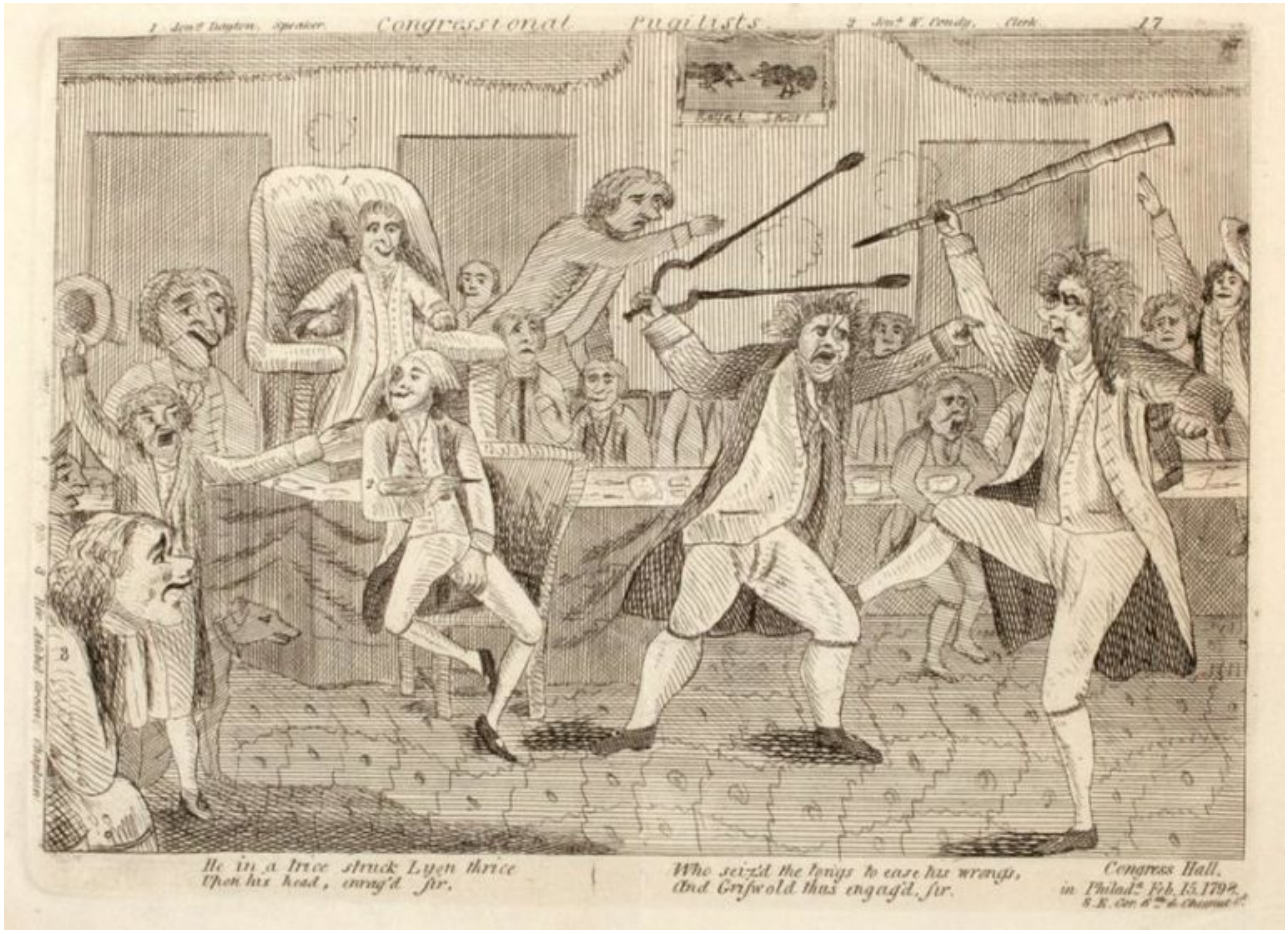
Were Jeffersonian Charges of Monarchism Really Just Sleazy, Hysterical Smears?



Every recent presidential election cycle, about the time a campaign goes negative, newspapers run a story like the one in the Sunday *New York Times,* August 17, 2008 "Week in Review."[1] These articles suggest that while we should deplore Swift-Boating and innuendoes about Barack Obama's possible Al-Qaeda sympathies, modern political tactics are mild compared to those of the founding era. Such pieces will often mention the Matthew Lyon/Roger Griswold House floor brawl or the Thomas Jefferson-Sally Hemings scandal before proceeding to the ultimate proof: Jeffersonian accusations that George Washington, John Adams, and the Federalists planned to reimpose monarchy.

The charge sounds absurd to modern ears, and no serious historian credits the claim that any Federalist literally planned to reintroduce a hereditary executive. Thus how could the supporters of Jefferson have been doing anything other than indulging in the 18th-century version of the attack ad when they claimed that John Adams wanted "the presidency [to] be made hereditary in the family of Lund Washington" (cousin of the childless President) and that his

desire was part of Adams's plot "to set up and establish hereditary government"? The scheme was not confined to Adams, insisted Jeffersonians, for his monarchism was symptomatic of the Federalists' fundamental purpose. Virtually their every action since placing a military chieftain at the head of a republican government stood "in favor of the general cause of monarchy and of aristocracy; a cause in with these gentlemen in some degree partook, and too probably hope still more to partake." The Federalists were, in short, power-mad aristocrats hostile to republican institutions and values. They abused the people's rights and gathered together to plot the end of republican institutions with "the levee-room their place of rendezvous." [2]

Such ripe language should at least leave us contemptuous of the unimaginative negative campaigning that assaults every swing state today. But the news articles precisely miss the point when they imply that nothing changes all that much over time and that modern negative campaigning, among other things, connects us with a venerable political past and with behavior that just might be the price we pay for free speech and democracy. Jeffersonian charges of monarchy, in fact, don't reveal how connected recent campaigns are to the politics of the early national period. Rather, understanding and contextualizing the charge of monarchy shows just how far removed we are from the concerns of the late eighteenth and early nineteenth centuries.

For there is nothing about the way we live now that allows us to experience the assumptions of people who were genuinely terrified by monarchy. By "monarchy," Jeffersonians meant more than simply kings and queens. They feared a broad culture of monarchy, which comprised hereditary power of any sort and any concentration or manipulation of public power likely to grant a few privileges that were denied to most. Jeffersonians identified this culture of monarchy as the most significant threat faced by republican experiments. The conviction arose that a culture of monarchy existed in the United States because the republic emerged toward the end of what can usefully be understood as the late early modern period, coinciding with what British historians call the long eighteenth century, beginning with the Glorious Revolution and ending at the Battle of Waterloo.[3]

I call the period "late early modern" because in post-revolutionary America (as well as the wider western European and Atlantic world of which it was a part), many features of the early modern period flourished: a commitment to a definable, pursuable, and unitary public good; quasi-aristocratic attitudes ranging from contempt to ambivalence about labor and laborers; and the conviction that societies could be divided into orders shaped by social and economic position, orders that corresponded to prescribed responsibilities and duties. Yet these convictions coexisted anxiously with ideas that reflected the lateness of this late early modern period, ideas often associated with mainstream nineteenth-century (and later) American political and economic thought. The late early modern period produced paeans to majority rule, egalitarianism, and the dignity of labor, along with an individualism that stressed the legitimacy of self-interest and necessity of an authentic self.

All of these compelling, but frequently conflicting, ideas were coeval in the same region, the same political party, even, at times, in the same person. But in general most Federalists of the 1790s were attracted towards the older, more conservative side of the late early modern period, while the Jeffersonian coalition embraced the era's more transformative possibilities.[4]

This late early modern period was dominated by the triumph of taxing states and increasingly consolidated national governments, with Britain separating itself from its competitors and forging the world's greatest empire by becoming the only truly successful fiscal state. The dominant state-building trends of the late early modern period were: embracing the financial revolution of public debt, constructing a nation-state bureaucracy that could manage overseas empires and the military forces such empires required, and, as much as possible, shifting decision-making power about nation-states and empires upward, to centralize political power and to subordinate localities to the center. Britain outdistanced its competitors in all of these goals; it was the model to emulate.[5]

American revolutionaries concluded that what they viewed as contempt for British liberty on the part of the new British state was systemically connected to the sort of state Britain had become. The Articles of Confederation government, with the most important locus of governance being the localities, was about as complete a rejection of the primary developments of the late early modern period that a people could construct and still claim to have a central government. During the 1790s all members of the emerging Jeffersonian coalition continued to agree that the locality should remain the principal place of governance.

The Federalists of the 1790s saw things rather differently. Federalists believed that disorderly citizens were creating conditions that would soon become unlivable. Popular support for the French Revolution produced self-created political organizations, the Democratic-Republican Societies. These groups challenged Federalist ideals of deference and hierarchy by inserting themselves into political debate and demanding changes in the nation's policies. Federalists believed such behavior produced the climate that caused a New York crowd to hurl stones at Alexander Hamilton when he spoke in support of an anti-French treaty. In addition, during the 1790s citizens registered discontent with Federalist economic and financial policies with actions that ranged from furious newspaper articles to armed rebellion.Federalists interpreted this behavior through a prism of classical republican political theory that argued for an inexorable progression from unstructured liberty to license to anarchy. Once anarchy replaced liberty, the citizenry would welcome any despot who promised to restore order, no matter how.

The Federalists were not seeking to restore hereditary rule, but they did believe that the gravest threat to republican institutions and the people's liberty was the people themselves. Their solutions: Hamilton's financial program, the expansive interpretation of the Constitution, the defense of an

energetic national state, and the court culture they developed in the Philadelphia capital. All of it was intended to merge a version of republicanism with the primary developments of the late early modern period. Hamilton's financial program made the new national government solely responsible for all revolutionary war debt, a debt by 1791 owned by a small group of the wealthiest Americans, and called for the national government to charter a Bank of the United States, partially funded with the newly valuable public debt. The program was openly modeled on the British financial system that had begun in 1694 with Parliament's passage of the million pound act and its creation of the Bank of England. Taxing to service public debt, critics of the Federalists insisted, was the quintessential act of modern monarchy. The Federalists sought to merge ownership of public debt with policies of economic development by making the debt a primary source of investment funds for manufacturing and banking projects.

This hierarchical arrangement fit neatly with an interpretation of the necessary and proper clause of the Constitution that vastly increased the nation-state's implied powers to, among other things, charter corporations such as the Bank of the United States. These centralizing policies of finance and political economy appeared to their critics to flourish in the sumptuous, court-inspired culture of levees, balls, and assemblies that shaped Federalist Philadelphia. This so-called republican court centered on the President and Martha Washington and radiated outward to include office-holders, public creditors, and the administration's wealthiest and most socially prestigious supporters. Federalists sought to consolidate cultural, social, political, and economic power in the hands of a national gentry that could preserve the people's liberty by guiding them more virtuously and intelligently than the people could guide themselves. The Federalist solution provoked the fears of any who considered the key to preservation of republican institutions and liberty to be governance primarily by the locality, and the rejection of the main developments of the late early modern period.[6]

A diverse group of people could embrace local control. In doing so they were driven by a complex combination of principle and interest, a mix of high-minded, sordid, and most other sorts of motives in between. Gentleman slaveholders such as Thomas Jefferson, upwardly mobile strivers and professionals such as the lawyers Alexander James Dallas and Levi Lincoln, somewhat less than respectable autodidacts and immigrant radicals such as Philadelphia *Aurora* editor William Duane, hardscrabble laborers such as the former-weaver-turned-politician William Findley, the farmer-intellectual William Manning, and many others could make common cause in opposition. By joining together, they fashioned a political critique that simultaneously protected their material interests, allowed them to be far more significant to the republican experiment than they were likely to be in the frankly elitist world of the Federalists, and addressed what everybody from Mandeville to Hume to Rousseau agreed were the most compelling questions of the era.

By seeking the triumph of the localities over the center, the Jeffersonians

opposed the dominant trends of that era. The only way the localities could triumph was to make them impregnable by parceling out power beyond the capacity of any effort to consolidate and direct it. Jeffersonian leaders, many of whom were slaveholders, defeated Federalist leaders, far fewer of whom were, because an ever-growing number of ordinary citizens associated their most cherished principles and their most intimate interests with the triumph of the localities. But localities deserved to govern themselves only if the mostly ordinary men in them were qualified to govern. In the early national period, defending the triumph of the localities required a language of democratization and egalitarianism, a language that promoters of the dominant trends of the late early modern period, such as the Federalists, could never be very comfortable using.[7]

Here was a purely Jeffersonian conundrum. Defending the supremacy of the localities gave local citizens the right and the power to do what they wanted, including own slaves. But championing the localities depended on claiming that all sorts of people who the Federalists considered incapable of reasoned judgment and self-government were capable of both. That claim was incendiary. When, for example, in 1800 Gabriel and other Richmond-area slaves revolted using the language and expecting the aid of the French and Jeffersonian friends of liberty, Federalists were quick to point out that gentlemen such as Jefferson should have known better than to incite their white inferiors, and so pave the way for this outburst from their black ones.[8]

This argument won few converts, partly because few slave revolts in the U.S. succeeded in the long run or drew the kind of cross-racial support Gabriel sought. And planters could lead a democratizing political coalition because a society of independent heads of household and local control were more appealing to most citizens north and south than anything the Federalists offered. Charges of monarchy resonated so powerfully because the political, social, cultural, and economic arrangements that sustained that institution during the late early modern period were essential to the goals of the Federalists, just as they were anathema to so many of their opponents.

The Jeffersonians succeeded in doing what they set out to do: organize the nation as the anti-Europe, as the refutation of the late early modern period. By glorifying the locality and making the nation the anti-Europe, the Jeffersonians rejected the centralizing trends of the late early modern period. By making the United States the anti-Europe, the Jeffersonians dissolved the institutions that the Federalists used to seek a consolidated and centralized nation state with direct connections to social and economic power. Such a state and ruling elite, Jeffersonians had no doubt, was evidence of an anti-republican culture of monarchy.

By building a 19th century anti-Europe, the Jeffersonians created a democratized, fluid, rapidly changing society of mobility, opportunity, risk, and often anxiety and uncertainty. Mobility went both upward and downward in the 19th century, and rapid and often frightening social and economic change

could be successfully negotiated, or fail to be. Regardless of the outcome, citizens of the republican anti-Europe learned repeatedly that they were pretty much on their own. For those who qualified as citizens, such a world was at once liberating and terrifying. The early American republic democratized both opportunity and inequality. It often seemed that as the chances for the first condition expanded, so too did the advancement of the second.

This republican anti-Europe depended on the autonomy of the locality. This autonomy guaranteed the absence of national institutions that could potentially consolidate political and economic power.By placing local autonomy at the center of their vision, the Jeffersonians dismantled the Federalists' consolidated nation-state, but they also guaranteed the safety of the slavery that sustained their primarily southern leadership. For local autonomy insulated and so allowed to expand the dominant institutions and practices within each locality. The same language that denounced the Federalists' consolidated nation-state also defended the autonomy of slaveholding localities. Once again principle and interest merged. All Jeffersonians feared a culture of monarchy and the consolidation within a nation-state of political and economic power. But certain Jeffersonians, especially the most prominent, lived as they did because they owned slaves, and slavery benefited enormously from a belief system that demanded that localities be left alone to do as they wished. By defeating what they had no doubt was a culture of monarchy, the Jeffersonians created a democratized, locally-oriented, republic of opportunity for all citizens—opportunity to rise or fall. Yet the ideals that made the United States the anti-Europe—a nation dedicated to the rejection of the central trends of the late early modern period—protected as no other 19th-century belief system could what Lincoln so movingly described as the embodiment of "the divine right of kings": by 1860 for four million Americans "the same spirit that says you work and toil and earn bread, and I'll eat it."[9] Jeffersonian ideology triumphantly smashed the late early modern period taxing state culture of monarchy. In doing so, Jeffersonians laid the foundation for a nation that enslaved four million souls and spread the divine right of kings across the land.

[1] Paul Vitello, "How to Erase that Smea…," *New York Times*, August 17, 2008, WK3.

[2] Thomas Paine, "Letter to George Washington, President of the United States of America, on Affairs Public and Private," (Philadelphia, 1796) 2-3, 7; No Author Listed, "Remarks Occasioned byt the Late Conduct of Mr. Washington As President of the United States," (Philadelphia, 1797), 27.

[3] Lance Banning, *The Jeffersonian Persuasion: Evolution of a Party Ideology* (Ithaca, NY: Cornell University Press, 1978); James L. Huston, "The American Revolutionaries, the Political Economy of Aristocracy, and the American Concept of the Distribution of Wealth, 1765-1900, *AHR* 98 (1993):1079-1105; Huston, *Securing the Fruits of Labor: The American Concept of Wealth Distribution, 1765-1900*(Baton Rouge, LA: LSU Press, 1998); Andrew Shankman, *Crucible of*

American Democracy: The Struggle to Fuse Egalitarianism and Capitalism in Jeffersonian Pennsylvania (Lawrence, KS: University Press of Kansas, 2004), chps. 1-2; Andrew Shankman "A New Thing on Earth: Alexander Hamilton, Pro-Manufacturing Republicans, and the Democratization of American Political Economy," *Journal of the Early Republic* 23 (2003): 323-352.

[4] A sampling of works on these transformative possibilities and also on the Jeffersonian connection to them includes, Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s*(New York, NYU Press, 1984); Appleby, "Thomas Jefferson and the Psychology of Democracy," in James Horn, Jan Lewis, and Peter Onuf eds., *The Revolution of 1800: Democracy, Race, and the New Republic* (Charlottesville, VA: UVA Press, 2002) 155172; Jay Fliegelman, *Prodigals and Pilgrims: the American Revolution Against Patriarchal Authority, 1750-1800* (Cambridge, UK: Cambridge University Press, 1982); W.J. Rorabaugh "I Thought I Should Liberate Myself from the Thraldom of Others: Apprentices, Masters, and the Revolution," in Alfred F. Young ed., *Beyond the American Revolution: Explorations in the History of American Radicalism* (De Kalb, IL: Northern Illinois University Press, 1993) 185-217; Michael Durey, *Transatlantic Radicals and the Early American Republic* (Lawrenceville, KS: University Press of Kansas, 1997); Daniel Walker Howe, *Making the American Self: Jonathan Edwards to Abraham Lincoln* (Cambridge, MA: Harvard University Press, 1997); Jeffrey L. Pasley, "1800 as a Revolution in Political Culture: Newspapers, Celebrations, Voting, and Democratization in the Early Republic," in Horn ed., *The Revolution of 1800*.

[5] Richard Bonney ed., *The Rise of the Fiscal State in Europe, 1200-1815* (London: Oxford University Press, 1999); Bonney ed., *Economic Systems and State Finance* (London: Oxford University Press, 1995); Mark Ormrod, Margaret Bonney, and Richard Bonney eds., *Crises, Revolutions, and Self-Sustained Growth: Essays in European Fiscal History, 1130-1830* (Lincolnshire, UK: Alden Group, 1999); P.G.M. Dickson, *The Financial Revolution in England: A Study in the Development of Public Credit, 1688-1756* (London, 1967); John Brewer, *The Sinews of Power: War, Money, and the English State: 1688-1783* (New York, 1988); Patrick O'Brien, "The Political Economy of British Taxation, 1660-1815," *Economic History Review* 41 (1988) 1-32; O'Brien, "Inseparable Connections: Trade, Economy, Fiscal State, and the Expansion of Empire, 1689-1815," in P.J. Marshall ed., *The Oxford History of the British Empire: The Eighteenth Century* (London: Oxford University Press, 1998) 53-77; O'Brien, "Fiscal Exceptionalism: Great Britain and its European Rivals from Civil War to the Triumph at Trafalgar and Waterloo," in Donald Winch and Patrick O'Brien, eds., *The Political Economy of British Historical Experience, 1688-1914* (London: Oxford University Press, 2002) 245-265; Lawrence Stone, ed., *An Imperial State at War: Britain from 1689-1815* (London: Routledge, 1994).

[6] Gordon S. Wood, *The Creation of the American Republic, 1776-1789* (New York: W.W. Norton, 1969); Stanley Elkins and Eric McKitrick, *The Age of Federalism: The Early American Republic, 1788-1800* (London: Oxford University Press, 1993); Donald R. Swanson, *Origins of Hamilton's Fiscal Policies* (Gainesville, FL:

University of Florida Social Science Monographs, 1963); James Roger Sharp, *American Politics in the Early Republic: The New Nation in Crisis* (New Haven, CT: Yale University Press, 1993); Shankman, *Crucible of American Democracy*, chap. one; Shankman, "A New Thing on Earth"; Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill, NC: UNC Press, 1980); David Hackett Fischer, *The Revolution of American Conservatism: The Federalist Party in the Era of Jeffersonian Democracy* (New York: Harper and Row, 1965), chp one.

[7] Thomas Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (London: Oxford University Press, 1986); Paul Douglas Newman; *Fries's Rebellion: The Enduring Struggle for the American Revolution* (Philadelphia, PA: Penn Press, 2004), Terry Bouton, "A Road Closed: Rural Insurgency in Post-Independence Pennsylvania," *Journal of American History* 87 (2000) 855-887; Andrew Shankman, "Malcontents and Tertium Quids: The Battle to Define Democracy in Jeffersonian Philadelphia," *Journal of the Early Republic* 19 (1999) 43-72; Sharp, *American Politics in the Early Republic*; Richard K. Mathews, *The Radical Politics of Thomas Jefferson: A Revisionist View* (Lawrence, KS: University Press of Kansas, 1984); Colleen A. Sheehan, "The Politics of Public Opinion: James Madison's Notes on Government," *William and Mary Quarterly* 49 (1992) 609-627; Sheehan, "Madison vs. Hamilton: The Battle over Republicanism and the Role of Public Opinion," in Douglas Ambrose and W.T. Martin eds., *The Many Faces of Alexander Hamilton: The Life and Legacy of America's Most Elusive Founding Father* (New York: NYU Press, 2006); John E. Ferling, *Adams vs. Jefferson: The Tumultuous Election of 1800* (London: Oxford University Press, 2004).

[8] Douglas R. Egerton, "Gabriel's Conspiracy and the Election of 1800," *Journal of Southern History* 56 (1990) 191-214; Egerton, *Gabriel's Rebellion: The Virginia Slave Conspiracies of 1800-1802* (Chapel Hill, NC: UNC Press, 1993).

[9] Abraham Lincoln, *Lincoln Selected Speeches and Writings* (New York, Verso Books, 1992), 193.

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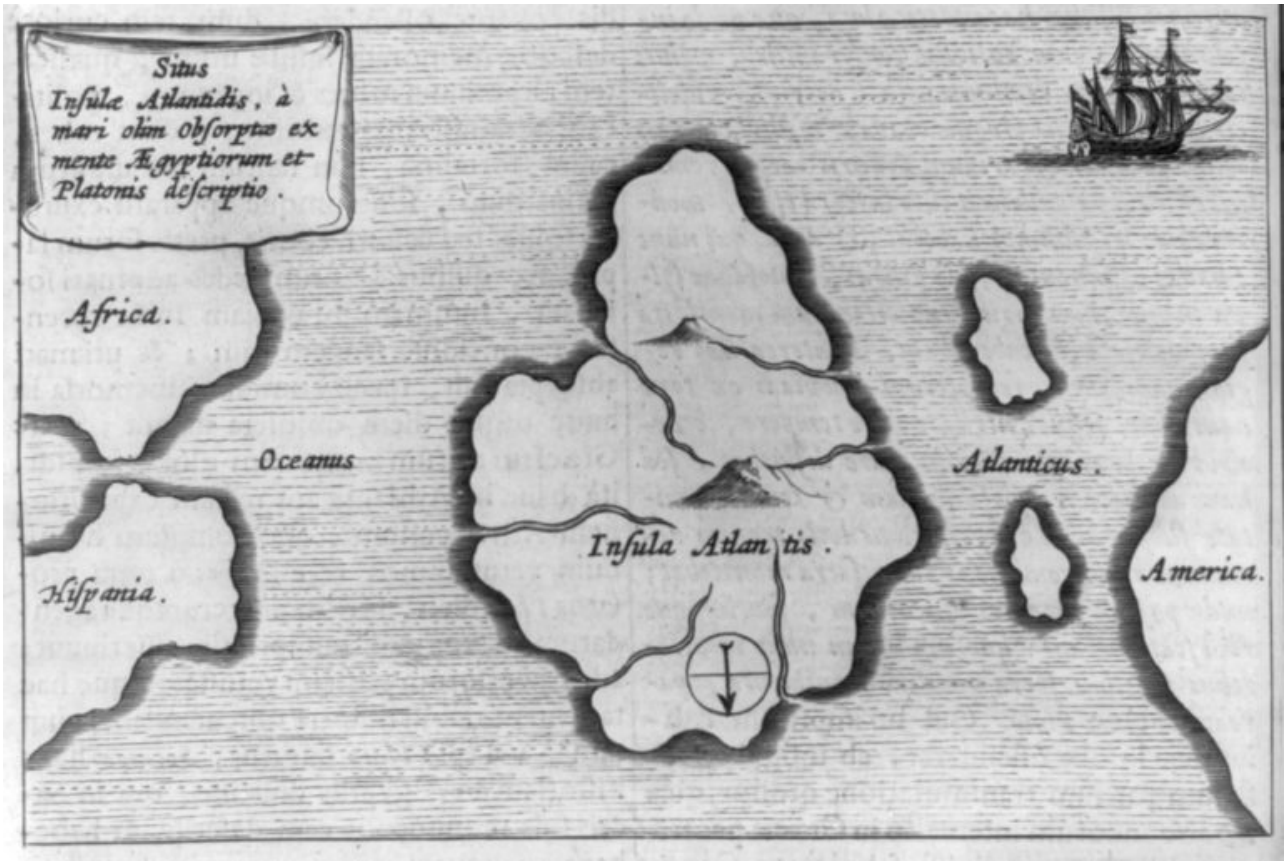
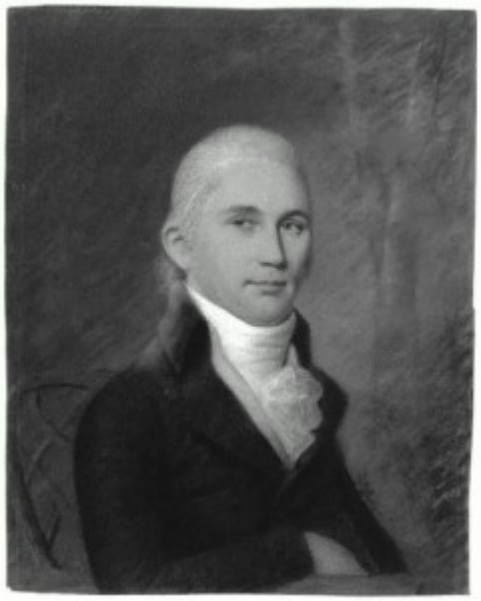
Myths of Lost Atlantis: An Introduction



Myths about early American politics certainly abound, but different ones operate in different quarters of the culture.

Was the Federalist Press Staid and Apolitical?



[BLOGITORIAL NOTE: Just to model the true spirit of democratic pluralism, we wanted readers to know up front that today's "myth" is one that the proprietor of this blog had more than a hand in promoting. My book "The Tyranny of Printers": Newspaper Politics in the Early American Republic (University of Virginia Press, 2001) focused heavily on Democratic-Republican political journalism in making the argument that partisan newspapers played a crucial binding and embodying role in the development of American political parties, and democratization more generally. My rather dismissive chapter-and-a-half on the Federalist press sold it decidedly short. Though like most authors I continue to believe I got the story basically right – there were some key differences in the degree and manner that Republican and Federalist newspapers connected themselves to electoral politics – in retrospect it would have taken little away from my argument to grant the Federalists a larger and more creative role in the political press of the Early Republic than I did. Looking back, the only good reason to short-shrift the Federalists to the extent that I did was the excessive length of my manuscript, though at the time that was a REALLY good reason. In this post, Catherine Kaplan redresses some of the interpretive imbalance left by writers like myself, and graciously does not even attack me for it. – JLP]

The belief that Federalists sat grim-faced and hapless as their nimble Jeffersonian opponents developed ways to shape public opinion runs deep in American historical thought. The Federalist press has been portrayed as entirely lacking the agility and ambition of its Republican counterpart; Federalist politicians have been accused of failing to realize they needed to create a network of believers; and the party as a whole often appears in historical accounts as the horseshoe crab of the early republic: a living fossil that played no role in the nation's ongoing evolution. I'll leave it to others, including Andrew W. Robertson and Philip Lampi in this very space, to show that Federalists competed electorally – and fiercely – until the War of

1812. What I'd like to discuss is the Federalist press, and I'll posit something that I hope honors the spirit of this contrarian blog, if not every historical interpretation ever advanced by its management: Federalist literati precociously developed politics as culture, politics as personal expression, politics as a community built through media, and politics as performance. These men and women of letters rejoiced over partisan divisions while other Americans (including more than a few Federalists) still lamented them. And they understood political media to be the art of getting read, discussed, and perhaps even paid, as much as the art of getting things done. Arianna Huffington? Meet Joseph Dennie.

Dennie was a 1790 Harvard graduate who had desultorily set up shop as a lawyer in New Hampshire, all the while trying to establish himself as an essayist and wit, a kind of American Addison. In the mid-1790s, Dennie learned to yoke together the goals and skills of literature and politics, and when he did so, he not only found his voice and livelihood, but also profoundly influenced the Federalist press. Dennie's two widely read and extracted periodicals were New Hampshire's *Farmer's Weekly Museum* newspaper, which he edited throughout the second half of the 1790s, and Philadelphia's *Port Folio* magazine, which he founded and edited from 1801 until his death in 1812.

Politics and Literature: Two Great Enterprises That Went Great Together

Here's another myth-buster: literature was not a retreat from politics for alienated intellectuals. Literary techniques helped to build the human infrastructure party politics required, and politics offered intellectuals a way to be heard in a country sorely lacking in aristocratic patronage and metropolitan density. Over the course of the eighteenth century, a tradition of witty clubbing – lubricated sometimes by coffee, sometimes by alcohol – had become increasingly entwined with print culture. The educated men and women in England and the colonies who gathered to critique literature, society, and life began to seek publication of their manuscripts in newspapers and magazines. In both their face-to-face gatherings and in print, participants were driven by three desires. They delighted in the sense that their superior judgment and wit differentiated them from the world outside. They wanted to be known to that world outside even as they were convinced of its dull incomprehension. And they wanted to believe that their associations and writings could make that world a better place. These goals – and the tensions between them – readily merged with the intense partisanship of the 1790s. The political parties did indeed have competing understandings of the role of government and competing agendas. But they each also needed to become virtual communities of emotion as well as reason, communities that were simultaneously evangelical and exclusive. Literati, it turns out, were well suited to creating these communities through print. Thomas Jefferson turned to a poet, Philip Freneau, to edit the *National Gazette*. But it was a Federalist man of letters, Joseph Dennie, who truly

excelled.

The literary marketplace in the early Republic had no metropolis, no London to which the aspiring could go and from which power, sales, and influence emerged. In the United States, to convince printers to bring works to press, and to make newspapers achieve anything like a national influence, small but interconnected networks of people worked together to drum up subscriptions. Many of those same people also wished to see their own writing pass through those networks, so they supplied manuscripts to printers and newspapers. Creating a national political party, even a loosely-knit one, required something similar: uniting the work of far-flung networks of amateurs with that of a few professionals, in order to create and circulate ideas and emotions, and to build a community – real as well as imagined – without direct contact.


A page from Joseph Dennie's "Port Folio" (click image for readable version)

In both the *Farmer's Weekly Museum* and the *Port Folio*, Dennie larded national and international news with brief, mordant commentary, and he also penned longer essays, such as the "Lay Preacher" series, which combined Benjamin Franklin-style moral pronouncements, acerbic critiques of American politics, and an almost campy display of Dennie's own melancholic unease. Dennie also printed poems, letters, and essays by readers both famous and obscure, many of whom used metaphors and pursued themes the editor himself had introduced.

Through his astute use of bylines, introductions, and even inside jokes, Dennie made visible the relationships and networks that produced and circulated literary and political content. Both the content and this revealing of the networks were important. The periodicals drew people into a partisan community in which they spread Federalist-inflected anecdotes and rumors, sent in their own political information, and, significantly, learned to see with Federalist eyes and speak in a Federalist tongue. Politicians such as Jeremiah Smith, Lewis Richard Morris, and Robert Goodloe Harper eagerly participated. More generally, Federalist newspapers – like Republican ones – reprinted each other's work, "linking" to each other in a way that increased awareness of publications and editors and sped circulation of ideas, animosities, and tropes. Successful editors offered their distinctive worldviews and voices, but also offered a forum in which nonprofessionals – in either literature or politics – could find their comments posted, their battles joined, and their turns of phrase admired and emulated.

Federalist Dittoheads

This was participatory print culture, one that openly tried to create an impassioned, hostile interdependence with Republican newspapers, so that

passions and readerships might rise. “Since the Editor has been splashed with the mud of Chronicle obloquy,” Dennie wrote gleefully in the midst of one newspaper war, “he has gained upwards of seven hundred subscribers. He therefore requests…the honour and the profit of their future abuse.” Such a print culture is reminiscent not of a hidebound aristocratic past but instead of today’s political/social/cultural websites such as DailyKos and Redstate. Federalists who participated in these newspapers, moreover, realized that jokes, caricatures, and a heightening of the divide between “us and them,” of the sort that flowed naturally from literary club culture, would gain both readers and political adherents. The point was to make participants feel part of an enclave, even as one justified that gated community by insisting one’s goal was to tear down the wall and reform the nation. Thus in Federalist newspapers, broad insults and scabrous doggerel (even John Quincy Adams indulged) drew laughs, while the creation of a private language of allusions, characters, and metaphors gave readers the thrill of being political participants and members, not simply consumers.

A reader of the *Museum* or the *Port Folio* brought forward in time would require little explanation of Rush Limbaugh and his 24/7 Club. There was startlingly virulent mockery of political enemies: Thomas Jefferson’s prose, one Port Folio column declared, not surprisingly resembled that of a certain maid named Betty, “for Betty is a long-sided, raw-boned, red-haired slut, and, like Mr. Jefferson, always *hankering to have a mob of dirty fellows around her*.” There were constant reminders of the difference between Dennie’s faithful readers and the moral and intellectual dullards around them: “When they cast their blinking optics to heaven,” Dennie wrote of the latter in 1805, “[they] can discern nothing there but stones, hard as their callous hearts, cold and heavy, like their calculating heads, and rugged and senseless, like their republican system.” And there were urgent calls to cultural and political arms: “At this moment, my friend,” wrote a 1798 correspondent Dennie identified as “Member of Congress,” “we should have our lamps trimmed and burning, for we know not the day nor the hour, when the Sans Culottes will come upon us.” More likely to keep their inkwells wet than their powder dry, Dennie’s readers nonetheless thrilled to the constant, convivial alarm.

The fact that this Federalist use of the media did not gain the party electoral dominance should not blind us to what it did do. Federalists may have spouted a rhetoric of disdain for the common public – the “swinish multitude” (see how fun that is?) – but Federalist literati wove a net of talkers, writers, readers, and circulators, and strove to shape information, opinion, and allegiance through it. Such sardonic Federalists precociously accepted the fact that democratic politics would never create a univocal public; they embraced partisanship when most Americans still deplored it. They also quickly realized that American political parties needed to create and market identities, not simply agendas.

Responding to the fact that politics is America’s lingua franca, Dennie dressed musings and rants about character, life, and society in partisan garb, and

dressed partisan rhetoric in musings and rants about character, life, and society. He offered himself up as analyst, entertainer, and – not least – martyr; seeking a broader audience by selling a feeling of exclusivity, Dennie implicitly told readers that only they could understand him and, therefore, only they could understand what was best for the nation. By such means, this Federalist editor drew readers, contributors, and politicians into a community that foreshadowed the community of listeners, callers, and politicians Rush Limbaugh would build two centuries later. Savvy Federalists saw in Dennie's periodicals a vehicle that wrapped their proffered bits of information and argument in its air of au courant intimacy, as well as a way to reach a potentially sympathetic and dynamic – but dispersed – audience, an audience who would then pass on the information and the thrill of belonging to others. Dennie's readers and contributors, in turn, felt included in a highly personal political world. The Constitution made them citizens; Dennie made them members. That their membership in the polity was built on criticism of their countrymen only makes the *Port Folio* feel more modern. In political communities from DailyKos to Rush 24/7, patriotism burns as an angry love. And so, you heard it here first. Federalists? They were ahead of their time.

FURTHER READING

For other scholarly accounts of Federalist literary journalism, see Lawrence Buell, *New England Literary Culture: From Revolution through Renaissance* (Cambridge University Press, 1989); Marcus Daniel, *Scandal and Civility: Journalism and the Birth of American Democracy* (Oxford University Press, forthcoming 2008); William C. Dowling, *Literary Federalism in the Age of Jefferson: Joseph Dennie and the Port Folio, 1801-1812* (University of South Carolina Press, 1999); Linda K. Kerber, *Federalists in Dissent: Imagery and Ideology in Jeffersonian America* (Cornell University Press, 1970); and David S. Shields, *Civil Tongues and Polite Letters in British America* (University of North Carolina Press, 1997). Google Books has much Dennie-ana available for full-text download, including an 1817 collection of the *Lay Preacher* essays, 26 issues of the *Port Folio*'s "new series" from 1806, and a 19th-century biography that reprints a number of Dennie's letters.

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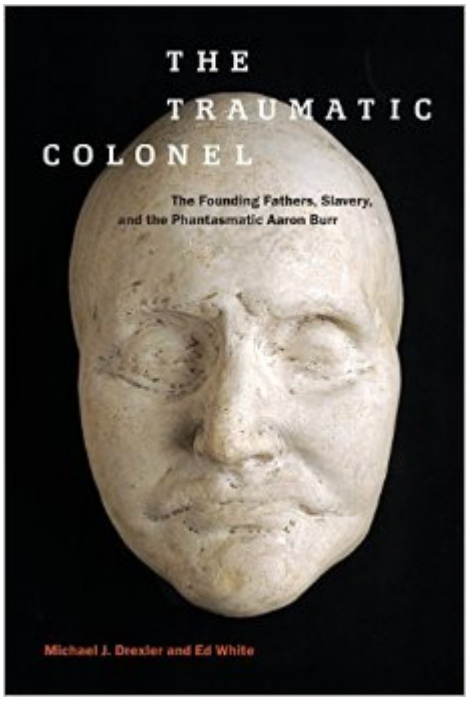
Catherine O'Donnell Kaplan is an Associate Professor of History at Arizona State University and the author of *Men of Letters in the Early Republic: Cultivating Forums of Citizenship* (University of North Carolina Press, 2008). She is currently working on a study of Catholicism in the new nation.

Aaron Burr and the United States Racial Imagination



A review of Michael Drexler and Ed White's recent collaboration, The Traumatic Colonel: The Founding Fathers, Slavery, and the Phantasmatic Aaron Burr

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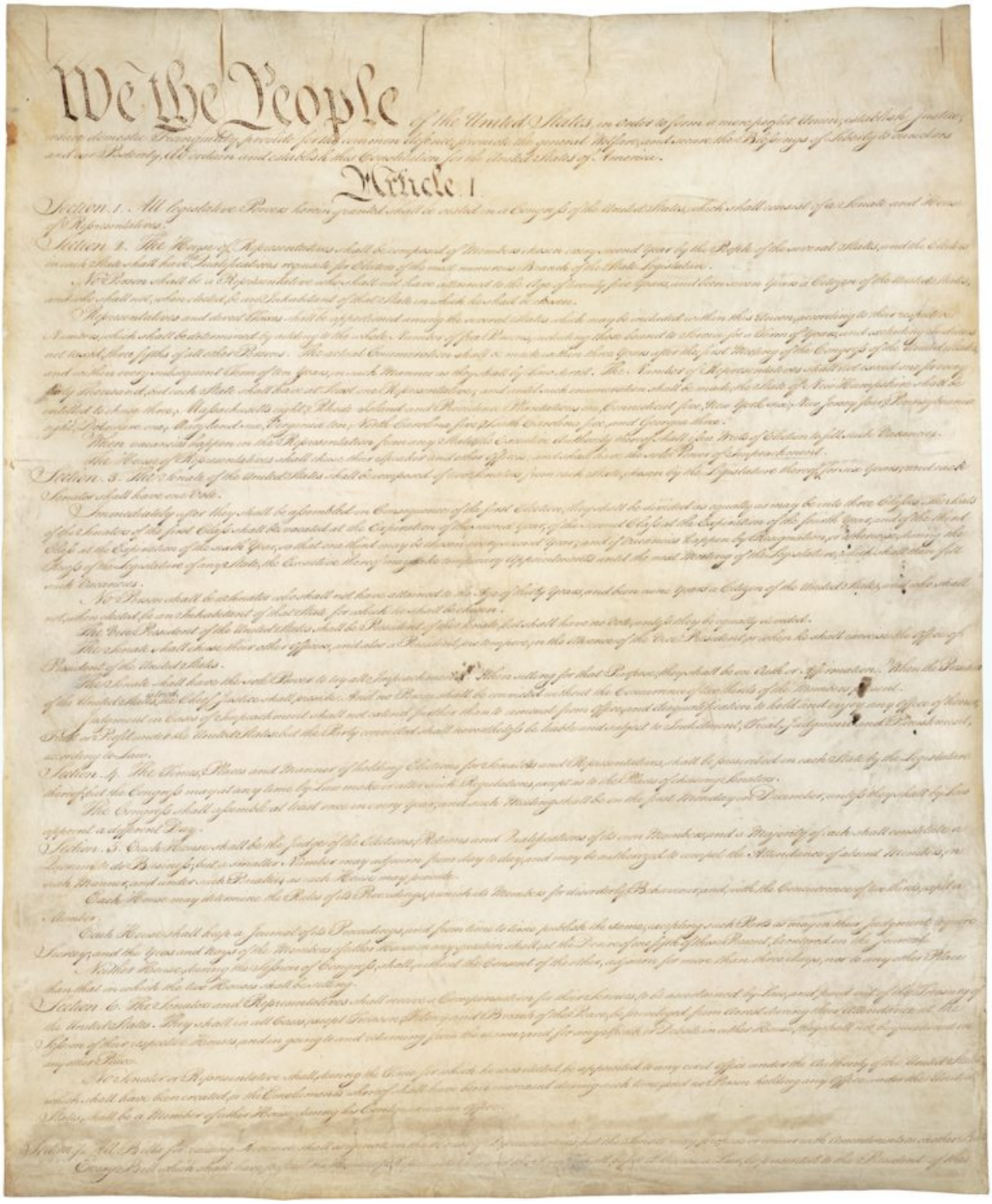
"Slaveholders and their Northern Abettors": Frederick Douglass's Long Constitutional Journey

Ultimately, my students and I had to consider how to make sense of the Douglass of the 1840s, who viewed the Constitution as a “covenant with death,” and the Douglass of the 1850s, who adhered to an antislavery reading of the Constitution.

Relics, Reverence, and Relevance


We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such Enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the

"[R]everence for the document is key to how people today think of the Constitution."

America’s Unknown Constitutional World

“We the People” once had many ways of exercising their sovereignty besides those ordained and established in the Federal Constitution.

“The Looking Glass for 1787” (click image for explanation)

Citizen Protests

Indebted farmers in Western Massachusetts had little to show after years of petitioning the legislature for relief from the state’s post-revolution fiscal policies. With their appeals unanswered and their economic plight deepening, they began organizing countywide meetings as they had during the Revolution. This time those efforts produced little relief. Finally, on August 29, 1786, some 1,500 farmers crowded the Court of Common Pleas at Northampton, preventing the court from meeting. They did not challenge the court’s legitimacy. Rather, the farmers sought a temporary suspension of debt collections to give the legislature time to redress “their grievances.”

The Northampton court closing, along with later actions of the farmers, raised the specter of revolution not just in Massachusetts, but across America. The Massachusetts events acquired the name “Shays’ Rebellion.” They have been cited ever since as one reason for replacing the Articles of Confederation with a new federal Constitution that supposedly saved the country from spiraling into rebellion and discord. Most historical accounts have followed suit, depicting the farmers as the losers in their confrontation with state government and in a larger struggle to determine if “tumultuous meetings” and armed resistance could be legitimate ways for the sovereign people to express their will.

Yet at the time, the political leaders we now call the Founders differed sharply over what the Massachusetts incidents really signified.

John Adams considered the farmers’ actions “seditious,” even their peaceful conventions and petitions, and referred to the Massachusetts events as an “insurrection.” Others, like James Madison, were clearly worried about the “turbulent scenes” in Massachusetts, but did not see them as rising to the level of revolution. Madison came to wonder if the government’s reaction to the farmers—including their violent suppression by a state-sanctioned private army—was a harmful overreaction. A few leaders, like Thomas Jefferson, considered the Massachusetts “commotions” a minor inconvenience of rule by a people who had won the Revolution. The Massachusetts incidents reflected the “liberty” Americans now possessed to rock the boat of government on occasion, and a little “turbulence” would not sink it.

In essence, historical and popular understandings of the American constitutional tradition have adopted the contentions of only one side of this debate and its role in bringing about the 1787 constitution. In doing so, these accounts miss much of that tradition’s actual history. The Massachusetts farmers were largely vindicated in the aftermath of their so-called rebellion. In the next state election following the “suppression” of the alleged rebels, those supporting forceful measures against the farmers lost control of the governorship and the lower house of the legislature. In this respect, the views of “defeated rebels” turned out to more closely mirror the attitudes of the populace and eventually exercised a strong influence on the direction of policy. That the farmers were as comfortable about expressing the will of the people through direct action as they were in going to the polls was a source of considerable consternation to their opponents.

Understanding why the meaning of the Massachusetts events divided Americans at the time, as well as its significance to America’s constitutional development today, requires understanding the constitutional mindset of the Massachusetts farmers and their opponents. It was not only what the Massachusetts farmers were doing, but how they defended themselves that alarmed their opponents. The fact that the farmers justified their actions in constitutional terms galvanized the Americans who framed and later supported the federal Constitution to move in a very different direction. Despite their different views of constitutionalism, the two sides in the 1787 debate both reflected

ideas unleashed by the American Revolution.

American Constitutionalism's Revolutionary Heritage

After declaring independence, Americans saw themselves as revolutionaries, but not as rebels. They maintained this distinction because they had exercised a people's collective right to cast off an arbitrary king, as they had George III. Both natural law and English constitutional doctrine gave the colonists a right to revolt against a monarch's oppression. But in rejecting George III, Americans had no ready replacement with a traditional claim on their loyalty. Few American revolutionaries worried about this. They assumed that the people themselves were the new and rightful sovereign, rather than a monarch. They established new state governments based on written constitutions. In thus implementing the theory of the people as the sovereign, Americans created a new and distinct revolutionary constitutionalism that would prove extraordinarily powerful and difficult to control.

While the theory of the people exercising power as the sovereign was not original to Americans, actually building governments on that foundation was new to world history. Most governments at the time were monarchies or expressions of raw power. Few examples existed of a people deliberately creating their own government. Thus, Americans found themselves in a unique position. As a South Carolina pamphleteer observed, Americans could fashion their own governments because they had freed themselves from "the control of hereditary rulers and arbitrary force."

Written state constitutions adopted in the 1770s expressed Americans' belief that they could, as Thomas Paine explained in *Common Sense*, exercise their "power to begin the world over again." A congressional delegate from Connecticut, Oliver Wolcott, described America's constitution-making in 1776 as a "Real" and not a theoretical expression of the people's will. In a Fourth of July oration in 1778, historian David Ramsay captured the novelty of America's constitutions: "We are the first people in the world who have had it in their power to choose their own form of government." Before the American Revolution, constitutions were "forced on all other nations" or "formed by accident, caprice," or "prevailing practices."

In the setting of the Old World, constitutions often represented a grant of specific rights or liberties to the people by the sovereign. In contrast, as Madison described, the American constitutions were "charters" by the people as the sovereign, granting to government specific powers. Achieving independence confirmed for most Americans the truth of their revolutionary aspirations. The deficiencies that hampered their war effort were overshadowed by the vindication that victory gave to their idealism. Their revolution ushered in governments that made it possible for the people to be the sovereign.

As Colonel Benjamin Hichborn, a Boston lawyer, expressed it in 1777, this

sovereignty was expansive. It entailed “a power existing in the people at large, at any time, for any cause, or for no cause, but their own sovereign pleasure, to alter or annihilate . . . any former government and adopt a new one in its stead.” There were doubters, of course. In that same year Pennsylvania revolutionary Dr. Benjamin Rush qualified claims “that ‘all power is derived from the People.’” This was undoubtedly true, believed Rush, but it did not mean “that all power is seated in the people.” They might be the source of power, but the actual exertion of that power on a day-to-day basis should be vested in the government and office-holders the people selected.

Independence intensified the struggle over what it meant that the people were the sovereign. Americans grappled with how they as the collective sovereign could, like a king, speak clearly in one voice on local as well as on national concerns in their large and diverse country. For some, a natural solution to discerning the voice of the sovereign was found in what we might call “proceduralism.” One would know the true will of the people only with their use of specified procedures established by the constitution.

But even this commitment to formal legal procedures by its most emphatic advocates was not absolute. The belief that a constitution’s requirements for changing the constitution should be observed gave way to the recognition that the government was still the servant of the people as the sovereign. Thus, as the sovereign, a majority of the people could dispense with the procedures required by the constitution for change. As a practical matter, to those believing in this proceduralism, the principle worked in two ways. If the servant of the people—the government—recognized a change the people made without using the established procedures, the legitimacy of the change went unquestioned. But if government refused to validate an alleged change made outside the constitutionally established procedures, the use of those procedures was necessary to legitimize the change and validate the fact that the sovereign had spoken.

One instance of the supple utility of the authority of the people to overcome supposedly mandatory procedures came with the revision of Pennsylvania’s 1776 Constitution. Critics of that “radical” constitution were stymied in their efforts for constitutional change. They had been unable to muster the constitutional requirement of a two-thirds vote by a Council of Censors that only met every seven years to consider whether or not to hold a new constitutional convention. By 1790 those critics controlled the legislature and they bypassed the 1776 constitution’s requirements for constitutional change by initiating a convention themselves. They argued that “the people” as the sovereign could replace the existing constitution without following its procedures, and called for elections of delegates to a constitutional convention that created a new constitution for the state. This was the same tactic used to replace the Articles of Confederation with the federal Constitution.

The Proceduralist Vision of Rule by the People

Today the idea that we know the will of the sovereign *only* through the exclusive use of specific formal procedures—such as elections and constitutional amendment—seems self-evident. For the revolutionary generation this was not immediately apparent. The recent experience of their successful revolution clearly taught them that proceduralism was not the *only* way to recognize when the sovereign had spoken. Often during the Revolution there was no way that traditionally accepted procedures could lend legitimacy to their struggle. Proceduralism provided one way, but not the only way, to confirm that the people had expressed their will. But with military victory, applying the principle of the collective sovereign's ability to act directly, without the aid of procedural verification, became a growing source of dispute among America's leaders, and between those leaders and some of their constituents.

To understand this dispute, the modern reader must resist assuming that our ordered world was anticipated by members of the revolutionary generation. Many of their ideas about rule through a constitution—ideas they seriously discussed, considered, and acted upon—are foreign to our present constitutional understandings and near-absolute commitment to proceduralism. Yet, the historical record offers abundant evidence that our constitutional tradition has evolved from many different and earlier constitutional understandings. Appreciating how these ideas gave rise to our present constitutional world requires that we take the past on its own terms to recover a constitutional world that once existed in America.

Today, it is widely assumed that following established procedures and processes is the only basis for legitimate change. From this perspective it seems as if the farmers who closed Northampton's court lacked any legal or constitutional justification. This conclusion erroneously assumes that the proceduralism we take for granted now was the touchstone of constitutional legitimacy in America then. As my book *American Sovereigns* suggests, the exclusive use of specific procedures was not so obvious to earlier generations of Americans.

Proceduralism in the Context of Revolutionary Constitutionalism

Americans of the revolutionary generation had a concept of proceduralism, but one significantly different from the one we accept today. Americans then and for quite some time after the Revolution often followed procedures, such as those specifying how a constitution could be changed. But even when those procedural steps were followed, many Americans regarded them as simply useful, not indispensable. The people might well follow specifically mandated procedures to effect change, but utilizing those procedures was not the only way a collective sovereign could legitimately articulate its will.

Indeed, the farmers participating in court-closings during the summer of 1786 saw themselves as the "body of the people" entitled to exercise their

sovereignty. They followed the well-known and widely accepted practice employed during the Revolution when crowds, committees of correspondence, and legally unsanctioned gatherings expressed the will of the people. That such a view was vigorously disputed by Massachusetts authorities and their allies underscores the growing difficulty of recognizing when "the people" acted as the collective sovereign. Colonel Hichborn's 1777 celebration of the power of "the people at large" was consistent with the views of the Massachusetts farmers engaged in the court-closings. Untroubled by his earlier statement, however, Hichborn took a leading role in suppressing the farmers' movement.

Since the time of the Revolution, ideas drawing upon the authority of the people—frequently reiterated in the constitutions of the 1770s (and in the Massachusetts Constitution of 1780)—were used in increasingly expansive ways. The events in Massachusetts frightened many leaders in post-revolutionary America. For those scandalized by citizens presuming to act as the people in closing courts, the "rebellion" in Massachusetts showed how important it was to rein in misguided constitutional understandings and constrain the meaning of American constitutionalism. The legitimacy of direct action was particularly serious because the events in Massachusetts formed part of a broader pattern of popular protests experienced in post-revolutionary America.

The Federal Framers and the People

Not surprisingly, those events influenced the federal Framers in 1787. Among the principles not expressed in the federal Constitution when it was drafted were statements of the rights of the collective sovereign—their primacy over government, their right to scrutinize governors and their government, and their right to alter or abolish government at will. A general concession that governors were the servants of the people and that the collective sovereign had the right to abolish government was one thing, but it was quite another to place words to that effect in the Constitution where it might be invoked willy-nilly. During the convention, James Madison acknowledged that the collective sovereign could "alter constitutions as they pleased." It was, after all, "a principle in the [state] Bills of rights," he noted. Still, popular attempts to exercise that right under state constitutions caused difficulties, as the events in Massachusetts demonstrated. Why tempt fate by including similar language in the federal Constitution?

In fact, while "the people" appeared prominently in the Preamble to "ordain and establish" the federal Constitution and later surfaced to elect members of the House of Representatives, they then disappeared from the text of the Constitution. Their absence formed a striking contrast to their presence in many state constitutions in which the people and their collective existence as the sovereign was repeatedly acknowledged. "The people" reappeared in the federal Bill of Rights added by the first Congress, but without any statements comparable to the wide-ranging expressions of the authority and rights of the

collective sovereign that were found in the state constitutions. Instead, James Madison drafted the amendments as narrowly worded prohibitions on certain types of legislation. This focus had the effect of deemphasizing the people's collective rights.

This silence about the people in the federal Constitution did not mean that the federal Framers disputed the idea that the people were the sovereign. In fact, they explicitly invoked the people's authority in submitting the new federal Constitution for an up-or-down vote even though their convention had only been authorized to revise the Articles of Confederation. The Framers brought about a new federal Constitution in defiance of the procedures that the Articles stipulated for altering its structure by citing the legitimacy that came with the people acting as the sovereign. As Madison put it, the people could "breathe life" into the proposed new Constitution, overcoming any procedural irregularities in its creation.

In this respect, the framing of the federal Constitution was not a singular constitutional event. It was another example of the doctrine of rule by the people. Yet despite their willingness to deploy this doctrine as a political tactic, the Constitution's supporters were reluctant to acknowledge, much less encourage, the direct authority of the people. The Federalist position simply underscored the tension inherent in the American commitment to the sovereignty of the people. That tension would resurface repeatedly over the next half-century.

The Persistence of Revolutionary Constitutionalism

Many federal Framers—including George Washington—expected the people to assume only a passive role as the sovereign after the adoption of the federal Constitution. These expectations were soon disappointed. Stiff resistance met the attempt to collect the national government's first tax on a domestic product: an excise on whiskey. Those tax protests illustrate a wider and persistent debate over the people's relationship to government that the Revolution had not resolved.

That relationship had been at the center of emerging understandings of constitutionalism from the moment Americans acted as the collective sovereign to declare independence and create new governments. Under that conception, government in America was subordinate to the people, and representatives were the people's agents. As with any principal-agent relationship, the people retained the right to monitor their agents through the constitutional order established under their authority as the collective sovereign. For example, the practice of drafting instructions to guide the actions of legislators—familiar to Americans long before the Revolution—developed a particularly important constitutional significance after independence.

The western farmers who protested the excise tax in the early 1790s embraced a

constitutionalism that considered the people entitled—as individual citizens and groups of citizens—to scrutinize the conduct of government. They believed that citizens had the right to petition, instruct, and assemble to criticize government officials as well as to establish groups to question government policies. Yet all these steps—unexceptional from today's perspective—were at the time branded by supporters of Washington's administration as "seditious" and constitutionally illegitimate. These later Federalists neutered the collective sovereign to point of flirting with a transfer of sovereignty from the people to government— and came close to turning America's revolutionary constitutionalism on its head. These constitutional arguments by opponents of the excise tax protestors are usually overlooked because of a tendency to focus on the later, violent stage of the farmers' protests and their supposed intent to foment a "Whiskey Rebellion." In fact, the controversy illustrates a disputed constitutionalism even after the federal Constitution supposedly "settled" the proper relationship of the people to their government.

This disputed constitutionalism persisted at both the state and national level well into the 1840s. For example, in 1842, Rhode Island witnessed another so-called rebellion involving whether a constitution enacted under the people's authority—but without the consent of the existing state government—had constitutional legitimacy. This "Dorr Rebellion" crystallized America's competing perceptions of the implications of written constitutions. That struggle pitted those who acknowledged the practical manifestation of the people's sovereignty against those who increasingly located sovereignty in government itself. Proponents of government sovereignty insisted that the people needed to act with the consent of the existing government and only according to constitutional provisions for change. Anything different would be a revolution based on raw power. Their opponents, on the other hand, insisted that the people's sovereignty gave constitutional legitimacy to revisions that bypassed existing provisions for constitutional revision and that occurred without the government's consent.

Contrasting our constitutionalism with that of earlier generations of Americans suggests our current theory of what makes government legitimate was not inevitable. It did not develop in a straight-line from the Revolution to today, as is often depicted in constitutional histories. Controversies over the people as the sovereign and how they would rule were not resolved in 1776, or in 1787, or in the 1790s, or for that matter in the 1840s.

America's Post-Civil War Constitutional Framework

The Civil War clearly influenced the development of ideas about the authority of the collective sovereign to act independent of government. It seems that many of those earlier constitutional ideas—described in *American Sovereigns*—survived the Civil War. This demonstrates that American constitutionalism—of both the federal and state variety—did not emerge from one

defining moment or event. Rather, it grew incrementally over the course of political controversies within the states and at the national level. The constitutionalism that holds sway today is not a natural inheritance but the product of choices Americans made between shifting understandings about the people as a collective sovereign.

As a preliminary study of the post–Civil War period suggests, the legitimacy of direct action by the people eventually came to be displaced. Ironically, those ideas were rendered beyond the constitutional pale only during the Progressive Era—the period of progressive reform associated with Theodore Roosevelt and persisting into the early 20th century. The Progressives suggested that direct action by the people could be achieved through the device of the initiative and referendum. The image of "the people" making law directly for themselves suggests—at first glance—the exercise of their sovereign authority. Yet, such law-making by the people required strict compliance with legal procedures. This effectively reversed the position taken by farmers closing courts in Massachusetts in 1786 that the sovereign could act independent of legal procedures.

Our adherence to proceduralism today often makes it difficult to understand our forebears' constitutionalism. Yet we both ground the legitimacy of American government on the consent of the people and their sovereign authority. And we—just as they—continue to struggle with the vitally important question: what does it mean that in America "the people" rule?

Note: The author wishes to thank Joe Franaszek, Ben Ortega, and Jeff Pasley for their helpful comments on this piece.

Further Reading:

A highly influential study of early American constitution-making is Gordon S. Wood's *The Creation of the American Republic, 1776-1787* (1969). In extending Wood's findings beyond the time frame of his work, scholars have assumed that today's constitionalism is directly linked to the Federal constitution. For a critique of that assumption by historians, political scientists, and lawyers, see Christian G. Fritz, "Fallacies of American Constitutionalism," 35 *Rutgers Law Journal* (2004), 1327-69. Fritz, *American Sovereigns*, examines how Americans struggled over the idea that a collectivity—the people—would rule as the sovereign. Terry Bouton, *Taming Democracy: "The People," the Founders, and the Troubled Ending of the American Revolution* (2007) and Ronald P. Formisano, *For the People: American Populist Movements from the Revolution to the 1850s* (2008) demonstrate how Americans both before and after the federal Constitution continued to invoke the sovereignty of the people. Larry Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (2004), advances a theory of "popular constitutionalism" that gives the people the responsibility "for interpreting and enforcing their constitution." The classic study tracing the emergence of the concept of the sovereignty of the people is Edmund S.

Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (1988).

BLOGITORIAL NOTE: Presenting an article that I commissioned a little too late to go through the full* Common-Place *production process, but still wanted to be part of the extended Politics Issue here on the blog. I think readers will find it one of the most original and illuminating pieces in the whole issue, and I am grateful to Prof. Chris Fritz for turning this out in record time and in such fine fashion. For another aspect of "popular constitutionalism," see Ray Raphael's article on the doctrine of instruction elsewhere in the issue and my essay on freedom of the press posted here a few weeks ago, a longer variant of one published in* Pennsylvania Legacies*. — JLP

This article originally appeared in issue 9.1 (October, 2008).

Christian G. Fritz is Dickason Professor of Law at the University of New Mexico and author of *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War (2008)*.

Slavery, Sectionalism, and the Constitution of 1787

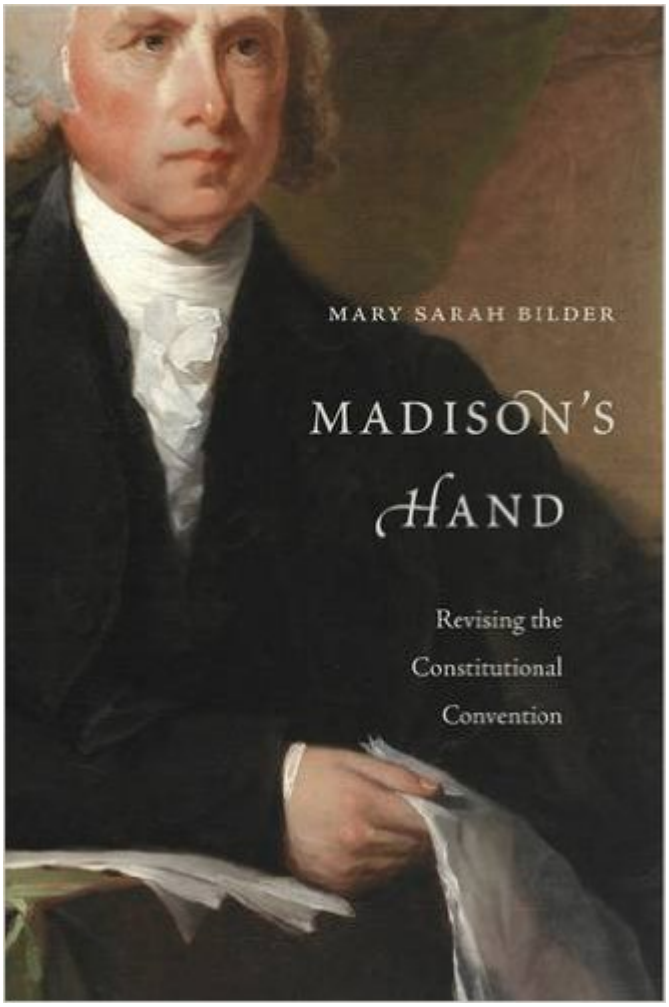
The Constitution's compromises added an element of complexity to the Constitution that defies any effort to reduce it to Twitter-sized proslavery or antislavery soundbites that implicate or exonerate the founders.

Instructions: The People's Voice in Revolutionary America

Presented as part of the special Politics Issue

Once the door was opened to popular control of government, who knew how far the people would go?

James Madison: Constitutional Convention Spin Doctor?



So mutilated did his Notes become, concludes Bilder, that even Madison himself eventually realized that he had lost forever the original convention proceedings of 1787.