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The Significance of Signatures: Why the Framers Signed the Constitution and What They Meant by Doing So

ABSTRACT. The signing of the U.S. Constitution is traditionally understood as the closing act of the Constitutional Convention. This Note provides an alternative account, one that understands the Constitution's signing as the opening act of the ratification campaign that followed in the Convention's wake. To begin, the Note explains the signatures' ambiguous form as the product of political maneuvering designed to win support for the Constitution during ratification. The Note then hypothesizes two ways in which the signatures may have helped to secure this support: (1) by highlighting pro-Constitution selling-points likely to resonate with the ratifying public; and (2) by limiting the ability of the signers to distance themselves from the Constitution once ratification battles had begun. Finally, the Note identifies a few respects in which this ratification-centered account of the Constitution's signing may influence our modern-day understanding of the document.

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New York presents a more complicated picture. Unlike Rhode Island, the Empire State sent a three-person delegation to the Convention that remained present there for a substantial portion of the Convention's duration. In fact, the New York delegation dissolved precisely because a majority of its members did not consent to the Convention's plans.⁶⁸ Even so, the Convention allowed New York's remaining delegate, Alexander Hamilton, to sign the Constitution.⁶⁹ In

68. Robert Yates and John Lansing, Jr., the two New York delegates to have left Philadelphia, explained their departure in a letter to the Governor:

We were not present at the completion of the new constitution; but before we left the convention, its principles were so well established, as to convince us, that no alteration was to be expected, to conform it to our ideas of expediency and safety. A persuasion, that our further attendance would be fruitless and unavailing, rendered us less solicitous to return.

3 FARLAND'S RECORDS, *supra* note 1, at 247. See generally BERNSTEIN, *supra* note 8, at 191-98 (describing the "frustration and deadlock" within the New York delegation). It should be noted that had Hamilton's co-delegates struck around, they would have thwarted Federalist efforts to characterize the agreement at Philadelphia as "unanimous." Indeed, this point holds for all Antifederalists who chose to abandon the Constitutional Convention rather than fight their battles within it. See Paul Finkelman, *Turning Losers into Winners: What Can We Learn, if Anything, from the Antifederalists?*, 79 TEX. L. REV. 849, 872 (2001) (reviewing SAUL CORNELL, *THE OTHER FOUNDERS: ANTI-FEDERALISM AND THE DISSIDENTING TRADITION IN AMERICA, 1788-1828* (1999)) ("Had the antifederalists been a little shrewder, the document would have read something like this: 'Endorsed by the votes of the state delegations, by a vote of ten aye and three nay.'").

69. Interestingly, New York was the only state not to specify a quorum requirement within the credentials issued to its delegation. Compare Resolution, Feb. 28, 1787 (N.Y.) (no quorum requirement), *reprinted in* 1 ELLIOT'S DEBATES, *supra* note 4, at 127, with An Act for Appointing Delegates to Meet in Convention of the States, May 10, 1787 (Conn.) (quorum requirement of one), *reprinted in* 1 ELLIOT'S DEBATES, *supra* note 4, at 131; Resolution, Apr. 9, 1787 (Mass.) (quorum requirement of three), *reprinted in* 1 ELLIOT'S DEBATES, *supra* note 4, at 126-27; An Act for Appointing Deputies from This State to the Convention, June 27, 1787 (N.H.) (quorum requirement of two), *reprinted in* 1 ELLIOT'S DEBATES, *supra* note 4, at 126; Resolution, Nov. 23, 1786 (N.J.) (quorum requirement of three), *reprinted in* 1 ELLIOT'S DEBATES, *supra* note 4, at 128-29; Resolution, Feb. 24, 1787 (N.C.) (quorum requirement of three), *reprinted in* 1 ELLIOT'S DEBATES, *supra* note 4, at 133-36; An Act Appointing Deputies to the Convention Intended To Be Held in the City of Philadelphia, Dec. 30, 1786 (Pa.) (quorum requirement of four), *reprinted in* 1 ELLIOT'S DEBATES, *supra* note 4, at 129-30; Resolution, Apr. 10, 1787 (S.C.) (quorum requirement of two), *reprinted in* 1 ELLIOT'S

a sense, the framers were having it both ways, treating New York as “not present” for the purposes of determining state unanimity and “present” for the purpose of signing to such unanimity.⁷⁰ In this way, the delegates implied the consent of twelve states when only eleven had actually consented.⁷¹

It is not difficult to see why the framers would desire to communicate as much unanimity as possible. The greater the appearance of agreement at Philadelphia, the more seriously the people would take the framers’ proposal. The Constitution would have been easier to dismiss summarily if it had emerged from a conspicuously divided convention. Apparent unanimity, by contrast, endowed the document with credibility from the start of the ratification campaign and portended success down the road. Expressing optimism along these lines, the *American Herald* observed that “[t]he unanimity you have secured in your deliberations is an auspicious omen of our future concord and felicity.”⁷²

DEBATES, *supra* note 4, at 135-36; and An Act for Appointing Deputies from This Commonwealth to a Convention Proposed To Be Held in the City of Philadelphia, Oct. 16, 1786 (Va.) (quorum requirement of three), *reprinted in* 1 ELLIOT’S DEBATES, *supra* note 4, at 132. As a result, Hamilton might have argued that, even with Yates and Lansing gone, his lone presence kept the New York delegation intact. The Convention records, however, do not indicate that Hamilton—or anyone else—ever tried to make such an argument. We can only speculate as to why, but one possible explanation is that Yates and Lansing had conditioned their departure on a promise from Hamilton not to vote on behalf of New York. I thank Seth Barrett Tillman for sharing this observation with me.

70. The framers made a similar move in their letter accompanying the Constitution, which included “Mr. Hamilton from New York” in its list of approving states. Letter from the Federal Convention to the Continental Congress (Sept. 17, 1787), *reprinted in* 2 FARLAND’S RECORDS, *supra* note 1, at 664-67.

71. Of course, the extent to which such an implication registered with the American people would have depended on their familiarity with the finer points of parliamentary procedure. If, that is, eighteenth-century Americans possessed a sophisticated knowledge of quorum requirements, bloc-by-bloc voting practices, and the distinction between supporting a motion and attesting to that motion’s support, then Hamilton’s lone signature on the Constitution may have been sufficient to tip them off to the New York delegation’s opposition to the Constitution. Cf. Seth Barrett Tillman, *A Textualist Defense of Article I, Section 7, Clause 3: Why Hollingsworth v. Virginia Was Rightly Decided, and Why INS v. Chadha Was Wrongly Reasoned*, 83 TEX. L. REV. 1265, 1370 (2005) (arguing that modern-day “Americans have lost the ability to understand the political and parliamentary worlds as the Founders and ratifiers understood them”).

72. CHARLES WARREN, *THE MAKING OF THE CONSTITUTION* 729 (Fred B. Rothman & Co. 1993) (1928) (quoting Editorial, AM. HERALD (Boston), Sept. 30, 1787); *see also* THE FEDERALIST No. 37, at 198-99 (James Madison) (Clinton Rossiter ed., 1999) (“The real wonder is that so many difficulties [at the Convention] should have been surmounted, and surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is impossible for any man of candor to reflect on this circumstance without partaking of the astonishment.