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Narrative, Interpretation,

and the Ratification of the Constitution

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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's 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 continued fluidity of constitutional understandings. For both Marcus and Seth Cornell, the complexity of arguments described in the book weighs powerfully against modern judicial theories of "originalism." However, as Cornell correctly observes, I deliberately avoided discussing the modern debate over originalism in Ratification, and I intend to do the same thing here. It seems more appropriate to use this opportunity to address the "authorial decisions" that interest Todd Estes 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 greatest political brawls of all time."ⁱ

From the very beginning---in the late 1990s, when I agreed to write the book for Simon and Schuster, and long before it had even a title---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 and other academics, but that part of the reading public with an interest in American history. Given its subject

matter, it was also likely to attract the interest of those members of the legal community who specialize in constitutional law.

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 the kinds of history we are used to writing, but their interpretations are buried in 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 character of the story, the intended audience, and, as always, the documentary record.

Take for example what Seth Cotlar refers to as the “opening chapter” of the book but that is in fact labeled a Prologue. No book on ratification geared for both non-specialists 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 Seriesⁱⁱ provided a rich and reader-friendly way to accomplish that task since 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. The Prologue ends with Washington leaving for Philadelphia on May 8, 1787; Chapter One 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, which provides background information, and the Epilogue, which is on the period after Congress officially declared the Constitution ratified.

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 “The 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 far-reaching 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.” Those who criticized of the Constitution (and often questioned the existence of a crisis) could not come into the story until there was a Constitution to criticize.

Introducing Washington and his correspondents early in the book had another advantage since those same correspondents wrote Washington throughout the ratification process, reporting on developments with the states and assessing the Constitution’s chances of being enacted as circumstances changed. In a book that tells the stories of 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. David Brookhiser, who knows something about narrative, said Washington served as the book’s “Greek chorus”;ⁱⁱⁱ I thought of Washington and his correspondents more prosaically as a string that held the “beads” of my story together. And, 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 shape the trajectory of what lies between, as Estes suggests. The succession of ratifying conventions does that.

That focus raised a more fundamental issue: how to define a clear story line for an event that happened in thirteen places, sometimes simultaneously. There the nature of the documentary record suggested a solution. In 1986, James H. Hutson catalogued 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. 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.^{iv} In the quarter century since Hutson wrote, 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. The editors of the DHRC could not, however, supply accounts of state convention debates that went unrecorded.

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;^v Delaware, New Jersey, Connecticut, and

Georgia fit in another. Virginia got three volumes, Massachusetts four, New York an astounding five. Although it had five states to go, the series had covered all but one state—North Carolina--- whose convention debates were recorded and published. I decided to describe in detail Pennsylvania, Massachusetts, Virginia, and New York, all of which were key states in the unfolding story of ratification and whose conventions were both distinctive and well documented, and to fold the other states into the narrative at appropriate chronological points. Consequently, the six chapters that Estes says are devoted to Virginia and New York include sub-sections 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. Imagine a “United States” without those two states and North Carolina, which refused to ratify in the summer of 1788, remembering that North Carolina and Virginia extended from the Atlantic to Mississippi and included what are now the states of Tennessee, Kentucky, and West Virginia. 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 would be ratified until its story arrived at June 1788, when both New Hampshire and Virginia voted to ratify assuming they were the critical ninth state. Nor could the book open with a theory of why it would be ratified. And yet as I worked through the story of

ratification, I found myself questioning much of what I had previously thought (and taught) based on previous scholarship. My conclusions were also powerfully at odds with Seth Cotlar's assertions that the contest was between an elite set of Federalists and Antifederalists fueled by a "massive popular opposition," and that a "majority of 'the people'" responded... negatively to the Constitution in the fall of 1787." He seeks a "big picture interpretation" that defines what "values or interests" united both "the opposition" to the Constitution and its supporters. Like the categories of contenders he uses, the interpretations he proposes take the form of dichotomies: "rural versus urban..., commercial versus the moral economy, the few versus the man, debtors versus creditors, classical republicans versus liberals, or provincial men of little faith versus cosmopolitan men of the enlightenment."

Start with the terms "Federalist" and "Antifederalist." I was a good way into writing the book when I realized that the only documents that used the word "Antifederalist" were by Federalists. It was a Federalist term, and, moreover, as Pennsylvania's William Findley said, a "name of reproach," and one he treated "with contempt."^{vi} Federalists claimed that "Antifederalists" were not new arrivals on the political scene, but 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 dead people by a name they considered, for good reason, a term of opprobrium, and thought telling the story of ratification using Federalist terms would tilt it in their direction. Eventually I decided to

use the word “Antifederalist” 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.^{vii} That also avoided other problems that follow from describing the contest as between Federalists and Antifederalists: 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 was 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 vote “yea” or “nay.” The strains of opinion that fed into that stark division were, however, 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 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.” The division among critics of the Constitution occurred not just among essay writers and convention delegates, but also on the grass roots level: In Massachusetts, for example, the town of Harvard preferred strengthening the Confederation over the wholesale transformation the “proposed Constitution” would bring, although many more town returns suggested that amendments might resolve their reservations on the Constitution.^{viii} Moreover, affiliations sometimes shifted as circumstances changed. By the time their state conventions met, onetime advocates of a strengthened Confederation such as John Lansing 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 those who insisted on considering amendments only after the Constitution went into effect, the likelihood of finding profound socio-economic or intellectual differences between them seems less promising than if it were between those who were “for” or “against” the Constitution. There is, however, one distinction that seemed 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 whom 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 was 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.

Cotlar's effort to discount the significance of the linked issues of taxation and representation seems to me utterly at odds with scholarship on the Revolution. 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. "The issue of the day was taxation," Edmund S. Morgan said in a landmark article that helped reopen the literature of the Revolution. In keeping with English practice, colonists held that "taxes were the 'free gift' of the people who paid them, and as such could be leveled only by a body which represented them."^{ix} 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 and Mark D. Kaplanoff 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 debt 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 said, “than in the period between the peace treaty of 1783 and the meeting of the Philadelphia Convention in 1797.” 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% of their state budgets and led to a massive tax cut.^x

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 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 on 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.^{xi} 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. That was material enough for a good brawl.

Who were “We the people”? The category included what Bernstein, citing Henry Adams, calls “the American ‘political population,’” that is those adult white men who qualified for the vote. 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 rateable polls (tax-paying 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 stand” (that is, without amendments); other towns read the Constitution out loud, “paragraft by paragraft,” 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.^{xii} In Virginia, Madison noticed that the electorate was less deferential to their leaders than usual in the convention elections, more insistent that delegates conform to its ideas of what should be done.^{xiii}

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 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.^{xiv} Nor were the people “out of

doors” uniformly opposed to the Constitution, as Cotlar assumes: 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.^{xv}

Finally, to suggest that the ratification conventions were ho-hum events dominated by the usual elites ignores the presence 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 more oratorically gifted colleagues, and who were sometimes noticeably nervous if their views had become out of sync with those of their “grass roots” 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.”

Like other books that take up previously neglected subjects, Ratification opens new lines of inquiry, some of which Bernstein 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.

NOTES

ⁱ Charles P. Pierce in Esquire, December 2012, available at
<http://www.esquire.com/fiction/best-books-2011-1211>. Accessed 2/6/2012.

ⁱⁱ W.W. Abbot and Dorothy Twohig, eds., The Papers of George Washington: Confederation Series, six volumes (Charlottesville, 1992-1997).

ⁱⁱⁱ Richard Brookhiser, “Nation Building,” New York Times Book Review, October 31, 2010, p. 20.

^{iv} James H. Hutson, “The Creation of the Constitution: The Integrity of the Documentary Record,” Texas Law Review LXV (1986): 1-39, esp. 20-24.

^v 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 post-convention developments, would probably be printed.

^{vi} Ratification, xv, quoting William Findley, History of the Insurrection in the Four Western Counties of Pennsylvania (orig. Philadelphia, 1796; facsimile reprint Spartanburg, S.C., 1984), 258.

^{vii} 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.” In other words, the names of political groups were about as meaningless as those of modern baseball teams. Cited in Ratification, 328-29.

^{viii} Ibid., 92-95, 232, 151 (Harvard) and, on town returns more generally, 147-152.

^{ix} Edmund S. Morgan, “Colonial Ideas of Parliamentary Power,” William and Mary Quarterly, 3d Series, V (1948), 311-41, esp. 326.

^x Max M. Edling and Mark D. Kaplanoff, “Alexander Hamilton’s Fiscal Reform: Transforming the Structure of Taxation in the Early Republic,” William and Mary Quarterly, 3d Series, LXI (2004), 713-744, quotation at 714. See also Edling, “So immense a power in the affairs of war’: Alexander Hamilton and the Restoration of Public Credit,” Ibid. LXIV (2004), 287-326, and A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State (Oxford, 2003). Essentially Hamilton exchanged old state and federal obligations for federal bonds, and 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 principle. That was sufficient to re-establish the credit of the United States.

^{xi} Ratification, 427—28. Cotlar found no entries in the index to Ratification for bond or speculators---or, for that matter, Charles Beard--- because they were not prominent issues in the ratification debates. There is, however, about a column of references under “taxation.”

^{xii} Ratification, 152 and 144-45 on the election rules and the size of the convention, which draws on Richard D. Brown, “Shays’s Rebellion and the Ratification of the Federal Constitution in Massachusetts,” in Richard Beeman et al., eds., Beyond Confederation: Origins of the Constitution and American National Identity (Chapel Hill, 1987), 122-123..

^{xiii} Ratification, 234.

^{xiv} Ibid., 156.

^{xv} Ibid., 374, 406-07, 64, 100, 398-99. 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, 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 found fault with the federal Constitution, had lost control of the state. After the wartime Test Acts were finally abandoned in 1786-87, re-enfranchised Quakers, Anglicans, Lutherans, and other sectarian non-jurors 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. Owen S. Ireland, “The Crux of Politics: Religion and Party in Pennsylvania, 1778-1789,” William and Mary Quarterly, 3d Series, XLII (1985), 453-75; “The People’s Triumph: The Federalist Majority in Pennsylvania, 1787-88,” Pennsylvania History, LVI (1989), 93-113; “The Invention of American Democracy: The Pennsylvania Federalists and the New Republic,” Ibid. LXVII (2000), 262-71, and 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 and New York, 2007), which, like Cotlar, posits a conflict between elite, anti-democratic partisans and “ordinary folk,” discusses the extraordinarily complicated considerations at work in Pennsylvania politics on pp. 126-29. The “Republican Party” in Pennsylvania, which was home to Bouton’s elite but for Ireland was genuinely democratic, did not lose the electorate’s favor quickly: in 1790, Pennsylvania replaced its constitution of 1776.

The division of opinion in South Carolina is hard to measure because western parts of the state were severely under-represented in both the state legislature and the ratifying convention.