

The Process of Ratification

A Study in Political Dynamics

by M.E. Bradford



Even as we, in our own time, go about revising, or refusing to revise, our fundamental law, so did our Fathers in the beginning vote to put such law in its place: that is, one state at a time, reflecting, after vigorous dispute, 13 different majorities, some of them very belated—and very reluctant. All of which is to say that there is no better definition of American federalism than the process with which the federalism began: no purely ideological explanation. Yet, though it is true that most American citizens living in 1787 wished to see a revision of the Articles of Confederation, it is a great mistake to assume that a general approval of the Philadelphia Convention and what it had produced was automatic from September 17 of that year onward. Those who know politics cannot believe that a second convention or a circulation of previous amendments was unthinkable, or that outright defeat could not have been arranged. Though some change in the form of government administered by the Continental Congress was, sooner or later, bound to occur, it might have been much less ambitious than what the Framers proposed; and much narrower in the range of implications that even the most subtle constitutional lawyer could wring out of its text. Most obviously, such would have been the case had the state ratifying conventions met in an order somewhat different from the one that history records.

There are, of course, many ways of explaining the sequence of events that provides us with the original Constitution of the United States and then adds to it the supplement we call (after its British prototype) the “Bill of Rights.” Even though they appear to be mutually exclusive, it may be argued of these views that several of them contain

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a modicum of truth—so far as they go. From two or three I will borrow details in developing the argument I propose. But through my own study of the records of the Great Convention and of the state ratifications that followed the deliberations in Philadelphia, I have come to believe that it is dangerous and misleading to dump all of these documents together in some great political “stew.” For each convention is a dramatic event with a pattern of its own and a meaning determined not only by the special history of the people it represented, but also by its function in a larger temporal sequence that cannot be recognized unless the integrity of its components is acknowledged before description begins.

As I believe I have demonstrated in the past, no one is more convinced of the uniqueness of particular conventions, of their authority as readings of the fundamental law; no one is more interested in the formal, dramatic view of the Philadelphia Convention itself. It is an action, a form commenting in structure on the bond of Union that it produced. Even so, I take separate readings as only a preliminary part of the task of commentary on the making of our Constitution—and attempt to keep in mind that there was, beneath a tiresome pattern of topical squabbling and theoretical dispute, a deeper level of practical consensus so widespread as to require almost no mention in any of the assemblies that occurred during the months when ratification was in question: a consensus that made our forebears, by negation, one people, united in their suspicion of government, of its self-importance, its affected benevolence, its disposition to tyranny established and imposed in the name of “good causes.”

A narrative explanation of the political dynamic that finally approved the original Constitution must begin, of course, with the condition of the country after the achievement of independence. A first predicate of this story is the

common pride born out of the “sharing” of warfare and of “lesser” perils that produced among men of every opinion a repository of natural fellow-feeling. The seemingly miraculous confirmation of what Americans had said about themselves, together, through the Continental Congress, in the Declaration of Independence, made possible in 1783 their acceptance of a formal connection in the Articles of Confederation. A common enemy and comradeship in arms are not a poor basis for political cooperation. However, the Confederation proved to be only a temporary expedient, a stop-gap measure for use in effecting a transition to some more durable, self-sufficient bond.

By 1786, independence had brought economic problems, both within the country and in the difficulty of its citizens in doing business overseas. Furthermore, there were Indian insurgencies along a now open frontier, problems with foreign debt, problems with opportunistic internal tariffs interrupting interstate commerce, a large domestic debt and a pattern of domestic insurrections coming to a head with Captain Daniel Shays’ “Rebellion” in Massachusetts during the fall and winter of 1786-1787. Though not a veritable “sea of troubles,” most Americans blamed most of these conditions on the incapacities of the government put in place by the Articles of Confederation and were, *before* the Philadelphia Convention gathered in May of 1787, ready for a new compact that would serve at least those purposes described as the proper objectives of the Framers by Roger Sherman of Connecticut: defense against foreign danger; control of internal disputes and disorders; treaties; foreign commerce; and a revenue to be derived from it. Mild Federalists such as Pierce Butler, William Samuel Johnson, John Rutledge, Edmund Pendleton, William R. Davie, Oliver Ellsworth, Hugh Williamson, Richard Dobbs Spaight, and Abraham Baldwin embodied the same conflicting but balanced impulses toward cohesion and dispersal that we find in the thought of Sherman. As did such mild Antifederalists as James Monroe, William Paca, Melancton Smith, Elbridge Gerry, and Eliphalet Dyer. Therefore, it was certain that something would be done, but not too much—that no remote, arbitrary, and sometimes unfriendly sovereign would be created to replace the remote, arbitrary, and sometimes unfriendly power whose authority we had just escaped.

There were, to be sure, versions of federalism much more ambitious than what we see in Roger Sherman’s little list, dreams of Union theoretically and ideologically instrumental in their intention to form a purposive state, something grand and imperial. These plans belonged to Alexander Hamilton, James Wilson, Gouverneur Morris, Robert Morris—and James Madison. By reminding their countrymen of a politics they had just escaped, they threatened ratification. And there were a few Antifederalists who wished to continue under the Articles as they stood, or with very minor modification to guarantee a revenue: the men of Rhode Island, John Francis Mercer of Maryland, General Samuel Thompson of Massachusetts, President Rawlins Lowndes of South Carolina, Mayor John Lansing of Albany, New York, and (perhaps) Patrick Henry himself. Such men were straightforward impediments to “a more perfect Union.” But the most serious obstacles in the path of the Constitution were of another kind, coming from other

quarters, and were more circumstantial and strategic than substantive in their character. We have all heard that, in politics, timing is of the essence, *when* and not *which measures*. The ratification of the United States Constitution within the context I have just described is an illustration of that principle.

By and large, the first states to vote in favor of the Constitution made in Independence Hall created very little momentum tending in its direction. No current flowed from these decisions. Nothing doctrinal or intellectually substantial was described by the approvals given by Delaware (December 7, 1787); New Jersey (December 19, 1787); Georgia (January 2, 1788); and Connecticut (January 9, 1788). Or even by a later affirmation in Maryland (April 28, 1788). Because of immediate dangers, economic, social, or military, faced by these communities, they were inclined to go along with any plan of government that would protect their commerce from the drain of interstate duties and/or the depredations of savage raiders. Connecticut wanted to avoid the disorders that were spreading just beyond its borders—in Rhode Island, Massachusetts, and New Hampshire. It also wanted security for lands promised to it in the Western Reserve of Ohio and relief from the cost of doing business through the port of New York. Pennsylvania had (December 12, 1787), thanks to its great men of business and banking, an image of all the fine things a stronger government might do or encourage. Philadelphia defined Pennsylvania federalism—and kept the western counties of the state in check. Everyone expected ratification from these sources.

Voting for the Constitution in commonwealths that might have done otherwise was another matter. Such decisions in Massachusetts and South Carolina, states jealous of their own established identities, with each of them deeply suspicious of what the other represented, impacted directly on the potential recalcitrance of other Northern and Southern communities. On terms that they dictated in reading the Constitution in a certain way, these ratifications made for the instruction of stubborn Antifederalists who persisted in seeing a Leviathan hidden just underneath the innocuous surface of its text. They were a step toward the accomplishment of the ends of a national connection as these states conceived them: a version that left forever secure the corporate liberty of Zion and the erstwhile Palmetto Republic, that left them free to continue in character—even though they were to do so within a political combination, by way of that combination. Down in Charleston, the heroic Rawlins Lowndes drew all of this matter, a full teaching on the Constitution, from his numerous Federalist adversaries. They defined the instrument of government that they were advocating over against a version less sanguine, and less tolerable—the basis of Lowndes’ extraordinary prophecies. In Massachusetts the Jeremiahs were more numerous. And also their respondents. But the warnings of tyranny that Antifederalists offered and the affirmations used to answer them followed the same pattern we can trace out from the Carolina legislative debates.

In New York, Virginia, and North Carolina, the power of the Federalist example in other conventions is reflected directly in local ratification debates. Professor John Kamin-

ski, editor of *The Documentary History of the Ratification of the Constitution*, has written of the July 1788 Federalist victory in the Empire State that, despite a more than two-to-one Antifederalist advantage in delegate commitments, “it was felt that all of the ratifying states could not be wrong, and therefore the Constitution should be given a chance.” In the second volume of Elliot’s *Debates in the Several States*, we read of the impact in the convention at Poughkeepsie of word that a ninth state has ratified, and the assumption that such information would change the pattern of events in New York. There are related statements in the records of the Virginia convention concluded June 23, 1788, in Richmond. And an even more telling remark in the North Carolina convention of later that summer. There Governor Samuel Johnston responded to exaggerated Antifederalist fears for what the Constitution will do to the public liberty that “states who have been as jealous of their liberties as any in the world have adopted it.” Massachusetts and South Carolina acted because their leaders had been convinced during the Revolution that they needed to be a part of a larger American entity in order to preserve the cherished integrity of their own ways of life. What they decided influenced similar decisions made in New Hampshire and North Carolina. But more importantly they had influence in Virginia and New York — also states that might have voted “no.” That Massachusetts approved meant that New Hampshire finally (June 21, 1788) ratified. And when these were combined with the influence of Virginia, New York also ratified (July 26, 1788). Such events in their turn brought pressure on North Carolina (November 21, 1789) and then — finally — on Rhode Island (May 29, 1790). Sequence, not the power of persuasion or the force of political arguments, is the key to this narrative, the kind of “bandwagon” psychology about which any practiced politician knows a good deal. But the dynamic of these conventions might have been very much otherwise, and with consequences we can hardly imagine. Let us think for a moment about such a hypothetical process, to learn from it a truth about the origins of American politics.

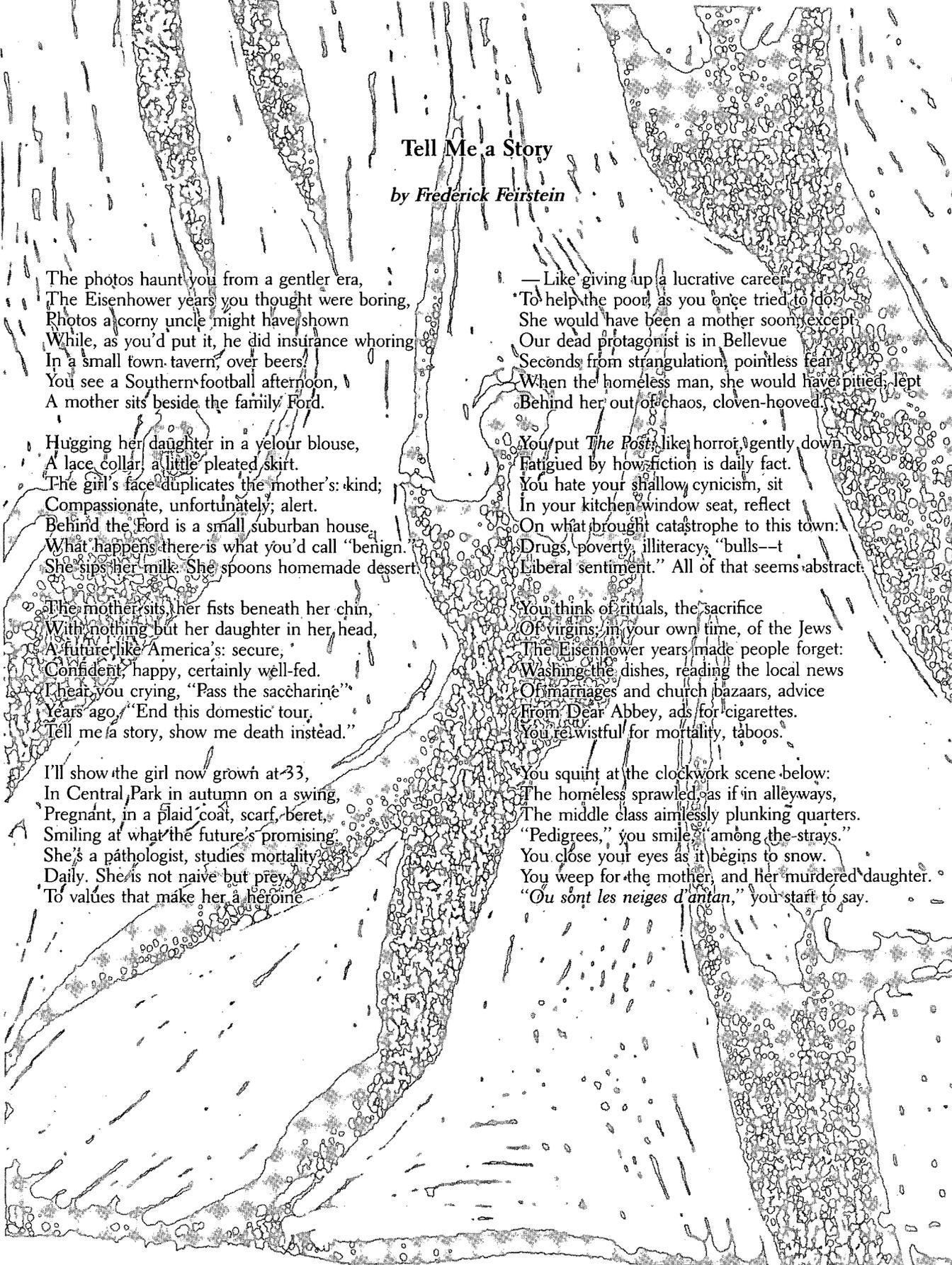
Suppose the struggle over ratification had been governed by a different strategy among the Antifederalists and that New Hampshire and North Carolina had been brought to make early decisions on the Constitution — decisions in the negative. Suppose then further that New York and Virginia had been rushed to judgment immediately following the votes against ratification in the two other states. It is reasonable to assume that one or both of the big Antifederalist strongholds would, under such circumstances, have also refused to approve the instrument under consideration. Under these circumstances Massachusetts would have voted “no” had it come next in the sequence. Maryland would have followed after Virginia; and nothing would then have served to get Rhode Island to change its mind. In this hypothetical scenario of how ratification could have been prevented, it would signify nothing at all if Delaware, New Jersey, Georgia, and even Pennsylvania continued to approve the Constitution as we know it. Political dynamics are not the same thing as intellectual substance. The best constitution ever devised by the mind of man would be disapproved within a formula for deliberation such as the

one designed to test the United States Constitution if the opponents of the plan managed to react to it officially before its supporters were ready to speak up. For democratic politics do not always turn upon judgments of substantive questions so much as they do upon procedural strategies, fashions, and trends. What I say of such politics was almost as true in 1787-1788 as it is today. The difference is in *how democratic* the politics.

Federalists and Antifederalists were not in 1787 organized political parties in the current sense, but rather 26 different state parties, 13 on each side of the general question, but not agreed with their allies on much else. In a broad sense, town men and commercial men tended to be Federalists throughout the country. But that distinction does not tell us about what they thought of the proper relation of religion to government, about slavery, John Jay’s proposed *entente* with Spain, navigation acts, sumptuary laws, or the origins of liberty in a pre-social state. Some Antifederalists wanted a Bill of Rights to protect the individual against untoward intrusions in his private affairs. Most of them, like Patrick Henry and Rawlins Lowndes, wanted only securities for corporate liberty: for the independence of the community to negotiate within itself those values it would affirm. Almost all hoped for the best, once the Constitution had been approved, speaking of it as Charles Pinckney did on May 14, 1788, when he called it “the temple of our freedom — a temple founded in the affections, and supported by the virtue, of the people.”

During the various ratifying conventions and in the recommended amendments that brought about the Bill of Rights, the Antifederalists had required their neighbors to specify that there was nothing hidden in the silences of the Constitution, that “everything not granted is reserved.” Said Colonel Joseph Varnum of Massachusetts, “No right to alter the internal regulations of the states” exists under the new government. To the same effect, his old counterpart Samuel Adams (quoting Governor Hancock) added, “All powers not expressly delegated to Congress are reserved to the several states, to be by them exercised.” We hear the same thing from James Wilson of Pennsylvania in his State House Yard Speech of October 6, 1787; from General William R. Davie of North Carolina; from Justice Iredell of the same state; and from Madison and Pendleton of Virginia and John Lansing of New York — which is only a partial listing of participants in this litany.

That the powers of the new government are few and explicit is in the ratifying conventions both the central theme of the Federalist defense of the United States Constitution, and a primary explanation of why the sequence of ratifications went as it did. If we would understand these results and the enthusiasm with which an essentially conservative people looked forward with hope to life under the new government they made possible, then we should find ground for them in “minimalist” interpretations of the authority thus created. They are a measure of *how different from what was intended* our fundamental law has become, and of the difficulty we fall into in attempting to read into it the ideological fashions of our own time. A good sense of the politics of ratification is much to our purpose in construing the meaning of what transpired as we began the adventure story that is our nation’s history. ◊



Tell Me a Story

by Frederick Feirstein

The photos haunt you from a gentler era,
The Eisenhower years you thought were boring,
Photos a corny uncle might have shown
While, as you'd put it, he did insurance whoring
In a small town tavern, over beers.
You see a Southern football afternoon,
A mother sits beside the family Ford.

Hugging her daughter in a velour blouse,
A lace collar, a little pleated skirt.
The girl's face duplicates the mother's: kind;
Compassionate, unfortunately, alert.
Behind the Ford is a small suburban house,
What happens there is what you'd call "benign."
She sips her milk. She spoons homemade dessert.

The mother sits, her fists beneath her chin,
With nothing but her daughter in her head,
A future like America's: secure,
Confident, happy, certainly well-fed.
I hear you crying, "Pass the saccharine"
Years ago, "End this domestic tour."
Tell me a story, show me death instead."

I'll show the girl now grown at 33,
In Central Park in autumn on a swing,
Pregnant, in a plaid coat, scarf, beret,
Smiling at what the future's promising.
She's a pathologist, studies mortality
Daily. She is not naive but prey,
To values that make her a heroine.

— Like giving up a lucrative career,
To help the poor, as you once tried to do.
She would have been a mother soon, except
Our dead protagonist is in Bellevue
Seconds from strangulation, pointless fear,
When the homeless man, she would have pitied, left
Behind her out of chaos, cloven-hooved.

You put *The Post*, like horror, gently down,
Fatigued by how fiction is daily fact.
You hate your shallow cynicism, sit
In your kitchen window seat, reflect
On what brought catastrophe to this town:
Drugs, poverty, illiteracy, "bulls—t
Liberal sentiment." All of that seems abstract.

You think of rituals, the sacrifice
Of virgins, in your own time, of the Jews
The Eisenhower years made people forget:
Washing the dishes, reading the local news
Of marriages and church bazaars, advice
From Dear Abbey, ads for cigarettes.
You're wistful for mortality, taboos.

You squint at the clockwork scene below:
The homeless sprawled, as if in alleyways,
The middle class aimlessly plunking quarters.
"Pedigrees," you smile, among the strays."
You close your eyes as it begins to snow.
You weep for the mother, and her murdered daughter.
"Ou sont les neiges d'antan," you start to say.