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# Prudence and decorum and the invention of american democracy: an examination of the ratification debates for the federal constitution in 1787-88

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**PRUDENCE AND DECORUM AND THE INVENTION OF AMERICAN  
DEMOCRACY: AN EXAMINATION OF THE RATIFICATION DEBATES FOR  
THE FEDERAL CONSTITUTION IN 1787-88**

by

**ROBERT BRYAN BRITO**

**DISSERTATION**

Submitted to the Graduate School

of Wayne State University,

Detroit, Michigan

in partial fulfillment of the requirements

for the degree of

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2012

MAJOR: COMMUNICATION

Approved by:

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Advisor Date

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## **DEDICATION**

This is for my sons Zachary, Joshua, and Elijah, who  
daily remind me what is important in life.

## **ACKNOWLEDGMENTS**

The completion of this project has been a long and arduous process. I would like to thank my parents for helping me and encouraging me; for teaching me to work hard and never give up. My Grandparents who believed in me, and never let me forget how proud they were of me. Morris Womack, whose lifetime example of faith and fortitude will always inspire me. Bernard Brock challenged me and taught me to ask questions, and never settle for the answer. Sandy Berkowitz, George Ziegelmueller and Matthew Seeger guided me, and prodded me, and ultimately were patient with me, thank you. Finally, my good friends, Brian Pederson, Joi Walker, Steve Collins, Keith Wentzel, and Thelma Gurschick, who regularly asked me about the progress of this dissertation, who questioned my assumptions, proofread my work, checked references, and ultimately challenged me to keep writing—

Thank You

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**CHAPTER 1****INTRODUCTION**

America is a nation uniquely built upon ideology. It has formed our identity and sense of destiny and purpose throughout our history. In the Preface to *Economic History of the United States*, Bogart (1923) writes, "The keynote of all American history, from whatever standpoint it may be written, is found in the efforts of a virile and energetic people to appropriate and develop the wonderful natural resources of a new continent and there to realize their ideals of liberty and government" (p. 11). Ephram Adams (1913) explains that "democracy, as a powerful ideal is acknowledged by all to have been a steady force in our history for over a hundred years, and is still a term of national inspiration" (p. 4).

Despite the conceptual and practical importance of the democratic ideal in the American experience, very few people can come to agreement regarding the actual meaning of democracy in either theory or practice. If we see democracy as a guiding ideology, but do not possess an adequate agreement regarding that ideology, we can begin to understand the difficulties Americans sometimes have in



defining themselves and their proper relationship to their government.

If we would come to a better understanding of the concept of democracy in the American experience, then we must go back to the birth of American Democracy - the ratification debates of the federal constitution in 1787-88. It is in these debates that the terms and ideals of American Democracy were initially set forth. Through the discourse, ambiguities and conceptual difficulties are highlighted, questioned, explained, and even, as is the case with the absence of a "Bill of Rights," changed. The disputants on each side of the debate declared their views of the proper role of government, and the ideal relationship of the people to that government. Through the process, they crafted something entirely new - a new form of government and a new form of democracy. This new form of democracy is not the result of clear cleavages or agreements that resulted from the rhetorical interactions; it is the result of an amalgamation of the two. While the Federalists and Anti-Federalists may have entered the debate with a clear picture of the meaning of the contested terms, the government and as such, the democracy that resulted from the debates is neither Federalist nor the

Anti-Federalist, but a mixture of both. The Constitution that resulted from the contest for ratification is an amalgamation of the debates, a combining, as it were, of both sides' understandings of the contested terms.

Given this, and because the process that created American Democracy was an instantiation of public discourse, it is critical that we come to a better understanding of the process and ideas that created that democracy. In particular, it is important to understand the normative conventions that framed this discourse. As such, rhetorical analysis of the events is the most prudent means of discerning the original understanding and intent of the framers.

In addition, using the ratification of the federal constitution as a mechanism for enhancing our understanding of American Democracy requires that we examine those debates as an instantiation of deliberative praxis. This understanding is necessary and important because the Constitution that was submitted to the states in 1787 is not the same Constitution that was ratified in 1788. The original document, for example, did not contain a "bill of rights"; this was added as a result of agreements made during the course of ratification. In more ephemeral terms

though, ideas and concepts within the document were explained, altered, and reconstituted throughout the course of the discourse. Even terms like "federalism" and "liberty" came to be redefined and reconstituted by the discourse of ratification. In advancing this exploration, and as I will explore in more depth in the discussion of method, I will excavate the classical concepts of prudence and decorum and apply them to the discourse. This examination will accomplish three major goals: to increase our understanding of the United States Constitution by increasing our understanding of the people and ideas that created it; to enhance our understanding of the process of deliberation in public controversy; and finally, to add my answer to the question that was first asked by Orrin Libby in 1894, why did the Federalists win?

In the following pages I develop a justification for further analysis of the debates for ratification of the federal constitution. Next, I summarize and analyze the development of the literature examining and interpreting the ratification debates. I also discuss the method and scope of the proposed dissertation, and finally, I outline a map of the study.

### JUSTIFICATION

Due to their centrality in both social and governmental history in the United States, the debates for ratification of the federal constitution are some of the most heavily documented and studied events in our history. Despite the voluminous nature of the existing scholarship dealing with the ratification discourse, there are still important insights to be gleaned from additional inquiry.

First, as mentioned above, there are important deficiencies in our understanding of our own democracy, a democracy that was substantially created during the ratification debates. In addition, despite the plethora of historical data surrounding the ratification of the federal constitution, Americans have a very limited understanding of their institutions and the purposes and limitations of those institutions. Therefore, in order to increase our understanding of these institutions, we must explore the ideas and debates that created our institutions. Ernest J. Wraga (1947) highlights the importance and centrality of the study of ideas in the life of a society, explaining that:

Whether we seek explanations for an overt act of human behavior in the genesis and moral compulsion of an idea, or whether we accept the

view that men seek out ideas which promote their interests and justify their activities, the illuminating fact is that in either case the study of ideas provides an index to the history of man's values and goals, his hopes and fears, his aspirations and negations, to what he considers expedient or inapplicable (p. 451).

Considering this view, the question that arises is: what is the most expedient and fruitful way to engage in such study? Historians, typically, have undertaken such studies by focusing their efforts primarily on formal written texts and documents. Wrage, however, explains that such a focus limits the potential insights to be gleaned. He explains that:

Man's conscious declarations of thought are embodied in a in a mosaic of documents, in constitutions and laws, literature and song, scientific treatises and folklore, in lectures, sermons, and speeches (p 452).

Merle Curti (1937) makes the case even more strongly by offering a critique of the traditional mode of such historical studies:

Historians of ideas in America have too largely based their conclusions on the study of formal treatises. But formal treatises do not tell the whole story. In fact, they sometimes give a quite false impression, for such writings are only a fraction of the records of intellectual history. For every person who laboriously wrote a systematic treatise, dozens

touched the subject in a more or less casual fashion (p. 108).

As such, we begin to see that if we wish to increase our understanding of our institutions and the ideas behind those institutions, we need to expand the artifacts under consideration. As indicated by both Wrage and Curti, the main deficiency in such examination is the refusal or even inability of scholars to include oral texts in their studies. Wrage (1947) argues that expansion of the artifacts under consideration also necessitates a re-working of the scholarly boundaries. Therefore, and in an effort to maximize the benefits of renewed inquiry, the scholarly field best suited to an examination of oral texts is that of rhetorical inquiry.

A second important reason for a re-exploration of the ratification controversy is that such an exploration, from a rhetorical perspective, will enhance our understanding of the process of both public deliberation and the effect of public deliberation on social and political ideas. The process of ratification in the several states functioned very much like a modern political campaign. In most states, the electorate chose the representatives for the Constitutional conventions and in many of those states

ratification was tied to the will of the electorate. In many states, the delegates to the ratification conventions functioned more as a proxy for the will of the majority rather than as an independent representative responsible for the "common good." It was necessary to "sell" or campaign for the ratification to the delegates at the conventions as well as to the public at large. Riker (1996) explains the value of exploring political campaigns arguing that:

Electoral campaigns are a distinguishing feature of modern representative democracies worldwide. For most citizens in most polities, campaigns provide a compelling incentive to think about government. Campaigns thus are a main point - perhaps the main point - of contact between officials and the populace over matters of public policy. If as democratic theorists postulate, rulers are responsible to the ruled, responsibility is imposed during campaigns and the elections in which they culminate . . . as crucial as campaigns are . . . we have only begun to accumulate knowledge about how they are involved in the transmission and approval of political ideas (p. 3).

Gerald Hauser (1986) extends Riker's argument by explaining how studying an instantiation of public deliberation will allow the critic to begin to unfold and unpack the structures and motives of the discourse as well as the resulting political order. Hauser explains:

In an important sense, all rhetorical situations may be thought of as posing a question. We are asked, 'What shall we believe or feel about this problem or concern?' In the same vein, rhetoric is an answer to the questions posed by the situation in which it arises. Rhetorical responses are not merely answers but, strategic answers and stylized answers (p. 167).

Hauser goes on to suggest:

Uses of language, patterns of argument, and methods of appeal guide our reasoning and responses in ways that lead to and reinforce a selected conclusion . . . Because all uses of language are necessarily structured; their strategies are implicitly present and waiting to be uncovered. Whenever we communicate seriously with another person, in some way our language serves to induce an attitude, even if it is the counter attitude of rejection (p. 172).

Finally, further examination of the ratification debates is warranted because the debates function as the foundational event in the development of the American Public. While publics clearly had been called into existence before the ratification controversy, these publics were temporary and quickly disbanded often out of fear that they might become unwieldy and dangerous to the governments or institutions that called them into existence. The public that was called into existence by the ratification controversy was unique, in that, in both



the language of the Constitution and that of the opposing sides in the debate, there are clear signs that this public was intended to be a permanent public.

Moreover, the ratification debates themselves created a controversy that by its very nature would be continually played out, deliberated, and re-worked throughout American history. James Jasinski (1992) explains the significance of this when he calls the ratification debates a "constitutive controversy" Jasinski suggests that in a such a controversy, "partisan advocates in the process of advancing their own interested claims, establish an 'inter-referential' or intertextual paradigm that shapes subsequent rhetorical transactions" (p. 198). He further explains:

In effect, then, the constitutive force of the ratification controversy perpetuates a paradigm of competing standards of judgment. Exploring the relationship of rhetoric and judgment in the ratification controversy and its trajectory can contribute to ongoing efforts at rehabilitating public life (p. 198).

In 1787-88, the Federalists and Anti-Federalists, in speeches, sermons, songs, broadsides, and pamphlets, asked the people of the several states to decide how they wished to be governed. While the debates themselves concluded

with the ratification of the federal constitution in 1788, the controversy they began continues to the present day in discussions, political campaigns, and court cases. The issues and questions raised by ratification did not go away. In fact, in many cases the authors of the Constitution choose to leave questions for another time by design. In addition, the very design of the Constitution makes it malleable and interpretable; the framers designed it to survive the test of time. Therefore, when issues arise courts, lawyers, politicians, and even the average citizen return to these early deliberations in an effort to determine the "framers' intent." Herbert Storing (1987) called America a nation "born in consensus," that "lives in controversy, and the main lines of that controversy are well worn paths leading back to the founding debate" (p. 6).

In essence, the debates for ratification of the federal constitution arguably constitute a unique event in the history of the world, at no other time in human history had a people been asked to decide the way in which they would be governed. Storing (1987) explains that the founding generation viewed the Constitution as unique because it was a product of deliberation. Despite the

historical and practical importance of this deliberation, Storing goes on to suggest that the majority of research examining the ratification debates ignores the complexity of the deliberative situation. He indicates that most studies break the discourse down into simplistic terms in which the Anti-Federalists are "democratic farmers," and the Federalists are "self-serving businessmen" (p. 5). In ignoring or understating the complexity of the ratification contest we fail to understand the complexity of the contested terminology, and the government that that terminology created. As such, critical reengagement with the controversy should open additional areas of inquiry and understanding in an effort to broaden our understanding of both our government and the ideologies that underpin our government.

## **LITERATURE**

### **Historical Interpretive Literature**

Even a cursory examination of the literature surrounding the debates for ratification of the federal constitution reveal a veritable mountain of material from songs, broadsides, newspaper articles, letters, speeches and pamphlets. A closer examination of the literature,

however, indicates that scholarship exploring the discourse has developed along several major themes. Considering this, this review of the literature proceeds from the above themes. This review allows greater exploration of the various themes most central to the present study.

Views and interpretations of the Constitution began to change in the late 19th century, beginning primarily with the dissertation written by Orin Libby in 1894. Libby examined the ratification controversy through the lens of Fredrick Jackson Turner's theory of class conflict. Specifically, Libby explored the social and economic conditions in late 18th century America and determined that there was a strong correlation between socio-economic conditions and election results in the ratification conventions in the several states. Libby (1894) explained that:

The factions in favor of paper money issues and tender laws and opposed to the enforcement of the British treaty of 1783 were to be found in the great interior agricultural region of the country, where the debtor class outnumbered the creditor, where taxes were unpopular and capitol scarce. And finally, the conclusion has been reached that these factions of 1785-86 are closely related to the Anti-Federalist Party of 1786 (p. 89).

In 1913, Historian Charles Beard expanded Libby's hypothesis, writing *An Economic Interpretation of the Constitution of the United States*. Beard (1954) explains that while the debates should "not be viewed solely in terms of economics" (p. xvi); economics provide a powerful insight into the process and the results of the contest.

In essence, the Beardian or economic view sees the opponents of the Constitution, Anti-Federalists, as representatives of a farming and debtor class; and proponents of the Constitution, Federalists, as representatives of the business and creditor class. In the introduction to the 1935 edition of the book, Beard explains, "It supports the conclusion that in the main the men who favored the Constitution were affiliated with certain types of property and economic interests and that the men who opposed it were affiliated with other types" (Beard, 1954, p. x). Beard takes the thinking a step farther when he argues that the framers themselves were motivated primarily by economics, and not by any sort of abstract ideology.

Essentially, for Beard and those who followed him the reasons for support or lack of support for the Constitution were primarily based in social and economic factors. The

debates themselves functioned as little more than a formal expression of class and economic divisions. Correspondingly, studies of the ratification from this period focused primarily on the social and economic issues leading up to ratification. The debates, under the economic view, functioned more as a treatise on government than an actual deliberative event. Further, because the Anti-Federalist position was not adopted, this portion of the debates was treated as little more than a footnote in history.

For the next thirty years, the Bearden view dominated scholarly interpretive discourse surrounding the ratification period. In fact, it was not until the end of World War II that scholars began to seriously rethink Beard's hypothesis. One of the most significant books written in this period was Forest McDonald's, *We the People: The economic origins of the Constitution*. McDonald, like Beard, believed that economics were the most important factor in the outcome of the debates. Unlike Beard, however, McDonald did not draw the same causal links with regard to the debates. McDonald indicates that the discourse of the debates worked to polarize the population along economic lines. As such, McDonald's view is a

critical departure from the thinking of Beard because McDonald does not see the debates as mere ritual, but as a mechanism to rally support for each side. Moreover, he argues that the debates were used by the disputants in the controversy to further exacerbate preexisting social cleavages. The importance of this shift in constitutional scholarship cannot be overstated, because it opened the door to examining the debates as more than a treatise on government. Increasingly, the debates are viewed as a mechanism for social change.

In arriving at his conclusion, McDonald described three primary areas of shortcoming in the Bearden approach: First, he explains that in the several states occupational and investment interests were often in conflict. While there were clearly poor farmers, who opposed the Constitution because it carried the potential to streamline the process of debt collection, McDonald observes that not all farmers were either poor or in debt. He argues that, in fact, some farmers were actually creditors themselves who might welcome a more efficient means of collecting on debts. However, even for some of these creditor farmers the Constitution was seen as more than a tool for debt collection; it was a possible

harbinger of a potentially powerful government that would have the ability to interfere in their everyday affairs. Clearly, these farmers, less than a decade from the Revolutionary War, had reasons for having nothing to do with economics, to oppose a new and powerful central government.

Additionally, according to McDonald, not all farmers opposed the Constitution. Many, on grounds of finance, security, or even philosophy, supported the Constitution and lent their voices and weight to the Federalist' cause.

Given these factors, McDonald explains that when one examines the vote spread, one finds that economics certainly did play a large and important role in the preference of citizens, but there were other factors that contributed both to support and opposition to the Constitution that should not be ignored.

In the final analysis, McDonald, argues that what Beard saw as causal, may actually have been more corollary. The chief opposition to the Constitution did tend to come from farmers in the rural parts of the several states and those farmers tended to be poor. On the other hand, these rural areas of the states were also unaccustomed to any sort of governmental interference in their affairs.



Considering the above, one might reasonably make the argument that Shey's Rebellion, in western Massachusetts, might have been as much about governmental interference as it was about economics. Similarly, opposition to the Constitution might have followed the same lines of reasoning.

Second, McDonald problematizes the Beardian notion that people voted in class blocks. He explains that these so-called class blocks contained a high level of fragmentation. Evidence shows that the people of the states were divided by a multitude of interests, certainly by economics, but also by religion, transportation, trade, and family, to name just a few (p. 332). As such, the absence of clear cleavages along simple socio-economic lines makes it difficult to sustain the argument that simple class lines determined the outcome of the debates.

Third, and perhaps most important from a rhetorical perspective, McDonald argues that certain groups had little or no economic stake in the outcome of the ratification contest. He suggests that these people were largely neutral and voted with their friends and neighbors or as individuals. They did not, according to McDonald, vote their economic class (p. 349-50).

Given these critiques of the Beardian economic view, it seems clear that while a portion of the population may have voted based on geography or economics, there was clearly a large part of society that was likely persuaded to support one side or the other in the deliberations. It is at this segment of the population that the ratification debates were directed. Given this view, it is difficult to reconcile the historical record with Beardian analysis. The historical record demonstrates that in some areas people who sent representatives to reject the Constitution, later allowed their representatives to vote to ratify, thus demonstrating at least some type of suasive influence for a change in disposition.

In many states such as Virginia, Massachusetts and New York, the ratifying conventions opened with heavy opposition. In order to achieve ratification in these states substantial portions of the population had to be convinced to change their position on the Constitution, and allow their delegates to vote for it. Clearly, this leaves open a strong case for a new hypothesis regarding the ratification debates, one that sees them as suasive rather than simply informative.

Ten years after *We the People*, Robert Brown wrote *Charles Beard and the Constitution: A critical analysis of "An Economic Interpretation of the Constitution"*. Brown, building upon McDonald's earlier work, went even further and rejected the economic interpretation altogether. Brown (1956) argues that, "certainly there is little correlation between ratification and personal property" (p. 151).

The importance of this statement to ratification scholarship cannot be over-stated. If we can assume that the decisions to vote for ratification were based on a broad range of factors, then as scholars, our avenues of exploration are greatly expanded.

While the 1950s saw significant decline in the progressive historiography view advocated by Beard, historians like Howard K. Beal, and C. Vann Woodward continued to see history at large, and the ratification period from the perspective of class warfare. These advocates, however, have moved to the fringe of constitutional scholarship. Increasingly, scholars are seeing that behind the ratification controversy was a complex web of social and political issues that guided people to favor one side over another, and that these

issues were highlighted and manipulated by the two sides of the ratification debates.

In short, scholarship is beginning to suggest that the debates were not a mere ritualistic play preceding predetermined events, but rather a pivotal event in the governmental history of the United States. More specifically, current inquiry by historians such as Bailyn, McDonald, Morgan, et al. suggests that the debates actually had a strong affect on the ways in which people voted and, as such, bear much responsibility for the eventual success of the Constitution and the resulting governmental institutions.

With this newfound openness in interpretive scholarship, several new works have taken up the task of examining the ratification debates. The most important of these is a project begun by Herbert Storing in the early 1980s. In this project, Storing has attempted to compile a complete anthology of all significant works circulated by the Anti-Federalists. Storing (1987) explains in the introduction to his groundbreaking work, *The Complete Anti-Federalist*, that the deliberations had a clear and unmistakable impact on the government that emerged from the ratification debates. He says, the "Constitution that came

out of the deliberations of 1787 and 1788 was not the same Constitution that went in" (p. 3). Moreover, he argues that the impact of the debates went well beyond the document itself and continued to influence the government that resulted and the "American polity." In short, Storing adds to the justification for continued study by highlighting the impact of the ratification debates on present political policy and national discourse.

Bernard Bailyn's (1984) compilation of *The Debate on the Constitution* goes a step farther than does Storing's work. Bailyn compiles, in chronological order, the ratification discourse in context. He places Federalist arguments alongside those of the Anti-Federalists in an attempt to allow the reader to see "on a scale unmatched by any previous collection, the extraordinary energy and eloquence of our first national political campaign" (cover).

Bailyn and Storing have made important and valuable contributions to the extant scholarship examining the ratification, but they clearly leave room for more. On one hand, while Bailyn places the arguments contextually, he does not attempt to add any analysis. Storing's work, on the other hand, is perhaps the first sustained discussion

of the rhetoricity of the ratification debates. His choice to focus entirely on the Anti-Federalists however, leaves Storing's analysis incomplete, and decontextualized.

Gordon Wood in *The Creation of the American Republic* (1998) explores the ratification era from the perspective of the social and political forces at work in the new nation. Wood's work avoids the decontextualized analysis of Storing, but the examination does not explore the intricacies of the discourse itself. Wood is primarily interested in building a picture of the citizenry, as a means of explaining who was persuaded and why. He does not attempt a sustained analysis of the debates themselves, but he does recognize their critical importance in shaping the voting patterns, as well as the resulting government. In other words, Wood clearly makes the case for the importance and impact of the debates in the ratification discourse.

In addition to these works, the United States government has commissioned *The Documentary History of the Ratification Debates*; as part of the much larger *Documentary History of the United States* project. This multi-volume work aspires to a complete documentation of the ratification debates in both public and private correspondence.

These projects all indicate a renewed scholarly interest in the means with which the participants of the ratification discourse advanced their claims, as well as in the people that they attempted to sway to one side or the other. In addition, the above works demonstrate continuing unanswered questions regarding the purpose and the mode of the discourse, and finally they suggest the need to open the examination of the discourse to other areas of inquiry.

### **Rhetorical Literature**

Despite the plethora of extant literature from the ratification period (newspapers, speeches, pamphlets, etc.) there is very little in the way of rhetorical exploration of the period. Bower Aly's *The Rhetoric of Alexander Hamilton* (1965) is a notable exception. This study, however, is not so much an exploration of the debates, as it is an analysis of the work of Hamilton. Given his focus, the only ratifying convention dealt with in any serious way is the New York ratifying convention.

Much of the reason for the paucity of rhetorical analysis of the period stems from two erroneous views; first the belief that such studies belonged either in history or philosophy; and second, the barriers created by

the critical model that has dominated 20th century rhetorical scholarship.

Until recently, the traditional or Neo-Aristotelian critical paradigm forced critics to explore rhetoric from the perspective of "great speakers." Brock (1990) explains that since rhetoric tended to focus on historical personages, criticism was largely descriptive and focused on effect (p. 25). This view left many important events such as the ratification controversy with inadequate exploration. While there has been much scholarship exploring individual speakers from the ratification period, like Aley's study mentioned above, there has been surprisingly little in the way of scholarly exploration of the ratification controversy as a rhetorical event in and of itself.

During the last 30 years, as rhetorical scholarship has expanded beyond the bounds created by the great speaker paradigm, scholars have begun to develop lines of inquiry into a multitude of different areas of social communication. Specifically, rhetorical scholarship has begun to examine public discourse and public debates, thus creating a space for a more comprehensive inquiry of the ratification debates.



James Jasinski, for example, has written an interesting and important analysis of the lasting effects of the ratification debates on American political discourse. William H. Riker developed an analysis of the discourse that proceeds from the perspective of campaign rhetoric. Riker's book, *The Strategy of Rhetoric: Campaigning for the American Constitution*, examines the ratification debates from the perspective of a political campaign. Unlike Jasinski, however, Riker does not seek to increase understanding of the ratification controversy in and of itself; his goal is to increase understanding of political campaigns, using the ratification controversy as a model. Additionally, while Riker's study is a significant addition to the rhetorical scholarship examining the debates Riker limits his examination to the winning side of the debate, the Federalists.

Ultimately, the goal of the current inquiry is to bridge some of the gaps mentioned in the above review of the literature. Specifically, while the studies mentioned above have created multiple new spaces for exploration, this study will attempt to create a sustained exploration of the discourse between Federalists and Anti-Federalists, as a contextual event.

### **METHOD OF THE STUDY**

Evaluation of the ratification discourse provides the critic with multiple potential sites of inquiry. Clearly, one could spend a lifetime reading the texts of newspapers, broadsides, pamphlets, and songs and produce volumes of scholarship on each. This dissertation focuses on the oral discourse produced through the course of the controversy--specifically, that discourse which occurred during the debates in the state ratifying conventions.

In choosing this approach, I have examined the approaches taken by other scholars to this and similar material, as well as the reasons that they present for their choices. For example, Jasinski argues that the most valid texts come from written sources such as newspapers and pamphlets. The advantages of Jasinski's approach are clear. The critic avoids the problems inherent in depending upon the perceptions and recollections of those who recorded the oral discourse, thereby avoiding the issue of textual authenticity.

Jonathan Elliot (1830), however, argues that it is clearly possible to critique the oral texts because, despite the potential of minor transcription errors, the texts create an accurate view of the ideas and strategies

of the disputants involved in the discourse. Elliot explains that:

The editor is sensible, from the daily experience of the newspaper reports of the present time, that the sentiments they contain may, in some instances, have been inaccurately taken down, and in others, probably, too faintly sketched, fully to gratify the inquisitive politician; but they nevertheless disclose the opinions of many of the most distinguished revolutionary patriots and statesmen, in relation to the powers intended to be granted to the congress of the United States under the Constitution, and certainly may form an excellent guide in expounding many doubtful points in that instrument (Elliot, preface).

This view is further supported by the work of Bernard Bailyn, Gordon Wood, and Philip Kurland. Each elected to examine the arguments of those "who agitated for, proposed, argued over, and ultimately voted for the Constitution of 1787" (Kurland, 1987, 1:xi). They believed that there were important insights to be gleaned from examining the oral arguments of the debaters themselves.

Herbert Storing (1985) concurred with this approach when he chose to make a "sustained comprehensive attempt to examine the thought, the principles, the arguments of the anti-federalists, (sic) as they were understood by the anti-

federalists (sic) themselves and by other men of the time" (p. 2).

While the work by Storing is the most closely matched to the type of exploration this dissertation engages, the chief difference is that while Storing engages in a decontextualized analysis (he examines the debates from the perspective of the Anti-Federalists alone), this study places the arguments in the context in which they occurred. For example, I will examine Federalist positions alongside the Anti-Federalist arguments that rebutted them. Moreover, this dissertation will also build upon the work of both Bailyn and Storing by adding analysis to the contextualized positions. In this way the study examines and explores the interaction and evolution of the positions and arguments advanced in the course of the debate.

Such analysis allows examination of the ways in which contested terms are "recursively constituted and reconstituted" throughout the course of the debate (Kurland and Lerner, 1987, p. 2). Moreover, this type of analysis will allow critical exploration of the demands of audience and situation during the ratification contest by focusing on the ways in which the participants adapted their arguments to the audiences and the situations.

Because the transformation and adaptation in participant positions throughout the course of the debates is an indication of rhetorical engagement consistent with classical conceptions of deliberation, critical inquiry which utilizes a methodology that does not incorporate an appreciation for the discursive, contentious, evolutionary processes which produced the Constitution, would be inadequate as a means of illuminating the critical role which deliberation played in the ratification process. As such, rhetorical inquiry based in classically grounded concepts brings forth the salient features of the ratification debates.

Through this exploration, analysis will seek to enhance understanding of the way in which rhetoric functioned in the discourse under examination. This study of the resolution of a public controversy has application beyond simply increasing our understanding the specific controversy under question. Such study should help us to understand public controversies themselves. Additionally, such understandings will increase our ability to understand the ways in which public controversies are resolved, and will broaden our knowledge vis-à-vis the interaction between political campaigns and the public sphere.

Finally, a concentration on the discourse of the debate, which created and shaped the Constitution, is a precondition for a fuller understanding of the resulting document and the governmental institutions and philosophies it helped to create. As is regularly demonstrated in politics and law, the constitution is not a simple document, and understanding its meaning and intent have been subject of deliberation as long as it has been in force.

Michael Leff (1992) explains that rhetoric "is persuasive in two senses, since it has both an intentional and extensional dimension" (p. 223). Since the work of Bailyn et.al, (1992) has already explored in some depth the extensional effects of the rhetoric of the period by focusing on the social and economic condition, this project will focus on the intentional dimension of the rhetorical exchanges. As such, the focus is based in the evaluation of the rhetorical tools used by the disputants in the furtherance of their cause.

In addition, the focus on the discourse of a public debate leads logically to a rhetorical methodology advocated by Leff and others, "close textual reading." This choice is most appropriate because, as Leff (1992)

explains, "Textual criticism (or close reading) centers on the effort to interpret the intentional dynamics of a text" (p. 223). Leff characterizes this approach as "formal/functional," meaning that the texts can be seen "both as linguistic constructions and as efforts to exercise influence" (p. 228). In addition, and with an eye on avoiding the pitfalls of Storing's analysis, close textual reading encourages the critic to see the text not as a single unit, but "as a positioned response set within a constellation of other positioned responses" (p. 230).

Considering the focus of the study, exploration of deliberative praxis will be of critical importance in the textual analysis. Moreover, in order to maximize the benefits of a "close textual" analysis this study will excavate the classical concepts of prudence, and decorum as the lens through which the text will be viewed. This will have the effect of both helping to answer the earlier questions regarding the actual effect of the ratification debates, as well as increasing our knowledge of the function of deliberation in political controversy.

While I will explain the classical terms in more depth in a future chapter, it is important at this point to clarify the means by which the classical terms will be

employed. One might reasonably argue that no speaker would create a text completely lacking in either prudence or decorum, for even the attempt to be imprudent or indecorous can be seen as both prudent and decorous if the context can be altered to allow such an act. However, prudence and decorum are in fact contextual acts, and are judged not so much by the rhetors themselves, but by the intended audience. Take, for example the protester who chooses to violate social norms in an effort to make a point, if the protester manages to change the audience, then that protester will be celebrated as a prudent rhetor, on the other hand, the failed protest is often seen as both imprudent and indecorous. In fact, imprudent and indecorous discourse often is designed as a rhetorical strategy as in protest rhetoric. The goal, then, of the classical critic is not simply to say that decorum is or is not present, but to examine the ways in which prudence and decorum are created or employed by the rhetor or within the text. If we understand correctly that rhetoric creates context, and that decorum is a matter of relating the rhetoric to the context, then it is clearly possible to examine rhetoric as a means of fashioning decorum and setting out the terms of prudence itself. Given the former,



then, it is instructive to understand that in the ratification debates prudence and decorum are employed both as procedure and as strategy. For example while the disputants followed the rules of discourse and worked to present themselves as the most prudent leaders in the debates, they also employed these strategies against the opposition in an attempt to define them out of the debates. This will be most clear in the analysis of the interchanges between Patrick Henry and James Madison. Madison, for his part does not directly confront Henry's claims, but subtly redefines Liberty in such a way as to invalidate Henry's propositions entirely.

Therefore, the critic looking for prudence and decorum is looking, on some level at both sides and judging both the adaptation of each side to a static context, as well as the attempts of each side to alter the context. The goal of this dissertation is to examine the texts of the debates in an effort to discern and explain the means by which the context is constituted and reconstituted throughout the course of the debates, and as such, to examine the shifting nature of prudence and decorum throughout the discourse.

### **SCOPE OF THE DISSERTATION**

As mentioned above, the depth and breadth of extant material from the ratification debates creates a situation in which the critic must create clear limits in order to allow a substantive discussion. While discussion of the philosophies undergirding American government and democracy began before these debates and continue today, the focus of this study is the period from the presentation of the Constitution to the states in September 1787 to the end of the New York convention, the last major battle in the ratification contest, in 1788. In addition, the study's focus is primarily on the three state ratifying conventions identified and discussed below.

The period indicated above is the period in which most of the significant Federalist and Anti-Federalist texts appeared. This limit, however, will still provide a large volume of text for evaluation. Additional limits will therefore, be necessary in an effort to create an appropriate examination. Considering the former, the texts used in this analysis will be further limited to those texts which deal specifically with the conceptual development of democracy during the ratification debates.

Since the term democracy is never employed by the disputants, it is necessary to clarify how this study excavates the concept from the discourse in question. Three major areas of discussion come to define democracy in the ratification debates; rights, liberty, and representation. As such only those texts or portions of texts that deal with one of more of these issues will be examined.

The project is limited to an examination of the ratifying conventions in Massachusetts, Virginia and New York. These conventions were chosen for several reasons. First, each of these states demonstrate the resolution of a deliberative controversy in, that in each state, the convention began in opposition to the Constitution, and through the course of the debate shifted to support. Second, these states were critical to the success of the Constitution. One could argue that rejection by any of these three states would have proved fatal to the new government. Third, because of the critical importance of ratification in these three states, both sides in the dispute brought their best minds and arguments to bear. For example in Massachusetts, the first serious challenge to ratification, the demand for a bill of rights forced

what Ralph Ketcham (1986) called a "long spirited debate, and some clever maneuvering by the Federalists" (p. 14). Moreover, Clinton Rossiter (1966) argues that the "Massachusetts formula" in which the state ratified unconditionally but with a strong recommendation that the Constitution be amended in order to quiet those who feared the usurpation of personal liberties, was a key moment in the ratification struggle (288).

Virginia, according to Ketcham (1986) was "the most important of the ratification contests" (p. 14). Clinton Rossiter (1966) explains that "in no convention were the opponents of the Constitution able to meet the friends on such equal terms" (p. 291). Moreover, regarding Virginia, Rossiter praises the "rhetoric of Revolutionary liberty...[and] the rhetoric of union and the consummation of the revolution and the guardian of liberty" woven by Virginians Patrick Henry and James Madison respectively (p. 291).

Finally, New York has been included for several reasons. First, as mentioned above, the inclusion of New York, due to its population and economic might, was critical to the survival of the new government. With this in mind, the Anti-Federalists brought to bear some of their

strongest arguments. New York's ratification accompanied by sixteen declared rights, seven "impressions," four "reservations," thirty-two amendments, and a call for a second convention, reflected the contentious and sometimes acrimonious debate, which occurred (Rossiter 1966, p. 293). In addition, the publication of *The Federalist Papers* in New York and their impact on the debate makes this a critical stop for any examination of the discourse of ratification. According to Rossiter (1961) *The Federalist Papers* are "the most important work in political science ever written or is likely ever to be written" (p. vii). Jefferson exclaims that within the Federalist one may find the "genuine meaning" of the Constitution (Rossiter 1961, pg vii). In 1788 Washington wrote to Hamilton: "When the transient circumstances and fugitive performances which attended this crisis shall have disappeared, that work will merit the notice of posterity, because in it are candidly and ably discussed the principles of freedom and the topics of government" (Rossiter 1961, p. viii). In New York, the Federalist, with *The Federalist Papers*, produced what Jefferson called the finest treatise on government ever produced by man.

Finally, even these limitations will produce a body of texts that is too large for a close critical examination. For this reason an additional limitation is introduced. Earlier in this chapter, in discussion of the critical method advocated by Leff (1992), the concept of paradigm texts was introduced. This concept will be applied to the text selection of this dissertation. Specifically, Ronald Reid (1995) argues that a "careful critic" will fail in the critical endeavor if the analysis attempts to cover too broad a range of texts. To this end, Reid suggests reviewing the broad range of potential texts and then, confining the actual critical analysis to "a sample of relevant discourses" (p. 7). The enactment of this second stage of limitation will be accomplished by establishing several criteria for evaluation.

First, a text will be considered for inclusion if it articulates a relevant position. As indicated above, those relevant positions will be those that further our understanding of democracy as it was to be enacted by the Constitution. Second, a text will be considered if it comes from a significant participant in the debates. These people should be relatively easy to identify through their roles in the debates, their roles in national politics, or

in the responses engendered by their positions. Finally, a text will be considered for inclusion if it helps to illuminate an element of deliberative praxis. These texts do not need to illuminate a fundamental position or come from a particular participant, but will be chosen for their contribution to the critical endeavor by the extent to which they illuminate the rhetorical concepts under consideration. In this way, overlapping arguments and redundant positions can be eliminated. This will allow the critic to assemble what Leff (1992) calls the "ensemble of paradigm texts constituting an embodied representation of the entire controversy" (p. 229).

Finally the texts will be chosen primarily from four sources, *Elliot's Debates*, Bernard Bailyn's *The Debates on the Constitution*, Herbert Storing's *The Complete Anti-Federalist*, and the *Documentary history of the United States*. These texts have been chosen in an effort to provide the optimal number of texts for evaluation, to provide for appropriate critical limits, and to insure textual authenticity. With these limits in place the number of texts selected for examination can be significantly restricted. Ideally, the texts in each of

the debates should not exceed 6 to 8 texts or portions of texts.

### **PREVIEW**

In order to begin the analysis it is first necessary to engage a discussion regarding the classical concepts being used in this analysis. This study will begin by exploring the classical concepts of prudence and decorum and then will engage in a brief discussion of the founder's familiarity with these concepts. After establishing the groundwork for the analysis, the study will then examine key texts in each of the chosen ratifying conventions applying the methodology discussed above to the analysis. Finally, the study will conclude with a brief discussion of what has been learned by from the analysis.

Each of the chosen conventions brings very different issues to the analysis. In Massachusetts, the primary issue was that of representation, and out of their fear that the representation created by the constitution would harm liberty, antifederalists demanded a Bill of Rights. In Virginia the analysis revolves largely around the discourse of James Madison and Patrick Henry. Finally, New York is chosen due to its critical importance to the new



union, as well as the circulation of the Federalist Papers in an effort to build public support for the constitution.

**CHAPTER 2****METHOD****CLASSICAL INFLUENCES ON THE FOUNDING GENERATION****Classical Education**

As described in chapter one there are two reasons to look to Cicero and to a lesser extent, Aristotle for the theoretical framework for this investigation. First, both developed insightful inquiries into the function of public deliberation. Their works have survived beyond their time, have crossed generational boundaries, and even today remain important means of examining rhetorical artifacts (See Brock, Foss, Brockriede, et al.). Second, the classical authors, specifically Cicero, were of particular interest to the founding generation of the United States. Both grammar schools as well as universities, for example, relied heavily upon classical authors. In addition, the libraries of the educated class in early America relied heavily on these writers. The following chapter will examine the notion of classical influence, and then proceed to discuss in more depth the classical concepts of *kairos*, *decorum*, and *prudence*.

### **Classical Influence**

There are those who have problematized the above claims, largely because it is impossible to draw a direct line from the classical texts to the authors and disputants in the ratification debates. In essence, this is so because it is rare to find authors who make a direct attribution to a classical author. Meyer Reinhold (1984) argues that it is very difficult, if not impossible, to establish that any particular classical writer or text influenced any particular participant in the ratification debates. Even if the book was in the library of the participant, it is difficult to establish whether the person actually read it (p. 35). In essence, Reinhold claims that we cannot possibly know what is any classical influence was exerted upon the American founders. Carl Richard (1994), on the other hand, while praising Reinhold's book as "the most thorough" work on the founders' classical reading, argues that, in an effort to avoid overstatement, Reinhold arguably understates the impact of the classics on the founding generation (p. 4). In other words, as stated above, the classics were heavily relied upon in the educational system, they were a part of popular culture as evidenced by the use of classical

pseudonyms in pamphlets and newspaper editorials. While direct attribution is absent, it cannot be accurate to say we cannot establish any influence.

This argument aside, it will not be the focus of this dissertation to determine or debate the level of classical influence on individual participants in the debates. Rather, the focus of this dissertation is the function that familiarity with the classics played in the debates. In essence, the focus concerns how the disputants utilized their knowledge of classical concepts throughout the course of the debate. As such, it is necessary to generate a brief discussion of the classical grounding of the Constitutional generation.

While classicists disagree about the level of influence the classics had on the Constitutional generation, there is agreement that the classics "supplied a large portion of the founders' 'intellectual tools'" (Reinhold, 1994, p 148). Additionally, the classical texts were a core constituent of eighteenth-century development of American views on moral and political behavior. Gilbert Chinard (1949) explains, "[The classical tradition] was an essential part of the moral foundation of many of the men

who framed American institutions" (p. 24-25). Reinhold (1994) explains that:

Evidence abounds for an American cult of antiquity during the eighteenth century, particularly during the second half; the ubiquitous classical quotations and tags; the common use of classical pseudonyms; the revival of classical place names; the constant adducing of classical parallels; even the frequent use of classical names for slaves in the southern states. Overshadowing all these was the tireless and purposeful reading by early Americans of the classics as a repository for timeless models for guidance in republicanism and private and civic virtue (p. 24).

The means by which the classics became such an important part of the lives of the founding generation was through the educational system. For example, Reinhold, Richards, Bailyn, and even Rossiter explain that educated people began classical training in grammar school, and this education continued through university training. In fact, according to Richard (1994), the men of the Constitutional generation equated merit and learning; and learning to this generation was "classical knowledge" (p. 51). Moreover, we find that classical symbols, allusions, and theories are used as a means of claiming social status. In other words, an education, particularly at the university level, was necessarily a classical education, and university education was available only to those of means, in this case middle

and upper class men. One way, therefore, for demonstrating one's social status was to make use of the classics in both speech and writing (ibid.).

The reason for the reliance on classical texts and authors has to do with the stated goals of education in the mid to late eighteenth century. Reinhold (1994) argues that American leaders during the second half of the eighteenth century believed that education should "teach useful knowledge and inculcate virtue" (p. 146). As evidence, Reinhold quotes from the *New Jersey Monthly Advertiser*, June 1787, explaining that classical texts were used because it was believed that these texts would aid in the effort to "make men virtuous" (p. 143).

Although the curriculum varied between schools, the texts that were typically used included Cato's *Distichs* (A collection of moral aphorisms), Cicero's orations, letters, and *De Officiis*, and sections and selections from Aristotle and others (Reinhold, 1984, p. 26 & 149-150.). At Harvard, Yale, and King's College (Columbia), Cicero was a staple. Tully, for example, was required reading (Reinhold, 1975, p. 27). Reinhold (1975) says that in the eyes of educated Americans:

Cicero took pride of place as orator, political theorist, stylist, and moralist. Especially popular for moral teaching was Tully's *Offices (De Officiis)*, which subsumed the essence of the moral heritage and humanistic values of the ancient world. This comprehensive compendium of moral instruction, useful to both young and mature readers, offered enlightenment and guidance for both private and civic virtue (p. 150).

Finally, in addition to the impact of Cicero on the American educational system, there is also a measurable impact on several key players in the American political arena. John Adams "derived a sense of identity and purpose" from his lifelong relationship with Cicero's works (Richard, 1994, p. 60). James Wilson claims to have idolized Cicero (*ibid.*). Gordon Wood (1988) explained the prevailing conception of the effect of antiquity upon this generation: "the Founding Fathers had not yet abandoned the classical tradition of civic humanism—the host of values transmitted from antiquity that dominate the thinking of nearly all members of the elite in eighteenth-century Anglo-American world" (p. XXXV).

Considering the impact of Cicero on the eighteenth century educational system and on the founders in particular, his thoughts on morality and politics are valuable tools for analyzing the ratification debates. As

such, this dissertation will proceed to examine Ciceronian conceptions of decorum and prudence and Aristotle's views on phronesis and character. In analyzing the discourse, and the development of the idea of democracy in the discourse, I will examine the interplay between prudence, propriety, and character, demonstrating their utility as a means of fostering critical analysis of portions of the ratification debate. This focus upon practical application of these concepts in context is consonant with their theoretical grounding in the particular (Richard, 1994, p. 8).

## **THE CLASSICS AND DELIBERATIVE PRAXIS**

### **Kairos**

One of the most important aspects of a studying public debate is the notion of appropriateness and time. The Greek philosopher Isocrates (1990) declared that *kairos*, or fitness for the occasion, was critical in the making of moral and rhetorical decisions (p. 8). In essence, public debate creates the need for public decisions; these decisions must be made in a situation in which the result of those decisions cannot be known with certainty. As such, the Greek notion of *kairos* (timing) becomes critical. For



example, had the constitution been suggested immediately following the revolutionary war, it would likely have been rejected due to the powerful central government that it created. The failings of the Articles of Confederation, as well as the upheavals in places like western Massachusetts created the potential for a new government. Timing, as such, was critical.

Propriety, on the other hand, is the ability to construct one's discourse in order to meet the contingencies and exigencies of the particular situation. Thomas Farrell (1993) explains the relationship between *kairos*, propriety, and prudence: "The central virtue of rhetoric is 'perspicuity' writ large: *phronesis* refigured as *kairos*—proper choices at propitious moments" (p. 39). Farrell later explains:

But the fact remains that eloquence in conversation is realized in the mastery of the moment—what the Greeks called *kairos*. In Rhetoric, which often begins with the urgency of the moment, eloquence moves beyond wit to the virtue of propriety—what the Greeks called *phronesis* (p. 236).

As such, when we realize the interrelated nature of propriety, prudence, and the accommodation to the situation, as well as the importance of these concepts to

rhetorical decision making, we find them to be appropriate for analysis of a public debate.

### **Decorum/Propriety**

#### **External Decorum**

Cicero explained that in speech "as in life, nothing is harder than to determine what is appropriate, The Greeks call it *prepon*, let us call it decorum" (trans.1934, p. 70). In the Roman system of rhetoric, what the Greeks had previously termed *prepon* came to be treated under two headings of Decorum: "*apte*" or "*accommodate dicere*", and "*decree*". Elaine Fantham (1984) explains that "*accommodate dicere*" refers to the specific adaptations that an orator makes to accommodate the audience, situation, and subject (p. 124). Fantham goes on to explain, "*decree* assumes an

absolute standard of aesthetic merit at which the speaker should aim" (p. 124). Examination of the Ciceronian concept of decorum reveals the linkages Cicero saw between timing and appropriateness, or *kairos*. In this multifaceted view of decorum, Cicero explains that the orator must consider three factors: the subject of the oration, his own character, and the character of the audience.<sup>1</sup> In *Orator*, Cicero explains that the speaker must adapt to both occasions and to persons (p. 123). Considering the above, Elaine Fantham (1984) explains that the ability to adapt to the external conditions of audience and circumstance, through which the speaker accommodated the address in order to speak in a way that was appropriate to both, was a

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<sup>1</sup> See Michael Leff, *Decorum and Rhetorical Interpretation: The Latin Humanistic Tradition and Contemporary Critical Theory* (Naples, Italy: Estrato da Vichiana, 1990).

necessary condition for eloquence in the Ciceronian model (p. 124). James Andrews and David Zarefsky (1989) explain that the notion that "the situation in which rhetoric occurs is a major determinant of what will be said, and how it will be said" is well established today (p. xx). Inasmuch as we understand the importance of the external factors today, we need also recognize that these factors were critical to Cicero's conception of rhetoric and eloquence.

Given the former, decorum requires adapting rhetoric to the external exigencies. However, this alone will not make a rhetor decorous. It is also necessary to construct a rhetorical artifact that is aesthetically acceptable. For Cicero, aesthetics was the realm of internal decorum.

### **Internal Decorum**

As important as the accommodation of the speech to circumstance and audience may have been, it was clearly not sufficient in the Ciceronian view. Propriety in this model was clearly not delimited to the functional concerns in the external sense of accommodating the speech to audience and the situation. As indicated above, decorum also has a critical internal component. In *Orator* Cicero explained

that "the orator must have an eye to propriety not only in thought but in language" (Orator 69) He, the orator, must construct an artifact that employs appropriate language, as well as using language appropriately. Elaine Fantham (1984) explained that this "requirement of Decere assumes an absolute standard of aesthetic merit" of grace and eloquence within the oration (p. 124). Michael Leff expands upon this in explaining that Cicero's notion of propriety linked the "proper treatment of a subject with the internal form, the coordination of style and argument, the particular circumstances informing the subject, and the magnitude of the subject itself" (Decorum, p 120). As a result of Cicero's discussion regarding the ability of the orator to equip, (ornare) the discourse in a manner designed to render it effective, Leff concludes that for Cicero a "rhetorical representation achieves its effect because it simultaneously blends practical utility with aesthetic pleasure" (ibid.). Richard Lanham (1991) offered a concurring view, describing decorum as the rhetorical concept establishing that "style should suit subject, audience, speaker and occasion" (p. 45). In sum, the admonition here is that the speaker needs to speak in a way that is deemed appropriate for both the situation as well

as the audience. The rhetor needs to meet the audience on terms that they will understand and identify with.

In addition, though, Cicero, like Aristotle, believes that the character of the speaker is also critical to rhetorical success. This leads to the third part of decorum, moral decorum.

### **Moral Decorum**

In addition to external and internal decorum, Cicero speaks of a third type that is necessary for this analysis: moral decorum. In this form of propriety, Cicero focuses on the moral character of the speaker. In *De Officiis*, Cicero explains to his son the moral duties of a Roman. He explains that moral propriety constitutes a combination of other virtues including "steadfastness, temperance, self control, and consideration of others" (Cicero, *De Officiis*, 1:98). In the Ciceronian model, steadfastness and temperance were of particular importance because they acted to prevent one from acting upon one's impulses. Cicero explains that "all the appetites must be controlled and calmed and that we must take infinite pains not to do anything from mere impulse or at random, without due

consideration and care" (ibid. 103). Cicero explains that in every man, two forces are at work, appetite and reason. Propriety, in the Ciceronian ideal, represented reason's control of the appetite (Ibid. 101). As such, for the rhetor to be seen as morally decorous, he/she had to demonstrate that they were seeking good for the community at large, not merely for themselves. They had to possess what Aristotle called ethos. Robert Harriman (1992) argued, "Cicero places the rules of decorum against the natural forces of impulse and irrationality which threaten always to bring one to self destruction. Thus the most important rule of decorum 'is to keep impulse subservient to reason" (p.149). Further, in *De Officiis*, Cicero maintains that propriety and moral goodness were inseparable (Cicero, *De Officiis*, 1:94). Key to this understanding is the notion of reason. Cicero argues that the morally decorous rhetor argues from the perspective of reason not passion or pathos.

James May (1988), discussing the important function of character in republican Rome, maintained that the Romans' reverence for authority was "rooted in their admiration of a person who exhibited wisdom gained through practical experience, expert knowledge, and a sense of responsibility

in both public and private life"(p. 6). Paul MacKendrick (1989) explains that power and prestige, arising from "talent, wealth, experience, age, knowledge, education, [and] public service," were intimately related to the operation of character in oratory (p. 17). As such, the accommodation of the speaker's moral character to the situation was a critical issue for Cicero.

Consideration of one's own moral character, though, was not sufficient. Cicero believed a speaker had to account for the character of several participants in the rhetorical situation: his own and that of the party he represented (if any), the opposition and its representative, and the audience. Cicero also recognized that a potential problem existed when situational standards of propriety contradicted the demands of individual propriety. In such a case, the orator was to remain true to one's own character (Cicero, *De Officiis*, 1:110). Moreover, in a situation in which one was called, due to circumstance, to act or speak in a way that was contrary to one's own moral predisposition, the better course was to act in accordance with one's "peculiar traits of character," even if doing so prevented one from being eloquent (Cicero, *De Officiis*, 1:110).



It is perhaps important to note that moral propriety, as it was conceptualized by Cicero, and Aristotelian ethos are not the same things. Aristotelian ethos is built during the speech, while moral propriety is, for Cicero, a pre-existing characteristic, existing before, during, and after the particular oration.<sup>2</sup> Aristotle postulated that the speaker entered the arena *tabula rasa* (a blank slate) and the speech itself was the event that filled the tablet and established the ethos of the speaker. Cicero, on the other hand, believed that the speaker entered the arena with a pre-established ethos. This understanding forms an important part of Cicero's understanding of oratory. Given this understanding, then, if a rhetors character can be imputed before they speak, then one might be able to lessen

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<sup>2</sup> See Aristotle, *Rhetoric*, Trans. W. Rhys Roberts (New York: Modern Library, 1984), 135a5-15, for a more in-depth conversation regarding the subject of ethos.

the effectiveness of the rhetorical engagement at large. Cicero maintains, in *De Oratore*, that an audience is persuaded "by a man's merit, achievements or reputable life," all of which exist before and outside the speaking situation (Cicero, *De Oratore*, 2:182). In the final analysis, Cicero believed that the speaker had the power to alter the audience's sense of his character through the discourse (Aristotle's concept of ethos); this did not alter the fact that the speaker entered the speaking situation with some existing personal characteristics familiar to the audience.

For the constitutional generation, the importance of the classics, and of Cicero in particular, cannot be overstated when it comes to their conceptions and understandings of morality. MacKendrick (1989) explained:

What Montesquieu and Cicero have centrally in common is a conviction that ethics and politics must be closely bound together: education in representative government must inculcate notions of self-denial, patriotism, and community of interests, but with recognition of the primacy of common over individual interests (p. 277).

Throughout the debates, one of the central areas of conflict is the intersection between self and community. On the one hand, the opposition to the constitution focuses

on self and local interests, while the federalists, on the other, consistently call for a more national view that melds local and national interests. Given this, the negotiation of the situational demands and moral propriety becomes a major concern for the participants of the discourse.

### **Prudence**

A key component of phronesis (identification with circumstances) can best be seen in the emphasis upon the particular and action directed toward the public good. The founders called frequently for the dissolution of faction, in so doing they indicate a belief in a single concept of public good that is to be sought at all times and at all costs. For Aristotle, phronesis functioned as the supreme political virtue because he saw it as the ability to determine the course of action to be undertaken in "things human and things about which it is possible to deliberate." (Farrell, Norms, 146; Aristotle, Nichomachen Ethics, trans. J. L. Ackrill (London: Faber & Faber, 1973), 1141b10)

In classical parlance, it is possible to interchange the concepts of prudential reasoning with the concept of

phronesis. This is true because as Aristotle expands upon the concept in his *Ethics* he does not draw a clear distinction between the moral action associated with phronesis, and the normative action associated with the problem solving nature of practical reasoning. Aristotle explains that there are ties between phronesis and decorum because both invoke practical judgment in situations that call for action and choice based upon probable rather than absolute truth (Kahn, 1985, p. 30). In other words, there was little use in debating that which was not variable, or that which was predetermined in the manner that the conclusions of scientific knowledge were universal and necessary. As such, the interplay of rhetoric and prudence becomes visible when we understand that both are concerned with choice in specific circumstances. Thomas Farrell (1993) observed that, "[R]hetoric is the only art which evokes the capacity for practical reason from a situated audience." (Farrell, p 10.)

Additionally, *kairos* and propriety are also related to phronesis because, according to Eugene Garver, (1987) the "chief appeal of prudence is in its appropriateness to circumstances" (Eugene Garver, *Machiavelli and the History of Prudence* (Madison: University of Wisconsin Press, 1987),

22.). Aristotle believed that the person possessing phronesis, meaning practical wisdom or prudence (the terms are interchangeable), was capable of determining the good end (to telos) and of determining which actions would promote the common good (Aristotle, Nichomachean Ethics, 1140a 25-35.).

In the Aristotelian conception, phronesis was a necessary but insufficient condition of civic virtue. This is because in the classical understanding not all judgments were prudential. As such, when 18th century Whig thinkers invoked the concept of civic virtue, they invoked a concept that was entirely consistent with the classical sense of prudence. This was so because in the case of both concepts, there was a strong moral element combined with political decision-making.

With the above in mind, it is important to understand that Aristotle saw clear cleavages between the concepts of prudential reasoning, and the idea of scientific knowledge. Science involved the demonstration of that which was necessarily true, while prudence was applicable only in situations of uncertainty where judgments could only be made on the basis of that which was, at best, probably true. In this sense prudence is neither science, episteme,

nor is it art, techne. Scientific reasoning was akin to algorithmic thinking, truth is derived from principle to consequences (Garver 20). On the other hand, techne is "a reasoned capacity for making . . . things that have existence and value of their own, while prudence has no end outside of itself" (ibid).

Nancy Sherman (1989) explains that distinguishing prudence from episteme, and techne brings to the fore a key quality. She notes that Aristotle was "eager" to distinguish phronesis from episteme and techne because of the top down deductive" method of the former and the lack of focus upon the praxis of the later (Nancy Sherman, *The Fabric of Character: Aristotle's Theory of Virtue* (Oxford: Clarendon Press, 1989), 3 n. 2.). In this model it is the accumulation of experience not that creates practical wisdom. This was based in the notion that phronesis was intimately related to the particulars rather than to universals. Ronald Beiner (1983) explains that one gained knowledge of particulars only through the accumulation of experiences. More importantly, these experiences foster the development of mature judgment (gnome) necessary for prudence.

Aristotle further explains that the exercise of prudence in situations presenting choices required a man of both experience and character appropriate to the situation (Aristotle, *Nicomachean Ethics*, 1142a15.). He argues that to be able to exercise practical wisdom requires moral virtue. As such, propriety itself becomes a prerequisite. Given this, we begin to understand that virtue requires practical wisdom, and practical wisdom requires virtue—the two are inseparable (Sherman, 5.). The reason for this is the link between phronesis and action. Aristotle's argument is essentially that practical wisdom is only applicable to those situations that require deliberated action. The syllogisms pertaining to the acts to be done, necessarily involve a starting point, what is to be done? Aristotle posits that "knowing how to discern the particulars" "is a mark of virtue" (Sherman 4). Moreover, only the morally good person is able to discern the proper end that will serve the common good. Thus, "it is not possible to be good in the strict sense without practical wisdom, nor practically wise without moral virtue" (Aristotle, *Nicomachean Ethics*, 1140a30.). As such, the function of character is an essential part of prudence. Beiner (1993) explains the centrality of character in the Aristotelian concept of

prudence claiming that for Aristotle, the prudent person possessed a "something" which was available "only by character and habituation, never by rational argument as such" (Farrell, *Norms*, 149, quoting Beiner, 236.).

For the experienced statesman, which is the focus of this study, prudence and propriety were necessary components for discernment and pursuance of public good. In this sense, Aristotle's concept of prudence is closely related to that of Cicero. In *De Officiis*, Cicero defines decorum "in the political realm as prudence" (Kahn 1985 p. 35). Kahn (1985) explains that:

In Cicero's view, then, even more than in Aristotle's, the faculty of prudence is inseparable from the ideal practice of the orator. Both the orator and the prudent man are concerned with the domain by acting according to the rhetorical standard of decorum. Just as the orator is guided by decorum in adapting speech to the exigencies of the moment, so the prudent man enacts decorum in the moral sphere by responding to the particular and contingent in human affairs (ibid) (citing Cicero, *Orator*, 71)

As with Aristotle, a full understanding of Ciceronian prudence requires recognition of a distinction between two types of knowledge: *sapientia* and *prudentia*. *Sapientia* is akin to philosophical or scientific knowledge, which by itself is not very useful in resolving practical political problems. This should not be taken to mean that this type



of knowledge had no value to the politician, but according to Cicero, philosophical/technical knowledge was insufficient to achieve eloquence (Cicero, *De Oratore*, 3:142). Moreover, Cicero indicates that such knowledge might be a "necessary condition" to prudence in some circumstances, but it was never sufficient to produce it (Leff, *Decorum*, 124.).

Cicero argues that the other type of knowledge, *prudentia*, is the means by which orators who are not "scholars" might achieve eloquence (Cicero, *De Oratore*, 2:1). Here, echoing Aristotle, Cicero argues that *prudentia* allows the senator to become a statesman (Ibid. 1:8). Cicero wrote that "while the ability to do what is appropriate is a matter of trained skill and of natural talent, the knowledge of what is appropriate to a particular occasion is a matter of practical sagacity [*prudentiae*]" (Ibid. 3:212). Thus, the eloquent speaker possessed the practical wisdom necessary to ascertain what propriety dictated should be said and done in a particular situation: "the man of experience is qualified for judgment because he is so used to acting" (Beiner, 77). In essence, prudence becomes a requirement of a statesman because his

wisdom and or experience make him or her a more thoughtful and discerning rhetor.

Thomas Farrell and G. Thomas Goodnight (1981) distinguish the two types of knowledge *sapientia* and *prudentia* in a discussion concerning technical and social reason:

By technical reasoning, we mean those modes of inference that are characteristic of specialized forums, wherein discourse is coded to fit functional demands of particular information fields... Social reason employs inferences that are prompted through the pressing contingencies of ordinary life, wherein the claims of advocates are affiliated with the interests of related others and grounded in the generalizable convictions of a competent audience" (Thomas B. Farrell and G. Thomas Goodnight p. 273).

For both Aristotle and Cicero the public spheres was the site in which the prudent orator applied practical wisdom gained through talent, virtue, and experience with the goal of resolving controversy for the public good. Moreover, prudence and propriety enabled the experienced statesman to discern and pursue the public good. Ultimately, the prudent orator applied practical wisdom which was gained through talent, virtue, and experience in the pursuit of resolution of controversy for the public good.

In the following chapters the concepts discussed above will be unpacked and applied as the debates themselves unfold. The roles of prudence, propriety/decorum will be examined operationally throughout the debates in Massachusetts, Virginia, and New York. In Massachusetts an examination is made of the linguistic tools used in an effort to achieve compromise, specifically with regard to the inclusion of a Bill of Rights. During the course of these examinations one will find distinctions made between propriety, and the appearance of propriety. In addition, emphasis will be placed on the distinctions offered between common good and personal gain.

In Virginia, the interaction between Patrick Henry and James Madison will be the focus of the examination. In this particular analysis the emphasis will be placed on the stresses between internal and external decorum. In Madison's rhetorical choices one can find examples of the dualities of decorum described by Leff. Henry, on the other hand, struggles throughout the convention with his revolutionary character; he tries to find a space that allows him to be true to his character and contextually decorous as well.

In New York, the focus primarily rests on Alexander Hamilton. Throughout the convention Hamilton struggles with both prudence and decorum. While Hamilton shared many of the struggles of Henry, in terms of situational decorum, he overcame some through the use of accommodation and audacity. On some level, this accommodation allowed New York federalists to snatch victory from the hands of defeat.

### CHAPTER 3

#### THE MASSACHUSETTS RATIFYING CONVENTION

There is little doubt as to the political and historical significance of the Massachusetts ratification convention of 1788. The convention represented the first real attack on the proposed constitution from the antifederalist opposition, as well as the first real compromise from the federalists in an effort to secure ratification. In addition to these larger issues, Massachusetts was critical insofar as the concept of representation was debated and explored in the process of the state's ratification debate. While the debate for a Bill of Rights is important, for the purposes of this dissertation, the larger deliberative issue in Massachusetts is the growing question of appropriate representation. Given the former, this chapter will explore the debates and discourse surrounding the concept of representation in Massachusetts.

In many ways, the model of Massachusetts came to be the model of ratification in every other hostile convention. Before Massachusetts; Delaware, Pennsylvania, New Jersey, and Connecticut had all ratified, and not one of these states suggested any alteration to the

Constitution. Their choice had been simply to accept or to reject. According to Harding (1896 p. 116), the Massachusetts example suggested an entirely new way to ratify, to accept and suggest amendment. This became such a successful formula for ratification that in the seven states yet to ratify, only one, Maryland, did not offer amendment to the document.

In addition to the afore mentioned ratification formula, Massachusetts was, in other ways, a turning point for the ratification process. Gordon Wood (1969) indicates that there could be no union without Massachusetts, as a result of this much of the opposition to the constitution in other parts of the country pinned its hopes on failure in Massachusetts. When this failure did not occur, an important pillar was removed from the structure of antifederalist opposition, thereby making Massachusetts' ratification itself a further argument in favor of ratification at large.

From a rhetorical standpoint, however, the debate in Massachusetts brings additional insights into the deliberative process that created the union that resulted from ratification of the constitution. Specifically, the debates in Massachusetts brought focused attention to the

mechanism of representation. That is to say, before the Massachusetts ratification convention opened, and before the delegates began to consider the specific components of the constitution itself, important decisions had to be made that would, in the end, have profound effects on the convention, the ratification process, and on the resulting federal government. As such, the discourse surrounding the form and method of representation will provide important insights into the deliberative processes in Massachusetts, as well as revealing important insights regarding the construction of American Democracy. This chapter will explore the afore mentioned discourse in an effort to shed greater light on this instantiation of public deliberation and the tools employed in that deliberation.

The American Revolution united disparate peoples into a single cause and created for the first time some sense of unity and nationalism. This unity was based largely on the common threat and is probably best represented by the iconic dictum, "join or die." This nationalism however, dissipated very quickly after the revolution. The weak national government that guided the war effort had very little power to preserve the peace, leaving the several states to manage their own affairs with little regard for

one another. This factionalism and discord left the Continental Congress unable to repay war debts, manage international affairs, or even mediate conflicts between states. In addition within the states there were different problems; government control seldom extended beyond the capitol and other urban areas. Rural citizens were used to managing their own affairs, and did not easily surrender authority to government officials. At every level of governance, discord and chaos were rapidly replacing order. Wood (1998) explains that the result of the slow disintegration of government control left the former colonies ripe for re-colonization. On August 29, 1786, Daniel Shay and a group of rebels took over a courthouse in Western Massachusetts to prevent the trial of debtors by a court system that they (the rebels) refused to recognize. The rebellion spread to other states, and culminated in an attempt to seize a federal arsenal. For many the rebellion and chaos in New England demonstrated that if liberty was to be preserved for all, it would only be preserved with a more effective national government. That more effective government was crafted by the 55 delegates who met in the summer of 1787 in Philadelphia. In crafting this document the Federalists had created a government that radically



resituated the locus of political sovereignty. Gordon Wood (1998) explains that this constitution premised upon participatory politics created a need for a "Clarification of the nature of representation" (p. 383). The constitution, then, created important questions regarding the relationship between the people and their representatives; as well as the nature of political deliberation itself.

In a "Memorial Discourse" eulogizing Massachusetts ratification convention delegate William Symmes, Nathan Hazen (1862) expounded the key questions of the debate:

[Symmes] had heard the discourses made in debate. He had learned what were the exigencies of the nation. He saw its perils. The scheme before them animated his hopes. Was he to decide upon his own knowledge and convictions, or upon those of his constituents? Why had he listened to the debates which must not influence his decision? Why indeed to men meet and discuss, if each man must inevitably hold the same opinions he had before meeting and discussion. (p. 13)

In essence, Symmes asks the quintessential question of ratification debates, should the delegates be a part of a larger community of discourse designed to find the best way to govern the new country, or should they simply attend the conventions as the mirrors of their constituents?

This chapter will first, briefly, examine the theories of political sovereignty and leadership that informed the ratification debates at large, and then engage an examination of the debates in Massachusetts focusing specifically upon the issue of representation as it plays out in the Massachusetts ratification discourse. This focus is important not only because it provides important insights into the deliberative process, but also because the issue of representation is a cornerstone in the American concept of democracy.

#### **POLITICAL SOVEREIGNTY**

At the time of the ratification debates, the concept of political sovereignty, independent authority over a designated territory, was in a state of transition. Gordon Wood explains that the concept of sovereignty was transformed by the "Glorious Revolution" of 1688. Sovereignty was transferred from the king, the representative of God, to parliament the representative of the people. The result of this is what Edmund Burke (1774) called a "government by discussion" in which parliament acted as "a deliberative assembly of one nation with one interest, that of the whole; where not local purposes, not

local prejudices, ought to guide, but the general good, resulting from the general reason of the whole" (p. 392).

In his criticism of Bristol's attempt at binding him with instructions Burke admonished "you choose a member indeed: but when you have chosen him, he is not a member of Bristol, but he is a member of parliament" (p. 392). Steven Browne (1993) explains that it was not Burke's intention to reject totally the views of the electorate. Burke thought that these views should be of "great weight" in a representative's deliberations. However, local views should not automatically prevail. Rather the representative must always use his "unbiased opinion, his mature judgment, his enlightened conscience" which, when exercised from the enlarged perspective that physical distance from the constituency provided, would tend toward fostering the common, not local, good and long term, not transient, benefits. Proper judgment was exercised in the "space of virtue ... a deliberative realm between the press of popular sentiment—which is volatile, shifting, and immediate—and the cold abstractions of reason—which are aloof, unsituated and irrelevant to the demands of public life" (p. 69-70).

In essence, what Burke argues is that proper representation should listen to all voices, and then judge what is best for the whole. Burke believed that the "legislator must operate in a free space where reflective principles can mediate and shape the response to particular situations. In assuming this ground, the judging subject is not alienated from the particular, since distance in space creates a perspective from which an enlarged view of things can emerge" (Browne 1993 p. 81-82). In other words, Burke argues that the representative must engage the deliberative process in order to discern the common good.

In colonial America, this view of Parliament as the ultimate governmental authority could be seen as a foundational cause of the American Revolution. The dispute resulted in large part from two competing theories of representation—virtual and actual (Wood, 1969, p. 188). Virtual representation, the view held by Parliament, and articulated previously by Burke, held that every citizen of the British Empire was represented by Parliament. Patrick Henry and other American colonists rejected this form of representation, arguing that the virtual representation was both implausible as well as logistically impossible. In effect, it was the view of many in the colonies that the

sheer distance between Britain and America made this kind of representation impossible. They insisted that there were important differences in the needs, and expectations of colonists and citizens at home in Britain. Moreover, they held that Parliament did not understand the colonies and as such was incapable of rendering adequate representation. In short, the colonists challenged virtual representation as illustrated in the iconic slogan of the revolution, often attributed to James Otis "taxation without representation is tyranny." (Smith, 1998, p. 21)

The resulting political doctrine, popular sovereignty, held that governmental authority rested with the people and not with a King or Parliament. Samuel Beer (1993) explains that "The conflict [between Britain and America] was between the idea that the many must look to the few for instruction in and direction toward the common good and the idea that the many can themselves determine the common good and direct the polity toward its realization" (p. 28). Wood (1998) concurs noting that American politics immediately before the Constitution's formulation saw the "actualization of representation through the growing use of instructions" (p 376). He argues that the reason for the

insistence on actual representation stemmed from the public's mistrust of their representatives:

Indeed, it was this breakdown in the sense of mutuality of interests, this mistrust of the representational system, which gave meaning to the notion of actual representation, most clearly seen in the expanded use of instructions by the constituents to their delegates in the legislatures. (p. 189)

Given the above, the framers in Philadelphia attempted to construct a new kind of representational body that recognized the fear and mistrust of government, as well as the need for a deliberative body focused on the national interest. Thus the balance between personal liberty and governmental authority, which characterized so much of the American experience, was manifest. These features were in many ways revolutionary. Captain Jeremiah Pierce (1788) described the representative qualities of Congress under the constitution, explaining that the House of Representatives was the "democratical" part of congress because it was elected by popular vote. The Senate, elected by the state legislatures, represented the "sovereignty of the individual states" (p. 120). Here

Pierce clearly articulates the balance being sought by the framers.

In New England, however, the composition of Congress coupled with broad wording of the enumerated powers in Article 1 section 8, specifically the Necessary and Proper Clause, the Commerce Clause, and the General Welfare Clause, fanned governmental mistrust, and generated a high level of suspicion. New England was a region in which citizens traditionally exercised very close constituent control of elected representatives, where state constitutions codified restrictions on representatives, and where distrust of politicians was an article of faith. This was particularly true in rural areas where tensions predicated on distrust of wealth and education and specifically lawyers had already fomented rebellion (Rutland 1983 p. 66-70). Silas Lee (1788), writing to his Uncle George Thatcher, a congressman in the Continental Congress, articulated this mistrust of representative government:

You will say most if not all [doubts] proceed from an unreasonable distrust of our rulers and idea that Congress want only an opportunity to oppress, & tyrannize over the people—experience has taught mankind that there is danger in giving up too much power to rulers—indeed if there was not danger of their misusing

their powers, there would be no need of any restraint at all, or limitation to their conduct. . . . If it is impossible for them to do otherwise than right, or than to make the true happiness of their constituents, their only study aim, there is no need of a constitution at all. . . . but I confess I have not so good an opinion of mankind as thus unlimitedly to give up all my rights--& cheerfully to submit to whatever their humor or caprice should happen to suggest (p. 268).

Given the tension already extant in New England, Lee's comments seem particularly apt. He concedes the possibility of an honest government, but prefers constraints to protect against the dishonest; these constraints particularly in New England, were reflected in their control of representatives.

In Massachusetts, for example, distrust of government was reflected in statutory checks on representatives: these checks ranged from annual elections and the right of recall to mandatory rotation in office. In addition, communities frequently used binding instructions as a mechanism for dictating representative's actions in the state legislature. Gordon Wood (1998) explains that, "in colonial politics, particularly in New England, the use of instructions did not raise a problem so long as the instructions were limited to local concerns" (p. 190). The line however, between local and regional or even national



concerns was not always easy to demarcate. As Wood goes on to explain, real problems arose when decisions had to be made concerning issues that affected multiple localities such as road building, or even war debts. Given the above, the Constitution represented a revolutionary shift in the concept and practice of representation.

While the evidence seems to weigh heavily in favor of town meetings and binding instructions, the arguments for a convention are compelling and bound in the political theory of the day. Writing in the Massachusetts Gazette James Iredell writing as "Marcus" challenges the town of Sandwich's decision to send an instructed delegate. He explains that such a decision is predicated on the fear that a delegate will not honor the wishes of his constituents. He argues that "as some men are open to conviction, the political creed of their delegates might be shaken by the triumph of reason and truth over sophistry and error" (Bailyn, 1992, 1:889)?

While the conversion of some anti-federalists confirms the fears of the opposing towns, "Marcus" stresses the importance of moving the debate from the over-heated public space into the more formal assembly setting. Marcus affirms the already accepted notion that in the public

space "sophistry and emotion take the place of reasoned argument and the application of Phronesis" (Harding, 1896, p. 50-53). This notion of a public space and a more venerated legislative space comes directly from the Cato's Letters, a text revered by the constitutional generation. According to Bailyn (1992) "the writing of Trenchard and Gordon ranked with the treatises of Locke as the most authoritative statement of the nature of political liberty and above Locke as an exposition of the social sources of the threats it faced" (p. 36). Trenchard and Gordon (1733) in discussing public debate argue,

Much greater latitude is allowed; and vehemence of tone and action, a hurry of pomp and words, strong figures, tours of fancy, ardent expression, and throwing fire into their imaginations, have always been reckoned proper ways to gain assent and affections (p. 318).

In a parliament, Congress, Senate, or any other legislative body, such "flattering and deceiving" language was seen as inappropriate. In such settings "theatrical action, and ostentation of language, prejudice both [speech and speaker], as they both break in upon propriety; and, disguise it with show and sound" (ibid.).

Ultimately, the argument is that in the public space has competing interests attempted to set the public's mind

a fire dispassionate reasoning was impossible. As such, most considered the deliberative power of the assembly to be superior to that of the public square. For true phronesis to occur, it was necessary for the representative body to filter out the passions of the public. Kessler (1987) writes:

The virtue of the man who is adept at deciding what is the best thing to be done under the circumstances, and to determine what is the best way to get from here to there (and who therefore must know where he's going, the goal for which to strive), who could instruct public opinion without either scorning its backwardness or flattering its vanity or inflaming its passions. This is prudence in the traditional sense. (p. 13)

Correspondingly the towns who instruct their delegates to employ their independent judgment highlight the importance of the exercise of Phronesis in such instructions. North Hampton Massachusetts issued resolution similar to many of these towns.

The object of your mission, Gentlemen, is of the highest magnitude in human affairs -- every step we take in the progress of our examination evinces, that is too important, complicated, and extensive, to be hastily decided upon -- much time, and unwearied application, are requisite in order thoroughly investigate it; the civil dignity and prosperity of this state, of the United States, and perhaps of humanity, are suspended upon the decision of this momentous question. And we with you, gentlemen, patiently to hear, and attentively to examine, every

argument, that shall be offered for and against its adoption -- be not unduly influenced by any local consideration -- let your mind be impressed by the necessity of having an equal energetic federal government. . .

But, gentlemen, we mean not to give you positive instructions relative to your voting for or against a reported Constitution -- when assembled you will have the collected wisdom of the state before you.... having the fullest confidence in your political wisdom, integrity, and patriotism, we cheerfully, on our part, submit the all-important question your decision (Bourne, 1875, p. 540).

Ultimately, the choice to submit the Constitution to ratifying convention was a first step in altering the political calculus in Massachusetts. The second step is in the progressive unbinding of Massachusetts delegates. These two steps are taken together signify a shift in the locus of argument from local to national, and an affirmation of the importance of prudence and substance over local preference. All these concepts will become critical as Massachusetts opens the debate on the role of representation in the new constitution.

As the Massachusetts convention opens, in many ways, one of the primary arguments has already percolated through the public mind: the question of the appropriate role of the representative. While this question was largely answered for the convention in that only a few towns

actually instructed their delegates, specifically the Massachusetts towns of Harvard, Lancaster, and Shereborn and the Maine towns of Brunswick and Harpswell (Wood, 1969, p. 89). This was not, immediately, a general shift in political theory. While binding instructions were only issued in a few localities, many towns publicly instructed their delegates and expected these instructions to be honored. The Resolutions of the Tradesmen of Boston, published in the Massachusetts Gazette, typified the control some constituencies sought to place upon delegates short of issuing binding instructions:

THAT, in the late election of delegates to represent this town in Convention, it was our design and the opinion of this body, the design of every good man in town, to elect such men, and such only, as would exert their utmost ability to promote the adoption of the proposed frame of government in all parts, without any conditions, pretended amendments or alterations whatever; and that such, and only such, will truly represent the feelings, wishes, and desires of their constituents; and if any of the delegates of this town should oppose the adoption of the frame of government in gross, or under pretense of making amendments, or alterations of any kind, or of annexing conditions to their acceptance, such delegate or delegates will act contrary to their best interest, the strongest feelings and warmest wishes of the Tradesmen of the will town of Boston. (Massachusetts Gazette January 9, 1788)

The importance of this can be seen in the understanding that while many towns did not formally charge their representatives to vote as the town expected, there was an informal expectation that delegates would vote as the town wished. In several cases, as will be noted later, delegates who violated these expectations suffered when they returned home.

While history remembers the Massachusetts convention because Massachusetts proposed the Bill of Rights, and created the mechanism by which the constitution would be ratified in the remaining states, one must not overlook the critical decisions that preceded the discussion of the Bill of Rights; the choice to allow representatives to debate the proposed scheme of government, as well as the growing shift from classical republicanism to the theory of representative government.

Gordon Wood (1969) explains that in Massachusetts two different theories of government held sway. One theory based largely on the English conception assumes the electorate consists of a homogenous mass with united interests the other system, or that which seem to hold more sway in America, assumes the existence of multiple classes and independent interests. Federalist 57 explains:

The aim of every political Constitution is or ought to be first to obtain for rulers men who possess the most wisdom to discern in the most virtue to pursue the common good of society; in the next place, to take the most effectual precautions for keeping them virtuous, whilst they continue to hold their public trust (Bailyn, 1993, p. 2:213).

Ultimately, the aim of a political constitution, by this standard, relies upon the exercise of phronesis by its representatives. In other words, what the federalists expected was that those chosen as representatives would not only discern, but pursue the common good. As such, the Federalists believed that success of the constitution required what Carl Richard (1994), calls a "natural aristocracy" (p. 131). James Monroe explains that the constitution is designed to "give the system all the advantages of an aristocracy -- wisdom, experience, and the consistency of measures" (ibid. p. 144). It was hoped, that by relying on this "natural aristocracy" some of the more dangerous impulses of democracy might be avoided. They, the founders, saw the public as impulsive, unwieldy, and ultimately dangerous. They feared, the public could be convinced by skilled orators to move in ways that were ultimately counter to the common good. Given this, they saw representatives as a natural buffer between the impulses of

the people, and the common good. The Federal Farmer John Dickinson explained,

The Senate should consist of the most distinguished characters, distinguished for their rank in life and their way to a property, and the Bering as strong a likeness to the House of Lords as possible, I said that would combine the families and wealth of the aristocracy in order to establish a balance that will check democracy (Richard p. 142-143).

While the Federalists were seeking to create a democratic system, they also saw the need to account for and control the "imprudence" of democracy (Richard p 131). They saw in people the danger of excess, the overwhelming of individual interests, the difficulty of maintaining the common good. As such, they attempted to devise in the constitution a stabilizing force; this force is what is referred to above at the "natural aristocracy." It is not a landed aristocracy in the European model, but one based on gifts of education, character, prudence, and wisdom. This mixed government allowed the people to be protected from themselves, but it also created the checks necessary for the people to protect themselves for the elites. John Adams explained:

Single assembly governments, which would inevitably be dominated by a natural aristocracy of wealth, birth, and talent. Hence the natural aristocracy should be segregated in a Senate,



where their talent could benefit the country, while their ambition could be checked by the one executive and the representatives of the many" (Richard, p. 134).

As indicated above, key to this mixed government theory is the idea that representatives have to be both men of character, and men of reason, ultimately they must possess prudence. Stephen Brown (1993) writing about Edmund Burke, noted the centrality of prudence in 18th-century politics. "Virtue is an expression of enlightened public action, or political will tempered by such values as prudence, right reason, forbearance, magnanimity, order and collective commitment" (p. 12). In addition, these values can be found throughout the Federalist papers. For example, in defending the need for a standing army, "Publius" explained:

On any scale, [a standing army] is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and whilst it does not rashly preclude itself from any resource which may be essential to its safety, will exert all his prudence and diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties (The Federalist 41).

As mixed government theory coalesces in America, prudence becomes a critical part of American politics. This happens largely because power is shared between the people,

the states, and the national government. This power sharing arrangement required all parties to engage in decision making in which multiple ethical positions might be supportable and as such prudential or "wise judgments" had to be made. One might see this more clearly by examining the shift in the discourse in the Massachusetts ratifying convention. While the classical republican side, represented by the antifederalists, argues for a high degree of constituent control over representatives; federalists in Massachusetts are arguing just the opposite; they want the representatives of the people to listen to the arguments and engage in prudential judgment regarding what is best for the nation. The dilemma they face, though, is that in arguing for the careful deliberation of the chosen representatives, they actually feed into the ad personam argument being advanced against them. Every argument for reasoned discourse further impels the position that the Federalists through their talents are attempting to manipulate the outcome in their favor.

The antifederalists, fear the dangers inherent in relinquishing power to the so-called natural aristocracy, while the federalists argue that this is the only way to protect the liberties of the people at large. Samuel Brian,

writing as Centinel, explains that there "can be no question that this feeling [against an aristocracy] underlay most of the opposition in the Massachusetts convention. Quotations in proof of this might be multiplied indefinitely" (Harding 1896 p, 75-76). Rufus King in a letter to James Madison expands on the antifederalists jealousies:

the opposition complains that the Lawyers, Judges, Clergymen, Merchants and men of education are all in favor of the Constitution -- and that for that reason they appear to be able to make the worse appear the better cause. Let's say they, if we had men of this description on our side, we should alarm the people with the imperfections of the Constitution and be able to refute the defense set up in his favor.... these objections are not directed against any part of the Constitution, but their opposition seems to arise from an opinion that is immovable, that some injury is plotted against him -- that the system is the production of the rich and ambitious, but they discover its operations and that's the consequence will be the establishment of two orders in the society, one comprehending the opulent and great, the other poor and illiterate. The extraordinary Union in favor of the Constitution in this State of the Wealthy and sensible part of it, is in the confirmation of these opinions and every exertion hitherto made to eradicate it, has been in vain (King, 1894,1:316-17).

As this letter makes clear, the federalists are in a difficult position, in defending the constitution they simply confirm their breeding and education, thus

reinforcing the antifederalist positions, and if they do not defend, then the constitution will surely fail. Given this stance, the antifederalists see as their best hope for success continued efforts to demonstrate that the federalists are in essence rich men trying to steal the rights of the common people.

The federalists, seeing themselves as men of practical wisdom and civic virtue need a venue in which they can offer reasoned arguments that will demonstrate that the constitution is in the common interest. Thus, one side needs to prevent debate and in so doing focuses on Ad Personam attacks, while the other side needed an audience willing to listen in order to have any hope of advancing its cause.

Fowler (1980) explains that the first salvo of the antifederal attack was an attempt to stop the debate before it ever began. They recognized the potential power of allowing the federalists to make their case, and as such, they [the anti-federalists] attempted to bring the constitution to an immediate vote when the convention opened (p. 269). The federalist, recognizing that the numbers were not on their side, argued that the very formation of a convention demanded a fair consideration of

the document and a paragraph by paragraph analysis. The federalist approach ultimately carried the day (ibid.).

As the debate began, the antifederalists continued their previous line of attack. They argued that the real issue was not so much the constitution as the character of the men who would be called upon to execute the power contained within the constitution. Rufus King (1894) observed:

An apprehension that the liberties of the people are in danger and a distrust of men of property or education have a more powerful effect upon the minds of our opponents than any specific objections against the Constitution. If the opposition was grounded on any precise points, I am persuaded that it might be weakened, if not entirely overcome. But every attempt remove their fixed and violent jealousies seem hitherto to operate as a confirmation of that baneful passion. (papers of James Madison, 10:437)

With this as the context, the tactic that came to be the primary position of the antifederalists, was to attack the wealth, education, and ultimately the character of the federalists. They used this tactic before the convention to try to bind the representatives that were being sent, they used the tactic to try to force an early vote at the

convention, and ultimately they used the tactic to try to invalidate the Constitution because of its lack of a Bill of Rights. Samuel Nason writes in the "Pathetick Apostrophe" that within the Constitution "not one right" was secured. He went on to question provisions for elections, representatives, terms of office, and the language used in the powers granted to Congress. Finally, he said that he feared that the Constitution would allow "artful, and designing men" to gain unlimited power which they could then use to usurp the people's rights (Bailyn, 1993, 1:925). Amos Singletary, in what Kenyon (1966) calls "class antagonism and overt anti-intellectualism" echoes Nason's concerns. He reminds the delegates of the causes of the revolution, and the unchecked power of the British Parliament. He claims that the Constitution poses similar threats. Specifically he says:

these lawyers, and men of learning, and moneyed man, the talk so finely and gloss over matters so smoothly, to make us poor illiterate people swallow the pill, expect to get into Congress themselves; they expect to be the managers of this Constitution and get all the power and all the money into their own hands (Bailyn, 1993, 1:906).

Ultimately, the antifederalists, created charges that amounted to a conspiracy. The antifederalists argued that

the wealthy and educated support the constitution because the government it creates will allow them to usurp the rights of the poor and uneducated. This conspiracy argument put the federalists in a difficult position. On one hand, the federalists clearly believed that the "natural aristocracy" was in the best position to lead the new government, and was best positioned to protect the rights of the people. Their argument was that the wealthy and educated were generally the best leaders precisely because of the gifts afforded by wealth and education. Unfortunately, this is not really a defense against the argument that the wealthy and educated are trying to secure power under the new constitution. In addition, because many, though not all, of the federalists came from the monied and educated class the arguments themselves reinforced the conspiracy. The federalists needed to shift the debate away from this conspiracy in order to move the discourse to a debate on the merits of the constitution itself.

In dealing with the antifederalist attacks, the federalists shifted tactics. The tactic the federalists adopted is a tactic which David Zarefsky identifies as characterizing the Lincoln Douglas debates (Zarefsky,

1990). During the Lincoln Douglas debates, both Lincoln and Douglas alternately claimed the other was involved in the conspiracy against the public interest. Zarefsky explains that these arguments created a situation in which the burden of proof for their defense was placed upon the defender (ibid. page 103). Essentially Zarefsky argues, as the target of a conspiracy charge there is little use in denying the charge, as any defense reinforces the original charge of conspiracy. As such, the best defense is to offer a counter charge of conspiracy (ibid.).

This view is precisely the position in which the federalists found themselves in Massachusetts. The charge that the wealthy and educated were involved in a conspiracy to steal the rights of the people is only reinforced by the defenses of the wealthy and educated. In other words, while the antifederalists charge that the wealthy are attempting to use the Constitution to seize power, the federalists argue that the best way to defend liberty is to give over power to the wealthy and educated. To overcome the bind created by this position, the federalists enjoined a two-pronged approach. First, they limited their argumentation strictly to the benefits of the Constitution. Second, the federalists issued a counter conspiracy charge against the



antifederalists claiming that their rejection of the constitution was a matter of their own self-interest. In other words, the federalists claimed that the antifederalists opposition to the Constitution is meant to secure local power and lucrative political position. They [federalists] further claimed that the antifederalists position; that they were merely defending the liberty of the people was merely a smokescreen to hide their true motivations. The effect of this argument does not necessarily clear the federalists of any doubt regarding their motives, it's not an argument they need to win. As Zarefsky notes, "if both the original claim and counterclaim are credible, one can at least hope for a wash" (ibid. 109).

The effect of the above strategies did not win the debate for the federalists, but it did allow the federalists to focus more fully on the Constitution itself and remove some focus from the conspiracy. The strategy created the "wash" the federalists needed in order to shift the focus of the debates, and to engage the antifederalists in a discourse regarding the merits of the new government.

While the counter conspiracy charge was not the most effective argument technique, in the early days of the

convention, this argument allowed the federalist to shift attention from their weakening position. However, this changes when Jonathan Smith responded to the charges leveled by Singletary.

Smith's response is notable because it has the effect of shifting the ground of the debate in a way that will be difficult for the antifederalists to overcome. Smith used his speech to turn the tables on the antifederalists, and reinforced the conspiracy charge leveled by the federalists. He pointed out the danger of anarchy, loss of property, and ultimately personal harm that was visited upon the citizens of western Massachusetts by Shey's rebellion. He told of children being taken away at gun point, of prisoners being lined up and shot, and generally brought the horrors of the rebellion to the floor of the convention. He pled the need of a government that could protect people from the horrors he had witnessed, and he saw in the proposed constitution, the kind of protection for which he and so many others longed. While the speech is powerful and passionate in its own right, the real power of this appeal, in terms of the convention, comes from the character of the speaker. Smith was completely immune to the conspiracy charges and the Ad Personam attacks that the

antifederalists had lodged against other proponents of the constitution. He was, by his own description a "plain man" who made his "living by the plough" (Bailyn, 1:907). Moreover, Smith insisted that he was not aided in the drafting of his remarks; he had had no lawyer to consult. In fact, Smith exclaimed that "we have no lawyers in our town, and we do well enough without" (Bailyn 1:908). Had this been the extent of Smith's defense, it would have been powerful. Smith, however, went farther; he defended the character of the federalist in general.

I don't think the worse of the Constitution because lawyers, and men of learning and monied men, are fond of it. I don't suspect that they want to get into Congress and abuse their power... Some gentlemen think that our liberty and property is not safe in the hands of monied men, and men of learning, I am not of that mind (Bailyn 1:908).

In his address to the convention Smith positioned himself as an average person with needs shared by all people whether they had money or education, or not. He said that social class was not a determiner of need or interest, and that at some level everyone shared basic needs. Specifically, he saw in the constitution one such interest that was shared by all. He said, "these lawyers, these monied men, these men of learning, are all embarked

in the same cause with us, and we must all sink or swim together" (Baileyn 1:908).

Smith's speech combined the ethos of a farmer from Western Massachusetts with the classical principle of "common good" and a faith in the force of reason and good argument. In so doing, he cracked the antifederalist conspiracy argument, and opened the door for the deliberative engagement that the federalist had sought from the beginning.

#### **CONCILIATORY PROPOSITIONS**

As the preceding analysis indicates, the chief strategy of the antifederalist was to attack the character of the supporters of the constitution. However, after Smith's speech, that thrust was blunted. While the antifederalists consistently argued that the Constitution was unacceptable because of the character of the men who drafted it, they used as proof of this position, the lack of the Bill of Rights. Once Smith had spoken, and the ad personam attacks blunted, the Bill of Rights argument became critical. Moreover, as the argument shifted, the balance of the convention began to shift. Storing (1981) explains that "when the ratified convention met, there was, from all accounts, a majority opposed ratification; it

after close to a month of debate a sufficient number of delegates changed their minds to give the federalists a small majority" (p. 3). Despite the evidence of the shift, the federalists remained unsure of the potential for victory. In order to widen their margin, the federalists formulated a plan that would come to be the linchpin strategy for ratification. While the federalists consistently argued against the need for a Bill of Rights, they found in this proposition a way to fundamentally alter the debate. The plan then, called for the convention to ratify the Constitution but recommend a Bill of Rights in the form of amendments to the ratified document. While this plan was risky, the federalists felt that if the right person were to recommend it, it might sway the convention. That's right person, was John Hancock.

Hancock had several advantages for the federalists; he had not indicated support for either side of the debates, he was very popular as a renowned patriot and the first signer of the Declaration of Independence, he was a longtime state politician, a president of the Continental Congress, and was famously generous in giving to the poor and needy (Richard, 1994, p. 66). With Hancock on the federalist side, the federalists had a "People's Champion"

as a proponent of the Constitution, and their method of ratification. Additionally, while Hancock was not held in esteem by all federalists, and was specifically criticized by Madison, Jefferson, and Rufus King, his position in the eyes of the masses, made him immune to the kind of personal and character attacks that had been successfully leveled at others (Main, 1974 pg. 205). Ultimately, this made Hancock the ideal candidate to present, what came to be called, the conciliatory propositions.

On January 30, 1787 Hancock spoke to the convention. In his speech, Hancock invoked key terms of classical republicanism. He called on the assembled representatives to consider his "sincere" proposals as they were designed to "promote the spirit of union" (Elliott, 1836, p. 123). The propositions were debated for a week, and according to Jackson Turner Main (1974) "a decisive shift occurred in the delegate count" (p. 206).

The conciliatory propositions proved to be a middle ground for both sides in the debates. These propositions allowed the federalists to shift the ground, creating opportunity for wavering antifederalists to approve the Constitution while remaining faithful to their constituents. Storing (1981), explains:

Hancock's and Adams actions were of the utmost importance in securing ratification in the crucial state of Massachusetts and in introducing recommendatory amendments. This proved to be the compromise used to secure ratification,... (sic) tempering the opposition of the antifederalists while maintaining the integrity of the Constitution (p. 4).

In the end, in many ways, Massachusetts comes full circle in these debates, moving from binding instructions to ratification based on a trust that their amendments would be seriously considered later. The importance of Hancock to this formula cannot be overstated. It was Hancock's character and reputation that truly shifted the ground in the debate, and ultimately political theory in Massachusetts. In so far as Hancock, by his person, creates a crossable bridge that inspires at least tacit belief not only in the natural aristocracy, of which Hancock is clearly a part, but his support for the protective amendments gives a measure of confidence in federalist character at large.

#### **Antifederalists shift**

While Hancock was critical in creating the foundation for the shift in the ratification debates, William Symmes, a lawyer from Andover Massachusetts, and a respected antifederalists, ultimately broke the resolve of the

antifederalists when he shifted sides on February 5, 1787, defying the instructions of his constituents (Bowen, 1966, p. 289-290).

Williams Symmes was described by town historian from Andover as a man "distinguished for his prudence, his sound moral principles, his unshaken integrity, and his irreproachable conduct" (Hazan, 1862, p. 2). Additionally Symmes expressed to Peter Osgood, in November 1787, his serious reservations about the proposed constitution (ibid. p. 6-7). Despite his opposition though, Symmes indicated the importance of remaining open-minded:

Let us equally shun a hasty acceptance or precipitate rejection of this all-important scheme. And if our final judgment be the effect of true wisdom, let us never doubt that the end will be happy (ibid. p. 7).

While Andover did not explicitly bind its representatives, the town's position was clear in its opposition to the constitution. Moreover, the town voted again on January 31, 1787, the day after Hancock delivered his conciliatory propositions (ibid. p. 13). Nevertheless, the town still did not bind or instruct its delegates (ibid.). Despite the lack of instructions, the town's position was clear leaving Symmes with a difficult problem. Hazan (1862) describes this problem:



the town meeting and informed him of the opinions and sentiments of the majority of his townsman.... he had notice that his vote in favor of the union, as proposed, would be in direct hostility to the wishes of a majority of electors.... but he heard the disclosures made in debate.... was he to decide upon his own knowledge and convictions, or upon those of his constituents? Why had he listened to debates which must not influence his decisions? Why, indeed, demand meet and discuss, if each man must inevitably hold the same opinions he had before meeting and discussion (p. 13).

Despite these difficulties, on February 6, William Symmes announced his intention, based on Hancock's propositions, to vote to ratify the Constitution and propose amendments. He said "in so doing I stand acquitted to my own conscience, I hope and trust I shall to my constituents (and [laying his hand on his breast] I know I shall before God" (Elliott, 1836, 2.174). Following the convention, Symmes went home to find he was not welcome -- he had violated the expectations of his town and was forced to move to another town (Harding, 1896, p. 108-109).

This incident highlights the shift in the concept of representation even as the disputants of the convention debated the proposed constitution. The very fact that Massachusetts held ratifying convention acted to alter the conceptions of the proper role of representatives as well as the nature public deliberation a large. These changes

altered the decorum of the debates, and would have a profound effect not only in Massachusetts but on American democracy at large. This is made clear by Symmes statement in defense of his shift in position. In his announcement, he praised Hancock, indicated the need for a strong national government to address the nation's problem, but also highlighted the necessity and importance of the amendments in securing his vote. In short, Symmes indicates that he was swayed by the debates (Elliott, 1836, 2:172-174).

Like Symmes, Nathaniel Barrell, from York, Maine, initially opposed the Constitution. Bailyn (1992) writes, "the attitudes of the Barrell Brothers to the Constitution and to ratification were typical of those of many Americans. Nathaniel Barrell initially opposed the Constitution but then, as he explained in the Massachusetts ratifying convention, "he changed his mind" (1.47). Prior to the convention Barrell was described by David Sewell as a "flaming anti-federalite" (historical magazine, 1869, p. 342). Samuel Phillips Savage wrote to George Thatcher saying:

it is said your friend N. Barrell, who is one of the two chosen for York, behaved so indecently before the choice, as exhorted a

severe reprimand from Judge Sewall, Edwin chosen modestly told his constituents, he was either lose his arm and put his assent to the new proposed constitution. It is to be feared many of his brethren are of his mind (ibid. p. 264).

During the convention Barrell reiterated his opposition in a letter to Thatcher in which he said he held too many objections that the "learned arguments" and "Wilsonian oratory" of the Federalists had not overcome (ibid.). Barrell further argued that the powers granted by the Constitution to the new Congress were such that the people's liberties would be destroyed. He said assent was akin to assenting to "slavery on my children" (ibid.). He challenged the very notion that men can be trusted to protect the liberties of the people. While he accepted that in the beginning there might be men of such character, men like Washington, for example, there is no guarantee that such qualities could be counted on in the future. In the close of his letter though, Barrell did make a concession. He said if there were amendments to secure the peoples liberties, he would approve the constitution (ibid.).

It seems clear that York, like Andover, elected Barrell, and his fellow delegate to Esaias Preble because of their clear opposition to the constitution. The directions that the town issued to the delegates were "to

take into consideration the proposed constitution for the United States, and to act thereon as they see fit" (records of York Maine, microfilm). In other words, the delegates were not bound, but there is reason to believe that the town did not expect the delegates to change their position, and likely elected them because of the same.

Jackson Turner Main (1974) posits that there were several arguments that seem to have been effective in altering Barrell's position. (Page 205) He explains that Barrell received a great deal of Federalist pressure to exercise judgment. In addition, Barrell received encouragement from George Thatcher, as well as his own brother, to adopt a constitution (Bailyn, 1993, 1.999). Joseph Barrell, a wealthy shipbuilder and merchant who pioneered trade in the Pacific Northwest, in attempting to convert his brother, argued that the anti-federalist leaders were acting out of self-interest and partiality. He said:

If you are Federal you will be pleased, but the anti-Federalist, the men of enterprise must be disgusting, nor can he wish him success, not upon his principles to success needful, for what is property without good government (ibid. 1.588).

While the effect of the pressure exerted upon Nathaniel Barrell by George Thatcher and Nathaniel's brother Joseph, cannot be known, his declaration of support contain elements of the positions of his brother, specifically the inadequacies of amending the articles of Confederation (Ibid. 1.938). Explaining his decision to vote for the Constitution, Barrell explained that he was a "plain husbandman with no pretensions to talents above the simple language adapted to the line of my calling" (ibid. 1.938). He invoked himself the image of the average anti-Federalist but he also praised the Federalist orators comparing them to "the Giants of rhetorick." He noted in them the "pleasing eloquence of Cicero [and] the blaze of Demonsthenian oratory" (Ibid). By contrast, he was inferior in both language and ability. However, rhetorical skill, education and reading are not grounds for rejection of the constitution. He explains that he rejected the threat to liberty that might be posed by future "Neros" choosing instead, to keep faith with Hancock's amendments, and the promise that they would be added.

Barrell presented himself, in much the same manner as Jonathan Smith, as a prudent statesman. He argued that the Federalists had presented sound arguments, engaged in "cool

deliberation," and ultimately demonstrated that the Constitution, coupled with recommended amendments, was "the greatest good [he] could do his country at present" (ibid. 1.938). He went on, as one of the converted, to reject the Eddie Federalists as "the most unprincipled of men," lumping them in with Tories, debtors unwilling to pay their debts, and insurgents who favored anarchy (ibid.). Further, in addition to the unprincipled, Barrell also saw in the antifederalists the group he calls "honest ignorant minds." These were men who were "dupes" to the above group, who persuaded them that their "liberties are in danger and they will be made slaves of others" (ibid.).

The defections of men like Barrell and Symmes from the ranks of the antifederalists are significant specifically because they represented the average person and were immune to the ad person attacks that originally made the antifederalists position so successful. These defections however, are also significant because they reflect a shift in political theory and the shift in the grounds of the discourse occurring in Massachusetts. Finally, they are significant because in the end they voted on the basis of character not on the basis of their fears.

The significance of Massachusetts is clear, while Main's (1974) assessment that the Constitution would not have been ratified without Massachusetts may be an overreach, it is at least plausible (p. 200). While other states may have ratified without Massachusetts, the Massachusetts model became the mode by which other states ratified. Gordon Wood (1988) explains that in the Massachusetts debates we can see the shift from classical politics to modernity. In this shift, we see the transition from classical republicanism as common good to the protection of individual rights instead. Wood says:

In place of the high ideals of the ancients that sought to compel men to transcend his lowly passions and interests, modern governments were now to be founded on these very passions and interests. Modern man became obsessed with his particular private pursuits of happiness in his individual desires, which he calls rights (page 3).

As a result of this shift, there is a corresponding shift in public deliberation. Wood explains that in Massachusetts we see a shift from quote older classical republicanism to a new Democratic, individualistic, commercial world" (ibid. 11-12).

### **Conclusion**

Massachusetts provided the first real hurdle to ratification of the federal constitution, and it also provided the first, and perhaps, most important solution to that hurdle. While Main (1974) makes clear the significance of Massachusetts to overall ratification may be a bit overstated by historians, he does believe that the "Massachusetts solution" provided the federalists with a critical tool that they employed throughout the remaining ratification process (p. 200). This process of ratification with recommendatory amendments provided a middle ground that allowed both sides to reach compromise in Massachusetts, as well as other states, and ultimately aided in the securing of ratification overall.

Gordon Wood (1988) saw in the Massachusetts contest a shift from classical politics to the politics of modernity. Wood explains that:

In place of the high ideals of the ancients that sought to compel man to transcend his lowly passions and interests, modern governments were now to be founded on these very passions and interests. Modern man became obsessed with his particular private pursuits of happiness and his individual desires, which he calls rights (p. 3)

This shift occurred both in the mistrust of the natural aristocracy, as well as in the call for a Bill of



Rights. Moreover, this shift altered the very landscape of public discourse. As Wood goes on to explain, "reason was dethroned, civic participation was reduced to periodic voting, and the public good was lost in the scramble for private interests" (Ibid). He adds, "the end of the eighteenth century in America [can be seen as a point of transition between an older classical republican world and a new democratic, individualistic, commercial world" (Ibid. pg 11-12).

Moreover, the antifederalists were not alone in advancing this shift. The founding fathers did not pursue a selfless agenda devoted purely to the common good. Adair (1974) explains that:

the greatest and the most effective leaders of 1787--no angels they, but passionately selfish and self-interested men--were giants in part because the Revolution had led them to redefine their notions of interest and given them, through the concept of fame, a personal stake in creating a national system dedicated to liberty, to justice, and to the general welfare (p. 24).

As such we find in the founding generation a shift to a system of government focused on individual rights, and personal self interest, as well as a shift away from the classical republican ideals of prudence and character. Kessler (1987) explains, "phronesis is not a virtue that

is especially needful in a regime of interest-group politics, where sobriety, calculating realism, and skill in maneuver suffice" (p. 18).

In essence, the real question in Massachusetts is the proper pole of the representative. Must one, as with the notion of binding instructions, simply stand by and vote without regard for reason and judgment, the will of one's constituents; or, should the representative attempt through reason and discourse attempt to discern the best interests of the polity at large, even in violation of the interests of one's constituents?

While Massachusetts does not definitively answer the above question, the tension over the proper role of the representative highlights both the tension and the transition from a classical republic to a representative democracy.

**CHAPTER 4****THE VIRGINIA RATIFYING CONVENTION****THE RHETORICAL SITUATION**

After the constitution was ratified in Massachusetts, the next big contest was Virginia. While Massachusetts is remembered for the challenges that the Federalists faced, and for the creation of the Bill of Rights, in the form of recommended amendments, Virginia is most remembered because of the interaction between Patrick Henry and James Madison.

This chapter will analyze the Virginia ratification convention, looking at the rhetorical problems faced by federalists and anti-federalists, specifically Henry and Madison. It will also bring light to many of the rhetorical tools employed by both in their efforts to secure victory for their respective positions.

**Antifederalist advantages**

As the Virginia ratifying convention opened, antifederalists enjoyed benefits perhaps stronger than anywhere else in the union. Of the three delegates who refused to sign the Constitution in Philadelphia, two were from Virginia, Edmund Randolph and George Mason. Edmund Randolph explained, at the Philadelphia Convention, that he felt that the Constitution offered insufficient protections

of rights, he suggests a second meeting, but his suggestion was rejected. George Mason, wanted the Bill of Rights to begin the Constitution, but his plan was rejected. Most of the delegates felt that existing state protections were already sufficient. Main (1974) points out, that in Virginia, Masons "well-publicized refusal to sign the Constitution was welcome evidence to the antifederalists that not all members of the drafting convention supported" the constitution (P. 223-224).

In addition to Randolph and Mason, Virginia's most influential politician, and perhaps the states greatest speaker, Patrick Henry, was also reputed to be opposed to the Constitution. (Rossiter (1966) P. 291) Henry had been invited to attend the Constitutional convention in Philadelphia, but declined. Some say Henry declined because of finances, but others indicated that Henry did not wish to be implicated in the project. Mayer (1986) explained that "Henry's straightened circumstances underlay his peremptory refusal to attend the Philadelphia convention, as Gov. Randolph reported to Madison, yet both men suspected that there was something more" (P. 373). While the federalists would have liked to have the support of a populist like Henry at the Philadelphia convention, his

well known distrust for strong central government meant that it was unlikely that Henry would have ever approved the plan. Nevertheless, Henry's absence made him a wild card as the Virginia convention opened.

In Massachusetts, many of the greatest antifederalists were kept from the convention because they were not elected in their community. For example, Elbridge Gerry came from an area where federalist held an advantage, and as such, was not elected as a convention delegate. Virginia did not require residency as a condition of election. As a result, a community could choose as its delegate any representative it liked. In this way, the antifederalists were able to secure election for their best and brightest. This list include those mentioned above as well as James Monroe, Benjamin Harrison and John Tyler. As such, while Virginia antifederalists did not have the numerical advantage of Massachusetts or New York, they made up in skill, what they lacked in numbers.

Because of Virginia's election rules Federalists did not have the advantage of the rhetorical and intellectual skill they enjoyed in Massachusetts, in Virginia the two sides were relatively well matched. Rossiter (1966) described the Virginia ratification debates as "the most

searching, exciting, and well reported of any convention" (P. 291). Ketchum (1986) "calls Virginia the most important of the ratification contests" (P. 14). McCants (1990) wrote of Virginia that, "it's star-studded roster analyzed the Constitution thoroughly and keenly, expanded Virginia's anthology of deliberative address, and skillfully exploited strategies in parliamentary sessions before an overflow audience" (P. 75). In addition, both sides tended to be similar in terms of influence, wealth, and talent. The social barriers that existed in Massachusetts were not a factor in Virginia. In Virginia, as noted above, the "natural aristocracy" represented both sides. Finally, unlike Massachusetts, Virginia had the advantage of important national advocates on both sides of the issue, specifically Madison and Mason respectively.

Divisions in Virginia, according to Main (1974), were based more on geography than on social class. Main writes, "it is clear that a division along lines of wealth does not account for the alignment in Virginia... sectional, not class, lines were of primary importance" (p. 233). George Washington, in a letter to Benjamin Lincoln, notes that the northern neck of Virginia was a federalist stronghold (Documentary History 1991, 9:636-637). Morris (1985)

indicates that the antifederal strongholds were primarily the southern and western parts of the state. Additionally, the federalists and antifederalists in Virginia seem to have been relatively equally divided. Rossiter (1966) estimates that the "antifederalists accounted for just about half of the delegates" (p. 291). While others indicate that the federalist might have even held a slight majority. David Henly's account of the convention, noted in the Documentary History of the United States (1990), claimed that 85 delegates favored the constitution, 66 were opposed, and three were undecided (p. 9:629-631). While there are some problems with this count, specifically, the exclusion of the 16 delegates from Kentucky, it does offer a contemporary perspective of the convention. Incidentally of the sixteen uncounted delegates six voted for ratification, nine opposed, and one abstained (Documentary History, p. 9:629-631). Given the quality of the antifederal position in terms of famous delegates, the education and social position of the opposition, and the relative parity in numbers, the antifederalists in Virginia had some very strong rhetorical advantages as the convention opened.

### **Antifederalist disadvantages**

While the antifederalists in Virginia had many advantages, listed above, they also faced some serious difficulties. In New England in general, and Massachusetts in particular, there was a general distrust of powerful government, and a deep-seated unwillingness to place ones fate in the hands of representatives. Given this general suspicion, New England state constitutions provided safeguards designed to shield the people from their representatives; the most obvious of these safeguards can be seen in the use of binding instructions.

In Virginia, the use of instructions was rare, and when they were used, they tended to favor the representative. For example, Spotsylvania instructed its delegates that in considering the constitution and the objections that the people might have to the plan, they were to use their "prudence and judgment confiding in their integrity to do the best [they could] for the common good" (Documentary History, p. 9:612). Given the difference in the regard of government in Virginia, the antifederalists were not able, with the same force, to make arguments regarding the danger of empowering a national government.



Coinciding with the above issue is the issue of representative election. Virginians did not see their interests with the same degree of locality as did those in Massachusetts. Massachusetts delegates had to be from the same towns and demonstrate connection to the people they were chosen to represent. This meant that many of the best antifederal spokesmen from Massachusetts were not elected to the convention. Elbridge Gerry, for example, was excluded from the Massachusetts convention because his views were not representative of the area from which he came. This absence cost the Massachusetts antifederalists their strongest voice.

In Virginia, there was no such problem. Representatives did not have to reside in the county that elected them. In this way Virginia Antifederalists were able to insure that their best and brightest were convention representatives. On the other hand, though, it also allowed the Federalists to do the same. James Madison and other influential Virginia Federalists were offered "secure counties" in the event that their home constituents elected others. This practice presented an additional disadvantage for the Virginia antifederalists; in separating the delegates from local interests it left the

delegates free to choose, not based on a particular localities' leanings, but on the basis of their own judgment. The delegates were thus allowed to listen to and debate the merits of the proposed constitution; creating a ratification forum that was freer than that of Massachusetts. William Wirt (1891), lamenting the antifederal loss in Virginia blamed the delegates who "voted against the wishes of their constituents" for the inability of the antifederalists to claim victory in Virginia (p. 2:377).

In addition to the above, George Mason, on the first day of the convention, moved for a clause by clause analysis of the constitution. This motion was, according to Madison, "contrary to his [Mason's] expectations concurred to by the other side" (Documentary History, 10:1574). Morris (1985) explains that while Mason's motion was entirely consistent with a prudential conception of deliberation, and suggested a desire for thoughtful consideration on the part of antifederal leaders, it also "played right into [the federalist] hands" (p. 260). As indicated in the previous chapter the federalist believed that time was their ally, and saw in deliberation advantage. Because of Mason's motion, Madison indicates,

the federalists were, presented, on the first day of the convention in Virginia, with an advantage, it also demonstrates the value placed by Mason and other antifederalists on a prudential conception of deliberation. Given the general absence of instructions, delegates in Virginia were free to exercise phronesis and decision-making power allowing federalists to capitalize on their strengths in deliberative argumentation.

In addition, while it seems clear that Mason's motion was designed to unleash Patrick Henry's rhetorical skills by creating a forum of appropriate depth, Henry's orations generally seem to encompass wider ranging themes rather than specific minutia. As such, while Henry might have been a great motivational speaker, or delivered a great sermon, as the discourse shifted to the specifics of the plan, Henry's far reaching orations on the necessity of liberty began to lose their relevance.

An additional problem faced by the antifederalists in Virginia was the very person of George Washington. Ketcham (1986) observes that "the figure of General Washington looming in the background was to many the basic argument for ratification.... his presence and universally admired patriotism is the plans and debates of 1787 in 1788 a

specific, personal quality that had an immense influence on the results.... more than anything else this vitiated antifederal specters of rampant corruption and tyranny under the new constitution" (P. 268). In short, the presence of Washington remained throughout the convention one of the strongest arguments for ratification; the character of Washington placed him beyond attack.

Added to the above, and perhaps the biggest hurdle the antifederalists faced in Virginia, was ratification in Massachusetts. Massachusetts posed a problem on two fronts. On one front, Massachusetts represented a defeat of the strong antifederal contingent, and a win for the Federalists. On the other front, Massachusetts presented an additional convention option; ratification with recommendatory amendments. In other words, the choices were no longer accept, reject, or call for a second convention. Massachusetts offers the delegates a chance to accept as well as recommend fixes. George Nicholas told James Madison, "our friend E. R. Talks of a compromise between the friends of the Union, but I know of but one that can safely take place; and that is on the plan of the Massachusetts convention" (Documentary History 9:704). Madison in discussing amendments says, "I think entirely

with you on the subject of amendments. The plan of Massts. It is unquestionably the Ultimatum of the Federalists. Conditional amendments or a second general convention will be fatal" (ibid. 10:707).

Finally, the antifederalists in Virginia faced a ticking clock. By the time the Virginia convention had opened seven states had already ratified. Mayer (1986) indicates that on the second day of the Virginia convention "the afternoon stage brought news that South Carolina had ratified and, following the stratagem first developed in Massachusetts, have placated the opposition by recommending a series of amendments to the attention of the new Congress" (P. 404). In addition, on June 21, the second New Hampshire convention ratified.

While Virginia continued to represent a critical state both in terms of economics, and geography, momentum for unconditional ratification clearly hampered calls for rejection. This shifting momentum can be seen, for example, in instructions Spotsylvania voters sent to their delegates:

although we've expressly required your concurrence to certain propositions for amendment yet we mean not thereby to break the union which it is our determination to preserve and you hereby authorize you in case nine states shall

have adopted the government before the decision takes place in our convention that you agree to accept and ratify (Documentary History 9:612).

On June 21, 1788, New Hampshire ratified, making it the ninth state, word did not reach Virginia until after the vote on June 25. Nevertheless, it seems clear that the number of ratifying states pose a problem for anti-Federalists arguing against ratification, particularly since the threshold was being crossed as Virginia debated.

All the above notwithstanding, Virginia's ratification was critical for several reasons. McCants (1990) explains that "the real question was whether a union could work without Virginia or without George Washington as president" (P. 74). Moreover, Washington is not the only figure the new union would be deprived of without Virginia, both Jefferson and Madison were also residents of Virginia.

In terms of geography, Virginia sat right in the middle of the new country, therefore practical union is undermined without the presence of Virginia. There would have been, in effect, two countries north and south. While this was legally possible, it was not practical, and Virginia antifederalists understood the power of their geography. Finally, even though the required number of states and already ratified, if Virginia had failed to

ratify this would have bolstered the antifederalists position in New York. No matter how many states ratified, successful union was not possible without Virginia and New York. Given the oversized clout of Virginia, and despite what appeared to be serious federalist advantages, Virginia antifederalists still hoped to prevent ratification. Rossiter (1966) explains that "even at this late hour the antifederalists hope to prevent the new government from coming into being, either by withholding approval of this essential state or by insisting that other states join with it in a second convention" (P. 291). As such, the advantages possessed by the Virginia antifederalists cannot be overstated. They held the keys to geographical union, they were an important bulwark against ratification in New York, and they possessed some of the keenest minds in the country calling for a new convention to fix the problems with the constitution.

#### **VIRGINIA RATIFICATION CONVENTION**

Locke (1940) writing on civil government reflected that the purpose of government was to protect the rights of man. To attain this protection, Locke argued that people transitioned from a "state of nature" to that of civil society (p. 118-125). Peter Knupher (1991) explains that

despite the differences in approach and philosophy, both sides in the ratification debates wanted the same outcome, "ordered liberty" (p. 315). The problem arises, however, in attempting to define what ordered liberty is. In examining the arguments and positions of this particular convention, the focus of this section will be on understanding order and liberty within the discourse of Patrick Henry and James Madison, focusing most specifically on Henry's opening address and Madison's response to that address.

While clearly both sides in the ratification debates wish to preserve the liberty of the people, their views on how to do that are quite different. The Federalists believe, and argue throughout the debates, a strong national government is critical to ensuring the liberties of the people. Jasinski (1994) explains that "Madison's discussion of stability and order as resulting from an energized central government reflected a theory of government grounded in classical conceptions of prudence. He (Jasinski) pointed to federalist 14 and 40 as evidencing the federalist linking of energy and stability" (NCA paper November, 1994). Antifederalists, by contrast, contend that the only way to protect people's liberty is to protect



people from over extending government. In examining the positions, one can see a federalist emphasis on order, and then antifederalists emphasis on liberty. Throughout the course of the discourse the tension between these two terms will be highlighted along with the constraints placed by the demands of decorum.

Perelman and Olbrechts-Tyteca (1991), in *The New Rhetoric*, devote significant discussion to the relationship between argument and values. They explain, that in every level of argumentation, values are implicated. For example, "in the fields of law, politics, and philosophy, values intervene as a basis of argument at all stages of the development" (P. 75). Moreover, the values may be concrete or abstract, but the point is argument does not really exist absent the values that inform it. Additionally though, Perelman points out that not all arguments are equal. As indicated above, while both Federalists and antifederalists share the value of ordered liberty, their emphasis is quite different. Given this, Perelman explains that hierarchies "are, no doubt, more important to the structure of argument than the actual values [for most] values are indeed shared by a great number of audiences,

any particular audience is characterized less by which values it accepts them by the way it grades them" (P. 79).

In other words, as indicated above, order and liberty are important values to both sides in the ratification discourse. However, they are not of equal importance. For the Federalists, the hierarchical value is order while the opposite is true for the antifederalists. In the ratification debates, these two terms, order and liberty, are placed in conflict. This conflict is highlighted by the speeches delivered by Patrick Henry and James Madison. In Henry's discourse, he lauds the importance of the preservation of liberty, while Madison will highlight the importance of order. Ultimately, Henry will posit that restrictions of liberty inherent in the plan will make the promised order untenable, while Madison will point out that the surrender of some liberty for the greater good will guarantee the greater enjoyment of the same.

#### **Patrick Henry**

The notion that Patrick Henry, famed for the statement "give me liberty or give me death", would hold as a value hierarchy, liberty over order, is not notable. Henry became famous during discourse leading to the revolutionary war, for just such a position. Looking back at the

"Liberty or Death" Speech in March 1775, one finds the creation of the value dichotomies that will propel Henry into the history of the period. He reminds the colonists that they must choose between "freedom or slavery", he called on the colonists to choose truth over peace, by admonishing "Let us not deceive ourselves... we must fight" (Reid, 1995 p. 113). Even in calling for war against Britain, Henry placed liberty above order, and his character and position as a revolutionary was without peer. Morgan (1929) writes that "once more, in revolutionary ideas, Patrick Henry was one full step in advance of his contemporaries" (p. 185). Louis Einhorn (1981) argues that "liberty ranked at the top of [Henry's] hierarchy of values" (p. 327).

As an advocate of change, specifically revolution against the King, it is incumbent upon Henry to establish a value hierarchy that propels the audience in the direction of this change. Perelman (1969) explains that:

The arguer advocating change, especially change that is fundamental in nature, will find a need for reliance on abstract values... [specifically] values essentially connected to change... [for they] seem to provide the criteria for one wishing to change the established order... [w]here change is not wanted, there is not reason to raise incompatibilities (p. 79).

Examination of Henry's revolutionary rhetorical artifacts reveals an agitative, or revolutionary ethos, as well as value hierarchies that seem to conform to the expectations highlighted by Perelman above. Perelman posits that the advocate of fundamental change my take on the role of a solitary social critic, one willing to stand alone and speak the truth. Einhorn (1981) also points out the link between "revolutionary character and solitary, unrelenting defense of the truth" (p. 336), but he also find in Henry's pre-revolutionary rhetoric, additional hallmarks, specifically the use of rhetorical questions in his speeches. Einhorn explains that these devices are consistent with revolutionary ethos for two reasons; they assume a truth the audience must accept, and they challenge those in opposition to the revolutionary. These are the tools and the ethos Henry brings to the ratification debate in Virginia in opposing the constitution.

While the ratification of the constitution is seen in a historical context as the culmination of the revolutionary war, there are some significant differences within the rhetorical situations of the two events. Kenneth Burke (1969) explains the differences between the revolution and the ratification as a "majority division"

and "division centered upon the rights of the minority" (p. 372). Moreover, in the revolutionary war, the enemy was a distant king and parliament, in the ratification debates the opposition is friend, neighbor, and, or, fellow citizen. The revolution was a call for bloody conflict in which the "lives and sacred honor" of all were at stake, while the ratification debates, while seeking to maintain order and stability, did not carry the risk of armed conflict.

In examining the discourse of Henry during the course of the ratification debates, one will find that the revolutionary character visible thirteen years earlier is still present. In describing himself Henry says "[O]ld as I am, it is probable that I may yet have the appellation of a rebel" (Mayer, 1986, p. 435). Rossiter (1966) says that during the Virginia convention, "the rhetoric of Revolutionary liberty burst forth from Henry in passage after passage" (p. 291).

Ultimately, while the rest of the country seemed to be looking for a way to govern, Henry, it seems was still fighting the revolution, or at least still grounding his rhetorical stance in the same values. He said, of his opposition to the proposed constitution, "even if twelve

and one-half states voted to ratify", he would oppose the constitution "with manly firmness and in spite of an erring world" (Documentary History 9:95). Morris (1985) says that one participant described Henry's "oratorical skills, melodious voice, and charisma" (p. 259). Rossiter (1966) says that Henry was "mighty of voice and influence" (p. 291). Henry, at the Virginia ratifying convention was clearly in his element, Mayer (1986) writes that "while other men declaimed, Henry dramatized" (p. 405). Without doubt, Henry saw the debates as a final battle in the war for liberty, and he intended to oppose this assault to the fullest.

In his opening speech, June 4, 1788, Patrick Henry listed the dangers posed by the proposed constitution. He insisted that while the Articles of Confederation were imperfect, there was no need for a new form of government. Unlike his 1775 "Liberty or Death" speech, Henry cast himself, According to Einhorn (1990), as a defender of the status quo. While this is true on one level, as Einhorn goes on to point out, this is also problematic because the presumption shifts throughout the course of the debates (p. 144-161). In September of 1787 as the new constitution was being distributed, the burden for its defense was fully on

the shoulders of the federalists. The shift in presumption, however, occurs as an ever increasing number of states vote to ratify, and as a result of the Massachusetts ratification plan. Specifically, in the early days of the debates, the presumption favored the status quo. James Wilson attempted to shift the presumptive burden in his "State House" speech by highlighting the value of order and specifically pointing to some of the threats to order.

As indicated above, the changing nature of the rhetorical situation made the status quo position seriously untenable, despite the initial position of the Virginia antifederalist, the status quo was no longer a serious antifederalist option. McCants (1990) explains that Virginia antifederalist had four "rhetorical stances" open to them: direct refutation, defense of the Articles of Confederation, amendments to the constitution, or an alternative plan (p. 80). Henry, began initially with a direct refutation of the plan, and defended the Articles of Confederation. From this perspective, Henry, and others, argued that the problems in the country were not such that the Articles could not manage them, and if they were, then the solution was to alter the Articles, not abandon them

for a new form of government that was much more restrictive than the Articles (ibid). McCants explains that this refutational stance was a core part of Henry's oppositional strategy and that, as such, it represents a weak position given the rhetorical situation (ibid). Einhorn (1990) explains, however, that Henry uses the defense of the status quo merely as a starting position, a position from which he shifts strategically in order to suggest amendments (146). While this position, as a matter of strategy, may seem effective, it will become clear, in examination of Henry's speech, that the strategy conflicts with the revolutionary ethos with which Henry enters the debates. In other words, it is always a difficult position for a revolutionary to be placed in the position of defending the status quo.

Mayer (1986) points out that the major problem Henry faced in choice of argument was that it "saddled [Henry] with an unappealing persona" (p. 83). Henry began the speech by arguing that there was no need for a new plan of government. He exclaimed that Virginia was at peace, and enjoying prosperity. As a result of this condition, there was no need for change. However, more importantly, Henry



points out that the absence of danger justified a vigorous response in defense of liberty (Bailey, 1993, 2:595).

Henry admonished the delegates "to be extremely cautious, watchful, [and] jealous of our liberty" (ibid). And while he believed that the framers exceeded their authority in drafting a new constitution, he also recognized the danger in attacking the convention delegates too vigorously. Any attack on the federalists might be seen as an attack on James Madison, and more importantly, George Washington. Henry explained:

I have the highest respect for those Gentlemen who formed the convention, and were some of them not here, I would express some testimonial of my esteem for them. America had on a former occasion, with the utmost confidence in them: A confidence which was well placed: And I'm sure, Sir, I would give up anything to them; I would cheerfully confide in them as my Representatives. But, Sir, on this great occasion, I would demand the cause of their conduct (Bailey, 1993, 1:597).

In issuing his call for the federalists to explain their actions, Henry, wisely, choose a day that Washington was absent. As such, Henry was able to avoid making such demands upon "that illustrious man, who saved us by his valor" (Ibid.). But Henry's position could not be more clear, he admonished the Federalists and Washington, for betraying the values of the revolution.

On the second day of the convention, June 5, Patrick Henry, began his attack on the Constitution in earnest, in a speech, which according to McCants (1990), exceeded three hours (P. 76). While there is no written record of the speech, one historian said Henry, "orated so, grandiloquently that the shorthand reporter, overcome by the torrent of words and the magnificently effective grimaces and gestures," was unable to record Henry's precise words (ibid., P. 255). What we do know about the speech, though, is that Henry included elements of his "prerevolutionary tirades against British measures," and the comparison of the battles against Parliament and the King to the battle against the Constitution, which similarly threatened the liberty of the people (ibid., P. 256). Additionally, Ketcham (1986) notes that Henry paid particular attention to the broad powers of the presidency and the tyranny those powers threatened (P. 255). In the end, speaking like a true revolutionary, Henry spoke of the disunion that might result from ratification. While he, "disclaimed any thoughts of disunion himself, he asserted. Such was 'the language of thousands'" (ibid.). As indicated above, Henry's grand revolutionary themes are here evidenced, the tone is soaring, and the message is

powerful, but it is difficult to separate this speech from any number of speeches given by Henry prior to the revolution.

### **James Madison**

Answering Patrick Henry's call for explanation was Virginia governor Edmund Randolph. On June 4, 1788, Randolph essentially "takes the stand" to explain why he now supports the constitution. While Randolph was a participant of the Philadelphia convention, he refused to sign the Constitution. This refusal left both federalists and antifederalists unsure of Randolph's position. This uncertainty, though, was clarified by Randolph's response to Henry.

Randolph explained that the Articles, while sufficient during the Revolutionary war, in the years following the war, made the government into a "political farce" (Bailyn, (1993). 2:598). He went on to explain that, since the war, the government under the Articles of Confederation was largely ignored. Quotas were not paid, foreign debts remain unanswered, commerce was not increasing, and America was an object of contempt in the eyes of foreign nations. In his response to Henry, Randolph clearly invokes the value of order by highlighting the dangers that the nation faced

under the Articles due to the weakness of its government. Randolph indicates, necessity required a response, and that response was embodied in the Constitution.

The decision to have Randolph, rather than Madison, respond to Henry was a strategic choice based upon Randolph's skill as a speaker. Ketchum (1986) explains that:

The federalists were convinced that ultimately they would have to rely on Madison's unrivaled command of the issues, but the contrast in lung power and histrionics between him and Henry seemed too stark to follow Henry's speech with Madison's. Seeking also to capitalize further on Randolph's recent conversion to their cause, the federalists decided that he -- -- big, eloquent, and prestigious -- -- could best counteract the impression as well as the argument of Henry's speech (p. 256).

In other words, while federalists relied upon Madison for his intellectual skill, he was not a match for the powerful rhetorical skill of Henry. They needed a speaker who could rouse the audience, and a speech of conversion did just that.

Two days later, Madison finally replied to Henry. While Madison was a brilliant thinker, his skill as a public speaker left much to be desired. The convention reporter frequently noted that segments of Madison speech could not be recorded because they were inaudible. He said,

for example, that Madison. "Spoke so low that his exordium could not be heard distinctly." (Bailey (1993). 2:611).

McCants (1990) writes that:

Madison was such a timid speaker, but he could not be heard throughout the hall. He was so tight that he could express excitement only by a somewhat rapid rocking of his body. He was so short that he could not be seen by all the delegates (P. 83).

Bailey (1992) describing the fundamental difference in the oratory of Henry and Madison says:

Patrick Henry declared in one of his vast speeches in the Virginia convention -- -- one of those thieving oceans of antifederalist passion, whose thundering waves threatened to drown Madison's small, tight cogencies (P. 335).

The federalist feared that despite the reason presented by Madison, the convention would be swayed by passion. It was; therefore, critical that the federalists move the convention away from passionate orations, and firmly into the deliberative ground into which Madison was a power player. Despite Madison's deficiencies as a speaker, the federalists hoped that Madison's grasp of the issues would allow him to return the convention to the clause by clause analysis that they believed was critical to victory. Realizing that he was speaking against the "forest born Demosthenes" Madison quickly suggested the

value of rational deliberation over oratorical acumen.

Madison says:

In this pursuit, we ought not to address our arguments to the feelings and passions, but to those understandings and judgments which were selected by the people of this country, to decide this great question, by a calm and rational investigation. I hope that Gentleman, in displaying their abilities, on this occasion, instead of giving opinions, and making assertions, will condescend to prove and demonstrate, fight fair and regular discussion (Bailey, 1993, 2:611).

Madison then began a line-by-line rebuttal of Henry's attacks. In this rebuttal, Madison discussed taxation, standing armies, control the federal district, in the process of amendments. In addition, he criticized Henry for failing to outline any specific dangers posed by the Constitution. Madison said:

Let the dangers which this system is supposed to be replete with, be clearly pointed out. If any dangerous and unnecessary powers begin to the general Legislature, but to me plainly demonstrated, and let us not rest satisfied with general assertions of dangers, without examination (ibid. 2:612).

In discussing the danger to liberty by the proposed Constitution, Madison echoed the federalist's position that, liberty is protected as long as people are vigilant. However, even if vigilance failed, the system of checks and balances placed within the Constitution were sufficient to

safeguard the people's liberty. Moreover, Madison indicated the protections contained within the Constitution were greater than those protections afforded by the articles Confederation.

Prior to the convention, Madison indicated, in a letter to Thomas Jefferson, that some sort of amendments to the Constitution would probably be necessary after ratification. The real question, according to Madison, was "whether previous alterations shall be insisted or not" (Documentary History, 9:744)? In Virginia, the mechanism of amendment was clearly important. Prior to Virginia eight states had ratified without conditioning ratification upon amendment. If Virginia were to depart from this model it would create a problem that could probably not be resolved. This fact was not lost on either the federalists or the antifederalists. Antifederalists realized that the clout of Virginia might allow them to call for a second convention altogether. Madison argued that this strategy of argumentation was indecorous and that antifederalists failed to speak a "language of respect" to those states that had already ratified (ibid. 10:1498). Specifically, Madison argued that, for Virginia to demand a new convention would be akin to denigrating the deliberations

and considerations of those states who had ratified. He called this type of argumentation "flattery" in that rather than engaging in rational discourse the antifederalists were attempting to inflame the passions of the delegates. Ultimately, this response was a signal that the strategies employed by Henry were not appropriate for a deliberative convention.

In examining Madison's opening speech one finds, not the fiery passionate rhetoric of Henry, but instead, the theoretical analysis delivered by an expert in government, an architect of the Constitution, and one trained in the tools of classical deliberation. Ketchum (1986) posits that Madison was probably:

Listening with apprehension and perhaps even despair, Madison knew the gauntlet had been thrown down. If he was forced to argue abstractly for the authority of government with opposing Henry's denunciations, the federalists cause was doomed. Madison saw that his task was to bring Henry down to particulars, to engage him in a point-by-point examination....though Henry had often overwhelmed such reason efforts in the past, the attempt nevertheless had to be made (P. 256).

In defending the Constitution against Henry, Madison explained that the Constitution was an effective and reasoned response to the faction increasingly present in the country. In offering this defense Madison's speech



stood in sharp contrast to the passionate denunciations offered by Henry. Madison offered an oratory of "moderation, prudence, and candor." Bushrod Washington writing to his uncle George Washington said that Madison spoke "with such force of reasoning, and the display of such irresistible truths, that the opposition seems to have quitted the field" (quoted in Ketchum, P. 258). Moreover, Madison's rhetorical choices reflect a larger federalist strategy in arguing for ratification:

[the federalists'] rhetoric of conciliation sought the development of concurrent majorities over time while also attempting to defuse extremist, emotional, and dogmatic criticisms of the Constitution by stressing a moderate temperament as the necessary prelude to making important policy decisions (Knupfer, 1991, P. 317).

The federalist position was that any successful government required compromise. They argued in order to create the necessary compromise each person had to set aside individual and local interests in the pursuit of the common good. By engaging this compromise, federalists argued that unity could be created out of diversity (ibid. 324).

The moderation and wisdom of the convention, as one of Washington's correspondence called it, must carry over into the new government. The federalists softened the old demand for a 'power

of coercing the states' and claim that 'much prudence, much moderation, and much liberality' should characterize future federal-state relations (ibid., 331).

Given this view, federalists argued that the antifederalists were by contrast self-interested and "disunionist" because they were unwilling to compromise state and local interests to save the union. To add strength to their position federalists contrasted the "obstinate behavior" of the opposition to the "cool, compromising, tempered character" of the participants of the Philadelphia convention (ibid., 331).

While the federalist tended to paint all opposition with broad brush strokes, there are antifederalists who are simply not guilty of the charges leveled by the federalists. George Mason, for example, indicated:

When such arguments, as shall, from the best information, secure the great essential rights of the people, shall be agreed to by Gentlemen, I shall most heartily make the greatest concessions, and concur in any reasonable measure to obtain the desirable end of conciliation and unanimity (Documentary History, 9:940).

In essence, Mason is willing to compromise, and ratify, if the federalists will agree to amend the Constitution and add a Bill of Rights.

The federalist position created a clear relationship between prudence and accommodation "moderation, the parent of compromise, was basic to constitutional liberty because it was the nucleus of personal and public constitutions" (Knupfer, 1991, 325). Given this view, federalist argued that the antifederalist's positions and arguments were dangerous because they functioned contrary to the common good (ibid. 331). In other words, an argument that did not accept the need for compromise and moderation was not simply an opposition, but an invalid response to the exigencies in the country. In this way the federalists hoped to disqualify antifederalists discourse by naming it both imprudent and indecorous. This strategy was effective in that it either defined the antifederalists position as outside of the debate, or forced the antifederalists to concede the need for at least some form of alteration to the government. Once the second route was taken, the federalist advantage was clear. If it could be agreed that some alteration was necessary then the only plan for alteration on the table was the federalist plan. Knupfer, examining Federalist 37, explains how Madison combined:

The images of civility, common sense, compromise, and ambiguity that federalists in general hoped to parade before the ratifiers. He prefaced his discussion of compromise with a long appeal to the good citizen who, Madison hoped, would investigate the positives and negatives of the proposed constitution in "that spirit of moderation" so essential to a just evaluation of public measures (ibid. 334)

Edmund Pendleton, when opening, the convention admonished all participants that,

Order & Decorum in the deliberations of all public bodies, is absolutely necessary, not only to preserve their Dignity, but that reason and Argument may have their proper affect in decision, & not be *lost in confusion & disorder* (Documentary History, 9:911).

Pendleton went on to caution that deliberation required participants to avoid:

all heats, Intemperance & Personal Altercations, which always impede, but never Assist Fair Investigation. Let us probe the Plan to the Bottom, but let us do it with Candor, temper & mutual Forbearance: & finally *decide as our Judgment may direct* (ibid.).

Pendleton's goal in the above discussion was to set the terms for the debates themselves. In other words, the federalists were not simply calling for decorum, the federalists were themselves defining what would be considered decorum within the debates.

After establishing the terms of debate, the federalists argue that the constitution is entirely

consistent with the decorum for which they previously argued. In this way, the constitution is not to be seen as extreme reaction to the exigencies within the country, but a moderate accommodation that creates stability and thwarts the dangers of passion and self-interest. It is important to note here that even in defining the constitution as a moderate response, the federalists are reinforcing the terms of the debate. If the Constitution is, in fact, a moderate response to the country's problems then moderation is called for in the discussion of that response. This particular position will be especially troublesome for Patrick Henry whose skill lies in his ability to rouse the passions of his audience. Henry Lee confirms this in acknowledging the importance of inoculating the audience against Patrick Henry's rhetorical strengths. While he acknowledges Henry's "é·clat and brilliancy... and the brilliant talent which he is often displayed," he chastises Henry for appealing to people's fears rather than "coolly and calmly" examining the Constitution (ibid. 949). In essence, the federalists are defining decorum in such a way as to leave Henry outside the bounds of the discourse.

As the debate progressed Madison continued his practice of reasonable and deliberative responses to

Henry's fiery oratory. Archibald Stuart wrote that Madison "came boldly forward & supported the Constitution with the soundest reason & most manly Eloquence I have ever heard" (ibid. 10:1651). James Breckenridge said that Madison responded to Henry with "plain, ingenious, & elegant reasoning" (ibid. 1621). However, Breckenridge also noted that Madison's arguments were "entirely thrown away and lost" among the "ignorant" delegates who had fallen prey to Henry's passion. Governor Morris writing to Alexander Hamilton acknowledges Henry's strengths, but argues that they fall short in their attempt to defeat Madison's argumentation. He explains:

Mr. Henry is most warm and powerful in Declamation being perfectly Master of "Action Utterance and the Power Of Speech to stir Men's Blood ["] Yet the Weight Of Argument is so strong on the Side Of Truth as Wholly to destroy even on weak Minds the Effects of his Eloquence (ibid. 1622).

Cicero (1968) explained that decorum requires moderation in both actions and speech (1:93-99). Moderation however is not a universal concept, is dependent upon the rhetorical situation. As such, what might be seen as moderation in one context could be seen as extremism in another. As noted previously, Henry's passionate revolutionary rhetoric may not be defined as indecorous in

the context of a revolutionary war. The question becomes though, what is appropriate in the context of the ratifying convention? Cicero's guidance on the matter continues in Cato's letters. Cicero explains that in a body such as a Senate, "theatrical action and an ostentation of language, prejudice [speech and speaker], as they both break in upon propriety, and instead of adorning the scene, disguise it was show and sound" (ibid.). On the other hand, when addressing the public,

much greater latitude is allowed; in vehemence of tone and action, a hurry and pomp of words, strong figures, tours of fancy, ardent expression, and throwing fire into their imaginations, have always been reckoned proper ways to gain their assent and affections (ibid.). As such, Cicero gives us two kinds of eloquence, "good sense, put into good words" and "fine figures and beautiful sounds, artfully and warmly applied to the passions" (ibid. 320).

Applying these standards to Madison and Henry one finds that Madison is eloquent clearly articulating a position of decorous moderation. Madison's response to Henry demonstrates a practical grasp of the problems that the country is experiencing, combined with practical solutions. Henry, on the other hand, while disavowing the need for the solution presented by the constitution, presents no other solution to the problems being

experienced by the states. While Madison admits that the new government will be more powerful than the government under the Articles, he intimates that this is a moderate solution to growing discord. Henry simply ignores real conflict occurring throughout the country, because it is not happening in Virginia, and as a result disavows any and all solutions. Henry seems to be campaigning while Madison is trying to find solutions.

It is difficult to ascertain the reasons behind Madison's and Henry's rhetorical choices in the ratification debates. While it is clear, at least in hindsight, that Madison's rhetorical choices demonstrated an eloquence consistent with a deliberative body and with his morals and character; it is not clear that Madison's choices are conscious. Einhorn (1981) explains that: "Henry's and Madison's structures, styles, and strategies may, of course, have been the results of habit, accident, or chance" (P. 328). What does seem clear however, is that the rhetorical choices made by the two men are clearly augmented by their views of the rhetorical situation. Einhorn (1981) notes "there was no need to reason logically" under Patrick Henry's thinking for he saw the controversy as a question of absolutes in which the correct



choice was obvious (ibid. 335). Madison, on the other hand, seemed to view the debates as a discourse in which reason was critical to good decision-making.

In the final analysis, while Madison's style may not have been as passionate, uplifting, or exciting as Henry's; this style was entirely consistent with the general federalist position in the debates. They, [federalists] did not believe that they could use the people's passions to secure ratification, they needed the people's reason. This is not to say that all antifederalists argued with the same passion as Henry, or that they all saw the debate in terms of absolutes, this would clearly be an oversimplification of the discourse. What is true of the antifederalists side is that throughout the debate they searched for the proper level of compromise with an eye on both individual and states' rights (Knupfer, 1991, P. 327-328).

#### **The Antifederalists Change Tactics**

At the end of the first week of the convention the two sides appeared to be at an impasse. McCants (1990) explains that the antifederalists clearly needed a new tactic (P. 77). This new tactic, in part, began with the arrival of Philadelphia antifederalists publisher Eleazer

Oswald. Oswald came to the convention bearing a personal message from New York antifederalists, General John Lamb, to Henry, Mason, and the rest of the Virginia anti-Federalist leadership (Documentary History, 10:1589). The importance of this visit was significant enough, even to the federalists, to be noted by James Madison and Alexander Hamilton (ibid.). The letter that Lamb delivered, suggested that New York and Virginia should establish correspondence with which to coordinate their efforts to defeat the constitution (ibid. 9:814). Lamb implored Virginia antifederalists to secure the public liberty by using their "best Endeavors to procure Amendments to the System previous to its Adoption" (ibid.).

On June 8, 1788, Patrick Henry shifted his tactics. As indicated above, Henry began the convention by arguing that the peace and prosperity of Virginia did not necessitate a governmental change. On June 8, Patrick Henry moved away from the position of absolute rejection and began to argue for prior amendments. This shift had a profound effect on Virginia antifederalists. On June 9, Patrick Henry, writing to John Lamb, indicated that securing amendments to the plan was "the only remaining

Chance for securing a Remnant of those invaluable Rights which are yielded by the new Plan" (ibid. 818).

Henry believed that four-fifths of Virginia residents opposed the constitution; he further believed this number was even higher south of the James River. However, the close division of convention delegates made rejection unlikely. In addition, he expressed the view that the federalists were behaving and arguing inappropriately. He said that:

The Friends and Seekers of Power have with their usual Subtlety wriggled themselves into the Choice of the People by assuming Shapes as various as the Faces of the Men they address on such Occasions (ibid.).

In sum, Henry argued that the Federalists were not worthy of trust when it came to protecting the liberty of the people. However, as discussed previously, Henry does not offer a practical solution to this issue. Instead, seeing that the convention numbers may not favor him, Henry argues that the best solution is to require amendments as a condition of ratification. While Henry clearly indicated the belief that previous amendments were the only way to protect liberty, as in other areas, Henry did very little to make such a case, maintaining his revolutionary attack against government in general.

On June 9, Patrick Henry initially seemed to continue his direct refutation of the Constitution explaining again the dangers to liberty. He argued that it was the constitution, and not the present situation, that endangered liberties of the people. Moreover, he said the country's present situation did not warrant ratification. He said, it was "not sufficient to feign mere imaginary dangers: There must be a dreadful reality. The great question between us, is, does that reality exist" (ibid. 1091)? Despite federalist claims to the contrary, Henry argued that the people "do not wish to change their government" (ibid.). Then, Henry changed course. Henry said, "four fifths of the people of Virginia must have amendments to the new plan, to reconcile them to a change of their government" (ibid.). Edmund Randolph, hearing the shift in Henry's argumentation, excitedly said that the question before the convention was no longer to ratify or not to ratify, but whether there should be "previous or subsequent amendments" (ibid. 1092).

With the above noted shift, Henry lined himself up with a position Mason had taken at the beginning of the convention. From this point forward Virginia antifederalists and Henry in particular no longer argued in

favor of the Articles of Confederation, but instead argued to secure previous amendments before ratification.

The problem that this shift created, particularly for Henry, cannot be overstated. Up to this point, in the debates, Henry presented himself as a revolutionary, as a lone voice speaking in defense of the liberties of the people, and as a solid opponent of the constitution. On the other hand, while his shifting position allowed Henry to shed what McCants previously referred to as his "unappealing persona", it also created problems in terms of Henry's ethos. If the constitution is bad, if a strong central government is bad, how will amendments ameliorate that bad? This is a question that Henry never answers.

For Henry, as well as the rest of the antifederalist delegation, the question ceased to be; ratify or not, and became; what amendments, when would they be offered, and how would they be applied (McCants, 1990, p.74). While the antifederalist shift opened the door for prudential deliberation and accommodation, it also created character problems for Patrick Henry, specifically, how to reconcile compromise with his previous character as an agitator and revolutionary.

Cicero says that discourse that is to be considered decorous must be appropriate to the situation, audience and the character of the speaker. Cicero further argues that when the situation changes such that its demands are inconsistent with the character of the speaker, then the speaker should maintain faithfulness to his character rather than try to adjust his ethos to fit the new situation. This maintenance of character is what Cicero calls "poetic decorum" (Cicero 1968, 96-97). While Henry clearly had to adjust his argumentative approach to meet the new situational exigencies, he also clearly attempted to maintain his revolutionary ethos, thereby maintaining "poetic decorum." This problem with this shift, though, was that it raised the specter of a lack of moral decorum.

Prior to June 9<sup>th</sup> Patrick rejected the constitution at every level. He claimed that the national situation did not warrant such a change, and that the situation in Virginia warranted it even less. After June 9<sup>th</sup> Patrick Henry vowed to require previous amendments to the constitution to protect the liberties of the people as the price for his ascent (Documentary History 9:745). The significant part of all of this is that Patrick Henry can no longer be said to be making a purely principled stance,

his vote has a price. As a matter of ethos this is problematic. While it seems clear that Henry advocated this position largely to stop ratification, not because he has undergone an actual change, the effect casted doubt on all of Henry's arguments due to the inconsistency of his positions.

By the end of the third week of the convention, Madison began to worry that the convention might be adjourned without a vote, this scenario was particularly troublesome because it was feared that in this time Virginia antifederalists might solidify ties to their counterparts in New York. Madison, discussing the situation with Alexander Hamilton, said antifederalists:

May Hear from the Convention of N. York, they may work on some of the least decided friends of the Constitution; in a weary out the patience of the House, and prepared for adjournment.... previous amendments will either be tried or give place to an effort to adjourn (Documentary History, 10:1637).

While federalists believed they might have a small majority, they were not yet comfortable about possibly victory. As such, although Madison opposed weakening the new government was amendments, he agreed that amendments along the line of the Massachusetts formula were preferable to continued delay (ibid. 1665). Additionally, Madison

hoped that by preemptively agreeing to a compromise, such as the Massachusetts formula, might prevent the antifederalists from proposing a Bill of Rights as a condition to ratification (ibid.).

On June 23 the federalists presented a prefatory statement of "plain and general truths that cannot affect the validity of the Act: & to subjoin a recommendation which may hold up amendments as objects to be pursued in a constitutional mode" (ibid. 1669). In other words, federalists believed that it was time to move toward a vote.

#### **RATIFICATION**

On June 24, 1788, a resolution for ratification was entertained. The federalists presented a "conciliatory declaration of certain fundamental principles in favor of liberty" (ibid. 1670). While Madison had hoped for unconditional approval, a position he maintained throughout the debates, George Wythe moved for ratification with recommended amendments (ibid. 1473). In what has come to be known as the "Thunderstorm Address" Patrick Henry immediately attacked Wythe's motion.

Henry argued that by guaranteeing some rights and not others, the other rights by implication might be denied.



In making this argument Henry was co-opting an argument made by Federalist James Wilson delivered nine months earlier. Henry said: "what is the inference, when you enumerate the rights which you are to enjoy? That those not enumerated are relinquished" (ibid. 1474). Once again Henry was defining the debate in absolutist terms. It was his position that the federalists offer would force people to choose between government or rights, and for Henry, this is not a valid choice.

In response to Wythe, Henry again strongly condemned the constitution. He offered his own amendments that he argued would substantially limit the power of the national government; he expanded his support for previous amendments and advocated approximately 40 changes to the constitution (ibid. 1504). In addition to amendments focused on liberty Henry specifically called for language to ban implied powers. Henry said, responding to Madison's logical defense of implied powers, that "nations who have trusted to logical deduction have lost their liberty" (ibid. 1505). Henry indicated that the separations of power, the checks and balances, the guarantees and promises contained within the constitution provided only theoretical protection. He explained though, that theory and reality often bore little

relation to one another, and that liberty was too important to be trusted to theoretical protections. On the other hand, Henry suffers from the same violation of which he charged the federalists. His objections lied not in actual premises, but in theoretical possibilities.

Expounding upon the dangers and the plan, Henry painted himself as a visionary predicting the dangers inherent within the Constitution. He moved from the immediate "horrison(sic)" to the vantage of "those intelligent beings which inhabit the aetherial(sic) mansions" as he pointed skyward (ibid. 1506, 1511). He indicated that from this heaven bound perspective one could see the future a future that was dependent upon the upcoming vote, a future that affected not only Virginia, not only the several states, but "one half of the human race" (ibid.).

Almost prophetically, a reporter notes that "a violent storm rose, which put the House in such disorder, that Mr. Henry was obliged to conclude" (ibid. 1506). The confluence of the imagery of the speech with the natural fireworks, was said to provoke the delegates to awe and disorder. Spencer Rowan later wrote:

By the joint effect of these two faculties, I mean of the power of his tone or voice in the greatness of his conceptions, he had a wonderful effect upon the feelings of his audience. Both of these concurred in the famous speech in the Convention which was interrupted by a storm.... He presented such an awful picture, and in such feeling colors, as to interest the feelings of the audience to the highest pitch.... it seemed as if he indeed the faculty of calling up spirits from the vasty deep (ibid. 1512).

On June 25, 1788 after defeating Patrick Henry's previous amendment motion by a vote of 88-80, Virginia voted to ratify by a vote of 89-79. The form of ratification was published days later the declaration of rights composed by George Mason and other anti-federalist leaders, on June 8, became the amendments the convention recommended (ibid. 1514-1515).

#### **CONCLUSION**

The Virginia ratification convention is notable for many reasons, not the least of which is the exchanges between James Madison and Patrick Henry. Madison delivered a reasoned logo-centric defense of the Constitution, while Henry delivered transcendent, vivid, passionate orations that were enhanced by his revolutionary character. However, while Henry's hierarchical defense of liberty over order continues to inspire, it is clearly out of place in a rhetorical situation which calls for deliberation. Henry motivates and inspires, but in the end, it is impractical. He offers theory and passion, and ultimately is outmatched

by the practical defense offered by Madison. Ultimately, federalists successfully made the argument that the country needed a more vigorous government, and as such, focused the convention on practical discourse surrounding the appropriate functions of such government. Henry, on the other hand, argued for most of the convention that a new government was not necessary, that a convention was not necessary, and that ultimately there was really no problem for which the existing government was ill-suited. While Henry created many rallying cries, his speeches did little to further the discourse. Ultimately, as an independent actor, Henry vindicated himself by maintain his own position, and as such maintaining his own decorum, both and moral. However, his absolutist positions, is inflexibility, and his revolutionary ethos rendered him indecorous within the context of the ratification convention which came to see its goal as that of fixing and ailing union.

John Marshall summarized the difference between James Madison and Patrick Henry:

If I were called upon to say who of all men I have known that the greatest power to convince, I should perhaps say Mr. Madison, while Mr. Henry had without doubt the greatest power to persuade (Henry, 1891, P. 376).

After reading Marshall, one might credibly ask if Henry were the more persuasive why then did the federalists win? In reality, the answer to this question problematizes the very concept of effectiveness. Without doubt, Henry's plea to protect liberty persuaded the convention of the need for a Bill of Rights. However, it is important to remember that this was not Henry's position in the convention. Henry rejected the constitution out of hand, and argued that the absence of a Bill of Rights was an important proof of the constitution's many failings. Madison, on the other hand, carefully and logically defended the constitution as a moderate solution to serious problems being experienced in the several states. Henry's refusal to seriously engage this line of argumentation made his positions untenable and indecorous.

Clearly throughout the convention several delegates switched positions. There is no historical data regarding the starting point for delegates from Kentucky. As such, it is impossible to know whether they came prepared to vote for against the Constitution. Finally, while some delegates indicated that they were persuaded for one side or the other, there is no dependable historical data to ascertain precisely the success or failure of either

speaker, or to establish the effect of private persuasion, constituent opinion, or a host of other influences that might have affected the delegates.

Given the former, rating effectiveness purely in terms of who won and who lost may not be the best measure of the term. For example, as previously noted, while Henry may not have secured rejection of the constitution, or even previous amendments, it seems clear that he did force the federalists to concede to the need for a Bill of Rights. Similarly, while Madison secured ratification, it was not ratification in the terms which Madison might've preferred. Ultimately, to measure effectiveness purely on the grounds of who won or who lost misses the point of the deliberative engagement. Prudential deliberative engagement is marked by moderation, conciliation, and compromise.

Einhorn (1981) explains that if "the outcome of the convention is used to judge effectiveness, the rhetoric of revolutionary agitation was inadequate to meet the needs of public deliberation" (P. 332). By this standard then, Einhorn goes on to explain that Henry's revolutionary rhetoric, and his absolutist positions, are better suited to battles of an either/or nature. The kind of absolutism

seen in the "liberty or death" speech was not well-suited to the ratification convention. Arnold wrote:

Such rhetoric had served well to intensify the spirit of protest and revolt against a distant enemy in a daze Revolution, but it was, I suggest, inadequate to meet the constructive needs of society and to give form and method to political deliberation. Argument by symbol, by expletive, from a remembered or imagined instance, or from the general topos that power corrupts invariably had won action in the days when Lord North and George III were the symbols of frustrating regimentation. But in the ratifying conventions, the problem was no longer how to become free, but how to balance freedoms plainly attained against a further, and equally desirable, social good -- efficient orderliness (Einhorn, 1990, quoting Carol Arnolds unpublished teaching notes).

Cicero (1988) says the "universal rule, in oratory as in life, is to consider propriety" (P. 71). While the rules seem simple, examination of Henry's speeches in Virginia demonstrate its complexity. Henry, a revolutionary at heart, struggles throughout the debates with the tension between his own character, and the rhetorical situation. Harriman (1992) points out such choices often create "problems of praxis", for example, "Quintilian recognized how Socrates made the less effective defense at his trial for impiety by choosing to be appropriate to his character rather than appropriate to the situation" (P. 154).

Madison, by contrast, found in the ratification debate a situation that was consistent with both his character and his abilities. As a result, Madison's speeches exhibit both moral and poetic decorum. Barbara Warnick (1993), quoting Hugh Blair, writes:

no one should ever rise to speak in public, without forming himself adjust and strict idea of what suits his own age and character, what suits the subject, the hearers, the place, the occasion; and adjusting the whole train and manner of his speaking on the idea (P. 70).

Examining the speeches of Patrick Henry and James Madison one finds the difficulty in establishing and maintaining a decorum, achieving desired results, and measuring success. On the other hand, the speeches delivered by these two men develop a wealth of rhetorical promise, in vivid imagery, rich ideas, and powerful deliberative engagement.



**CHAPTER 5****THE NEW YORK RATIFYING CONVENTION**

During the course of the ratification debates for the federal Constitution, New York stands out for several reasons. Unlike early conventions both sides had a wealth of arguments upon which to build. In addition, New York federalists, and anti-federalists alike, had to contend with the momentum of ratification that was occurring, but also with the significant ratifications that were lacking; notably Virginia and New Hampshire. As such, despite the fact that New York was the last convention to ratify, it was by no means a rubberstamp. Moreover, as in the case of Virginia, union without New York was certainly unlikely, if not impossible.

New York, unlike Virginia, was not a convention dominated by two giant voices. The most prominent voice in New York, Alexander Hamilton, was mixed in with a series of notables; John Jay (who along with Hamilton co-wrote the Federalist papers), Chancellor Livingston, Melancton Smith, John Lansing, and George Clinton (editor of the Cato letters and president of the convention). Given this, this chapter will focus on the interplay of prudence, decorum and the shifting rhetorical situation in New York.

It will examine the ways in which the speakers attempted to accommodate themselves to the situational needs of the rhetorical engagement.

#### **RHETORICAL SITUATION**

In beginning an examination of the New York ratifying convention is important that we put the convention in context. In New Hampshire, it was estimated that the delegate split was approximately 52-52; in Virginia most estimates place the delegate count at approximately 89-80, Federalists held a slight lead. New York, by contrast, has a delegate estimate of 19-46, in favor of the antifederalists. If the antifederalists had an opportunity to win anywhere, it was clearly going to be New York. Numbers aside though, New York was a divided state. Most of the state was antifederalists with the important exception of New York City (Main, 1974, P. 240-242). In addition to the geographic division in New York, the state was also divided economically. Federalist tended to represent the interests of the wealthy merchant dominated counties where "impost was favored, and paper money disliked" (ibid.). The Antifederalists came largely from rural areas of the state. Main (1974) explains:

it is significant, moreover, that those antifederalists who finally change sides were among the more well-to-do, including one merchant, one large landowner, and three lawyers who were also large landowners, while four lawyers or large landowner refrained from voting. The alignment on the final vote therefore shows a more categorical difference between Federalists and antifederalists. Although the number of lawyers and judges who voted on either side was equal, all the merchants, most of the landowners and men of wealth were Federal. Among the college graduates, Federalists outnumber antifederalists at the beginning seven to three and at the end eight to one.... it seems clear that most of the wealthy landowners and merchants, and out of the convention, or Federalists and that the antifederalists while drawing some of their leaders for this class, were on the whole, men of lesser means (P. 241-242).

Regarding the delegate elections themselves, Hamilton quickly recognized they were not a positive sign for the Federalists. He worried that the delegate selections might result in a "harsh verdict" against the Constitution, and that they did not bode well for the convention's deliberations (Miner, 1921, P. 87). Writing to Gov. Morris, Hamilton complained that the elections "have gone wrong," and that "violence, rather than moderation, is to be looked from the opposite party" (Hamilton, 1962, P. 4:650).

Given the serious imbalance in the delegate count, as indicated above, almost three to one opposition,

New York antifederalists believed they had a serious opportunity to defeat the Constitution. However, as has already been seen in Virginia, timing is going to play a role in New York.

The Constitution required ratification by nine states in order to go into effect. By the time the New York convention opened seven states already ratified. In addition, Virginia was holding its ratifying convention, and New Hampshire was reconvening. Hamilton, writing to Madison, indicated his belief that the best chance of Federalist victory in New York rested on nine earlier ratifications (ibid. P. 5:2). Moreover, it is clear that Hamilton was not alone in this view. As noted in the previous chapter, New York antifederalists sought out their Virginia counterparts in order to aid in the shoring up of opposition to the constitution.

As the New York ratifying convention opens, both sides look to New Hampshire and Virginia. For the antifederalists, Virginia offers the last best chance for a new convention, for the federalists, Virginia and New Hampshire represent the hope of nine ratifying states. Hamilton himself offered to pay for express riders from

Richmond or Portsmouth to announce ratification in either state (ibid. 4:650).

While antifederalists in New York hold the clear numerical advantage, this advantage does have some drawbacks. As noted above, it is very likely that nine states will ratify before New York votes. In addition, Hamilton indicates that:

The Leaders of the party hostile to the Constitution are equally hostile to the union. They are however afraid to reject the constitution at once because that step would bring matters to a crisis between this state and the states which had adopted the Constitution and between the parties in the state. A separation of the Southern District from the other part of the state is perceived would become the object of the Federalist and the two neighboring states. They therefore resolve upon an adjournment as the safest and most artful course to affect their final purpose (ibid. 4:649).

As such, in attempt to protect the geographic integrity the state of New York, and to avert political crisis, antifederalists in New York begin the convention with the hope of forcing adjournment and postponement of a final vote, this is a strategy Federalists are determined to avert. As the convention opens, both Federalists and antifederalists support a motion to begin clause by clause consideration of the Constitution. Antifederalists, led by Melancton Smith, support the resolution largely because of

its ability to delay a potential vote; Federalists, led by Livingston, employ the tactic, as they have before, in order to extol the benefits of the proposed system and encourage prudential deliberation (Elliott, 1836, 2:222).

It is important to note, at this point, that antifederalists at the New York convention were not a monolithic voting bloc. Some antifederalists, particularly those led by Clinton, were willing to reject the constitution and be excluded from any potential union, others like Smith, preferred amendments, and were not willing to remain outside the union. Jay, writing to George Washington, indicated that:

Many in the opposition are friends to union, and mean well; but their principal leaders are very far from being solicitous about the fate of the Union; they wish and mean, if possible, to reject the Constitution with little debate and as much speed as possible (Jay, 1949, 3:334-335).

Given these cleavages, Hughes saw potential for Federalists to create and exploit any Federalist divisions, he said, this created a "shadow of hope," for the Federalists (Miner, 1921, P. 98). Hamilton argued, that the Federalists should focus their efforts on converting those antifederalists who "have their scruples in an air of moderation" (Hamilton, 1962, 5:10).

### Moderation as rhetorical strategy

Due to the numerical advantage held by the antifederalists, it was critical for the Federalists to persuade moderate antifederalists to vote for ratification. In order to accomplish this, the Federalists realized that Hamilton himself would be required to make some changes in effort to present himself as less objectionable to the opposition. Smith (1993) explains that "Hamilton's effectiveness was hampered by his arrogance and the fact that he often insulted delegates during the debate" (P. 111).

Rhetorically, this change is problematic. Plato, in the *Gorgias*, argues that the problem with rhetoric is that it makes the weak case appear strong and the strong case appear weak. Because many saw in Hamilton strategy rather than sincerity, they questioned his character, and argued that Hamilton was misleading or manipulating the delegates. This points to one of the perennial problems of rhetoric, how does the rhetor adjust to the rhetorical situation without compromising character? This problem is not dissimilar from the problem faced by Henry in Virginia. Keeping this problem in mind, Garver (1987) explains that prudence requires the rhetor to demonstrate an ability to

use both appearance and reality in an effective combination. Leading to the question is Hamilton's behavior misleading, or "virtuous adaptation" (p.7).

Hamilton is not alone in his adaptations to the rhetorical situation in New York. Federalists believed that the convention itself had to be a model of prudence and decorum in order to create the space for moderate antifederalists to be persuaded. In one of his early addresses at the New York convention, Alexander Hamilton reminded the delegates of the collegiality and the spirit of compromise that existed in the Philadelphia drafting convention (Elliott, 1836, 2:234). Hamilton explained that the Philadelphia convention reflected an example of both wisdom and prudence, pointing out that the framers, in order to reach accommodation with one another, resolve disputes, and protect the interests of all states, created a "committee of accommodation" (ibid. 2:236). In so arguing, Hamilton sets the tone for the debates to follow. He repeatedly calls, not just in his initial address, but throughout the convention, for the delegates to exercise the "principle" or "spirit" of accommodation (ibid. p. 251, 268).



James Jasinski (1994) explains that the invocation of terms like compromise, adjustment, and conciliation are signals terms for prudential accommodation (p. 197). He explains that "prudential principle" became a regulative ideal for the constitutional generation at large, but for the federalists in particular (ibid. p. 173). Given this view, it seems clear the federalists in Poughkeepsie saw in prudential accommodation a rhetorical tool that might be used to overcome the numerical disadvantages that they faced.

In examining the speeches themselves, one finds the concept of accommodation to be a major theme of federalist discourse and argumentation. Echoing Hamilton, John Jay admonishes the delegates to allow a spirit of moderation and conciliation to prevail. Jay exclaims:

We are endeavoring to agree. Cannot the conditional amendments be paired down so that we may agree? We honestly think Congress must reject such an adoption. Cannot we endeavor further to Accommodate? The Gentlemen have advanced for Accommodation. We have now advanced for Accommodation (Schwartz, 1971, p. 880).

Federalist James Duane, criticized those antifederalists who refused to end their call for conditional amendments because in so doing they were

ignoring the federalist attempts at conciliation and compromise. He said of these holdouts,

"Gent. Say they have condescended—made advances—to accommodate—to my mind a conditional amendment is a rejection—then where is the spirit of accommodation" (ibid. p. 888)?

As previously indicated, in his initial address to the New York convention, Hamilton points to the conciliatory nature of the Philadelphia drafting convention. Specifically, he points out the compromise reached regarding the issue of slavery. Hamilton indicates that this compromise represents a victory of reason over passion (Elliot, 1836, 2:237).

The constitution was designed as a mechanism to control faction and promote those leaders who were willing and able to seek out the common good. Insofar as the constitution accomplishes this task, it confers on the new government the ability or the tools to maintain order/reason over passion. As such, given that the federalists consistently argue that the constitution represents a moderate solution to the problems faced by the several states, lack of moderation in the ratification discourse represents imprudence, and the absence of decorum. Given this understanding, the federalists, and

Hamilton, in particular, challenge the antifederalists to maintain reason over declamation in their debate discourse (ibid. 2:237).

In the above context, declamation is synonymous with irrationality. One can see this relationship in a statement made by Melancton Smith in which he, both, highlighted the above sense of declamation, and also demonstrated the incompatibility of reason and passion, in his discussion regarding the potential of the constitution to support a natural aristocracy.

I do not mean to declaim against the great, and charge them indiscriminately with want of principle and honesty. The same passion and prejudices govern all men (ibid. 247).

Hamilton responded that Smith's argument was "directed to the passions and prejudices" (Ibid. 256), and Livingston indicted Smith for having "so copiously declaimed against declamation" (ibid. 276). The style of argument preferred and advanced by the federalists is clearly one of moderation. One commentator wrote, of the Federalist Papers:

These essays are written in a style simple, clear, and straightforward. Abstruse as are the topics discussed, there is no ambiguity, no faltering, no juggling after the manner of demagogues (McLaughlin, 1905, p. 308).

As such, federalists not only define the terms of moderation, in so doing, they also define that discourse which will be considered decorous in the context of the convention. Ultimately, the substantive claims made throughout the convention discourse particularly by the leading federalist disputants, Smith, Jay, and Hamilton, consistently demonstrate moderation in the grounding of the substantive claims.

In addition, to defining the debate in comparison to the drafting convention, the Federalists also worked to invalidate that discourse that exceeded their predetermined bounds of reason in other ways. Specifically, federalists invoked the use of metaphor in critiquing antifederalist arguments. In this mode, reason was considered "cool" and moderate, while passion is described as, "hot and intemperate". John Jay (1788), writing to Thomas Jefferson about the factions opposing the constitution said that such discourse gave rise to "heats and parties" (3:326). In Federalist No. 2 Jay lauded the Philadelphia convention for its "cool, uninterrupted, and daily consultations; and finally, without having been awed by power, or influenced by any passions except love for their Country" (Federalist No. 2). Hamilton challenged delegates to refrain from the

"heat of argument" and to debate with "cool conviction" (Elliot, 1836, 2:396). It is important to note, Federalists were not the only ones to warn against the heat of passion. John Lansing an antifederalist cautioned against arguments that would put the country "in a flame" while calling for cool deliberation (Schwartz, 1971, 887). Thomas Tredwell, another antifederalist, pointed to the "necessity of proceeding, in our deliberations on this important subject, coolly and dispassionately" (Elliot, 1836, 2:396).

As the debate continued, Hamilton continued to chastise antifederalists for relying on passion and vitriol rather than reason, in their opposition to the constitution. He said that the "talk of tyranny, and the subversion of our liberties, is to speak the language of enthusiasm" (ibid. 257). The importance of this position cannot be overstated. In effect, Hamilton and other federalist are disqualifying, as indecorous, most antifederal argumentation. The reason for this is simple, in opposing the constitution, and calling for a Bill of Rights, Antifederalist pointed to the potential for dire consequences contained within the constitution. In discrediting these types of emotional appeals, the

federalists are essentially removing from the antifederalist arsenal, their chief line of attack (Ibid).

The federalists, on the other hand, did not hold that all passion was invalid. For example, Franklin's speech was treated with respect despite the fact that Franklin evoked patriotic passion in his presentation. This passion, according to the federalists, differed from the kind of emotionalism used by antifederalists because Franklin's patriotic passion was consistent with a conception of the "public good" while antifederal emotionalism was seen as incompatible with reason, and focused on local and individual interests, and as such, factional.

In addition to the above, federalists charged that the afore mentioned types of factionalism were specifically the types of factionalism that the constitution was designed to overcome. They (federalists) pointed again to the Philadelphia drafting convention as an example of appropriate\decorous debate.

#### **ESTABLISHING PRUDENCE**

Throughout the ratification process federalists work to establish decorum in the conventions. It might be said that the ratification of the terms of decorum is critical

to the ratification of the constitution itself. New York is no different.

Federalists saw in their antifederal counterparts, men of intemperate self-interest. In order to secure ratification in New York, it became critical to channel and control those interests. The tool that was employed for this purpose was accommodation or prudence. Madison in Federalist 10 argued that Faction was a critical danger to the country and that had to work to suppress faction by encouraging the "common good." Hamilton, understanding differing needs and interests in a large and diverse country argued the critical need for accommodation. Moreover, Hamilton pointed to the Philadelphia convention as an appropriate example of accommodation. He said, "the truth is, the plan, in all its parts, was a plan of accommodation" it was meant to address the needs and interests of all representatives of the convention (Hamilton, 1836 p. 274). Insofar as prudence is connected to decorum in terms of appropriateness of discourse, federalists are now able to, on some level, establish the terms of the debates. In this way they created the position in which they can argue that all disputants must be willing to sacrifice some of their interests in an

effort to ratify a plan that might be beneficial to all. One can see the issue of accommodation played out in the dispute regarding the constitutional provisions regarding representation.

Antifederalists argued that the system of representation in the constitution did not provide sufficient numbers to adequately represent the people or to protect their liberties. Federalist argued that this argument, in particular, evinced the antifederalist's self-interest. Hamilton explained that the goal of the representational system was to insure that all voters were uniformly represented. He explained that the representatives should have a "strong and uniform" relationship with voters (*ibid.* p. 226). Increasing numbers, according to Hamilton, would not create this relationship but would instead allow for representatives that were deeply tied to local, rather than national interests. Hamilton indicated that this level of representation would "give birth to an unaccommodating spirit of party, which has frequently embarrassed the best measures" (*ibid.*). In addition Hamilton indicted their argument of "probability and chance" saying that it was:



One that would render useless all reasoning upon the probable operation of things, and defeat the established principal of natural and moral causes. It is a species of reasoning sometimes used to excite popular jealousies, but it generally discarded by wise and discerning men. I do not suppose that the honorable member [Governor Clinton] who advanced the idea had any such design. He undoubtedly would not wish to extend his arguments to the destruction of union or government; but this, sir, is its real tendency (ibid. 267).

Ultimately, the federalists argued that the only appropriate form for a new government was also the only form of appropriate argumentation. Discourse that depended upon arousing the passions was discourse that detracted from strength and stability, a core constituent of the new government. One can see this highlighted in the argument revolving around the power of makeup of the senate. Antifederalists argued that the Senate was not constructed as a body designed to protect the liberty of the people. They believed that the Senate might devolve into an aristocratic body. As such, antifederalists argued for term limits, and the right of state legislatures to recall senators (ibid. 289). Hamilton responded to this argument by pointing out that the Senate was designed to be a body that would provide maturity and stability to the national government. He further explained that because of the

structure of the House of Representatives, the government would require "some permanent body to correct the prejudices, check the intemperate passions, and regulate the fluctuations of a popular assembly" (ibid. p. 301). He further pointed out that the people did not have "the discernment and stability necessary for systematic government" (ibid. p. 302).

While Hamilton was criticized for advocating an aristocratic form of government, careful examination of the argument suggests something more nuanced. Hamilton seems clearly to making the point that balance is a critical component of government. He does not argue against the existence of the democratically elected house, but rather argues for the need of a Senate to balance the passions of the popular assembly. In other words, the legislature requires the mutual control of both houses in order to achieve balance. Similarly, as Hamilton criticized the self interest of the antifederalists, he also criticized the lack of balance in their positions. Moreover, while the charge of self interest might be leveled at Hamilton it seems clear that his argument is not that there is no room for self interest in prudential discourse, but merely that

such discourse cannot be based solely on uninterested or self-interested.

James Jasinski points out that in considering prudence it is necessary to understand the interplay of accommodation and audacity. Audacity, according to Jasinski, "is the process of using traditions, even as they are being destabilized, as a means of crafting political innovation" (Jasinski, *forms and limits*, p. 43). In explaining the relationship of these two concepts, Jasinski interposes Garver's "reconstruction of Machiavellian prudence" which links prudence and audacity in an "antagonistic yet symbiotic" relationship (*ibid.*). The tension that Jasinski highlights is what he calls the foundation on the "prudential heritage inherited by the nation's founders and [that] the discursive play between these alternative conceptualizations of prudence can be found in the central controversies of the late eighteenth and nineteenth century (*ibid.* 29). Jasinski explains that for the constitutional generation audacity was key because through its use they "prudentially destabilized the Confederation in order to preserve the Union" (*ibid.* p. 33-34).

This dual understanding of prudence and audacity is critical to understanding the rhetorical strategies of the ratification discourse. However, while Jasinski highlights the tension between accommodation and audacity, he pays inadequate attention to the symbiotic nature of the two concepts, and the ways in which this symbiotic relationship is critical to the federalist's arguments in favor of the constitution. In other words, Hamilton et al. essentially argue that while the constitution might represent destabilization of the order (audacity), this destabilization is balanced by the accommodation of varied social influences and needs, as well as invocation of "classical prudential discourse of accommodation" (ibid. p. 43).

In applying the above understanding to the discourse surrounding representation one finds Hamilton praising both the strength and stability or "firmness" of the system of representation while also extolling the energizing virtues that will reinforce national prosperity (Elliot, 1836 p 2:258). Throughout the debates, Hamilton consistently and frequently invoked terms like "strength and safety", "stability and energy" and even "strength and confidence" in defending the audacity represented by the departure from

the articles of confederation (ibid. p. 258). Ultimately Hamilton explained that while the system of representation under the new constitution represented change, it was change coupled with stability. Moreover, he [Hamilton] indicated that the coupling of the Senate with the popular House of Representatives would help ameliorate the "instability that would arise from the prejudices that govern the public deliberation and the passions that rage in the councils of the Union" (ibid).

In essence, Hamilton's argument is that past republican governments failed because of the flaws in human nature itself. In order to correct for the passions of the people the constitution sets out to create a representative body that will combat the excesses of human nature, the Senate. While the Antifederalists were hard pressed to argue against the wisdom of a more moderate body, give the strictures the federalists attempted to place on the debate itself, some like Melancton Smith (1836), argued that a limit of Senatorial terms was a "proper medium" or middle ground that would allow for the stability that a Senate might provide while also protecting the sovereignty of the state government (ibid. p. 309).

The point here is that Hamilton and the federalists argued that a national government required the energy to solve the nation's ills, and the caution and stability to protect the liberties of the people and provide for the interests of the nation at large. This is increasingly clear as one reads Hamilton's criticism of the nation under the Articles of Confederation:

Our error has been of a very different kind. We have erred through excess of caution, and a zeal false and impracticable. Our councils have been destitute of consistency and stability. I am flattered with the hope, sir, that we have now found a cure for the evils under which we have so long labored. I trust that the proposed constitution affords a genuine specimen of representative and republican government, and that it will answer, in an eminent degree, all beneficial purposes of society (ibid. p. 259).

Hamilton's view on the above is not unique. John Jay, writing to Chevalier de Bourgoing after the convention explained that the constitution would provide for the nation "a greater degree of stability and efficiency to our national government than it has hitherto experienced" (1949, 3:356). All of this is important because through this line of argumentation, the federalist establish the position that accommodation and audacity can be complementary. They break the dichotomy between passive accommodation, and active audacity, and join the two ideas

together in such a way as to create the possibility for incredible governmental change while still providing for strength and stability. In addition, the consistent application of accommodation to the overall federalist position made the argument that the constitutional system endangered the liberty of the people increasingly untenable.

As the federalists continued to advance their position, the clearest line of attack remained the natural aristocracy that the antifederalists saw in the new Senate.

#### **RHETORICAL CONFLICT**

The New York Convention began to show serious signs of strain by the third week. Hamilton argued that under the articles New York often paid more than its fair share in taxes to the national government due to the unwillingness of other states to pay their fair share, and he presented papers to prove his case. (Elliot, 1836, p. 2:360). While Miner (1921) describes this as one of the most important speeches Hamilton gave at the convention, it also seems to have been the impetus for a great deal of conflict to follow, as well as a break down in decorum (p. 110). While Hamilton argued that he made this argument solely to rebut the antifederalist position that taxation and the ability

to raise a national army were destructive to the liberties of the people; the antifederalists claimed that he was trying to embarrass them by showing an inconsistency in their position, ultimately challenging their integrity. In response to Hamilton's attacks, the antifederalists attempted to introduce amendments that further heated and exacerbated the debates.

Hamilton immediately argued that in exploring the antifederal amendments "important proofs" would have to be explored that might be injurious to the sensibilities of some of the disputants. For example, Hamilton explained that the plan was problematic in that it lacked a "deliberate and extensive design" (Bailey, 1993 p. 2:824). While this provoked a rebuke from the antifederalists, it did not alter the plan, and Hamilton later offered that their "general surmises" were without merit, reflecting a discourse that did not seek the "discovery of truth" (ibid. p 825). Moreover, Hamilton used this opportunity to question the desire of the antifederalists to create a "strong united government" (ibid.). Finally, Hamilton stoked the fire by arguing that the truth of his positions "must strike every intelligent mind" (Ibid. 826), while



antifederalist arguments were "illogical", "improper", "unjust", and "absurd" (Ibid.).

Hamilton ultimately argued that the antifederal position regarding taxation was "unjust and unfair and that it was altogether destitute of virtue and prudence" (Ibid. 828). He said of their positions that they "were in the old track of jealousy and conjecture" and that the "premises are as false as their conclusion" (Ibid. 829). The essence of his position was that taxation was a necessary condition of any government and that whether the taxes were direct, or requisitioned, as under the Articles made, there was little difference in terms of the role of the representative. Moreover, Hamilton posited that since the new system would be more equitable, based on the fact of the refusal to comply under the old system, the arguments against it were "astonishing" insofar as they created a "logical" dilemma that the antifederalists simply could not escape (Ibid. 829).

At the end of the speech Hamilton averred and explained that exhaustion might have caused him to speak more sharply than was appropriate, that he might have overstepped the bounds of propriety. While Hamilton's

attacks had been unrelenting and pointed, he chose to conclude with an apology explaining:

I am apprehensive, sir, that in the warmth of my feelings, I may have uttered expressions which were too vehement. If such has been my language, it was from the habit of using strong phrases to express my ideas...I confess, Sir, that on no subject has my breast been filled with stronger emotions, or more anxious concern. If anything has escaped me, which may be construed into a personal reflection, I beg the gentlemen, once for all, to be assured I have no design to wound the feeling of any one opposed to me (Ibid. 834).

In response to the charges leveled against him that he was acting for personal advantage, Hamilton echoed the concerns that the Massachusetts antifederalists raised about federalist' invocations of their prowess in deliberation for individual gain.

It has been said, that ingenious men may say ingenious things. And that those, who are interested in raising the few upon the ruins of the many, may give to every cause an appearance of justice. I know not whether these insinuations allude to the character of any, who are present, or to any of the reasonings in this house... What reasonable man, for the precarious enjoyment of rank and power, would establish a system, which would reduce his nearest friends and posterity to slavery and ruin?... If today, I am among the favored few, my children, to-morrow, may be among the oppressed many... (Ibid. p. 834-835).

Basically, Hamilton argues that one's position in life is not a guarantee, and that prosperity today might well

lead to obscurity tomorrow. As such it is not in the best interest of anyone to advocate a system, from a position of power, to which they might be subject, uncomfortably in less prosperous times. He reasoned, "it cannot be the wish of any reasonable man, to establish a government unfriendly to the liberties of the people... The suspicion, Sir, is unjust; the charge is uncharitable" (ibid.). Insofar as Hamilton apologizes for his indecorous remarks, Hamilton implicitly recognizes the difficulty of upholding the standard of accommodation that has been pressed upon the debates by the federalists themselves. The French charge' to Versailles said of Hamilton:

Hamilton was a great orator, intrepid in public debate, zealous and even extremist partisan of the Constitution and declared enemy of Governor George Clinton of New York... But has a bit too much affectation and too little prudence (Morris 1985, pg. 5).

While the delegates called upon one another to maintain decorum and accommodation throughout the debates Hamilton is an apt example of the difficulty of this proposition. While Governor Clinton and his allies claimed that Hamilton, in calling the opposition self-interested was a direct assault on the character of the governor

himself, Hamilton called this "an unjust and unnatural coloring of my observations" (Elliot 1836, pg. 2:268). It is important to note that despite Hamilton's disavowal of offence, these kinds of attacks were a common practice of many of the delegates, to attack the character of the opposition, and then use disavowal as a means of defending ones position and character was quite common. As a matter of fact the charges listed above are quite tame when compared to the pre-convention "Phocion" letters. Clearly there is a shift from *ad personam* attacks to a more focused and substantive defense of the constitution.

It should also be noted that Hamilton was not alone in the failure of decorum noted above. Many delegates ignored decorum altogether, and those who did concern themselves with appropriateness were not always consistent in their propriety. Notable among these was Robert R. Livingston.

As indicated above, Hamilton apologized for the inappropriateness of his comments. However, this apology did little to alter the growing hostility within the convention. After Hamilton's address, John Lansing spoke about the potential abuses of the power of taxation (Elliot 1836, pg. 2:371). While Lansing delivered a pointed attack upon the constitution as well as its supporters, the real

affront came at the end of the speech in which Lansing accused Hamilton of dishonesty and inconsistency. He based this charge on remarks Hamilton made in the Philadelphia convention in which Hamilton, indicated that due to hostility that he believed would come to exist between state and federal government, the states ought to be "subverted" (Ibid. pg. 376).

The inconsistency to which Lansing is pointing stems from remarks that Hamilton made in Poughkeepsie regarding the importance of the states in checking the power of the federal government and protecting the liberties of the people. Lansing hopes to convince the delegates that Hamilton's remarks are not a change of heart, but a lie based on necessity. Lansing implies that Hamilton spoke his true feelings in the secrecy of the Philadelphia convention, and is now speaking that which is expedient (Miner, 1921, pg. 114).

Hamilton interrupted Lansing, and "contradicted in the most positive terms the charge of inconsistency" (Elliot, 1836, pg. 2:376). Though the convention reporter did not note the exact contents of Hamilton's objection, he did note that "a warm and personal altercation between those gentlemen... engrossed the rest of the day" (ibid. pg. 376).

The "personal dispute" continued to disrupt the convention the following day as well, and required the intervention of John Jay to restore order to the convention (Kline, 1973, pg 201).

From this point forward Hamilton's role at the convention seems to have been greatly diminished. Taking his place according to Miner (1921) were John Jay, James Duane, and Robert Livingston (pg 115). Jay called for mature reflection, and conceded that the antifederalist fear of uninformed representation certainly had "some weight," but that the amendments proposed by the antifederalists were too problematic to warrant approval (Elliot, 1836, pg 2:380). Following this there was debate over several points until the entry of Robert Livingston into the discussion.

One might argue that from the very beginning of his address Livingston rejected the collegiality that Jay had attempted to restore to the proceedings. Reading Livingston's comments one will find that Livingston seems to ignore almost every principle of prudence and decorum. He [Livingston] opened his remarks by criticizing the antifederalists on several fronts. He pointed out the divisions among the antifederalists, their lack of "fixed

maxims", "random" talk, and inconsistencies in the positions of each delegate's positions (Ibid. pg. 382-383). While Livingston called the antifederalist position erratic and "too delicate to dwell" upon, he nonetheless cited several examples to make his case (Ibid. pg. 383). The most egregious break with civility, though, came when Livingston attacked the antifederalist position that liberty would suffer under the new constitution. Livingston said:

With these melancholy ideas no wonder we mourn for the fair damsel of American liberty, harassed with oppressive laws, shut upon a dismal dungeon, robbed of the light of heaven, and, by a beautiful anti-climax, robbed of the money in her pocket (Ibid.)

Livingston continued the attack by criticizing the "fine reasoning" of the antifederalist position of taxation was "impracticable" as well as "dangerous"

To what should I compare this reasoning? Shall I liken it to children in the market-place, or shall I like it to children making bubbles with a pipe? Shall I not compare it to two boys on a balanced board? One goes up, the other goes down, and so they go up and down, down and up, till the sport is over, and the board is left exactly on the balance, in which they found it. But let us see if we cannot, from all this rubbish pick out something which may look like reasoning (Bailey 1992, pg 2:837).

Livingston's speech is significant for several reasons. First, Livingston represents a strong departure from the decorous accommodation offered by Smith, Jay, and even Hamilton. He [Livingston] challenges the reasoning of his opponents in an era [the enlightenment] where reason and logic are valorized by the society at large. Moreover, he added salt to the wounds by comparing the opposition to children. But the speech is also significant for its style. As can be seen even in the rebuke, Livingston creates powerful imagery, and stirring metaphors. While the language may represent a departure from the accommodation for which the federalists were aiming, the imagery of Livingston's speech soars. This places Livingston in sharp contrast to the plain style employed by others in the debates. Moreover, a more thorough examination of the metaphors Livingston uses reveals an important dichotomy between reasons and passions. Nevertheless, the appeal to pathos that is evident in Livingston's address is clearly inconsistent with the norms of deliberative praxis, and secured for Livingston some condemnation.

On July 2, Gilbert Livingston chastised Robert for his "torrent of illiberality" (Ibid.). He [Gilbert] argued



that the comparison of the opposition to children had the effect of robbing the argument of its strength. He said that this kind of argumentation would not convince anyone to change their positions. Gilbert said "Robert's argument, (if what was said might be called an argument)" was ultimately an inappropriate means of addressing the opposition (Ibid.). However even as he denounced Robert, Gilbert employed many of the same tactics in his rebuttal. He said:

It consisted wholly of brass, without any mixture of clay; and a luxuriance of fancy which that member is famous for, and I suppose for the sake of variety, he has taken it from the feet and toes, where, on another occasion, he had emphatically placed it, and now displayed it wholly in front... When gentlemen will, for the sake of displaying their own parts, or perhaps for worse purposes, depart from the line of propriety, then they are fair game. I cannot suppose however, that it is disagreeable to the member himself, as he appears to delight to dabble in dirty water (Ibid. pg 386).

Ultimately, Gilbert claimed that Robert had damaged himself, and the "damsel of liberty" as well as all who fought to free the country from the grasp of the King in making such indecorous remarks. Nevertheless, Gilbert was not alone in his criticism of Robert Livingston; Melancton Smith also joined the rejoinder with a more restrained critique:

I submit to the candor of the committee, whether any evidence of the strength of a cause is afforded, when gentlemen, instead of reasoning fairly, assert roundly, and use all powers of ridicule and rhetoric to abuse their adversaries. Any argument may be placed in a ridiculous light, by taking only detached parts. I wish, Mr. Chairman, that ridicule might be avoided. It can only irritate the passions, and has not tendency to convince the judgment (Ibid. pg 392).

After such scathing assaults, Robert Livingston offered an apology. However, such apology did little to soothe the passions the original speech had excited, and served only to highlight and reopen feuds that had existed before the convention. Ultimately, Livingston's powerful invective against the antifederalists was such that the prudential discourse was virtually abandoned, and substantive issues ignored (Ibid. pg. 391). Had events not proceeded as they did outside the convention, New York might have become mired in its own animosities.

On June 25, an express rider informed the convention that New Hampshire had become the eighth state to ratify, and on July 2, Governor Clinton was interrupted with the news that Virginia had become the ninth state to ratify, and without amendments. Because the constitution explicitly required ratification by nine states, on July 2, the constitution was now in force. Up to this point in the

debates, the strategy of the New York antifederalists had been to stall in hopes of securing concessions, the news changed that equation dramatically. Rossiter (1966) explains that "the federalists had full reason... to thank Governor Clinton for having stalled his unseeing way into a situation in which to reject the Constitution would have been to invite disaster for New York" (pg. 294).

From this point forward the entire focus of the debates shifted in New York. Miner (1921) points out:

the New York convention abandoned its opposition to the Constitution in large part because the ninth state ratified during the ... debates, leaving New York with the prospect of lonely nationhood to itself (pg. 116).

As a result of these changes, the debates in New York shifted dramatically. No longer was rejection a serious discursive position, despite the numerical advantage held by the antifederalists. From this point forward, the question in New York became a question of amendments.

#### **THE DEBATE FOR AMENDMENTS**

The tone and direction of the New York ratification debate changed on July 3, after news arrived from Richmond. In effect the fight for ratification was over, and the new battleground moved to the call for amendments. In the days to follow the New York antifederalists introduced a total

of fifty-five motions for amendments to the new constitution (Kline, 1973, pg. 210). In addition, as the fortunes of the antifederalists shifted the animosity that was present in the convention before the news seems to have shifted somewhat allowing Hamilton to reemerge. John Jay, writing to Washington sums up his feelings on the convention:

The leaders in opposition seem to have more extensive views than their adherents, and until the later perceive that circumstance they will probably continue combines. The greater number are, I believe, averse to a vote of rejection. Some would be content with recommendatory amendments, others wish for explanatory ones to settle constructions which they think are doubtful, others would be satisfied with less than absolute and previous amendments; and I am mistaken if there be not a few who prefer separation from the Union to any national government whatsoever (Jay, 1949, pg. 3:346).

Ultimately events brought accommodation back into the convention, and cooler heads began to prevail. On July 4, Jay wrote to John Adams of the continued "temper and moderation" that he believed would allow accommodation of recommendatory amendments (Ibid. pg. 347). As the antifederalists surveyed the ground they were left, many realized that their best hope of impacting the new government lied not in rejection or even conditional amendments, but in the Massachusetts formula. Federalists

seeing this shift renewed their push for accommodation on a formula that would allow for ratification. Miner (1921) explains that at this juncture "Hamilton stated his willingness to engage in compromise and to accede in any plan that was reasonable (pg. 117). Moreover, at this juncture, federalists adopted what had been an antifederalist position of asking for an adjournment in order that delegates might consult with constituents.

The ratification of the ninth state substantially changed the federalist outlook in New York. Adjournment, unthinkable a day before the news came in from Virginia, was suddenly the most prudent course for unconditional ratification. Federalist believing that the citizens of New York were not willing to be isolated outside of the new union saw in adjournment an opportunity for the antifederalist to hear their constituents. John Jay cautioned those antifederalists still demanding conditional ratification that such strategy created a risk of rejection or even exclusion from the union (Schwartz, 1971, pg. 889). In one speech Jay, four times, repeated the admonition that conditional ratification was risky, and that the more prudent course was adjournment and consultation with constituents.

In addition to the call for adjournment, New York federalists also issued a subtle threat to the opposition.

Forest McDonald (1979) explains that:

Hamilton and Jay played upon a threat that had been circulated as a rumor for several weeks; they declared that if New York did not ratify, New York City would secede from the state and join the union on its own. Faced with that prospect, the Clintonian majority had no choice but to capitulate. After some negotiations over proposed amendments, designed to make the pill less difficult to swallow, it did so (pg 114-115).

John Jay (1949) writing to Washington said of the threat, it [secession by New York City] "has influence on the fears of the [antifederalist] party" (pg. 3:335). Main (1929) argued:

What had the most weight with the Antifederalists was the thought of possible consequences if New York failed to ratify. The Federalists made much of this point in debate, raising the ominous prediction that if the Constitution was defeated, the southern counties would secede and join the Union. There is no doubt that this threat was made by persons of influence (pg. 238).

Rossiter (1981) explains that "the fact is that New York ratified principally because Hamilton raised the specter of secession by the city and southern counties" (pg. 293-294).

As in the calls for adjournment, the timing of this tactic was critical. Neither of these two positions was tenable in a country in which the union did not exist. While the New York antifederalists began the convention stalling in the hope that New Hampshire would fail to ratify, or even call for conditional amendments, the federalists began the end in much the same position, despite their numbers, events or *kairos* have given the federalists the upper hand.

#### **ACCOMMODATION AND AMENDMENTS**

New York antifederalists did not discover amendments at the end of the discourse, like many of the other states, amendments were a part of the process of objection. For the Federalists the challenge was to avoid amendments altogether, or secure ratification along the Massachusetts model; ratify and recommend amendments to be ratified later. In 1776, George Campbell wrote that "reliance upon experience and probability was a primary feature of rhetoric" (pg. 746). In much the same way, Federalist argued that the most significant feature of the new constitution was its reliance on experience and perfectibility, through the process of amendments. The constitutional generation did not believe that it was their

task, or even a goal to create a governmental model that would last into perpetuity, instead they created a government that could be adjusted and perfected as flaws were revealed. Jefferson himself indicated that governments were cyclical in nature; he estimated that the potential lifespan of any government was approximately 20 years. From this thinking Jefferson uttered the famous quotation "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure" (Boyd, 1955, p. 356).

Given this, consideration of amendments was not objectionable to the federalists; they did not believe that a perfect system of government had been imagined. Rather they believed that practice would reveal actual rather than hypothetical flaws that could be corrected. As such, while antifederalists often relied upon potential theoretical flaws, federalists preferred to move from abstraction to practicalities. Eugene Garver (1987) explains that for Machiavelli "practical judgment on particulars is more reliable than that on generalities" (p. 157). As such the federalists are able to argue that the more prudent course is to make adjustment as need based on real practical exigencies.



The above is clearer when applied to Hamilton's debate with Melancton Smith regarding representation. Hamilton pointing to the clause that allowed Congress to adjust the numbers of representative after three years, and then every ten was based on the notion that the legislature would be able to determine the appropriate level of representation in practice better than in theory (Elliot, 1836, 2:238). Similarly Garver (1987), making an explicit connection between prudential audacity and experience wrote:

Like Aristotle, Machiavelli encounters a reflexive problem about prudence; prudence requires that one be responsive to shifting circumstances without being passive to them, and the reflective articulation of the principles and materials for prudence also require that the writer find some middle ground between too much universality... and too much particularity (p. 39).

Hamilton and other federalists argued that it was not possible to determine the appropriate number of representatives forever, and as such a legislative body would have to make such judgments as they seemed prudent. He said nobody could "pronounce, with certainty, that it will be expedient to go beyond this number... [E]xperience alone must determine" (Elliot, 1836, 2:239).

Antifederalists, on the other hand, were not willing to allow any such discretion on the part of the new

congress. Smith argued that there must be a higher and exact number of representatives to insure proper representation (Ibid. 243). However, even Smith acknowledged that there could be no mathematical formula that would determine the proper number of representatives to create ideal representation (Ibid. p. 244). Despite his admission, though, Smith continued to argue that increased representation was necessary to insure the adequacy of local interest representation, as well as inclusion of the middle class in congressional ranks, to diminish the power and influence of the natural aristocracy. Nevertheless, Federalists remained firm in their objections. Hamilton proffered that experience not "curious speculation" should guide the discourse (Ibid. p. 259). Jay (1949) acknowledged that while the constitution was an imperfect vehicle it "will become more and more perfect in proportion as their knowledge and experience increases" p. 3:355).

Similarly, after the Philadelphia convention Jay (1949) mused to John Adams his hope that, "experience and the good sense of the people will correct what may prove to be inexpedient" (Ibid. p. 258). In each case it is the federalist intention that prudence should guide any changes or alterations to the governmental plan, not speculation

and passion. While the federalists never contended that the constitution was perfect, they argued consistently that corrections required experience. Garver (1987) explains, "noting assures that a prudential action will be correct; the rightness and the success of a prudential action are always open to debate and to refutation by practical failure" (p. 16). While antifederalists point to comments made by Benjamin Franklin regarding the imperfection of the new constitution, at the end of the Philadelphia convention, Jay (1949) responds to this sentiment in a letter to John Adams:

A compact like this, which is the result of accommodation and compromise, cannot be supposed to be perfectly consonant with the wishes and opinions of any of the parties (pg. 3:258).

Moreover to read Franklin's comments as an assault on the constitution is to take them out of their context. Franklin (1982) did argue that the constitution was imperfect, but he also added that perfection was an unattainable goal, and that this constitution was as perfect as any constitution might be (p. 251). In essence, Franklin argues that the constitution is a product of prudential wisdom, and that prudence dictated that a government be crafted which allowed for its careful

modification as exigency dictated. Franklin explained that government required wisdom, accommodation and experience, without which no government could effectively function (Ibid. p. 251).

This above discourse illustrates the federalist position that perfection was not attainable. Moreover, that wisdom was the accumulation of accommodation and conciliation, in favor of the common good. In the argument in support of ratification the federalist exhibit *phronesis, kairos*, prudence and decorum. They indicated a strong belief that the constitution represented careful audacity that also provided for a degree of stability that was absent from the country under the Articles of Confederation. In the end, though, the federalist argued that barring all other remedies, the constitution allowed for its own amendments in order to insure that, as experience dictated, the government could always provide for the common good in under unforeseeable circumstances as well as "perform continual acts of innovation" (Garver, 1995, p. 34).

#### **JOHN JAY**

As indicated above, the interplay between Hamilton and the antifederalists did not always demonstrate the

accommodation and conciliation that the federalists hoped to demonstrate in New York. While ratification was of paramount importance, governing was still going to be necessary at the end of the contest, and with this in mind, the prudent choice clearly called for accommodation at the end of the convention.

Hamilton, who took a strong role after the news from New Hampshire and Virginia altered the landscape in New York, began, again, to step back. Jay clearly was the federalists' middle ground, and while ratification seemed all but assured at this stage, the Clintonian faction was pushing conditional amendments. At the beginning of the second week of July, John Lansing and the more virulent wing of the antifederalists offered amendment to the constitution to be approved before New York ratified. With these amendments the ratification of New York was to be "upon condition" of acceptance of the proposed changes to the constitution. On July 11, John Jay replied to Lansing with a resolution for ratification. Jay's resolution included explanatory and recommendatory amendments which "might be deemed to be useful, or expedient" (Elliot, 1836, p. 2:410). Melancton Smith opposed the federalist call for recommendatory amendments but in Private conversations

"Smith acknowledged that he would favor recommendatory amendments rather than risk rejection" (Schwartz, 1971, p. 893). Gilbert Livingston recorded Williams' prudential call for an accommodation that would allow for action:

The questn. Is wheather [sic] we shall adjourn or not-[William] wishes a middle line--cannot vote for a rejection--& cannot vote for an unconditional adopn. -wishes some mode may be thot. of (ibid. p. 893).

After a few more days of debate Lansing resumed his call for conditional ratification. Lansing demanded a bill of rights prefixed, and amendments subjoined (Elliot, 1836, pg. 2:411-412). On July 23, Samuel Jones, a more moderate antifederalist called for an amendment to Lansing's motion changing the words "upon condition" to "in full confidence" (Kline, 1973, p. 206). Melancton Smith then delivered an address in which he restated his belief that the constitution was "radically defective" (Bailyn 1993, p. 2:852). Nevertheless, Smith argued that ratification in Virginia as well as the possibility of secession by southern New York convinced him that amendments could not be made prior to ratification. He said, "the dictate of reason and duty" required him to "quit his first ground, and advance" by supporting Jones' motion (Ibid). Jones motion passed by a very narrow margin, and as a result

Lansing called for a vote to allow New York to withdraw from the union if amendments were not made in a specified time period. Jay and Hamilton both argued that such a condition was not a real ratification. Moreover, Hamilton posited that such an action would engender bad feeling between New York and other states; he argued that such a position would be seen as arrogance (Hamilton, 1962, pg. 5:177-178). In addition Hamilton read a letter from Madison that indicated that such ratification was a rejection rather than an effective ratification. Madison said, "in short any condition whatsoever must violate the ratification" (Ibid. pg. 184-185). The federalists called, once again, for "an accommodation... [and to] conclude the business with harmony and to the satisfaction of both parties" (Ibid. p. 195).

After this call, federalists led by Hamilton issued a call for a second constitutional convention to consider the amendments proposed by New York antifederalists (Bailyn, 1993, p. 1:1098). John Jay indicated that the call and the circular letter would show compromise and help the antifederalists to save face. He considered it a cheap price to "pay for ratification" (Monaghan, 1935, p. 297). In addition, the call for a

second convention had little or no cost for the New York Federalists, the resolution was not binding, but allowed all in New York to unite behind a single cause.

In the end, Jay played a leading role in establishing a compromise ratification position with the antifederalists. Smith, Jay, Hamilton, and Lansing; prepared a letter to circulate among all New York delegates. This letter enshrined the principles discussed throughout the ratification process. It spoke of accommodation, of security and experience, of harmony and common good, and it tied all of these to wisdom. The letter read in part:

As we desire nothing more than the amendments proposed by this or other states be submitted to the consideration and decision of general convention, we flatter ourselves that motives of mutual affection and conciliation will conspire with the obvious dictates of sound policy to induce even such of the states as may be content with every article of the Constitution to gratify the reasonable desires of that numerous class of American citizens who are anxious to obtain amendments of some of them.

Our amendments will manifest that none of them originated in local views, as they are such as, if acceded to, must equally affect every state in the Union. Our attachment to our sister states, and the confidence we repose in them, cannot be more forcibly demonstrated than by acceding to a government which many of us think very imperfect, and devolving the power of determining whether that government shall be



rendered perpetual in its present form, or altered agreeably to our wishes, and that minority of the states with whom we unite.

We request the favor of your Excellency to lay this letter before the legislature of your state; and we are persuaded that you regard for our national harmony and good government will use you to promote a measure which we are unanimous in thinking very conducive to those interesting objects (Hamilton, 1962, P. 5:196).

After the circulation of the letter, Lansing's motion on the right of secession was put to a vote, the motion failed by a vote of 31 to 28. Smith, Jones and Gilbert Livingston joined the federalists in voting no. On July 26, the New York Convention ratified the constitution by a vote of 30-27.

#### **CONCLUSION**

New York, perhaps more than any other state was a battle ground of extremes. Both sides had hardened positions and in many ways the best minds at their disposal. Prudential wisdom was juxtaposed against theory and suspicion, and rancor and distrust were overcome by moderation and accommodation. Competing alongside the extremist position of the Clintonites were the more moderate voices of Robert Livingston, John Lansing and John Jay. While the New York convention pointed out many of the imperfections in the constitution, it also, explored,

through Alexander Hamilton, the concept of audacious accommodation. In sum the New York ratification convention brings to light the strengths and weakness of prudence and decorum particularly in the hands of people as debaters. But at least as important is the key role played by kairos or timing in the resolution of this debate. Many different roads might have been taken, but instead for the most part the disputants in New York chose unity and accommodation as the wiser course. In 1791 James Madison fulfilled the Federalist pledge by shepherding through congress and the states the first 10 amendments to the constitution. Since ratification of the Bill of Rights, the Constitution has been amended twenty seven times, and each time the discussions surrounding those amendments have harkened back to the original ratification contests in order to glean from these words the original intent and desires of the framers.

**CHAPTER 6****CONCLUSION**

This dissertation began with the assumption that analysis of the constitution through the lens of classical concepts of prudence and decorum would allow greater understanding of the constitution, the discourse that created it, and the reasons for the federalist victory. I also hoped to enhance understanding of how the classical concepts of prudence and decorum functioned. In accomplishing these goals, this analysis has drawn on Aristotle and to a much larger extent, Cicero to inform the concepts used in the analysis. Cornell (1994) points out that the founding generation, by melding classical republicanism with English Whig political thought created a new understanding of both discourse and community, as well as the relationship of the individual to both (pg. 17-18). James Aune (1989) explains that the participants in the ratification debate had to overcome the significant problems of creating a republican government in a large country made up of a multiplicity of varying state interests. He says that "by examining the discourse of the ratification debates, one of the "concrete instances of political judgment", one comes to a wider, but by no means

perfect, comprehension of the philosophies and principles that undergird the constitution (pg. 43-49).

#### **INCREASING OUR UNDERSTANDING OF THE CONSTITUTION**

As I stated early in this examination, the constitution that was submitted to the states in 1787, was not the same constitution that emerged ratified in 1788. Specifically, a bill of rights was expected and later added to codify the rights of the people in the new order. This shift began in earnest in Massachusetts and continued throughout the controversy. As such any examination of the powers and prerogatives granted the new government cannot be understood absent the serious expectation that these privileges and prerogatives would be limited by defined statements of rights. Perhaps more importantly, though, because the constitution was a product of deliberation, understanding of the constitution comes not simply from the text of the document, but from a combination of the texts coupled with the discussion that surrounded the text. In other words we understand and define the Constitution based upon the discourse that surrounded it's ratification.

Given the above understanding, several key areas of understanding that are broadened from studying the text of the ratification discourse. The most significant of these,

for the purposes of this study are representation and rights.

### **Rights**

As indicated above the constitution did not define a specific set of rights in its original. Madison (1976) writes Jefferson regarding the proposed Bill of rights:

My own opinion has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time I have never thought the omission a material defect, nor been anxious to supply it even by *subsequent* amendment, for any other reason than that it is anxiously desired by others. . . . I have not viewed it in an important light - 1. because I conceive that in a certain degree, though not in the extent argued by Mr. Wilson, the rights in question are reserved by the manner in which the federal powers are granted. 2. because there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude (Smith, 1976, pg 427).

Madison clearly believed that the constitution guaranteed rights simply because it limited the rights of the federal government, and because it contained a clause that indicated that those powers not given to the government were reserved to the states and the people. Additionally, Madison believed that delineating rights did not guarantee rights so much as it limited them. Nevertheless, as a result of the discourse of ratification

it became necessary for the Constitution to contain a Bill of Rights. However, it should be noted that we do not understand or interpret these rights in a vacuum; they are interpreted through the lens created by statements like those of Madison. Insofar as we see the text as intertwined with the discourse, we also understand that the discussion of rights is not entirely bound by the text of the Bill of Rights, nor is as nebulous as the statement made by Madison, but somewhere in between. In effect that constitution is better understood as more than a document, but a combination of the document and the discourse in which the contested terms are "recursively constituted and reconstituted" (Kurland, 1987, pg 2).

### **Representation**

In addition to the issue of rights, this investigation also focused on the understanding of representatives both from the perspective of the framers, and from the population at large. As was clear from the outset of the Massachusetts debate, the traditional notions of prudential representation were called into question by the delegate selection process, and specifically by the issuance of binding instructions. In essence, the people of Massachusetts saw the role of a representative as one who

was chosen to reflect the will of the constituent. In this case, the declining role of the representative reflected a shift in the importance of the assembly as a deliberative forum. Increasingly citizens believed that decisions should be reserved for the community and merely ratified by the assembly. While this shift is most clear in the discussion surrounding the Massachusetts debates, the distrust of the "natural aristocracy" is evidenced in all of the debates explored. It was argued that in order to counteract the dangers to liberty that power ambition and opportunity and ambition might create, government had to be decentralized. Bellah and Madsen (1985) explain that in an effort to protect rights people tried to localize government in an effort to police representatives (pg. 35). To enact this on a larger scale constituents limited representatives through the use of instructions, limited empowerment, rotation, term limits, and most seriously, the right of recall. Ultimately, the discourse surrounding this issue demonstrated a shifting locus of control in governmental authority that was not complete but merely beginning in the eighteenth century.

The federalist argued, conversely that the appropriate representation required people of maturity, character,

talent, and experience. They, federalist, argued that prudence would help the representative perceive the greatest good for the greatest number or people, or the "common good" and would exercise power to secure such good. This view is most powerfully articulated by Hamilton in his Philadelphia Convention address. Hamilton calls for the "better sort" within the community to exercise judgment largely free of the constraints of the public at large, limited only by the power of the people to vote for or against a particular representative.

Madison, on the other hand, while maintaining the importance of the natural aristocracy, and the principles of prudential reasoning in representation, saw in the constitution additional protections for securing the rights of the people. Madison believed that factional interests in society, tension between state and federal government, as well as division of powers within the federal government itself acted as a check to protect society from the potential abuses. However, while Madison clearly saw a need to protect society from the abuse of power, he also sought to maximize the potential energies of the representational system. In other words, Madison believed the best way to create a stable energetic government that



was sensitive to the need for the protection of liberty was best achieved through a system of balancing interests.

Madison's vision is most clearly articulated during the course of the Virginia debates as he explains, when pressed by Henry, that this, balancing of interests, is the best way to secure liberty. Madison's formulation reserved for the natural aristocracy, the Senate, as a place of stability and prudential wisdom, and the House as a place for the expression of other segments of society (Brookhiser, 2011, pg. 35).

Nevertheless, the melding of the representation concepts of the ratification debates help clarify the continuing difficulty of defining the proper role of the representative even in today's political culture. Henry Fairlie (1984) writing about the "decline of oratory" bemoans the absence of deliberative oratory in modern political discourse, and sees the roots of this decline in the 18<sup>th</sup> century shift away from classical republicanism. In essence then, one can see that the concept of representative that was written into the constitution was altered by the course and the method of the ratifying debates, and it is not possible to understand the subtle

shift in the concept of representative absent the ratification debates.

Given the importance of analysis of the debates to inform our concepts of rights and representation one might credibly ask what, if any, influence the method and strategies of the debates themselves have on the final outcome of these two components of American Democracy. The answer to the question is best illustrated by the shifts in meaning that occur. Had the federalists pursued different strategies, refusing to negotiate on a Bill of Rights, or even defining rights quite differently, the debates might have taken a different course. Additionally, the federalists willingness to encourage debate in the face of clear challenges to the classical conceptions of representation helped to create a new understanding of representation through the process of the debates themselves.

#### **UNDERSTANDING THE DISCOURSE OF THE DEBATES**

In examining the debates surrounding the ratification of the federal constitution, this exploration has sought to explore the interplay of prudence in a large scale public controversy. As discussed previously, the debates represent a shift in political discourse, from a classical

representative model, to a more populist model that has continued to transform American political discourse.

While this exploration has employed prudence and decorum as a means of unpacking and understanding the debates, the textual exploration of the debates themselves have been critical to this exploration. As Clifford Geertz (1973) explained, in order to understand science, one must first look at the practitioners of science (p. 5). Additionally Geertz explained that in order to appreciate a culture, one should study events within the culture, rather than examining abstract theoretical concepts (p. 17). He writes:

The major theoretical contributions not only lie in specific studies—that is true in almost every field—but they are very difficult to abstract from such studies and integrate into anything one might call “cultural theory” as such. Theoretical formulations hover so low over the interpretations they govern that they don’t make much sense or hold much interest apart from them. This is so, not because they are not general (if they are not general, they are not theoretical), but because, stated independently of their applications, they seem either commonplace or vacant... the essential task of theory building here is not to codify abstract regularities but to make thick description possible, not to generalize across cases but to generalize within the, (p. 25-26).

In essence then, Geertz (1973) explains that the goal is to "draw large conclusions from small, but very densely textured facts; to support broad assertions about the role of culture in the construction of collective by engaging them with complex specifics" (pg. 28). Leff (1993) underscores the complexity of this writing:

The reading and rereading of the text, the analysis of the historical and biographical circumstances that generate and frame its composition, the recognition of basic conceptions that establish the co-ordinates of the text, and an appreciation of the way these conceptions interact with the text and held determine the temporal movement (pg. 168).

As such one understands that in the study of public discourse theory development is achievable if the critic proceeds from the above premises. In other words, the development of theory proceeding from the study of public discourse requires the critic to intertwine the theory with the discourse artifact. As Geertz further notes:

Although one starts any effort at thick description, beyond the obvious and superficial, from a state of general bewilderment as to what the devil is going on—trying to find one's feet—one does not start (or ought not) intellectually empty-handed. Theoretical ideas are not created wholly anew in each study; as I have said, they are adopted from other, related studies, and, refined in the process, applied to new interpretive problems. If they cease being useful with respect to such problems, they tend to stop being used and are more or less

abandoned. If they continue being useful, throwing up new understandings, they are further elaborated and go on being used (pg. 27).

The goal of this dissertation has been to examine theoretical concepts like prudence and decorum through the lens of an actual public controversy, to see the concepts playing out in rhetorical practice. In this way, and using the thinking above, it is then possible to develop "thicker" understandings of the concepts under examination. Clearly, prudence and decorum were employed as a rhetorical strategy in the efforts to create a new national government for the United States. One can see prudence, for example, in the calls for open debate in Massachusetts, in the invocations of character throughout the discourse, in the use of language choices, and even planning of the debates. Moreover, the very construction of the representative model of the constitution is predicated on a model of classical prudence. Stephen Brown (1993) explains in an examination of the discourse of Edmund Burke that "prudence at once constructs and is constructed" through discourse (pg 117).

In addition to prudence, decorum is visible throughout the debates as the federalists wrestled with opposition, and the needs of a broad constituency. For example as Madison sparred with Henry, it was clear that

while the rhetorical style of Henry was soaring and compelling it did not meet the exigencies of the situation, Henry spoke as a revolutionary at a time when the more appropriate choice was policy making. Additionally, federalists chose to reign in Hamilton in New York, in attempt to appear conciliatory and accommodating. While circumstance clearly called for audacity, Federalists were constantly mindful of the potential of overplaying their hand.

#### **WHY THE FEDERALISTS WON**

This analysis began as an examination of an extended public controversy, challenging the notion that the outcome could be attributed to single causes. It is easy, and even tempting to try to find simple explanations for major events and shifts in public policy, but this impulse should be resisted. This is the case when examining the ratification debates.

Using the ratification as a conceptual model, one finds, for example that while Beard argued compellingly for an economic determinism behind the ratification controversy, this lead to a stilted and incomplete understanding of the controversy. Similarly, Jackson Turner Main asserted geographic causes for the divide

between federalists and antifederalists, leaving little room for understanding the effect of the discourse in the controversy. Ultimately, the answer revealed by examination of the discourse is that both economics and geography clearly played a part on the outcome, but even this part is not wholly understandable without an analysis of the discourse.

Quite simply, it is difficult to attribute any single cause to the ratification controversy. Certainly, economics and geography played a part, but there are also clear indicators, that sometimes these did not. To understand the controversy, as well as the government that resulted, one has to examine a multiplicity of causes, perhaps most significantly, timing.

Michael Leff (1993) points out the significance of Kairos in the study of any discursive controversy (pg. 163, 171). In this case one might safely say that the ratification debates required very specific circumstances to even take place. Madison could not have recommended his project to a country with a healthy government, and he probably required crises such as the burgeoning economic problems enveloping the country as well as Shay's rebellion in Massachusetts to initiate his proposal. In addition, the

relatively easy ratification by Delaware, Pennsylvania, New Jersey, Connecticut, and Georgia lent credibility to the constitution and clearly aided the federalists in the process.

Massachusetts created a new template for ratification that allowed the Federalists and anti-federalists to seek and find compromise. Massachusetts also substantially altered the resulting government by authoring a Bill of Rights that came to be the first ten amendments to the new Constitution. The Massachusetts formula appeared to have influenced both Virginia and New York delegates. In addition, as the process of conventions proceeded, the ratifying states added subtle pressure to those still considering. For example, South Carolina brought ratification a step closer, influencing the delegates in Virginia. While the delegates debated in New York, New Hampshire ratified, creating a legal union that gave the federalists an opportunity to audaciously secession if recalcitrant antifederalists refused to compromise. This forced upstate antifederalists to retreat from their tactic of obstruction, and return to the discourse. On the other hand, the federalists wisely did not overplay their hand,



and withdrew pressure in order to accommodate the sensibilities of the more moderate antifederalists.

The above examples make clear the notion that while timing was critical to the success of the ratification project, ratification did not require perfect timing. Ratification did however require one to be sensitive to the surrounding context. The success of the federalists lied as much in their sensitivities to the circumstances surrounding them, as it did in their willingness to remain cognizant to the sensibilities of the opposition. In making decorous choices of accomodation and compromise, the federalists were able to identify with the opposition, as well as dispel arguments about the heavy handedness of the natural aristocracy they were seen to be advancing.

While timing and circumstance were important, this investigation involved the application of prudence and decorum augments to aid our understanding of the success of the federalists in advancing the constitution. In examining the debates in Virginia, it became clear that while Patrick Henry brought great rhetorical skill to bear in opposition to the constitution, he did so as a revolutionary in a time when problem solving and compromise was the more decorous choice. In New York the large

antifederal contingent required that federalists maintain a conciliatory stance in an effort to forestall calls for a second convention. At the same time New York delegates anxiously awaited the changing circumstances that would surely come with ratification in Virginia and New Hampshire.

Ultimately, this dissertation has argued that the constitution is a product of a discursive process influenced by the norms of prudence and decorum, and that it and the discourse that surrounded its ratification broaden our understanding of both. It is not simply a static document, but the sum of the deliberations that went into its ratification. The federalists did not prevail because the events were on their side, nor did the antifederalists fail because economics were against them. Federalists and antifederalists alike engaged great speakers like Patrick Henry, and Alexander Hamilton, as well as great thinkers like James Madison and Elbridge Gerry. In sum, neither side succeeded or failed over a single issue or cause. The ratification of the federal constitution happened because a constellation of events came together at the right time, and a people were willing to deliberate and compromise regarding the best means of

dealing with the circumstances in which they found themselves.

Ultimately, the discourse coalesced around a single issue that reflected a multitude of concerns and that issue was a Bill of Rights. The Bill of Rights, like the rest of the Constitution, is not the product of a single argument or even constellation of arguments. The calls for the Bill of Rights emerge despite the heated and acrimonious discourse separating the delegates. As battle lines were being drawn by men like Henry, and Hamilton, Singletary and Clinton; more moderate voices were working to create a workable national governments. Into this backdrop emerged the Bill of Rights.

The absence of a Bill of Rights from the original Constitution should not be seen as a reflection of intent, nor does its adoption suggest a unitary interest. Instead, the Bill of Rights reflects an intersection of interests and objections finding some solution in its crafting and later adoption. The issues dealt with range from representation, and taxation, to a standing army, and economic divisions. In addition, it also satisfied the basic antifederalist objection; that the Constitution failed to safeguard individual liberties. The centrality

of liberty to eighteenth century political thought, as well as its centrality in fomenting rebellion against Great Britain a decade earlier created a powerful and compelling argument for the antifederalists. However, despite the power of this position, it was not sufficient, on its own, to overcome the challenges faced by an inadequate government, and deteriorating security. The constitution was created and considered because the new country faced real and serious problems that required some sort of solution. The Bill of Rights, and the Massachusetts solution allowed the Federalists to accommodate the concerns of the antifederalists, and the antifederalists were allowed a victory that did not stop ratification, but secured the concessions of the federalists with regard to the protection of the liberty of the people.

The end result of the ratification controversy was not one in which Federalists won, and Antifederalists lost, but was instead a discourse in which those who engaged had an effect on the eventual outcome. While there were those who refused to engage, or who lacked the prudential judgment, specifically the Clintonians faction, that might have allowed them to see beyond their objections to the issue of the larger good that was served by the discourse, for the

most part all participants of the discourse can be said to have achieved some form of victory in the ratification debates. Moreover, even some of the most serious opponents, like Henry and Hamilton found much in the plan that they liked. In both cases, though it is not that they failed so much as they refused to be part of the success, in the case of Henry, specifically because joining in the success of the new constitution might have been seen as a violation of his character.

The ratification debates can be seen as a discourse that melded prudence and decorum, to achieve ratification of a government that federalists argued was efficient, stable and energetic. This government survived the colonization and annexation of much of North America, slavery, and the Civil War, the Industrial Revolution and the Great Depression, and the rise and fall of Communism, and two World Wars.

#### **LIMITATIONS**

It is tempting, when embarking on a study of this magnitude to attempt to establish a single cause for the success or failure of a particular event. As indicated in the literature review section, this has been part of the problem with ratification scholarship in the past. There

is no better example of this "single cause impulse" than Beard's economic determinism.

The point is, there is no single cause, or conversely any single explanation for the federalist success in the ratification debates. In all likelihood, had the federalists tried to introduce the constitution immediately after the revolutionary war, it would have failed. One might argue that the federalists needed conflicts like Shey's Rebellion to justify such a radical departure from the principles of the revolution. In addition, had the New York ratifying convention been held earlier, absent the pressure exerted by the ratification of the ninth state, the antifederalists might have been able to force a new constitutional convention since no real union was possible without New York. Further, one must not underestimate the great intellectual power that was brought to bear in favor of the constitution. Finally, one might argue that the federalists benefited from a bit of luck. The Massachusetts conventions excluded some of the strongest intellectual voices in opposition, by the method of representative election; as such Massachusetts federalists had an easier time securing ratification.

In Virginia, while the antifederalists brought great rhetorical power to the convention, the federalist had the singular advantage of James Madison, considered by many to be the primary architect of the constitution, to speak on behalf of ratification. In New York, the federalists benefited from the fact that the economic interests of New York City were aligned in their favor. Had these events occurred differently, the rhetorical skill of the federalists may not have carried the day.

In addition, while examination of the debates through the classically grounded lens of prudence and decorum help the reader to understand how and why contested terms came to be defined and understood as they were, these strategies did not happen in a vacuum. Notions of representation were changing before the revolutionary war. Colonists increasingly distrusted, not simply parliamentary representatives, but the entire classical understanding of representation. As Massachusetts federalists attempted to reconstitute the understanding of representative in such a way as to maintain the notion of prudential reasoning coupled with electoral safeguards, they did so in a historical context.

Moreover, while federalists in New York maintained decorum designed to reduce alienation of upstate antifederalists, even in the face of overwhelming advantage after ratification in New Hampshire created a legal ratification, real concession in New York came not from federalist arguments, but as a result of the positions taken by moderate antifederalist Melancton Smith and Samuel Jones. Smith and Jones together secured approval of the Massachusetts formula in New York, and as such dramatically increased the potential for ratification in New York.

Prudence and decorum are reflected in strategies employed by the federalists, and this examination has attempted to demonstrate how the understanding of these classical concepts can help increasing of not only the ratification controversy, but other controversies as well. Furthermore, this examination has endeavored to explain how and why the disputants in the ratification controversy reacted to issues and hurdles encountered in the midst of this particular public controversy in an effort to secure what they clearly believed was the prudent outcome for the new country, a constitution that combined energy and audacity in an effort to provide a republican government in



such a large territory, and feat that had been hitherto deemed impossible.

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**ABSTRACT****PRUDENCE AND DECORUM AND THE INVENTION OF AMERICAN  
DEMOCRACY: AN EXAMINATION OF THE RATIFICATION DEBATES FOR THE  
FEDERAL CONSTITUTION IN 1787-88**

by

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This dissertation examines the ratification debates for the federal constitution in 1787-88. The goal of this project has been to examine the use of the rhetorical strategies of prudence and decorum as they are employed within the debates in Massachusetts, Virginia and New York.

In Massachusetts, classical notions of representation are challenged by the use of binding instructions given to delegates sent to the ratification debates. In addition, Massachusetts federalists had to overcome objections to the proposed constitution based on the system of representation, as well as the absence of a Bill of Rights. Federalists Challenged these views, and established a method of ratification that garnered the goodwill of the Massachusetts electorate, as well as

creating a method for ratification in many other states that desired more clearly enumerated rights.

In Virginia, Federalist were faced with prospect of debating one of the most popular and respected revolutionaries in the newly independent country, Patrick Henry. While the federalists had the advantage of a constitutional architect, James Madison, to speak for them, as a rhetor, Madison was powerfully overmatched by Henry's rhetorical acumen. In order to overcome this disadvantage, Federalists positioned themselves in the position of the rational problem solvers, leaving Henry's fiery protests largely unanswered, while focusing on the immediate problems of the struggling nation. In this way, while Henry was engaging, and memorable, Madison was by far the more decorous of the disputants.

Finally, in New York, the federalist found themselves outnumbered and, in many ways, powerfully outmatched by the overwhelming opposition of the upstate Antifederalists. To their advantage, federalists had the support of New York City, the most important New York constituency, and the overall ratification clock. In this debate, the federalist managed the necessity of preventing an adjournment, which might have doomed the entire project, while at the same time moving the discussion forward without creating undue enmity from the upstate opposition.



Throughout the debates federalists patiently explained, defined and redefined the contested terms of the constitution, thus creating through discourse, an energetic and effective form of government.

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