

Textuality and Legitimacy in the Printed Constitution

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IN OUR SOCIETY, outfitted as it is with unprecedented technologies of discipline, the forms of coercion are innumerable; but the supreme means of deriving force over the will of others is to win the appeal to a written text. Let us consider this state of affairs. Why is the ground of legality—and thus of coercion—an official hermeneutics of a written text? What establishes *its* legality, and what is the significance of its textuality? The question is complicated because the Constitution's textuality was an issue even before conflict over the text's meaning was institutionalized in the role of the court system. The act of writing constitutions had been an American innovation, and one that had taken place only on the assumption that the constitutional text would be a printed one. The subject that I wish to take up, therefore, is that of the meaning of the writtenness and printedness of constitutions in the culture of republican America, and of the relation between textuality, so considered, and the changing criteria of legitimacy that produced our official hermeneutics.

For Americans of the Revolutionary period, the written constitution was a way of literalizing the doctrine of popular sovereignty. That literalization was a complex strategy, giving sub-

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stance to the people's authority but doing so only by the agency of writing. It was also, therefore, a deeply problematic strategy, since the sovereignty of the people is obviously not identical to the official hermeneutics entailed by the constitutive text. On the other hand, if popular sovereignty seems to be a doctrine beyond question in our society, I shall argue that its literalization articulated its already problematic nature. The writtenness of the constitution mediated a central and paradoxical problem in revolutionary politics: that of sovereignty in a legal order — or more generally, the legality of law.

Of course, the British had believed their polity to be founded, in theory, on the sovereignty of the people as well. Sovereignty lay in Parliament, or the king-in-Parliament, but it did so because all Englishmen were represented there and could therefore be said to have consented to Parliament's laws. The imperial crisis leading to the Revolution came about when Americans, refusing their consent to the laws of Parliament, denied that they were represented there. In doing so, they disclosed a tautology deployed in England to legitimate the order of law: although what gave authority and legality to parliamentary law was its claim to represent the people, the only warrant for its claim to represent the people was parliamentary law. No one questioned the appeal to sovereignty; it was axiomatic that law required some authority for its legality. But since Americans were denying that they themselves, in representation, were the authority for law's legality, it became obvious that parliamentary law was its own authority. The American rhetoric of contestation, which identified parliamentary law as arbitrary power, thus derived its categories and its power from the British rhetoric of legitimation.¹

Working out that rhetoric of contestation could be dangerous. Since it was (and could only have been) worked out within the

1. The best source on American constitutionalism remains Gordon Wood's *The Creation of the American Republic* (Chapel Hill, 1969; repr. New York, 1972). For a comparative history of the state constitutions, see Willi Paul Adams, *The First American Constitutions* (Chapel Hill, 1980).

paradigm of representational legitimation, having identified the tautology of representational politics left the Americans with a heavily invested challenge to the legitimacy of their own governments. Recognizing that their challenge to the British was not just a challenge to particular rulers, but rather to the fundamental validity of a legal order, the Continental Congress issued on May 15, 1776, a decree calling for the suppression of the authority of the Crown and for the establishment of new state governments 'on the authority of the people.' A peculiar crisis ensued. The present governments, like Parliament, already claimed the authority of the people in their representational character, though of course their claim to that authority became problematic because revolutionary politics depended on suspicion toward the circularity of such claims. But it also seemed that any *legal* procedures for claiming the authority of the people would have to be void along with the rest of the Crown-derived legal order. Far from being a lawyer's debate internal to law, this was a political crisis involving the legality of law. In a time of increasing military violence and crowd actions, the legal order as a whole was losing legitimacy.

In Philadelphia, as soon as word had spread of the May 15 decree, a pamphlet called *The Alarm* appeared, asking the hard question of who the 'proper persons' could be to establish a government 'on the authority of the people,' and what could be the proper 'mode of authorizing such persons?' The Assembly was claiming that right, but as the *Alarm* pointed out, the Assembly derived its legal warrant from the proprietary charter, the authority of which was now void. Were the Assembly to suppress the authority of the Crown and institute the authority of the people, it would be suppressing its own authority and instituting its own authority, and thus the Assemblymen might be 'continually making and unmaking themselves at pleasure' (p. 1). The Assembly, in other words, wasn't legal enough precisely because it was *already legal*.

For all the splendor of the argument, one has to wonder what ideal standard is being invoked against the Assembly. The very

posing of the problem in the *Alarm*, in fact, offers us the spectacle of a legal order trying to legalize itself. 'It is now high time,' says the pamphlet, 'to come to some settled point, that we may call ourselves a people; for in the present unsettled state of things we are only a decent multitude. . . . We are now arrived at a period from which we are to look forward as *a legal people*' (p. 3). From decent multitude to legal people—how could this transformation come about? Better yet, how could it come about without law being there already?

The crisis symptomatized an irresolvable problem in the sovereignty of the people. The sovereignty of the people had to be appealed to as the ground for a legal order, but it could only be represented from within that legal order. As James Otis had put it in 1764, 'An original supreme Sovereign, absolute and uncontrollable, *earthly* power *must* exist in and preside over every society; from whose final decisions there can be no appeal but directly to Heaven. It is therefore *originally* and *ultimately* in the people.'² Originally, ultimately—but in the meantime? One reason why the Revolution has struck many observers as not being very revolutionary is that the Americans insisted at every point on the continuity of law; new governments could not be established by fiat. The common-law tradition, of course, continued; as a sphere of customary law rather than of positive, bureaucratic law, it required no original authority.³ What needed original authority was a state

2. James Otis, *Rights of the British Colonies Asserted and Proved* (Boston, 1764).

3. The tension between revolutionary rhetoric and forms of continuity such as the doctrine of state succession is explored in Peter Onuf's *The Origins of the Federal Republic* (Philadelphia, 1983). By concentrating on the derivation of law in constitutionalism, I have not afforded space to the American understanding of state sovereignty, a subject well treated by Onuf. Although the doctrine of state succession allowed Americans to continue the legal arrangements of their pre-Revolutionary governments, they clearly regarded themselves as needing a more transcendent ground for the legitimacy of the new governments and their systems of law, and it is with the latter that I am concerned.

The distinction between customary and bureaucratic law follows Roberto Mangabeira Unger's comparative theory of law, *Law and Modern Society* (New York, 1976). One of the main differences between customary and bureaucratic law, in Unger's view, is the separation of state and society in a system of bureaucratic law. The common-law tradition did not observe that separation, as has been amply shown by William Nelson in *Americanization of the Common Law* (Cambridge, Mass., 1975). The emergence of a paradigm of sovereignty

apparatus and the legal order in which it would operate. It was in this sphere of positive, bureaucratic law that revolutionary rhetoric insisted that law had been abrogated. Some in New Hampshire, for example, believed that once royal prerogative was annulled, 'they never were a body politic in any legal sense whatever.'⁴

There is a delirious theatricality about such claims; the American crisis of law was acting out, through time, the eighteenth century's narrative of legitimation: the social contract. Once law had been relegalized by the Massachusetts constitution, for example, an orator named Thomas Dawes proclaimed that the people had successfully 'convened in a state of Nature.' 'We often read,' he said, 'of the original Contract, and of mankind, in the early ages, passing from a state of Nature to immediate Civilization. But *what eye* could penetrate through the gothic night and barbarous fable to that remote period? . . . And yet the people of Massachusetts have reduced to practice the wonderful theory.' By enacting the founding of the legal-political orders that would represent them, the people would render the origin within history and the transcendent source of law as its present practice.⁵

The crisis is therefore revealing because the difficulties encountered in generating law from nature are symptomatic of difficulties in the legal order's claim to transcendent justification; that is, to law's character of duty as opposed to force. Many of the period's most vexing problems, such as the problematic character of popular sovereignty, continue to haunt law's account of itself. As H. L. A. Hart argues in *The Concept of Law*, the people cannot be said to lay down the rules, and thus to be sovereign, because 'the rules are *constitutive* of the sovereign. . . . So we cannot say that . . . the rules specifying the procedure of the electorate represent the conditions under which the society, as so many individuals, obeys itself as an electorate; for 'itself as an electorate' is not a reference to a

in constitutionalism, along with the consequent replacement of the customary legitimacy of common law, can therefore be seen as part of the emergence of the modern state.

4. Quoted in Wood, *Creation of the American Republic*, p. 289.

5. Thomas Dawes, *Oration Delivered March 5th 1781* (Boston, 1781), pp. 20-21.

person identifiable apart from the rules.⁶ Hart concludes that a legal system cannot have a sovereign, an origin of law not itself legally constrained. Rather, it can have only rules.

Hart argues against sovereignty because he identifies it with coercion, with an account of law as orders backed by threats. Sovereignty, to him, is that point at which legality must derive from orders backed by threats, or, what comes to the same thing, from politics. His solution, however, will be subject to the same problem. Hart argues that primary rules, such as statutory law, are made law by means of secondary rules—rules of recognition that enable certain people under special conditions to establish law. In these terms, Americans of the Revolutionary period were trying, in their debates about constitution forming, to establish the secondary rules. But what rule of recognition allows one to establish or adjudicate or even reproduce a rule of recognition? Rules, as Hart himself remarks in another context (p.123), cannot provide for their own interpretation. Unless, therefore, the modern Cato is destined to plunge philosophically onto the dagger of infinite regress, it will be necessary to concede that the legality of law is not itself guaranteed by law or rules. The effectiveness of any claim to be operating according to rules will depend in the last analysis not on autonomous or self-modifying rules but on the politics of rhetoric in which rules are reproduced and altered. Hart struggles to imagine a self-contained and self-authorizing system of legality because, for him, when law's authority is seen to derive from the contingencies and irregularities of political culture it can no longer be exempt from the character of coercion.

Eighteenth-century Americans had the same dream of a self-contained system of positive law; where Hart dreams of law regulated by its own regularity, Americans pictured law justified by its derivation from the will of the people. The legal-political order would be transcendent in its authority but immanent in its source. The trick was to see how law could be given to the people transcendently and received from it immanently at the same time. Like

6. H. L. A. Hart, *The Concept of Law* (Oxford, 1961), p. 75.

Hart's, the *Alarm's* solution for the legal origination of law was predictably disappointing. The committees of inspection, 'agreeable to the power they are already invested with,' were to call a convention for the drafting of a constitution. The pamphlet regards the authority of the committees as unproblematic, a tendency that should not be astonishing, since at some point the authority of law must always be seen as 'already invested.' Similar crises were resolved in similar ways in other colonies. The 1778 Massachusetts constitution, for example, was voted down primarily because it originated from the old House of Representatives and not a special convention; two years later, a convention-drafted constitution succeeded. Only a national pest like Noah Webster would follow the critique to its conclusion, pointing out that a convention must inevitably be 'chosen by the people in the manner they choose a legislature.'⁷

If the argument for constitutional conventions thus lacked a legal and theoretical consistency—and no argument for the legal establishment of law *could* have had such a consistency—the question of how they were legitimated could only be answered politically. Why, having mounted a brilliant challenge against the Assembly's claim to originate law, did the *Alarm* simply turn around and accord that right to conventions established by virtually the same legal procedures? The explanation lies in one of the most brilliant insights in Gordon Wood's history of the period: given the colonial tradition of extralegal conventions, says Wood, the new constitutional conventions could fill their legitimating role precisely because of their inferior legality. Formed in imitation of assemblies, the conventions had long been denounced as subversions of law. They could therefore be described, as Tom Paine describes them in *Common Sense*, as 'some intermediary body between the governed and the governors, that is, between the Congress and the people.'⁸ In the political culture of Revolutionary

7. Quoted in Wood, *Creation of the American Republic*, p. 379.

8. *The Complete Writings of Thomas Paine*, ed. Philip Foner, 2 vols. (New York, 1945), 1:28.

America, then, the convention was sufficiently dubious to appear unconstrained by law, and thus it could stand in the place of the sovereign.

But this is also where writing comes in. Paine's notion that the constitutional conventions would stand between 'the governed and the governors' is an invocation of the contract theory of written law, in which bills of rights or charters or the Magna Carta were supposed to embody agreements mutually constraining rulers and ruled. Yet, as Wood points out, 'bills of rights in English history had traditionally been designed to delineate the people's rights against the Crown or the ruler, not against Parliament which presumably represented the people' (p. 272). The bizarre new American project of writing charters as fundamental law for all government aimed at removing the circular legitimation of representative assemblies. But the constitutions, themselves generated 'on the authority of the people,' prescribed the procedures for claiming the authority of the people. By constituting the government, the people's text literally constitutes the people. In the concrete form of these texts, the people decides the conditions of its own embodiment. The text itself therefore becomes not only the supreme law but the only original embodiment of the people. In this act of literalization, the meaning of the charters' writtenness has been transformed; no longer merely a better way of keeping records, writing gives original existence to its author. *Ecriture* would save the republic.

Because the writtenness of the constitution has its source in the legitimating—and, by the same token, delegitimizing—tenet of popular sovereignty, it shares a history with crowd actions, extra-legal conventions, and the intense localism of community assemblies in the 1770s and 1780s. Yet these latter movements, though motivated by the desire to maintain political sovereignty in the people rather than in the kind of supreme institution that Parliament had become, were distinctly outside the legal order. They were perceived not as manifestations of the sovereign body but rather as the breakdown of government altogether. In these con-

texts, 'the people' functioned as a legitimating signifier that did not entail the regularity of law. It interpellated subjects into a political world without interpellating them into the juridical order.⁹ In some regions, such as Vermont and the western counties of Massachusetts, people began regularly to disobey the courts, and defended doing so by means of rigorous republican constitutional theory. Undesirable as this delegitimizing result was for American revolutionaries, it was the practical fulfillment of the necessary conditions under which the signifier of 'the people' could *legitimate* a juridical order.

Like any signifier, of course, the people could never be realizable *as such*. Yet in the Revolutionary years a wide range of collectivities, especially local assemblies, were able to recognize themselves, in action, as the people. Moreover, they were often able to sustain that self-identification legitimately in their dealings with other, similarly identified collectivities. This should not surprise us, since a people recognizing itself as the people is like a king recognizing himself as the king; we do not have to indulge in a sentimental populism to see these groups as realizations of the people. The difficulty of doing so lies in that our society's representational polity rests precisely on a recognition of the abstract and definitionally nonempirical character of the people. It is the invention of the written constitution, itself now the original and literal embodiment of the people, that ensures that the people will henceforward be nonempirical by definition. The opacity of signification has become a political fact.

By means of their customarily extralegal status, the constitutional conventions repeated the revolutionary realizations of the people, so that writing could be summoned, from a position not yet law, to become already law. It could do so partly on the very grounds of a traditional logocentric anxiety: whereas in speech

9. The term 'interpellation' comes from Louis Althusser's 'Ideology and Ideological State Apparatuses,' in his *Lenin and Philosophy* (New York, 1971), pp. 127-86. It designates the hailing of the individual that always renders the individual as a subject within an ideology. (See note 22 below.)

persons, hearing themselves speak, are present to themselves and therefore responsible for their language, writing migrates from persons arbitrarily. Rousseau, for example, cites this determination of language to argue for the necessity of speech for any realization of the people in a republic. 'I maintain,' he writes in the *Essay on the Origin of Languages*, 'that any language in which it is not possible to make oneself understood by the people assembled is a servile language; it is impossible for a people to remain free and speak that language.' The classical republics survived because 'among the ancients it was easy to be heard by the people in a public square'; by contrast, writing is the mark of modern corruption: 'Popular languages have become as thoroughly useless as has eloquence. Societies have assumed their final forms: nothing can be changed in them anymore except by arms and cash, and since there is nothing left to say to the people but *give money*, it is said with posters on street corners or with soldiers in private homes; for this there is no need to assemble anyone; on the contrary, subjects must be kept scattered; that is the first maxim of modern politics.'¹⁰ As Derrida observes of Rousseau, 'Praise of the "assembled people" at the festival or at the political forum is always a critique of representation. The legitimizing instance, in the city as in language—speech or writing—and in the arts, is the representer present in person: source of legitimacy and sacred origin.'¹¹

In contrast, the Americans who prevailed in the constitutional movement were those who regarded their task not as getting rid of representation, but of deriving representation in the first place. The presence of the people to themselves in oral assembly was for them not legitimate enough precisely because it was recognized as the *source* of legitimacy. As source, or sovereign, it was by definition not legally constrained. The speech heard by the assembled people, in the words of the Boston *Independent Chronicle*, could only come from men 'with the *vox populi vox Dei* in their mouths.'¹²

10. Jean-Jacques Rousseau, *The First and Second Discourses and Essay on the Origin of Languages*, trans. Victor Gourevitch (New York, 1986), pp. 294–95.

11. Jacques Derrida, *Of Grammatology*, trans. Gayatri Spivak (Baltimore, 1976), p. 296.

12. Quoted in Wood, *Creation of the American Republic*, p. 369.

In this view, the vox populi, in order to be the vox Dei, cannot be in anybody's mouth because the owner of the mouth, as embodiment of the sovereign, would not be a constrained subject. What was needed was the derivative afterwards of writing. By articulating a nonempirical agency to replace empirical realizations of the people, writing came to be the hinge between a delegitimizing revolutionary politics and a nonrevolutionary, already legal signification of the people.

Written constitutions, including the federal Constitution of 1787, completed a deployment of writing that had already begun with the Declaration of Independence. The best account of that earlier deployment comes to us from the unlikely source of Jacques Derrida, in a set of prefatory and not entirely serious remarks given at the University of Virginia during the Declaration's bicentennial. Derrida notes the paradox that documents such as the Declaration, or the Constitution, should be signed. 'In principle,' he observes, 'an institution is obliged, in its history and in its tradition, in its permanence and thus in its very institutionality, to render itself independent from the empirical individuals who have taken part in its production'; nevertheless, 'the founding act of an institution—the act as archive equally with the act as performance—must retain the signature within it.' Derrida will attribute the felt need for the founding signature to 'the structure of the institutive language.' But for such a purpose, he asks, 'whose signature could be legitimate?'¹³

Derrida observes that although Jefferson wrote the Declaration, he did so not in his own right but by delegation from the other delegates, who then revised his draft and put their names to it. But they in turn put their names to it not in their own right but 'in the name and by authority of the good people of these . . . free and independent states':

By rights, then, the signatory is the people, the 'good' people. . . . It is the 'good people' that declares itself free and independent by the relays of its representatives of representatives. One cannot decide—

13. Jacques Derrida, *Autobiographies* (Paris, 1984), p. 17 (my translation).

and it is all the interest, the strength, and the impact of such a declarative act—whether the independence is stated or produced by this statement. . . . Is it the case that the good people is already freed in fact and does nothing but acts out its emancipation by the Declaration? Or rather does it liberate itself at the instant and by the signature of the Declaration? . . . Such then is the ‘good people’ which is not engaged and only engaged in signing, in causing to sign its own declaration. The ‘we’ of the Declaration speaks ‘in the name of the people.’ But this people does not exist. It does not exist *before* this declaration, not *as such*. If it is given birth, as a free and independent subject, as a possible signatory, that can only depend on the act of this signature. The signature invents the signatory. The latter can only authorize to sign once it has arrived at the goal, so to speak, of its signature, in a sort of fabulous retroactivity. Its first signature authorizes to sign. . . . In signing, the people speaks—and does what it says to do, but in deferring it by the intermediation of its representations, whose representativeness is only fully legitimated by the signature, and thus after the fact. . . . By this fabulous event, by this fable which is implicated in the trace and is in truth possible only by the inadequacy of a present to itself, a signature is given a name. (pp. 20–23)

In this mention of the trace and the inadequacy of the present, Derrida’s philosophical concerns become visible, and he will pursue his teasing remarks only in that direction, through a discussion of Nietzsche. Yet the paradox he identifies in the Declaration is perhaps not just a tease or a philosopher’s puzzle, and Derrida indicates in passing a couple of ways in which it raises a serious issue. The puzzle of the relation between the authorizing people and the authorized signature that creates the people’s authority, Derrida remarks, ‘is not a matter here of an obscurity or a difficulty of interpretation, a problematic on the way toward a solution. It is not a matter of a difficult analysis that founders before the structure of implied acts and the overdetermined temporality of events. This obscurity, this indecidability between, let us say, a performative structure and a constative structure, is *required* in order to produce the effect sought for. It is essential to the very position of law [droit] as such, that one speaks here of hypocrisy, of equivocation, of indecidability or of fiction’ (p. 21).

Derrida suggests, in other words, that the paradox of the authorized and authorizing signature replicates the contradiction that we have already observed in the notion of sovereignty. By saying that it is 'essential to the very position of law as such,' however, he means that the effect is not simply that of the founding moment produced by the Americans' theatrical claim that they had reverted to the state of nature. The word 'droit,' essential for his assertion here, denotes at once law and right, commandment and authorization to command. In the systems of positive law that characterize modern society—systems of law, let us say, not underwritten by God—law is defined by its derivation of authority from itself.

The contrast with divine authority may clarify the position of the written constitution as fundamental American law. Paine refers to the written constitution, in *The Rights of Man*, as a 'political bible.' It is no accidental turn of phrase. When the Declaration asserts that the states 'are and ought to be' free and independent, Derrida notes (p.27) that the 'and,' which 'articulates and conjoins here the two discursive modalities of is and ought, statement and prescription, fact and law,' occupies the position of God. 'Are and ought to be' is like the divinely imperative and creative 'Be,' which human authority can approximate in an indicative 'is' or a subjunctive 'ought.'¹⁴ For a legal system to derive its legality immanently rather than transcendently, therefore, requires the effect of textuality that collapses the two modes. The Constitution deploys that effect most notably in the preamble: 'We the People . . . do constitute. . . .' Legality rides on the inability to decide whether the people constitute the government already—that is, in fact—or in the future, as it were by prescription.

In order to be the law to the law, however, the people must

14. William Nelson's study of the law in Massachusetts affords an illustration of this point. According to Nelson, pre-Revolutionary legislation was almost always justified by preambles that explained the continuity of the statute with common law. Beginning with the ratification of a written constitution, however, the legislature began to shift its self-understanding so that by the 1790s 'legislation was coming to rest solely on a "be it enacted" clause—a naked assertion of sovereign legislative power.' Nelson, *Americanization of the Common Law*, p. 91.

occupy this textual position themselves, and not by the relays of representatives who sign for them in the Declaration. It is for this reason that it was of utmost importance that the legal political order be constituted not just by a written text, but by a printed one. In the important 1776 pamphlet called *Four Letters on Interesting Subjects*, which along with *Common Sense* was among the first to argue for a written constitution, we read that 'all constitutions should be contained in some written Charter, but *that* Charter should be the act of *all* and not of *one man*.' The specific negative reference here is to Pennsylvania's proprietary charter, granted by the Crown; such charters are inappropriate models, the pamphlet suggests, because they emanate from the authority of persons, and are thus 'a species of tyranny, because they substitute the will of ONE as the law for ALL.'¹⁵ Since it is not clear how any concrete act could be the act of all, the obscurity of agency in print was helpful as the enabling pretext for a constitution.

In *Common Sense*, Paine similarly suggests that the people might charter their own government. It is this suggestion that occasions the famous passage in which he imagines a solemn day for 'proclaiming the charter,' on which the charter will be brought forth and crowned so that the world will know that 'in America the law is king.' 'But lest any ill use should afterwards arise,' he adds in a revealing afterthought, 'let the crown at the conclusion of the ceremony be demolished, and scattered among the people whose right it is.' The political motives for this vivid image of the smashed and scattered crown would become the meaning of the printed artifact on the constitution. By the time of *Rights of Man*, Paine would be laying great emphasis on the constitution's printed condition, detailing carefully the procedures of printing proposed constitutions for the people's approval. Similarly, he notes with satisfaction that, once approved in Pennsylvania, the state constitution had been properly scattered. 'Scarcely a family was without

15. Anonymous, *Four Letters on Interesting Subjects* (Philadelphia, 1776), reprinted in Charles S. Hyneman and Donald S. Lutz, eds., *American Political Writing during the Founding Era*, 2 vols. (Indianapolis, 1983), 1:381-82.

it. Every member of the Government had a copy; and nothing was more common when any debate arose on the principle of a bill, or on the extent of any species of authority, than for the members to take the printed Constitution out of their pocket, and read the chapter with which such matter in debate was connected.¹⁶ When every representative is able to pull the people out of his pocket to receive his charter, then is law law.

The procedure of printing the Constitution for reference was undergone twice during the proceedings of the federal convention (after the reports of the committees of detail and style), in order that each delegate might be sure of identical wording. The procedure guaranteed that the Constitution would be a general creation. Franklin's motion for unanimity similarly indicates the importance of nonparticular authorship; when his famous speech failed to obtain the assent of every delegate, Franklin proposed that the document be signed by 'unanimous consent' of the states. By this stratagem, signing the Constitution did not amount to endorsing it personally. And thus, whereas the climactic moment for the Declaration of Independence was the signing, for the Constitution the climactic moment was the maneuver that deprived signing of personal meaning. For the same reason, where the signed copy of the Declaration continues to be a national fetish, from which printed copies can only be derived imitations, the Constitution found its ideal form in every printed copy, beginning—though not specially—with its initial publication, in the place of the weekly news copy of the *Pennsylvania Packet*.

The printedness of the Constitution allows it to emanate from no one in particular and thus from the people. It is worth stressing, however, that this meaning for print is a determinate feature of political culture, not a transcendently secured logic.¹⁷ The Con-

16. Paine, *Rights of Man*, in Foner, ed., *Complete Writings*, 1:378.

17. I emphasize that even the nature of print is a contingent element of culture in order to distinguish my argument from the technological determinism that one finds in studies of print by Elizabeth Eisenstein, Marshall McLuhan, Walter Ong, Jack Goody, and Alvin Kernan. These studies, different though they are, have in common the assumption that print exerts a causative force independent of the political/cultural determinations of print discourse.

stitution derives from particular persons as much as speech or script do. We know their names—compilers, printers, and printing-shop journeymen included. Only contingent structures of meaning ensure that such filiations will lack the status of the filiations of other kinds of language. Among these structures we may count the emergent paradigm of representational legitimacy, with its newly literal and literalizable notion of the sovereignty of the people. We may also include a republican paradigm of public discourse that for several decades had informed perceptions of print in America.

Developed in practices of literacy that included the production and consumption of newspapers, broadsides, pamphlets, legal documents, and books, the republican ideology of print arranged the values of generality over those of the personal. In this cognitive vocabulary, the social diffusion of printed artifacts took on the investment of the disinterested virtue of the public orientation, as opposed to the corrupting interests and passions of particular and local persons.¹⁸ *The Alarm*, quoted earlier, is a good example. It argues that one reason why the Assembly should be disqualified from writing a constitution is that its members have a 'private interest' in the positions to be established under such a constitution. Offering itself as a contrast, the anonymous *Alarm* proclaims: 'The persons who recommend this, are Fellow-Citizens with yourselves. They have no private views; no interest to establish for themselves. Their aim, end and wish is the happiness of the Community. He who dares say otherwise, let him step forth, and prove it; for, conscious of the purity of our intentions, we challenge the world' (p. 3). 'We,' however, do so anonymously, in print, while the doubtless corrupt challenger is imagined to speak and stand forth in person. Anonymity, in the republican culture of print, does not designate cowardice, but public virtue. The arguments of the

18. I have argued this point in more detail in 'Franklin and the Letters of the Republic,' *Representations* 16 (1986): 110-30. For an excellent discussion of the interest/disinterest opposition in the constitutional period, see Gordon Wood, 'Interests and Disinterestedness in the Making of the Constitution,' in Richard Beeman et al., eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill, 1987), pp. 69-109.

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.

A R T I C L E 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 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, in that order 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

Fig. 1. The first publication of the Constitution, in the Pennsylvania Packet, September 19, 1787. Note the relative type size of the preamble. American Antiquarian Society.

Alarm are vouched for by the claim to disinterested concern for the general good, and that claim is in turn vouched for by the perceived conditions of the very medium in which it is made. And if such assumptions on the part of the unnamed 'we' of the *Alarm* seem to be determinate features of a political culture, it will be remembered that the same assumptions enable the unnamed 'we' of the Constitution. They will also be seen animating the ratification debates, especially in the aggressive print campaign of the 'Publius' who stands forth in the Federalist papers.

For all the power of the republican paradigm of print discourse, it hardly replaced the more familiar logocentric determinations of language. Readers of the *Alarm*, even while according validity to its rhetorical self-presentation, might have speculated about the authors' identities and their private views. The same is true, as we know, of the Constitution. Its composers, unlike those of the *Alarm*, did not refuse to subscribe their names, though after Franklin's motion they deliberately ambiguated the significance of their subscriptions. It was not unusual for copies of the Constitution to omit the names, printing only the approved resolutions of unanimity. That the generality of the printed language be seen as more important than the signatures was crucial to the legitimation of the document.

Some of the document's detractors, from that time to the present, have not refrained from reading its significance as determined by the private interests of those men. By the same token, many of the document's professed admirers also adduce, for *their* interpretations, views about the private interests of the subscribing individuals, though interests in this case are redescribed as intentions. The present attorney general of the United States, for one, believes the proclaimed derivation of the Constitution's authority in the preamble to be uncreditable. In his view, all official hermeneutics of the text should be governed by the intentions of the particular men who signed it on September 17, 1787, in Philadelphia—long before its ratification. Given the eighteenth-century republican understanding of the Constitution as fundamental law express-

ing the authority of the people, Attorney General Meese's understanding of constitutional validity would have to be seen as transforming the document into the kind of charter that *Four Letters on Interesting Subjects* calls tyranny, for the simple reason that it derives authority in the last instance from the will of the so-called founders—specifically, from the supposed mental contents of those founders—rather than from the people, who were at the time the only legitimate founders. In other words, the Constitution would never have been ratified had it been perceived as the kind of document that Meese thinks it is. The Meese brand of intentionalism could only take hold once a nationalist filiopietism had supplanted the radical republicanism that initially legitimated the constitutional order. The amnesia of that shift in legitimacy paradigms demonstrates the historical specificity of the cultural assumptions that allowed the printed constitution to embody the will of all. As one South Carolinian put it in 1783, 'What people in their senses would make the judges, who are fallible men, depositaries of the law; when the easy, reasonable method of printing, at once secures its perpetuity, and divulges it to those who ought in justice to be made acquainted with it.'¹⁹

But, as this last passage makes clear, in allowing the expression of the will of all, the printedness of the constitution not only underwrites, so to speak, the popular *authorship* of the constitution, but also summons the *readership* of the print audience to recertify it continually and universally. As with the authorship, the readership of the constitution is more than a convenience or mere exigency, and in an important sense is structurally required by representational legitimacy. The same textuality that was essential to the constitution of law's authority inhabits equally the position of the subject under the law, in that it provides a necessary ambiguation of consent. For the constitution, readership is to authorship as consent is to sovereignty. Popular sovereignty, which avoids domination by allowing that all subjects of the legal order will take their place as the sources of law, necessarily requires a notion of

19. Quoted in Wood, *Creation of the American Republic*, pp. 302–3.

consent, in which the people who give law vow that they will take their place as its subjects. The two parts of sovereignty and consent correspond, then, to the compulsory and voluntary aspects of duty. It is to give law the character of duty that republican political rhetoric insists on the foundation of politics in popular sovereignty and popular consent. Thus the predicament of sovereignty in the Revolutionary period was everywhere implicated with a problem of consent.

Revolutionary rhetoric required Americans to be very good at using the word 'consent' to mean both authorization and compliance at once, as when the *Boston Evening Post* proclaimed in 1765 that 'the only moral foundation of government is, the consent of the people'; in that phrase, 'consent' must be redundant for 'moral foundation' or redundant for 'government'—or rather, both simultaneously.²⁰ On one hand, to say that people consent to the law is tautologous, since consent from this point of view designates what Weber calls 'validity': the belief in a norm by the members of a society. Consent of this variety does not confer any lasting authority on law, but just *is* the authority of law; it is either continually reproduced or law loses legitimacy. On the other hand, in a system of positive law and popular sovereignty, consent is adduced to justify the enforcement of norms even where they are not believed—that is to say, where they are not taken as duty—or those norms obviously would not be law. But this second variety of consent is narrativized; it is the moment at the origin of law in which the coercive character of law is forsworn in advance. Unlike the voluntary aspect of duty, which by nature cannot be instituted as positive law, authorizing consent is thus consent to one's own coercion, contradiction in terms though that might be.

For the American republicans, it was self-evident that a law could not be law by reason of someone else's consent; in a letter to Madison in 1789, Jefferson took this to mean that 'no society can make a perpetual constitution, or even a perpetual law.' Madison's response astutely realizes that a doctrine of actual consent

20. *Ibid.*, p. 182.

would not only prevent one generation from legislating for another—this, it will be recalled, is Paine’s justification for revolution—but will prevent the majority from legislating for the minority. ‘Strict Theory,’ he observes, ‘at all times presupposes the assent of every member to the establishment of the rule itself.’ But, asked John Adams, when he sensed the same implications, ‘Shall we say that every individual of the community, old and young, male and female, as well as rich and poor, must consent, expressly, to every act of legislation?’ ‘I find no relief from these consequences,’ Madison wrote, ‘but in the received doctrine that a tacit assent may be given to established Constitutions and laws, and that this assent may be inferred, where no positive dissent appears.’ Indeed, he went on, ‘May it not be questioned whether it be possible to exclude wholly the idea of tacit assent, without subverting the foundation of civil Society?’ Madison, Adams, and Jefferson were understandably worried about this conclusion, because it retroactively denied the legitimacy of the Revolution and, more to the point, left the present order without transcendent legality. *Every* extant legal order is justified by tacit assent, which is to say that no legal order is *justified* at all.²¹

The written constitution mediates this crisis in perpetuity—the only way it could be mediated. In the preamble, the reading citizen interpellates himself—even herself—into the juridical order precisely at its foundation. Whereas Meese’s sacralizing intentionalism makes the foundational moment the finite intentions of the patriarchs, the ongoing consumption of the preamble in print makes the moment of foundation perpetual and socially undifferentiated. Not only does it enact the consent of every citizen—male and female, old and young, black and white, rich and poor—it also reads that consent as the transcendent grounds of subjection. We might say that the printedness of the constitution here restores

21. Jefferson to Madison, September 6, 1789, *The Papers of Thomas Jefferson*, ed. Julian Boyd et al., (Princeton, 1950–), 15:392–97; Madison to Jefferson, February 4, 1790, *The Papers of James Madison*, ed. William Hutchinson et al., (Chicago, 1962–77 [vols. 1–10]; Charlottesville, 1977–), 13:18–21; John Adams, quoted in Wood, *Creation of the American Republic*, p. 182.

to the dutifulness of law the permanence that consent had narrativized. By the same token, the 'we' of the constitution—and this is essential for its legitimating effect—is speaking *to itself*. The evidently untraced origins and universal audience of the printed text allow the people always to be both authoring and reading, and thus giving and receiving its commands at once. Unlike Rousseau's general will, which similarly derives its obligatory character from the simultaneity of its common origin and common object, the printed constitution is a mechanism whereby the transcendent conditions of legality are translated into a system of positive law. In this sovereign interpellation the people are always coming across themselves in the act of consenting to their own coercion.

I say 'their' own coercion, but of course this is what the Constitution will not allow me to say. There is no legitimate representational space outside of the constitutive we. When someone calls out to the people, you will answer.²² You inhabit the people, but this is not true of any group to which you belong, the people being the site where all lesser collectivities are evacuated. For this reason, the preamble contributes to a nationalist imagination in the same way that Benedict Anderson has argued for novels and print in general.²³ It is by means of print discourse that we have come to imagine a community simultaneous with but not proximate to ourselves: separate persons having the same relation to a corporate body realized only metonymically. The national community of the constitutional 'we' is thus an aspect of the people's abstractness, and may be contrasted with the intense localism of the popular assemblies that were its main rival for the role of the people.²⁴

22. My wording here is meant to echo Althusser's explanation of interpellation (see note 9 above). Ideology, he writes, 'transforms the individuals into subjects (it transforms them all) by that very precise operation which I have called interpellation or hailing, and which can be imagined along the lines of the most commonplace everyday police (or other) hailing: "Hey, you there!" Assuming that the theoretical scene I have imagined takes place in the street, the hailed individual will turn round. By this mere one-hundred-and-eighty-degree physical conversion, he becomes a *subject*. Why? Because he has recognized that the hail was "really" addressed to him, and that "it was *really him* who was hailed" (and not someone else)' (p. 174).

23. Benedict Anderson, *Imagined Communities* (London, 1983).

24. The ratification parades that were held in some cities, notably in Boston, provide

Worcester, Aug. 21
 In Reply
 to the printer's procession in the city of New York, they
 follow engineers the following was the arrangement of the

ment—A ship
 over multi in—
 erent,
 et.
 which was diffe
 ship New-Conti
 ntre of the flag,
 lion in his right
 left—Fame with
 him under, this
 er,
 view,
 le of a sail left—
 falls, with men
 view of a river,
 mence—a boat
 —the out-side of
 ing sail. During
 a flag, a ship's
 fall cut out, on
 which was per
 rants and trowers,
 ibson. The reber
 followed the
 rd and measure
 x canvas veil and
 size walls, and a
 blue ribbon—in
 the 10 states that
 headed by Mr.
 rthlands in their
 with thirteen
 y just from the
 forecast in with
 the wharf with
 a serving rope;
 ng success to the
 th a cart lead of
 rish a trumpet,
 rish,
 et.
 ished, with men
 g of rigging
 being,
 of,
 said Clark.

near her; a woman and children in great distress,
 lamenting the sad catastrophe, are consoled by
 a man, leaning with one hand on a large anchor,
 and pointing with the other to GRABITY, who
 holds a chart inscribed, *New-York Marine Society*;
 in the upper part, handsomely ornamented, is
 written, *Marine Society, State of New-York*; in the
 lower, in gold letters, the Society's motto,
 'To Charity all Knowledge.'

Former officers.
 Standing committee.
 Society and strangers, masters of vessels, four
 bore-ail.
 A Printers, Book-Binders, and Stationers.
 Preceded by Messrs. Hugh Gaine and Samuel
 London, on horseback.
 The Standard, supported by Messrs. Carroll and
 Bryce.

A flag, drawn by four horses. Upon the flag
 the *Federal Printing-Press*, complete; cases, and
 other typographical implements, with press-men
 and compositors at work.—During the procession,
 many hundred copies of a Song, and an Ode, adapted
 to the occasion, were struck off, and distributed
 by Mr. A. M. Lean among the multitude.

A small flag on the top of the press, on which was
 inscribed the word ' *Peace* ' in gold letters.
 Mr. John Loudon, representing a herald,
 mounted on the back of the *Federal Printing-
 Press*, dressed in a flowing robe, and a cap, on
 which were written the words, ' *The Liberty of
 the Press* ' with a brazen trumpet in the right
 hand, proclaiming ' *The speech of Liberty and Jus-
 tice* ' the words ' *Epochs of Liberty and Justice* '
 pending from the mouth of the trumpet. In the
 left hand, a parchment scroll representing the New
 Constitution.

The Master Printers, Bookbinders and Book-
 binders, with their Journeyman and Apprentices,
 four a-bread, following the stage.

Description of the Standard.
 Fame blowing her trumpet, and supporting the
 medallion of His Excellency Doctor Frank-
 lin, the venerable Printer; Liberty attending,
 holding her cap over his head—the electric fluid
 darting from below. On the upper corners, the
 United flag, and Stationers' Arms; and below, the
 Bible, and Federal Constitution, representing the
 religious and civil Constitution of our country.

Motto.
 18. Ars Artium omnium conservatrix.
 21. May the Liberty of the Press be inviolably
 preserved as the *Pollux* of the Constitution,
 and the Constell of Freedom.
 And surrounding the Medallion of His Excel-
 lency Dr. Franklin, the following word—'Where
 Liberty dwells, there is my Country.'

EIGHTH DIVISION.

Cannon.
 A cart painted red, with the words ' *Federal
 Cart* ' in white letters—ornamented with green
 boughs, and drawn by an elegant bright bay horse,
 neatly caparisoned, and ' *Union* ' inscribed under
 each ear; driven by Mr. Edward Fowler, dressed
 in a white frock and overalls, with a blue sash
 and white bow.

On the cart was erected a standard, with a broad
 flag, one side representing Marry's wharf, Stew-
 art and Jones' store, and three vessels discharging
 and taking in cargoes—carts plying and replying
 —the harbor, a view of Long-Island—the rising
 sun—vessel under sail, named the ' *Federal Ship
 Hamilton* ' and a coat of arms. Motto, ' *By this
 we live* ' in yellow letters. On the reverse, Jones'
 wharf and store houses, with a view of the river,
 —Long-Island—harbors and carts—the rising sun—
 the federal flag; over which on both sides were
 these lines,
 ' *Behold the federal Ship of Fame* '.

HAMILTON.

ately from her
 dices and ecc
 sion, both in
 ponds of three
 coat uniform;
 Nicholson,
 6.
 a procession to
 the ship, as
 at under way,
 as in the head,
 action. When
 the power fig-
 the four top

Founders Colours.
 Furnace, sand trough, two pillars, an wreath, non,
 mous. Motto—' *May the Founders to every gen-
 eration of Amity, agree in Unity* '.

Tin Plate Workers.
 Handed by Messrs. Keampton, Hardenbrook and
 other matters, followed by their Journeyman and
 apprentices, with white cockades, emblematical
 of their business; their standard borne by two of the
 profession, exhibiting a figure; on one side, the
Federal Tin Manufactory; on the other, the *Federal
 Tin Warehouse*; in the square are raised ten pil-
 lars, with lamps to each lighted; three more were
 gradually raising, the lamps half lighted, emblem-
 atical of the ten States that have adopted the Con-
 stitution, and the three that have not; on each of
 the ten pillars is a different article of manufac-
 ture; in front is a view of the river; the Federal
 man of war appears, and shows the poop lantern;
 at a great distance appears a light house and a ship
 in the offing. The flag of war shows the Federal
 flag of ten stripes. On the manufactory are in-
 scribed, the words, *Federal Constitution*; and
 ' *When three were Pillars rise,
 Our Union will the world surprize* '.

Peweees.
 Bearing an orange colored silk flag, on which
 was elegantly painted, the United States col-
 ors; underneath which, the Peweteers arms, sup-
 ported by two miners, holding burning lamps in
 their hands; motto, ' *Solid and pure* ' in gold let-
 ters; on the front part of the flag, the words,
Society of Peweteers, with the representation of a
 peweteers workshop, in which the different branch-
 es were at work, and some of their work finished,
 Above this were the following lines, viz.
 ' *The Federal plan must solid and secure,
 American their freedom will enforce;
 All arts flourish in Columbia's land,
 And all her Sons join in one social band* '.

Gold and Silver Smiths.
 A gold Federal Eagle on the top of the standard.
 The Goldsmiths emblematical arms on white silk em-
 bazoned, the creel representing justice sitting on a
 helmet, holding in one hand the balance, in the other
 the touch stone; the arms supported by two savages,
 the field quarterly, six, two eagles heads crest'd
 azure, two cups inverted between two gold bac-
 kles; the motto,
 ' *Justice is the Queen of Virtues* '.

The Supporters resting on a globe representing the
 United States, Standard supported by the four
 former gold smiths, followed by twenty-five.
 Pattern.
 A flag, on which were represented figures of stone
 and earthenware. A flame ware kiln in full flame, with
 different parts of both branches.—A stage drawn by two
 horses—three lanes of work, bearing a number of vessels
 of different forms.—Motto on the flag—' *The Potter
 hath power over the Clay* '.

The Chocolate Makers Device.
 The old Constitution, represented by the naked body
 of a man, dressing Congress without power, with 13
 heads, looking different ways, seeing the sinking inter-
 est of the States in Union, with their lines,
 ' *When each head thus directing,
 The body naught pursues;
 But when in one uniting,
 Then energy fulfils* '.

The ten men well dressed, representing the ten states
 supporting the head of a man, representing the New Con-
 stitution united in a Federal treat.
 Across the loins of the naked man, in a circle, a scroll
 from the right hand to the left, pointing with the fore-
 finger to a rising sun and the western land, with these
 lines in it.
 ' *In all creation my Birth not,
 Adept the New and let me be forgot.
 Behold how beams you bright and rising sun,
 O, happy Arts! ye cause in God,
 Hence Federal governments in Rome begun* '.

Fig. 2. Account of the printers' participation in New York City's parade celebrating the state's forthcoming ratification of the Constitution, from the New-York Morning Post, and Daily Advertiser for August 4, 1788. This article was marked up for republication in a Worcester newspaper, but it apparently did not run. American Antiquarian Society.

For several decades before the Constitution, print had in its political uses been acquiring the ability to serve as a means of imagining the public sphere. The simultaneity of the artifacts of political print discourse expressed the identity of this sphere that was no longer local. Eventually, although this abstract public sphere was articulated with republican categories of generality, disinterested virtue, and civic liberty, it would enable a modern national state that was more appropriate to liberal individualism. By way of conclusion, then, I would like to suggest that the deployment of textuality in the Constitution, though itself profoundly republican, marks the emergence also of a new mode of textuality.

The commission of sovereignty to its literalization in print required from American political culture a high degree of confidence in the transparency of language and the undifferentiated universality of print. 'No man is a true republican,' says *Four Letters on Interesting Subjects*, 'or worthy of that name, that will not give up his single voice to that of the public.'²⁵ The voicing strategies of the written constitution are registered here as the liberty of the social contract. Here also we can see most clearly the relation between the legitimating drama of sovereignty that gave rise to the Constitution and the official hermeneutics that resulted from it. Hermeneutics, as John Marshall makes clear in his analysis of the Constitution's writtenness, gives the law exactly in the act of receiving the law: 'The powers of the legislature are defined and limited; and that those limits may not be forgotten, the constitution is written. . . . Certainly, all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void. This theory is essentially

an interesting case in which these two modes for the realization of the public are sutured together. In the parades, printing presses were dragged through the streets on wagons, being worked en route by pressmen who distributed the products to the crowd. The civic populace and the abstract public of print are here called to bear witness to each other in a way that may be without parallel. (See fig. 2.)

25. In Hyneman and Lutz, *American Political Writing*, 1:386.

attached to a written constitution, and is, consequently, to be considered, by this court, as one of the fundamental principles of our society.²⁶ Marshall's decision establishes the principle of judicial review precisely by denying that the court can make law: 'the courts, as well as other departments, are bound by' the written Constitution. Giving the law in receiving it, official hermeneutics repeats, albeit in a very different mode, the sovereign consent of the Constitution.

Official hermeneutics thus constructs a relation between the subject and the text that must be registered as mediation. There language, far from being transparent, has become in its ambiguity the site of conflict even while the resolution of that conflict must be received from an authority immanent in the language. In a letter of 1814, Gouverneur Morris expresses disbelief at the new state of constitutional textuality. For him, the existence of 'a written constitution containing unequivocal provisions and limitations' should have eliminated all difficulty of meaning. Interpreting the Constitution, he writes, 'must be done by comparing the plain import of the words with the general tenor and object of the instrument.' He then adds, evidently in support of his position, 'That instrument was written by the fingers which write this letter.' The curious thing about it is that he does *not* appeal to his intentions as founder, but to the act of writing as testament to the clarity of the written text. But because authority was now to be received from its already mediated condition, Morris's somewhat comical confidence in, as it were, the indexical value of his fingers had become deeply anachronistic. Legality is to be registered under the bureaucratic nationalist state as an alienation within experience. This characteristically modern relation to an authoritatively mediated hermeneutics, I would suggest, helps to determine a newly representative relation between literary textuality and the nature of subjectivity in the bureaucratic nation. More appropriate than Morris's appeal to his fingers, then, is Poe's *Narrative of*

26. *Marbury v. Madison*, in John Marshall, *Major Opinions and Other Writings*, ed. John P. Roche (New York, 1967), pp. 87-88.

Arthur Gordon Pym, published fifty years after the Constitution. There, the unfingered text that has mysteriously but authoritatively materialized on the island of Tsalal—without author but with the full prophetic weight of law—is encountered both as fate and as the pure resonance of signification. It is the romantic scandal of hermeneutics, now to inhabit the law.

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