

An Inconvenient Truth:  
A National Government Rejected in the Federal Convention  
of 1787 and  
(How It Was Forgotten by Northern Mythmaking )

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What the founders and framers intended their government to be for the newly independent states after Independence, had to be both republican and federal. Having rid itself of a monarch and made the public good or *res publica* one of its main purposes besides preserving the liberty of its citizens, the republican part was already in place. So too was the federal part as well with the thirteen states as sovereign and independent entities (John Taylor of Caroline later called them “state nations”). Since the defense of *imperium in imperio* had been a central demand on the part of the colonies, which the supreme power of Parliament would not recognize in the interest of sovereignty indivisible, the local affairs of each state already had governments to attend to them or make changes when needed. “In both Britain and the colonies, supporters of Parliament’s right to legislate for the colonies insisted, as they had ever since the beginning of the controversy during the Stamp Act crisis, that the British Empire, consisting of Great Britain and all its territories, was **a single state composed of ‘ONE people, ruled by ONE constitution, and governed by ONE king’** [without a monarchy, this was the same language of the “nationalists’ in 1787].” “Reiterating the same central contentions that had underlain their argument from the beginning, metropolitans continued to interpret the controversy as a dispute over **sovereignty** [just as it would be between “nationalists’ and republican-federalists in 1787].” Dismissing the doctrine of no legislation without representation as ‘an obsolete maxim’ that had no applicability to the distant parts of the extended polity like the British empire, they persisted in asserting that ‘no maxim of policy’ was ‘more universally admitted, than that a supreme and uncontrollable power must exist somewhere in the in every state.’” To James Mcpherson of Great Britain and author of *The Rights of Great Britain Asserted Against the Colonies*

*of America* (London, 1776), “the question between them . . . was nothing less than ‘dependence or independence, connection or no connection’.” If the colonists “refused obedience to Parliament, they were ‘no longer Subjects, but rebels’ who, by arrogating ‘to themselves all the functions of Sovereignty,’ were obviously endeavouring to put themselves ‘on the footing of a Sovereign State’.”<sup>1</sup>

On the colonial side, between 1764 and 1776, “most colonial leaders had resisted such reductionism and had endeavored, unsuccessfully, to focus debate on the seemingly more tractable and certainly **less abstract problem** of how power was or should be allocated in a polity composed of several related but nonetheless distinct corporate entities. For the colonists, resolution of their dispute with the metropolis had never seemed to require much more than the rationalization of existing political arrangements within the empire.”

For them, the ‘great solecism of an *imperium in imperio* seemed, as James Iredell declared, to be little more than ‘a narrow and pedantic . . . point of speculation, ‘a scholastic and trifling refinement, that had no relevance to the situation at hand. The claim ‘that two independent legislatures cannot exist in the same community, George Johnstone observed, demonstrated ‘a perfect ignorance of the history of civil society’ and a complete misunderstanding of the workings of the empire. ‘Mankind are constantly quoting some trite maxim, and appealing to their limited theory in politics, while they reject established facts,’ he complained. For colonial supporters, however, ‘custom and continual usage’ were invariably, in Iredell’s phrase, “of a much more unequivocal nature than speculation and refined principles.’ Notwithstanding the fact that it had been ‘so vainly and confidently relied on’ by their antagonists, their beautiful theory in political discourses—the necessity of an absolute power residing somewhere in every state’—seemed . . . to **be wholly inapplicable to a situation involving ‘several distinct and**

**independent legislatures, each engaged on a separate scale, and employed about different objects. [Besides presaging the views of later “nationalists” in the Federal Convention, derived from their rejection of *imperium in imperio* and their new theory of a single people in America, the remarks above also highlight the wisdom of John Dickinson when he said “Experience must be our guide. Reason may mislead us.” Independent America was comprised of thirteen different and independent states and their reality could not be ignored in forming a new government beyond the Confederation.]<sup>2</sup>**

For the new states as a whole, the Second Continental Congress continued to be the unofficial government until the Articles of Confederation were approved by all of the states in 1781. Although a plan of a Confederation of States was drafted at the time of Independence, many state issues delayed implementation. As to its form and nature, there was no doubt that the Articles of Confederation were a league of independent states denominated as a “Confederacy.” Before the new Constitution of 1787-1788, it was also referred to a “federal” government. By contrast, the new government formed by the Constitution of 1787-1788 as ratified pending amendments (there was no “Constitution of 1787”) was a unique “confederate republic” of a compound nature with two governments supposedly sharing governance: a new federal authority for general purposes and those of the states who were sovereign with respect to their local and internal concerns (including slavery to abolish or not). These powers were reserved to them by the Tenth article of the Bill of Rights based on demands emanating from some of the most important state ratifying conventions. Neither a Confederation, nor was the new government a “national” one either! A “national” government, in fact, was proposed at the beginning of the Federal Convention and then categorically rejected.<sup>3</sup>

Because the reality of a **non-national government** being established in 1787-1788 has such enormous implications for later American and Southern history—states’ rights were an original intention and crucial both to federalism and America’s new extended republic while **nationalism** was not (making Andrew Jackson, Daniel Webster, and Abraham Lincoln the real innovators or “out-liers” in constitutional history)—and it was also the North that changed beliefs by embracing newer and foreign “isms” and not the South (which did so because of slavery), what the framers really intended needs to be determined authoritatively for history’s sake. America’s Civil War was about much more than slavery and its origins are to sought above the Mason Dixon line rather than below. On the myth of slavery as the single cause, Edward Ayers has a different opinion.

Even slavery, usually cited as the defining issue of the region, was far more complex than many historians recognize. Enthusiasm for secession didn’t correlate with local patterns of slave-owning, nor did ending slavery emerge as the main justification for the Civil War until late in the conflict. Civil War historians have argued back and forth about the causes of the conflict. The dominant school long argued that economic issues such as tariffs and industrialism were more critical in causing the war than the slavery issue—and that the conflict might well have been avoided. More recently, the focus on slavery in such works as Ken Burns’s Civil War documentary and James McPherson’s *Battle Cry of Freedom* has presented the image of a tragic and inevitable—but finally cleansing—conflict. The truth, Ayers argues, embodies some of both viewpoints and resists “bumper-sticker” answers.

Indeed, the South, along with the other North, remained republican in character and spirit while a part of the North became Romantic, perfectionist, and nationalist. Thus, the Northern and Romantic-Nationalist origins of America’s Civil War of 1861-1865—that was very much about conflicting views of government, society, and politics informed by

original intentions (18th century republicanism and federalism) versus much different ones (19th century Romanticism).<sup>4</sup>

The source for this startlingly new (old) insight is none other than the *Notes of Debates in the Federal Convention Reported by James Madison* (1840 and later editions). As the most complete source of information about the debates at Philadelphia that actually records what delegates said (that the *Journal of the Federal Convention* published in 1819 does not). It also confirms the notes of other delegates beginning with *The Secret Proceedings and Debates of the Convention Assembled at Philadelphia . . .* by Robert Yates in 1821). Therein, too, is to be found what remained secret before 1840 (and allowed the wide embrace of such a falsehood as a national and supreme government as an original intention) and what has long since been forgotten afterwards with the triumph of the myths of democracy and a reactionary South with the Northern victory on the battlefields of 1861-1865. Then did slavery become the sole cause and the War between the States blamed on the South alone.<sup>5</sup>

From May 29 to July 16, a few “nationalists” attempted to establish a single and supreme or “consolidated” government for all of America that operated directly on the people as individuals and that also sought to avoid the intervention of state governments as much as possible. Embodied in the Virginia Plan (really Madison’s) and introduced to the convention on May 29 by Governor Edmund Randolph (since Madison was busy recording his famous *Notes*), it sought (as the first proposition was changed on May 30 to move beyond “**a Union of the States merely federal**” and a revision only of the Articles of Confederation (to which most delegates were bound by state instructions deputing them as delegates from the various states). As revised, the first proposition underscored

the need “for a **national** Government” to be established “consisting of a **supreme** Legislative, Executive & Judiciary.”<sup>6</sup>

Immediately objections were raised. On May 30, as recorded by Madison: “Some verbal criticisms were raised agst. the first proposition, and it was agreed on motion of Mr. BUTLER seconded by Mr. RANDOLPH, to pass on to the third, which underwent a discussion, less however on its general merits than **on the force and extent of the particular terms national & supreme**” “**Mr. CHARLES PINKNEY** wished to know of Mr. Randolph whether he meant to abolish the State Governmts. altogether. Mr. R. replied that he meant by these general propositions merely to introduce the particular ones which explained the outlines of the system he had in view.” “**Genl. PINKNEY** expressed a doubt whether the act of Congs. recommending the Convention, or the Commissions of the Deputies to it, could ] authorise a discussion of a System founded on different principles from the federal Constitution. **Mr. GERRY** seemed to entertain the same doubt.” “**Mr. Govr. MORRIS** explained the distinction between a federal and national, supreme, Govt.; **the former being a mere compact** resting on the good faith of the parties; **the latter having a compleat and compulsive operation**. He contended that in all Communities there must be one supreme power, and one only [sovereignty indivisible].” “**Mr. SHERMAN** who took his seat today, admitted that the Confederation had not given sufficient power to Congs. and that additional powers were necessary; particularly that of raising money which he said would involve many other powers. **He admitted also that the General & particular jurisdictions ought in no case to be concurrent**. He seemed however not be disposed to make too great inroads on the existing system; intimating as one reason that it would be wrong to lose every amendment, by inserting such as would not be agreed to by the States.” It was moved by Mr. READ 2ded. by Mr. Chs. COTESWORTH PINKNEY, to postpone the 3d. proposition last offered by Mr. Randolph viz that a national Government ought to be established consisting of a supreme Legislative Executive and Judiciary," in order to take up the following-viz. "Resolved that in order to carry into execution the Design of the States in forming this Convention, and to accomplish the objects proposed by the Confederation a more effective Government consisting of a Legislative, Executive and Judiciary ought to be established. The motion to postpone for this purpose was lost [Note that the words ‘national’ and ‘supreme’ were dropped.].”<sup>7</sup>

The first and most important debate of the Federal Convention had begun. As delegates understood it, and as Edmund Randolph expressed it on June 16, a month before the Great Compromise, “**the true question is whether we shall adhere to the federal plan, or introduce the national plan.**” Also speaking on June 15 was John Lansing of New York: “**Mr. LANSING** called for the reading of the 1st. resolution of each plan, which he considered as involving principles directly in contrast; that of Mr.

Patterson says he sustains the sovereignty of the respective States, that of Mr. Randolph destroys it: the latter requires a negative on all the laws of the particular States; the former, only certain general powers for the general good. The plan of Mr. R. in short absorbs all power except what may be exercised in the little local matters of the States which are not objects worthy of the supreme cognizance. He grounded his preference of Mr. P.'s plan, chiefly on two objections agst. that of Mr. R. 1. want of power in the Convention to discuss & propose it. 2. the improbability of its being adopted.

**1. He was decidedly of opinion that the power of the Convention was restrained to amendments of a federal nature, and having for their basis the Confederacy in being.** The Act of Congress, The tenor of the Acts of the States, the Commissions produced by the several deputations all proved this. And this limitation of the power to an amendment of the Confederacy, marked the opinion of the States, that it was unnecessary & improper to go farther. He was sure that this was the case with his State. N. York would never have concurred in sending deputies to the convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government.

2. was it probable that the States would adopt & ratify a scheme, which they had never authorized us to propose? and which so far exceeded what they regarded as sufficient? We see by their several Acts particularly in relation to the plan of revenue proposed by Cong. in 1783, not authorized by the Articles of Confederation what were the ideas they then entertained. Can so great a change be supposed to have already taken place. To rely on any change, which is hereafter to take place in the sentiments of the people, would be trusting to too great an uncertainty. We know only what their present sentiments are. And it is in vain to propose what will not accord with these. **The States will never feel a sufficient confidence in a general Government to give it a negative on their laws.** The Scheme is itself totally novel. There is no parallel to it to be found. The authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

**Mr. PATTERSON**, said as he had on a former occasion given his sentiments on the plan proposed by Mr. R. he would now, avoiding repetition as much as possible, give his reasons in favor of that proposed by himself. He preferred it because it accorded 1. with the powers of the Convention, 2. with the sentiments of the people. If the confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them of ourselves. I came here not to speak my own sentiments, but the sentiments of those who sent me. **Our object is not such a Governmt. as may be best in itself, but such a one as our Constituents have authorized us to prepare, and as they will**



**approve.** If we argue the matter on the supposition that no Confederacy at present exists, it can not be denied that all the States stand on the footing of equal sovereignty. All therefore must concur before any can be bound. **If a proportional representation be right, why do we not vote so here?** If we argue on the fact that a federal compact actually exists, and consult the articles of I, we still find an equal Sovereignty to be the basis of it. He reads the 5th. art: of the Confederation giving each State a vote & the 13th. declaring that no alteration shall be made without unanimous consent. This is the nature of all treaties. What is unanimously done, must be unanimously undone. It was observed [by Mr. Wilson] that the larger States gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are they for that reason at liberty to take it back. Can the donor resume his gift without the consent of the donee. This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser States. The large States acceded readily to the confederacy. It was the small ones that came in reluctantly and slowly. N. Jersey & Maryland were the two last, the former objecting to the want of power in Congress over trade: both of them to the want of power to appropriate the vacant territory to the benefit of the whole. If the sovereignty of the States is to be maintained, the Representatives must be drawn immediately from the States, not from the people: and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty, is that of throwing the States into Hotchpot. To say that this is impracticable, will not make it so. Let it be tried, and we shall see whether the Citizens of Massts. Pena. & Va. accede to it. It will be objected that Coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the States, or from the individuals; and according to his plan it may be exerted on individuals as well as according that of Mr. R. A distinct executive & Judiciary also were equally provided by his plan. It is urged that two branches in the Legislature are necessary. Why? for the purpose of a check. But the reason of the precaution is not applicable to this case. Within a particular State, where party heats prevail, such a check may be necessary. In such a body as Congress it is less necessary, and besides, the delegations of the different States are checks on each other. Do the people at large complain of Congs.? No, what they wish is that Congs. may have more power. If the power now proposed be not eno', the people hereafter will make additions to it. With proper powers Congs. will act with more energy & wisdom than the proposed Natl. Legislature; being fewer in number, and more secreted & refined by the mode of election. The plan of Mr. R. will also be enormously expensive. Allowing Georgia & Del. two representatives each in the popular branch the aggregate number of that branch will be 180. Add to it half as many for the other branch and you have 270. members coming once at least a year from the most distant as well as the most central parts of the republic. In the present deranged state of our finances can so expensive a system be seriously thought of? By enlarging the powers of Congs. the greatest part of this expence will be saved, and all purposes will be answered. At least a trial ought to be made.

**Mr. WILSON** entered into a contrast of the principal points of the two plans so far he said as there had been time to examine the one last proposed. These points were. 1. in the Virga. plan there are 2 & in some degree 3 branches in the Legislature: in the plan from N. J. there is to be a single legislature only. 2. Representation of the people at large

is the basis of the one: the State Legislatures, the pillars of the other. 3. proportional representation prevails in one: -equality of suffrage in the other. 4. A single Executive Magistrate is at the head of the one: a plurality is held out in the other. 5. in the one the majority of the people of the U. S. must prevail: in the other a minority may prevail. 6. the Natl. Legislature is to make laws in all cases to which the separate States are incompetent &: in place of this Congs. are to have additional power in a few cases only. 7. A negative on the laws of the States: in place of this coercion [sic] to be substituted. 8. The Executive to be removeable on impeachment & conviction; in one plan: in the other to be removeable at the instance of majority of the Executives of the States. 9. Revision of the laws provided for in one: no such check in the other. 10. inferior national tribunals in one: none such in the other. 11. In ye. one jurisdiction of Natl. tribunals to extend &c; an appellate jurisdiction only allowed in the other. 12. Here the jurisdiction is to extend to all cases affecting the Nationl. peace & harmony: there, a few cases only are marked out. 13. finally ye. ratification is in this to be by the people themselves: in that by the legislative authorities according to the 13 art. of the Confederation.

With regard to the power of the Convention, he conceived himself authorized to conclude nothing, but to be at liberty to propose any thing. In this particular he felt himself perfectly indifferent to the two plans.

With regard to the sentiments of the people, he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved, were commonly mistaken for the general voice. He could not persuade himself that the State Govts. & Sovereignties were so much the idols of the people, nor a Natl. Govt. so obnoxious to them, as some supposed. Why sd. a Natl. Govt. be unpopular? Has it less dignity? will each Citizen enjoy under it less liberty or protection? Will a Citizen of Delaware be degraded by becoming a Citizen of the United States? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their Govts.? no, Sir. It is from the Natl. Councils that relief is expected. For these reasons he did not fear, that the people would not follow us into a national Govt. and it will be a further recommendation of Mr. R.'s plan that it is to be submitted to them, and not to the Legislatures, for ratification.

Proceeding now to the 1st point on which he had contrasted the two plans, he observed that anxious as he was for some augmentation of the federal powers, it would be with extreme reluctance indeed that he could ever consent to give powers to Congs. he had two reasons either of wch. was sufficient. 1. Congs. as a Legislative body does not stand on the people. 2. it **is a single body**. 1. He would not repeat the remarks he had formerly made on the principles of Representation. he would only say that an inequality in it, has ever been a poison contaminating every branch of Govt. In G. Britain where this poison has had a full operation, the security of private rights is owing entirely to the purity of Her tribunals of Justice, the Judges of which are neither appointed nor paid, by a venal Parliament. The political liberty of that Nation, owing to the inequality of representation is at the mercy of its rulers. He means not to insinuate that there is any parallel between the situation of that Country & ours at present. But it is a lesson we ought not to disregard, that the smallest bodies in G. B. are notoriously the most corrupt.

Every other source of influence must also be stronger in small than large bodies of men. When Lord Chesterfield had told us that one of the Dutch provinces had been seduced into the views of France, he need not have added, that it was not Holland, but one of the smallest of them. There are facts among ourselves which are known to all. Passing over others, he will only remark that the Impost, so anxiously wished for by the public was defeated not by any of the larger States in the Union. 2. Congress is a single Legislature. Despotism comes on Mankind in different Shapes, sometimes in an Executive, sometimes in a Military, one. Is there no danger of a Legislative despotism? Theory & practice both proclaim it. If the Legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it within itself, into distinct and independent branches. In a single House there is no check, but the inadequate one, of the virtue & good sense of those who compose it.

On another great point, the contrast was equally favorable to the plan reported by the Committee of the whole. It vested the Executive powers in a single Magistrate. The plan of N. Jersey, vested them in a plurality. In order to controul the Legislative authority, you must divide it. In order to controul the Executive you must unite it. One man will be more responsible than three. Three will contend among themselves till one becomes the master of his colleagues. In the triumvirates of Rome first Caesar, then Augustus, are witnesses of this truth. The Kings of Sparta, & the Consuls of Rome prove also the factious consequences of dividing the Executive Magistracy. Having already taken up so much time he wd. not he sd. proceed to any of the other points. Those on which he had dwelt, are sufficient of themselves: and on a decision of them, the fate of the others will depend.

**Mr. PINKNEY**, the whole comes to this, as he conceived. Give N. Jersey an equal vote, and she will dismiss her scruples, and concur in the Natil. system. He thought the Convention authorized to go any length in recommending, which they found necessary to remedy the evils which produced this Convention.<sup>8</sup>

With the Great Compromise of July 16 (still misunderstood), when “nationalists” acquiesced in the republican-federal insistence on equality in the Senate, the proposed government for America had to be federal and not “CONSOLIDATED.” With representation in the Senate based on the States, **a first step had been taken to complete America’s new “confederate republic”** of a compound nature [as described by Alexander Hamilton in *The Federalist* #9], a government like no other in history: a republic for an extensive territory as America comprised. This process would not be completed until the state ratification conventions met and some offered recommendatory

amendments. Historians of the Constitution have all excluded this important phase of government-making because it was when a federal government (the proposed plan being submitted to the states) led to federalism itself. For obvious reasons, again, historians dismiss the state debates as being about the complaints of the Constitution's opponents, those "anti-Federalists." Far more than being opponents of the Constitution, however, they (the republican-federalists) were instead its perfecters in making it federal rather than national and in keeping with the principles of 1776. The Constitution thus fulfilled the purpose of the American Revolution instead of rejecting it.<sup>9</sup>

#### Federalists as Nationalists and Anti-Federalists as Anti-Nationalists

In characterizing the "Anti-Federalists" as opponents of the Constitution only, the assumption is made that the plan reported by the Federal Convention was in fact **the Constitution!** Moreover, the Bill of Rights did not change its national character and these amendments were accepted to placate the opposition and turn them into friends of the Constitution. In the longer term, the mischaracterization of the "Anti-Federalists" as opponents of the Constitution would survive into the nineteenth century to smear John C. Calhoun and the Nullifiers of 1828-1832. In his new history of the Constitution, *State Sovereignty and a Certain Dissolution of the Union . . .* (New York: J. Kennaday, 1832), Benjamin Romaine of New York repeated the slurs of the Federalists versus the "Anti-Federalists" along with a myth of a Confederacy that charged the Nullifiers with reviving the old Articles of Confederation. Addressing his book "To the Honorable John C. Calhoun, Vice President of the United States," Romaine begins:<sup>10</sup>

Your very labored publication to sustain an existing 'paramount,' Sovereignty in our several States, since the adoption of the present Constitution of the United States, has occasioned a general surprise, and much painful regret. Your Station, the time, manner, and perplexing matter of your address, has made it a subject of the highest importance,

not to us only, but very specially to the Republics of South America, who had adopted our model, and [are] now held in a confused struggle of formation, from this impracticable doctrine, sought to be sustained among us. [Note: Romaine and other nationalists are wrong on this point. Calhoun and the Nullifiers were not proclaiming the States to be sovereign and independent! They ceased to be so with the new Constitution of the U. S. in 1787-1788. If not sovereign and independent, however, they were now sovereign with respect to the powers of government reserved to them. With a new federal government, divided between two separate political entities, a “line of partition” was also established that was to keep the national and state governments within their respective spheres of political power. With the recent War of Independence in mind, preventing the concentration of power was a top priority. Should the new federal authority assume powers not delegated or usurp powers reserved to the states, the states had a veto or negative of their own (in keeping with the new American theory of checks and balances) to preserve the “line of partition” and to maintain the government as federal and limited. Choosing to forget the unique nature of America’s new “confederate republic” of a compound nature, anti-Nullifiers charged Nullifiers of reviving the old Articles of Confederation while they invoked the new myth of a “national government” that without any doubt was rejected in the Federal Convention of 1787.]

Continuing in his new history for a new nation in the making, Romaine then states:

“Of this **anti-federal germ** you now stand forth the unequalled advocate, although we have a deep experience, and certain knowledge of its destructive tendencies. This I now pledge myself to substantiate, in a few short numbers [four in all], and which, in strict propriety, are addressed to you as my special auditor. It is evident that a great and mighty change of political sentiment, is about to pervade a large portion of this globe. Such great changes, whether religious or political, are of rare occurrence. Europe has been held under the uniform policy of personal despotism, for more than three thousand years, and the struggle now is if their institutions are to be eternal! Our written model of republican Constitution [that was not democratic], has gone forth thank God, and yet stands foremost in the high career of social melioration. Hence, Sir, the vast concern in to sustain it in all of its purity, and as it was adopted by a united Sovereign people [not true], and as now displayed by its ample energies----all operating, in due checks and balances [but not all of them], and resting mainly on the single lever of the *elective franchise* [as the new power of the people in the aggregate and a majority alone that made it democratic not republican and about which the framers warned] . . . .”

“A total denial of this fact [the idea of supreme Sovereignty in the collected body of the people of the United States], is the main subject of your address [the Fort Hill letter], and you are the first man who ever assumed a like position, and grounded on a ‘paramount’ Sovereignty of the individual states, since the adoption of the present Constitution. [This was not Calhoun’s view!] It is clearly seen, that, your assumption became of indispensable necessity as the ground work of your system of nullification. You have indeed placed yourself, in the front ground, but it can no longer be doubted to be the work of a **combination**. You have seized on the death robes of the deceased Jefferson to

bear you out in your assumption. You have raked into the embers of his election to the Presidency in 1800, and the then opposition to the Alien and Sedition laws, and applied them to your present system of nullification . . . .”

“You now declare to have assumed as facts, and the main ‘Basis’ of your productions, certain Kentucky resolutions, and a report of the Virginia Legislature, as far back as 1798, and passed during the heat of that unexampled party contest, which placed Mr. Jefferson in the chair of the Union! . . .

Besides claiming that “these long-by-gone circumstances . . . are now totally irrelevant to your present system of nullification,” Romaine repeats yet another myth of the difference between the “Virginia Doctrines and the Carolina ones” and chastises Calhoun for making him [Jefferson] “an accomplice” (while forgetting Madison). “Your principles of nullification go to destroy the constitution” while “Mr. Jefferson’s principles . . . sustain it on the ground **of the elective franchise, based on the will of the majority, which you now also declaratively oppose.**” Jefferson, however, was no more a democrat than Calhoun and the framers were distrustful of democracy and the tyranny of the majority. In the Age of Jackson, that was also the Age of Democracy in America (as Alexis de Tocqueville well understood and described), Romaine not only projects this idea backward in time to Jefferson, but he conveniently ignores Jefferson’s republican-federalist views from 1787-1788 to 1826. Jefferson was no egalitarian nor was he a nationalist who believed in the supremacy of government over the states.<sup>11</sup>

To Romaine’s point about the Alien and Sedition Acts being irrelevant, he was wrong again. Infractions of the Constitution were always serious and had to be resisted. America’s new written charter of government was supposed to limit the federal government to the exercise of delegated powers alone. The Sedition Act was a direct violation of the Bill of Rights reserved to the states and the people thereof and thus, as both Jefferson and Madison concurred, grounds for protesting this assumption of power

not granted and specifically reserved. As a federal and limited government, with a “line of partition” dividing the powers of government, the states too had a veto or negative as a positive power of self-defense to maintain their independence and to keep the government a federal one. This is what the Kentucky and Virginia Resolution intended to do. The threat of civil war, it should be noted, emanated from the nationalist side and its new belief in the Union as absolute and irrevocable (as Paul C. Nagel notes in his *One Nation Indivisible: The Union in American Thought, 1776-1861*.)<sup>12</sup>

In fact, Calhoun and the Nullifiers were defending the Constitution of 1787-1788 as ratified pending amendments (which completed the transition from the Articles of Confederation to a new federal republic like no other in history). In the “South Carolina Exposition & Protest of 1828, “ Calhoun’s sources were the Constitution, the essays by Publius in *The Federalists*, the newly published *Journal of the Federal Convention* (published in 1819), the Kentucky and Virginia Resolutions of 1798, and Madison’s *Virginia Report of 1800* (that presented a republican-federal history of the American republic since 1776). Not one Anti-Federalist is quoted. No new states’ rights theory of the Constitution had to be invented because they were already expressed in the Federal Convention and the state ratifying conventions of 1787 and 1788.<sup>13</sup>

The term “Anti-Federalists” is misleading and incorrect. The division within the Federal Convention of 1787 was between a few “nationalists” (principally James Madison, Alexander Hamilton, James Wilson, Gouverneur Morris, Rufus King, and George Washington) and “republican-federalists.” This division persisted into the state ratification debates and beyond to explain the first party system between Federalists (nationalists) and Republicans (Whigs and federalists). The term, “Federalist,” was

adopted by the “nationalists” after the Great Compromise of July 16. In their view, state representation in the Senate on an equal basis was concession enough to make the proposed government a federal one. As “republican-federalists” continued their opposition through the Federal Convention and into the state ratifying conventions, the “nationalists” now as “Federalists” assumed this name for themselves in defense of the proposed plan of government without amendments including a Bill of Rights (see Henry Knox to George Washington, October 3, 1787, in the *Papers of George Washington*, LC, on “the germ of opposition” originating in the Convention). Their hope was to secure as rapid a ratification as possible without any further dilution of national power.<sup>14</sup>

In this context, Elbridge Gerry’s description of the political division in the continuing debate about the Constitution of 1787-1788 is most insightful: “Those who were called antifederalists at the time complained that they had injustice done to them at the time by the title, because they were in favor of a Federal Government, and the others were in favor of a national one; **the federalists were for ratifying the constitution as it stood, and the others not until amendments were made.** Their names then ought not to have been distinguished by federalists and antifederalists, but rat[ification]s and antirat[ification]s.”<sup>15</sup>

To George Ticknor Curtis, author of *History of the Origin, Formation, and Adoption of the Constitution of the United States, with Notices of its Principal Framers* (2 vols., New York, Harper and Brothers, 1858, 1859):

As the Constitution presented itself to the people in the light of a proposal to enlarge and reconstruct the system of the Federal Union, its advocates became known as ‘the Federalists,’ and its adversaries as the ‘Anti-Federalists.’ This celebrated designation of *Federalist*, which afterwards became so renowned in our political history as the name of a party, signified at first nothing more than was implied in the title of the essays which passed under that name, namely, as advocacy of the Constitution of the United States.



The history of the terms ‘Federal’ and ‘Federalists,’ offers a curious illustration of the capricious changes of sense which political designations undergo, within a short period of time, according to the accidental circumstances which give them their application. During the discussion of the Convention which framed the Constitution of the United States, the term federal was employed in its truly philosophic sense, to designate the nature of the government established by the Articles of Confederation, **in distinction from a national system, that would be formed by the introduction of the [Virginia] plan having the States represented in Congress in proportion to the numbers of their inhabitants.** But when the Constitution was put before the people of the States for their adoption, its friends and advocates were popularly called Federalists, because they favored an enlargement of the Federal government at the expense of some part of the State sovereignty, and its opponents were called the Anti-Federalists. In this use, the former term in no way characterized the nature of the system advocated, but merely designated a supporter of the Constitution. A few years later, when the parties were formed, in the first term of Washington’s Administration it so happened that the leading men who gave a distinct character to the development of the Constitution, then received had been prominent advocates of its adoption, and had been known as Federalists, as had also been the case with some of those who separated themselves from this body of persons and formed what was termed the Republican, afterwards the Democratic party . . . . Thus, for example, Hamilton, in 1787, was no Federalist, because he was opposed to the continuance of a federal, and desired the establishment of **a national government.** In 1788, he was a Federalist, because he wished the Constitution to be adopted, and he afterwards continued to be a Federalist, because he favored a particular policy in the administration of the government, under the Constitution. It is in this later sense that the term became so celebrated in our political history. The reader will observe that I use it, of course, in this work, in the sense attached to it while the Constitution was before the people of the States for adoption.”<sup>16</sup>

#### A Line of Partition

The opponents of the proposed plan of government, in the Federal Convention and beyond, were really “anti-nationalists” as well as “federalists.” To them, state representation in the Senate on an equal basis did not make the new government to be federal enough. There still remained the states themselves and what their role and rights would be in a new government? The “republican-federalist” solution began with distinguishing a “line of partition” between two governments, a new federal authority and those of the states. To the former, powers few and specific were delegated for general purposes and all others were reserved to the states or to the people thereof for local and internal concerns (including slavery to be abolished or not as each state decided for or

against). Besides inventing modern federalism, governance being shared by two governments for distinct and separate purposes, the republican-federalists also created a new republican government on an extended basis like no other in the world. Alexander Hamilton described it in *The Federalist* # 9 as a “confederate republic” of a compound nature. Neither national, nor was it the Confederation of old. It was, effectively, what the delegates to the Federal Convention were empowered to do, a revision to strengthen the Confederation only.<sup>17</sup>

There was another aspect to America’s new federal government and a union of the states that scholars, historical and constitutional, have totally ignored despite the evidence presented in James Madison’s *Notes of Debates* and in the state ratification debates. Since the powers of government (not sovereignty) were to be divided between a new federal authority and those of the states, it stood to reason that the states like the departments of government (Executive, Legislative, Judicial) should also be empowered with a veto or negative as a positive power of self-defense by which to maintain their independence. As parties to the new compact of government, the states were thus responsible for maintaining the new “line of partition” and keeping the federal government within its sphere and not usurping the rights of the states. In a word, Nullification or State Interposition (there was no real difference between them) was very much a principle of American federalism and limited government and an original intention.<sup>18</sup>

#### Original Intentions Recovered

By 1830, Jonathan Elliot had published the first edition of his *Debates in the Several State Conventions on the Adoption of the Federal Convention* to solidify the documentary record against a national government being established in 1787. Since the publication

of the *Journal of the Federal Convention* in 1819, the *Secret Proceedings* . . . of Robert Yates in 1821, and the later writings of John Taylor of Caroline between 1820 and 1823 (*Construction Construed and Constitutions Vindicated*, *Tyranny Unmasked*, and *New Views of the Constitution*) along with *The Federalist* (with the authority of Publius being cited in favor of a federal and limited government), there was documentary evidence enough to solidify the republican-federal view of the Constitution and the Union against that of the “nationalists.” Notwithstanding the 20th century criticism of James H. Hutson of the Library of Congress, that attacked the veracity of Elliot’s *Debates* and their contents and the integrity of its editor who was supposedly a supporter of John C. Calhoun, the new *Documentary History of the Ratification of the Constitution* (now in 29 volumes) certainly supplants but by no means invalidates Elliot’s *Debates*.<sup>19</sup>

In volume three, in the debates in Virginia covering 663 pages, there is the familiar charge of “consolidation” being attempted and that one single government for all of America would be fatal to the liberties of the people (citizens of the states) and thus making “an extended republic” indispensable. George Mason hopes that “a government may be framed which may suit us, by **drawing a line between the general and state governments.**” Madison, meanwhile, repeats his arguments from *The Federalist* about the government being unprecedented and partly national and partly federal. The general government’s powers were not only enumerated, but it was not “wholly independent of the states and depended on them. To assure the federal nature of the government to be and its limited purposes, republican-federalists in Virginia and elsewhere insisted upon amendments that would clarify and specify the rights of the states: “That there be a declaration or bill of rights asserting, and securing from encroachment, the essential and

indispensable rights of the people” and that “each state in the union shall separately retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the federal government.” So, securing the personal rights of citizens as well as the rights of states were thus joined together!<sup>20</sup>

Indispensable as James Madison was to the creation of a new federal republic for America, he cannot be considered the “Father of the Constitution” as historians have claimed. His Virginia Plan in the Federal Convention was modified with the small states’ demand for equal representation in the Senate to be based on the states and not proportionally. While this made the proposed government “quasi-Federal,” his pet proposal for a “National Negative” over state laws was defeated several times in the Federal Convention. Not only did Madison himself reject the claim of being the sole author, the Constitution was the product of many . . . , but he also stated that original intentions were to be found in the state conventions that ratified the new Constitution.<sup>21</sup>

Critic of “originalism” that Jack N. Rakove is, and however complex the subject of what the framers intended or not in regard to particular words and clauses (not only what was said but what was not), there is no doubt whatever about the larger purpose of the Constitution or the nature of the Union it established. Presuming a “nationalist” intention from the beginning (not unlike Andrew Jackson or Abraham Lincoln), Rakove marginalizes state’s rights and following Madison interprets *federalism* as a much more complex concept than what it was: two governments sharing legitimate political power (not sovereignty) granted to them by the sovereign people—the states.<sup>22</sup>

Beyond Original Intentions and the Past:  
Daniel Webster and a New History for a New Nation in the Making

## in the Nineteenth Century

Writing about the “Great Triumvirate” of Webster, Clay, and Calhoun during the third Nullification controversy in America of 1828-1832, and in particular about the Webster-Hayne debate of 1830, the late Prof. Merrill D. Peterson made this telling point: “In the course of answering Hayne point by point, Webster unfolded a **[new] conception of the Union and the Constitution that stood in stark contrast to that of the South Carolinians** [who were defending original intentions and the principles of republicanism and federalism].” After calling Hayne “the fanatical one” about slavery and “imagining a Northern conspiracy against slavery where none existed,” he came to the American System. “ Then “Webster again disclosed the wide gulf between **two systems of politics, two philosophies of the Union.**” Instead of seeing “essentially different countries with different interests [as represented by Ohio and South Carolina], we [in the North] look upon the States, not as separated, but as united . . . . We do not impose . . . geographical limits to our patriotic feelings . . . .”<sup>23</sup>

When Hayne referred to the Hartford Convention and New England disunionism, Webster answered that it “was ancient history, and Webster made light work of it . . . . Of what consequence, he stated, was it in 1830 whether men or states or sections had once been Federalists or Republicans?” Webster’s **dismissal of the past** would be important to his reinterpretation of the Constitution and the Union or “his explanation of [their] true principles.” Interestingly, according to Prof. Peterson, Webster agreed with Hayne and the South Carolina Exposition & Protest. “His statement . . . . “ “Regardless, he denied the authority of a state to decide constitutional questions. ‘It is, Sir, the people’s Constitution, the people’s government, made for the people, made by the people, and

answerable to the people.’ In thus stating the theory of the Constitution as the fundamental law of one people, rather than a compact of sovereign states, Webster drew upon a strain of Supreme Court interpretations, to which he had himself contributed, and upon a body of nationalist thought that included perhaps most significantly for him, Nathan Dane’s 1829 *Appendix to his General Abridgment and Digest of American Law*. Dane, whose claim to authorship of the Northwest Ordinance was championed by Webster, held that the Union was older than the Constitution and the states were its creatures rather than the reverse. While Webster did not go this far, he found ample basis for the nationalist theory in two provisions of the Constitution, one declaring it to be ‘the supreme law of the land,’ the other vesting in the Supreme Court the power to decide ‘all cases arising under the Constitution and laws of the United States.’ This, he said, was ‘the keystone to the arch’ of supremacy and permanence.<sup>24</sup>

As Peterson admits, “**The idea of a supreme and permanent Union was still something of a novelty in 1830.** Free of the embarrassments of nullification, the Carolinians’ view of the Union as only a partnership, which might be dissolved when it became inconvenient **was closer to the prevailing conception than Webster’s doctrine.** Almost every politician acknowledged ‘the sovereignty of the states.’ Liberty was supposed to depend more on the rights of the states than on the powers of the general government. Even the leading textbook on the Constitution [by William Rawle] maintained the right of a state to secede peacefully, from the Union.” Ralph Waldo Emerson, Transcendentalist turned nationalist by 1850, could declare vvthat “The Union is part of the religion of this people [as one].”<sup>25</sup>

In his later reply to John C. Calhoun's speech on the Force Bill, Webster "said **nothing new** . . . . Dropping the legalistic contract theory [the nationalists' alternative to the compact theory], he treated the Constitution as a law of **paramount obligation** and as a perpetual union of **one people**." In his **new** view, and one becoming more popular in the North as a new history for a new nation in the making, "the **existence** not the **origins** of the Constitution was the question. The founding fathers had created a national government based on the will of the people and commanding ascent to its laws."<sup>26</sup>

Afterword:

Joseph J. Ellis on the American Founding

When I decided to purchase and peruse *American Creation: Triumphs and Tragedies at the Founding of the American Republic* (New York, 2007), I was not expecting what I discovered and that is the author's agreement with my views expressed above about the rejection of a "national" government in favor of a federal one in process of becoming something new and unique as a "confederate republic" of a compound nature that was neither "consolidated" nor a revival of the old Confederation.

Beginning with the Federal Convention of May to September of 1787, Ellis devotes considerable space to a select group of "nationalists" ("consolidationists") who agreed with George Washington that the successful conclusion to the War of Independence meant "not only independence from the British Empire," but "the creation of an American Empire." As opponents of the Articles of Confederation, who had cause to exaggerate its failings, these "nationalists" believed that "the burgeoning American empire required a fully empowered **central government** to manage its inevitable expansion. " By 1786, Washington "had grown convinced that his beloved American republic was not on the verge of greatness but rather at the edge of anarchy. Multiple

letters poured out from Mount Vernon, warning that the government established under the Articles of Confederation had proved itself ‘a rope of sand’ and was now lurching from mere incompetence to complete dissolution.”

**“Without some alternation in our political creed**

[not necessarily a new national government], the superstructure we have been seven years raising at the expense of much blood and treasure must fail. We are fast verging to anarchy & confusion.”

“No morn ever dawned more honourable than ours did and no day was ever more clouded than the present . . . . Thirteen sovereignties pulling against each other, and all tugging at the federal head, will soon bring ruin on the whole.”

To Ellis, “the solution was simultaneously obvious and, at least within the current framework, **impossible**.” In Washington’s words, expressed to John Jay, “I do not conceive we can exist long as a nation . . . without having lodged somewhere a power which will pervade the whole Union in as energetic manner as the authority of the different state governments extends over the several States. We are either a United people, or we are not. If the former, let us, **in all matters of general concern** act as a nation, which have national objects to promote and a National character to support. If we are not, let us no longer act a farce by pretending to it.” As listed by Ellis, the “small coterie of ultra-nationalists” included George Washington and his “trusted political consultants,” Henry Knox, John Jay, and Alexander Hamilton. Madison also reached their “radical conclusions.” Other prominent “nationalists” were Gouverneur Morris and James Wilson of Pennsylvania.<sup>1</sup>

Washington’s sentiments, while genuine, were not realistic politically or constitutionally. “Therein lay the rub. For the vast majority of Americans regarded the Confederation Congress as some distant irrelevancy and their local and state governments



as their only meaningful sources of political authority. Washington's broader nationalistic perspective was exceptional rather than typical, having developed in the crucible of a long war in which the inability of the Continental Congress to coerce the states, and the recalcitrance of the states to provide men and money on a reliable basis, nearly cost America its glorious victory. Or so thought the former commander in chief, for whom American Independence had become synonymous with the creation of American nationhood." Such "a national government," however, "contradicted the most cherished values the American Revolution claimed to stand for." While "the outright nationalists" deplored the Articles, "the vast majority of American citizens saw it as **"a shining example of republican principles, since a strong central government replicated the distant and political power against which they had recently rebelled [seceded]."**"<sup>2</sup>

Preceding the Federal Convention at Philadelphia in 1787, the "nationalists" had been behind the scenes planning a reform of the Articles. Among these was James Madison who arrived early before the opening of the convention on May 14. He "had come to the same conclusion as Washington that the full promise of the American Revolution could be secured only by a viable and wholly **consolidated** nation-state." At Philadelphia, Madison's Virginia Plan presented an "ultra national agenda."<sup>3</sup>

For one who was so "discernibly cerebral, Madison was stunningly adroit at the hurly-burly of practical politics, which boiled down to twisting arms and counting noses." He had "created a network of contacts in all the states [from his service in the Confederation Congress) that provided essential information on the delegates being selected for the looming convention" and "his running tabulation revealed that the

Philadelphia Convention would not repeat the fiasco at Annapolis. There would be a clear majority of delegates committed to a major overhaul of the Articles.” Since “those favoring the status quo had had boycotted the selection process,” this information led Madison to “the surprising conclusion that there was at least a fighting chance to rescue the fragile American republic from dissolution.” Additionally, “Washington’s recruitment to the cause gave the gamble legitimacy. News about the prospective delegates gave it plausibility.”<sup>4</sup>

From Paris, Thomas Jefferson wrote to Madison on June 20, 1787 that “the existent government . . . was like a fabric that needed to be patched but not discarded. **The hole that needed patching concerned federal sovereignty [really power or authority] over foreign affairs, but all domestic policy ought to remain the exclusive province of the states.**” In the end, Jefferson proved to be more prescient than his fellow Virginian. Not only was a “national” government rejected, but a federal government prevailed and, what is more, modern federalism was invented. In America, two governments would share governance with distinct powers (delegated and reserved) for different purposes, general and local. Sovereignty was not divided; only the powers of government were between a general authority and the states. Sovereignty remained indivisible with the people—of the states and not the people at large en masse and in a single entity as James Madison described it.<sup>5</sup>

As Ellis concludes, “the argument that eventually won out, which was a new and wholly unprecedented version of federalism, emerged from the messy political process rather than from the mind of any single thinker [thanks to those republican-federalists wrongly identified as “Anti-Federalists’]. Going further, Ellis even acknowledges “a line

of demarcation” being established which would give to the General Government every power requisite for general purposes, and to leave to the states every power which might be most beneficial to them.” Having admitted to a federal government triumphing over a “national” one, however, Ellis retracts what appears to be a defense of states’ rights without which there could be no federalism or an extended republic without the broad foundation provided by the states themselves. He does because not to do so would jeopardize his own professional status and undermine his own liberal synthesis of a founding that began not with the American Revolution (that was not democratic or egalitarian or nationalist) but with the Federal Convention that “declared nationhood.”<sup>6</sup>

The State Debates and Federalists versus Anti-Federalists,  
1787-1788

This failure by Ellis is obvious by what he and many others prefer to do it. There was more to the story of the ratification debates than “Federalists” and “Anti-Federalists” being proponents and opponents of the new plan of government. Ellis’s confused division of “moderates” (republican-federalists) and “radicals” (“nationalists”) agreeing that the Articles “required revision” is not the case at all. For “nationalists” at the Federal Convention, their plan of a complete consolidation had to be abandoned. After a “national” plan of government was dropped in the Federal Convention before the Great Compromise of July 16, the republican-federalists still believed that the proposed plan was not federal enough even with state representation in the Senate on an equal basis. There still remained the states themselves and their role and rights if they were no longer to be sovereign and independent. Former “nationalists,” now Federalists, agreed that the Great Compromise made the new plan of government federal enough.<sup>7</sup>

Among other truthful and historical insights (about the “nationalists” in the Federal Convention and American federalism), Ellis agrees that “the labels affixed to the two sides also defied logic, for both sides were federalists [after the “nationalist” Virginia Plan and “nationalists” acquiescence in the Great Compromise of July 16, 1787], meaning that they advocated a [new] confederated republic, but disagreed over the relative power of the states and the central government in the confederation.” Just as the “the Virginia delegation had seized the political initiative at Philadelphia, the pro-ratification side stole the rhetorical march by calling themselves Federalists. This left the opponents of ratification in the awkward posture of accepting the wholly negative connotation of Antifederalists. Even before the state-by-state debates had begun, the Federalists won the preliminary round [but this one only].”<sup>8</sup>

Seeking to achieve as rapid a ratification as possible without amendments, that they knew would become an issue since they had been raised at the end of the Federal Convention and also because the subject was being debated in the Confederation Congress, the authors of *The Federalists* changed their strategy as republican-federalist opposition increased beginning in October of 1787. Instead of the scare tactics of the first eight essays by Publius, which emphasized “disunion” if the new Constitution was not ratified, Publius (as Hamilton and Madison) began to describe it as establishing a unique “confederate republic” like no other in history. To quote Prof. Ellis, “the chief goal of *The Federalist* was to contest that claim [of “consolidation”] and offer a rebuttal that would make the Constitution a rescue rather than a betrayal of the American Revolution.”<sup>9</sup>

As the ratification debates progressed through the end of 1787 and into the new year of 1788, “both Hamilton and Madison were forced by the political exigencies of the moment to frame their argument on behalf of the Constitution around a core idea that they had both strenuously opposed at the Philadelphia Convention. As we have seen, Madison had argued for the clear supremacy of the federal government and for the resolution of the sovereignty question at the national rather than the state level. If anything, Hamilton was more of an outright nationalist, preferring that the states disappear altogether. Both men had regarded the more blurred resolution reached at Philadelphia as a terrible defeat that left the all-important question of sovereignty undecided [not true]. Now, however, they embraced the very ambiguity they had condemned as a fatal weakness of the Constitution as its central strength [not true either as will be clarified below].”<sup>10</sup>

“Starting in January of 1788, his [Publius’] message began to change, most probably in response to the obviously effective Antifederalist charge that the Constitution created a consolidated federal government.” Madison argued to the contrary. The Constitution only “vested the central government with . . . those enumerated powers essential for preservation of the union. All residual powers [still undefined] remained with the states. The persistent potency of the state governments thereby assured that the bogeyman depicted by the Antifederalists was a complete fabrication, and the clearly delineated and separate powers of the three federal branches provided added assurance that no full-blooded consolidation could occur at the national level.”<sup>11</sup>

In the Virginia ratification convention of June of 1788, Madison reiterated what had become a familiar argument this time to answer Patrick Henry’s “argument that the

Constitution created a consolidated government that essentially annihilated state power in favor of an omnipotent federal government [which was true].”

If Henry were to read the Constitution carefully, Madison observed, his fears would quickly evaporate, for he would discover that it was truly a unique creation. ‘It is in a manner unprecedented . . . . It stands by itself. In some respects it is a Government of a federal nature; in others it is of a consolidated nature. This hybrid creature rendered Henry’s flamboyant accusations irrelevant because **‘We, the people’ did not refer to ‘the people as composing one great body—but the people as composing thirteen separate sovereignties.’** Apparently Mr. Henry needed to be reminded of the abiding significance the states would have in the new order. The Senate represented states and was elected by the state legislatures. The states appointed the electors who chose the president. All subsequent constitutional amendments must be ratified by the states. Thus the proposed Constitution ‘is of a complicated nature . . . and this complication, I trust, will be found to exclude the evils of absolute consolidation, as well of a mere confederacy.

The fact that eight states had already ratified the new Constitution was not “unsolicited political pressure on Virginia to comply.” It was proof of “a measure of wisdom on the part of our Fellow Americans from which we should learn.”<sup>12</sup>

However much Publius, *The Federalist*, and Federalists described the unique nature of the proposed government to be established by the new Constitution of 1787-1788, the “Anti-Federalists” as its **perfectors** kept reiterating the need for a better definition of the rights of individuals and of states! As far as Publius and Federalists were concerned, the states were no more than mere subdivisions of the federal government essential only for enacting supreme delegated powers. For their part, republican-federalists had something more substantive in mind beginning with a definite “line of partition” to be made between powers delegated and those reserved. If states were the soul and characteristics of a confederacy, they would be just as indispensable in a “confederate republic.” George Mason was very specific in the Virginia ratifying convention. “Whether the Constitution be good or bad [and it had some good qualities

about it], the present clause [about the power of laying direct taxes] clearly discovers that it is a national government, and no longer a Confederation . . . . The very idea of converting what was formerly a confederation to a consolidated government is totally subversive of every principle which has hitherto governed us. This power [beyond the form of the proposed government] is calculated to annihilate totally the state governments.”

It is ascertained, by history, that there never was a government over a very extensive country without destroying the liberties of the people: history also, supported by the opinions of the best writers, shows us that monarchy may suit a large territory, and despotic governments over so extensive a country, but that popular governments can only exist in small territories. Is there a single example, on the face of the earth, to support a contrary opinion? Where is there one exception to this general rule? . . . . There is one thing in it which conceive to be extremely dangerous. Gentlemen may talk of public virtue and confidence; we shall be told that the House of Representatives [to be less numerous than it should be] will consist of the most virtuous men on the continent, and that in their hands we may trust our dearest rights. This, like all other assemblies, will be composed of some bad and some good men; and considering the natural lust of power so inherent in man, I fear the thirst of power will prevail to oppress the people . . . .

He rather hoped “that a government may be framed which may suit us, *by drawing a line between the general and state governments*, and prevent that dangerous clashing of interest and power, which must, as it now stands, terminate in the destruction of one or the other.”<sup>13</sup>

On June 9, Patrick Henry raised the essential question about the role and rights of the states.

“We are told that this government, collectively taken, is without an example; that it is national in this part, and federal in that part, & c. We may be amused, if we please, by a

treatise on political anatomy. It the brain it is national; the stamina are federal; some limbs are federal, others national. The senators are voted for by the state legislatures; so far it is federal. Individuals choose the members of the first branch; here it is national. It is federal in conferring general powers, but national in retaining them. It is to be supported by the states, the pockets of individuals are to be searched for its maintenance. What signifies it to me that you have the most curious anatomical description of it in its creation? To all common purposes of legislation, it is [still] a great consolidation of government [in terms of powers granted and their reach continentally and to be exercised by one part of the government].” **“What shall the states have to do? Take care of the poor, repair and make highways, erect bridges, and so , and so on? Abolish the state legislatures at once. What purposes should they be continued for?”**<sup>14</sup>

Amendments there had to be and were. “If Virginia be for adoption, what states will be left, of sufficient respectability and importance to secure amendments by their rejection?” “North Carolina, it is a poor, despised place. Its dissent will not have influence to introduce any amendments. Where is the American spirit of liberty? Where will you find attachment to the rights of mankind, when Massachusetts, the great northern state, Pennsylvania, the great middle state, and Virginia, the great southern state, shall have adopted this government? Where will you find magnanimity enough to reject it?” If “the remaining states have this magnanimity, they will not have sufficient weight to have the government altered.” Virginia, however, **“has weight and importance.** Her example will have powerful influence [and] her rejection will procure amendments? . . . . The necessity of amendments is universally admitted. It is a word which is reechoed from every part of the country. A majority of those who hear men think amendments are necessary. Policy tells us they are necessary. Reason, self-preservation, and every idea of propriety, powerfully urge us to secure the dearest rights of human nature . . . .<sup>15</sup>

“We are told that all powers not given are reserved.” This truth, however, is belied by English history. “The people of England lived without a declaration of rights till the war in the time of Charles I. That king made usurpations upon the rights of the



people. These rights were, in great measure, before that time undefined. Power and privilege then depended on implication and logical discussion. Though the declaration of rights was obtained from that king, his usurpations cost him his life. The limits between the liberty of the people, and the prerogative of the king, were still not clearly defined” until the Glorious Revolution of 1688. In the Union between Great Britain and Scotland, the privileges of the latter were expressed “in plain and direct terms. They were “particularly secured.” “It was expressly provided that they should retain their own particular laws.”<sup>16</sup>

So, why a Bill of Rights? They tell us “our rights are reserved” and they will “restrain the general government.” To “adopt first, and then amend” is neither reasonable nor safe for liberty. “The government unaltered may be terrible to America, but it can never be lived till it be amended.” Is not “the great and direct end of government . . . liberty? Secure us our liberty and privileges, and the end of government is assured.”<sup>17</sup>

In the second great debate about the proposed plan of government, “the Antifederalists enjoyed advantages of their own, primarily the quite potent claim that they spoke the *true ‘spirit of ’76.’* The Antifederal argument was anchored in the revolutionary ideology that regarded any powerful central government as a domestic version of the very British government they had supposedly repudiated forever. If the watchword of the Federalists was ‘anarchy,’ the watchword for the Antifederalists was “consolidation,’ meaning a nefarious clustering of power in secret conclaves (like the Constitutional Convention itself), while courtiers and politicians plotted to cheat ordinary Americans of their liberty and the rightful rewards of their daily toil. ‘Consolidation”

conjured up the specter of a political monster devouring the rights purportedly guaranteed by the hallowed, indeed sacred, War for Independence . . . .”<sup>18</sup>

Most important, “The Antifederalists also enjoyed the rhetorical advantage of representing the preference of a clear majority of the populace. Although there is no way to know for sure, it seems highly probable that a popular referendum would have produced a negative vote on the proposed Constitution. In Virginia, John Marshall, a staunch Federalist, acknowledged that the population at large opposed ratification, but the ratifying convention itself was evenly split because the voters had chosen the most prominent state and local leaders regardless of their position on ratification. The Antifederalists could therefore claim, with considerable plausibility, to speak for the majority of the people [citizens].” Additionally, “the Antifederalists could and did argue that they were protecting ordinary Americans from a hostile takeover of the American Revolution by an elite minority, who had themselves **lost the true republican faith.**”<sup>19</sup>

#### The Confederate Republic Completed

As ratified pending amendments to be adopted by the First Congress, the “quasi-federal” plan of government after the Great Compromise of July 16, 1787 (by which a “nationalist” or “consolidated” government was defeated), became the new “confederate republic” of a compound nature partially described by Alexander Hamilton in *The Federalist* #9 and in other essays by Publius thereafter. Then did **federalism** (two governments for America rather than one exercising different powers for distinct purposes, general and local) triumph over nationalism or “consolidation.” Those “Anti-Federalists” (really republicans and federalists) not only “spoke for the true “spirit of ’76,” but they deserve credit as the real founders of the Constitution of 1787-1788 and a republican government on an extended basis like no other in history!”<sup>20</sup>

At this point, and contrary to Ellis and most scholars, historical and constitutional, of the founding era, “state sovereignty” **ceased to be relevant** in American political and constitutional history. With the Constitution of 1787-1788, the states were no longer sovereign and independent entities as they had been. States still existed, of course, but their new role was to serve as the foundation for America’s new extended republic and, as a party to the new compact of government, to become the umpire so to speak of the “line of partition” that distinguished delegated versus reserved powers of distinct governments, a new federal authority and those of the states. With this “line of partition” decided, the states themselves were again constituent parts of the new federal government beyond their representation in the Senate. As such, they needed a power of self-defense by which to defend their reserved rights and to maintain the “line of demarcation” at one and the same time. Just as the departments of the federal government were armed with a veto or negative to maintain their independence, so did the new American principle of checks and balances apply to the states. What we know as Nullification or State Interposition was indeed an original principle of American republican and federal government. Speaking in the Federal Convention on June 29, 1787, Dr. Samuel Johnson stated:

The controversy must be endless whilst Gentlemen differ in the grounds of their argument. Those on one side considering the States as districts of people composing one political Society; those on the other considering them as so many political societies; that if the States as such are to exist they must be armed with some power of self-defence. This is the idea of [Col. Mason] who appears to have looked to the bottom of this matter . . . .

Foreshadowing what would ultimately happen, Johnson added that “On the whole he thought that as in some respects the States are to be considered in their political capacity, and in others as districts of individual citizens, the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined; that in *one* branch the *people* ought to be represented; in the *other* the *States*.”<sup>21</sup>

That “line of partition,” raised both in the Federal Convention and in the state conventions (where there was opposition to the proposed plan without amendments), was more than “a phrase.” It was the prelude to the Tenth Amendment by which reserved powers not delegated to the states became a constitutional mandate since amendments had the same status and sanction of the Constitution itself. “Nationalists” had maintained that what was not delegated was automatically reserved as a political axiom. “Anti-Federalists” (republicans and federalists) wished for more certainty in this important matter. Then did the new government become another federal one as a “confederate republic” as well as a compact of government. Neither a “national” government nor was it a revival of the old Articles of Confederation. In the language of the time, “a partial consolidation” and “a modification of state sovereignty” was the final compromise of the framers<sup>22</sup>.

The uniqueness of this government, unlike any other in history, would fade in the early nineteenth century as a second effort at “consolidation” would emerge after 1815 with “the protective principle” or “Protectionism.” Then did later “nationalists like John Marshall, Andrew Jackson, Justice Joseph Story, Daniel Webster, and Abraham Lincoln all forget the great achievement of a “confederate republic” of a compound nature. Instead of defending original intentions, Southerners and their Northern allies were

merely reviving the Articles of Confederation with its “state sovereignty” in their resistance to efforts to make the American government national once again. To this later “myth of a Confederacy,” “nationalists” would add another one of “anti-nationalists” being proslavery.<sup>23</sup>

The innovators of a new theory of the American government being national, except for Andrew Jackson, were to be found above the Mason-Dixon line. Since their newer beliefs were revolutionary, they had to be legitimized to become acceptable thus requiring a new history for a new nation in the making. In their nationalist mythology, the American nation commenced with the Declaration of Independence making the Union older than the states. “Thus [Justice Joseph] Story deems it of the highest importance to undermine the compact argument, and his main discussion of the nature of the Constitution assumes the negative character of an analysis of why the Constitution was not a compact.” (Ibid., 283.) “Story had claimed that the Declaration of Independence was the united act of all, and that none of the colonies had pretended to be sovereign before its promulgation.” Meanwhile, “[Henry] Tucker points out that the voting on the Declaration was by states, not by individuals, thus making America free, but composed of separate communities [as Madison did].” (Ibid., 250.) At Independence, “Story was judged correct in saying that the sovereignty passed from the Crown of Great Britain to the people of this country; but this transfer meant that ‘Each of the thirteen colonies . . . became itself a sovereign. (Ibid., 249.) Yet, “The framers thought of the Constitution in terms of the compact theory.” (Ibid., 308.) The impetus for a new Constitution, according to Bauer, was that “basic changes had taken place in the nature of

the union, making the old ideas inadequate as explanations of the realities that men [in the North] saw about them.” (Ibid., 308)<sup>24</sup>

In the future, secession had nothing to do with “state independence” but instead remained a right of revolution, the sovereign power to begin the government anew should it become necessary to do so (but only after a long train of abuses had occurred which they did in the North between 1848 and 1861). War came in 1860-1861 not because of slavery, but because Lincoln and the new Republican party denied the legitimacy of secession as a right of revolution (in the name of Romantic nationalism). Before there could be a new “birth of freedom,” the South itself had to be conquered to rid the nation of “disunionism.” Only with the South out of the Union in 1860-1861, could preliminary emancipation begin before the final abolition of slavery in 1865 with the Thirteenth Amendment. Abolition, however, was not inspired by “black egalitarianism.” All it meant was that the legal ownership of humans as property had ended. Then did freedmen become “free labor” and bound by new labor contracts governing wages to be paid for work.<sup>25</sup>

#### Sovereignty Clarified in 1787-1788

By no means was sovereignty **obscured** by the debate about the Constitution and the nature of the government as Joseph J. Ellis maintains as one of his key points. “It is not true that “the political architecture of the new government defied the old orthodoxy of singular sovereignty by creating a unique diffusion of power.” Nor can it be said that “Madison . . . discovered the beauty of ambiguity, or perhaps shifting sovereignties.” There was nothing “willy-nilly” about this at all. **To be a federal government**, as it had to be based on American experience, **states had to be a part of it**. If no longer sovereign and independent after 1787-1788, and **they were not**, their new role was a dual one of

providing the foundation for America's new extended republic and defending their reserved rights. This also meant, in turn, maintaining the new "line of partition" inviolate by their own veto or negative as a power of self-defense that was essential to maintain their own separate sphere of power and thus assure a "federal" versus a "national" government. To George Mason, early in the Federal Convention on June 7, "whatever must be necessary for the National Government a certain portion must necessarily be left in the States. It is impossible to for one power to pervade the extreme parts of the U. S. so as to carry equal justice to them. **The State Legislatures also ought to have some means of defending themselves against the encroachments of the National Government.** In every other department we have studiously endeavored to provide for its self-defence. Shall we leave the States alone unprovided [sic] with the means for this purpose?"<sup>26</sup>

For James Madison, there was no ambiguity about sovereignty and its location after ratification. It resided in the people—of the states and not in the people at large. In the Virginia ratifying convention, Madison repeated his remarks from *The Federalist* #39. With Patrick Henry in mind, he begged leave "to say something of the nature of the government, and to shew [sic] that it is safe and just to vest it with the power of taxation. There are a number of opinions, but the principal question, is whether it **be a federal or consolidated government.**"

[I]n order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself, that it is of a mixed nature: it is in a manner **unprecedented**: we cannot find one express example in the experience of the world: it stands by itself. In some respects, it is a government of a federal nature, in others it is of a consolidated nature. Even if we attend to the manner in which the constitution is invest-

igated, ratified, and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alledged [sic], that this government is not completely consolidated, nor is it entirely federal. **Who are the parties to it? The people—but not the people as composing one body—but the people as composing thirteen sovereignties.**

Were it, as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment, and as a majority have adopted it already, the remaining states would be bound by the act of a majority, even if they unanimously reprobated it . . . . ]

The proposed government would differ from the Articles of Confederation in another important respect. “The existing system had been derived from the independent derivative authority of the legislatures of the states; whereas this [one] is derived from the superior power of the people [of the states in special conventions called for this very act of their sovereignty]. In a later letter to Thomas Jefferson about the Virginia Resolutions of 1798, Madison asked, “Have you ever considered thoroughly the distinction between the power of the State, & that of the Legislature, on questions relating to the federal pact [?] On the supposition that the former is clearly the ultimate judge of infractions, it does not follow that the latter is the legitimate organ especially as a Convention was the organ by which the compact was made . . . .” (This is why the Tenth Amendment stated that “The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people [not at large but in the States who were the sovereign power]. In 1828, John C. Calhoun and the South Carolina Nullifiers, got it right when they called for a special convention of the people and not the Legislature to approve the ordinance of Nullification.)<sup>27</sup>



Continuing with the opposition argument that the proposed government was a “consolidated” one and that “joined with the power of direct taxation, would tend “to destroy all subordinate authority,” Madison said he could not “think this will be the case. If the general government were wholly independent of the governments of the particular states, then indeed usurpations might be expected to the fullest extent: but, sir, on whom does this general government depend? It derives its authority from these governments, and from the same sources from which their authority is derived. The members of the federal government are taken from the same men from whom those of the state legislatures are taken. If we consider the mode in which the federal representatives will be chosen, we shall be convinced that the general will never destroy the individual governments; and this conviction must be strengthened by an attention to the construction of the senate . . . “ As elsewhere, and even at this late date, Madison believed that encroachments by the states on federal power were more likely than vice-versa, which is why he proposed his “national negative” over state laws several times in the Federal Convention of 1787 before it was finally rejected.<sup>28</sup>

In 1791, after the new “confederate republic” of a compound nature had been officially inaugurated in April of 1789, Madison returned to the subject of “Consolidation.” “Much has been said, and not without reason, against a consolidation of the States into one government. Omitting lesser objections, two consequences would probably flow from such a change in our political system, which justifies the cautions used against it.”

“First, it would be impossible to avoid the dilemma, of either relinquishing the present energy and responsibility of a single executive magistrate, for some plural substitute, whicy by dividing so great a trust might lessen the danger of it; or suffering so great an accumulation of powers in the hands of that office, as might by degrees transform him

into a monarch. The incompetency of one Legislature to regulate all the various objects belonging to the local governments, would evidently force a transfer of many of them to the executive department; whilst the increasing splendor and number of its prerogatives supplied by this source, might prove excitements to ambition too powerful for a sober execution of some the elective plan, and consequently strengthen the powers for an hereditary designation of the magistrate.”

“Second, were the state governments abolished, the same space of country that would produce an undue growth of the executive power, would prevent the control of the Legislative body, which is essential to a faithful discharge of its trust . . . .” As a result, “neither the voice nor the sense of ten to twenty millions of people “ could be “comprehended.” “In such a state of things, the impossibility of acting together, might be succeeded by the inefficacy of partial expressions of the public mind, and this at length, by a universal silence and insensibility, which, it must be owned, is the natural propensity of every government.”

For Madison, “here, then is a proper object presented both to those who are most jealously attached to the separate authority reserved to the states, and to those who may be more inclined **to contemplate the people of America in the light of one nation.** Let the former continue to watch against every encroachment, which might lead to a gradual consolidation of the states into one government. Let the latter employ their utmost zeal, by eradicating local prejudices and mistaken rivalships, to consolidate the affairs of the state into one harmonious interest.”<sup>29</sup>

Later, in describing the new government in 1792, Madison stated that “the political system of the United States claims still higher praise. The power delegated by the people [of the states] is first divided between the general government and the state governments: each of which is then subdivided into legislative, executive, and judiciary departments. And as in a single government **these departments are to be kept separate and safe, by a defensive armour for each; so, it is to be hoped, do the two governments possess each the means of preventing or correcting unconstitutional encroachments of the other.**” “In bestowing the eulogies due to the partitions and internal checks of power, it ought not the less to be remembered, that they are neither the sole nor the chief palladium of constitutional liberty. **The people [of the states] who are the authors of this blessing, must also be its guardians.** Their eyes must be ever ready to mark, their voice to pronounce, and their arm to repel or repair aggressions on the

authority of their constitutions; the highest authority of their constitutions; the highest authority next to their own, because the immediate work of their own, and the most sacred part of their property; as recognizing and recording the title to every other.”<sup>30</sup>

In the same year, Madison added: “A republic involves the idea of popular rights . . . . And a **confederated republic** attains the force of monarchy, whilst it equally avoids the ignorance of a good prince, and the oppression of a bad one. To secure all the advantages over the rights of the people; over the authorities of the confederal [sic] government; and over both the rights and authorities of the intermediate governments.” “A government, deriving its energy from the will of society [“the people” as one omitted here], and operating by the reason of its measures, on the understanding and interest of the society,” is the new American government “for which philosophy had been searching, and humanity [has] been sighing, from the most remote ages. Such are the republican governments which it is the glorie of America to have invented, and here unrivaled happiness to possess. May her glory be strengthened by every improvement on the theory which experience may teach; and the happiness be perpetuated by a system of administration corresponding with the purity of theory.”<sup>31</sup>

Also in 1792, in response to Hamiltonian disregard for the new Constitution and interpreting it strictly by the intent of those who ratified it with recommendatory amendments, Madison both as the leading figure in the debates of 1787-1788 and co-founder of with Jefferson of the Republican party in opposition, penned these remarks about the significance of the Constitution and its supremacy over government. “As compacts, charters of government are superior in obligation to al others, because they give effect to all others. As trusts, none can be more sacred, because they are bound on

the conscience by the religious sanctions of an oath. As metes and bounds of government, they transcend all other landmarks, because every public usurpation is an encroachment on the private right, not of one, but of all.”

The citizens of the United States have peculiar motives to support the energy of their constitutional charters. Having originated the experiment, their merit will be estimated by success. The complicated forms of their political system, arising from **the partition of government between the states and the union**, and from the separation and subordination of the several departments in each, requires a more than common reverence for the authority which is to preserve order thro’ the whole. Being republican, they must be anxious to establish the efficacy of popular charters, in defending **liberty against power, and power against licentiousness: and in keeping every portion of power within its proper limits**; by this means discomfiting the partizans of anti-republican contrivances for the purpose.”

Charters of government, of which the new Constitution of 1787-1788 was one, were supreme over the government because they were the expression of the sovereignty of the people—of the states. (With defeat of a “national” plan of government for America, it cannot be emphasized enough, the people as a single entity became irrelevant, like state sovereignty, and remained dormant until it was revived by Northern constitutional commentators in the early nineteenth century.)<sup>32</sup>

The government as a federal and not a national one, and also a compact by the states, was reiterated again in the “Virginia Report on the Alien and Sedition Acts.” The General Assembly declares “that it views the powers of the Federal Government, as resulting from the compact, to which the states are parties, as limited by the plain sense and intention of the instrument constituting their compact; as no farther valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate,

palpable and dangerous exercise of powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining within their respective States, the authorities, rights and liberties appertaining to them.” **Although “the federal powers are derived from the Constitution, and from that alone,** the committee are not **unapprised of a late doctrine which opens another source of federal powers, not less extensive and important, than it is new and unexpected [‘by forced construction of the Constitutional charter’ for the purpose of enlarging the powers of the federal government** and ‘to transform the present Republican System of the United States, into an absolute, or at least a mixed monarchy’[.]” “[I]n all the contemporary discussion and comments, which the Constitution underwent, it was constantly justified and recommended on the ground that the powers not given . . . were withheld . . . .” The Constitution, moreover, “was submitted to the ‘States’; in that sense the ‘States ratified it; and in that sense of the term ‘States,’ they are consequently parties to the compact from which the powers of the Federal Government result.” The “exposition of the general phrases here combated” would “by degrees **consolidate** the states into one sovereignty.” Unless checked, the Constitution itself would become nullified!<sup>33</sup>

Many years later, after the rise of the first party system between Federalists and Republicans in the 1790’s, and the beginnings of a second party system following the end of the Virginia Dynasty with James Monroe’s second term, Madison expressed hope for the future in reducing “party distinctions.” While “the Constitution itself . . . must be an unfailing source of party distinctions” because of “the very peculiarity which gives preeminent value to that of the United States, the partition of power between different

power between different governments, opens a new door for controversies and parties.” To “moderate its violence, in the “ascendant party,” a “policy which harmonizes jealous interests” needs to be pursued and divert if “from more obnoxious channels.” In particular, the Constitution will need to be given “that just construction, which, with the aid of time and habit, may put an end to the more dangerous schisms otherwise growing out of it.”<sup>34</sup>

“With a view to this last object, **I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that be not the guide in expounding it, there can be no security for a consistent and stable, more than for a faithful exercise of its powers.** If the meaning of the text be sought in the changeable meaning of the words composing it, it is evident that the shape and attributes of the Government must partake of the changes to which the words and phrases of all living languages are constantly subject. What a metamorphosis would be produced in the code of law if all its ancient phraseology were to be taken in its modern sense. **And that the language of our Constitution is already undergoing interpretations unknown to its founders, will I believe appear to all unbiased Enquirers into the history of its origin and adoption.** Not to look further for an example, take the word “**consolidate**” in the address of the Convention prefixed to the Constitution. It then and there meant to give strength and solidity to the Union of the states. In its current & controversial application it means a destruction of the states, by transfusing their powers into the government of the Union . . . .”<sup>35</sup>

“Consolidation”:  
An Old Idea

The first problem with a single government for all of America was that it was un-American. If the word “national” was new, the idea that government was sovereign and supreme over its subjects was an old concept. The old classification of governments into monarchical, aristocratic, or democratic or by one, a few, or the many did not change the location of sovereignty. Whoever or ever how many ruled, they did so with sole authority to do so for good or bad. This old “numerical analysis,” as John Taylor of Caroline explained it, was rejected with the American Revolution. Then did the principle of the sovereignty of the people—of the newly independent states—over their governments become a new standard in world history. The ruled now became the rulers and government was to their agent or servant and not their masters. In America, according to James Madison, government became a charter of power (limited) granted by liberty.<sup>36</sup>

“Nationalists” in the Federal Convention, however, were proposing that government should once again become supreme and sovereign. “We, the people,” or the people as a single entity, was a theoretical conception designed to overcome the reality of “the people—of the states and their sovereignty. Writing to Jefferson in Paris on October 24, 1787, Madison informed Jefferson “of the result of the Convention, which continued its session till the 17th of September (and in the process broke the pledge of secrecy invoked at the beginning of the Federal Convention).

It was generally agreed that the objects of the Union could not be secured by any system founded on the principle of a confederation of sovereign States. A voluntary observance of the federal law by all the members could never be hoped for. A *compulsive* one could never be reduced to practice, and if it could, involved equal calamities to the innocent and guilty, the necessity of a military force both obnoxious and dangerous,

and in general. **A scene resembling much more a civil war,** than the administration of a regular Government . Hence was embraced the alternative of a government which instead of operating on the States, should operate without the intervention on the individuals composing them: and hence the change in the principle and proportion of representation . . . . **It may be said that the new Constitution** [as proposed and not yet accepted] **is founded on different principles, and will have a different operation. I admit the difference to be material. It presents the aspect rather of a feudal system of republics, if such a phrase may be used, than of a Confederacy of independent States . . . . The Senate represents the States in their political capacity** . . . .

A federal government, however, presumed the existence of states. Although *The Federalist* would present the proposed government as a new “confederate republic” (beginning with essay #9 by Alexander Hamilton), Madison’s remarks above prove that they still considered it a “national” one, with the general government to be established still supreme over the states whose role would be distinctly subordinate and not co-equal.<sup>37</sup>

In the second place, a single and supreme government for all of America was dangerous to liberty. According to John Taylor of Caroline, such a government being “unchecked,” would inspire “arrogance, and cause . . . oppression [as it had done historically].” “Co-ordinate and independent powers alone, can beget moderation.” To Taylor and most of the framers who were decidedly not “nationalists,” “History and human nature both demonstrate, that in all nations a party invariably exists, disposed to elevate the powers of a government to a pitch graduated by personal motives, and to tighten a magical cordage about the people . . . .” Moreover, “concentrated power is ever active in repairing its defeats, and inventing new expedients for the gratification of its propensities [lust for power and self-interest].” “The word America is used to designate



the quarter of the globe in which the . . . states were established, and not to designate a nation of Americans.” “An American people never existed.” The nation after 1776 was comprised of the people of the states. It was a union of the states or as a Confederation, of “state nations.” “The fact is, that the people and the states are one and the same . . .”<sup>38</sup>

In the third place, the idea of a single and supreme government for all of America was no different from the one of Great Britain that the colonists had so recently rejected in 1776. Much as the old “mixed” government of King, Lords, and commons had preserved English liberty before 1688, through a tripartite sharing of powers, after the Glorious Revolution and the development of Great Britain into an Empire, Parliament proclaimed itself (with the help of theorists) to be the sovereign authority in Great Britain and throughout the Empire. Although the form of the old government persisted, it was largely irrelevant as a liberty-saving constitution. With this English history in mind, and the reality of colonial self-government in local affairs, through different colonies, after 1776 the colonies became new states, all of which were sovereign and independent. Of this historical reality, there was no doubt until much later.<sup>39</sup>

From the beginning in 1776 to the end of the long debate about government for America in the ratification debates of 1787-1788, the reality of states had to be confronted and resolved in some form or other. As one opponent of the “nationalist” Virginia Plan recognized, “the preservation of the states in a certain degree of agency is indispensable. It will produce that collision between the different authorities, which should be wished for **to check** each other. To attempt to abolish the States altogether, would degrade the Councils of our Country, would be impracticable, would be ruinous . .

. .” Dickinson was by no means alone in expressing these “states’ rights” sentiments. Indeed, the prominent defenders of states’ rights in the Federal Convention were Northerners: As later enthusiastic supporters of the proposed plan of government, they embraced it because it was federal and not national.<sup>40</sup>

### No Compact of Government

Related to the “nationalist” conception of one supreme government for all of America, and also ignored by scholars, historical and constitutional, was their rejection of the compact theory of government. On the second day of the Federal Convention after the introduction of the “nationalist” Virginia Plan, Gouverneur Morris made it clear what a “national” government was and was not. **It would not be “a mere compact resting on the good faith of the parties.”** The difference between “a federal and national, supreme Government,” according to Morris was that “the latter” would have **“a compleat and compulsive operation.”** And, invoking unpleasant language from the British side of the colonial-imperial debate between 1763 and 1776, He reiterated the belief “that in all Communities there must be one supreme power, and one only.”<sup>41</sup>

To “nationalists,” their belief in sovereignty indivisible automatically rejected any notion of government by compact that necessarily limited government and made it the agent of the sovereign people. The “nationalists” invocation of “We, the People” only referred to the authority of the people (regarded as a single entity) in their role as choosing their rulers by popular vote. After exercising their suffrage, their representatives and government officials then became empowered to enact policy in conjunction with the President, Vice-President, and their appointed heads of departments. Should the people disagree with legislation enacted, their only recourse was to await the

next election of representatives and hope to remove them from office. With popular sovereignty expressed in Congress as the “will” of the people, the danger of another tyranny arose, rule by a majority, that could be despotic especially if it were formed around an interest that was purely sectional.<sup>42</sup>

“Popular sovereignty,” a misleading term, was only the legitimizing principle of a “national” and a supreme government. Since providing for the “general welfare” was one important end of government, the people at large should have greater weight than the states. On June 1, 1787, James Wilson said “he was not governed by the British Model which was inapplicable to the situation of this country; the extent of this country; the extent of which was so great, and the manners so republican, that nothing but a great confederated republic would do for it.” Speaking on June 6, Wilson “wished for vigor in the Government, but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The Government ought to possess not only 1st the force, but 2d the will and sense of the people at large.”<sup>43</sup>

Sovereignty yet remained in the “national” or “consolidated” government. Effectively, a “consolidated” government for America would be similar to the British model. In place of a monarch, the national government would be the equivalent of Britain’s Parliament. While it was one part of the constitution of the state representing the people, it was also the ultimate source of authority for Great Britain and the Empire. The form of the old Gothic constitution, of King, Lords, and Commons , would persist **but the sharing of power would not.**<sup>44</sup>

Original Intentions

Jack N. Rakove's position against "originalism" is evident in *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York, 1996). He also rejects "the historians' old-fashioned and perhaps naïve desire to get the story rights for its own sake." With a "national government assumed as the starting point," Rakove proceeds to compound his many errors of interpretation about the Confederation and the new Constitution of 1787-1788. Notwithstanding the rejection of a "national" government in the Federal Convention of 1787, proved conclusively and factually by James Madison's own *Notes of Debates*, Rakove cannot bring himself to accept a republican-federal consensus in the convention and prevailing throughout the state ratification debates. *The Federalists*, that he idolizes, failed to achieve a rapid ratification and to prevent amendments (making it far from the last word about the Constitution). Indeed, the recommendatory amendments demanded were the final phase of a process of government making that had begun in 1776 and culminated in a new "confederate republic" of a compound nature that was neither "national" nor a Confederation. Then was modern federalism invented! America would have two governments sharing power, one for general and the other (the states) for local purposes. *Imperium in imperio* in 1776 led to federalism in 1787-1788 and a new union of the states. In America, a republican government had to be a federal one based on the states as its broad foundation. As a new charter of government granting power (limited) by liberty, the Constitution of 1787-1788 was intended to limit and restrain the exercise of power. The Constitution of 1787-1788 thus fulfilled the principles of 1776 rather than rejecting them (as a minority of "nationalists" did in the Federal Convention including James Madison). Understood in terms of a form of government, its structure and purpose, original intentions were

expressed as general consensus in favor of a federal and a limited government rather than a national and unlimited one. Much as Rakove and other modern interpreters of the Constitution do not want to admit it, strict construction and states' rights were original intentions and not later ones invented for the better defense of slavery within the Union. The partisans in the long debate about the Constitution (and the Declaration of 1776) were the "nationalists" (as "consolidationists" in the 1790s and those in the North in the period from 1815 to 1850.<sup>45</sup>

#### Original versus Different Intentions after 1815

The rejection of a "national" government in the Federal Convention of 1787 changes everything about American and Southern history from the creation of a new Constitution of 1787-1788 (with the establishment of a "confederate republic" of a compound nature like no other in history) and the Civil War of 1861-1865. With the invention of modern federalism, America would have two governments instead of a single and supreme one for all of America as "nationalists" desired in 1787-1788 and Federalists in the 1790's and still many others to come in the nineteenth (John Marshall, Justice Joseph Story, John Quincy Adams, Andrew Jackson, Daniel Webster, and Lincoln and the new Republican party of 1854-1860).

Instead of "dividing sovereignty" (as it has been mischaracterized to be), the republican-federalist framers divided the powers of government between a new federal authority (for general and external purposes) and the states (for internal and local purposes). Sovereignty remained indivisible, absolute, and uncontrollable **not in a "national" government** or the **people at large** but in the people of the states (as James Madison, the former "nationalist" in the Federal Convention, stated in the Virginia

ratifying convention and again in 1792 and once more in 1798 in his *Virginia Report of 1800*). The people and the states were one and the same as a matter of historical experience and their separate colonial beginnings. A government to be federal presumed the existence of states for self-rule over local affairs (in keeping with the colonial demand for *imperium in imperio*). The states also served an important role as another check on the federal government.<sup>46</sup>

Change agents in the North after 1815 were the newer and foreign “isms” of the day—Unitarianism and Transcendentalism in New England; abolitionism also in New England; and Romanticism both as perfectionism and nationalism in a larger part of but not the entire North in the 1830’s and 1850’s. In relation to the American founding of 1776-1787, the 18th century republican-federalist beliefs of the founders and the majority of framers were not democratic, egalitarian, abolitionist, nationalist, or secularist as believed. These were the newer beliefs and values being embraced above the Mason Dixon line and where the causes of America’s Civil War (of Northern-Nationalist-Romantic Origins) are to be found. It was not the South and its Northern allies that changed because of slavery and became reactionary or “conservative.” There and also in the other North, beliefs in states’ rights (not “state sovereignty” from a myth of the Confederation being revived) and strict construction were derived from the 18th century republicanism and federalism that constituted the original intentions of the republic. While there would have been no Civil War without slavery, this is not to say that the “peculiar institution” **was** its sole or single cause. Much more than slavery was involved be it is defense on the part of the South or its abolition in the North (as a minority

opinion). The “national” government rejected in the Federal Convention only became a reality with the Northern-Union triumph on the bloody battlefields of 1861-1865.<sup>47</sup>

The “years [1815-1865] themselves serve as signs. They mark the time period between the end of America’s war with England and the end of America’s war with itself.”

The first marks the completion of American separation from England, a process that falls outside this inquiry. The second marks the inauguration of a single American identity; the establishment of the United States as a noun which would thereafter take verbs in the singular. The Revolution and the War of 1812 made manifest, and gave formal expression to, the differences that separated America from England. The Civil War was the incarnation of a wholly American contradiction, the materialization of an immanent conflict in the meaning of America.

The time between these significant years was a time of tension and division, of contending cultures and conflicting loyalties. **North and South came to represent contending conceptions of America** and alternative notions of the standards of legitimacy, which the regime was required to satisfy, of the historical origins of the nation, and its eschatological significance and constraints upon its future course. This adherence to alternative Americas was manifested in regional identities which presented in disparate constellations of traits, attributes, and associations, radically different conceptions of American individual rights and collective authority.

In simpler terms, “In the Jacksonian period, **American ideology had distanced itself dramatically from the revolutionary ideology of the Founding and the Revolution of 1801**. Whigs and Democrats [in the North] likewise deprecated the right of revolution. Whig historians attempted to repudiate the Revolution altogether, giving all to the Pilgrims.”<sup>48</sup>

Indeed, the conflict between the North and the South was not one between liberty and slavery but competing and fundamentally different views of government, society, and politics including liberty. It was 18th republicanism versus 19th Romanticism and an irrepressible conflict that had to be, at least in the North, where the perfection of America would not be considered to be complete until slavery was abolished to make a “new birth

of freedom” a reality. The abolition of slavery meant, in turn, the destruction of the South and that meant a war of conquest for national unification had to occur. A new nation meant a new Constitution and, overlooked, a new history or national myth about the past from the Revolution to the Civil War. In the context of nineteenth century trans-Atlantic history from 1815-1860, America’s second war of independence from the South and the 18th century was both a war of liberation from the past and a war of national unification.<sup>49</sup>

The “national” government rejected in the Federal Convention only became a reality with the Northern-Union triumph on the bloody battlefields of 1861-1865. As a leading scholar of the American founding (not beyond criticism), Jack N. Rakove expressed a similar view: “It took the better part of a century to begin to convert the Union from a confederation into a polity more resembling a modern nation-state.” “Lincoln, no less than Melville and Whitman, was engaged in creating for a nation altered by civil war altered standards in the regime’s legitimacy, and an amended nationality. He was, however, the only one of the three who was an essential component of the myth.” “The Republican party in the 1850s was engaged in, and was partly the result of, **a process of national construction** by which the American national idea became associated with the North in general and the Republican party in particular.” In the pattern of Europe in the 19th century, “a Romantic-Liberal” definition of nationalism “found expression in the Republican party in the 1850s and a conclusion of sorts in the Civil War. Convinced that their democracy was, in Abraham Lincoln’s words, ‘the last best hope of earth,’ northerners could no more allow the secession of the Southern states in 1861 than they could permit the South to remain in the Union unchanged.”<sup>50</sup>



## American History Forgotten

The rejection of a “national” government in 1787 and 1787-1788 (when a new federal republic was ratified) was not known for certain as an historical fact until 1819 and the publication of the *Journal of the Federal Convention* in 1819 by authority of Congress. Thereafter, the “veil of secrecy” surrounding the proceedings of the Federal Convention and the state ratification debates was slowly lifted to reveal quite different and **non-national intentions** that a second generation of “nationalists” in the years after 1815 was then pursuing. The *Secret Proceedings and Debates of the Convention at Philadelphia in the Year 1787. For the Purpose of Forming the Constitution of the United States of America* by Robert Yates was published in 1821 (and reprinted in 1838 and 1844). Between 1829 and 1831, Jonathan Elliot published the first volumes of his *Debates in the Several State Conventions on the Ratification of the Federal Constitution*. This documentary source was reissued in a second and revised edition in 1836 that included the *Journal of the Federal Convention* and important debates in Congress about the nature of the Union, federal or national. In addition to these sources, the later works of John Taylor of Caroline should be included in this **recovery of original intentions of the founders and framers**: *Construction Construed and Constitutions Vindicated* (1820); *Tyranny Unmasked* (1822), and *New Views of the Constitution* (1823). The latter is about the *Journal of the Federal Convention* and its importance in determining who the framers were and what their intentions were. Therein is also to be found the first extended critique of *The Federalist*.<sup>51</sup>

As a prelude to the Civil War of Northern-Romantic-Nationalist origins, the third Nullification movement in America in South Carolina from 1828-1832 (after Virginia in

1798-1800 and New England, in 1814-1815) was a defense of the republic and of the federal government against the nationalistic-consolidationist views of Andrew Jackson and his supporters including Northern manufacturing interests. The Tariff was the cause but the controversy was very much about original intentions (republican-federalist) and different ones (nationalism and Protectionism but not slavery). In this third Nullification movement, the *Journal of the Federal Convention* published in 1819 played a critical role in reviving the original intentions of the founders and framers of 1776-1787-1788. Calhoun also relied upon *The Federalist*, the Kentucky and Virginia Resolutions of 1798, and Madison's Virginia Report of 1800. He did not invent his own or a new states' rights theory of government. All he had to do was to follow the principles of 1776 and of 1787-1788 (with the Constitution being a fulfillment of the former and not its rejection). After all, Lance Banning concluded in 1974, "states' rights and strict construction were necessary parts of a systematic defense of republican liberty."<sup>52</sup>

After the third Nullification movement in South Carolina from 1828-1832, and the triumph of the Nullifiers over the nationalist-consolidationists, the *Notes of Debates in the Federal Convention Reported by James Madison* were finally published in 1840 following Madison's death in 1836. There, at last, was the great secret revealed: a few "nationalists" in the Federal Convention (led by Madison, Alexander Hamilton, James Wilson, and Gouverneur Morris) presented a plan of government for one single and supreme government for all of America and operating directly upon the people without any state agency being involved. To say the least, this plan was rejected in the Convention with the Great Compromise of July 16 that made representation in the Senate

to be by states and not by proportional representation. On June 20, the word “national” had already been dropped as an adjective describe the proposed plan of government.<sup>53</sup>

The first era of documentary historical publication between 1819 and 1830, it would not be an exaggeration to say, was responsible for **the preservation of the union** until 1860-1861. Not until the early twentieth century would more additional information become available. In 1913, Yale University press published Max Farrand’s *Records of the Federal Convention* in three volumes. By authority of Congress in 1927, on the 150th anniversary of the Declaration of Independence, *Documents Illustrative of the History of the Formation of the Union* was published and edited by the U. S. Government Printing Office. Only in the later 20th century, with the publication of the first volumes of the *Documentary History of the Ratification of the Constitution* was an even more complete history of the Constitution made available to the public. Herbert J. Storing’s *The Complete Antifederalist* was published in a three volume edition in 1981 by the University of Chicago Press. By this time, the “nationalist” bias in the interpretation of the Constitution was clearly proved to be inadequate as was the popular Progressive view favoring clashing economic interests over ideas that were regarded as mere rhetoric hiding darker and more selfish motives.<sup>54</sup>

In attendance for the entire course of the convention from May 29 to September 17, Madison’s *Notes* most fully reported the remarks of delegates and their competing views about a reform of the Confederation or its abandonment in favor of a totally new or “nationalist” government. Madison was clearly in the “nationalist” group that was a minority one. Therein is the rejection of a “national” government most fully reported along with the reasons why most delegates did so.

Therein, too, is to be found confirmation of the **veracity** of the *Secret Proceedings and Debates* by Robert Yates including the “Letter of Luther Martin of Maryland” as well as the views of John Taylor of Caroline in his later books. Although urged to publish his *Notes of Debates* during his lifetime, Madison awaited until after his death in 1836 to permit their publication that followed in 1840. “Hardly a year passed from the close of the Convention to the day of Madison’s death than he was not urged to publish the notes he had taken as semi-official reporter. His unvarying response was the statement that he would not release them for publication until all the framers had died.” Since the Constitution had become a subject of controversy during the first and second party systems, arising from “nationalists” who rejected original intentions and desired a “consolidated” government (first with Alexander Hamilton and the Federalist party and later by John Marshall, “Protectionists,” and Andrew Jackson), Madison may have wanted to insulate surviving delegates from further scrutiny “and the gusts of party warfare.” A more “personal factor” may have been to preserve their value for the benefit of his wife, Dolly.” Their monetary worth would only increase with time.<sup>55</sup>

Irving Brant, biographer and defender of Madison, described him as a “nationalist” and anti-state sovereignty before and during the Federal Convention. No revision of the Articles would resolve America’s political and economic problems as Madison saw them. Madison, the “nationalist” was not a “consolidationist” although an “individual independence of the states . . . was utterly irreconcilable” with a “national” government. “State sovereignty had virtually no place in the scheme of government Madison outlined to Washington, Randolph, and Jefferson on the eve of the Constitutional Convention.” “The [Virginia] plan undoubtedly was written by Madison.”

As to its reception and modification, “Confusion and some alarm greeted the substitute [nationalist’ proposals.” Brant here understates the reaction that was hostile. On Nullification or state interposition, “The basic doctrine of state opposition to unconstitutional laws had been suggested by Madison to Jefferson in 1788, enthusiastically indorsed [sic] by the latter, and restated by Madison in Congress in 1789.” On the non-publication of his *Notes*, Brant adds important political insights. The Federalist in the 1790’s would have benefitted from them because of his “nationalist” views. Later, he did not do so to rebut the *Secret Proceedings and Debates* of Robert Yates because “his prestige would be shattered and there would be an implied verification of the Marshall-Hamilton conception of the national government.” Finally, Madison was not the “Father of the Constitution” although he came to be view as such.<sup>56</sup>

Hopeful as Madison was that the posthumous publication of his *Notes* would be “particularly gratifying to the people of the U. S.,” to have at last “a careful and extended report of the proceedings and discussions of that body [the Federal Convention],” its impact was a mixed one. If the rejection of a “national” government supported the defenders of original intentions (republicans as federalists}, the *Notes* also supported a negative view of the framers and the necessity for moving beyond the flawed principles of 1776 and 1787-1788. After 1840, Madison and his *Notes* ceased to be influential and his role in the Federal convention and as co-author of *The Federalist* awaited different interpreters in the 20th century. By this time, those espousing more democratic and abolitionist as well as nationalist causes in the political arena were already numerous and well organized (albeit separate before 1854). Between 1865 and 1900, one biography of Madison appeared in 1884. The author was Sydney Howard Gay, noted abolitionist and

a former editor of the *National Anti-Slavery Standard*. “Mr. Gay was not a huge fan of Madison” and besides impugning his pro-slavery views, he also “blames him from straying from his Federalist Roots in order to support the [Jeffersonian} Republican idea of state rights.” A Madisonian revival began with Gaillard Hunt’s *The Life of James Madison* (New York, 1902) and his edition of *The Writings of James Madison* (9 vols., 1900-1910).<sup>57</sup>

Prof. Koch’s introduction to Madison’s *Notes of Debates* is not without error. “In general, he did enter the constitutional controversies of each successive period, even after his ‘retirement’ from politics, but he usually prevented himself from resorting to the ultimate (peaceful weapon of citing his notes which he alone possessed.” This is incorrect. Madison did loan his *Notes of Debates* to Jefferson in 1795 so a copy could be made. Writing to Jefferson on November 8, 1798, Madison said he had “left with my Father [in Orange Country, Virginia] subject to your order the packet of papers promised you.” In 1810, as President, Madison inquired of Jefferson about Alexander Hamilton’s proposed plan of government. “Among the papers relating to the Convention of 1787, communicated to you, that copies in your hands might double the security against destructive casualties, was a delineation of Hamilton’s plan of a Constitution in his writing. In looking for it among the Debates etc., which were returned to me, this particular paper does not appear. I conclude therefore that it had not then been copied, or was at the time in some separate situation. I am very sorry to trouble you on such a subject, but being under an engagement to furnish a copy of that project, I must ask the favor of you to see whether it be nor among your papers, and if so, to forward it by mail.” Jefferson replied that “I have carefully searched among my papers for that of

Hamilton which is the subject of your letter, but certainly have it not. If I ever had it (which I should doubt) I must have returned it. I say I doubt having had it because I find it in your Conventional debates under date of June 18, where it is copied at full length, being so entered I presume in your Original manuscript . . . .”<sup>58</sup>

There are other problems with Prof. Koch’s introduction. Madison’s description of the “compound government of the United States [being] **without a model** and to be explained by itself, not by similitudes or analogies,” is not the form he presented at the beginning of the Federal Convention. The Virginia Plan proposed a new political system altogether as a “national” or “consolidated” government (as opponents called it). Although Alexander Hamilton used the term “confederate republic,” his version was not “compound” in nature because the states were to be reduced to mere administrative units and possessed of no real power especially as a “counter-right” (Jefferson’s term) on their part to assure a federal and a limited government. A federal government was one in which governmental powers were shared. Only during the ratification process of 1787-1788 was a “line of partition” defined and powers thus delegated and reserved distinguished. Sovereignty indivisible remained with “the people—of the states” as Madison would later state in 1788 and 1792. With the powers reserved to the states, moreover, a means of self-defense was also implied both as a matter of form and theory, in keeping with the new American ideas of checks and balances. Despite later objections to the “doctrines of South Carolina” on the part of Madison, the form of the American government as a “confederate republic” of a compound nature made “State Interposition” or “Nullification” constitutional in 1798 and 1828.<sup>59</sup>

Nor was America's "Constitutional Convention at Philadelphia" the "culminating phase of the sweep toward democratic institutions in the western world in the eighteenth century." In his study of *The Age of the Democratic Revolution*, R. R. Palmer does not use the word "democracy to describe "the process by which the [American] Revolution led to a broadening of popular political participation." Among "The Distinctiveness of American Political Ideas," he does not include democracy either. "Government may have been for the people, but it was not administered by them." More men voted after 1776 and were elected to state offices but democracy this was not. To R. R. Palmer, democracy was less a radical social movement because the American Revolution "did not contribute primarily a social doctrine." The "American Revolution was still a *revolution*, and it was radical" if not democratic. In assessing the political and social thought of the founders and framers, Martin H. Diamond long ago emphasized the need to appreciate the perspective of "pre-democratic thought" and "pre-democratic experience" that characterized their time. The "really odd thing about the story of the glory of 1776," John H. Keane has written, is its silence about a simple fact: that the republican gentlemen who championed the Philadelphia model of government . . . were not keen on democracy in any sense." "Due to the context in which it was conceived, our constitution came to incorporate significant antidemocratic elements." In the end, Dahl is most ambiguous about the Constitution of 1787-1788: "The political system that emerged from the world's first great democratic experiment is unique." Prof. Dahl should have consulted the studies by Palmer and Main above and Hanna Arendt's *On Revolution* (1963). In 1964, Richard Buel, Jr. had already written that "The complex of



assumptions about the people's power with which Americans entered the imperial crisis bore little relation to American democracy as it is popularly conceived.”<sup>60</sup>

A federal republic was about local self-rule on one level and not necessarily rule by the people. The latter as democracy was a form of government to be avoided. Representation in the former replaced direct action on the part of the people. The “Sovereign people” were not individuals en masse and America's extended republic was founded on the states (at least the non-Madisonian version was). Hannah Arendt, distinguishing between the American and French revolutions of the late 18th century, stated that in the former “the end of revolution [was] the foundation of freedom” which did not happen in France. This principle of “*Constitutio Libertatis*” is what made America's independence unique in the history of the world. The Constitution of 1787-1788 was not imposed by a government on a people, but became the means “by which a people constitutes its own government.”<sup>61</sup>

What, then, made the American Revolution unique in the history of the world? Edmund S. Morgan identified the following principles that did so: “The Government would incorporate all the protections to liberty that they still cherished from their British heritage; it would preserve both imported and home-grown republican traditions; and it would employ the political principles developed during the Revolution. It would be a government **inferior to the people** and one in which no people should have dominion over another [*imperium in imperio* or federalism].” To Cecelia Kenyon, “The American Revolution was radical in its four principal achievements: independence; the establishment of republican government and the identification of republicanism with political right; the crystallization of the individualism and equalitarianism of the

Declaration \* . . . ; the extension of the principle and practice of republicanism to a large and heterogeneous population by combination with a new form of **federalism**.”<sup>62</sup>

In a larger trans-Atlantic perspective, with the American and French Revolutions in mind again, Arendt writes that Americans would have “agreed with Robespierre on the ultimate aim of revolution, the constitution of freedom . . . .” In America, however, independence “did not end ‘with a multitude of Commonwealth, Crimes and Calamities . . . till at last the exhausted Provinces [would] sink into Slavery under the yoke of some fortunate Conqueror.’” Between America and France, the end of the latter was “liberation”; in the former the end of independence was a “foundation of freedom.” In America, constitutional government prevailed not only as a means to limit government, but the “people [citizens] constituting a government.” A constitution became “antecedent to government” and superior to it. Government, thus, became the creation of a constitution as a compact.<sup>63</sup>

Also unique to America was the founding of a “confederate republic.” The division of power meant more than “its separation in the three branches of government.” To the founders, “the chief problem . . . was the how to establish union out of thirteen ‘sovereign,’ duly constituted republics; their task was the foundation of a ‘confederate republic’ which, in the language of the time, would reconcile the advantages of monarchy in foreign affairs with those of republicanism in domestic policy. And in this task of the Constitution there was no longer any question of constitutionalism in the sense of civil rights . . . but of erecting a system of powers that would check and balance in such a way that the power neither of the union nor of its parts, the duly constituted states, would decrease or destroy one another.” (In an interesting insight into the Articles of

Confederation, Arendt observed that “the defect of the Confederacy was that there had been no ‘partition of power between the General and the Local Governments . . . .’”<sup>64</sup>

“The American Constitution,” contrary to Charles A. Beard and the Progressives, was not a “counter-revolution.” It “finally consolidated the power of the Revolution, and since the aim of revolution [in America] was freedom, it indeed came to be what Bracton had called *Constitutio Libertatis*, the foundation of freedom.” “The great and fateful misfortune of the French Revolution was that none of the constituent assemblies could command enough authority to lay down the law of the land; the reproach rightly leveled against them was always the same: they lacked the power, to constitute by definition; they themselves were unconstitutional.” Fortunately, it was “the great good fortune of the American Revolution . . . that the people of the colonies, prior to their conflict with England, were organized in self-governing bodies.” Consequently, “there never was any serious questioning of the *pouvoir constituant* of those who framed the state constitutions and, eventually, the Constitution of the United States.”<sup>65</sup>

“The astounding fact that the Declaration of Independence was preceded, accompanied, and followed by constitution-making in all thirteen colonies revealed all of a sudden to what an extent an entirely new concept of power and authority, an entirely novel idea of what was of prime importance in the political realm had already developed in the New World [North America], even though the inhabitants of this world spoke and thought in terms of the Old World and referred to the same sources for inspiration and confirmation of their theories.”<sup>66</sup>

What was lacking in the Old World were the townships of the colonies, and seen with the eye of a European observer, ‘the American Revolution broke out, and the doctrine of the sovereignty of the people came out of the townships and took possession of the state.’ Those who received the power to constitute, to frame constitutions, were duly elected

delegates of constituted bodies; they received their authority from below, and when they held fast to the Roman principle that the seat of power lay in the people, they did not think in terms of a fiction and an absolute, the nation above all authority and absolved from all law, but in terms of a working reality, the organized multitude whose power was exerted in accordance with laws and limited by them. The American revolutionary insistence on the distinction between a republic and a democracy or majority rule hinges on the radical separation of law and power, with clearly recognized different rights, different legitimations, and different spheres of application.

What the American Revolution actually did was to bring the new American experience and the new American concept of power out into the open. Like prosperity and equality of condition, this new power concept was older than the Revolution, but unlike the social and economic happiness of the New World—which would have resulted in abundance and affluence under almost any form of government—it would hardly have survived without it: without revolution, in other words, the new power principle would have remained hidden, it might have fallen into oblivion or be remembered as a curiosity, of interest to anthropologists and local historians, but of no interest to statecraft and political thought.

Reflecting on the Federal Convention, Arendt notes that had it “instead of creating and constituting the new federal power, chosen to curtail and abolish state powers, the founders would have met immediately the perplexities of their French colleagues; they would have lost their *pouvoir constituant*—and this, probably, was one of the reasons why even the most convinced supporters of a strong central government [the “nationalists” in the Federal Convention] did not want to abolish the powers of state governments altogether. Not only was the federal system the sole alternative to the nation-state principle, it was also the only way not to be trapped in the vicious cycle of *pouvoir constituant* and *pouvoir constitué*.<sup>67</sup>

In comparing the American and French revolutions and the former one securing freedom by constitutional government and the latter failing to do so, Arendt further observes that the “fever of constitution-making which gripped the country immediately after the Declaration of Independence prevented the development of a power vacuum” by the establishment of new governments by compact. Natural rights led to government by

compact which then limited it to certain ends including the preservation of natural rights themselves. In France, the “Declaration of the Rights of Man and the Citizen” were not “limitations of all lawful government, but on the contrary . . . the very foundation.” In France, “the declaration ‘All men are born equal’ was “fraught with truly revolutionary implications in a country which still was feudal in social and political organization and great inequalities among the people. There were “no such implications in the New World” of America.<sup>68</sup>

In nineteenth century America, with the Romantic revolutions of perfectionism and nationalism, the equal rights of all men, once divorced from natural rights as the prelude to society and government, became again the foundation of a new government and society (in a part of the North) that would supplant the first American republic of 1776-1861. “Radical egalitarians,” Richard J. Ellis informs us, “typically desire not only to ameliorate current wrongs but also to transform human beings as we know them [thus the central issue of human nature then and now]. The perfectionist faith is a source of immense hope, but it can also be a route to authoritarianism or totalitarianism.” The birth of democracy in America in the 19th century was the great albeit conveniently ignored insight of Alexis de Tocqueville’s two volume work of 1835 and 1840. With the development of a myth of democracy in the North to obscure the radical nature of Romantic perfectionism and nationalism, the Northern origins of America’s Civil War have also been lost to history. Writing in 1964, Richard Buel, Jr. state that “to be still debating such a fundamental question [‘of whether the Revolution was a democratic movement’] indicates a critical weakness in our knowledge” or, perhaps, an unwillingness to learn the real lessons of the American past.<sup>69</sup>

For those concerned with history and what the founders and framers actually intended, James Madison's *Notes of Debates* only confirmed what they already knew and believed. For those with different intentions in mind, original ones were irrelevant. More important was the present and what America **should become** in light of newer and more enlightened (Romantic) thinking. In 1840, thus, the publication of Madison's *Notes of Debates* was used to denigrate the 18th century republican-federalist beliefs of the founders and framers. To abolitionists, already believing in a Declaration of 1776 that they reinterpreted to be more about the equal rights of all men than independence, the framers quashed the real "Spirit of 1776" by their compromises with the slave interests. The myth of the Constitution as a "Proslavery Compact" was born.<sup>70</sup>

#### A New History for a New Nation: The Slave South

While the debate about original intentions became embroiled in the renewed controversy over **slavery** (in the territories), which only intensified until the final crisis of the union, slavery was used by Northern "nationalists" to make it the sole cause of the South more so than their defense of original intentions and the principles of 1776 and 1787 (encompassed within 18th century republicanism and federalism). Being irrelevant, the other revelations in its Madison's *Notes of Debates* were ignored. The rejection of a "national" government, of course, would be a most inconvenient fact and one that belied their claim to be the true heirs to the founders and framers. What was "fact," however, could be overcome by historical reinterpretation as misinterpretation. The American founding could be manipulated to serve different intentions beyond original ones. Romantic history would be the path to an "imagined" nation that was threatened in the present by a South defined more and more by slavery.<sup>71</sup>

Disunionist as it was, Garrison's "Pro-slavery compact" was an idea before its time. More powerful and effective was the idea of a "Slave Power conspiracy." "The notion of the slave power conspiracy enabled northerners to bridge the gap between the ideals expressed in the Declaration of Independence [as interpreted by "perfecters" and "nationalists"] and the reality of slavery in the nation by sectionalizing the dominant moral dilemma of the age. In sum, the image of the southern slave power conspiracy provided Whig-Republicans with a powerful and persuasive symbol of aristocratic tyranny against which to define their own political and social vision [beyond the principles of 1776 and 1787-1788]." "Although the Republican Party advertised itself as the party of the Union and of republican government and claimed to stand for the American nationalist principles, it was, as David Potter reminded us, 'totally sectional in its constituency, with no pretence to bisectionalism'." Quoting David Brion Davis from 1984, Susan-Mary Grant concluded that the Republicans "were committed to the Union on northern [and nationalist] terms alone."<sup>72</sup>

Identifying the cause of the South with slavery was not the only tactic used to separate the beliefs of Southerners from the American founding. To critics, their states' rights beliefs were no more than the state sovereignty ones of the old Articles of Confederation. Then did "state sovereignty" prevail and Southerners hoped to do so again. Northern constitutional theorists meanwhile were actively explicating the Constitution to deduce a "national" rather than a federal government. The South and its Northern allies, on the other hand, were accurately defending the Constitution of 1787-1788 that created a new "confederate republic" of a compound nature that was unique in history. Of these competing views of the Constitution and of government, society, and

politics in the pre-Civil War era, the outcome of the Civil War of 1861-1865 would determine whether history or myth prevailed.<sup>73</sup>

### A New History for a New Nation: The Myth of Democracy

With the “nationalists” and the “perfectionists” in the North being the ones embracing newer and foreign “isms,” they were the ones who had to make them **less revolutionary** than they were. This they did by imparting the newer 19th beliefs in democracy, equality, abolition, and nationalism to the founders and framers themselves to change the meanings of the Declaration and the Constitution. By a “myth of democracy” did Romantic perfectionist-nationalist revolutionaries (and this is how they were viewed at the time) now claim to be the true heirs of the founders and the framers. Together with the myth of a reactionary South, that divorced that region and its Northern allies from the American founding, a new history for a new nation in the making was formulated. Fully developed by 1860, this revised past was used by the new Republican party to win the election of 1860 and then to justify war against the South. To Graham A. Peck, “Lincoln and the Republicans inverted northern ideas about antislavery politics by attaching a powerful nationalist ideology [not present at the American founding] to the antislavery movement.”

Their core proposition—that the nation was dedicated to freedom [not slavery and could no longer remain half-free and half-slave]—resonated deeply in the free states. Adopting that doctrine, Republicans insisted that Congress possessed the power and the duty to exclude slavery from the territories [effectively nullifying the Constitution and the old Union] . . . . This was radical antislavery doctrine, inspired by the [new] idea of equality [derived from a reinterpretation of the Declaration of Independence], justified by [new] antislavery legal theory, and animated by a desire to destroy slavery . . . . Yet, as Lincoln’s speeches demonstrate equally well, **the Republicans cloaked this doctrine in conservative garb**. The case for antislavery politics rested on the Republicans’ promise to preserve rather than to destroy the nation.” In the aftermath of 1854, “Lincoln drew on the Declaration of Independence to condemn the Kansas-Nebraska Act far more than



most anti-Nebraskites. He considered the revolutionaries' document to be the touchstone of human liberty.

With this in mind, "Lincoln urged all Americans to 'repurify' the nation's ideals . . . ." <sup>74</sup>

On the other side, Southerners and other Northerners did not reject the Declaration of Independence understood as a "right of revolution." Locke was still embraced and his compact view of government remained part of the radical Whig ideology that became Americanized as 18th republicanism. They did reject the **new view** of the Declaration of 1776 after 1815 as a proclamation of the equal rights of all men, universally. "In 1806, Pennsylvania congressman, Joseph Clay, said that the Declaration's assertion on unalienable rights was not literally true, and during the Missouri debates of 1820 those who defended slavery again disputed the notion that all men were created equal." John Tyler believed the principle of equality, "although lovely and beautiful," could not "obliterate those distinctions" that "society itself engenders." "Men's equal creation," to John Randolph, was "a falsehood" beyond a state of nature. As a "state of war," following Locke, men were "necessarily subject to the control of others" when a compact of government was made. <sup>75</sup>

When John C. Calhoun declared that there was 'not a word of truth in the notion that men were created equal,' in 1848, he was not rejecting Thomas Jefferson, the principal author of the Declaration of 1776 (interpreted to be about independence more than the equal rights of all men beyond a state of nature and which he reaffirmed in 1823 not then to be stating anything new). Jefferson, moreover, was no democrat or egalitarian believing as he did in a "natural aristocracy" of merit that the opportunities for individual success afforded by America's society and economy. After pairing Jefferson and Calhoun in 1820 in their **agreement** about "Northern efforts to interfere with slavery as a standing

threat to the Union,” Prof. Maier then separates the two. Reflecting her own liberal bias, after documenting at length both the Declaration’s original meaning and its later reinterpretation in the North into a “sacred” document, she writes: “Now, in the final years of his life, Calhoun’s efforts to defend Southern rights [about more than slavery] and preserve [not] the nation [but the union as a “confederate republic” of a compound nature as Jefferson had conceived and defended it including “nullification as a means to do so] brought him up against the document in whose drafting Jefferson had taken such deep pride [as the declaration of America’s birth as a new republic and justification for secession from the British empire].” What Calhoun and others, North and South, were criticizing was not the Declaration of Independence but its willful misinterpretation by those in the North with very different intentions in mind beyond original ones. Their views, in sum, were not the contrary ones.<sup>76</sup>

When John C. Calhoun and others limited equality to a state of nature alone, he and they were agreeing with the “Great Mr. Locke,” which is to say that others in the North (Romantics) were not and in fact were dismissive of Locke’s political theory and epistemology. In *The Two Treatises of Government* (1689), Locke wrote the following about the state of nature: A state of Nature: “A *state also of equality*, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection, unless the lord and master of them all should, by any manifest declaration of his will, set one above another,

and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty.”<sup>77</sup>

To the question of why quit a state of nature, Locke’s answer was: “IF man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to no body, **why will he part with his freedom?** why will he give up this empire, and subject himself to the dominion and controul of any other power? **To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others: for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure.** This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and **it is not without reason, that he seeks out, and is willing to join in society with others,** who are already united, or have a mind to unite, for the mutual *preservation* of their lives, liberties and estates, which I call by the general name, *property*.” Reminiscent of Calhoun, Locke added from Chap. Seven: “GOD having made man such a creature, that in his own judgment, it was not good for him to be alone, put him under strong obligations of necessity, convenience, and inclination **to drive him into society,** as well as fitted him with understanding and language to continue and enjoy it.”<sup>78</sup>

The denial of the equality of all men was not related to a defense of slavery alone. Many Northerners shared the same view and similar sentiments also prevailed at the founding of the American republic in 1776 as Jack P. Greene, John Phillip Reid, and

others have so well documented. “What the phrase [equality of all men] **could not mean**, according to Prof. Greene, “was that all men were equal by nature.” “Nor could a case be made for equality of social condition.” If Americans “lived “so near the state of original equality,” compared with Europeans, they “clearly did not enjoy a state of perfect equality.” Samuel Williams, Vermont historian, said that in America “the nearest equality will take place that can ever subsist among men . . . . But nothing ever did, nor ever can produce an equality of power, capacity, and advantages, in the social or in any other state of men.” From Pennsylvania, it was proclaimed anonymously “that ‘superior degrees of industry and capacity’ . . . had inevitably ‘introduced inequality of property among us, and those have introduced . . . distinction of rank . . . as certain and general as the artificial distinction of men in Europe’.” In 1784, New Hampshire historian Jeremy Belknap asked “Where shall we look for an equal division of property? Not in the five southern States, where every white man is the lordly tyrant of an hundred slaves. Not in the great trading towns and cities, where cash in funds yields 13 or 16 per cent, and in trade much more.” “Not ‘all the systems of metaphysics and bills of rights in the world,’ Belknap concluded, could ‘prevent one man from being stronger, or wiser, or richer than another’.” “It was certainly true that nothing like an equality of property existed,” Alexander Hamilton spoke before the delegates at the Federal Convention in Philadelphia in 1787; that an inequality would exist as long as liberty existed, and that it would unavoidably result from that very liberty itself.”<sup>79</sup>

On the question of equality, Southerners and their Northern allies were not alone in qualifying its meaning. To Loyalists in North America and to British officials at the time of the American Revolution, the Declaration of Independence was “a conspiracy”

long in the making without a cause. George III, in a speech in Parliament on October 31, 1776, “condemned the ‘daring and desperate’ spirit of the leaders of the American colonies, who had ‘persevered to set up their rebellious confederacies for independent states’.” John Lind, “a young lawyer and pamphleteer,” wrote an *Answer to the Declaration of the American Congress* (1776). While copies of this document, or a revised one, were sent to the colonies to be used for rebuttal efforts, its focus was mostly a “refutation of the charges against the king.” Americans, moreover, were no more than “treacherous individuals” and “still rebels.”<sup>80</sup>

Although American defenders of the rights of Englishmen were accused of hypocrisy by proclaiming “the natural equality of all mankind” and denying it to slaves, this charge was a false one **because no such meaning was intended** as quotes above underscore. Early on, then, was one phrase in the Declaration’s second paragraph misinterpreted to mean more than it was understood at the time. In this case, the British did so to belittle the American cause of independence. The natural rights theory of John Locke was the prelude to society and government and, as a compact, consent could be withdrawn as a “right of revolution.” This is what Great Britain had to deny and in fact had already done so after 1688 in favor of *sovereignty indivisible* and no *imperium in imperio*. Locke had become irrelevant to the governance of an empire just as he would be forgotten in the North in the nineteenth century by political and constitutional commentators who favored a “national” government over a federal one.<sup>81</sup>

Jeremy Bentham, author of a “Short Review of the Declaration” was another **denier** of the equal rights of all men. To Bentham, “the principles upon which the Americans claimed their independence” were “tautologies, redundant, inconsistent, and

hypocritical.” According to David Armitage, “Until the end of his life, Bentham remained critical of the principles that underpinned the Declaration. ‘Who can help lamenting that so rational a cause should be rested upon reasons, so much fitter to beget objections, than to remove them’.” Later, he “called the Virginia Declaration [of Rights] ‘a hodge-podge of confusion and absurdity, in which the thing to be proved is all along taken for granted’.”<sup>82</sup>

Here is what Bentham wrote in “A Short Review of the Declaration,” which was included as the last part of Lind’s *An Answer to the Declaration of the American Congress* (1776):<sup>83</sup>

IN examining this singular Declaration, I have hitherto confined myself to what are given as *facts*, and alleged against his Majesty and his Parliament, in support of the charge of tyranny and usurpation. Of the preamble I have taken little or no notice. The truth is, little or none does it deserve. The opinions of the modern Americans on Government, like those of their good ancestors on witchcraft, would be too ridiculous to deserve any notice, if like them too, contemptible and extravagant as they be, they had not led to the most serious evils.

In this preamble however it is, that they attempt to establish a *theory of Government*; a theory, as absurd and visionary, as the system of conduct in defence of which it is established is nefarious. Here it is, that maxims are advanced in justification of their enterprises against the British Government. To these maxims, adduced for *this purpose*, it would be sufficient to say, **that they are repugnant to the British Constitution**. But beyond this they are subversive of every actual or imaginable kind of Government . . . .

131) These are the Acts—these are the exertions of constitutional, and hitherto, *undisputed* powers, for which, in the audacious paper, a patriot King is traduced — as “a Prince, whose character is marked by every Act “which may define a tyrant;” as “unfit to be the ruler of a free people.” These are the Acts, these exertions of constitutional, and, hitherto, undisputed powers, by which the Members of the Congress declare their selves and their constituents to be “absolved from all allegiance to the British Crown” pronounce “all political connection between Great Britain and America to be totally dissolved.” With that hypocrisy which pervades the whole of the Declaration, they pretend indeed, that this event is not of their seeking; that it is forced upon them; that they only “*acquiesce in the necessity which denounces their separation from us:*” which compels them hereafter to hold us, as they hold the rest of mankind; *enemies in war; in peace, friends.*”

How this Declaration may strike others, I know not. To me, I own, it appears that it cannot fail — to use the words of a great Orator— “of doing us *Knight’s* service.” The mouth of faction, we may reasonably presume, will be closed; the eyes of those who saw not, or would not see, that the Americans were long since aspiring at independence, will be opened; the nation will unite as one man, and teach this rebellious people, that it is one thing for them to *say*, the connection, which bound them to us, is dissolved, another to *dissolve* it; that to *accomplish* their *independence* is not quite so easy as to *declare* it: *that there is no* (132) *peace with them, but the peace of the King: no war with them, but that war, which offended justice wages against criminals.* — We too, I hope, shall *acquiesce in the necessity* of submitting to whatever burdens, of making whatever efforts may be necessary, to bring this ungrateful and rebellious people back to that allegiance they have long had it in contemplation to renounce, and have now at last so daringly renounced.

The second paragraph of the Declaration of Independence that contains the phrase “all men are created equal” (in a state of nature only) thus was capable of much misunderstanding at the time beyond what was intended and what remained not said, i.e., inequality was a fact of life in the 17th and 18th centuries. The preamble to the Declaration of Independence (not the equality of all men) was pure Locke from his *Second Treatise*. In a state of nature, all men were indeed equal. A state of nature was no Utopia as later egalitarians would insist it was. The necessity of society and government that Locke proclaimed, flowing from the many inconveniences of a state of nature, **they would forget**. Whereas society and government by compact were a blessing to humanity, later egalitarians saw it in terms of Rousseau and Romantic perfectionism as not progress but retrogression. The state became the means of the oppression of individuals and their full development required reform if not the destruction of government.<sup>84</sup>

In her reconstruction of the Declaration of Independence, Pauline Maier observed: “The Declaration of Independence was, in fact, a peculiar document to be cited by those who championed the cause of equality. Not only did its reference to men’s equal creation

concern people in a state of nature before government was established, but the **document's original function was to end the previous regime**, not to lay down principles to guide and limit its successor.” While “the Declaration of Independence offered an implicit standard against which all governments could be compared and found wanting . . . unless they secured men’s inalienable rights, the people could alter or abolish them and institute others ‘more likely to effect their safety and happiness.’” As a further reminder about the Declaration’s less egalitarian purpose, Maier pointed to the “declarations or bills of rights” of the states and these being “normally” the means to secure rights. “Moreover, after an initial period of uncertainty, state bills of rights were recognized as legally binding parts of the states’ law. Their provision could therefore be enforced in the courts, which was not true of the Declaration of Independence.” (The question is raised here of why Romantic perfectionist reformers in the North, who used the state of nature as a model for their civil society, did not pursue their demands in the state courts to achieve egalitarian ends? Why invoke the Declaration at all? One part of the answer is that the philosophical sources that informed their newer beliefs and values were of foreign origin and they were radical. In other words, the abolition of slavery was not an end. It was the beginning of the reform of government and society in America. The other part is provided by Prof. Maier herself. The “Declaration’s newfound status [after 1815] as a sacred document made it extremely useful for causes attempting to seize the **moral** high ground in public debate. And so, starting in the 1820’s, workers, farmers, women’s rights advocates, and other groups [abolitionists] continually used the Declaration of Independence **to justify their quest for equality** and their opposition to



the ‘tyranny of factory owners or railroads or great corporations or the male power structure [and of slave owners].’<sup>85</sup>

When Prof. Maier asserts that “the opponents of slavery,” in citing the Declaration, “did not need to rewrite the Declaration of Independence to enlist its authority on their behalf,” she is not being truthful. Besides contradicting her views about a state of nature of above, the founders did not believe that all men were created equal beyond a state of nature as quotes above document. The role of the Declaration, she noted earlier, “was essentially done once it had successfully announced and justified Congress’s decision to break with Britain and begin a new nation [really a new federal republic].” “Moreover, its assertion that ‘all men are created equal,’ which became a prominent part of the document’s **moral** message, had originally referred to men in a state of nature, that is, before government existed.” Contrary to abolitionists and later Republicans including Lincoln, there was in the 18th century no “inconsistency between American principle and practice.” When Northern states began to abolish slavery legally in the early 19th century, they did so under the aegis of states’ rights (that was the federal solution to the problem of slavery and its gradual abolition.<sup>86</sup>

Anyway, from government by express consent, by compact, there followed the logic of withholding consent when a government pursued ends injurious to the body politic. In short, there was a “right of revolution” on the part of the people making an original compact for limited purposes. Government by compact was not only limited government, but it could be dissolved if certain conditions pertained. For Locke, a “right of revolution” was no worse than enduring the condition of tyranny and instead of promoting rebellions would be a safeguard against usurpations and arbitrary rule.<sup>87</sup>

. . . . But because no *political society* can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is *political society*, where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it. And thus all private judgment of every particular member being excluded, the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, [270] for the execution of those rules, decides all the differences that may happen between any members of that society concerning any matter of right; and punishes those offences which any member hath committed against the society, with such penalties as the law has established: whereby it is easy to discern, who are, and who are not, in *political society* together. Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders, are in *civil society* one with another: but those who have no such common people, I mean on earth, are still in the state of nature, each being, where there is no other, judge for himself, and executioner; which is, as I have before shewed it, the perfect *state of nature*. (Chap. VII: “Of Political or Civil Society,” Section 87.)

For when any number of men have, by the consent of every individual, made a *community*, they have thereby made that *community* one body, with a power to act as one body, which is only by the will and determination of the *majority*: for that which acts any community, being only the consent of the individuals of it, and it being necessary to that which is one body to move one way; it is necessary the body should move that way whither the greater force carries it, which is the *consent of the majority*: or else it is impossible it should act or continue one body, *one community*, which the consent of every individual that united into it, agreed that it should; and so every one is bound by that consent to be concluded by the *majority*. And therefore we see, that in assemblies, impowered to act by positive laws, where no number is set by that positive law which impowers them, the *act of the majority* passes for the act of the whole, and of course determines, as having, by the law of nature and reason, the power of the whole . . . . (Chap. VIII, “Of the Beginning of Political Societies,” Section 96.)

And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation, to every one of that society, to submit to the determination of the *majority*, and to be concluded by it; or else this *original compact*, whereby he with others incorporates into *one society*, would signify nothing, and [281] be no compact, if he be left free, and under no other ties than he was in before in the state of nature. For what appearance would there be of any compact? what new engagement if he were no farther tied by any decrees of the society, than he himself thought fit, and did actually consent to? This would be still as great a liberty, as he himself had before his compact, or any one else in the state of nature hath, who may submit himself,

and consent to any acts of it if he thinks fit. (Chap. VIII: “Of the Beginning of Political Societies,” Section 97.)

In Chap. X: “Of the Forms of a Commonwealth, Locke “By commonwealth” meant “not a democracy” or any other form of government, but any independent community, which the Latines signified by the word *civitas* . . . .”

For the “Legislative Power” and limits to its exercise, see “Chap. XI: “Of the Extent of the Legislative Power,” sections 136, 137, and 140.

*Secondly,\** The *legislative*, or supreme authority, cannot assume to its self a power to rule by extemporary arbitrary decrees, but *is bound to dispense justice*, and decide the rights of the subject *by promulgated standing laws, and known authorized judges*: for the law of nature being unwritten, and so no where to be found but in the minds of men, they who through passion or interest shall miscite, or misapply it, cannot so easily be convinced of their mistake where there is no established judge: and so it serves not, as it ought, to determine the rights, and fence the [317] properties of those that live under it, especially where every one is judge, interpreter, and executioner of it too, and that in his own case: and he that has right on his side, having ordinarily but his own single strength, hath not force enough to defend himself from injuries, or to punish delinquents. To avoid these inconveniencies, which disorder men’s properties in the state of nature, men unite into societies, that they may have the united strength of the whole society to secure and defend their properties, and may have *standing rules* to bound it, by which every one may know what is his. To this end it is that men give up all their natural power to the society which they enter into, and the community put the legislative power into such hands as they think fit, with this trust, that they shall be governed by *declared laws*, or else their peace, quiet, and property will still be at the same uncertainty, as it was in the state of nature. (Section 136.)

Absolute arbitrary power, or governing without *settled standing laws*, can neither of them consist with the ends of society and government, which men would not quit the freedom of the state of nature for, and tie themselves up under, were it not to preserve their lives, liberties and fortunes, and by *stated rules* of right and property to secure their peace and quiet. It cannot be supposed that they should intend, had they a power [318] so to do, to give to any one, or more, an *absolute arbitrary power* over their persons and estates, and put a force into the magistrate’s hand to execute his unlimited will arbitrarily upon them. This were to put themselves into a worse condition than the state of nature, wherein they had a liberty to defend their right against the injuries of others, and were upon equal terms of force to maintain it, whether invaded by a single man, or many in combination. Whereas by supposing they have given up themselves to

the *absolute arbitrary power* and will of a legislator, they have disarmed themselves, and armed him, to make a prey of them when he pleases; he being in a much worse condition, who is exposed to the arbitrary power of one man, who has the command of 100,000, than he that is exposed to the arbitrary power of 100,000 single men; no body being secure, that his will, who has such a command, is better than that of other men, though his force be 100,000 times stronger. And therefore, whatever form the commonwealth is under, the ruling power ought to govern by *declared and received laws*, and nor by extemporary dictates and undetermined resolutions: for then mankind will be in a far worse condition than in the state of nature, if they shall have armed one, or a few men with the joint power of a multitude, to force them to obey at pleasure the exorbitant [319] and unlimited decrees of their sudden thoughts, or unrestrained, and till that moment unknown wills, without having any measures set down which may guide and justify their actions: for all the power the government has, being only for the good of the society, as it ought not to be *arbitrary* and at pleasure, so it ought to be exercised by *established and promulgated laws*; that both the people may know their duty, and be safe and secure within the limits of the law; and the rulers too kept within their bounds, and not be tempted, by the power they have in their hands, to employ it to such purposes, and by such measures, as they would not have known, and own not willingly . . . .(Section 137.)

THOUGH in a constituted common-wealth, standing upon its own basis, and acting according to its own nature, that is, acting for the preservation of the community, there can be but *one supreme power*, which is *the legislative*, to which all the rest are and must be subordinate, yet the legislative being only a fiduciary power to act for certain ends, there remains still *in the people a supreme power to remove or alter the legislative*, when they find the *legislative* act contrary to the trust reposed in them: for all *power given with trust* for the attaining an *end*, being limited by that end, whenever that *end* is manifestly neglected, or opposed, the *trust* must necessarily be *forfeited*, **and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security.** And thus the *community* perpetually *retains a supreme power* of saving themselves from the attempts and designs of any body, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject: for no man or society of men, having a power to deliver up their *preservation*, [329] or consequently the means of it, to the absolute will and arbitrary dominion of another; when ever any one shall go about to bring them into such a slavish condition, they will always have a right to preserve, what they have not a power to part with; and to rid themselves of those, who invade this fundamental, sacred, and unalterable law of *self-preservation*, for which they entered into society. And thus the *community* may be said in this respect to be *always the supreme power*, but not as considered under any form of government, because this power of the people can never take place till the government be dissolved. (Chap. XIII, "Of the Subordination of the Powers of the Commonwealth," Sec. 149.)

It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent, *i. e.* the consent of the majority, giving it either by themselves, or their representatives chosen by them: for if any one shall claim a *power to lay* and levy *taxes* on the people, by his own authority, and without such consent of the people, he thereby invades the *fundamental law of property*, and subverts the end of government: for what property have I in that, which another may by right take, when he pleases, to himself? (Section 140.)

AS usurpation is the exercise of power, which another hath a right to; so *tyranny is the exercise of power beyond right*, which no body can have a right to. And this is making use of the power any one has in his hands, not for the good of those who are under it, but for his own private separate advantage. When the governor, however intitled, makes not the law, but his will, the rule; and his commands [374] and actions are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, covetousness, or any other irregular passion. (Chap. XVIII: "Of Tyranny," section 199.)

It is a mistake, to think this fault is proper only to monarchies; other forms of government are liable to it, as well as that: for wherever the power, that is put in any hands for the government of the people, and the preservation of their properties, [376] is applied to other ends, and made use of to impoverish, harass, or subdue them to the arbitrary and irregular commands of those that have it; there it presently becomes *tyranny*, whether those that thus use it are one or many. Thus we read of the thirty tyrants at *Athens*, as well as one at *Syracuse*; and the intolerable dominion of the *Decemviri* at *Rome* was nothing better. (Section 201.)

*Where-ever law ends, tyranny begins*, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another. This is acknowledged in subordinate magistrates. He that hath authority to seize my person in the street, may be opposed as a thief and a robber, if he endeavours to break into my house to execute a writ, notwithstanding that I know he has such a warrant, and such a legal authority, as will empower him to arrest me abroad. And why this should not hold in the highest, as well as in the most inferior magistrate, I would gladly be informed. Is it reasonable, that the eldest brother, because he has the greatest part of his father's estate, should thereby [377] have a right to take away any of his younger brothers portions? or that a rich man, who possessed a whole country, should from thence have a right to seize, when he pleased, the cottage and garden of his poor neighbour? The being rightfully possessed of great power and riches, exceedingly beyond the greatest part of the sons of *Adam*, is so far from being an excuse, much less a reason, for rapine and oppression, which the endamaging another without

authority is, that it is a great aggravation of it: for the exceeding the bounds of authority is no more a right in a great, than in a petty officer; no more justifiable in a king than a constable; but is so much the worse in him, in that he has more trust put in him, has already a much greater share than the rest of his brethren, and is supposed, from the advantages of his education, employment, and counsellors, to be more knowing in the measures of right and wrong. (Section 202. See also Chap. XIX, “Of the Dissolution of Government.”)

On slavery, in Chap. VII: “Of Political or Civil Society,” Locke had this to say in section 85:

*Master and servant* are names as old as history, but given to those of far different condition; for a freeman makes himself a servant to another, by selling him, for a certain time, the service he undertakes to do, in exchange for wages he is to receive: and though this commonly puts him into the family of his master, and under the ordinary discipline thereof; yet it gives the master but a temporary power over him, and no greater than what is contained in the *contract* between them. But there is another sort of servants, which by a peculiar name we call *slaves*, who being captives taken in a just war, are by the right of nature subjected to the absolute dominion and arbitrary power of their masters. These men having, as I say, forfeited their lives, and with it their [268] liberties, and lost their estates; and being in the *state of slavery*, not capable of any property, cannot in that state be considered as any part of *civil society*; the chief end whereof is the preservation of property.

Government by compact and a “right of revolution” were what really bothered the British and their new view (since 1688) of the indivisibility of sovereignty and, of course, no *imperium in imperio*. Instead of stating clearly the substance of their opposition, British imperialists chose to imagine a conspiracy first and also to focus on the claim of equality to disparage the colonists’ grounds for declaring independence. In nineteenth century America, “nationalists,” who had to move beyond the compact theory of government as well, looked to slavery and the denial of equality as reasons for war against the South and its Northern allies. In both cases, what the American War of Independence was about **was forgotten** (as was the real revolution in political theory that followed). It was about independence in defense of their ancient rights as Englishmen that became Americanized as 18th republicanism (and federalism) and the foundation of

a “confederate republic” of a compound nature like no other in history. America was not born modern, which is to say liberal with beliefs in democracy, egalitarianism, abolitionism, or nationalism intact. These “isms” would come later in the 19th century with the Romantic Revolution in the North between 1815-1860.<sup>88</sup>

“What were Americans celebrating with their processions, their ceremonial bonfires, their illuminations, the firing of guns and ringing of bells, the printed pages that they ‘fixed up’ on the walls of their homes?” So asked Pauline Maier in her history of the Declaration of Independence. It was “the news, not the vehicle that brought it; Independence, the end of monarchy, and the assumption of self-government, not the document that announced Congress’s decision to break with Britain. Considering how revered a position the Declaration of Independence later won in the hearts and minds of the American people, their disregard for it in the earliest years of the new nation verges on the incredible.”<sup>89</sup>

“The Declaration of Independence was, of course, more than a Congressional press release, or an effort to enlist popular enthusiasm with ‘awkward and uncouth’ language. It performed a constitutional function in formally closing the previous regime and so provided, as Hancock noted, ‘the Ground and Foundation of a future Government’ [federal republic].” (Maier, 162-163.)

“The Declaration of Independence was just one among several resolutions of the state and Continental congresses by which ‘all power whatever . . . hath reverted to the people’ so they could empower their representatives to ‘institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this State’ [New York].” (Maier, 163.)

“In none of these documents [state declarations of rights] is there any evidence whatsoever that the Declaration of Independence lived in men’s minds as a classic statement of American political principles. Not one revolutionary state bill of rights used the words ‘all men are created equal’.” (Maier, 167.)

“During the first fifteen years following its adoption, then, the Declaration of Independence seems to have been all but forgotten, particularly within the United States, except as the means by which Americans announced their separation from Great Britain.

The histories and political writings of the 1789s generally describe the document ‘primarily as the act of independence’.” (Maier, 168-169.)

With these additional quotes from Maier’s *American Scripture*, there can be no doubt whatsoever about the original meaning of the Declaration of Independence. In the years to come after 1815, a new Declaration would emerge that would make equality its central theme, for partisan purposes and ideological purposes.

Without making a direct link between newer “isms” from abroad and the reinterpretation of the Declaration to be less about independence and more about equality (and soon to be democracy and abolitionism), that this author does, Prof. Maier does emphasize the years after 1815 as the beginning of the “sacralization” of the Declaration in the North (or parts of it being Romanticized and industrialized). Influential in this respect was not the American War of Independence (that happened so long ago, approaching a half-century since 1776 in 1826), but post-Napoleonic “revolutionary movements” that “swept through Spain, Portugal, Naples, Piedmont, Sicily, Greece, and Latin America. Their inspiration, in turn, was the more recent French Revolution of 1789 and its various phases continuing until 1799. Nationalist resistance to Napoleon before 1815 resumed against the Holy Alliance of absolute monarchies in Europe that were restored in Austria, Prussia, and Russia. France, once again, was a monarchy as well under Louis XVIII.<sup>90</sup>

Although the second and radical French Revolution of the Jacobins had failed, their revolutionary beliefs in democracy, equality, abolition, and socialism lived on in Europe into the nineteenth century. In Europe between 1789 and 1848, a three-way ideological split and debate was on-going among Liberals, Conservatives, and Radicals (the ideas of the Jacobins). In America after 1815, 18th century republicanism was the



equivalent of European liberals, while the radicals were those espousing democracy, equality, abolition, socialism, and nationalism **that were not present at the creation of the American republic.** By the 1820's, too, the Industrial Revolution had come to America as a result of the War of 1812 and this economically transforming event had the further effect of popularizing democratic, egalitarianism, and socialist beliefs among urban wage workers. Abolitionism was another different response altogether that most in America opposed. The democracy, egalitarianism, abolitionism, and nationalism of the nineteenth century in America were not just an expansion of these ideas from the American Revolution. They were altogether newer ones imported from foreign sources and inspired by the Jacobin phase of the French Revolution (which radical ideas continued to be influential after 1799.)<sup>91</sup>

Important as *American Scripture* is in reconstructing the original and limited meaning of the Declaration of Independence, “as a statement of political philosophy” it “was therefore purposely unexceptional in 1776,” and then documenting its reinterpretation in the nineteenth century to be more about equality and democracy than it was and how “it was remade into a sacred text,” the authors objectivity does not extend to Abraham Lincoln. Although an active participant in the Northern historical revisionism of the Revolution and the Constitution, Prof. Maier just cannot admit that Abraham Lincoln, Republicans, and abolitionists all reinterpreted the American past in light of later 19th “isms” reflecting entirely newer beliefs and values beyond original ones. The South and its Northern allies were right not wrong about 1776 and 1787-1788. It was the North (or a part of it) that had changed and its war against the South was about much more than slavery.<sup>92</sup>

For example, on page 206 Maier can write that Lincoln “was able to agree with Calhoun that the assertions of human equality and inalienable rights were unnecessary in the Declaration of Independence; the Americans could have declared their Independence without them.” In the Lincoln-Douglas debates, the views of Lincoln’s opponent were “in many ways more faithful to the past and to the views of Thomas Jefferson . . . .” “Lincoln’s view of the past . . . was a product of political controversy, not research, and his vision of what the founders meant was full of wishful suppositions.” By the mid-nineteenth century, when the standard of revolution had passed to radical Abolitionists and Southern secessionists who wanted to dismember the Union, **the Declaration of Independence was in need of another reading.** In Lincoln’s hands, the Declaration of Independence became first and foremost a living document for an established society [really a federal republic being transformed in the North by the revolutions of Romanticism and Industrialism], a set of [new] goals to be realized over time, and so [true] an explanation **less** of the colonists’ decision to separate from Britain [a right of revolution was not compatible with an absolute Union and nationalism] than of their victory in the War of Independence.”<sup>93</sup>

Presuming Abraham Lincoln to be following Jefferson, Maier proceeds to deny his role as historical revisionist. “Lincoln and those who shared his [new] convictions did not therefore give the nation a new past or revolutionize the Revolution. But as descendants of the revolutionaries and of their English ancestors, they felt the need for a document that stated those values in a way that could guide the nation, **a document that the founding fathers had failed to supply.** And so they made [a new] one, pouring” new not “old wine [of Romantic perfectionist and nationalist vintage] into an old vessel

manufactured for another purpose [independence], creating a [new] testament [of equal rights for all] **whose continuing usefulness depended not on the faithfulness [or historical accuracy] with which it described the intentions** of the signers but on its capacity [as myth] to convince and inspire living Americans.”<sup>94</sup>

Writing after the publication of *American Scripture* in 1997, Richard Brookhiser also transforms “Old Abe” into a *Founders’ Son*. Brookhiser, of the *National Review*, may be a conservative politically, but his popular biographies of George Washington, James Madison, and Alexander Hamilton distort the first American founding more than they reveal what happened between 1776 and 1800. Much as Lincoln and the new Republican party of 1854-1860 may have claimed to be the true heirs of the founders and framers, they were not. They were in the process of making America anew, i.e., engaging literally in a second founding of a nation beyond the first founders’ “confederate republic.” Strangely, Brookhiser admits this to be the case.

“Lincoln did not think that compromise could ever resolve the slavery question: The nation would have to pass through a grave crisis to settle it one way or the other . . . . This speech [of a “House Divided”] was judged by many to have been a fatal error on Lincoln’s part for, as [Stephen A.] Douglas pointed out, it was more or less a forecast of disunion or civil war [with Romantic nationalism being the cause behind the rejection of secession as “rebellion”]. The founding fathers,” to Brookhiser, “had managed to compromise the issue, and indeed had written those compromises into the Constitution. From Douglas’s point of view, it was Lincoln (not he) who had turned his back against the founders.”

“Lincoln,” Brookhiser continues, “was mindful that his efforts to contain slavery [by a new policy of “Antislavery Nationalism”] was acting against the intentions of the founders—and that he might be complicit in causing the national crisis that he had forecast in his ‘House Divided’ speech.”

“Throughout the war, as the casualties mounted, Lincoln called upon the founding fathers to justify the sacrifices required to maintain the Union—which he more and more referred to as ‘the nation.’ In the Gettysburg Address, he dated the founding of the nation to the Declaration of Independence [yet another example of Northern-Romantic-Nationalist historical revisionism].”

“It is easy to see Lincoln as a radical or reformer who brought far-reaching changes to the United States,” reviewer James Pierson concludes. “Brookhiser reminds us that those changes were brought about by Lincoln’s appeal to the founding fathers [reinterpreted to be the democrats, egalitarians, abolitionists, and nationalists they were not in order to obscure different intentions Lincoln and the Republicans derived from newer “isms” of the 19th century].” Reading “between the lines of his fine book one can see that Lincoln, by his leadership and **rhetoric**, added something startling and original of his own to the founders’ experiment . . . .”

“In his Civil War addresses, Lincoln acknowledged that the founders’ formula had not worked at all.” “The nation was in need of ‘a new birth of freedom,’ or, rather, to be more historically accurate, a “new birth of freedom” required that a nation first had to be created.”<sup>95</sup>

For all of their egalitarian rhetoric, opponents of slavery, including members of the new Republican party of 1854-1860, had to qualify their belief to such an extent that its believability became suspect. And rightfully so. “To vindicate the ‘great truths’ in that ‘immortal instrument,’ he [Benjamin Wade] recalled, the fathers had pledged their lives, fortunes and sacred honor. Without ‘the influence of those soul-searching principles it would not have been possible for the patriots of that day to have achieved our independence’ . . . .” As to “How exactly were men equal?,” Wade was more circumspect . . . .” “Not in physical power; certainly not. Not in point of intellect; nobody pretends it.” Like Wade, “Lincoln denied that the signers of the Declaration meant that men were ‘*equal in all respects.*’ They did not mean to say all were equal in color, size, intellect, moral development, or social capacity. They defined with tolerable distinctions, in what respects they did consider all men created equal. He, too, made sense of the Declaration’s assertion of man’s equal creation by eliding it with the next, separate statement on rights. The signers, he insisted, said that men were equal in having ‘certain

inalienable rights . . . .’ This they said, and this they meant. They had no intention of affirming the ‘obvious truth, that all were then men enjoying that equality,’ nor to confer it on them immediately.”<sup>96</sup>

Abraham Lincoln was more specific in 1858 during his debates with Sen. Stephen A. Douglas for election to the U. S. Senate. In Charleston, Illinois, Lincoln recalled that at his hotel that morning . . . an elderly gentleman had wanted to know whether ‘I was really in favor of producing a perfect equality between the negroes and white people.’ Then he “issued a series of statements defining where he stood on racial equality.”

I will say that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and black races, [applause]—that I am not nor ever have been in favor of making voters or jurors of negroes, nor of qualifying them to hold office, not to intermarry with white people.

“After stating his own opinion, Lincoln went on to say that he had never met a person ‘in favor of producing a perfect equality, social, and political, between negroes and white men’.”<sup>97</sup>

To Ronald C. White, Jr., a Lincoln scholar, “Few white Americans were without aversion to black Americans in the 1840s and 1850s. White attitudes were based on an assumption of the inferiority of African-Americans. This prejudiced mind-set permeated both the South and the North.” Not necessarily ironic, “antislavery and racist attitudes walked hand in hand. Only a few aggressive abolitionists contemplated social equality with African-Americans as a possibility. Republicans who campaigned in the 1850s understood that it was prudent to deny any interest social equality as part of achieving some measure of political rights for African-Americans.” It should be noted that this “prejudice” continued in the North and within the Republican party after 1865. The

connection between antislavery and racism in the North is easier to understand when it is known that anti-slavery was against the extension of slavery and the Slave Power and its presumed threat to white labor in the North. Free Soil and Free Men meant for whites only.<sup>98</sup>

The platform of the new Republican party of 1854-1860 may have embraced the equal rights of all men of the Declaration of 1776, but it was also dedicated to “free soil” and opposition to the expansion of slavery into the territories. “Free Soil” also meant “Free Labor” and that meant white workers and farmers (as new entrepreneurs) each seeking a “homestead” in the territories and opportunity to succeed. No slaves were wanted and no free blacks either. In Illinois, although its first constitution of 1818 outlawed slavery, a later one of 1847 excluded an extension of the right of suffrage [voting] to blacks by a vote of 137 to 7. Another law “prohibiting black migration to Illinois” followed in 1848. “More than three-fourths of Illinois voters approved the new constitution.”<sup>99</sup>

To say the least, “Free Soil, Free Labor, Free Men” had a racial component as well. With this in mind, Republicans including Lincoln used the equality issue in a special way that **was not an endorsement of black equality**. Focusing more on the concept of free labor, equality meant no more than “an equal right not to be compelled to do something” or to be free from force being used. To Benjamin Wade, “the ‘good old Declaration’ says ‘that all men are created equal, and have inalienable rights; that is, [they are] equal in point of right; that no man has a right to trample upon another’.” “The serfs of Russia and the slaves of the South ‘have precisely the same rights as he who trampled them down’; and where those rights were wrested from them by force or fraud [by legal

slavery or serfdom] justice demanded that they be ‘restored without delay.’ To deny that principle---to say that the Revolution was unconcerned with ‘personal rights,’ that it involved nothing more than, as [John] Pettit [Democrat from Indiana] said, an assertion that Americans had the right to be ‘a free and independent nation, and to fix our domestic and home institutions as we pleased [which is what it was],’ was to make a lie of the Americans’ boast that their fathers had discovered ‘a new principle of government [of a “confederate republic” of a compound nature that Wade and the Republicans in the making were in the process of denying].’ . . .”<sup>100</sup>

History according to Pettit, in Wade’s reinterpretation of 1776, “implied . . . that force, not consent, conferred authority, which vindicated the rights of kings and of privileged orders everywhere [quite an exaggeration when Democrats, North and South, were the ones defending government by compact and consent that the new Constitution of 1787-1788 created as a federal republic like no other in history].” Wade was right about one thing: “Pettit’s argument robbed the Revolution of all meaning, beyond Independence,” which he and other opponents of slavery were intent on reading back into America’s War of Independence the newer “isms” of the nineteenth century.”<sup>101</sup>

For anti-slavery advocates, the denial of equality, North and South, was also twisted into a “justification of authority” and an “emphasis on subjection as natural to man.” To Wade, this could only end in tyranny “worse even than those whose disappearance from the earth had been the dream of men like Jefferson and Thomas Paine and Samuel Adams . . . .” Again, Wade takes liberties with the past. Jefferson referred only to monarchical governments and absolute ones and free governments not democratic formed by consent with rights of individuals protected by a Bill of Rights. Samuel

Adams was a good “radical Whig” who opposed British tyranny for their denial of self-rule to their English colonies. Paine, after *Common Sense*, wrote *The Rights of Man* (1792), became a supporter of the radical French Revolution of 1792-1794, and in the *Age of Reason* he added atheism to his radical democratic views.<sup>102</sup>

Abraham Lincoln, like Wade, likewise believed that the “plain, unmistakable language” of the Declaration of Independence, in declaring “all men” were created equal, meant that “there can be no *moral* [italics added] right in connection with one man’s making a slave of another.” The Declaration’s “condemnation of monarchy” also applied to “a condemnation of slavery. “To deny that king’s can justly rule b right of birth was to deny that anyone could rule another.” Neither Wade nor Lincoln, however, were being literal in their interpretation of the Declaration. Equality applied only in a state of nature as Pauline Maier clarified the issue. “The Declaration of Independence was, in fact, a peculiar document to be cited by those who championed the cause of equality. Not only did its reference to men’s equal creation concern people in a state of nature before government was established, but the document’s original function was to end the previous regime, not to lay down principles to guide and limit its successor.” At the same time, “the function of stating fundamental principles that established governments had to respect was normally entrusted to declarations or bills of rights like those attached to many state constitutions.” “By the mid-nineteenth century, “ Maier adds, “the Declaration . . . was in need of another reading . . . .” So it was and a new history for a new nation in the making was well underway.<sup>103</sup>

In light of anti-slavery proponents’ own racism, and their own equivocations about equality for blacks, their qualified egalitarianism must be understood as part and



parcel of their general indictment of slavery and of the slave society of the South. Since subjugation by force was its central element and authority preferred over consent, the extension of slavery had to be prevented because of the threat posed to free society in the North. At the same time, the abolition of slavery would make slaves free by default with their “natural rights” restored that did not necessarily extend to civil or political rights! To Republicans, including Lincoln, the abolition of slavery was always no more than the end to the legal right to own humans as property. With the Thirteenth Amendment of 1865, the Northern-Republican commitment to blacks was fully satisfied (except for a few radicals).<sup>104</sup>

The Republican paradox of racism and egalitarianism was not only a reality; it also pointed to a war against the South being more about nationalism than abolitionism. By the logic of Romantic perfectionism (beyond Unitarianism and Transcendentalism, earlier “isms” in the North from foreign sources, Thomas Reid’s Scottish common sense philosophy and intuitionism along with Kant Americanized), the final perfection of America would be a new nation unified at last. Only then could there be a new “birth of freedom.” Toward this end, preliminary emancipation during the Civil War of Northern-Romantic-Nationalist origins, was more about weakening the Southern Confederacy’s ability to wage war than an embrace of racial egalitarianism. Prof. Ethan Kytle’s new book on Romantic reformers in the 1840’s and 1850’s makes the same point as the author. To one reviewer, Jason Stacy of Southern Illinois University-Edwardsville:

For the lay student of American history, abolitionism begins with the tepid gradualism of the founding generation, is followed by the emigrationism of the American Colonization Society, and culminates in either the radical, though effectively pacifist immediatism of William Lloyd Garrison or the violence of John Brown. Ethan J. Kytle lends nuance to this narrative with his exploration of the

ideological background and moral impetus of the generation of abolitionists who came of age in the 1840s and 1850s and drew on romantic ideals. Inspired by the cultural biographies written by David Brion Davis, Daniel Walker Howe, Leslie Butler, and Frederick J. Blue, Kytile illuminates the ideological framework of Theodore Parker, Frederick Douglass, Harriet Beecher Stowe, Martin Robison Delany, and Thomas Wentworth Higginson and explores their perfectionism, moral certitude, and faith in the power of “self-culture” and liberal democracy (p. 22). In this regard, Kytile adds significantly to our understanding of American abolitionism on the eve of the Civil War.

But what made these New Romantics new? According to Kytile, New Romantic abolitionists appealed to immediatism and perfectionism in the shadow of the Fugitive Slave Law of 1850, which threatened to make Garrison’s uncompromising statements like “I will not retreat a single inch” ring hollow. For abolitionists like Parker, the Fugitive Slave Law made “ethical preaching” [End Page 678] at best a half measure: “Slavery must be put down politically, or else militarily” (p. 55). Here, Kytile captures some of the ambivalence of the New Romantics. Douglass was committed simultaneously to “political abolitionism” and “anti-slavery violence” (p. 111). Stowe balanced a “trenchant critique of southern slavery with a sensitive portrayal of the burdens faced by slaveholders” (p. 157). At various points during the 1850s Delany advocated integration and emigration. Higginson defended John Brown and toyed with the North’s secession from the slave states but denounced political violence in the name of liberty as surrendering the “ground between ourselves and the guillotine” (p. 239). Kytile characterizes this ambivalence as “a defining feature of the antislavery movement in the 1850s” and sees its cause in the contradictory appeals of “moral suasion, political agitation, and armed struggle against slavery” (p. 25).

Occasionally, Kytile’s exploration of this ambivalence threatens to undermine his claim of the ideological consistency of these reformers. For example, while Kytile claims his subjects’ “disparate backgrounds ... underscore the degree to which romantic reform penetrated all walks of American life,” of his representative romantics all but Delany passed through the abolitionist crucible of New England (p. 19). Parker was born, lived, and worked in Massachusetts for much of his life; Douglass was an acolyte of Garrison and lived in Massachusetts for a time; Stowe grew up in Litchfield, Connecticut; and Higginson was born in Massachusetts and spent much of his career there. These quibbles, however, **do not undermine Kytile’s important work on the debt to romanticism owed by this last generation of abolitionists before the Civil War.**<sup>105</sup>

With “national identity” preceding “the legal definition of the state,” myths and memories, as Susan-Mary Grant underscores, become “integral to the concept of a nation” since “there can be no identity without memory (albeit selective” and “no collective identity without myth.” Because the “process of national construction” in the

North began in the nineteenth century, the myth-making that accompanied it “has been overlooked.” Following Peter Alter’s model, Prof. Grant describes “a process . . . engineered by intellectual minorities [Romantics] but directed at the social group as a whole.” “Myths of origins and descent, of liberation and migration, of the golden age and its heroes and sages, perhaps of the chosen people now to be reborn after its long sleep of decay/exile,” all are used in “nation-building.” In Anthony D. Smith’s view, “myth-motifs can be formed into a composite national mythology and salvation drama.” Joseph Llobera, “writing about the Romantic nationalists,” states that “the Romantics” emphasized “the importance of a mythical past” that “embodied the loftiest and most worthy ideals.” For this purpose, the Declaration had to be revised.<sup>106</sup>

In the nineteenth century, as the conflict between 18th century republican and 19th century Romantic notions of government, society, and politics became embodied in political parties (Democrat versus Liberty, Free Soil, and new Republican in 1854-1860), history itself also became a partisan affair. “In time, North and South came to see in the other a threat” to their vision of America: a federal republic of 1787-1788 as the fulfillment of American War of Independence or a new “national ideal. “Each side accused the other of betraying the legacy of the Founding Fathers.” Only one side was right historically before 1860 and that was the South and its Northern allies. After 1865, the “national ideal” prevailed although as myth.<sup>107</sup>

After 1865, America was conceived to have been born modern, which is to say with beliefs in democracy, equality, abolitionism, and nationalism already intact. It was not the North that had changed, historically. It was the South at least mythically. This

liberal formulation of this “myth of democracy” informs Joseph J. Ellis’ *American Creation: Triumphs and Tragedies of the Republic* (New York, 2007).

“During the last quarter of the eighteenth century a former colony of Great Britain, generally regarded as a provincial and wholly peripheral outpost of Western Civilization, somehow managed to establish a set of ideas and institutions that, over the stretch of time, became the blueprint for political and economic success for the nation-state in the modern world. Over the course of the next two centuries these ideas and institutions—labeled ‘democracy’ or ‘liberalism,’ though neither term would have been recognizable to the founding generation—replaced the monarchical dynasties of Europe in the nineteenth century, then defeated the totalitarian despotisms of Germany, Japan, and the Soviet Union in the twentieth.”

While Ellis is right about the American rejection of monarchy in 1776 and the establishment of a unique “confederate republic” of a compound nature between 1776 and 1787-1788, he (and others) forgot about the “great disruption” of the republic as a new union of the states that occurred in the years between 1815 and 1865. In that “half century of revolution” to use Parrington’s term, a new America and a new American nation were born. The revolution of Romanticism both as perfectionism and nationalism was the source of newer “isms” including democracy, equality, abolitionism, and nationalism. In their embrace in a part of the North are to be found the Northern-Romantic-Nationalist origins of America’s civil war of 1861-1865. As a “new birth of freedom,” the conflict of 1861-1865 was not only irrepressible but represented a second founding, i.e., as “the birth of a Nation.”<sup>108</sup>

Instead of a war to remake America and perfect it without slavery that demanded military conquest of the South to destroy the source of pro-slavery and disunion thought, it became one to preserve the Union on the part of the North (as represented in Abraham Lincoln and a new Republican party) against an illegitimate secession movement on the part of the South, which was only defending slavery. It

was, in a nineteenth century context, a war of liberation from the past and one for national unification at one and the same time. Forgotten was the revolutionary nature of the new “isms” of the day. Speaking for many others, North and South, in opposition to the newer beliefs being espoused was Henry James, Sr. “Democracy . . . is revolutionary, nor formative. It is born of denial. It comes into existence in the way of denying established institutions. Its office is rather to destroy the old world, than fully to reveal the new.”<sup>109</sup>

### Myth-Making in History

Myth-making, as Prof. Marc Ferro reminds us in *The Use and Abuse of History* (London, 1984) is a(n) almost universal phenomenon engaged in by all peoples and societies be it American, African, Asian Indian, Arabic, Islamic, Armenian, or European. Among the reasons cited by Prof. Ferro for this long-lived practice are (1) the need to ennoble the past by ignoring more sordid events and developments (as with the origin of the caste system in India); (2) to establish continuity and uniformity in ideology and political rule (as in Communist Russia and among Muslims); (3) to explain away a debilitating past and/or to avoid troublesome issues; (4) to promote nationalism and patriotism; and (5) to justify war and imperialism. This list of causal factors in the myth-making process applies as well to the North during the antebellum period. While studies of American myths abound, their larger political meaning has heretofore escaped notice (and here is yet another implication of republicanism).

That it was the North doing the myth-making rather than the South not only fits Prof. Ferro's model of historical reinterpretation or misinterpretation, it also

squares with the historical reality of the "Age of Revolution and Reform" from 1815-1860 both in Europe and America. Buffeted by the revolutions of Romanticism and Industrialism after 1815, Europeans experienced their own contest of ideas and struggle for power among competing political and social groups. On one side were the conservatives (aristocrats and monarchists seeking to maintain the status quo against the liberal and radical demands of democrats, republicans, and socialists. In Europe, the forces for and against change clashed dramatically in the attempted revolutions of 1848. Scared as hell at the thought of another French Revolution, the conservatives enacted reforms (political, constitutional, and social) from above to prevent revolution from below. The result was not civil war(s) but the responsive conservative state!

If Romantic perfectionism fueled individualism and social reform, the nationalistic element of that revolutionary ideology gave rise to the idea of the state or nation as the best means for the fulfillment of a new society. Expressed by Johann Herder and other German writers, in the wake of the wars of the French Revolution and Napoleon (1792-1815), nationalism in the sense of unifying a people of common culture and language led to the unification of Italy in 1870 and Germany in 1871. In this context, the American Civil War of 1861-1865 has a chronological significance not fully appreciated. What happened in America, in short, was part of a larger world pattern of revolution, reform, and unification.<sup>110</sup>

## End Quotes

"The war is not a civil war; it is a war of two countries divided by geographical lines and interests. . . ." (John M. Daniel, *The Richmond Examiner*, August 14, 1861.)

"To seek the origins of the Civil War is to range over much of the nation's early history." Don E. Fehrenbacher, "Disunion and Reunion," in John M. Higham, ed., *Reconstruction of American History* (New York: Harper & Brothers, 1962), 98-118 (quote on 100).

"Either the American people plunged into civil war for light and transient reasons, or else the spectacular quarrel over slavery in the territories was merely the skirmish line of a larger and more fundamental conflict." (Ibid., 101-102.)

## Romantic History as Myth

(This part will be in the text of the book, *Beyond Slavery*. See “The Republic in Peril, 1815-1836: The Great Disruption of Jacksonianism and Different versus Original Intentions,” introduction to volume four, *The Union of the States, 1800-1861*.)

For the philosophy and methodology of Romantic historians, see David Levin, *Romantic History as Art* [Stanford, 1959]. [ ]. The myths of democracy and a reactionary South are the particular forms of a mythical past that Romantic perfectionists and nationalists invented to justify their revolutionary reconstruction of America in the nineteenth century including the conquest of the South.

This Romantic Revolution in America, leading to the creation of another America beyond the republic of 1776 and 1787-1788, is long **forgotten** history that needs to be told. Between the Revolution and the Civil War of Northern-Romantic-Nationalist Origins, America experienced not one but two foundings, i.e., first, the American federal republic and second, America as a unified nation or the “United States” as singular.)



## Notes//No National Government in 1787

1

See Jack P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge, UK and New York: Cambridge University Press, 2011), 150, 151. See also W. Kirk Wood, *Nullification, A Constitutional History, 1776-1833* [2 vols., Lanham, Maryland: University Press of America, 2008, 2009; Forrest McDonald, *States' Rights and the Union: Imperium in Imperio* [Lawrence, Kansas, 2000]; Bernard Bailyn, *The Ideological Origins of the American Revolution* [Cambridge, Massachusetts, 1967, 1992]; Bailyn, *To Begin the World Anew: The Genius and Ambiguities of the American Founders* [New York, 2003]; J John Phillip Reid, *The Meaning of Liberty in the Era of the American Revolution* [Chicago, 1988], and Reid's four volume *Constitutional History of the American Revolution* [Madison, Wisconsin, 1986-1992]. In the new Union of England and Scotland, 1707, "neither Ireland nor the American colonies were offered admission to the Union, and remained dependencies of a British state that stood at the heart of a transatlantic **composite monarchy of unequal communities defined by the Navigation Acts and increasingly, by mercantile legislation from the British Parliament** [and its political supremacy]." "In due course, the aggressiveness of that nationalism [arising from the "metropolis"], **the unredeemable promises made to the colonists in the form of the rights of Englishmen, and the basic consequences of the export of British political theory together** ensured that the British Empire would **sunder** and then be refashioned in the decades after the Seven Years' War." In Armitage's view, "the ideological origins of the British Empire also . . . contained the ideological origins of the American Revolution [moderate Whigs in Great Britain after

1688 and radical Whigs before in England and continuing in the colonies] . . . .” See David Armitage, *The Ideological Origins of the British Empire* (Cambridge, UK and New York, 2007), 149,171, 9-10. Important as Gordon S. Wood’s *The Creation of the American Republic, 1776 to 1787* [Chapel Hill, University of North Carolina Press] is, the author conveniently ignores the subject of *imperium in imperio* and federalism. Equally disappointing is Alison LaCroix, *The Ideological Origins of Federalism* [Cambridge, Massachusetts, 2010]. In an American context, how one can discuss federalism without states’ rights is inconceivable. On Parliament’s refusal to share “sovereignty,” see Joseph J. Ellis, *American Creation: Triumphs and Tragedies at the American Founding* (New York, 2007), 23-24. “[I]t seems strange,” Ellis writes, “that such a massive movement of the historical templates [America’s independence and Great Britain’s loss of “their entire empire in North America except for Canada”] could be caused by such a **minor, merely constitutional, difference of opinion**. In retrospect, the core problem blocking a sensible resolution was the British presumption . . . that imperial sovereignty must be singular.” (Ibid., 24.) The views expressed above are presented more expansively in Volume Two of *Beyond Slavery*, “The First American Republic: The Path to Independence, 1763-1776” and Volume Three, “The Americanization of Radical Whig Ideology: Republicanism, Federalism, and the Rights of States, 1776-1788.”

2

See Greene, *Constitutional Origins of the American Revolution*, 166. The doctrine of Parliamentary supremacy was also opposed in Great Britain. After the loss of the American colonies, a political reform movement in Great Britain would lead later to a

new Dominion status for Canada. See *ibid.*, 167-169. Dickinson's quote is from *Notes of Debates in the Federal Convention Reported by James Madison*, edited by Adrienne Koch (Athens, Ohio; 1966; New York, 1987), August 13, 447-448. See also his views on the importance of states to government in America in *ibid.*, June 2, 55-57; June 6, 77-78; and June 7, 84-85. For the influence of England's liberty-loving past before the Stuart dynasty, see H. Trevor Colbourn, "John Dickinson, Historical Revolutionary," *Pennsylvania Magazine of History and Biography*, (July, 1959), 271-292.

3

See Koch, ed., *Notes of Debates*, May 29-July 16 and John Taylor of Caroline, *New Views of the Constitution* (Washington City, 1823; Clark, New Jersey, 2002, 2010). On the Confederation period, see the older studies by Merrill Jensen and later ones by Peter S. Onuf: *The Origins of the Federal Republic* [Bloomington, Indiana, 1983], *Statehood and Union: A History of the Northwest Ordinance* (Bloomington and Indianapolis, 1987), and *Jefferson's Empire: The Language of American Nationhood* [Charlottesville, Virginia, 2000]. See also Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* [Lawrence, Kansas, 1985] and Wood, *Nullification, A Constitutional History, 1776-1833*. In *Congress and Confederation*, volume four of *The New American Nation* (New York and London, 1991), Onuf rejects the "new orthodoxy . . . of a national theory of American federalism." Following Curtis P. Nettles and Samuel H. Beer, liberal constitutional historian Jack N. Rakove (who rejects "original intentions") maintains that "a national government existed before any state" and that "sovereignty resided in the people of the United States [as a whole and in the aggregate]." This new idea, of course, was later expressed by Andrew Jackson and

Abraham Lincoln as a newer reinterpretation of history with different intentions for America in the nineteenth century. As Onuf further notes, this idea of **one people** was distinctly in the minority. The “national theory of American federalism” is contradictory and nonsensical making it an oxymoron and divorced from the realities of government in America after 1776 and secession from the centralized power of the British Empire. The Library of Congress describes the Articles of Confederation as “the first Constitution of the United States (see [www.loc.gov](http://www.loc.gov).) See also Jack N. Rakove, “The Articles of Confederation, 1775-1783” in Jack P. Greene and J. R. Pole, ed., *A Companion to the American Revolution* (Oxford, UK and Malden, Massachusetts, 2000) and *The Beginnings of National Politics: An Interpretative History of the Continental Congress* (New York, 1979.)

4

Quote by Edward L. Ayers, *What Caused the Civil War?: Reflections on the South and Southern History* (New York, 2004) from *Kirkus Reviews*, June 25, 2005, at <http://www.kirkusreviews.com>. Slavery as not the sole cause of the Civil War is also the view of Marc Egnal and his critique of “The Idealistic Interpretation” in *Clash of Extremes: An Economic Interpretation of the Civil War* (New York, 2009), 3-7. See also Wood, *Nullification, A Constitutional History, 1776-1833* and “Appendix A: Quotations,” 87-98; “Appendix B: Defining Republicanism: A Typology and Chronology, 1776-1861 and Beyond,” 99-122; and “Appendix C: What Happened to Republicanism,” 123-132 in volume one and “Appendix B: A New History for a New Nation: The Northern Reinterpretation of 1776 and 1787,” 133-137 in volume two. See further, “The writer’s multi-volume study, *Beyond Slavery: A New History for a New*

*Nation in the Making: The Northern Romantic-Nationalist Origins of America's Civil War, 1861-1865*, a work in progress. See preface and introduction to volume one at [www.nullificaitonhistory.com](http://www.nullificaitonhistory.com). In *American Creation*, Joseph J. Ellis agrees that a federal government was formed as a compromise yet insists that "American nationhood" was established by the second founding "in 1787-1788." (Ibid., 9.)

5

When Madison's *Notes* were finally published in 1840, they were first exploited by William Lloyd Garrison and his abolitionists to prove that the Constitution was indeed a "pro-Slavery compact." Original intentions of republicanism and federalism thus became subsumed in the slavery debate to 1860 with anti-slavery advocates and non-extensionists also proclaiming the American government to be national rather than federal and the Union being perpetual. See Paul Finkelman, "Garrison's Constitution: The Covenant with Death and How It Was Made," *Prologue*, 32 (Winter 2000) at [www.archives.gov](http://www.archives.gov). The publication of Madison's *Notes* was featured in the *North American Review* in 1841, volume 53 [July 184], 41-78! On the changing nature of the government from federal to national and the Union from compact to absolute, see Paul C. Nagel, *One Nation Indivisible: The Union in American Thought, 1776-1861* (New York, 1964).

6

See *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*, ed. by Adrienne Koch (Athens, Ohio, 1966 and New York, 1987), 27-33. Citations herein are to this source. See also Forrest McDonald on the Virginia Plan in

*Novus Ordo Seclorum: The Intellectual Origins of the Constitution* [Lawrence, Kansas, 1985), 226-227. “Nationalists of all three descriptions, though influential, were in a decided minority. See Forrest McDonald, *Novus Ordo Seclorum*, 167. As McDonald also asserts, “Their weight in public affairs after 1783 was overbalanced by that of ideologue republicans who were extremely distrustful of congressional power” and “by the greater weight of politicians who were state-oriented by reason of self-interested motives.” In *American Creation*, Joseph J. Ellis describes Madison’s Virginia Plan as “ultra-national” and that America’s critical period required “nothing less than radical remedies,” to which George Washington and other “nationalists” agreed. (Ibid., 108.) Although earlier editions of Madison’s *Notes* were published in the late nineteenth and early twentieth centuries, their revelation of a “national” government being rejected had no impact upon the interpretation of the Constitution and historians’ disparagement of states’ rights and their connection to a federal and limited government. See Koch’s introduction and Max Farrand’s *Records of the Federal Convention* (4 vols., New Haven, 1911, 1937.) See, for example, Max Farrand’s *The Framing of the Constitution* (New Haven, 1913, 1962.

7

Madison, *Notes of Debates*, ed. by Adrienne Koch, 34-35. Prof. Joseph J. Ellis conveniently passes by the objections above to hurry to the Great Compromise of July 16. While “the radical agenda was . . . poised to ride forward to victory,” the hopes of its supporters were not realized. “By mid-June the moderate delegates . . . recovered their balance with an initiative of their own.” This was William Paterson’s New Jersey Plan for a federal government.” (*American Creation*, 109.

Madison, *Notes of Debates*, 127-128. See also views of Lansing, Patterson, and Wilson, 121-125.

See Saul Cornell, *The Other Framers: Antifederalism and the Dissenting Tradition in America, 1788-1828* [Chapel Hill, 1999]. *Perfectors* is a word and a noun according to Dictionary.Com. See also Wood, *Nullification, A Constitutional History* and Forrest McDonald, *Novus Ordo Seclorum*. He also emphasizes the uniqueness of America's new federal not national government. *Ibid*, 276. Joseph J. Ellis does not in *American Creation*, which is not unusual for most modern interpreters who do not want to acknowledge states' rights as an original intention despite its obvious connection to federalism and America's new extended republic that had to be founded on the broad foundation of the states. Madison's theory of the extended republic was not the only one and its relevance ceased with the rejection of a national or consolidated government. This is a subject that needs to be explored. A beginning point would be the views of John Dickinson in the Federal Convention of 1787 and a reconsideration of the Articles of Confederation as the first extended republic. Carol Berkin's *A Brilliant Solution* likewise excludes the achievement of a new "confederate republic" and the republican-federalists' invention of modern federalism. See Berkin, *A Brilliant Solution: Inventing the Constitution* (New York: Harcourt, 2002.) More appreciative of federalism is Bernard Bailyn in *To Begin the World Anew: The Genius and Ambiguities of the American Founders* (New York, 2003).

The quotes are from *State Sovereignty, and a Certain Dissolution of the Union* (paperback reprint from BiblioLife, Charleston, S. C., 2013, 5-8. Romaine's pamphlet is also available online.

11 See Jefferson's letter to James Madison of June 24, 1787 about the Federal Convention and a division of federal and state powers for general versus local purposes. With this determined, "the existent government . . . was like a fabric that needed to be patched but not discarded." (Quoted in Ellis, *American Creation*, 102) See also Jefferson's views about the Constitution of 1787-1788, the union of the states, and states' rights in James Morton Smith, ed., *The Republic of Letters* (3 vols., New York, 1995). See further, Kevin R. C. Gutzman, *Virginia's American Revolution: From Dominion to Republic, 1776-1840* (Lanham, Maryland: Lexington Books, 2007); Luigi Bassini, *Liberty, State, and Union: The Political Theory of Thomas Jefferson* (Macon, Georgia: Mercer University Press, 2010); and Kevin R. C. Gutzman, *Thomas Jefferson, Revolutionary: A Radical's Struggle to Remake America* (New York: St. Martin's Press, 2017).

12

See Wood, *Nullification, A Constitutional History, 1776-1833* and the introduction to Volume four: "The Republic in Peril Again: Jacksonianism and the Great Disruption, 1824-1836." As unconstitutional acts by Congress, the Alien and Sedition Acts were already null and void by being contrary to the Constitution. With the Federalists a majority in Congress and in control of the presidency if not the Judiciary, interposition was a means to emphasize this important point. If unconstitutional acts continued, there



was always the “right of revolution” to invoke according to the principles of 1776. About Shays’ uprising in western Massachusetts in 1786-1787, Jefferson said “A little rebellion now and then is a good thing.” ( Quoted in Ellis, *American Creation*, 27.)

13

See the “South Carolina Exposition & Protest” of 1828 and the Ft. Hill Address of 1831 in Lence, ed., *Union and Liberty: The Political Philosophy of John C. Calhoun* (Indianapolis, 1992), 311-366 and “The Fort Hill Address: On the Relation of the States and Federal Government,” 367-400. See also Wood, *Nullification, A Constitutional History, 1776-1833*.

14

For the terms “Federalist” and “Anti-Federalist” being misleading, see Wood, *Nullification, A Constitutional History*, I, xiv-xvi and McDonald, *Novus Ordo Seclorum*, 284-291. America’s new federal republic on an extended basis was thus “a new order of the ages” without precedent! See also Joseph J. Ellis on the federalists and anti-Federalists in the “Afterword” to follow below. In *New Views of the Constitution*, John Taylor presented the first extended critique of *The Federalists* after 1789. Those claiming that *The Federalist* is the last word on the Constitution have not only overlooked this source, but would probably not change their minds after they did. Such is the bias against “states’ rights” and its supposed “Southern” origins.

15

See *Annals of Congress*, 1st Congress, 1st session, August 15, 1789, column 759.

16

George Ticknor Curtis, *History of the Origin, Formation, and Adoption of the Constitution of the United States; with Notices of Its Principal Framers* (2 vols., New York: Harper and Brothers, 1858-1859), II, 496-497.

17

See Wood, *Nullification, A Constitutional History, 1776-1833*. In *Tyranny Unmasked* (1822), John Taylor devoted about half of this study to the legitimacy of a “Mutual Veto” that automatically flowed from the federal nature of the new American government.

18

See Wood, *Nullification, A Constitutional History, 1776-1833*; Taylor, *Tyranny Unmasked*, and Madison’s *Virginia Report of 1800 on the Alien and Sedition Acts* in Rakove, ed., *Madison: Writings*, 1999, 589-662. For a right of self-defense on the part of the states and the line of partition, see the remarks of Dr. Samuel Johnson, June 29, 1787, 211; Roger Sherman, July 14, 291; and Oliver Ellsworth, June 29, 218. “The States now confederated have no doubt a right to refuse to be consolidated, or to be formed into any new system . . . . Nothing can be more ideal than the danger apprehended by the States, from their being formed into one nation. Massachusetts was originally three colonies . . . . These apprehensions existed then. . . . On the whole he considered a Union of the States as necessary for their happiness, & a firm General [not national] Government as necessary to their Union. He should consider it as his duty if his colleagues viewed the mater in the same light as he did to stay here as long as any other State would remain with them, in order to agree on some plan that could with propriety be recommended to the people.”( *Ibid.*, June 29, 211-212.)

For biographical information about Elliot (1789-1846), see brief entry in Wikipedia and obituary, will, and biographical sketch by Ann Francis Gray Benson, daughter of Elizabeth Elliot Chase Gray of Silver Spring, Maryland. These last items are in “Bytes of History,” 2015, PDF at [bytesofhistory.org/cemeteries](http://bytesofhistory.org/cemeteries). There is a brief correspondence between Elliot and James Madison, 1826 and 1830, in the Madison Papers at the Library of Congress, digital images available at <https://www.loc.gov>. For James H. Hutson’s comments about Elliot and the flaws of the *Debates* as well as other early sources, see “Riddles of the Federal Constitutional Convention,” *William and Mary Quarterly*, 3rd series, 44 (July 1987), 411-423 and “The Creation of the Constitution: The Integrity of the Documentary Record,” *Texas Law Review*, 65 (November 1986), 1-39. With respect to the notes of Yates and Luther Martin’s letters, their veracity is confirmed by James Madison’s *Notes of Debates* (that were not published until 1840.) The first edition of Elliot’s *Debates* . . . was published between 1827 and 1830 in four volumes. A second edition in five volumes was published in 1836 and included “the Journal of the Federal Convention, 1819, Luther Martin’s Letter, Yates’s Minutes, Congressional Opinions, and the Virginia and Kentucky Resolutions of ’98-99.”

Elliot, ed., *Debates*, III, 21, 29, 30, 33, 86-97, 657-661. *The Debates in the Several State Conventions on the Adoption of the Federal [not National] Constitution* . . . are now available in print by Forgotten Books, London, 2015. The citation above is to volume three of this edition, which is a reprint of a reprint of an 1888 edition by Burt Franklin, New York. Another edition of *The Debates* . . . is available through The

Scholarly Publishing Office of the U. of Michigan Library that reprints materials from its collection in a digital reformatting process. See <http://spo.umdl.umich.edu>. *Elliot's Debates* are available electronically at the Online Library of Liberty of Liberty Fund, Inc. Madison's *Notes of Debates* can be accessed at the digital archives of the Yale Law School Library/Avalon Project.

21

See McDonald, *Novus ORdo Seclorum* and Wood, *Nullification, A Constitutional History, 1776-1833: Volume One: James Madison Not the Father of the Constitution* (Lanham, Maryland, 2008). Madison himself “did not accept the sweeping compliment that he was often tendered as ‘the father of the Constitution’.” In his words, it was “the work of many heads & many heads.” (Adrienne Koch, introduction, to *Notes of Debates in the Federal Convention Reported by James Madison* (New York, 1987), xi-xii. Much of the analysis presented here is absent from Drew McCoy, *The Last of the Founders: James Madison and the Republican Legacy* (Cambridge, UK and New York: Cambridge University Press, 1991).

22

See Jack N. Rakove, *The Beginnings of National Politics: An Interpretative History of the Continental Congress* (New York, 1979) and *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York, 1996). See also note #45 below.

23

Peterson, *The Great Triumvirate*, 176.

24

Peterson, *The Great Triumvirate*, 176-178.

25

Peterson, *The Great Triumvirate*, 178-179.

26

Peterson, *The Great Triumvirate*, 223.

## Notes: Afterword

1

Ellis, *American Creation*, 87, 91, 102, 124, 74. Their views are defined and presented at length in James Madison's *Notes of Debates*.

2 Ellis, *American Creation*, 89, 91-92.

3 Ellis, *American Creation*, 93-94, 101, 108.

4 Ellis, *American Creation*, 100-101.

5

Ellis, *American Creation*, 102; and Wood, *Nullification, A Constitutional History, 1776-1833*. For Madison's clarification "We, the People," see James Madison to Thomas Jefferson, October 24, 1787 in Rakove, ed., *James Madison: Writings* (New York, 1999), 142-158. See also *ibid.* in Bernard Bailyn, ed., *The Debate on the*

*Constitution: Federalist and Antifederalist Speeches, Articles, and Letters During the Struggle for Ratification, Part One* (2 vols., New York, 1993.” The time span covered by the first volume is Sept. 17, 1787 to January 12, 1788.) According to Bailyn, “This letters is one of Madison’s most careful and comprehensive interpretations of the Constitution, and is in some ways more revealing of his true view of the document than anything he would write for *The Federalist*.” (Ibid., I, 1150.) See also Thomas Jefferson to James Madison, December 20, 1787 for his objections to the proposed plan of government. (Ibid., I, 209-213.) See further *The Federalist* #39, in Ibid., II, 26-32 on ratification to be not **by the people “as individuals composing one entire nation**, but as composing the distinct and independent States to which they respectively belong. It is the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves [via a special convention of delegates elected by the people or those who were citizens]. The act therefore establishing the Constitution, **will not be a national** but a **federal act**.” (Ibid., II, 29.)

6

Ellis, *American Creation*, 90, 112, 9, 241-243.

7

See Koch, ed. *Notes of Debates in the Federal Convention of 1787 Reported by James Madison* (New York, 1987), passim. See also Wood, *Nullification, A Constitutional History, 1776-1833* and Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution*.)

8

Ellis, *American Creation*, 114-115.

9

See Ellis, *American Creation*, 116. For the “divided voice” of Publius, see any edition of *The Federalist* and compare the first eight essays with those thereafter beginning with # 9 by Alexander Hamilton. See further, Gottfried Dietze, *America’s Political Dilemma: From Limited to Unlimited Democracy* (Baltimore, 1968.) The first critic of *The Federalist* after 1789 was John Taylor of Caroline not only in *An Inquiry into the Principles and Policy of the Government of the United States* (Fredericksburg, Virginia, 1814), but also in *New Views of the Constitution* in 1823.)

10

See Ellis, *American Creation*, 117.

11

See Ellis, *American Creation*, 118.

12

Ellis, *American Creation*, 123.

13

George Mason, June 4, 1788, in the Virginia ratifying convention from Elliot, ed. *Debates*, III, Virginia, 29-34 quotes on 9, 30, 32, 33 (pagination from 2015 reprint by Forgotten Books).

14

Jonathan Elliot, ed., *Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in*

1787 . . . . (5 vols., revised edition, 1836; Forgotten Books, 2015), volume Three, Virginia, III, 171)

15

Ibid., 314-315. “The tyranny of Philadelphia may be like the tyranny of George III. I believe this similitude will be incontestably proved before we conclude.” Ibid., 314.

16

Ibid., 316, 319. ADD John Taylor on Union of Gb and Ireland!!!!

17

Ibid., 445-449, 573, 651)

18

Ellis, *American Creation*, 115-116.

19

Ellis, *American Creation*, 116)

20

See Wood, *Nullification, A Constitutional History, 1776-1833* and Ellis, *American Creation*, 91-113. Above all, see John Taylor of Caroline, *New Views of the Constitution* (Washington City: Way and Gideon, 1823; Clark, New Jersey: The Lawbook Exchange, LTD, 2010, 2012). The “new views” about which Taylor was writing were those contained in the recently published *Journal of the Federal Convention* (1819) and followed by *Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787 . . .* by Robert Yates in 1821. With these two publications, the “veil of secrecy” had finally been lifted from the proceedings of the



Federal Convention. What these two sources revealed was a critical phase in American history that history and historians have forgotten. There was a “nationalist” attempt to establish a single, “consolidated” government for all of America based on the Virginia Plan (really Madison’s). This scheme, however, was rejected in the Federal Convention with the Great Compromise of July 16, 1787. According to Taylor, the “difference between a federal and a national government . . . was thoroughly understood in the convention, and that the members unanimously admitted that the two forms were incompatible.” (*New Views*, 59.) *New Views* was about making this new insight more widely known so that original intentions (republicanism and federalism) would prove useful again in defeating a second revival of “consolidationism” after 1815. For this subject, see Taylor’s *Construction Construed and Constitutions Vindicated*, 1820 and *Tyranny Unmasked*, 1822, about “the protecting duty principle” or “Protectionism.”)

21

See Ellis, *American Creation*, 110, 113; Wood, *Nullification, A Constitutional History, 1776-1833*; and Koch, ed., *Notes of Debates*, 211. To Taylor, Nullification or State Interposition as a “mutual veto” was inherent in the federal nature of the government itself. See *Tyranny Unmasked*, 1822, well before John C. Calhoun’s “South Carolina Exposition & Protest” of 1828.)

22

See Wood, *Nullification, A Constitutional History, 1776-1833*; Taylor, *New Views*; and Yates, *Secret Proceedings*. In Taylor’s view, shared by the author, “Had the Journal of the convention, which framed the constitution of the United States, though obscure and incomplete, been published immediately after ratification, it would have

furnished lights toward a true construction, sufficiently clear to have prevented several trespasses upon its principles and tendencies toward its subversion. Perhaps it may not yet be too late to lay before the publick the important evidence it furnishes.” (*New Views*, 11.) Although Taylor dies in 1824, it can be said that he did contribute to a revival of original intentions (republicanism and federalism and states’ rights) that did impede the progress in the nineteenth century America toward nationalism as “consolidationism” revived along with the majoritarianism of “Democracy in America,” too.

23

See Elizabeth K. Bauer, *Commentaries on the Constitution, 1790-1860* (New York: Columbia University Press, 1952). “There is a direct connection between many of the political events of the period and the efforts to make the meaning of the Constitution clearer [really more national than federal]” than Bauer wants to admit. “Story was encouraged to write his *Commentaries* not merely by the requirements of his position at Harvard, but because he felt the nullification argument then being elaborated in South Carolina needed to be answered.” (*Ibid.*, 21.) “The first generation of political thinkers was led by Hamilton and Jefferson [and Madison], whose opposing views on the nature of the union they wished to build, served to mark out the main lines of controversy.” (*Ibid.*, 26.) Instead of commentaries from “The Middle States,” “The New England Nationalists,” and “the “States Rights School of the South,” there is really a two-fold division between defenders of original intentions, South and North, versus proponents of nationalism who had much different intentions for America in the nineteenth century. (*ibid.*, 39-210.)

24

See Bauer, *Commentaries on the Constitution* as quoted. Bauer mistakenly interprets the *New Views of the Constitution* (1823) to be those of John Taylor himself rather than those of the founders and framers. (Ibid., 238-239. On the changing views of the Union from the Revolution to the Civil War from federal to nationalist, see Paul Nagel, *One Nation Indivisible: The Union in American Thought, 1776-1860* (New York, 1964). Taylor's writings between 1814 and 1823 constitute a counter republican-federalist history by which to understand original intentions versus much different ones beginning with the Federal Convention and the reasons for them.)

25

The contrary conclusions above are documented individually in the notes to follow. The author's multi-volume work, *Beyond Slavery: A New History for a New Nation and the Northern-Romantic-Nationalist Origins of America's Civil War, 1776-1865*, is in progress with four volumes completed. See also *Wood, Nullification, A Constitutional History, 1776-1833* (2 volumes, Lanham, Maryland, 2008-2009) and other research by the author cited in note #108 below.

26

See Ellis, *American Creation*, 118-119. George Mason, June 7, in Koch, ed., *Notes of Debates*, 87. Mason was not the only one to express this viewpoint. What Mason was describing and defending was *imperium in imperio* or the colonial right of self-rule within the British Empire. In the proposed new government, the states had to have the same relationship to a new federal authority as the colonies had vis-a vis Parliament.

Imperium in imperio thus led to federalism rather than nationalism. For the clarity of Madison's "nationalist" views in the Federal Convention and as Publius, see John Taylor of Caroline, *New Views of the Constitution* (1823.)

27

James Madison in the Virginia ratifying convention, June 6, 1788, in Rakove, ed., *Madison: Writings*, 355-365, quotes on 361-362; also, Elliot, ed., *Debates*, III (Virginia), 93-84. See also James Madison to Thomas Jefferson, December 29, 1798, in Rakove, ed., *ibid.*, 591-592. The Tenth Amendment is quoted from Rakove, ed., *Madison: Writings*, 883.)

28

Elliot, ed., *Debates in the Several States on the Adoption of the Federal Government*, III (Virginia), 361-362, 364. For states still representing the greater threat, see *ibid.*, 259. By this time, a "national" government had been rejected and Federalists (former "nationalists") were trying to prevent recommendatory amendments. For Madison's earlier views against state sovereignty, see his letters for 1786-1787 in James Morton Smith, ed., *The Republic of Letters: The Correspondence between Thomas Jefferson and James Madison, 1776-1826* (3 vols., New York, 1995), I, 393-434 (chapter 10, "State and National Reforms") and 373-434 (chapter 11, "Miracle at Philadelphia").

29

Madison, "Consolidation," *National Gazette*, December 5, 1791, in Rakove, ed., *Madison: Writings*, 498-500.)

30

Madison, "Government of the United States," *National Gazette*, February 6, 1792, in Rakove, ed., *Madison: Writings*, 508-509.)

Madison, "Government," *National Gazette*, January 2, 1792, in Rakove, ed., *Madison: Writings*, 501-502; "Spirit of Governments," *National Gazette*, February 20, 1792, in *ibid.*, 509-511.

Madison, "Charters," January 19, 1792, *National Gazette*, in Rakove, ed., *ibid.*, 502-504. On Hamilton's rejection of original intentions, see Joseph J. Lynch, *Negotiating the Constitution: The Earliest Debates over Original Intent* (Ithaca, New York, 1999). Defeated in the Federal Convention and in the ratification debates since *The Federalist* did not prevent amendments, Hamilton preferred to use his position as first Secretary of the Treasury to reinterpret the recently ratified Constitution of 1787-1788. By a "loose construction" of key phrases, he could enlarge the intent while maintaining the form of a "confederate republic." For his part, Madison made his peace with the opponents and became a defender of the Constitution as it was understood by those who approved it in the state ratification debates. See his letter to Henry Lee in 1824 cited below. The revival of a "nationalist" view of the Constitution in the North is fully explored by Elizabeth K. Bauer, *Commentaries on the Constitution, 1790-1860* (New York, 1952). The "Southern states' rights school" **was not**, as Bauer asserts, the one representing different intentions. States' rights were an original intention and inextricably linked to a republican government on an extensive bases and a federal versus a national government. For a second "consolidating" effort after 1815, expressed in the "nationalist" views of John Marshall and Joseph Story on the Supreme Court, see Thomas Jefferson's letter to Judge William Johnson of South Carolina off June 12, 1823

(available at *Founders' Online*. “Thomas Jefferson endorsed the states’ rights views of [John] Taylor [of Caroline] as set forth in Taylor’s *Construction Construed and Constitutions Vindicated* (1820), a slashing attack on the Supreme Court’s authority to decide constitutional questions for the states or for the other branches of the federal government.” See James Morton Smith, ed., *The Republic of Letters*, III, 851. “Thomas Jefferson endorsed [John] Taylors views in general . . . James Madison denied them . . .” Smith, ed., quoting Dumas Malone and Irving Brant, in *The Republic of Letters*, III, 869.)

33

Madison, “Report on the Alien and Sedition Acts,” in Rakove, ed., *Madison: Writings*, 618-619.)

34

James Madison to Henry Lee, June 25, 1824 in Rakove, ed., *Madison: Writings*, 803-804.)

35

Ibid. Actually, Madison was not being completely honest here. In 1787, he and other “nationalists” meant by a “national” government, one single one for all of America beyond state authority. See his very revealing letter to Thomas Jefferson of October 24, 1787, in Smith, ed., *The Republic of Letters*, I, 495-507.)

36

See Madison, “Charters,” January 19, 1792, *National Gazette*, in Rakove, ed., *ibid.*, 502-504 and John Taylor, *New Views of the Constitution* (Washington City, 1823; Clark, NJ, 2002, 2010), 2. “The consolidating project leaves unexamined the arguments of the [D]eclaration . . . **If the declaration of independence is not obligatory, our**

**entire political fabric has lost its magna charta, and is without solid foundation.** But if it is the basis of our own form of government [and John Taylor had no doubts that it did] it is the true exposition of the principles and terms we have adopted.” (Ibid.) “The contemporaneous construction of the declaration of independence was completely adverse to the idea that it conferred any sovereign power, whatever, upon a consolidation of the states [as the people of America].” (Ibid., 3.) The old idea of mixed government was analyzed and rejected by Taylor in *An Inquiry into the Principles and Policies of the Government of the United States* in 1814.)

37

James Madison to Thomas Jefferson, October 24, 1787, in James Morton Smith, ed., *The Republic of Letters*, I, 495-507, quote on 499. For “nationalist” views in the Federal Convention, see the remarks by James Madison, James Wilson, Gouverneur Morris, and Alexander Hamilton in the Federal Convention between May 29 and July 16 in Koch, ed., *Notes of Debates*. James Madison’s letter to Thomas Jefferson, October 24, 1787 is also in Rakove, ed., *Madison: Writings*, 142-158. In this letter, Madison was still more “nationalist” than federalist. His first essay as Publius, *The Federalist* #10 appeared in November 22, 1787. At this point, Madison began a retreat in describing the proposed government as partly nationalist and partly federalist without, however, ever clarifying the rights and role of the new states. If no longer sovereign and independent, what was their purpose if any? Not satisfied, opponents of the proposed plan moved on to demand amendments for precisely this purpose. See notes above.)

38

John Taylor of Caroline, *New Views of the Constitution* (Washington City, 1823), 15, 34, 172, 176, 231, 243-245.)

39

See Jack P. Greene, *The Constitutional Origins of the American Revolution*; David Armitage, *The Declaration of Independence: A Global History*; and J. G. A. Pocock, *Three British Revolutions: 1641, 1688, 1776* (Princeton, 2014, 2016.)

40

See remarks by John Dickinson, June 7, 1787, in Koch, ed., *Notes of Debates*, 84-85. The views of Paterson, Sherman, and Ellsworth deserve to be re-examined.

41

Gouverneur Morris in Koch, ed., *Notes of Debates*, May 30, 35.

42

See James Madison's analysis of "majority tyranny" in *The Federalist* #10. These views had already been expressed in the Federal Convention. Madison's idea of an extended republic was "nationalist" in operation by its premise of people as individuals and comprising a single entity that one government would act upon and reflect their "general will." This "nationalist" extended republic, like a "national" government, was likewise rejected in favor of a federal version of an extended republic based on the states. In fact, the Articles of Confederation was America's first extended republic. In America, a new government had to be both republican and federal and that was the long and short of the matter.)

43



See Gordon S. Wood, *The Creation of the American Republic, 1776-1787* for the development of the “sovereignty of the people” from the “people-out-of doors” protesting state government policies in the 1780’s. The quote by James Wilson is in Koch, ed., *Notes of Debates*, 47, 82.

44

See Greene, *The Constitutional Origins of the American Revolution*.

45

For the complexities of original intentions or not and their reference source (the Federal Convention, the state ratification debates, or *The Federalist*, see Gregory E. Maggs, “A Concise Guide to the Records of the Federal Convention of 1787 as a Source of the Original Meaning of the Constitution,” *George Washington Law Review*, 80 (2012), 1-43 and other sources cited therein including those of Prof. Maggs. See also Rakove, chapter one, “The Perils of Originalism,” in *Original Meanings*, 3-22; Rakove, *Interpreting the Constitution: The Debate over Original Intent* (Boston, 1993); and “The Original Intention of Original Understanding,” *Constitutional Commentary*, 13 (Summer 1996), 159-186 ; and Thomas C. Mackey, “Mackey on Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution*,” review, in *H-Law*, December, 1995). Elsewhere, Rakove is more explicit. “It [originalism] was dictated not by the prior conviction that this was the most appropriate strategy to ascertain the meaning of the Constitution, but by considerations of partisan advantage.” (*Constitutional Commentary*, 186.) The Constitution, by Rakove’s intention, is part of an ongoing debate and thus, being itself the result of politics and interests, is not such a sacred document as some would like it to be. (See Mackey, review of *Original Meanings*.) For a different

view, see Charles Lofgren, “The Original Understanding of Original Intent,” *Constitutional Commentary*, 5 (1988 ), 77-113. “Some disputants in the political debates of the 1790s . . . clearly thought the expectations, understandings, and intentions of the ratifiers could serve as a restraint on doubtful constructions of the Constitution.” To Madison, original intentions were to be found in the sense that the state ratification conventions accepted the proposed plan of government.

46

See notes 1-22 already cited above. The different history presented here is elaborated at length in the first four volumes of *Beyond Slavery: A New History for a New Nation and the Northern-Nationalist-Romantic Origins of America’s Civil War of 1861-1865*. The preface and introduction to volume one are available at [www.nullificationhistory.com](http://www.nullificationhistory.com). The new principle of the “sovereignty of the people” emerged after Independence in the 1780’s first among radical democrats before being co-opted by “nationalists.” See Gordon S. Wood, chap. 9, “the Sovereignty of the People,” in *The Creation of the American Republic, 1776-1787* (Chapel Hill, 1969), 344-389. The “**counter-revolution**” of the “nationalists” (as I call it) is described in chapter 10, “Vices of the System,” 393-429; vchap. XI, “Republican Remedies,” 430-467, and chap. 12, “The Worthy against the Licentious” and “The Federalist Revolution,” 471-564.)

47

The new “isms” in the 19th century, are examined at length in volume three of *Beyond Slavery: A New History for a New Nation and the Northern Romantic-Nationalist Origins of America’s Civil War, 1815-1865*. To Ellis, “one venerable interpretation of the founding era, namely that it was a clash between ‘democracy’ and ‘aristocracy,’ is

fatally flawed, since none of the founders, to include Jefferson, regarded democracy as a goal of the American Revolution. Throughout the founding era, the term ‘democracy’ remained an epithet, used to tar an opponent with the charge of demagoguery or popular pandering. Those founders who lived long enough to experience the early manifestations of a democratic culture—Adams, Jefferson, and Madison—all expressed the same baffled disappointment that their hard-won republic was being corrupted by an alien force.” (*American Creation*, 241-242.) See also Wood, *The Creation of the American Republic*; Bailyn, *The Ideological Origins of the American Revolution*; Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England* (New York, 1988); Jack P. Greene, *Constitutional History of the American Revolution*; and John Phillip Reid, *The Concept of Liberty in the Age of the American Revolution*. For the Declaration of 1776 being about independence more than the equal rights of man (beyond a state of nature), see Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York, 1997) and David Armitage, *The Declaration of Independence, A Global History* (Cambridge, Massachusetts, 2007). Democracy’s realization in the early 19th century is one of the themes of Gordon S. Wood’s, *The Radicalism of the American Revolution* (New York, 1992). The link between the rise of democracy and egalitarianism in the early 19th century and the reinterpretation of the Declaration of Independence to be more democratic than it was is made by Maier, *American Scripture*. The idealistic view of 1861-1865 and slavery being the sole cause of the Civil War is critiqued in Marc Egnal, *Clash of Extremes: The Economic Origins of the Civil War*. New York: Hill and Wang, 2009. Jeffrey R. Hummel also challenges the view that slavery was the sole cause of the American Civil War in *Emancipating Slaves, Enslaving*

*Free Men: A History of the American Civil War* (Chicago and LaSalle: Open Court, 1996.)

48

Anne Norton, *Alternative Americas: A Reading of Antebellum Culture* (Chicago, 1986), 7-8, 268.)

49

Agreeing with the author about a Romantic revolution in the North after 1815 leading to newer ideas or “isms” are Anne Norton, *Alternative Americas: A Reading of Antebellum Culture* (Chicago, 1986); Susan-Mary Grant, *North over South: Nationalism and American Identity in the Antebellum Era* (Lawrence, Kansas, 2000); W. Caleb McDaniel, *The Problem of Democracy in the Age of Slavery: Garrisonian Abolitionists and Transatlantic Reform* (Baton Rouge, 2013); and Ethan Kytle, *Romantic Reformers and the Antislavery Struggle in the Civil War Era* (Cambridge, UK and New York, 2014). An older study still full of insights is Vernon L. Parrington, *The Romantic Revolution in America, 1800-1860* (New York, 1927; Norman, Oklahoma, 1966). See also Carl Degler, “The American Civil War and the German Wars of Unification: The Problem of Comparison,” in Stig Forster and Jorg Nagler, *On the Road to Total War* (Cambridge, UK and New York, 1993), 53-72; Timothy M. Roberts, *A Distant Mirror: 1848 and the Challenge to American Exceptionalism* (Charlottesville, Virginia, 2009) and Michael A. Morrison, *Slavery in the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill, 1997).

50

Jack N. Rakove, *Original Meanings*, 202; Norton, *Alternative Americas*, 277; Susan-Mary Grant, *North over South*, 9.

51

The second phase of “Consolidationism” after 1815, viewed as a continuation of the policies of the Federalist party and Alexander Hamilton, is described by Thomas Jefferson in his *Anas* (1818) and in his letters to Judge William Johnson of South Carolina in 1823. (See James M. Smith, ed., *The Republic of Letters*, volume III.) While Jefferson saw the Judicial branch under John Marshall as the leading spirit behind a “national” government versus a one, John Taylor of Caroline also pointed to Marshall and to the new idea of “Protectionism” or a purely protective tariff promoting the interests of manufacturers in the North at the expense of the South and West. See *Construction Construed and Constitutions Vindicated* (1820) and *Tyranny Unmasked* (1822) wherein Taylor connected the links between Judicial supremacy and economic nationalism in Congress.) The continuing relevance of the term “Consolidation” to those who opposed it adds to the view by John M. Murrin and others of a continuing English Whig Country-Court political dialogue adjusted to American circumstances. See John M. Murrin, “The Great Inversion, or Court versus Country: A Comparison of the Revolution Settlements in England (1688-1721) and America (1776-1816),” in J. G. A. Pocock, ed., *Three British Revolutions: 1641, 1688, 1776* (Princeton, 1980), 368-454; J. Thomas Wren, “The Ideology of Court and Country in the Virginia Ratifying Convention of 1788,” *Virginia Magazine of Biography and History*, 93 (October 1985), 389-408; Hans Joas and Barbo Klein, eds., *The Benefit of Broad Horizons* (Leiden The Netherlands, 2010); Ignacio-Gallup Diaz, Andrew Shankman, and David Silverman,

eds., *Anglicizing America: Empire, Revolution, Republic* (Philadelphia, 2015); John M. Murrin, *Rethinking America: From Empire to Republic* (Oxford, UK and New York, 2018); and T. Thornton Miller, introduction to *Tyranny Unmasked* by John Taylor (Indianapolis, 1992).

52

See Wood, *Nullification, A Constitutional History, 1776-1833* (2 vols., Lanham, Maryland, 2008, 2009); Merrill D. Peterson, *The Great Triumvirate: Webster, Clay, and Calhoun* (New York, 1987); and Lance Banning, “Republican Ideology and the Triumph of the Constitution, 1789-1793,” *William and Mary Quarterly*, 3rd series, 31 (April 1974), 167-188, quote on 180-181, For more on states’ rights, see Charles Pinnegar, *Virginia and State Rights, 1750-1861: The Genesis and Promotion of a Doctrine* (Jefferson, North Carolina, 2009); Edwin Viera, *How to Dethrone the Imperial Judiciary* (San Antonio, 2004); and Peter Zavodnyik, *The Age of Strict Construction: A History of the Growth of Federal Power* (Washington, DC, 2007). Edwin Viera, Harvard Graduate (M. A., Ph. D., LL. B.) is an attorney in private practice in Virginia. In his book about the new “protecting duty principle” being debated in Congress in 1820, *Tyranny Unmasked* (1822), John Taylor of Caroline devoted half of this work to the remedy of Nullification or what he called “a mutual veto.” Southern constitutional scruples are denied by William W. Freehling. See *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York, 1966) and *The Road to Disunion* (2 vols., New York, 1990, 1991).

53

See Wood, *Nullification, A Constitutional History*; notes 1-22 above, and “Afterword: Joseph J. Ellis on the American Founding.”

54

See Adrienne Koch, ed., *Notes of Debates*, for information about the history of this source and Farrand, *Records*, about early documentary material. Farrand’s own book, *The Framing of the Constitution of the United States* (1913) was written without benefit of the documentary evidence he compiled! Further information about the Federal Convention and the state ratification debates, see the introduction to volumes one of Elliot, ed., *Debates in the State Conventions* and *The Documentary History of the Ratification of the Constitution*. “The signing of the U.S. Constitution on 17 September 1787 was a milestone in creating a government for the recently independent United States. However, **the act of signing itself did not create a government**. Nor did it bring the new Constitution into force. The closing of the Constitutional Convention was the beginning of a long public debate during which citizens, represented in state ratifying conventions, read, debated, and ultimately voted to ratify the Constitution. The process of ratification produced an invaluable record of debates and commentaries that reveal how eighteenth-century Americans understood the Constitution and how they assessed its strengths and weaknesses. Beginning with the publication of the first volume of *The Documentary History of the Ratification of the Constitution* (DHRC) in 1976, editors have been publishing the definitive collection of primary source material related to the ratification debates. Editors draw on a body of more than 70,000 documents, including official materials, such as records of town meetings, legislative proceedings, convention

journals and debates, and forms of ratification; personal papers, such as letters, memoirs, and diaries; diplomatic correspondence; and printed primary sources, such as newspaper articles, broadsides, and pamphlets. These documents have been transcribed, annotated, and published in twenty-nine volumes (to date) totaling more than 15,000 printed pages.” (From the University of Wisconsin Digital Collections at <https://uwdc.library.wis.edu/collections/history/constitution>.)

55

Koch, ed., *Notes of Debates*, viii-ix. On Madison’s decision to record notes of the debates, he was inspired by “the deficiency” he found in the histories of ancient confederacies “related to the process, the principles, the reasons, & the anticipations, which prevailed in the formation of them, determined me to preserve as far as I could an account of what might pass in the Convention.” See “A Sketch Never Finished Nor Applied,” ca. 1830, in Rakove, ed., *Madison: Writings*, 840-842. For “consolidation” in the 1790’s and continuing after 1815, see Thomas Jefferson’s *The Anas*, 1818 and his letters to Judge William Johnson of Charleston, S.C. in 1823. See Merrill D. Peterson, ed., *Thomas Jefferson: Writings* (New York, 1984) and James M. Smith, ed., *The Republic of Letters: Correspondence between Thomas Jefferson and James Madison, 1776 -1826* (3 vols., New York, 1995). Like Jefferson, John Taylor of Caroline was present at the birth of the new American republic in 1776 and a Jeffersonian (Whig) Republican in the 1790’s. His works prove the continuing influence of radical Whig ideology as 18th century republicanism into the 19th century. See John M. Murrin, “The



Great Inversion, or Court versus Country: A Comparison of the Revolution Settlements in England (1688-1721) and America (1776-1816,” in J. G. A. Pocock, ed., *Three British Revolutions: 1641, 1688, and 1776* (Princeton, 1980). See also J. Thomas Wren, “The Ideology of Court and Country in the Virginia Ratifying Convention of 1788,” *Virginia Magazine of History and Biography*, 93 (October 1985), 389-408; T. Thornton Miller, introduction to John Taylor’s *Tyranny Unmasked* (Indianapolis, 1992); and Murrin, *Rethinking America: From Empire to Republic* (New York and Oxford, 2018.)

56

Irving Brant, *James Madison: Father of the Constitution, 1787-1800* (Indianapolis and New York, 1950), 11, 12, 13, 23, 30, 267, 461n, note #10, and 21-22.

57

See Koch, ed., *Notes of Debates*, ix-x; Alice Felt Tyler, *Freedom’s Ferment: Phases of American Social History to 1860*; Joseph Blau, ed., *Social Theories of Jacksonian Democracy*; and Russell B. Nye, *Society and Culture in America, 1830-1860*. See also Mark Meuser, “James Madison by Sydney Howard Gay,” in *American Statesman*, July 21, 2016; and “Online Books” by Gaillard Hunt (1862-1924).

58

James Morton Smith, editor of *The Republic of Letters*, states that “Madison agreed to loan Jefferson his ‘Notes on the Debates at the General Convention.’” See Smith, ed., *The Republic of Letters*, II, 881, 889-890 and III, 1640-1642.

59

Koch, ed, *Notes of Debates*, x and the Virginia Plan of May 29 in *ibid.*, 27-33. On May 30, the first proposition of the Virginia plan was amended to read “that a Union of the States merely federal will not accomplish the objects proposed . . . .” Instead “a *national* Government ought to be established consisting of a *supreme* Legislative, Executive & Judiciary.”(*Ibid.*, 34.) See notes 1-22 above and “Afterword: Joseph J. Ellis on the American Founding.’ Also, Wood, *Nullification, A Constitutional History, 1776-1833*. On the “counter-right” of states, see Jefferson to Madison, October 1, 1792 in Smith, ed., *The Republic of Letters*, II, 740-741. On the supposed difference between the doctrines of South Carolina 1828 versus Virginia in 1798-1800, Madison was right in relation to his Virginia Resolution of 1798. Jefferson was in fact a “nullifier” and disagreed with Madison. In the “South Carolina Exposition & Protest” of 1828, Calhoun referred to Jefferson’s “Kentucky Resolutions” and not Madison’s “Virginia Resolutions.” Calhoun further relied on Madison’s *Virginia Report of 1800*, the *Journal of the Federal Convention*, and *The Federalist* especially essay #51 by Alexander Hamilton. This S. C. state paper above is presented in Ross Lence, ed., *Union and Liberty: The Political Philosophy of John C. Calhoun* (Indianapolis, 1992), 313-367. By 1828, the epithet of “Disunion” was used by “nationalists” like Jackson, Webster, and Madison to lessen any claim of constitutionality on the part of the Nullifiers as defenders of original intentions, republicanism and federalism joined. Its use at the time was itself an index to the growth of the new idea of the “Union as absolute” that Paul C. Nagel has so well documented in *One Nation Indivisible: The Union in American Thought, 1789-1861* (New York, 1964). See also Elizabeth Varon, *Disunion! The Coming of the Civil War, 1789-1850* (Chapel Hill, 2008, 2010). In their dismissal of original sources about

the Federal Convention and later of the state ratifying debates, “nationalists” demonstrated a **deliberate willingness** to ignore what the framers really intended. This, in turn, speaks to their different intentions about government and society in America. Instead of preserving the republic as they claimed, they were in fact in the process of creating a new “National” government for which a new “national” history or myth was needed.)

60

See Jack P. Greene, “The Revolution in Practice,” in Greene, ed., *The Reinterpretation of the American Revolution* (New York, 1968), 322; R. R. Palmer, “The American Revolution: The People as Constituent Power,” in *ibid.*, 338-361, quotes on 338, 339, 360; Jackson Turner Main, “Government by the People: The American Revolution and the Democratization of the Legislatures,” in *ibid.*, 291-338, quotes on 322, 324; Diamond, “Democracy and the Federalists: A Reconsideration of the Framers’ Intent,” *ibid.*, 504-526; Keane, *Democracy*, 275; Robert A. Dahl, “How Democratic is the American Constitution?,” quote from Yale University press release at Google; and Richard Buel, Jr., “Democracy and the American Revolution: A Frame of Reference,” in Greene, ed., *The Reinterpretation of the American Revolution*, 122-147, quote on 146.) See also Cecelia Kenyon, “Republicanism and Radicalism in the American Revolution: An Old-Fashioned Interpretation” in *ibid.*, 291-310. To the question of “Did the Fathers write a ‘democratic’ Constitution?,” Douglass G. Adair believed this to be the wrong question. America’s new federal republic was *sui generis*. See Douglass G. Adair, “Experience Must be Our Only Guide: History, Democratic Theory, and the United States Constitution,” in Greene, ed., *The Reinterpretation of the American Revolution*,

397-416, quotes on 411, 412, and 413. John Keane's *The Life and Death of Democracy* (New York, 2009) is also informative about definitions, the origins of democracy and the idea of representation, and the American framers' disdain of democracy. (Ibid., xv, 83, 275-283.) What Tocqueville "famously called a 'great democratic revolution' in favor of political and social equality" came to America in the years after 1815. (Ibid., xxi, 308-311. On the question of democracy, perhaps not the right one, see further Robert A. Dahl, *How Democratic is the American Constitution?* (New Haven, 2001,2003).)

61

Hannah Arendt, "Constitutio Liberatis" in Jack P. Greene, ed., *The Reinterpretation of the American Revolution*, 679-607. See also *On Revolution* (New York, 1963). On democracy being opposed as demagoguery and being inappropriate as a description of popular government in the 18th century, see Jackson Turner Main and Cecelia Kenyon above. Above all, see more recently Jack P. Greene, *ALL MEN ARE CREATED EQUAL: Reflections on the Character of the American Revolution*," in Greene, ed., *Imperatives, Behaviors, and Identities: Essays in Early American Cultural History* (Charlottesville, and London, 1993.)

62

Morgan, "The American Revolution Considered As an Intellectual Movement," in Greene, ed., *The Reinterpretation of the American Revolution*, 568-578, quote on 578; Kenyon, "Republicanism and Radicalism," 302. \*Kenyon overstates the degree of equality at the time.

63

Hannah Arendt, “Constitutio Libertatis,” in Greene, ed., *The Reinterpretation of the American Revolution*, 579, 580, 582, 584.

64

ibid., 591-592, 593.

65

Ibid., 594. The “counter-revolution” was the Philadelphia Convention orchestrated by “nationalists” led by James Madison and the Virginia delegation. See Wood, notes above; Joseph J. Ellis, *American Creation*; and Irving Brant, *James Madison: Father of the Constitution 1787-1800*.

66

Ibid., 595-596.

67

Ibid., 595.

68

Ibid., 586-587.

69

See Richard Buel, Jr., “Democracy and the American Revolution: A Frame of Reference” (1964) in, Greene, ed., *The Reinterpretation of the American Revolution*, 122-146, quote on 123 and Richard J. Ellis, *The Dark Side of the Left: Illiberal Egalitarianism in America* (Lawrence, Kansas, 1998), 7. See also Stephen R. C. Hicks, *Explaining Postmodernism: From Rousseau to Foucault* (Roscoe, Illinois), 2011, 2014) and Wood, *Beyond Slavery*, volume one *Republicanism, the Untold History of an Idea, 1776-2016*;

volume two, *The American Federal Republic, 1776-1815*; and volume three, *Enlightenment and Counter-Enlightenment in America, 17889-1848*.

70

See Paul Finkelman, "Garrison's Constitution: The Covenant with Death and How It Was Made," *Prologue*, 32 (Winter 2000) at National Archives.gov. See also Wendell Phillips, *The Constitution Proslavery Compact; or, Extracts from the Madison Papers*, etc. (Boston, 1844). For the reinterpretation of the Declaration in the 19th century by abolitionists, workers, and feminists, see Maier, *American Scripture*, 187-188, 191, 197-199.

71

See Morrison, *Slavery in the West* and Susan-Mary Grant, *North over South*, 11-18, 36, 37-60, 61-80, 101-110, and 111-129.

72

See Susan-Mary Grant, *North Over South*, 5 and Michael Morrison, *Slavery in the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill, 1997).

73

See Elizabeth K. Bauer, *Commentaries on the Constitution, 1790-1860* (New York, 1952).

74

See again Maier, *American Scripture*, on the reinterpretation of the Declaration in the North. Only after the War of 1812 did the Declaration itself come to be celebrated with the same cross-party national fervor as the Fourth of July itself. It was in precisely

this period that the Declaration became a national icon.” “It was in light of this renewed interest that the second paragraph of the Declaration began its progress toward becoming the heart of the Declaration’s meaning in the United States . . . . When peace had been restored with Britain, and the precise incidents that lay behind the grievances in the main body of the Declaration had been forgotten, all the substance that remained to be revered was in the second paragraph. The Declaration’s original motivation and its cosmopolitan appeal to the ‘Opinions of Mankind’ were lost to a nationalistic veneration of the document as a whole. Selective attention was paid only to its **abstract** claims rather than to its import as a document with international implications.” In the light of more recent trans-Atlantic independence movements, the Declaration served a utilitarian and useful purpose of justification! (David Armitage, *The Declaration of Independence: A Global History*, 92-93.) See also Graham A. Peck, “Abraham Lincoln and the Triumph of Antislavery Nationalism,” *Journal of the Abraham Lincoln Association*, 28 (Summer 2007), 1-27 and his new book, *Making an Antislavery Nation: Lincoln, Douglas, and the Battle over Freedom* (Urbana, 2017). See also Garry Wills, *Lincoln at Gettysburg: The Words That Remade America* (New York, 1992). Prof. Maier’s only criticism of Wills is that Lincoln **alone** did not reinterpret the Declaration. The “remaking of the Declaration of Independence [into a sacred text] no less than its original was not an individual but a collective act . . . .” (*American Scripture*, xix-xx. The South as a slave aristocracy (and not democratic” and later as a “Slave Power,” were two components of a reactionary South along with its new states’ rights theory of government. For the Northern critique of Southern society and politics, see Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York, 1970, 1995) and

Susan-Mary Grant, *North Over South*. The democratic thrust of the thought of William Lloyd Garrison and his fellow abolitionists is the subject of W. Caleb McDaniel, *The Problem of Democracy in the Age of Slavery: Garrisonian Abolitionists and Transatlantic Reform* (Baton Rouge, 2013). See author's published research in note # 108 below and "Reactionary South Bibliography," 1-10, at [www.nullificationhistory.com](http://www.nullificationhistory.com).

75

Maier, *American Scripture*, 199. The declaration's original and singular purpose of announcing the birth of a new government (as a republic) into the trans-Atlantic world order nation-states, see David Armitage, *The Declaration of Independence: A World History*.) America was different because it was a Confederacy of thirteen independent and sovereign states or "state-nations" as John Taylor of Caroline called them.

76

Maier, *American Scripture*, 199-200. See also Jefferson's views about the Declaration in 1823 and the politics of the time, i.e., the revival of "Consolidation" again in the North in James Morton Smith, ed., *The Republic of Letters*, volume three. In his "South Carolina Exposition & Protest" of late 1828, Calhoun cited Jefferson's "Kentucky Resolutions" as one source of Nullification's constitutionality. He also cited the *Journal of the Federal Convention*, *The Federalist*, and the *Virginia Report of 1800* by James Madison. See this protest in Ross Lence, *Union and Liberty: The Political Philosophy of John C. Calhoun*. Calhoun, it is incorrect to say, invented no new states' rights theory of government.

77



Locke, Chap. Two, “Of the State of Nature.” Quoted from The *Two Treatises of Government* (1689) at the Liberty Fund’s Online Library of Liberty.”)

78

Ibid., Chap. IX, “*Of the Ends of Political Society and Government*” and Chap. Seven, “Of Political and Civil Society.”

79

Jack P. Greene, “ALL MEN ARE CREATED EQUAL: Reflections on the Character of the American Revolution,” in *Greene, ed., Imperatives, Behaviors, and Identities: Essays in Early American Cultural History* (Charlottesville, and London, 1993), 239-241 and Alexander Hamilton, June 26, 1787, quoted in Koch, ed., *Notes of Debates*, 196-197. See also John Phillip Reid, *The Concept of Liberty in the Age of the American Revolution* (Chicago, 1988). In its description of Sanford Lakoff’s *Equality in Political Philosophy* (Cambridge, Massachusetts, 1964), Harvard University Press states that “classical and medieval theories” tended “to reflect an ambivalent view of equality.” Only **in the 19th century** did modern theories “acquire . . . the familiar designations of Liberal, Conservative, and Socialist.”

80

Armitage, *The Declaration of Independence, A World History*, 74-76.

81

See Christopher L. Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill, 2006), “The Politics of Slavery in Years of Crisis,” 106-153; Jack, P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge, UK and New York, 2011); Greene, “All Men Are Created Equal: Some Reflections on the

Character of the American Revolution,” in Greene, *Imperatives, Behaviors & Identities: Essays in Early American Cultural History* (London and Charlottesville, Virginia, 1992), 236-267; and Greene, “ ‘Slavery or Independence’: Some Reflections on the Relationship among Liberty, Black Bondage, and Equality in Revolutionary South Carolina,” in *ibid.*, 268-289; and John Phillip Reid, *The Concept of Liberty in the Age of the American Revolution* (Chicago, 1988). The American War of Independence and Revolution will be the subject of volume two, “The American Republic, 1776-1815” of *Beyond Slavery: A New History for a New Nation and the Northern-Romantic-Nationalist Origins of America’s Civil War of 1861-1865* (in progress, four volumes to date).

82

Armitage, *The Declaration of Independence*, 78-79.

83

See copy of this pamphlet, 132 pages, at Books Online, <http://onlinebooks.library.upenn.edu>.

84

The Declaration of 1776 being about independence more than the equal rights of all men is affirmed by Pauline Maier in *American Scripture* and David Armitage in *The Declaration of Independence, A Global History*. On Romanticism in the 19th century and Rousseau in the 18th and the “rebellion against reason, see Hannah Arendt, *On Revolution* (New York, 1963), 70-71, 171-176. To Arendt, one great difference between the Enlightenment and Romanticism was the “passion for compassion” that informed the latter. (*Ibid.*, 162.) See also Sir Isaiah Berlin, “Three Turning Points, 3: Romanticism,”

in “The Isaiah Berlin Virtual Library; and “Isaiah Berlin and the Origins of the Totalitarian Rousseau” at Oxford Scholarship Online.

85

Maier, *American Scripture*, 192, 197.

86

Maier, *American Scripture*, 192, 197-198.

87

Locke, Chapter XIX, “Of the Dissolution of Government,” Sections 220-229, in Shapiro, ed., *John Locke, Two Treatises of Government and A Letter Concerning Toleration* (New Haven, 2003), 196-203. “The end of government is the good of mankind: and which is best for mankind, that the people should be always exposed to the boundless will of tyranny; or that the rulers should be sometimes liable to be opposed when they grow exorbitant in the use of their power, and employ it for the destruction and not the preservation of the properties of their people [with property combining life and liberty as well].?” (Ibid., 201.)

88

See Maier, *American Scripture*; Armitage, *The Declaration of Independence*; and Bauer, *Commentaries on the Constitution, 1790-1860*. See also Wood, preface and introduction to *Beyond Slavery: Volume One, Republicanism, The Untold History of an Idea 1776-1976*. The American Revolution will be the subject of *Beyond Slavery: A New History for a New Nation and the Northern-Romantic-Nationalist Origins of the American Civil War, 1776-1865* (in progress), volume two: *The American Federal Republic, 1776-1815*.)

89

Maier, *American Scripture*, 160.

90

Maier, *American Scripture*, 187. See also Richard Stites, *The Four Horsemen: Riding to Liberty in Post-Napoleonic Europe* (Oxford, UK and New York, 2014).

91

Maier, *American Scripture*, 178. See also Joyce Appleby, *The Relentless Revolution: A History of Capitalism* (New York, 2010) and Wood, preface and introduction to *Beyond Slavery: Volume One, Republicanism, The Untold History of an Idea, 1776-1976; Volume Two, The American Federal Republic, 1776-1815; Volume Three: Enlightenment and Counter-Enlightenment: Europe and America, 1789-1848; and Interlude One: Review and Preview, Europe and American, 1789-1848*. *Beyond Slavery* is a multi-volume work still in progress.

92

Maier, *American Scripture*, xvii, xvii.

93

Maier, *American Scripture*, 206-207. Maier adds that Lincoln and Republicans believed that in 1776 there was “the promise of something better, than a mere change of masters.” “He understood the Northern cause in the Civil War in much the same way: the North fought not only to save the Union, but t save a form of government . . . .” Neither one of these purposes was true or historically accurate. Lincoln and the Republicans were about remaking the Union into an absolute and indissoluble one to deny secession as a right of revolution. Also, as a “confederate republic” of a compound

nature with the powers of government shared between two political authorities, the rights of states were sovereign over the issue of slavery. Only states, duly admitted into the Union, could decide for or against slavery. For the South, the vote for or against did not matter. The constitutional principle did. Slavery was not about to expand into the territories to any great extent because of “Natural Limits” to large-scale plantation agriculture. Lincoln’s new policy of “Antislavery Nationalism” of the late 1850’s was thus a rejection of the old Union and the rights of the states and cause for secession once Lincoln and the Republicans capture control of the government in the election of 1860. The reality of “Natural Limits” was what made compromise in the Missouri crisis possible. Southerners agreed to “restriction” because the Northwest Territory was bound to be free. Southern secession was not a “rebellion” and it was in defense of the Declaration as a justification for independence. There was no “base effort ‘to overthrow the principle of all men were created equal” as the historical evidence above demonstrates conclusively. "The aggressor in war is not the first who uses force, but the first who renders force necessary." The quote is from Henry Hallam, *The Constitutional History of England . . .* (3 vols., Paris, 1841), II, 169 available at Google Books online. Once Lincoln was officially inaugurated as sixteenth President of the U. S., he and his administration pursued a military policy to assure that the Confederates were the first “to shoot” against Ft. Sumter in Charleston Harbor. See Russell McClintock, *Lincoln and the Decision for War: The Northern Response to Secession* (Chapel Hill, 2008, 2010.)

94

Maier, *American Scripture*, 208. Oblivious to history, fact, and truth, the myths of the Declaration of 1776 and of the American Revolution live on to misinform even

more Americans about the first founding of America as a “confederate republic” of a compound nature and a second founding of America as a united nation with the Civil War of Northern-Nationalist-Romantic Origins, 1776-1865. See Alexander Tsesis, *For Liberty and Equality: The Life and Timers of the Declaration of Independence* (Oxford, UK and New York, 2012). Readers of this book, however, should be sure to buy and absorb the lessons in Richard J. Ellis, *The Dark Side of the Left: Illiberal Egalitarianism in America* (Lawrence, Kansas, 1998).

95

James Pierson, “Abraham Lincoln: American Prophet,” review of Harold Holzer, *Lincoln and the Power of the Press: The War for Public Opinion* (New York, 2014) and Richard Brookhiser, *Founders’ Son: A Life of Abraham Lincoln* (New York, 2014), *The New Criterion*, 37 (October 2014, 1-9 pages.

96

Maier, *American Scripture*, 201, 205.

97

Ronald C. White, Jr., *A. Lincoln, A Biography*, 275-276. In rationalizing Lincoln’s embarrassing comments, White says that “it was a short-term political tactic.” *Ibid.* 277.)

98

White, *A. Lincoln*, 276. See in particular Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York, 1970, 1995). Citing Prof. White again, he notes that Lincoln in his debates with Douglas, “focused on the accusation that Douglas, despite, his protest of the LeCompton Constitution, was part of a conspiracy to impress slavery on Kansas.” *Ibid.*, 277.) Prof.

Michael Morrison denies that the Civil War was a “crusade against slavery.” To emphasize this single issue alone “underestimates the racism of antislavery activists.” See *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill, 1997), 9.)

99

White, A. *Lincoln*, 276. See also Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York, 1970-1995.)

100

Maier, *American Scripture*, 201.

101

Maier, *American Scripture*, 203-204. When Sen. Pettit stated that “all men are created equal” was not a “self-evident truth” but a “self-evident lie,” he had history on his side. The “liars” and “falsifiers” were abolitionists and later Republicans and doubly so. Not only were they not racial egalitarians, but the “self-evident lie” was more useful in adding a new dimension to an emerging “Slave Power” conspiracy that now directly threatened free labor and free society in the North! See “John Pettit” at Wikipedia and Jeremy J. Tewell, *A Self-Evident Lie: Southern Slavery and the Threat to American Freedom* (Kent, Ohio, 2013.) By accepting the myth of equality inherent in the Declaration of Independence in 1776, Tewell demonstrates a faulty knowledge of early American history or a deliberate denial of historical reality in order to perpetuate the myth of a reactionary South that was invented in the North before 1860 for partisan purposes. See the author’s reply, “Locke, Jefferson, and the Declaration Reinterpreted: The Northern Origins of the Civil War, 1815-1865,” to Tewell, “Assuring Freedom to

the Free: Jefferson's Declaration and the Conflict over Slavery," *Civil War History*, 58 (March 2012), 75-96. The editor of *CWH* never acknowledged receipt of my rebuttal. The reply is at [www.nullificationhistory.com](http://www.nullificationhistory.com).

102

See Maier, *American Scripture*, 200. For one interpretation of Paine as a "radical," see Charles E. Merriman, Jr., "Thomas Paine's Political Theories," *Political Science Quarterly*, 14 (September 1899), 389-403. Paine as a radical and a democrat is also maintained by Sean Monahan, "Reading Paine from the Left," in the *Jacobin Magazine*, at [www.jacobinmag.com](http://www.jacobinmag.com); Phil Scarr, "Thomas Paine and the Radical Foundations of American Democracy," *The Masses*, at [www.themassesareangry.blogspot.com](http://www.themassesareangry.blogspot.com) (April, 2011); and Isaac Kramnick, "Tom Paine: Radical Democrat," in *Democracy Journal*, I (January 1981), 127-138 at [www.democracyjournal.com](http://www.democracyjournal.com). See especially, Nathalie Caron, "Lincoln, Paine and the American Freethought Tradition," *American Studies Journal*, 60 (2016), 1-20 pages, at [Http://www.asjournal.org](http://www.asjournal.org).

103

Maier, *American Scripture*, 192, 193, 204, 206-207.

104

See Foner, *Free Soil, Free Labor, Free Men*; Morrison, *Slavery and the American West*; Susan-Mary Grant, *North Over South*; Anne Norton, *Alternative Americas*; and Richard J. Ellis, *The Dark Side of the Left: Illiberal Egalitarianism in America*



(Lawrence, Kansas, 1998). The limits of Reconstruction on the part of the larger Republican party, and its abandonment of the freed blacks, see Edward Ayers, *The Promise of a New South* (Oxford, UK and New York, 1992; Charles W. Calhoun, *Conceiving a New Republic: The Republican Party and the Southern Question, 1869-1900* (Lawrence, Kansas, 2006); and Paul D. Escott, “*What Shall We Do with the Negro?*”: *Lincoln, White Racism, and Civil War America* (Charlottesville and London, 2009).

105

Ethan Kytle, *Romantic Reformers and the Antislavery Struggle in the Civil War Era* (Cambridge, UK and New York, 2014) and review by Jason Stacy in the *Journal of Southern History*, 82 (August 2016), 678-679.

106

See Susan-Mary Grant, *North Over South*, 22-23 and works by the author cited below in note #108.

107

See Wood, *Nullification, A Constitutional History* and the works by Anne Norton, Susan-Mary Grant, Garry Wills, and Pauline Maier above and Michael Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill, 1997).

108

Ellis, *American Creation*, 3. In more general terms, the myths of democracy and a reactionary South were central to the "Consensus" view of American history after World War II. See the author's Ph.D. dissertation, "The Union of the States: A Study of Radical Whig-Republican Ideology and Its Influence upon the Nation and the South, 1776-1861" (U. of South Carolina, 1978) and on-going research since that time. See "Beyond Myths (Madisonian, Federalist, Liberal, and Nationalist): The Constitutionality of Nullification and What the Framers Really Intended," *The Early America Review* (an electronic journal), V (Winter-Spring, 2004) at <http://earlyamericareview.org> (18 pages); "The Central Theme of Southern History: Republicanism, Not Slavery, Race, or Romanticism," in *Continuity: A Journal of History*, 9 (Fall, 1984), 33-71; "Alexis de Tocqueville and the Myth of Democracy in America," *Southern Studies, New Series*, V (1994), 1-18 (published in 1998); "Rewriting Southern History: U. B. Phillips, the New South, and the Antebellum Past," *Southern Studies*, XXII (1983), 216-243; "Before Republicanism: Frank L. Owsley and the Search for Southern Identity, 1865-1965," *Southern Studies, new series*, VI (Winter, 1995), 65-78 (published in 1999); and the following papers presented at meetings of the Mid-America History Conference, the Duquesne History Forum, and the St. George Tucker Society: "The Idea of a Great Reaction: U. B. Phillips and the Modern Interpretation of Southern History"; "What Happened to Republicanism, I?: George Bancroft, the Myth of Democracy, and the Lost Causes of 1776, 1787, and 1861"; "Republicanism, A Typology and Chronology, 1776-1861"; "What the Framers Really Intended: James Madison and the Constitutionality of Nullification"; "In Defense of the Republic: John C. Calhoun and State Interposition

in South Carolina, 1776-1833"; and "An American Interprets His Civil War: Thomas J. Pressly's View of Frank L. Owsley and the Myth of a Neo-Confederate Revival.")

109

See works by Wood above and Gary Gallagher, *The Union War* (Cambridge, Massachusetts, 2011); and R. W. B. Lewis, *The American Adam: Innocence, Tragedy, and Tradition in the Nineteenth Century* (Chicago, 1955, 1971), 13. Prof. Lewis identifies a dualism in the literature of the time. A "party of the Future" (Emerson, Thoreau, Whitman, William Cullen Bryant, Bancroft, Parkman, Theodore Parker) against a "party of the past (Hawthorne, Melville, Cooper, and the South). In *Walden*, for example, Thoreau "prescribes the following cure: the total renunciation of the traditional, the conventional, the socially acceptable, the well-worn paths of conduct, and the total immersion in nature." To James Russell Lowell on Thoreau, "There is only one thing better than tradition, and that is the original and eternal life out of which tradition takes its rise [nature]." (Ibid., 21, 23.)

110

For the European historical context, see Charles Breunig, *The Age of Revolution and Reaction, 1789-1850* (New York, 1970); Norman Rich, *The Age of Nationalism and Reform, 1850-1890* (New York, 1970), and Gregory Fremont-Barnes, ed., *The Encyclopedia of the Age of Political Revolutions and New Ideologies, 1760-1815* (Westport, Connecticut, 2007.) The author taught World History at Alabama State University in Montgomery, Alabama from 1989 to his retirement in 2010. The European perspective was most useful in interpreting the American

experience anew. On the myth of slavery as the single cause, Edward Ayers has a different opinion. “Even slavery, usually cited as the defining issue of the region, was far more complex than many historians recognize. Enthusiasm for secession didn’t correlate with local patterns of slave-owning, nor did ending slavery emerge as the main justification for the Civil War until late in the conflict. Civil War historians have argued back and forth about the causes of the conflict. The dominant school long argued that economic issues such as tariffs and industrialism were more critical in causing the war than the slavery issue—and that the conflict might well have been avoided. More recently, the focus on slavery in such works as Ken Burns’s Civil War documentary and James McPherson’s *Battle Cry of Freedom* has presented the image of a tragic and inevitable—but finally cleansing—conflict. The truth, Ayers argues, embodies some of both viewpoints and resists “bumper-sticker” answers.” From *Kirkus Reviews*, June 25, 2005, about *What Caused the Civil War?: Reflections on the South and Southern History* (New York, 2005) at <http://www.kirkusreviews.com>). Other valuable works by Ayers include *In the Presence of Mine Enemies: The Civil War in the Heart of America, 1859-1864* (New York, 2004) and *The Thin Light of Freedom: The Civil War and Emancipation in the Heart of America* (New York, 2018).