

**The American Constitution: 225th Anniversary of the Ratification
Presentation Abstracts**

University of Georgia Hotel and Conference Center

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Spatial Models of the Convention: Cal Jillson, discussant

Jeremy Pope and Shawn Treier, "Mapping the Convention's Agenda."

A careful reading of Farrand's notes on the Convention reveals two facts about the agenda. First, delegates thought hard about what topics to discuss and in which order. For example, Madison, famously, chose to stress representation ahead of general government powers. Second, though delegates thought hard about the nature of the agenda, there is little to no evidence of agenda manipulation at the Convention. Instead, delegates simply offered proposals and debated them as they came up. At times the agenda is actually a bit confused as delegates would actually amend a proposed clause or amendment and then simply discard the entire project. With an unguided agenda like this mapping proposals can show us how the Convention tested ideas sometimes accepting them and sometimes discarding them. Our model, employing delegation votes and some delegate information, estimates status quo and proposal locations in the unguided agenda to demonstrate how this happened in Philadelphia, 1787.

Keith L. Dougherty, "The Power of the South: A Multidimensional Analysis of the Philadelphia Convention."

Authors: Keith L. Dougherty, Paul D. Carlsen, and Ryan Bakker.

Despite representing a minority of the states at the U.S. Constitutional Convention, Southerners were able to pass several clauses appearing in the Constitution which favored Southern interests. This included the 3/5ths compromise, the protection of the slave trade until 1808, and the prohibition of export taxes. We explain why the South succeeded on these issues but failed on others, using a multidimensional spatial voting model estimated using Bayesian techniques and a new dataset on delegate votes (gathered with support from the National Science Foundation). Although the South often lost sectional issues in the Congress of the Confederation between 1786 and 1787, we argue they won similar issues at the Constitutional Convention because many of the same issues varied along a localism-nationalism axis instead of purely a north-south axis. This subtle difference in the preferences of the delegates moved Southerners from extreme positions to more centrist positions on some votes that were

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important to them. We also investigate whether a delegate's ability to formulate successful motions was related to his projected distance from the floor pivot, independent of whether he was a Southerner. Preliminary evidence suggests that the South's success resulted from the relative position of a few key delegates, rather than an unholy compromise as previously suggested.

Jac C. Heckelman, "State Bloc Versus Individual Delegate Voting at the Constitutional Convention: Did it Make a Difference?"

Authors: Paul D. Carlsen and Jac C. Heckelman.

Voting at the 1787 Constitutional Convention followed the norm of the Continental Congress by requiring state votes to be determined by the majority vote of each state's present delegates, and the outcome of the vote to be decided by majority vote of the states. Yet in establishing the new legislature to replace the Continental Congress, the adopted Constitution set new rules such that voting in state blocs would no longer hold in either house; instead a simple majority of all present representatives would determine the outcome of each house vote. We investigate how Convention vote outcomes might have changed if delegates put this rule in place for the Convention as well. Using individual delegate vote inferences available through the Constitutional Convention Research Group dataset (Dougherty et al. 2012), we use spatial models to identify cut points on roughly 400 separate roll calls. Preliminary analysis suggests only a few vote outcomes would have changed under individual delegate voting but those that were predicted to change included passage of a clause allowing the federal legislature to set property qualifications for membership and requiring states to pay the salaries of their national legislators. In addition, requiring the election of the president by a joint ballot of the federal legislature would have expected to have been rejected despite it actually having passed under state bloc voting and later having a substantial influence on a future compromise resulting in the formation of the Electoral College.

Early American Political Thought: Robert McGuire, discussant

Alan Gibson, "James Madison and the Creation of an Impartial Republic."

"James Madison and the Creation of an Impartial Republic" will present a broad and bold reinterpretation of Madison's vision of the American republic and the course of his political career. Impartiality, I will argue, is the foundational principle in Madison's political thought and an impartial republic is the best description of the kind of regime that Madison hoped to create. Impartiality brings together and serves as the organizing ideal behind Madison's varied commitments to

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disinterested public service, the equal protection of the rights of all individuals, groups, and sections, the preservation of the union, and the pursuit of proportionality and fairness in power sharing arrangements and the distribution of public benefits and burdens.

My essay will thus tease a full understanding of Madison's commitment to impartiality from a close reading of his voluminous public writings and private correspondence from 1780 to 1792 and an analysis of his policy commitments, especially his position on impost duties, discrimination between original and subsequent holders of the national debt, the assumption of state debts, and the location of the national capital. This analysis will result in a novel narrative of the pivotal and most studied and storied years of Madison's political career, including the sources of Madison's discontent with the states and the national government under the Articles of Confederation, Madison's constitutional reform program and his efforts to institutionalize impartial administration, and his efforts in the First Congress to enact the policies necessary to launch the republic.

Michael T. Gibbons, "The Political Discourse of Slavery in Eighteenth Century America."

It is generally recognized that the issue of slavery and the slave trade were two of the most important unresolved issues of the American founding. The failure of the delegates to the Constitutional Convention of 1787 to adequately address it resulted in the prolonging of that institution, the American Civil War, and then subsequent periods of discrimination and racial oppression. This failure, I argue, is paradoxical not simply because it was at odds with commonly shared, general political principles of the time. The genuine paradox lies in the fact that when the issue of slavery was specifically addressed, it is rejected at three separate levels. Influential continental philosophers opposed it, key political leaders in America opposed it, and most importantly, for purposes of this paper, a detailed examination of the political and religious pamphlets of the time in North America show virtually no support for the institution of slavery. In this essay, I examine the extensive, comprehensive argument against slavery that appears in popular writing of the period between 1750 and 1800.

It is generally recognized that two of the most influential European philosophers on American political thinking, Locke and Montesquieu, were on record as opposing slavery. Although Locke's personal behavior on that issue brings his sincerity concerning the issue into question, the latter was apparently little known in North America where he was generally understood to have opposed slavery.

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Montesquieu's scathing sarcasm concerning slavery was similarly understood as such by North Americans.

Similarly, Franklin, Washington, Jefferson (at least early on), Hamilton, Jay, Madison, and James Wilson, arguably (but not very) the seven most strategically placed political leaders of the period from 1776 to 1800 all registered their political opposition to slavery, both publicly and privately.

At a third level, that of popular political discourse of the time, the center of gravity of opinion in North America is overwhelming opposed to slavery. Of some sixty-four pamphlets recorded as published from 1750 to 1790, only two embody a justification of slavery, and one seems clearly to be a straw man argument. Moreover, the institution of slavery is attacked and rejected on the most comprehensive grounds. It is corrupting of republican government, it corrupts the slave holders as well as those held in slavery, in corrupts the children of slave holders, it is a violation of the Old Testament, the New Testament, and threatens the covenant that at least some North American writers of the time believe America has with God.

The overwhelming published opinion against slavery makes the failure of American political leadership on the issue even more puzzling and troublesome. I conclude the paper with several brief explanations as to why the institution was not abolished at a time when such abolition might have been accomplished.

Nathaniel C. Green, "What the Federalists and Anti-Federalists Agreed On: The Debate Over the Presidency and the Anti-Republican Nature of the Constitution."

Nathaniel C. Green offers a unique take on the public ratification debate of 1787 by examining the office supporters of the Constitution (so-called "federalists") and their "anti-federalist" opponents discussed the least, but agreed upon the most: the American presidency. He argues that, for all their differences, supporters and opponents of ratification agreed that the Constitution's most essential function was to claim more power for national government, and less for the diverse and diffuse general populace. While federalists and anti-federalists discussed the Executive Branch less than either the Congress or the Judiciary, they agreed that, more than any other office, the presidency embodied the proposed national government's anti-republican nature. For federalists, the presidency represented the concentration of national power necessary to counter the partisan division and popular clamor that doomed "purely republican" governments to anarchy. Anti-federalists, meanwhile, saw the presidency as emblematic of the proposed government's true purpose:

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“consolidated,” tyrannical national authority. Green’s paper reminds us that the Constitution began its public existence as something quite different from the charter of national republican principles many Americans imagine; and that the early presidency, so often assumed to have been tangential to early national politics, was in fact the pivot around which early Americans defined the (anti-)republican nature of the Constitution.

Afternoon special topic.

Richard Beeman, “The Founding Fathers of 1787 and the Myth of the ‘Original Meaning’ of the United States Constitution.”

On September, 17, 1787, when thirty-nine members of the Constitutional Convention in Philadelphia signed the final draft of the United States Constitution, that document represented nothing more than opinion. The document they signed would not become the law of the land until “We the People” in at least nine of thirteen states had agreed to ratify the Constitution. The battle over ratification—in some senses America’s first popular referendum—was a heated and passionate one, with the outcome in many key states—Massachusetts, Virginia, North Carolina, New York, and Rhode Island in particular—very much in doubt. Yet in spite of the highly-contested character of that debate—with many of the opponents of the Constitution predicting the destruction of American liberty if the proposed Constitution was approved—almost immediately after the document was ratified by the necessary nine of thirteen states, it became the touchstone for what was good and true for virtually every side in every political debate that has ever taken place in our nation.

It is precisely because Americans have such reverence for their Constitution that they argue so vehemently about how it should be interpreted. While the constitutional divide between “strict constructionists” and “broad constructionist” has been with us almost from the beginning of the operation of the new government, in the past few decades, it has been the doctrine of “originalism” or the “original meaning” of the Constitution, that has shaped much of the nation’s constitutional debate. The most articulate (and outspoken) advocate of that doctrine has insisted that the Constitution be viewed as a straightforward legal text, and that it be interpreted according to the “plain” or “ordinary” meaning of the words on the pages, as understood by the people of the United States at the time it was adopted. This paper will **not** address the philosophical question of whether American citizens in the twenty-first century should be bound by the meaning of words crafted two hundred and twenty-five years ago.

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Rather, through an examination of the debates in the Constitutional Convention and in a few of the state ratifying conventions, it will explore the question of whether it is possible to discern the eighteenth century “plain meaning” of any of the central concepts and issues imbedded in the Constitution. Among the concepts and issues that will be explored are: “federalism,” “executive power,” the meaning of Article I, Section 8, Paragraph 18, the so-called “necessary and proper clause,” as well as some of the specifically enumerated and unenumerated powers granted to Congress.

Defining American Law: Discussant Pauline Maier

Robert J. Cottrol, “Race at the Founding: Did a Pro-Slavery Constitution Mandate Racial Exclusion?”

This paper asks the question most vividly framed in the Dred Scott decision: Did the Constitution which originally not only permitted slavery, but indeed contained provisions for supporting slaveholding, exclude Afro-American citizenship? The idea that the pro-slavery Constitution was inimical to Negro citizenship point of was central to Taney’s opinion and has been reiterated by popular and scholarly commentators since the decision was handed down in 1857. And yet, as Justice Benjamin Curtis’s dissenting opinion in Dred Scott indicated, race in the United States in the late eighteenth century was more complicated. These complications included the deliberate extension of the right to vote to free black men in a majority of states at the time. Are Afro-American citizenship and the legal enslavement of people of African descent mutually exclusive? This paper looks at the intertwined issues of slavery, race and citizenship at the time of the Constitution’s framing. It does so partly through a comparative lens, examining race, slavery and citizenship in Brazil’s first Constitution, adopted in 1824. Brazil had the largest slave population in the Western Hemisphere and yet its first Constitution explicitly recognized free Afro-Brazilians as citizens. The paper argues that this comparative history can improve both our understanding of race in the original Constitution and the forces that influenced the Taney decision and the Curtis dissent.

Mary Beth Norton, “Defining Constitutionality by its Negative: What did Americans find ‘Unconstitutional’ in the British Empire in 1774?”

This paper examines the construction and use of the term ‘unconstitutional’ by American commentators in the final imperial crisis of the year 1774. The word only entered American colonists’

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vocabulary in 1765 in the context of the Stamp Act crisis, when many declared that it was “unconstitutional” for Parliament to levy taxes on the colonies, when Americans had no representation in Parliament. That usage remained essentially constant until 1774, when new British acts elicited new and broader American definitions. The paper’s working premise is that thinking about what was “unconstitutional” within the empire before the Revolution helped Americans later to define what was, or should be, “constitutional” in their own republic.

Peter C. Hoffer, “Federalism and the Judiciary.”

One of the reasons why Madison, Hamilton and other proponents of the Constitutional Convention wanted a federal system of government was to insure uniform and effective judicial proceedings. They feared that state courts and judges would not honor the terms of the Treaty of Paris or provide genuine justice for out of state litigants. The debates at the Constitutional Convention and the ratification conventions showcased these issues, and the resulting creation of a Supreme Court and inferior federal trial courts were an experiment in dual judicial function that resolved some of the problems, but created new ones.

Special Topics of the Founding: John Wallis, discussant

Farley Grubb, “The Continental Dollar: Initial Design, Ideal Performance, and the Credibility of Congressional Commitment.”

An alternative history of the Continental dollar is constructed from original sources and tested against evidence on prices and exchange rates. The Continental dollar was a zero interest bearer bond, not a pure fiat currency. The public could redeem it at face value in specie at fixed future dates. When time-discounting (rational bond pricing) is separated from depreciation, no depreciation occurred before 1779. In 1779, and again in 1780, Congress passed ex post facto laws altering Continental-dollar maturity dates. Because these new dates were not fiscally feasible, Congress' commitment to the Continental dollar lost credibility. Depreciation and collapse followed shortly thereafter.

John R. Vile, “Rediscovering William Pierce.”

It is ironic that the delegate to the Constitutional Convention who wrote character sketches of 53 of the 55 delegates who participated should be so little known. Still, it was not until fairly

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recently that William Pierce (1753-1789), one of four participating delegates who represented Georgia at the Convention, has been recognized as having been born in York County, Virginia in 1753 rather than in Georgia in 1740. A beautifully-bound book has recently reprinted Pierce's portraits and other comments on the Constitution, but, like earlier works, it largely presents Pierce's words without analyzing them. Pierce was educated in the liberal arts, artistically gifted, and deeply patriotic. Sometimes employing irony, or asteism, Pierce was the master of the backhanded compliment, but his sketches still give us the best contemporary record we have of the delegates and their speaking styles. The information that Pierce provided (or sometimes failed to provide) on the delegates' characters, educations, occupations, reputations, religious affiliations, and the like arguably continue to influence popular opinion and modern scholarship. A comparison with character sketches of some of the delegates penned by the French foreign minister in 1788 and of Pierce's own son in an extended poem on the year 1812 generally highlight the overall strengths of Pierce's portraits. They further suggest that the nation may have had a relatively small window in which to propose and agree on such wide-reaching forms.

Michael J. Faber, "Organized Opposition: The Anti-Federalist Political Network."
Authors: Michael J. Faber and Robi Ragan.

Scholars of the American founding often assume that a substantial part of the Federalist victory in the debate over ratification of the Constitution was due to their superior organization and planning. The Anti-Federalists, according to conventional wisdom, were at best disorganized, if not fractured, in their opposition. The disparity in the degree of cooperation and coordination of each of their political organizations, however, has never been systematically examined. In this paper, we conduct one of the first quantitative investigations into this question. We construct a simple measure of the organization of the Anti-Federalists, the spread of published newspaper essays, to examine the extent and development of their political network during the debates over ratification, from September 1787 through July 1788. Using a data on the reprinting of essays in support of or in opposition to the Constitution, we examine the dissemination of Federalist versus Anti-Federalist arguments. We use network analysis techniques to determine the extent of national cooperation of newspapers sympathetic to each side. Our results suggest that although the Anti-Federalist network was not as strong at the beginning of the debate, they became better organized in late 1787, only to begin to crumble early the following year.