive force. He begins by saying the “most palpable defect of the existing Confederation is the total want of a SANCTION to its laws.”¹¹⁷ Essentially, Publius is revealing the fact that the Confederation Congress has no real means execute and enforce its laws. The main concern as presented in the essay in the dangerous incapability of the Congress to establish themselves as the primary and supreme authority of which their rules are to be obeyed. Conversely, they cannot muster

¹¹⁷ Publius, *Federalist*, #21, 129.

the power enough needed to discipline those states that do not comply with the laws they put forth as a result of their heavy dependence upon a majority of the states being present rather than the independent executive later called for in the *Federalist*. Furthermore, Publius continues, if there is no executive or means to enforce law, “the United States afford the extraordinary spectacle of a government destitute even of the shadow of constitutional power to enforce the execution of its own laws.”¹¹⁸ Without the capabilities to execute, enforce, and uphold the laws, any notions of a real social and political order are meaningless. Each law passed would merely fall upon deaf ears. It is out of this understanding that the Framers created the role of the President at the Constitutional Convention. The United States finally had a governing document in which power is lent to an executive capacity.

The information concerning the executive is found within Article II, simply stating that “The executive Power shall be vested in a President of the United States of America.”¹¹⁹ There must be some understanding of what executive power may be as there is no explicit enumeration of the exact meaning of the phrase. Throughout the remainder of the Article, there are specific duties that are listed for the President to act upon; however, this in no way implies what is to be considered the executive power, only what is necessarily the duty of the office of the President. As it is presented, it appears that executive power can and does exist outside and independent of the presidency, and it is merely the act of empowering the office with those capabilities that sets it apart as the executive office. Still, it continues to list powers of command of

¹¹⁸ Ibid., 130.

¹¹⁹ “Constitution of the United States,” 17 September 1787, *Teaching American History*, Ashbrook Center, <<http://teachingamericanhistory.org/library/index.asp?document=2>>.

the military forces, ability to pardon, the power to make treaties in conjunction with the Senate, and other various and sundry duties enumerated in the Constitution. Another important piece of information concerning the nature of the executive power in the Constitution can be found in the Oath of the office in Article II, Section 1, Clause 8. A part of it reads that the President will “to the best of [his] Ability, preserve, protect and defend the Constitution of the United States.”¹²⁰ This does not mean that executive power is to protect the Constitution, but the President is given the executive power to do so. This clause could clearly lend itself to the understanding that the President will, through whatever means necessary, reach that Constitutional end. To further complicate matters, the Constitution charges the President with the duty to “take Care that the Laws are faithfully executed.”¹²¹ Perhaps this is the clearest establishment of what the President is supposed to do as far as his role of using executive power is concerned. Only the executive may execute laws and the only question that remains is how the President is supposed to do this and act accordingly and when may he do so? This more or less comprises the function of the office and the purpose of the president.

Yet, it is just as important to ascertain the specific identity of the president: identity in light of its function and other departments. This simply refers to the overall character for which the *Federalist* had hoped. Concerning the *Federalist*, the main, overarching characteristic of the executive is undeniably vigor—a sort of republican dynamism. It even goes so far as to claim that the characteristic of the “energy” in the president “is a leading character in the definition of good government.”¹²² While it may

seem that the concept of the energetic executive is being thoughtlessly grafted into the definition of good government, the way in which that conclusion is derived is rather simple and syllogistically sound—at least for him who makes the claim. What is there to be lost without the inherent advantages of energy in an executive? Were the executive to be without the necessary energy and vigor, he could not execute and enforce the laws in an efficient manner, but rather a “feeble” one. In turn, this is another way to say a weak executive leads to bad execution. The rest of the logic consequently flows thusly, claiming that “government ill executed, whatever it may be in theory, must be in practice a bad government.”¹²³ Therefore, one can assert that good government is executed well or that is to say executed energetically. The question that then remains is how the characteristic of an energetic executive can be achieved. To this question, *The Federalist* provides an answer.

According to the interpretation by Publius in the *Federalist* 70, the sub characteristics of the president can be quantified into what he calls “four ingredients” that provide the makeup for the energetic executive. The first is unity, the second is duration, the third being “adequate provision for its support,” and finally “competent powers.” As energy is imperative to the American conception of the executive and to good government itself, Publius remarks that one of the most important characteristics that must be taken into consideration in this regard is that of unity. Only through unity can energy be truly achieved. If the executive were to be carved up and extended to some co-executive or even an advisory council of some sort, energy would be destroyed leaving only feeble powers cut and spliced in multiple ways. For Publius, the idea of unity being conducive to energy is both a necessary and sufficient condition

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Publius, *Federalist*, #70, 471.

¹²³ Ibid., 472.

to good government as well as a forgone conclusion. He suggests that it is a fact not even to be subjected to possible disputation. In essence, the energy and expedience of the executive which necessary to good government can only be hindered if it is divided or subject to others. This was due, partially, to the “propensity of the legislative department to intrude upon the rights and to absorb the powers of the other departments” or as the legislature is earlier referred to as an “impetuous vortex.”¹²⁴ This is a significant point to make. The implication here is that the vast numbers of individuals sitting in the legislature are already a large and imposing check on executive power. This motivates Publius to note that if more people were to be involved in the process, they ought to be found in the place that already aligns itself as the opponent of the executive.

It is from this line of thinking that Publius is prompted to affirm that “Those politicians and statesmen, who have been the most celebrated for the soundness of their principles, and for the justness of their views, have declared in favor of a single executive and numerous legislature.”¹²⁵ What is interesting about this statement is that Publius takes the time to specifically mention a “numerous legislature” in relation to a single executive. This, again, references the multiple executive concept as well as advisory council, but it actually carries the far more significant idea that the check is inherent in the “numerous legislature,” and therefore does not need to be as numerous in the executive branch. As a result, it would not do well to introduce a legislative means of balance to another branch. The check that does exist between the legislative and executive branch is, in a sense, twofold. The sheer size of Congress compared to the one president is the first and the second is the

concept of legislative deliberation. Deliberation naturally exists in the legislature as a result of the many people in both the House and the Senate. This approach in the legislature is wholly intended by the framers and deliberation can and should be rather slow and deliberately protracted as to ensure it is an actual enduring notion and well considered. This is, in effect, intended to counter the speed and decisive efficiency of the executive and vice versa. Were this similar formula for deliberation to be imposed on the executive, which is to say in the like manner as the Roman Decemvirs, the executive would then simply be transfigured into yet another deliberative body. Such an element of deliberation would effectively destroy the unity desired by Publius. Even if the multiple executives were to be of one opinion, that would then qualify as a tyranny.

Concerning the other three of the four ingredients, they are equally as important that of unity and equally as consequential, yet for the sake of brevity, a brief understanding of the remaining three will be given. Essentially, when Publius says adequate provision for its support he means, to a degree, monetary compensation, and when competent powers is referenced, this to a large extent is referring to what is referred to a “qualified negative” by the president. This is otherwise known as the “veto.” It is qualified in that Congress may, in fact, overturn any veto if certain requirements are satiated. For Publius in the *Federalist*, duration in the executive is one of the effective attributes about the office. The period of duration in the president creates what he calls “personal firmness of the Executive Magistrate” and the “stability of the system of administration.” Through personal firmness, the president is then coupled with a reinvigoration to execute the laws and government as he sees fit. The executive must “dare to act his own qualified opinion

¹²⁴ Ibid., #73, 494.

¹²⁵ Ibid., #70, 272.

with vigor and decision.”¹²⁶ The executive magistrate must serve as a guide to the people and must not let the people guide him. Were he ever to come into a position of conflict or disagreement with either the people themselves or their representatives in the legislature, it would simply be a dictate of good government and is to be lauded. For a president, four years in one term is long enough to establish true firmness and the ability to act his conscience without the immediate fear of answering to the people as would a member of the House of Representatives. In fact, it is a significant detail to not that one presidential term is, in fact four years long—a happy, middle ground between the two year terms of the members of the House of Representatives and longer, six year term of Senators. Were the presidency to be equipped with a shorter term, “firmness” would be impossible whereas a longer term would be perceived as an encroaching force on “public liberty.”

In a way, the *Federalist* is a mark of hope for the American system that they wished to be and levied their conjectures in part to persuade the people of New York of that hope. By having a unified executive, the Americans did not destroy the “impetuous vortex” that defines the legislature, but they were, however, able to make the temptation of such seizure “less irresistible” through the counterbalancing forces of the executive. In the early days of the presidency, however, despite any amount of energy placed in the office, the office found itself to be weak. Much of the power of the president rests in his attendance to foreign affairs, and, with few exceptions, the United States could hardly claim that they have any significant foreign obligation, outside threat, or any serious influence abroad. As a result, if there is no significant threat to the United States or any need for the president to exercise his powers of foreign affairs, his is essentially

deprived of one of his principle functions. For the American president power is defined by the spirit of the particular situation, not necessarily by its letter. This is essentially what Alexis de Tocqueville later suggests when asserts that “the laws permit him [the executive] to be strong,” while “circumstances keep him weak.”¹²⁷ The fact that the president cannot assert himself in the foreign arena and actually led the country leads to weak and servile executive—and as the Publican syllogism shows, that is simply bad government.

What then should be done? Was the *Federalist* wrong in their assertions about the executive? To an extent, every political theory is “wrong” as a result of its inevitable, imperfect implementation. There is one constitutional mean that saved the *Federalist* version of the executive from completely failing, yet it is perhaps what contributes most to the overall degeneration of the executive that was intended to be removed from the people. The constitutional means in question are means meant to stave off the weakened but not eradicated appetite of power in the legislature. In *Federalist* 73, Publius writes that each branch of government must have a defense for their offices when “parchment barriers,” or as it says here “parchment delineation” becomes insufficient. Therefore, it is of the utmost necessity that each branch furnishes for itself “constitutional arms for its own defense.”¹²⁸ In the case of the executive, what do its “constitutional arms” resemble? As the president is actually made weaker than the laws admit as there is no significant role for him to play in foreign affairs as of the mid nineteenth century and the only other significant “power” he can wield is the “qualified negative” or veto, the executive then would naturally begin to search for various other ways he can assert himself through other

¹²⁶ Ibid., #71, 483.

¹²⁷ Tocqueville, *Democracy*, 119.

¹²⁸ Publius, *Federalist*, #73, 494.

means. This action is indeed natural and expected by the *Federalist*, although the exact means adopted by the president specifically were not. Nonetheless, the president must protect his identity as president through the executive function of his office. It is here that the executive embarks upon a positive action and turns to the people. If he cannot increase his power from a time of war as presidents will eventually do, presidents saw how powerful the influence of the people could be. Additionally, this example is strengthened primarily during the Age of Jackson where the president asserts himself as the true voice of the people—not to mention his small increase in power through “foreign interventions” into the various Indian nations. Appealing to the people directly thus infuses the executive with positive action whereas before he merely held the veto.

From this appeal to the people begins the degeneration of the executive envisioned by the *Federalist*. Tocqueville shows this degeneration take place through the other main characteristic identified by Publius and it is the characteristic of duration. The reason that “duration” is the particular characteristic where the majority of the degeneration takes place is because the president has ceded his responsibility to guide the people to the overwhelming desire to follow them instead. If he cannot persuade the people, then they will merely ignore him, but the instant the president is indebted to the people, they do not soon forget that debt—especially if the president wishes to be reelected. Essentially, the sitting president becomes preoccupied with simply doing nothing or merely waiting for his replacement to carry on while the election takes place. Conversely, the people are caught in their own wild passions of electoral fervor. If the election in question is a reelection campaign, his only prerogative is his self-defense. Tocqueville remarks that “He no

longer governs in the interest of the state, but in that of his reelection; he prostrates himself before the majority and often, instead of resisting his passions, as his duty obliges him to do, he runs to meet its caprices.”¹²⁹ The model described here by Tocqueville is so far from the original intent of the executive that it completely changes the perspective and emphasis for which the *Federalist* had hoped. The president was no longer far removed from the people. Reason no longer prevailed, but rather uncontrolled, unmeasured, and untreatable passion now carries electoral majorities. By turning so dependent upon the people, it seems as if the character and balance of the executive has been lost. Subject to the people and dependent on their will, the executive is without independence—without the desired “firmness” to oppose a wayward people or a power-lusty Congress. It is in this understanding that that the delicate, Aristotelian balance wished for in the *Politics* is ultimately disturbed. It is the great hope of this comparison that one may simply begin to think about two great topics such as these in a new way, comparative way.

* * *

Before concluding, there are two more significant points of comparison to be made between the *Politics* and the American regime of the *Federalist*. The first pertains to the fundamental fact that in the United States the people are completely sovereign and all authority rests with them. Understanding this point about the American regime is incredibly important and deserves speculation as to how Aristotle would address this notion. The second is a far more general but no less important observation which seeks to find if there is a way that the American regime can be thought about in

¹²⁹ Tocqueville, *Democracy*, 127.

Aristotelian constructs of polity, the best “practicable” regime he presents in the *Politics*.

Generally speaking, the concept of the sovereignty of the people is not present in the *Politics* either, yet it is a significant hallmark of the American regime. As all men are equal in the United States, there is then an air of legitimacy that accompanies the rule of the majority. For a majority to legitimately rule, all men in consideration logically must be among equals. Additionally, equality additionally carries with it notion that it thereby implies differences between people as it is in light of these differences that men are still equal to other men. Even though there are external barriers set up to combat the potential tyranny of the majority and an “enlarged” sphere to combat the problems of faction as Publius asserts in both *Federalist* 9 and 10, there still seems to be a danger that Aristotle would isolate with regards to the sovereignty of the people. Essentially, Aristotle would question the whether the American regime is a polity or simply just a democracy. If the multitude makes any claim to rule, it must be either of these two regimes. Again, Aristotle would say that external barriers in government are not enough as there must be balance instead. Additionally, it would appear that the problem and threat of the tyranny of the majority will never go away in the United States because of the fact that every institution is touched by the majority and given power through the sovereignty of the people. What is happening in the United States, it appears, is that the multitude is, in fact, ruling in favor of the many. However, it does not make much sense for democratic institutions to serve as checks on other democratic institutions as that is no check at all. As a result, the intention of the Framers was essentially to ask democratic peoples to fill undemocratic positions and act undemo-

cratically as a check on the will of the majority.

The balance with the multitude can be seen in how the concept of Aristotelian polity fits into the American regime. Polity, as a reminder, is a mixture of the two regimes oligarchy and aristocracy. These two regimes and their interests are mixed and, with the help of a middle class, moderated. In terms of the American regime, the interests and dominion of the multitude—the democratic regime—are clearly stated and easily recognizable. For polity to exist, however, there must be a form oligarchic element as a regime present also. Much has been made in the scholarship of this search for relating classical political philosophy to the Constitution of 1787 and the answers pertaining to the true representation of “the few” differ greatly. It has been argued that the Senate in its pre-17th Amendment form resembles an aristocratic class, while others have also pointed to the few, unelected members of the Supreme Court as this oligarchic infusion in the United States. In fact, it would make sense even to consider the Electoral College as the true oligarchic scheme as they are the ones who actually elect the president. While each of these institutional bodies is all legitimate possibilities as the American form of oligarchy, it is the very fact that they are institutional bodies that disqualifies them from being considered. Nowhere in the *Politics* does Aristotle claim that certain the certain forms of regimes that comprise polity are found in actual institutions and offices of the regime. As a result, if a polity truly exists in America, there must be a legitimate oligarchy, working on behalf of the few and rival regime that serves in the interests of the many. The “many” part, as has been said, has already been identified, and that is “the people” largely understood. As far as recognizing a true regime that represents the

few, that task is considerably more difficult. It only takes a glance at American history, however, to discover an oligarchic regime in America. Rather than simply one oligarchic regime, it would be far more accurate to describe it as a “regime of oligarchs.” At the time of the Constitutional Convention, the two greatest interests that came into conflict time and time again were the interests of the people—democracy—and the collective interest of the states—the elusive oligarchic form. Understanding the states as the oligarchic half of the American polity is further supported based upon the understanding that while the states form a collective interest of “the few,” they are, in fact completely separate governments with their own offices and corresponding ways of life. It is in the Constitution of 1787 that the interests of the democratic people and the oligarchic states are reconciled and balanced. This is further supported when it is remembered that Aristotle describes that a well mixed polity “[the regime] should be held to be both [aristocracy and oligarchy]—and neither.”¹³⁰ In many ways, this assertion is but the perfect Aristotelian articulation of the observation Publius makes with regards to the nation and state governments in that their mixing in the Constitution produces a regime that is “neither wholly *national*, nor wholly *federal*.”¹³¹ As Aristotle would say, it is both and neither at the same time. The interests of the oligarchy are even included in the representational form that America embraced, given the state governments a chance to act upon their interests in the Senate.¹³² As a result, it is quite legitimate to say that the United States is, to a consider-

able degree, an Aristotelian democratic polity.

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In conclusion, this analysis and comparison of the *Politics* of Aristotle and the Constitutional argument made in the *Federalist* has shown that there are significant grounds to understand them together. Truth is not hindered by time. Nevertheless, the many differences between the two concepts of regime do not mean that they merely render the similarities to be useless. Sparked by the initial charge levied by Publius in *Federalist* 9 that humanity has advanced far beyond the failed republics of the past, this study has, to some degree, proven him right. After all, the advances in politics have more or less allowed the United States to become the oldest and most democratic republic in the world. Conversely, the key political principles identified by ancient philosophers—especially Aristotle—are no less true despite the alterations and “improvements” that they undergo with time.

Ultimately, the purpose of this study was to explore the American regime through the *Federalist* in light of the understanding of a regime in the *Politics*. Aristotle says that a regime is both the ordering of offices and the way of life. The desire was to look for ancient political thoughts in the law-giving moment of the United States and see if they are there, and, sure enough, they are indeed there. The intent was not only to evaluate the particular mechanisms of the regime in both texts, that is to say the ordering of offices, but also to seek to answer the question “what is the American way of life?” Through the analyses of the philosophy of the separation of powers according to the *Federalist*, the three parts of every regime found in the *Politics*, and even the overall explanation of the Aristo-

¹³⁰ Aristotle, *Politics*, 1294b35.

¹³¹ Publius, *Federalist*, #39, 256.

¹³² This was effectively changed by the 17th Amendment which made Senators elected through the direct election of the people rather than the state legislators as originally dictated in the Constitution.

telian position, it has shown that the development of political thought can be traced and has clear and definable roots. The modern reader should not be surprised when reading ancient texts reveal the fact that Plato crafts the bedrock of social contract theory or that Aristotle—without any explanation of why this is so—quantifies the three essential and naturally occurring “parts” of every regime that every regime since has established. In the end, it is only the truth that matters.

Inasmuch as politics is defined by conflict and grayed by the particulars of human life, there is still a place for truth in politics despite its various philosophies. Every generation will view itself to be new and demand what it views to be “new” philosophies to match its lifestyle as the apparent vanguard of human progress. These sentiments only betray an ignorance in which every generation partakes. An ignorance that C. S. Lewis has called “chronological snobbery,” which he defines as “the uncritical acceptance of the intellectual climate common to our own age and the assumption that whatever has gone out of date is on that account discredited.”¹³³ Simultaneously, the people of the day cannot mourn the loss of what has gone and do so to the disadvantage of what has come. The fact that the American regime exists rather than the ideal Aristotelian regime should not be bemoaned by those who long for the best regime. It can be imagined that if Aristotle condensed book IV of the *Politics* into one, succinct assertion and extend it as a piece of advice to scholars like Bloom and Diamond, it would perhaps be something to the effect that as flawed human beings, the good cannot be made the enemy of that which is perfect. It is with this understanding of humanity and their regimes in mind that the overall project of analysis

and comparison of Aristotle and Publius should be understood. It is possibly the greatest tasks of mankind to strive for that which is perfect in light of the knowledge that it will never be reached. This applies to regimes as well though the happy empire is as elusive as ever. For despite all various differences and similarities between these ancient and modern concepts, Aristotle is ever present in his knowledge as he reminds any reader of his political philosophy that “in truth all fall short of the most correct regime.”¹³⁴

¹³³ C. S. Lewis, *Surprised by Joy*, (Orlando: Harcourt, 1955), 207.

¹³⁴ Aristotle, *Politics*, book IV, chapter 8, 1293b20-25.

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