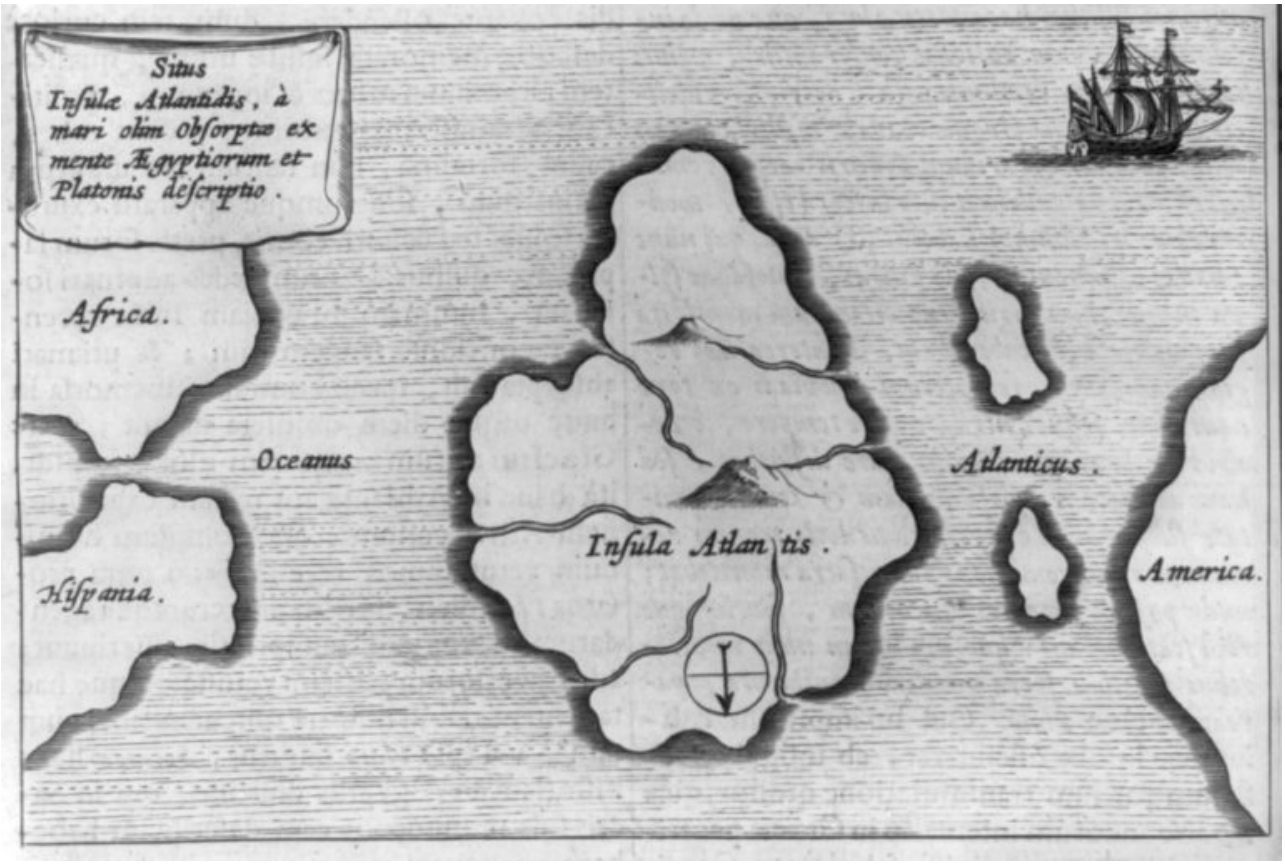
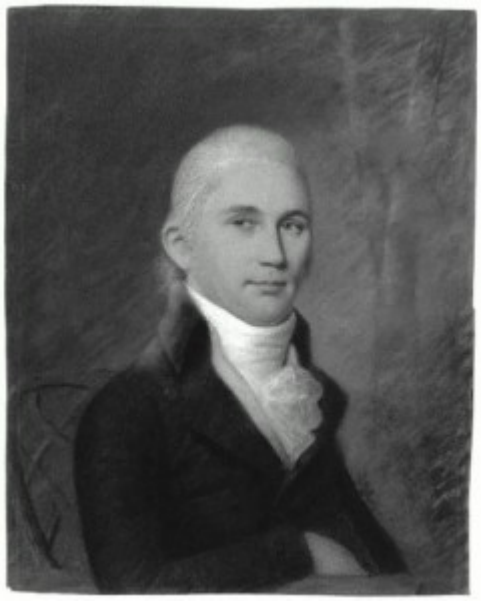
Myths of Lost Atlantis: An Introduction



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.

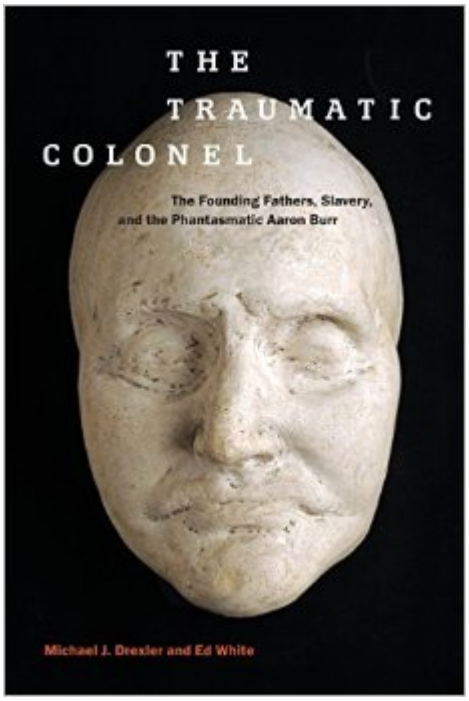
FURTHER READING

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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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

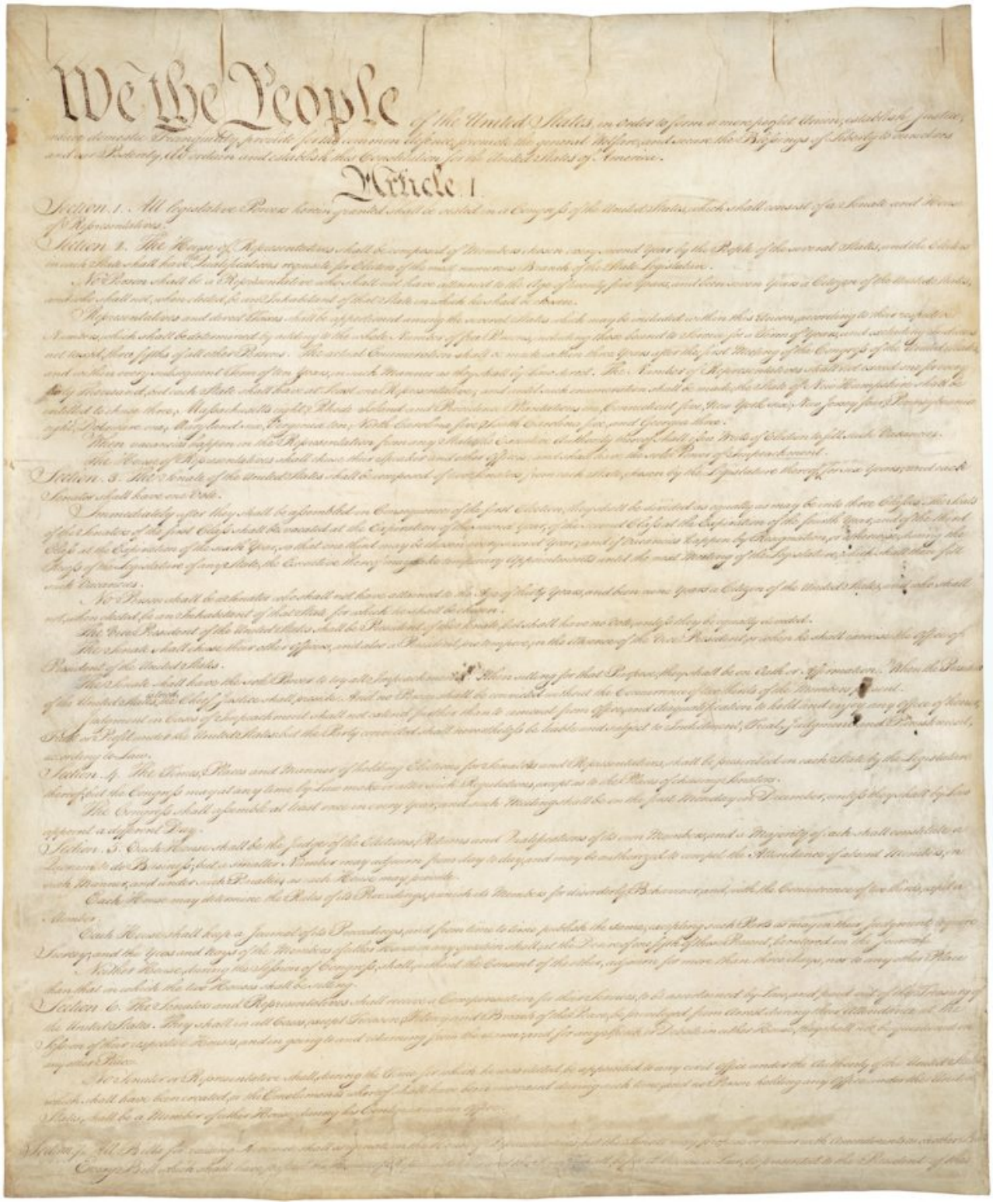
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"Slaveholders and their Northern Abettors": Frederick Douglass's Long Constitutional Journey



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

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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.

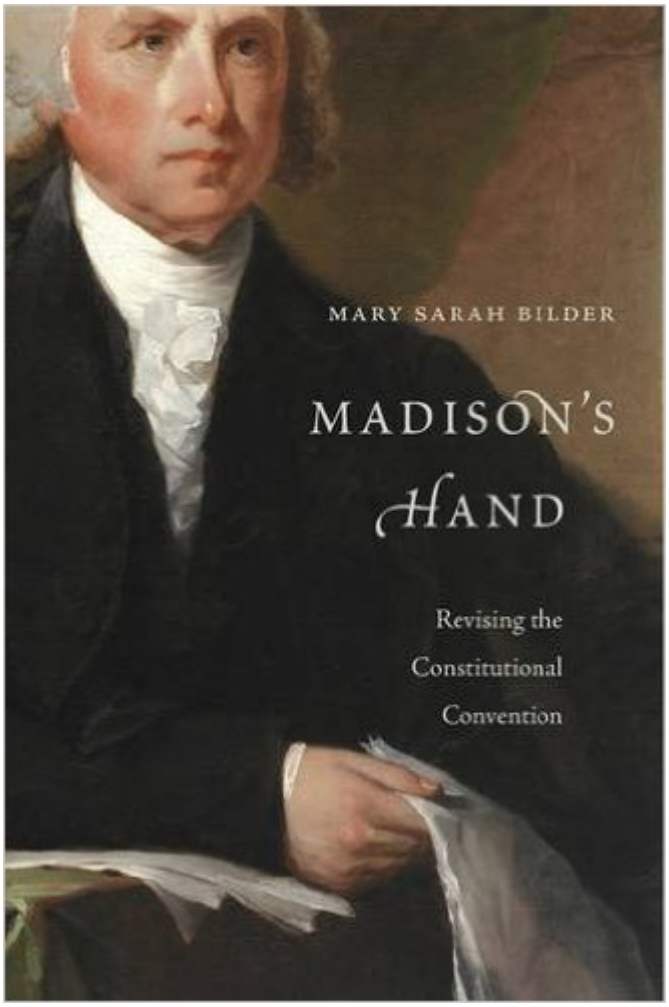
Instructions: The People's Voice in Revolutionary America



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.

Images of Want: How poverty was, and was not, pictured before the Civil War



RUN ON THE SEAMEN'S SAVINGS' BANK DURING THE PANIC.

Precisely because images were so extensively braided into the milieu, their distinctive handlings of Americans in need or suddenly having to do with less—in other words, what these images did and did not show—were important in defining the Republic between the Revolution and the Civil War.