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Narrative, Interpretation, and the Ratification of the Constitution

Pauline Maier

I am grateful to the participants in this Forum for their careful and enthusiastic responses to *Ratification: The People Debate the Constitution, 1787–1788*. Some comments usefully extend the discussion beyond what is in the book. Maeva Marcus pushes the story into the 1790s, when the new Supreme Court took up issues that had played a role in the ratification debates, and demonstrates the ongoing fluidity of constitutional understandings. For both Marcus and Saul Cornell, the complexity of arguments described in the book weighs powerfully against modern judicial theories of “originalism.” However, as Cornell observes, I deliberately avoided discussing the debate over originalism in *Ratification*, and I intend to do the same here. It seems more appropriate to use this opportunity to address authorial decisions and the more general issue of how the book contributes to historical interpretations of ratification, an event that one reviewer described as “one of the great political brawls of all time.”¹

From the beginning *Ratification* was defined as a narrative history. The book would tell the story of the ratification of the Constitution by looking at the popularly elected state conventions that decided the Constitution’s fate. Its intended audience consisted not only of professional historians, other academics, and members of the legal community who specialize in constitutional law but also that part of the reading public with an interest in American history.

Narrative histories written for broad audiences have had an honorable place in American history over the past two centuries, but modern historians are not, I think, trained to write narrative. The discipline is more geared to asking questions and answering them, or proposing hypotheses and gathering evidence to support them, than to telling stories. Narrative histories are no less interpretive than traditional monographs, but their interpretations are woven into the stories they tell. Narrative histories also pose challenges of organization and content distinct from those of analytical history. They require a different kind of artfulness and a series of strategic decisions that come from the intended audience, the character of the story, and, as always, the documentary record.

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¹ Charles P. Pierce, in “The 10 Best Books of 2011,” *Esquire*, December 2011, available at <http://www.esquire.com/fiction/best-books-2011-1211>.

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Take, for example, what Seth Cotlar refers to as the “opening chapter” of the book but is in fact labeled “Prologue.”² No book on ratification geared to both nonspecialists and specialists can begin on September 17, 1787, when the federal Convention adjourned and the ratification process began: it has to provide background information on the problems that led to the calling of the Convention and that the Constitution was meant to resolve. *The Papers of George Washington: Confederation Series* offered a rich and reader-friendly way to accomplish that task: in late 1786 and early 1787 Washington and his correspondents, often old army officers, discussed at length the worrisome state of the nation and what could be done to set things right.³ But why not start, Todd Estes asks, with William Findley or Governor George Clinton or Elbridge Gerry or John Lamb or the printer Eleazer Oswald rather than Washington, or with “A View from Pittsburgh” rather than “The View from Mount Vernon”? Because none of those persons could convey the sense “of crisis requiring immediate attention and extensive reforms” that led to the Constitution and because nothing in Pittsburgh compared to the rich cache of letters moving in and out of Mount Vernon before the federal Convention met. As Estes himself says, “Federalists were the ones pushing the action.”⁴ Those who criticized the Constitution (and often questioned the existence of a crisis) could not come into the story until there was a Constitution to criticize. The prologue ends with Washington leaving for Philadelphia on May 8, 1787; chapter 1 begins with delegates leaving Philadelphia on September 18 with a six-page printing of the Constitution and two other documents the Convention had adopted tucked into their baggage. “The people debate the Constitution” in the body of the book, in numbered chapters between the prologue and the epilogue (which is on the period after Congress officially declared the Constitution ratified).

Introducing Washington and his correspondents early in the book had another advantage since those same correspondents wrote to Washington throughout the ratification process, reporting on developments within the states and assessing the Constitution’s chances of being enacted as circumstances shifted. In a book that describes a series of state conventions whose members appear, sometimes briefly, and then often disappear, it is useful to have a handful of characters who surface throughout the text. Richard Brookhiser, who knows something about narrative, said Washington served as the book’s “Greek chorus”; I thought of Washington and his correspondents

² Seth Cotlar, “The View from Mount Vernon versus the People Out of Doors: Context and Conflict in the Ratification Debates,” *William and Mary Quarterly*, 3d ser., 69, no. 2 (April 2012): 369–72 (quotation, 369).

³ W. W. Abbot et al., eds., *The Papers of George Washington: Confederation Series*, 6 vols. (Charlottesville, Va., 1992–97).

⁴ Todd Estes, “Perspectives, Points of Emphasis, and Lines of Analysis in the Narrative of the Ratification Debate,” *WMQ* 69, no. 2 (April 2012): 361–64 (“crisis,” 362, “Federalists,” 363).

more prosaically as a string that held the “beads” of my story together.⁵ Although the prologue describes Washington pondering whether to attend the Convention and the epilogue shows him agonizing in much the same way over becoming president, those two scenes do not drive the trajectory of what lies between, as Estes suggests. The succession of ratifying conventions does that.

The focus on the state conventions raised a more fundamental issue: how to establish a clear story line for an event that happened in thirteen places, sometimes simultaneously. The nature of the documentary record suggested a solution. More than twenty-five years ago James H. Hutson cataloged a list of problems with the records of the state ratifying conventions that probably explain why, as R. B. Bernstein observes, the subject received no “comprehensive historical treatment” until now.⁶ Some states’ debates were not recorded, and the published debates of others suffered from the limited skills of the stenographers, their willingness to let speakers correct the texts of their speeches, and a bias toward the Federalists, who often subsidized the preparation and publication of the debates.⁷ *The Documentary History of the Ratification of the Constitution (DHRC)* has gone far to overcome those problems. By collating the published debates with the conventions’ official journals, notes kept by delegates and other witnesses to the conventions’ sessions, newspaper accounts, and private correspondence, it allows scholars to assess and fill holes in the published versions of the state debates.

By the end of 2009, the *DHRC* had published fourteen volumes on ratification in eight states. There are dramatic disparities in the surviving documentary records for different states: Pennsylvania got one volume; Delaware, New Jersey, Connecticut, and Georgia fit in another.⁸ Virginia got three volumes, Massachusetts four, New York an astounding five. The series had covered all the states whose convention debates were recorded and published except one, North Carolina. I decided to focus on Pennsylvania, Massachusetts, Virginia, and New York, all key states in the unfolding story of ratification, with distinctive and well-documented conventions, and to fold the other states into the narrative at appropriate points. Consequently, the six chapters that Estes describes as devoted to

⁵ Richard Brookhiser, “Nation-Building,” review of *Ratification: The People Debate the Constitution, 1787–1788*, by Pauline Maier, *New York Times Sunday Book Review*, Oct. 31, 2010, 20.

⁶ R. B. Bernstein, “Ratification’s Pathfinder, with Some Hints for Future Explorations,” *WMQ* 69, no. 2 (April 2012): 377–81 (quotation, 377).

⁷ James H. Hutson, “The Creation of the Constitution: The Integrity of the Documentary Record,” *Texas Law Review* 65, no. 1 (November 1986): 1–39, esp. 20–24.

⁸ Pennsylvania actually had a larger documentary record than the one volume suggests. Under current editorial policies, many of the documents in the supplementary fiche for Pennsylvania, which is especially rich on postconvention developments, would probably be printed.

Virginia and New York include subsections on Rhode Island, Maryland, South Carolina, and each of New Hampshire's two conventions. Estes asks whether New York and Virginia were important enough to merit such extensive treatment. I think the answer is clear. Remembering that North Carolina and Virginia extended from the Atlantic to the Mississippi and included what are now the states of Tennessee, Kentucky, and West Virginia, imagine a United States without those two states and North Carolina, which refused to ratify in the summer of 1788. Could so segmented a nation have survived?

In the introduction to *Ratification* I explained that the book would test a theory that I once heard Barbara Tuchman describe. A book can build tension in telling a story even if readers know the outcome, she said, so long as it does not mention the outcome until it occurs. That meant the book could say nothing that suggested the Constitution's eventual ratification until the story arrived at June 1788, when both New Hampshire and Virginia voted to ratify, each assuming it was the critical ninth state. Nor could the book open with an explanation of why the Constitution would be ratified. In truth, the assumptions with which I began came straight out of the previous scholarship. And yet, as I worked through the story of ratification I found myself questioning much of what I had thought (and taught) for decades. My conclusions also ran powerfully against any description of the contest as between an elite set of Federalists and, as Cotlar describes them, elite Anti-Federalists fueled by a "massive popular opposition" to the Constitution.⁹

Where Cotlar's proposed interpretations rely on dichotomies—"rural versus urban . . . , commercial capitalism versus the moral economy, the few versus the many, debtors versus creditors, classical republicans versus liberals, or provincial men of little faith versus cosmopolitan men of the Enlightenment"—I saw something quite different.¹⁰ Start with the terms "Federalist" and "Anti-Federalist." I was a good way into writing the book when I realized that the only documents that used the word "Anti-Federalist" were by Federalists. It was a Federalist term, and, moreover, as Pennsylvania's Findley said, a "name of reproach," and one he treated "with contempt" (xv). Federalists claimed that "Anti-Federalists" were knee-jerk opponents of federal power who had opposed all efforts to strengthen the central government since long before the federal Convention met. They were, moreover, state politicians who feared for their jobs or individuals who saw the Constitution as a threat to their private economic interests. Neither of those generalizations checked out. I felt uncomfortable calling

⁹ Cotlar, *WMQ* 69: 370.

¹⁰ *Ibid.*

dead people by a name they considered, for good reason, a term of opprobrium, and feared that telling the story of ratification using Federalist terms would tilt it in their direction. Eventually I decided to use the word “Anti-Federalist” only if it appeared in quotations or if the persons so designated accepted it, which occurred only in the upper Hudson Valley of New York.¹¹ This decision also avoided other problems that follow from describing the contest as between Federalists and Anti-Federalists: it suggests that there were national parties, which there were not (although divisions over the Constitution sometimes coincided with state parties), and that, in the way of dichotomies, one was “for” the Constitution and the other “against,” which is also incorrect.

Thanks to the federal Convention’s insistence that the states had to ratify or reject the Constitution, the final state convention votes were “yea” or “nay.” The strains of opinion that fed into that artificially simple division were, however, far more complicated. Contrary to Federalist charges, virtually everyone recognized the need to strengthen the central government. The issue was how. Initially some contenders preferred giving more power to the Confederation and therefore literally opposed ratifying the Constitution. However, the greater part of those who criticized the Constitution saw it as a possible solution to the country’s needs if certain ambiguous and dangerous provisions were amended before it was ratified. Although Federalists agreed that the Constitution should be ratified as written, they too differed among themselves. Some preferred a more centralized system that would dominate the states. Others were happy leaving the states in control of their internal affairs and sometimes favored amendments not so different from those proposed by the Constitution’s critics. They said, however, that any amendments should be enacted only after the Constitution’s ratification using the provisions in Article V.

In late 1787 the “Federal Farmer” described precisely these four groups of contenders. The categories also correspond with James Madison’s description of the divisions in Virginia politics, except that Madison recognized no distinctions among those who were for “adopting the Constitution without attempting amendments” (232). The division among critics of the Constitution occurred not just among essay writers and convention delegates but also on the grassroots level. In Massachusetts, for example, the town of Harvard preferred strengthening the Confederation over the wholesale transformation the “proposed Constitution” (151) would bring,

¹¹ Albany “Anti-Federalists” accepted that name only after stripping it of all its misleading and demeaning implications. “Terms of distinction, on a difference in political sentiments,” according to a broadside issued by the Albany, New York, Anti-Federal Committee, “are frequently arbitrary, and often, in their origin, without a precise meaning affixed to them” (328–29). In other words, the names of political groups were about as meaningless as those of modern baseball teams.

although many more town returns suggested that amendments might resolve their reservations on the Constitution.¹² Moreover, affiliations sometimes shifted as circumstances changed. By the time their state conventions met, onetime advocates of a strengthened Confederation such as John Lansing Jr. in New York and Patrick Henry in Virginia had become advocates of prior amendments. In several close states the Constitution passed because a subset of the prior-amendments advocates settled for recommending amendments to be considered once the new government began. And once a convention voted to ratify, some Federalists voted to recommend amendments that their colleagues disdained.

If, then, the critical division was between those who favored amendments prior to ratification and others who insisted on considering amendments only after the Constitution went into effect, the likelihood of finding profound socioeconomic or intellectual differences between them seems less promising than if it were between those who were “for” or “against” the Constitution. However, one distinction did seem almost universal. Communities along the Atlantic coast were uniformly in favor of ratification, as were commercial centers in the interior. Enthusiasm for the Constitution there pulled in everyone from elite merchants and lawyers through artisans and dock workers (thus cutting through class lines); all of them foresaw—correctly—that ratification and the institution of a strong new national government would bring a major revival of American commerce. Those who opposed ratification of the unamended Constitution tended to come from inland areas where the prospect of commercial prosperity seemed less enticing. The amendments they favored did, indeed, demonstrate fear of a small and distant Congress whose members were unfamiliar with the circumstances of those for whom it legislated. That for them was an issue of representation, and the legislative decisions most at issue concerned taxes.

Whatever the history of the phrase “no taxation without representation,” those two issues were of central significance starting with the opening years of the struggle with Britain. In keeping with English practice, colonists held that “taxes were the ‘free gift’ of the people who paid them, and as such could be levied only by a body which represented the people.”¹³ The threat of oppressive taxes might have been prospective, but that was enough to mobilize colonial resistance in the decade before 1774. Moreover, oppressive taxation became a reality in the mid-1780s, when—as Max M. Edling

¹² “Anti-Federalist” partisans in Albany County, New York, also gave evidence of wanting to save and strengthen the Confederation, although they also argued for amending the Constitution prior to its ratification (335).

¹³ Edmund S. Morgan, “Colonial Ideas of Parliamentary Power, 1764–1766,” *WMQ* 5, no. 3 (July 1948): 311–41 (quotation, 326).

and Mark D. Kaplanoff have discovered—taxes rose to a multiple of the pre-war level in several states due to an ill-considered effort to pay off their war debts rapidly. The greater part of the tax burden took the form of regressive poll and property taxes (i.e., “direct taxes”) that were especially burdensome to farmers. “Perhaps at no point . . . were taxes more controversial,” Edling and Kaplanoff have said, “than in the period between the peace treaty of 1783 and the meeting of the Philadelphia Convention in 1787.” The heightened tax burden helps explain the rural insurgency of the period, and its demise (except in areas affected by the new whiskey tax) after Alexander Hamilton’s assumption of state debts relieved the states of a burden that accounted for as much as 90 percent of their state budgets and led to a massive tax cut.¹⁴

In the meantime, oppressive state taxes fed popular fears that a Congress insufficiently representative of the people would add federal poll or property taxes to those already in place. All five states that proposed constitutional amendments wanted to allow state legislatures—where the people were more fully represented than in Congress—to prevent the collection of federal direct taxes by raising their states’ portion of the general levy in whatever manner they considered easiest for their people to bear. Leading Federalists such as Washington and Madison had no objection to many of the proposed amendments; indeed, they too had misgivings about the Constitution’s provisions on representation. However, they firmly rejected the tax amendment because they thought it would restore the failed requisition system of the Confederation, cause endless haggling, and undermine the restoration of public credit.¹⁵ That issue keyed to others: whether the states would survive if an insufficiently representative Congress had the comprehensive taxing power in Article I, Section 8; whether liberty could survive in the consolidated government that would emerge after state power collapsed; and ultimately whether the Constitution would save the Revolution or undermine all that Americans had suffered and died for during the Revolutionary War—material enough for a good brawl.

Just who were “We the people”? The category included what Bernstein, citing Henry Adams, calls “the American ‘political population’”—that is,

¹⁴ Max M. Edling and Mark D. Kaplanoff, “Alexander Hamilton’s Fiscal Reform: Transforming the Structure of Taxation in the Early Republic,” *WMQ* 61, no. 4 (October 2004): 713–44 (quotation, 714). See also Edling, “‘So immense a power in the affairs of war’: Alexander Hamilton and the Restoration of Public Credit,” *WMQ* 64, no. 2 (April 2007): 287–326; Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York, 2003). Essentially Hamilton exchanged old state and federal obligations for federal bonds, reduced the rate of interest so he could pay it reliably with income from customs duties and a few excise taxes, and deferred payment of the principal. That was sufficient to reestablish the credit of the United States.

¹⁵ Cotlar found no entries in the index to *Ratification* for bonds or speculators—or, for that matter, Charles Beard—because these were not prominent issues in the ratification debates. There is, however, about a column of references under “taxes.”

those adult white men who qualified for the vote.¹⁶ New York, however, expanded the category by eliminating the property qualification used in legislative elections: there all white men twenty-one years of age or older could vote for convention delegates. Massachusetts, like several other states, did not expand the franchise, and used the same apportionment for the convention as for the legislature, such that towns with at least 150 ratable polls (taxpaying men at least sixteen years of age) could send a delegate, and more as their population rose. The towns not only chose delegates but often discussed the Constitution with great seriousness. The little town of Richmond in western Massachusetts held four informational meetings before deciding the Constitution was no good “as it now stands” (that is, without amendments); other towns read the Constitution out loud, “Paragrapft by Paragraft” (145), as one report says, with pauses so townsmen could comment. In the end, the towns elected a whopping 370 convention delegates, over 100 more than they sent to the legislature in the spring of 1786, which was the largest legislature in a decade.¹⁷ In Virginia Madison noticed that the electorate was less deferential to their leaders than usual in the convention elections and more insistent that delegates conform to its ideas of what should be done (234).

Everywhere newspapers were filled with news and essays on the Constitution, whose strengths and weaknesses were debated not only in town and county meetings but in streets, taverns, and homes, pulling in people well outside the “political population.” In the one account we have of a rip-roaring argument within a home, three of the four participants, including the protagonist, were women. Nor were the people “out of doors” uniformly opposed to the Constitution. Federalists joined in a full-fledged riot in Albany, where “Antis” had ceremonially burned the Constitution on July 4, 1788; forcefully ended an election in North Carolina when it seemed to be going against them; and attacked or threatened critics of the Constitution in Philadelphia and New York. Indeed, a good bit of evidence runs against Cotlar’s assumption that a majority of the people responded “negatively” to the Constitution.¹⁸

Finally, to suggest that the ratification conventions were ho-hum events dominated by the usual elites ignores the presence of newcomers to politics

¹⁶ Bernstein, *WMQ* 69: 378.

¹⁷ My analysis of this subject in *Ratification*, pp. 144–45, draws on Richard D. Brown, “Shays’s Rebellion and the Ratification of the Federal Constitution in Massachusetts,” in *Beyond Confederation: Origins of the Constitution and American National Identity*, ed. Richard Beeman, Stephen Botein, and Edward C. Carter II (Chapel Hill, N.C., 1987), 113–27, esp. 122–23.

¹⁸ Cotlar, *WMQ* 69: 369. Whether or not the vast majority of the people responded “negatively” to the Constitution in the fall of 1787 is difficult to prove one way or the other. The results of convention elections are one measure of popular sentiment, and critics of the Constitution had strong majorities in the ratifying conventions of New York, North Carolina, and Rhode Island. However, the divisions were close in Massachusetts, Virginia, and New Hampshire, and Federalists dominated Delaware, New Jersey, and

and of farmers, gristmill owners, and the like, some of whom took the floor in the final days of a convention to report what conclusions they drew from the debates of their more oratorically gifted colleagues, and who were noticeably nervous if their views had seemed out of sync with those of their grassroots constituents. The entire process, from the election of delegates through the deliberations of the conventions, was an extraordinary event for the time. As Bernstein says, “by the standards of politics in the late eighteenth-century Atlantic world,” the enactment of the Constitution was “an unprecedented exercise of popular sovereignty.”¹⁹

Like other books that take up previously neglected subjects, *Ratification* opens new lines of inquiry, some of which Bernstein helpfully summarizes. I will add another. Although bills of rights were a popular issue in the state ratification debates, of the five states that both ratified and recommended amendments, only Virginia formally asked that a bill of rights be added to the Constitution. However, Virginians who ardently supported that demand, such as Patrick Henry and Richard Henry Lee, were bitterly disappointed with the amendments the First Federal Congress proposed. Neither they nor, for that matter, anybody else—not Washington, or Jefferson, or Madison—referred to the twelve amendments proposed by Congress or the ten ratified by the end of 1791 as a “bill of rights.” When did that term become commonplace, and why?

Come to think of it, I might take a crack at that question myself.

Georgia, where the votes to ratify were unanimous, as well as Connecticut and Maryland. More surprising, they dominated Pennsylvania, where the “Constitutionalist” party, which defended the state constitution of 1776 but criticized the federal Constitution, had lost control of the state. After the wartime Test Acts were finally abandoned in 1786–87, reenfranchised Quakers, Anglicans, Lutherans, and other sectarian nonjurors gave the “Republicans,” who had fought the Test Acts and favored ratification of the Constitution, a majority in the legislature and the state ratifying convention. O. S. Ireland, “The Crux of Politics: Religion and Party in Pennsylvania, 1778–1789,” *WMQ* 42, no. 4 (October 1985): 453–75; Ireland, “The People’s Triumph: The Federalist Majority in Pennsylvania, 1787–1788,” *Pennsylvania History* 56, no. 2 (April 1989): 93–113; Ireland, “The Invention of American Democracy: The Pennsylvania Federalists and the New Republic,” *Pennsylvania History* 67, no. 1 (Winter 2000): 161–71; Ireland, *Religion, Ethnicity, and Politics: Ratifying the Constitution in Pennsylvania* (University Park, Pa., 1995), esp. xvi–xviii, 117–53. Terry Bouton, *Taming Democracy: ‘The People,’ the Founders, and the Troubled Ending of the American Revolution* (Oxford, 2007), which, like Cotlar, posits a conflict between elite, anti-democratic partisans and “ordinary folk,” discusses the complicated considerations at work in Pennsylvania politics, 126–29. The “Republican Party” in Pennsylvania, which was home to Bouton’s elite but for Ireland was genuinely democratic, did not apparently lose the electorate’s favor quickly: in 1790, Pennsylvania replaced its 1776 constitution. The division of opinion in South Carolina is hard to measure because western parts of the state were severely underrepresented in both the state legislature and the ratifying convention.

¹⁹ Bernstein, *WMQ* 69: 378.