

IN DEFENSE OF THE CONSTITUTION'S ATTESTATION CLAUSE

CADE SCOTT PALMER*

An academic consensus asserts that the Attestation Clause in the United States Constitution is not part of the document's legal text. The argument is based on Article VII's requirement that at least nine states ratify the Federal Convention's proposed Constitution before it go into effect. Nine of the thirteen ratifying state conventions included an ostensive transcription of the Constitution's text in their ratifying instruments; but of these nine, only four states included the Attestation Clause in that transcription. Thus, the argument proposes that the Clause, without receiving the support of nine states, was never ratified. This position requires three assumptions. First, the state ratifying conventions must have amended the Constitution at the time they ratified it. Second, the state conventions must have treated the Constitution as a conglomerate of disparate parts to choose from rather than a unitary item, with any clauses not receiving the requisite nine votes removed from the document. Third, the text of the Constitution included in the state ratifying instruments must have represented the legal text of the document ratified by each state, respectively. An investigation of these assumptions and the existence of an "Archetype Constitution" disprove the academic consensus. Not only did contemporaries believe they ratified the Attestation Clause, but the Clause was, in fact, ratified. Thus, the legal text of the Constitution contains the Attestation Clause.

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* B.A. Harvard College; J.D. Baylor Law School

I. INTRODUCTION

It is an alluringly simplistic tale. The Constitution of the United States is, of course, those four pieces of parchment flanked by guards, encased in bulletproof glass, and enshrined in a building styled after Rome's most famous temple to its gods. Lest the pilgrim confuse the parchment for the rotunda's other revered papers, a bronze plaque boldly identifies the four pages as the "Constitution of the United States of America." But this document so ingrained in the national consciousness has not long occupied this privileged place of reverence. In 1883, when historian J. Franklin Jameson visited the library of the Department of State in Washington, he found the Declaration of Independence elegantly mounted for public observance in the central room of the library.¹ In contrast, the parchment papers of the Constitution were ingloriously folded in a tin box and hidden in a closet—sacrilege that suggests what is engraved in bronze may not be so easily set in stone.²

The proposition of a legal Constitution separate from the four pages of engrossed parchment is deceptively intuitive. Errors riddle the engrossed Constitution. The document capitalizes nouns inconsistently and anachronistically, spells Pennsylvania varyingly, uses "it's" incorrectly, and misplaces punctuation. In addition, the parchment includes a paragraph after Article VII noting where the scrivener interlined words, text none consider to be part of the legal Constitution. This ostensibly innocent proposition introduces a certain dubiety into constitutional interpretation. If the parchment in the National Archives is not the "legal Constitution," then what is? Printing presses account for the other contemporaneous copies of the document, but these renditions too are laden with the consequences of human error and editorial discretion. Fortunately, the placement of punctuation in the Constitution has rarely engendered dramatic legal consequences. But rarity is not impossibility. In one such unusual instance, member of the House of Representatives General Alexander Smyth accused John Quincy Adams, publisher of an 1819 journal of the Federal Convention, of willfully falsifying the copy of the Constitution therein to vest absolute and arbitrary powers in Congress.³ The crime consisted of a colon's substitution for a semicolon and a capital "T" for a lowercase "t."⁴ To substantiate the

¹ See J. FRANKLIN JAMESON, AN INTRODUCTION TO THE STUDY OF THE CONSTITUTIONAL AND POLITICAL HISTORY OF THE STATES 5 (1886).

² See *id.*

³ John Quincy Adams, Diary Entry (Jan. 11, 1823), in 34 THE DIARIES OF JOHN QUINCY ADAMS 8 (on file with Massachusetts Historical Society).

⁴ *Id.*

accusation, Smyth compared Federal Convention delegate David Brearley's copy of the draft of the Constitution to that in Adams's journal.⁵ Adams brought various copies of the Constitution to his defense, including the "original roll of the Constitution itself."⁶ Adams notes in his diary that "[t]he punctuation in no two of the copies was exactly the same," and these discrepancies vindicated him of the "conspiracy of colons and Capital Letters."⁷ A conspiracy, Adams thought, which not stymied might have erupted into impeachment proceedings.⁸

The purpose of this Article is to address a more recent instance of consequence spawned by the dubiety innate in relocating the Constitution from its shrine in the National Archives. The engrossed document's Article VII concludes halfway down the fourth piece of parchment. What fills the remainder is a short paragraph indicating the date and place of the Constitution's drafting, a demarcation of the engrosser's interlineations, followed by the signatures of most of the Federal Convention delegates. The short paragraph is known as the Attestation Clause. On the engrossed Constitution, it reads:

done in Convention by the Unanimous Consent of the States
present the Seventeenth Day of September in the Year of our
Lord one thousand seven hundred and Eighty seven and of
the Independance of the United States of America the
Twelfth In witness whereof We have hereunto subscribed
our Names.⁹

The consensus view today, pioneered by Professor Akhil Amar, is that the Attestation Clause is not part of the legal text of the Constitution.¹⁰

⁵ *Id.* at 7.

⁶ *Id.* at 8.

⁷ *Id.*

⁸ *Id.*

⁹ U.S. CONST. art. VII, cl. 2.

¹⁰ See, e.g., Matthew Spalding, *Attestation Clause*, in THE HERITAGE GUIDE TO THE CONSTITUTION: FULLY REVISED SECOND EDITION 392, 393 (David F. Forte & Matthew Spalding eds., 2nd ed. 2014) ("Akhil Amar suggests that attestations and signatures are not normally regarded as part of the substance of a legal document. Nonetheless, the Attestation Clause has traditionally been included in reprintings of the Constitution."); Andrew L. Seidel, *Dating God: What Is Year of Our Lord Doing in the U.S. Constitution*, 3 CONST. STUD. 129, 132–33 (2018) ("Year of our Lord" is not actually in the Constitution. . . . The fifty words of the attestation clause are not part of the legal document itself. Akhil Reed Amar clarified this point . . ."); Michael Rosen, *The Constitution, in Text and Spirit*, AMERICAN ENTERPRISE INSTITUTE (Jan. 11, 2013), <https://www.aei.org/articles/the-constitution-in-text-and-spirit/> ("Amar explores a debate that raged a few years ago about whether the lightning-rod term 'the Year of Our Lord' resides in the Constitution itself. . . . Amar rules the 'Lord' language out of bounds . . ."); Andrew L. Seidel, *State/Church FAQ*, FREEDOM FROM RELIGION FOUND (May 2017), <https://ffrf.org/faq/state-church/item/29479-what-is-the-year-of-our-lord-doing-on-diplomas-government-documents-and->

The Clause, Professor Amar argues, was never ratified.¹¹ The words are not a part of the “official printed Constitution—the democratic one, the legal one, the one actually ratified by the people.”¹² To evidence this contention, he references those acts of ratification passed in the states marking their respective assent to the new government order.¹³ Per Article VII, the Constitution could only be ratified by the consent of nine state conventions.¹⁴ In time, all thirteen states endorsed the new government but did so inconsistently. Nine states included a copy of the Constitution’s text in their ratifying instruments, four did not. Of the nine that did, five omitted the Attestation Clause, while four included it.¹⁵ Professor Amar fixated on the discrepancies between the state ratification instruments, presenting the popular argument in his 2012 book, *America’s Unwritten Constitution*:

Of the nine states that printed the texts of the Constitution that they were ratifying, a majority—five—ended the text with the single sentence of Article VII and thus severed off the witness and signature flourish. Evidently, all five states understood that the witness and signature language was not part of the official written Constitution itself. No matter how we count, this closing flourish was never ratified by the nine-state minimum required by Article VII.¹⁶

the-constitution (“No matter how we count, this closing flourish was never ratified by the nine-state minimum required by Article VII,” concludes Amar in his book *America’s Unwritten Constitution*. This is crucial; those unratified words cannot be part of the legal Constitution according to the terms of the Constitution itself.”); Josh Blackman, *Is “in the Year of our Lord one thousand seven hundred and Eighty seven” not part of the Constitution?*, JOSH BLACKMAN’S BLOG (Aug. 31, 2012), <http://joshblackman.com/blog/2012/08/31/is-in-the-year-of-our-lord-one-thousand-seven-hundred-and-eighty-seven-not-part-of-the-constitution/> (“In response to people who said that the Constitution . . . had no references to God, I would turn to the last page, right after Article VII . . . Apparently, that part—known as the attestation clause—is not actually part of the Constitution! So says Akhil Amar . . . Huh. Go figure. I won’t make that argument anymore.”)

¹¹ AKHIL REED AMAR, *AMERICA’S UNWRITTEN CONSTITUTION: THE PRECEDENTS AND PRINCIPLES WE LIVE BY* 73 (2012).

¹² *Id.* at 72.

¹³ *Id.* at 73.

¹⁴ U.S. CONST. art. VII (“The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.”).

¹⁵ The five states that omitted the Attestation Clause were New Jersey, Maryland, South Carolina, Virginia, and North Carolina. 2 DOCUMENTARY HISTORY OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA 60–61, 121, 138, 160, 290 (Washington, Dep’t of State 1894) [hereinafter *Documentary History*]. The four states that included the Attestation Clause were Pennsylvania, Georgia, New York, and Rhode Island. *Id.* at 43–44, 81–82, 189–90, 307–09. Only Delaware, Connecticut, Massachusetts, and New Hampshire did not include any of the Constitutional text. *Id.* at 25–26, 87–89, 93–96, 141–44.

¹⁶ Amar, *supra* note 11, at 73.

The recent consensus coalescing around what may be dubbed the “establishment hypothesis”¹⁷ strips the legal Constitution of the Attestation Clause and the Federal Convention delegates’ signatures. This Article rejects that consensus and asserts the contrary.

II. DEBUNKING THE ESTABLISHMENT HYPOTHESIS

To defend the establishment hypothesis, one must hold at least three faulty assumptions about the process of ratification in order to cleave the Attestation Clause from the legal text of the Constitution. First, one must assert that the state ratifying conventions amended the Constitution after it left the hands of the Federal Constitutional Convention. Second, the state conventions must have treated the Constitution as a conglomerate of disparate parts rather than a unitary item, with all clauses not receiving the requisite nine votes *de facto* removed from the document. Third, the text of the Constitution included in the ratifying instruments passed by the state conventions must have represented the legal text of the document respectively ratified. For the purpose of this Part, this Article will assume that when the Continental Congress submitted the Constitution to the states for ratification, it included the Attestation Clause as part of the legal text.¹⁸

A. *The Authority to Amend*

For the establishment hypothesis to have merit, the state conventions must have amended the Constitution contemporaneously with their ratification of it. State convention amendment requires, first, that the conventions possess the authority to amend the Federal Convention’s Constitution and, second, that they exercise this authority. If either premise does not hold, the text of the Constitution when ratified by states is ineffectual in discerning whether the Attestation Clause was severed. The inquiry would instead focus on the document transmitted to, rather than from, the conventions.

While it is undisputed the state conventions could ratify and reject the Constitution, their authority to amend was more controversial. The prospect divided authorities and convention delegates of the time. In Pennsylvania, A Plain Citizen explained, “[t]hat the Convention ha[s] given

¹⁷ So named because of Article VII’s language that the Constitution will be “establish[ed]” by the “ratification of the conventions of nine states.”

¹⁸ Part III of this article evidences this assumption, but the establishment hypothesis is irrelevant if the legal text of the Constitution at no point included the Attestation Clause. If the Attestation Clause was not attached to the Constitution when Congress transmitted it to the states, the establishment hypothesis maintains that status quo. If it the Clause was attached upon transmission, then the hypothesis concludes that the states removed the Clause.

no power to the citizens of any state to make the smallest alteration in the proposed plan of government is an incontrovertible fact.”¹⁹ Cato prefaced the ratification debates by arguing the contrary view in his first letter published in New York: “The same medium that gave you this system, if it is erroneous, while the door is now open, can make amendments, or give you another, if it is required.”²⁰ A direct response under the pseudonym Caesar asserted otherwise, contending Cato argued “without proper authority” and that “the door of recommendation is shut, and cannot be opened by the same men . . . we must reject in toto, or, vice versa; just take it as it is; and be thankful.”²¹ In a letter to Edmund Randolph, Richard Henry Lee wrote, “[i]f it be found right, after mature deliberation, adopt it; if wrong, amend it at all events.”²² However, Lee implied that amendment would require an additional federal convention.²³ Cassius responded to Lee that the advice “seems to suppose, that Virginia can amend or omit it at pleasure. The arguments drawn from the facility, with which the last convention was obtained, to prove that another may be procured, are not conclusive.”²⁴ During the New York ratification debates, Alexander Hamilton wrote to James Madison proposing amendments with the condition that if they were not adopted within a time

¹⁹ *A Plain Citizen, To the Honorable the Convention of the State of Pennsylvania, Philadelphia Independent Gazette*, 22 November 1787, in THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION DIGITAL EDITION (John P. Kaminski et. al. eds., 2009), https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/lachlanmcintosh_to_johnwereat.pdf [hereinafter DOCUMENTARY HISTORY DIGITAL].

²⁰ Cato I, *New York Journal*, 27 September 1787, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, <https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/cato1.pdf>. See also, e.g., *A Plain Citizen, To the Honorable the Convention of the State of Pennsylvania, Philadelphia Independent Gazette*, 22 November 1787, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, <https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/aplaincitizen.pdf> (“That the Convention have given no power to the citizens of any state to make the smallest alteration in the proposed plan of government is an incontrovertible fact.”); *Cassius III: To Richard Henry Lee, Esquire, Virginia Independent, Chronicle*, 23 April 1788, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/cassius_iii_4.23.pdf (“This advice seems to suppose, that Virginia can amend or omit it at pleasure. The arguments drawn from the facility, with which the last convention was obtained, to prove that another may be procured, are not conclusive.”).

²¹ *Cæsar I, New York Daily Advertiser*, 1 October 1787, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/caesar_i_10.01.pdf.

²² 1 RICHARD H. LEE, MEMOIR OF THE LIFE OF RICHARD HENRY LEE 78 (Richard H. Lee ed., 1825).

²³ *Id.* (“Experience, and the actual state of things, show that there is no difficulty in procuring a general convention, the late one having been collected without any obstruction; nor does external war, or internal discord, prevent the most cool, collected, full, and fair discussion of this all-important subject. If, with infinite ease, a convention was obtained to prepare a system, why may not another convention, with equal ease, be obtained to make proper and necessary amendments?”).

²⁴ *Cassius III: To Richard Henry Lee, Esquire, Virginia Independent, Chronicle*, 23 April 1788, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/cassius_iii_4.23.pdf.

by the new government, the state would withdraw from the Union.²⁵ Madison responded that “[t]he Constitution requires an adoption in toto, and for ever. It has been so adopted by the other States. An adoption for a limited time would be as defective as an adoption of some of the articles only. In short any condition whatever must [vitiate] the ratification.”²⁶

While the war of words unfolded in the papers, the delegates at the state conventions addressed the practical applications of these arguments. Following the transmission of the Constitution and accompanying texts to the state executives on September 28, 1787, the states began to convene and deliberate. Delaware punched first, ratifying the Constitution in a unanimous vote on December 7. Pennsylvania, New Jersey, Georgia, and Connecticut followed in quick succession, ratifying without apparent amendment and getting the Federalists more than halfway to victory before the conclusion of January 1788.²⁷ The momentum faltered in Massachusetts. That convention’s sharp division prompted a Federalist proposal to amend the Constitution, resulting in a unique manner of acquiescence since dubbed the Massachusetts Compromise. As several of the later state conventions followed this model, the Massachusetts convention’s debates on pre-ratification amendment to the Constitution are instructive.

Cognizant of the dissension in the Massachusetts Ratifying Convention, the Federalists therein turned to a conciliatory measure designed to assuage the Anti-Federalist concerns while still ultimately achieving state ratification. Though gout precluded convention president John Hancock’s attendance at the early portions of the convention, he entered in the waning days to “hazard a proposition” for the delegates’ consideration.²⁸ Hancock proposed that the convention attach recommended amendments to its assent.²⁹ A so-far-mostly-silent Samuel Adams, one of the convention’s swing votes, spoke next to endorse the proposal and motion for its consideration.³⁰ A delegate seconded the motion, and the secretary read it

²⁵ Letter from Alexander Hamilton to James Madison (July 8, 1788), *reprinted by* FOUNDERS ONLINE, NAT’L ARCHIVES, <https://founders.archives.gov/documents/Hamilton/01-05-02-0012-0057>.

²⁶ Letter from James Madison to Alexander Hamilton (July 20, 1788), *reprinted by* FOUNDERS ONLINE, NAT’L ARCHIVES, <https://founders.archives.gov/documents/Madison/01-11-02-0131>.

²⁷ New Jersey and Georgia ratified the Constitution unanimously. The minority in Pennsylvania wrote a publicized dissent which, among other things, complained that the majority restrained them from proposing amendments. NATHANIEL BREADING ET. AL., THE ADDRESS AND REASONS OF DISSENT OF THE MINORITY OF THE CONVENTION, OF THE STATE OF PENNSYLVANIA, TO THEIR CONSTITUENTS (1787).

²⁸ 2 DEBATES IN THE SEVERAL STATE CONVENTIONS, ON THE ADOPTION OF THE FEDERAL CONSTITUTION 122 (Jonathan Elliot ed., 1974) [Hereinafter ELLIOT’S DEBATES].

²⁹ See *id.* at 122–23.

³⁰ See *id.* at 123–25. Among Adams’s few motions prior to his speech endorsing Hancock’s proposal was one that called for the convention to “attend morning prayers, daily, and that the gentlemen of the clergy, of every denomination, be requested to officiate in turn.” *Id.* at 2.

from the table.³¹ Two speeches followed.³² Delegate Daniel Taylor argued that he liked the idea of amendments but had “read the several authorities which provided for the meeting of Conventions, [and] did not see in any of them any power given to propose amendments. . . . [The convention] must take the whole, or reject the whole.”³³ The reason for this omission, delegate George Cabot contended, was because amendments “were provided for in the [fif]th article of the Constitution.”³⁴ Debate concerning Hancock’s proposal wove throughout the remainder of the convention. The delegates first considered their legal authority to act on the proposal. On February 4, two days before ratification, delegate Charles Jarvis delivered a speech ostensibly settling the issue in favor of the convention’s authority to amend:

If we have no right, sir, to propose alterations, there remains nothing further to be attempted, but to take the final question, independent of the propositions for amendment. But I hope the mere assertion of any one is not to operate as an argument in this assembly; and we are not yet waiting for evidence to prove this very singular position, which has been so often repeated. If we have a right, sir, to receive or reject the Constitution, surely we have an equal authority to determine in what way this right shall be exercised. It is a maxim, I believe, universally admitted, that, in every instance, the manner in which every power is to be exerted, must be in its nature discretionary with that body to which this power is delegated. If this principle be just, sir, the ground which has been taken to oppose your excellency’s proposals, by disputing the right of recommending alterations, must be necessarily relinquished. But gentlemen say, that they find nothing about amendments in the commission under which they are acting, and they conceive it neither agreeable to the resolution of the legislature, nor to the sense of their constituents, that such a scheme should be adopted. Let us inquire, then, sir, under what authority

³¹ *Id.* at 125.

³² *Id.*

³³ *Id.* See also *id.* at 138 (“Mr. WIDGERY said, he did not see the probability that these amendments would be made, if we had authority to propose them. He considered, he said, that the Convention did not meet for the purpose of recommending amendments, but to adopt or reject the Constitution. He concluded by asking, whether it was probable that those states who had already adopted the Constitution would be likely to submit to amendments.”); *Id.* at 140 (“Gen. THOMPSON said, we have no right to make amendments. It was not, he said, the business we were sent for However, as to the amendments, he could not say amen to them, but they might be voted for by some men—he did not say Judases.”).

³⁴ *Id.*

we are acting, and to what tribunal we are amenable. Is it, then, sir, from the late federal Convention that we derive that authority? Is it from Congress, or is it even from the legislature itself? It is from neither, sir. We are convened in right of the people, as their immediate representatives, to execute the most important trust which it is possible to receive; we are accountable, in its execution, to God only, and our own consciences. . . . The arguments of those gentlemen who oppose any propositions of amendments, amount simply to this, sir, — that the whole people of Massachusetts, assembled by their delegates, on the most solemn and interesting occasion, are not at liberty to resolve in what form this trust shall be executed. When we reflect seriously and coolly on this point, I think, sir, we shall doubt no longer.³⁵

The majority, conceiving themselves to have justified the power of at least proposing amendment, considered the form thereof. On Hancock's proposal, Adams remarked, "[t]he only difficulty on gentlemen's minds is, whether it is best to accept this Constitution on conditional amendments, or to rely on amendments in future, as the Constitution provides."³⁶ Hancock's proposal supported the latter proposition. Those in favor of the proposal argued that conditional amendments "must operate as a total rejection."³⁷ Again, Jarvis eloquently explained this rationale:

As so many other states have received the Constitution as it is, how can it be made to appear that they will not adhere to their own resolutions? and should they remain as warmly and pertinaciously attached to their opinion as we might be decidedly in favor of our own sentiments, a long and painful interval might elapse before we should have the benefit of a federal Constitution. I have never yet heard an argument to remove this difficulty. Permit me to inquire of gentlemen

³⁵ *Id.* at 151–52. *See also id.* at 154–55 (statement of Fisher Ames) ("Before he proceeded to discuss this question, he wished to notice two objections, which had been urged against his excellency's proposition — that this Convention, being confined in their powers to reject or ratify the Constitution as it is, have no right to propose amendments; and that the very propositions imply the Constitution is not perfect, and amount to a confession that it ought to be rejected. It is well that these objections were not made by a lawyer: they would have been called quibbles, and he would have been accused of having learned them at the bar. Have we no right to propose amendments? This is the fullest representation of the people ever known, and if we may not declare their opinion, and upon a point for which we have been elected, how shall it ever be known?").

³⁶ *Id.* at 124.

³⁷ *Id.* at 152.

what reason we have to suppose that the states which have already adopted the Constitution will suddenly consent to call a new convention at the request of this state. Are we going to expose the commonwealth to the disagreeable alternative of being forced into a compliance, or of remaining in opposition, provided nine others should agree to receive it? As highly as some persons talk of the force of this state, I believe we should be but a feeble power, unassisted by others, and detached from the general benefit of a national government. We are told that, under the blessing of Providence, we may do much. It is very true, sir, but it must be proved that we shall be most likely to secure the approbation of Heaven by refusing the proposed system. . . . The remaining seven states will have our example before them; and there is a high probability that they, or at least some of them, will take our conduct as a precedent, and will perhaps assume the same mode of procedure. Should this be the fact, their influence will be united to ours.³⁸

Fisher Ames emphasized this point in a speech the following morning, arguing that “[i]f we accept upon condition, shall we have a right to send members to the new Congress? We shall not; and, of course, this state would lose its voice and influence in obtaining the adoption of the amendments. This is too absurd to need any further discussion.”³⁹ The majority view of the convention believed that pre-ratification amendment amounted to a rejection. Thus, the only manner of amendment that likewise ratified the Constitution was that done after ratification in accordance with the document’s Article V.

Hancock’s proposal, since labeled the Massachusetts Compromise, achieved its compromising aims. The state ratified the Constitution 187 yeas to 168 nays.⁴⁰ The language of the ratification is of particular interest. First, the act announced that the delegates “in the name and in behalf of the people of the commonwealth of Massachusetts, assent to and ratify the said Constitution for the United States of America.”⁴¹ The assent preceded a second section, which described the proposal for amendment:

³⁸ *Id.* at 152–53.

³⁹ *Id.* at 156–57.

⁴⁰ *Id.* at 181.

⁴¹ *Id.* at 176.

And, as it is the opinion of this Convention, that certain amendments and alterations in the said Constitution would remove the fears and quiet the apprehensions of many of the good people of the commonwealth, and more effectually guard against an undue administration of the federal government, the Convention do therefore recommend that the following alterations and provisions be introduced into the said Constitution And the Convention do, in the name and in the behalf of the people of this commonwealth, enjoin it upon their representatives in Congress, at all times, until the alterations and provisions aforesaid have been considered, agreeably to the [fif]th article of the said Constitution, to exert all their influence, and use all reasonable and legal methods, to obtain a ratification of the said alterations and provisions, in such manner as is provided in the said article.⁴²

Thus, the Massachusetts Convention believed itself to be ratifying an unamended Constitution to which it appended recommended amendments for a future Congress to consider. South Carolina, New Hampshire, Virginia, New York, North Carolina, and Rhode Island all ostensibly adopted the Constitution in the same manner.⁴³

The establishment hypothesis proposes that the state ratification instruments de facto removed the Attestation Clause from the legal text of the Constitution—which is to say these documents amended out the Clause.⁴⁴ To allege this, the establishment hypothesis must prove conventions enacted pre-ratification amendments. Indeed, at least the Massachusetts Ratifying Convention believed it possessed the authority to amend the Constitution before ratification, but it did no such thing.⁴⁵ The establishment hypothesis is against the weight of contemporary authority and accuses the conventions of unintentionally doing that which most voted expressly against. Congress, the state ratifying conventions, and the people all believed the Constitution

⁴² *Id.* at 177–78.

⁴³ See 2 DOCUMENTARY HISTORY, *supra* note 15, at 139–40 (South Carolina), 141–44 (New Hampshire), 145–46 (Virginia), 190–96 (New York), 270–75 (North Carolina), 316–20 (Rhode Island).

⁴⁴ AMAR, *supra* note 11, at 73 (“Of the nine states that printed the texts of the Constitution that they were ratifying, a majority—five—ended the text with the single sentence of Article VII and thus severed off the witness and signature flourish.”).

⁴⁵ See ELLIOT’S DEBATES, *supra* note 28, at 151–52; 2 DOCUMENTARY HISTORY, *supra* note 15, at 93 (“The Convention having impartially discussed, & fully considered The Constitution for the United States of America, reported to Congress by the Convention of Delegates from the United States of America Do in the name & in behalf of the People of the Commonwealth of Massachusetts assent to & ratify the said Constitution for the United States of America.”).

to have been ratified in toto, without amendment, just as the Father of the Constitution insisted it must be.

B. *A Conglomerate of Clauses*

Even if the state conventions did unintentionally amend the Constitution, the establishment hypothesis remains practically impossible. The hypothesis alleges the Attestation Clause, by itself, “was never ratified by the nine-state minimum required by Article VII.”⁴⁶ Thus, the hypothesis proposes a novel and unworkable method of constitutional ratification.

To argue that the conventions could reject a single clause of the Constitution while ratifying the remainder in one cycle of voting is to propose that Congress did not transmit to the states a unitary document for ratification but rather a set of disparate clauses to pick and choose from, with only those receiving approbation from nine states comprising the ratified Constitution. For if the Constitution is treated as a unitary item, a state’s ratification of an altered document would constitute a rejection of the transmitted Constitution and the proposal of a new one. As Hamilton explained in *The Federalist* 85, “[t]he moment an alteration is made in the present plan, it becomes, to the purpose of adoption, a new one, and must undergo a new decision of each state. To its complete establishment throughout the Union, it will therefore require the concurrence of thirteen states.”⁴⁷ James Madison, agreeing with this view, noted its practical

⁴⁶ AMAR, *supra* note 11, at 73.

⁴⁷ THE FEDERALIST No. 85 (Alexander Hamilton) (Clinton Rossiter ed., 1961). *See also* Lachlan McIntosh to John Wereat, Skidoway Island, 17 December 1787, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/lachlanmcintosh_to_johnwereat.pdf (“If, therefore, we reject the whole or any part of it, I fear we will remain, for a considerable time at least, without remedy in the same unconnected state we now are in, as it appears to be so constructed that the whole or none of it must stand or fall together; and should it be found necessary to call another convention of the United States to amend it, we cannot expect the last illustrious members will serve again, and the determination of any others less dignified will not have the same general influence and may miscarry also.”); New York, Hudson Weekly Gazette, 17 June 1788, in Documental History Digital, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/ny_hudson_weeklyjournal6.17.pdf (“To amend before the adoption will require that all the states who are to become members of the new confederacy, should adopt all the amendments that shall be adopted by any one. For example, if five amendments should be proposed by a new general convention, and adopted by one state, every other state that should not adopt them all would effectually reject the constitution. That is, the consent of the whole thirteen will be necessary to obtain any one amendment, however salutary.”); *A Plain Citizen, To the Honorable the Convention of the State of Pennsylvania, Philadelphia Independent Gazetteer*, 22 November 1787, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, <https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/aplaincitizen.pdf> (“[T]he different states, unless when convened together, can never be unanimous in anything. . . . Is there, then, the smallest probability that the alterations, which might please any particular state, would be

application in a speech before the Virginia Ratifying Convention: “[To] call on the States to rescind what they have done, and confess that they have done wrong, and to consider the subject again, it will produce such unnecessary delays and is pregnant with such infinite dangers, that I cannot contemplate it without horror.”⁴⁸

Given the improbability—and, as time progressed, mathematical impossibility—of nine states ratifying the same amendments in this first round of conventions, Anti-Federalists tacitly accepted this premise and proposed a second national convention to coalesce the disparate state amendments into a single document that the states would again vote upon. In the last debate before engrossment at the Federal Convention, Edmund Randolph presented a motion “that amendments to the plan might be offered by the state conventions, which should be submitted to, and finally decided on by, another General Convention.”⁴⁹ Both George Mason and Elbridge Gerry voiced support for the motion, with Mason arguing that a “second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing.”⁵⁰ Every state voted against Randolph’s motion. He, Mason, and Gerry then became the only three delegates present to not pen their names on the engrossed Constitution. However, Randolph’s motion outlived the

accepted by the others? Certainly, there is not. . . . [W]e should have a parcel of narrow, partial and illiberal proposals, jumbled together in one confused chaos, which would require no less than the omnipotent fiat of Jehovah to reduce them to order or to consistency with each other.”); *An Impartial Citizen, Petersburg Virginia Gazette, 10 January 1788*, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/an_impartial_citizen.pdf (“It is seemingly impracticable to adopt another mode of amending, as the very circumstance of this frame of government’s being objected to, strongly proves the difficulty of a general concurrence by all the States, with any proposition. . . . I therefore contend that though we have indisputably a right to propose amendments, yet it is unnecessary and inexpedient to exercise that right on the present occasion, and that rejection or adoption of this Constitution is the alternative.”); *James Innes Speech in the Virginia Ratifying Convention, 25 June 1788*, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/james_innes_speech6.25.pdf (“Virginia is about dictating again to the other States. Eight States have exercised their sovereignty in ratifying it. Yet with a great deal of humility we ask them to rescind, and make such alterations as the ancient dominion shall think proper. States are but an aggregate of individuals. Would not an individual spurn at such a requisition? They will say, It has been laid before you, and if you do not like it, consider the consequences. We are as free, sister Virginia, and as independent, as you are; we do not like to be dictated to by you. But say Gentlemen, we can afterwards come into the Union—We may come in at another time,—that is, if they do not accede to our dictatorial mandate. They are not of such a yielding, pliant stuff, as to revoke a decision founded on their most solemn deliberations, to gratify our capricious wishes.”).

⁴⁸ *James Madison Speech in the Virginia Ratifying Convention, 25 June 1788*, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/jamesmadison_speech6.25.pdf.

⁴⁹ 5 ELLIOT’S DEBATES, *supra* note 28, at 552.

⁵⁰ *Id.* at 552–53.

Federal Convention and found new life on the lips of Anti-Federalists during the state conventions.⁵¹

In opposition to this sentiment, the Federalists argued that a second convention would lead only to further division.⁵² Madison wrote in a letter to Randolph, “a second experiment would be either wholly abortive, or would end in something much more remote from your ideas and those of others who wish a salutary Government, than the plan now before the public.”⁵³ The states did not call a second convention.

Thus, if one assumes the state ratification instruments contained the legal text of the document—as the establishment hypothesis must⁵⁴—and the Constitution is considered a unitary item, the discrepancy between the states on the matter of the Attestation Clause implies that the Constitution was not ratified. No single version of the Constitution received nine votes.⁵⁵ However, the establishment hypothesis asserts that the Constitution was ratified. The hypothesis also maintains that five state conventions did not ratify the Attestation Clause and, in so doing, cleaved the Clause from the document while ratifying the remainder. This assertion of partial ratification

⁵¹ See, e.g., *Candidus I*, *Boston Independent Chronicle*, 6 December 1787, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/candidus_1.pdf (“On the other hand, if the State Conventions do not approve of every paragraph, must the whole plan become null and void? . . . The State Conventions in case any alterations are required, have it in their power to choose delegates to meet again in Continental Convention.”).

⁵² See, e.g., *A Jerseyman: To the Citizens of New Jersey*, *Trenton Mercury*, 6 November 1787 (excerpt), in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, <https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/ajerseyman.pdf> (“[I]s it probable that a future convention (which at this rate would be necessary) would agree on better ground for the whole, than the late one? No, it would be idle to suppose it.”); *A Citizen of New-York: An Address to the People of the State of New York*, 15 April 1788, in DOCUMENTARY HISTORY DIGITAL, *supra* note 19, https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/a_citizen_of_newyork.pdf (“The States of Georgia, Delaware, Jersey and Connecticut, have adopted the present plan with unexampled unanimity; they are content with it as it is, and consequently their deputies, being apprized of the sentiments of their Constituents, will be little inclined to make alterations, and cannot be otherwise than averse to changes which they have no reason to think would be agreeable to their people—some other States, tho’ less unanimous, have nevertheless adopted it by very respectable majorities; and for reasons so evidently cogent, that even the minority in one of them, have nobly pledged themselves for its promotion and support.”).

⁵³ Letter from James Madison to Edmund Randolph (Apr. 10, 1788), *reprinted by* FOUNDERS ONLINE, NAT’L ARCHIVES, <https://founders.archives.gov/documents/Madison/01-11-02-0016>. The letter continued, “It is to be considered also that besides the local & personal pride that wd. stand in the way, it could not be a very easy matter to bring about a reconsideration and recision of what has will certainly have been done in six and probably eight States, and in several of those by unanimous votes.”

⁵⁴ Part II.C considers this assumption in detail.

⁵⁵ Part II.C supports this proposition. As an example, consider the Attestation Clause. Ignoring the divergences in form, four states even included the clause in their ratifying instrument. Thus, the version of the Constitution that includes the Attestation Clause would not meet the nine-state ratification requirement. Additionally, only five states passed a constitution devoid of the Attestation Clause. That version of the Constitution, too, did not meet the nine-state threshold.

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through omission is only coherent if, first, all of the above contemporary authority is incorrect in its characterization of pre-ratification alteration, and, second, if the state conventions conceived of the proposed Constitution as a group of individual parts up for ratification. In the unlikely event the first statement is true, the second is impossible.

A conception of the proposed Constitution as a group of disparate parts up for ratification by the states produces the immediate practical difficulty of determining how large each “part” of the Constitution is. The establishment hypothesis implies that nine states, in compliance with Article VII, must have included the text of the Constitution being ratified in their ratifying instruments. But only nine states did so.⁵⁶ Given Article VII’s nine-state threshold, even one divergence in any state ratification instrument was enough to prevent the divergent part’s ratification. Suppose a state ratifying instrument omitted a word from a clause, incidentally or otherwise. The implications of this omission under the establishment hypothesis are not entirely evident. Is only the word removed from the Constitution’s legal text? The sentence? The clause? The article? Neither reason nor the hypothesis can supply an answer.

Conveniently, the Attestation Clause—the sole focus of this novel mode of constitutional verification—makes for a straightforward application of the rule. The five states omitting the Clause omitted it in its entirety. Though Professor Amar limits the application of the establishment hypothesis to the Attestation Clause, one may extend its reasoning to cleave even more. The state ratification instruments are replete with transcription errors. In comparing the ratification instruments of even the first two states that attempted to inscribe the Constitution therein, a relevant divergence appears as early as Article 1, Section 3:

Pennsylvania Act Ratifying the Constitution

No person shall be a Senator who shall not have attained to the age of thirty years, and be nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.⁵⁷

New Jersey Act Ratifying the Constitution

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the

⁵⁶ It is not immediately clear how the establishment hypothesis would treat the states which did not include the Constitution in their ratification instruments. The very fact that four nearly-sovereign states chose to defer this magisterial framing power to the other states is a further indictment of the hypothesis.

⁵⁷ 2 DOCUMENTARY HISTORY, *supra* note 15, at 29.

United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.⁵⁸

The difference lies in the alteration of “been nine years a citizen” to “be nine years a citizen” by the Pennsylvania convention. Using the logic of the establishment hypothesis, at least the last two letters of the word “been” cannot be considered part of the Constitution’s legal text regardless of how the remaining seven state ratifying conventions wrote the word. The letters “en” were never ratified by the nine-state minimum demanded by Article VII. It is not the same to “be nine years a citizen” and to have “been nine years a citizen.” The imprecise logic of the establishment hypothesis might engender greater implications than even this. The error might doom the sentence, Section 3, or the whole of Article I.

The contemporary authorities agreed that amendment by the state conventions to the proposed Constitution was not as simple as leaving out a clause. Any legally binding addition or omission, assuming amendment as a legitimate power held by the state conventions, required one of two things to occur. First, nine states could approve the amended Constitution in their state conventions. That failing, second, the states could convene another federal convention to rectify their disparate instruments and vote to approve the resulting product according to the procedures elucidated therein.⁵⁹ Neither occurred.

C. Out of Many, None

The establishment hypothesis finally must assume that the transcriptions of the Constitution in the state ratifying instruments represented the exact text of the document ratified. If the legal text is found outside of the state instruments, that several states did or did not include portions of the Constitution therein implies a mistake of no legal significance.

The implications of this assumption are particularly dramatic when one considers them in tandem with the view described above—that a state’s alteration of any portion of the Constitution represented its tacit rejection and the proposal of a new document. If one takes the contemporaneous authorities at their word on that proposition, then the assumption that authorities must discern the legal text from the state ratifying instruments implies that the states never ratified the Constitution. No two renditions of the Constitution wholly match. The documents omit various commas, diverge in the placement of capital letters, and misspell words. Since only

⁵⁸ *Id.* at 48 (emphasis added).

⁵⁹ A second convention could presumably alter Article VII.

nine states included the text of the document they ratified in their instruments, the establishment hypothesis supposes that even one divergence—one haphazard move on the part of a wayward scrivener—was enough to doom the portion to failure and forgo the work of the Federal Convention. The status of the Constitution as a ratified document indicates the hypothesis's apparent incongruity. This piecemeal manner of determining the legal text of the Constitution is untenable.

Ignoring this objection, the Continental Congress likewise operated in a manner inconsistent with the notion of vesting legal relevance in the state texts. After the ninth state—New Hampshire—successfully voted to ratify the Constitution, the Continental Congress formed a committee with the purpose of “putting the said constitution into operation in pursuance of the resolutions of the late federal Convention.”⁶⁰ First, the Continental Congress expressly provided for putting into operation the resolution of the Federal Convention, not the state instruments.⁶¹ Second, if the state instruments did not ratify some preexisting Constitution, the ninth ratification would require action on the part of the Continental Congress to compare this document to the other submitted ratification instruments to discern which parts had been ratified by nine states and which had not. At the moment of New Hampshire's ratification, this action was impossible, as only five states had so far included an inscription of the Constitution in their ratifying instruments.⁶² Government under the Constitution began on March 4, 1789. By that point, only seven states had included the Constitution's text in their ratifying instruments making the side-by-side comparison suggested by the establishment hypothesis impossible until after governance under the document began.⁶³

The record book “Ratifications of the Constitution” emphasizes the lack of relevance assigned to the state ratifying instruments' transcriptions of the Constitution. Following a contemporary practice, the record book took the documents relevant to the Constitution's ratification and copied them within a single volume. Secretary Thomas's office kept the book, and his clerk, Benjamin Bankson, is credited with the entries through 1788.⁶⁴ The book contains first a transcription of the proposed Constitution and the state ratification instruments. In transcribing the instruments, “Bankson's Journal” never includes the portion of the instrument inscribing the Constitution's text

⁶⁰ 34 JOURNALS OF THE CONTINENTAL CONGRESS 281 (Worthington C. Ford et al. eds., 1937).

⁶¹ 2 DOCUMENTARY HISTORY, *supra* note 15, at 161.

⁶² Delaware, Connecticut, Massachusetts, and New Hampshire did not include any constitutional text in their ratifying acts. Rhode Island was the ninth state to include the constitutional text and did not ratify until 1790.

⁶³ North Carolina ratified the Constitution on November 21, 1789, and Rhode Island on May 29, 1790. 2 DOCUMENTARY HISTORY, *supra* note 15.

⁶⁴ See S. Doc. No. 49, at 73 (1st Sess. 1961) (historical notes authored by Denys P. Myers).

and instead interpolates a note referencing the transcription of the Constitution at the start of the book.⁶⁵ If Congress meant to give the text of the constitutions in the state instruments the legal significance proposed by the establishment hypothesis, Bankson inexcusably omits the most crucial parts of the instruments. However, the reference to an earlier transcription, with no effort to note any discrepancies between the constitutions in the state ratifying instruments, indicates that Congress—or at least its secretary—had little interest in what the states said the Constitution was.

D. Conclusion

The establishment hypothesis proposes that because five states' ratification instruments did not include the Attestation Clause in their transcriptions of the Constitution, the Clause did not reach the Article VII threshold for ratification and is therefore not a part of the legal text of the Constitution. By extension, it proposes that even though no state convention or delegate conceived itself to be making a pre-ratification amendment, five did so unintentionally. It proposes that even though contemporary authorities were nearly unanimous in their belief that any amendment amounted to a tacit rejection of the entire Constitution, this amendment did no such thing. It proposes a novel view of ratification where only the portions of the Constitution that nine state ratification instruments included are a part of the Constitution's legal text. And finally, it locates the legal text of the Constitution in the state ratification instruments. If any of the above propositions lack veracity, the establishment hypothesis cannot stand. This Part argues that not one of these essential propositions has any merit.

III. THE ARCHETYPE CONSTITUTION

Debunking the establishment hypothesis does little to verify the Attestation Clause's position in the legal text of the Constitution and instead solely discredits the state ratifying instruments as the arbiter of this fact. One must discover the answer elsewhere. Inherent in the proposition that one can ascertain an answer is the presupposition that there exists a document that is the legal and true Constitution. That document is often called the Archetype Constitution, and its purported existence is neither new nor disputed.

⁶⁵ See RATIFICATION OF THE CONSTITUTION ("BANKSON'S JOURNAL") 1786–91, Roll 10, Target 17 (Nat'l Archives & Records Admin.) available at <https://www.fold3.com/image/9265402>. The transcription of the Maryland Constitution provides one example of the practice. On page 113, Bankson replaces the Constitutional text with "(Vide page 45 @ 70)" with the journal's transcription of the Constitution running from page 45 to 70.

In 1961, the Senate designated an Archetype and printed 10,300 copies of the same as a Senate Document for its personal use.⁶⁶ The Constitution contained within was an accurate reproduction of a September 28, 1787, print by John McLean. This September 28 print was the version of the Constitution transmitted to the state legislatures, ratified by the state conventions, and acted upon by the Continental Congress. Additionally, when the new Congress assembled for its first session under the Constitution, it resolved on July 6, 1789, that a “correct Copy” of the Constitution be prefixed to its first session laws—that copy was also a reproduction of the September 28 print.⁶⁷ This print is the legal Constitution of the United States. It is appended.

This simplistic identification is complicated, but not invalidated, by considering the Constitution’s varied prints. Yet, this obfuscation is necessary for a thorough understanding of the Archetype’s bibliography and the confirmation of Congress as the unlikely arbiter of fact. Before the first state ratification, there had been more than 150 printings of the Constitution.⁶⁸ This explosion of source material compounded the printing errors of the first issues, and, for that reason, the analysis below follows only the printings solicited by authorities.⁶⁹

The first relevant print of the Constitution is a six-page document by the Philadelphia shop of Dunlap and Claypoole done on September 18, 1787. The print originated in the Federal Convention’s waning days when the present states unanimously assented to the Constitution, ordered it be engrossed and 500 printed copies struck on Saturday, September 15.⁷⁰ At its final meeting two days later, the convention delegates signed the engrossed

⁶⁶ See S. Doc. No. 49, *supra* note 64, at 19; See also JOURNAL OF THE SENATE OF THE UNITED STATES OF AMERICA: FIRST SESSION OF THE EIGHTY-SEVENTH CONGRESS 484 (1961).

⁶⁷ ACTS PASSED AT A CONGRESS OF THE UNITED STATES OF AMERICA: BEGUN AND HELD AT THE CITY OF NEW-YORK, ON WEDNESDAY THE FOURTH OF MARCH IN THE YEAR M,DCC,LXXXIX, AND OF THE INDEPENDENCE OF THE UNITED STATES THE THIRTEENTH 3 (1789).

⁶⁸ Leonard Rapport, *Printing the Constitution: The Convention and Newspaper Imprints, August–November 1787*, 2 PROLOGUE J. NAT’L ARCHIVES 69, 89 (1970).

⁶⁹ See generally *id.* See also S. DOC. NO. 49, *supra* note 64. This subject is not contentious. The Center for the Study of the American Constitution names Rapport “an authoritative source on the history of the printing of the Constitution and subsequent reprinting throughout the states.” The Senate approved Myers’s research as a Senate Document.

⁷⁰ See 5 ELLIOT’S DEBATES, *supra* note 28, at 553 (Madison wrote “[o]n the question to agree to the Constitution, as amended, all the states, ay. The Constitution was then ordered to be engrossed, and the House adjourned.”). See also 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 634 (Max Farrand ed., 1911) (McHenry wrote, “[t]he question being taken on the system agreed to unanimously—Ordered to be engrossed and 500 copies struck—Adjourned till monday the 17th.”); 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 70, at 18 (George Washington’s diary entry confirms McHenry’s journal: “adjourned ’till Monday that the Constitution which it was proposed to offer to the People might be engrossed — and a number of printed copies struck off.”).

parchment.⁷¹ At adjournment, Dunlap and Claypoole had a copy of the final text and a deadline of ten o'clock the next morning—the time at which a New York stagecoach was scheduled to depart carrying convention secretary William Jackson, and the newly minted Constitution, to the Continental Congress.⁷² With only a few changes from the earlier prints, the printer easily met the deadline, and the print sped off to the body it proposed to annul. Jackson delivered the engrossed Constitution, a resolution by the Federal Convention recommending its manner of approbation, and a letter of transmittal signed by George Washington to President of the Continental Congress Arthur St. Clair on September 20.⁷³ Jackson likely distributed the printed versions for popular consumption as well. The second relevant print of the Constitution is a four-page Pennsylvania Packet published by Dunlap and Claypoole on September 19. This print likewise appended the resolution of the Federal Convention and the letter of transmittal by Washington. It is often called, if incorrectly, the first public printing of the Constitution.⁷⁴ Among the several Pennsylvania papers which printed the document, the Pennsylvania Packet appears to be the purest.⁷⁵ The third relevant print of the Constitution is the four-page Supplement to the Independent Journal done by McLean in Hanover Square, New York. The print, completed on September 22, 1787, follows the September 19 Pennsylvania Packet.⁷⁶

McLean then printed the Archetype, the final print of the Constitution considered by this Article. On September 28, Congress “Resolved Unanimously that the said Report with the resolutions and letter accompanying the same be transmitted to the several legislatures in Order to be submitted to a convention of Delegates chosen in each state by the people thereof in conformity to the resolves of the convention made and provided in that case.”⁷⁷ The Continental Congress secretary, Charles Thomson, then needed copies of the document for transmission to the legislatures. After some corrections to the Supplement to the Independent Journal, Thomson commissioned 100 copies of this McLean print.⁷⁸ The four-page document began with the Constitution and included the convention resolution,

⁷¹ 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 70, at 648

⁷² See Rapport, *supra* note 68, at 75.

⁷³ See 33 JOURNALS OF THE CONTINENTAL CONGRESS, *supra* note 60, at 488 n.2. The report was read aloud. The journal makes no such note, but it is expressed in a September 21, 1787, letter from William Bingham to Thomas Fitzsimons: “It is unlikely that the engrossed copy was actually read, since printed copies of the Convention text were available and would be more convenient to read. In any case the reading would not show the differences in capitalization and other variations between the engrossed and printed copies.” S. DOC. NO. 49, *supra* note 64, at 55 n. 21.

⁷⁴ See Rapport, *supra* note 68, at 80.

⁷⁵ See *id.* at 82.

⁷⁶ See *id.* at 83–84.

⁷⁷ 33 JOURNALS OF THE CONTINENTAL CONGRESS, *supra* note 60, at 549.

⁷⁸ See S. DOC. NO. 49, *supra* note 64, at 56–57.

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Washington's letter, and the September 28 Congressional resolution transmitting the documents. Thomson drafted a circular letter, signed the prints, and sent the documents to the state executives.⁷⁹ The state executives forwarded the report to their legislatures, which then reproduced it for public consumption.⁸⁰ Several states still possess their copy of this four-page printed Archetype.⁸¹

The establishment hypothesis is grounded in a correct emphasis on the ratification of the Constitution by the states. In a speech before the House of Representatives after ratification, Madison expressed a desire that the interpreters of the Constitution look not to the Federal Convention but those of the states. He said,

As the instrument came from [the Federal Convention] it was nothing more than the draft of a plan, nothing but a dead letter, until life and validity were breathed into it by the voice of the people, speaking through the several State Conventions. If we were to look, therefore, for the meaning of the instrument beyond the face of the instrument, we must look for it, not in the General Convention, which proposed, but in the State Conventions, which accepted and ratified the Constitution. To these also the Message had referred, and it would be proper to follow it.⁸²

Justice John Marshall similarly explained, "[t]he Convention which framed the Constitution was indeed elected by the State legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. . . . From these [state] conventions the Constitution derives its whole authority."⁸³ The document left the Federal Convention mere parchment and materialized into the supreme law of the land with New Hampshire's ratification. The operative question then, and the question that the establishment hypothesis correctly endeavored to answer, is: what exactly did the states ratify?

The congressional print of September 28, as the Constitution mailed to the states for the express purpose of ratification, is the appropriate answer to the inquiry. Further, the copy of the Constitution in Bankson's Journal follows the printed version of September 28, indicating Congress used it as the working text.⁸⁴ After Congress incorporated the September 28 print as

⁷⁹ *See id.*

⁸⁰ *See id.* at 57 n. 27.

⁸¹ *See id.* at 61–62.

⁸² 6 THE WRITINGS OF JAMES MADISON 272 (Gaillard Hunt ed., 1906).

⁸³ *McCulloch v. Maryland*, 17 U.S. 316, 403 (1819).

⁸⁴ *See* S. DOC. NO. 49, *supra* note 64, at 58–59.

the “correct copy” of the Constitution at the beginning of its first volume of laws, official editions of the Constitution for the Government used the print as a guide up through the mid-nineteenth century.⁸⁵

In this manner, the September 28 McLean printing of the Constitution eclipses the hundreds of other prints and manifests as the clear Archetype of the United States Constitution. The Continental Congress sent the print to the state conventions for ratification in 1787.⁸⁶ The states so ratified it. The Continental Congress appealed to it when referring to the Constitution during ratification. The first session of Congress reproduced it as the “correct Copy” of the Constitution in 1789—an adjective never again used to describe a printing of the document.⁸⁷ And nearly two centuries later, the Senate named it the undisputed Archetype.⁸⁸ Professor Amar himself, the pioneer of the establishment hypothesis, has repeatedly recognized the legitimacy of the September 28 print as the Archetype and the Constitution sent to the states for ratification.⁸⁹

On the fourth page of the Archetype, the Attestation Clause and the delegates’ signatures appear below Article VII with only a small space serving as separation. In contrast, the resolution of the Federal Convention is separated from the signatures by the large heading “IN CONVENTION,” which spans the entirety of a column. Similarly, Washington’s letter of transmittal and the subsequent resolution of Congress are separated from each other and the Federal Convention’s resolution by thick black lines.

The packet sent by the Federal Convention to Congress containing the Constitution also supports the Clause’s inclusion in the legal text. As explained above, the secretary of the Federal Convention delivered the engrossed copy of the Constitution together with the resolution of the Convention and a letter of transmittal signed by Washington to the president of the Continental Congress. These texts were more easily distinguished in the originally transmitted documents than in the newspapers, partitioned as they were by pages of parchment. The engrossed Constitution, enshrined today in the National Archives, was neatly limited to four pages. The Attestation Clause and the signatures are featured prominently on the fourth page amongst portions of Article IV and the totality of Articles V, VI, and VII. Proponents of the enactment hypothesis propose we take scissors to this section of the fourth page. This Article is not so bold.

In addition to the Attestation Clause’s inscription on the same page as the ubiquitously accepted portions of the Constitution’s legal text, the

⁸⁵ See *id.* at 65.

⁸⁶ See *id.* at 56–57.

⁸⁷ Akhil R. Amar, *Our Forgotten Constitution: A Bicentennial Comment*, 97 YALE L.J. 281, 287 (1987).

⁸⁸ S. JOURNAL, 87th Cong., 1st Sess. 484 (1961).

⁸⁹ See *id.* at 281; AMAR, *supra* note 11, at 68.

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other documents in the transmitted packet attest to the Clause's intended function. The Federal Convention's resolution resolved that "the preceding Constitution be laid before the United States in Congress assembled."⁹⁰ The resolution's reference to the preceding Constitution can only mean the four pages of the engrossed Constitution when taken in the context of the packet's delivery. There is no other evident division except by page. There is also no indication that "the preceding Constitution" means the four pieces of parchment excluding the attestation and signatures. Similarly, Washington's letter of transmittal uses the referential language of "the Constitution, which we now present."⁹¹ The packet cleanly divided the documents it transmitted by page. The Attestation Clause is on a page which all parties agree includes the Constitution.

However, the discussion of the importance of state ratification above negates the need to consider the Framers' intent. Madison described the document transmitted by the Federal Convention as a "dead letter."⁹² The relevant inquiry is whether the Attestation Clause was ratified. The identification of the Archetype, its inclusion of the Attestation Clause as part of the Constitution's text, and the subsequent state ratification of this Archetype, implies that it was.

IV. CONCLUSION

Even if the above designation of the Archetype is incorrect, an argument for the inclusion of the Attestation Clause and signatures as part of the legal text of the Constitution reasonably need only dispute the legitimacy of appealing to the state ratifying instruments as the source of this text. Nearly every other authorized rendition of the finished Constitution includes the Clause and signatures.

The importance of the Attestation Clause's inclusion is deceptively immense. The attestation dates the document using the form "in the year of our Lord."⁹³ This express religious reference accounts for most of the political relevancy attributed to the Clause. In 2002, the United States Court of Appeals for the Ninth Circuit held unconstitutional the statute which added the words "under God" to the Pledge of the Allegiance.⁹⁴ The Senate attacked this holding as erroneous and argued that the ruling "would lead to the absurd result that the Constitution's use of the express religious reference 'Year of our Lord' in Article VII violates the First Amendment to the

⁹⁰ S. DOC. NO. 49, *supra* note 64, at 19–20.

⁹¹ *Id.* at 22.

⁹² 6 THE WRITINGS OF JAMES MADISON, *supra* note 82, at 272.

⁹³ U.S. CONST. art. VII, cl. 2.

⁹⁴ *See Newdow v. U.S. Congress*, 328 F.3d 466 (9th Cir. 2002).

Constitution”⁹⁵ Christian commentaries in the nineteenth century cited the phrase as a recognition of the authority of Christ by the people of the United States.⁹⁶ Most arguments against the Constitution’s inclusion of the Attestation Clause likewise focus on this dating language.

Thus, this Article further serves to dispute a popular view in academia that the Constitution is a wholly secular document. Indicative of this strain of scholarship, Professor William Martin explained, “[i]n keeping with their determination to separate religion and government, the framers wrote a constitution that was entirely secular.”⁹⁷ Another professor, Steven Keillor, wrote, “[a] ‘remarkably secular’ Convention produced ‘a perfectly secular text.’”⁹⁸ Similar proclamations of an absolutely secular Constitution fill church-state scholarship.⁹⁹ The inclusion of the “year of our Lord” verbiage serves to contravene these all-encompassing statements of secularity.

Arguments with less traction than the establishment hypothesis discuss how the “year of our Lord” text entered the document, whether the Federal Convention delegates voted on it, and why other dates in the

⁹⁵ An Act to Reaffirm the Reference to One Nation Under God in the Pledge of Allegiance, Pub. L. No. 107-293, 116 Stat. 2057. 4.

⁹⁶ See, e.g., JASPER ADAMS, *THE RELATION OF CHRISTIANITY TO CIVIL GOVERNMENT IN THE UNITED STATES: A SERMON*, PREACHED IN ST. MICHAEL’S CHURCH, CHARLESTON, FEBRUARY 13TH, 1833, BEFORE THE CONVENTION OF PROTESTANT EPISCOPAL CHURCH OF THE DIOCESE OF SOUTH-CAROLINA 32 (2d ed. 1833) (“The phrase, then, our Lord, making a part of the dating of the Constitution when compared with the commencing clause, contains a distinct recognition of the authority of Christ, and of course, of his religion by the people of the United States. . . . The date of the Constitution is twofold;—it is first dated by the birth of our Lord Jesus Christ; and then by the Independence of the United States of America. Any argument which should be supposed to prove, that the authority of Christianity is not recognised by the people of the United States in the first mode, would equally prove that the Independence of the United States is not recognised by them in the second mode. The fact is, that the Advent of Christ and the Independence of the country, are the two events in which of all others, we are most interested; the former in common with all mankind, and the latter as the Birth of our Nation.”). B. F. Morris references this last sentence of Adams’s sermon, seemingly as proof of his proposition that, “The constitution itself affirms its Christian character and purpose.” BENJAMIN FRANKLIN MORRIS, *CHRISTIAN LIFE AND CHARACTER OF THE CIVIL INSTITUTIONS OF THE UNITED STATES, DEVELOPED IN THE OFFICIAL AND HISTORICAL ANNALS OF THE REPUBLIC* 262 (1864).

⁹⁷ WILLIAM MARTIN, *WITH GOD ON OUR SIDE: THE RISE OF THE RELIGIOUS RIGHT IN AMERICA* 375 (1996).

⁹⁸ STEVEN J. KEILLOR, *THIS REBELLIOUS HOUSE: AMERICAN HISTORY & THE TRUTH OF CHRISTIANITY* 96 (1996).

⁹⁹ ROBERT BOSTON, *WHY THE RELIGIOUS RIGHT IS WRONG ABOUT SEPARATION OF CHURCH AND STATE* 6, (2d ed. 2003) (“The Constitution fashioned in 1787, largely the work of Madison, is a secular document.”); BILL PRESS, *HOW THE REPUBLICANS STOLE CHRISTMAS: THE REPUBLICAN PARTY’S DECLARED MONOPOLY ON RELIGION AND WHAT DEMOCRATS CAN DO TO TAKE IT BACK* 51 (2005) (“The farsighted Americans who gathered in Philadelphia . . . founded the nation on a secular document.”); Brooke Allen, *Moral Minority: Our Skeptical Founding Fathers* xiv (2006) (“The United States of America was a purely secular project. The absence of God in the new nation’s Constitution was a highly deliberate, indeed a vital part of that project.”); but see MARK DAVID HALL, *DID AMERICA HAVE A CHRISTIAN FOUNDING?* 21–55 (2019).

Constitution did not use the same phraseology.¹⁰⁰ These inquiries are irrelevant to the question addressed in this Article. They relate only to the significance ascribed to the phrase and not to its presence in the legal Constitution. It is of no matter how the “year of our Lord” flourish entered the Constitution, so long as the states ratified it. A similarly interesting inquiry exists as to why five state conventions failed to recognize the Attestation Clause and signatures as part of the Constitution. The omission, however, is not to be attributed legal importance. The purview of this Article is confined to the legitimacy of the Attestation Clause and signatures’ placement in the Constitution’s legal text.

¹⁰⁰ See, e.g., Seidel, *supra* note 10.

APPENDIX

Original Copy of the Constitution of the United States, attested by Charles Thomson Secretary to the Confederation Congress.
Issued 28 September 1787.

(I)

WE the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I

Sec. 1. ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sec. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New-Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Sec. 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice-President of the United States shall be President of the senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sec. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sec. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Sec. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 8.

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Sec. 8. The Congress shall have power

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States: To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads: To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Sec. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title,

of any kind whatever, from any king, prince or foreign state.

Sec. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and controul of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Sec. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately chuse by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner chuse the President. But in chusing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall chuse from them by ballot the Vice-President.

The Congress may determine the time of chusing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services,

services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States."

Sec. 2. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next Session.

Sec. 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The President, vice-president and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Sec. 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior court, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Sec. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in

the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Sec. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.

ARTICLE IV.

Sec. 1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

Sec. 3. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sec. 4. The United States shall guarantee to every state in this union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

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The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

A R T I C L E VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

DONE in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our Names.

GEORGE WASHINGTON, President,
And Deputy from VIRGINIA.

NEW-HAMPSHIRE. { John Langdon,
Nathaniel Gilman,
Nathaniel Gorham,
Reuben King, }
MASSACHUSETTS. { William Samuel Johnson,
Roger Sherman,
Alexander Hamilton,
William Livingston,
David Brearley,
William Paterson,
Jonathan Dayton,
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Governor Morris,
George Read,
Gunning Bedford, Junior,
John Dickinson,
Richard Basset,
Jacob Roose,
James McHenry,
Daniel of St. Tho. Jenifer,
Daniel Carroll,
John Blair,
James Madison, Junior,
William Blount,
Richard Dobbs Spaight,
Hugh Williamson,
John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler,
William Few,
Abraham Baldwin,
And WILLIAM JACKSON, Secretary.

CONNECTICUT.
NEW-YORK.
NEW-JERSEY.

PENNSYLVANIA.

DELAWARE.

MARYLAND.

VIRGINIA.

NORTH-CAROLINA.

SOUTH-CAROLINA.

GEORGIA.

IN CONVENTION,

MONDAY, September 17, 1787.

P R E S E N T,

The States of New-Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia:

R E S O L V E D,

THAT the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each Convention assenting to, and ratifying the same, should give notice thereof to the United States in Congress assembled.

Resolved, That it is the opinion of this Convention, that as soon as the Conventions of nine states shall have ratified this constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this constitution. That after such publication the electors should be appointed, and the senators and representatives elected: That the electors should meet on the day fixed for the election of the president, and should transmit their votes certified, signed, sealed and directed, as the constitution requires, to the secretary of the United States in Congress assembled, that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the senate, for the sole pur-

pose of receiving, opening and counting the votes for president; and that after he shall be chosen, the Congress, together with the president, should, without delay, proceed to execute this constitution.

By the unanimous Order of the Convention,

George Washington, President.

William Jackson, Secretary.

In Convention, September 17, 1787.

S I R,

WE have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the general government of the Union; but the impropriety of delegating such extensive trust to one body of men is evident—Hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all—Individuals entering into society, must give up a share of liberty to procure the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the Constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State is not perhaps to be expected; but each will doubtless consider, that had her interests been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect,

We have the honor to be

S I R,

Your Excellency's most

Obedient and humble servants.

George Washington, President.

By unanimous Order of the Convention,

HIS EXCELLENCY

The President of Congress.

United States in Congress assembled,

FRIDAY, September 28, 1787.

PRESENT, New-Hampshire, Massachusetts, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Virginia, North-Carolina, South-Carolina and Georgia, and from Maryland Mr. Roß.

CONGRESS having received the Report of the Convention lately assembled in Philadelphia,

Resolved, unanimously, That the said Report, with the Resolutions and Letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a Convention of Delegates chosen in each State by the people thereof, in conformity to the Resolves of the Convention made and provided in that Case.

Chas. Thompson