

## JÜRGEN HEIDEKING

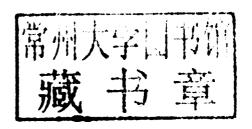
EDITED BY JOHN P. KAMINSKI AND RICHARD LEFFLER

# THE CONSTITUTION BEFORE THE JUDGMENT SEAT

The Prehistory and Ratification of the American Constitution, 1787–1791

Jürgen Heideking

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JOHN P. KAMINSKI AND
RICHARD LEFFLER



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The Constitution before the Judgment Seat

The present state of American politics will form the most important area that ever engaged the pen of the historian.

BALTIMORE MARYLAND GAZETTE, JULY 13, 1787

I have either read or heard this truth, which Americans should never forget,
—That the silence of historians is the surest record of the happiness of a
people.

"A FARMER," BALTIMORE MARYLAND GAZETTE, MARCH 7, 1788

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#### **PREFACE**

The story of how this English translation of Jürgen Heideking's award-winning work came to fruition is a bit complicated. Madison House Publishers obtained a grant for Jerry Neeb-Crippen to translate the original text from German into English. Jürgen, who had made substantial deletions to the manuscript before the translation, then worked with Richard Leffler in revising the translation of the first three chapters. Shortly thereafter, in the year 2000, Jürgen was tragically killed in an automobile accident. The manuscript lay dormant for several years. In the interim, Rowman & Littlefield Publishers bought Madison House.

Several years later, the present volume's editors reinitiated the editing process. Rowman & Littlefield graciously stepped aside, making it possible for the University of Virginia Press to publish an English-language edition, including an editors' introduction placing Jürgen's work within the historiography of the twenty years that had elapsed since Jürgen first wrote his book.

The German Historical Institute, through the good auspices of its former director Christof Mauch, now a professor of American cultural history at the Ludwig Maximilians University Munich, provided a generous subvention, making it possible to publish this long book at a reasonable price.

John P. Kaminski and Richard Leffler

### EDITORS' INTRODUCTION

Some years ago, William Pencak, in his review of Richard R. Beeman's Variety of Political Experiences in Eighteenth Century America (Philadelphia, 2004), commented that most of Beeman's citations were to pre-1980 scholarship, "which is not so much a judgment of his research but an indication that political history is no longer at the top of the agenda for early Americanists."1 Similarly, Pauline Maier recalled that an audience member at a session at the annual meeting of the Organization of American Historians said that "when he teaches the American Revolution he finds himself assigning books that were published thirty years ago." But political history has seen a revival using new sources and methodologies,<sup>3</sup> and to these have been added schools of "Atlantic history," "postcolonial theory," and "public-sphere history." Contemporaneous with the earliest expressions of these developing ideas, and preceding most of them, Jürgen Heideking, a professor of British and North American history at the University of Tübingen and then at the University of Cologne, published Die Verfassung vor dem Richterstuhl: Vorgeschichte und Ratifizierung der Amerikanischen Verfassung, 1787-1791 (Berlin, 1988), which looked at important political, economic, social, and cultural elements of the post-Revolutionary settlement in America, culminating in the ratification of the Constitution. Jürgen's work looked back to earlier historians as well as to contemporaries; it was often innovative, but it was always based on remarkably thorough research into the original sources on the ratification of the Constitution.

Jürgen brought a unique perspective to his work. He wrote as a European with a viewpoint born of the ongoing evolution of "Europe," a work still in progress. Although his writing is not tendentious or didactic, Jürgen believed that the period of American history during the Confederation, from 1781 to 1789, resembles the modern condition of "Europe" as it transcends the polities of the individual nation-states. Therefore, Jürgen began his study with a "Historical Background," a brief analysis of the "United States during the 'Critical Period,'" which is remarkably concise but which captures the constitutional, legal, political, and economic issues that led eventually to the Constitutional Convention in the summer of 1787. As he says in his acknowledgments, his hope was that the American experience during the Confederation would be instructive, and "that the process of European integration might

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benefit from the example of the thirteen American states which, in free and open debate, crafted a constitutional framework for a common future."

Perhaps Jürgen's background as a German Social-Democrat had an influence on him, because at a time when both "an economic interpretation" and the view that there was a general reaction against the radical democracies created by the state constitutions after the Revolution were very much out of favor, Jürgen was interested in both ideas. He notes that there were cries of "too much democracy" and "tyranny of the majority" during the Confederation. In Jürgen's view, economic conditions and the actions taken in the states in the years before 1787 persuaded nationalists that there was a "deep-seated moral crisis, symptomatic of the loss of virtue regarded as the lifeblood of republics. For this reason, the planned revision of the Articles of Confederation would have to go beyond merely redistributing power between the states and the central government, and root out the mechanism of self-destruction which had apparently been embedded in the state constitutions" (see p. 13).

On the other hand, many people were deeply suspicious of any new, stronger government, such as that created by the Constitution. They feared that Federalists in power in a new national government "would use it as against the interests of the 'common man'" (133). Large electoral districts, possible under the Constitution and required in the Senate, "favored widely known or wealthy candidates, resulting in the exclusion of the 'middling classes' supported by the Antifederalists" (133). The new government under the Constitution, if controlled by the Federalists, would create "an aristocratic regiment consisting of the president, Congress, and the Supreme Court [who] could join forces to isolate itself from the states and people, thus permitting 'energetic' government action in the broadest sense of the word" (133). And what was this broadest sense? If the "better sort," represented by the Federalists, controlled the new government, they would seek fame and power, "to the detriment of the common man." Heideking continued: "The cost of their aspirations for national glory would be devastating wars and a massive national debt; to raise the money needed for arms and interest payments, taxes would soar and be collected by force if necessary; the concern for the common weal would give way to private profit-seeking and unbridled egoism, leading to the complete subjugation of the middling and lower classes to a phalanx of merchants, lawyers, and creditors. . . . America was on the verge of imitating all the mistakes already endured by Europeans" (133).

Even if these aspects of the debate over the Constitution were of little interest to the academic consensus at the time Jürgen was writing, he looked at these issues freshly and persuasively. Both sides, Federalist and Antifederalist, remarked on the transformation of post-Revolutionary attitudes

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about "democracy" and "liberty" that was taking place only a few short years since 1776. In fact, Jürgen argues, there was a "popular repudiation of the radical republican tradition" in the last years of the Confederation, and many Antifederalists—John Quincy Adams for one—were extremely distressed by this transformation of the Revolutionary ethos they had "grown up with and internalized" (66). To Jürgen, the Federalists "were indeed the revolutionaries of 1787-88." These revolutionaries, however, "intended their revolution to achieve stability, order, security, and predictability." He goes on: "To accomplish this, though they had little faith in the political wisdom of the common man, they were forced by the social and political realities of Revolutionary America to respect the sovereignty of the people and to win the majority to their side." They rallied round the Constitution, but they believed it did not go nearly far enough in concentrating power or restraining "the destructive forces inherent in republics." Jürgen quotes many Federalists, such as the Constitutional Convention delegate Oliver Ellsworth of Connecticut, who wrote, "The danger of the constitution is not aristocracy or monarchy, but anarchy" (134).

In addition to this debate over the distribution of power and the need for political and social restraints, there was also the related question of control over money and taxes. Americans everywhere—and of all classes and trades but especially the dominant group, farmers—were affected by debt and vastly increased tax obligations after the war, and by the shortage of specie or any other circulating medium. This "prompted New England farmers as well as Southern planters to oppose the Constitution that prohibited paper money" and had vast new taxing power, which had already been used in the states to finance the repayment of debt (250). The possibility that the liquidity provided by paper money might be eliminated and that additional taxes would be imposed was alarming. In the years since Jürgen died in 2000, there has been a resurgent interest in these economic and social issues related to the Constitution, and recent analyses have generally supported Jürgen's interpretation. In this, as in other aspects of his work, Jürgen anticipated what has become important in current historical writing.<sup>5</sup>

Closely related to these issues prevalent during the Confederation (and of interest to anyone concerned with developments in Europe today) was the effort in post-Revolutionary America to create a modern nation-state with power to act in the national interest and to defend the nation without the mediation of the states. Radical nationalists supported the Constitution as "the only realistic alternative to the weak Congress" under the Confederation. They had an exaggerated sense of conditions under the Articles, and they were cognizant of the predictions, in Britain and on the Continent, that

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the post-Revolutionary American condition would be marked by catastrophe. A weak and unstable Confederation would tempt the European powers to engage in war with America. "Only a sound federation could act with enough self-confidence in the international arena to be treated with respect by potential adversaries" (138). The alternative was weak regional confederacies backed by the various European powers—a series of small nation-states dominated by the European state system. Federalists like Alexander Hamilton believed that the federal government needed unrestricted power to raise an army, and this required the power to borrow money on short notice and to raise the revenues needed to finance the debt. "Money," Hamilton wrote, "is with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion and enables it to perform its most essential functions. A complete power, therefore, to procure a regular and adequate supply of revenue, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution." Similarly, the power to raise armies and navies, to direct their operations, and to "provide for their support"... "ought to exist without limitation: Because it is impossible to foresee or define the extent and variety of national exigencies, and the correspondent extent & variety of the means which may be necessary to satisfy them" (147).6 It was, therefore, "difficult to obtain new foreign loans as long as the repayment of the existing debts in France and the Netherlands remained doubtful" (11). "Only if Congress could be ensured an 'independent income' would it have the necessary authority to deal with states and foreign powers" (10). Here Jürgen is suggesting a line of thought that has burgeoned in the last decade, one that extends his ideas and makes explicit the intimate connection between the powers to tax, to borrow, and to make war as one condition of the modern nation-state.<sup>7</sup>

There was also a profound disagreement between Federalists and Antifederalists over the place of the United States in the world. Both sides hoped and expected that America would be part of the Atlantic commercial world, and that a reformed American government would encourage vast numbers of Europeans to emigrate to America. Before the war the American colonies were part of the British colonial system, and Americans hoped to become part of the British trading system again. Antifederalists wanted the United States to remain separate and different from the European state system. American nationalists, like Washington, Hamilton, and Madison, conceived of the United States as necessarily part of the greater Atlantic community, and wanted to be able to defend the nation within that system, to be a major player within it—or, as the American Peace Commissioners said in 1783, to "move like a Primary & not like a Secondary Planet . . . in the Political Sys-

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tem of the World."8 And some Americans had a vision as well of becoming a continental empire in the western hemisphere. Federalists "took the 'westward course of empire' metaphor seriously, which implied that the center of world power, having migrated from Asia to Greece, Rome, and then England, would some day shift to the American continent" (161). Antifederalists were less than enthusiastic about this world ambition and the governmental power needed to achieve it. "They often admonished their compatriots to place 'domestic peace and justice' before 'national glory." Antifederalists "agreed that America should assume its appropriate place in the circle of world powers; however, the United States was created as a "fœderal union," not as a "Universal Empire'" (161). As a European, and as a student and professor of American history, Jürgen understood well the importance of Europe to America's commercial prosperity and the desire by some Americans at the time of the ratification debate to depend on European political theory; to look to the forms of European governments as examples for America; to view the great European empires past and present as something for America to emulate or as something to avoid; and to play an appropriate role in the Atlantic world, though Americans might disagree strongly about what was an appropriate role. When Jürgen wrote Die Verfassing, "Atlantic history" and "postcolonial theory" were in their beginning stages. By the time he undertook the revision and translation, they had become huge forces in the writing of American history.9

Another aspect of Jürgen's work concerns the political process that was used to adopt the Constitution. An important element in the process of ratifying the Constitution was the campaign in each of the states to elect delegates to a state ratifying convention. As with any election, various methods and venues were used to influence public opinion. Newspapers, magazines, broadsides, and pamphlets; public meetings and parades; legislative debates; existing political parties and ethnic groups; and organizations of workmen all were part of the electoral process. Although Jürgen Heideking wrote Die Verfassing well after Jürgen Habermas published his work on the "public sphere" in 1962, Heideking's work was published a year before Habermas's was translated into English, and was, therefore, among the earliest applications of "public-sphere" theory to early American political history, where it has become so important.10 Jürgen writes about the public mood, public opinion, and about the press. He writes about the "republican festive culture"-including the public celebrations of ratification in various cities throughout America—which, as he said elsewhere, was not just a reflection of social practices but had "the elemental power to create and 'construct' (or 'desconstruct') political concepts and cultural meaning. In this sense, festive xvi Editors' Introduction

culture is part of the historical process that shapes and transforms power relations, social structures, and popular mentalities."11 He writes of the ratification of the Constitution as "a political process and cultural event of the highest order," which played a "pivotal role . . . in the transition from the struggle for independence to national integration and—within the broader scope of the eighteenth century's 'democratic revolution'—the progression from a traditional to a modern society" (4). This process, he says, "affected public as well as private life, and altered the traditional methods of influencing public opinion" (3). The debate took place in "private circles and letters, in representative institutions, and, above all else, in the 'public sphere' situated between the private and the official levels" (4). The ratification debate was an effort by each side to win the support of public opinion, "a vital element of American politics." As Jürgen continues: "In contrast to Europe, where public opinion was slowly evolving in opposition to the established ruling powers, and where it had at best a corrective influence, public opinion in America constituted a driving force of political development" (53). Jürgen's analysis of the role of the press—the way it functioned to distribute news and opinion nationally, its relationship to public opinion, the circulation size and distribution of the newspapers, the politicization of the printers, and the pressures exerted on the Antifederalist press—is the finest and most comprehensive in print. As he asserts, "The debate over the Constitution led to the emergence of a national party press which was to develop its full potential during the following decade in the dispute between Federalist and opposition Republican newspapers" (85). Jürgen brings a dramatic insight to the story when he notes that "interstate political and publishing activities [during the ratification debate] contributed to the nationalization of political life in post-Revolutionary America," and that printers, by appealing "to a national audience[,] ... [were] contributing to the construction of a common American identity" (93). For instance, the cooperation among Antifederalists in New York, and with Antifederalists in other states, "marked the transition to a national party organization and political culture" (100). "As an early form of party activity on the national level," Jürgen concludes, "its significance transcends the ratification debate" (104). Jürgen thus anticipated the work that would be done after him, and with unmatched detail.

But it is in his discussion of the celebrations of ratification that took place throughout America (and, in some places, the reaction against these celebrations) that Jürgen best displays his extraordinary mastery of the documentary record and his ability to extract from these events the full meaning of the ratification debate and, really, the agenda of Federalists from 1787 to 1801. He captures here the political, economic, and social agenda of Federalists

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as no one has before or since. 12 First, he describes in great detail the celebrations in Boston, Philadelphia, New York, Baltimore, and elsewhere. He contrasts these celebrations with other rituals honoring the Revolution that had taken place since 1776 that contained an "anti-authoritarian and rebellious aspect which somehow seemed incompatible with the principles of an upstanding, self-governing citizenry" (344-45). He then analyzes the elements of these ratification rituals with intelligible, believable, and exciting insights. The ratification rituals were, at bottom, portrayals of the Constitution as "the logical conclusion of the prolonged struggle for political and religious freedom and represented the consummation of national unity" (352). The celebrations had a multilayered meaning and revealed much about the way in which the Constitution, and later the federal government, were portrayed by Federalists. The celebrations were a demonstration to Antifederalists that they were "running the risk of political isolation and social quarantine. At once an appeal and a warning, they coaxed the opposition into line with Federalist attitudes" (362). They encouraged opponents to join the new government as a way of achieving their desired goal of adopting amendments to the Constitution.

The celebrations were a reflection of the Federalist theme that the Constitution would end the economic depression of the 1780s under the Articles of Confederation and restore the unity and patriotism of the Revolution. "The parades essentially represented the symbolic banishment of economic hardship and optimism for the future" (362). That "the storm had been weathered and brighter days were in store was manifested in the rising-sun metaphor" that was common in the processions and celebrations (362). A persistent theme was a demand for the protection of the domestic manufacturing industries that had arisen in America since the 1760s. Marching tradesmen in the parades carried signs that called unambiguously for protection, and expressed their preference for domestically produced goods over imports. The Baltimore silversmiths proclaimed, "No importation and we shall live." The New York clothing workers urged, "Americans, encourage your own manufacturers." At the celebratory banquets that accompanied the processions it was always noted that the food and drink were American: "federal food," "federal beverages," home brews, and "ale, proper drink for Americans" (363).

Another theme was that the economic and political crises of the 1780s had to be resolved by "working together and avoiding clashes between classes and special interests." The urban middle classes were staking "their claim to a position of economic and political equality with the elite" (363). Boston merchants jumped at the chance to create a solidarity with workers by

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raising money to commission three new ships from local shipyards (the shipbuilding industry had been decimated during the depression), and the *Massachusetts Centinel* declared, on March 26, 1788, that "this unequivocal proof of federalism . . . will be a great relief to a number of our industrious mechanicks, whom the decline of commerce . . . has deprived of employment" (363–64). When the new government was launched, tradesmen's groups from various cities demanded that Congress provide protectionist measures for their industries.

The organization, symbolism, and slogans of the celebrations were intended to justify the Constitution as "an inevitable and universally accepted link in an unbroken chain of events from the discovery and settlement of America to the Revolution" and the war. The Constitution "represented the final step toward the foundation of an American nation-state. The struggle for ratification was seen as the continuation and culmination of the struggle for independence" (364). Jürgen quotes from Benjamin Rush's description of the Philadelphia July 4th parade, a revealing insight into Federalist motives: "The connection of the great event of Independence—the French alliance—the Peace—and name of General Washington, with the adoption of the Constitution, was happily calculated to unite the most remarkable transports of the mind which were felt during the war with the great event of the day, and to produce such a tide of joy as has seldom been felt in any age or country." Rush concluded: "'Tis done! We have become a nation" (364).

The word "federal" now came to replace the word "national." Tradesmen were "federal" carpenters, "federal" cordwainers. As one writer in the Massachusetts Centinel observed on January 18, 1788, the word "federal" invoked "national honour, dignity, freedom, happiness, and every republican privilege," as opposed to the term "anti-federalism," which stood for "anarchy, confusion, rebellion, treason, sacrilege, and rapine" (365). This was the Federalist platform, not just in 1787-88, but throughout the Federalist era. And Jürgen provides a remarkable analysis of the architectural metaphors of the federal celebrations, in language, in cartoons, and in actual structures. He notes references to the "Grand Federal Edifice," the "Grand Republican Superstructure," the "New Roof," the "Fœderal Temple," and the "Temple of American Liberty." These are allusions to buildings that were "designed to illustrate the innovative principle of federalism itself, the interconnections and interdependencies between the central government and the states" (366). The federal government was the roof supported by pillars representing the states, indicating the intended power relationship in the federal system. The temple-and-dome symbolism was intended "to combine classical form and aestheticism with Christian values" (366).

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Ironically, amidst all this symbolism, the Constitution itself became a focal point only gradually. But by July 4, 1788, it had become a central element. Pennsylvania's chief justice Thomas McKean, a leading Federalist in that state's convention, participated in the Philadelphia parade, holding a scroll of the Constitution. Jürgen quotes Benjamin Rush's account of this scene: "The triumphal car was truly sublime—It was raised above every other object. The Constitution was carried by a great Law-officer, to denote the elevation of the government, and of law and justice, above every thing else in the United States" (366). In the July 23rd New York procession, a life-sized image of Washington held a copy of the Constitution. Jürgen observes that these images of the Constitution began the portrayal of the Constitution as sacred.

These processions of 1788 were not haphazard. They were, as Jürgen says, "public works of art," a form of expression intended to convey a message. In this case, "They rendered the Federalist ideology tangible by converting its message into movement, images, and sound" (367). The designers of these events were some of the most important artists of the age, including Charles Willson Peale, Francis Hopkinson, Alexander Reinagle, Noah Webster, Samuel Low, and Pierre L'Enfant. "They built temples and colonnades, modeled figures, designed illuminations, set off fireworks, and painted allegorical pictures and portraits of Washington for public display; they wrote songs, recited poems, and put on plays; they composed marches, odes, and hymns, set Psalms to music, and held concerts" (367). The processions consciously conveyed the idea that the arts, literature, and education—represented by students, teachers, and professors—would be encouraged as never before under the government created by the Constitution. Jürgen quotes James Wilson's oration at the Philadelphia July 4th procession on the value of such republican parades: "They may instruct and improve, while they entertain and please. They may point out the elegance or usefulness of the sciences and the arts. They may preserve the memory, and engrave the importance of great political events. They may represent, with peculiar felicity and force, the operation and effects of great political truths" (369).

The actual events, the behavior of the people who participated, also were intended to convey a message of what the future would be under the Constitution: a "new republican society" marked by "liberty and equality yet still structured, orderly, and disciplined." At the banquets that often concluded the processions, all orders of people "dined together in the most perfect harmony." Social deference and partisan division were transformed into "harmony and friendship," and because these processions involved a very high percentage of the population, they were clearly "sanctioned by the majesty of

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a Free People," in pointed contrast to European practice, in which processions were celebrations of the political and social elites (373). Again Jürgen quotes from Rush, who contrasts the egalitarian nature of the American events as opposed to the European celebrations of great personages. In America, the lowliest apprentice participated along with farmers and tradesmen: "Such is the difference between the effects of a republican and a monarchical government upon the minds of men!" Jürgen points to the motto of the Philadelphia masons in the procession: "Both buildings and rulers are the works of our hands" (370).

The Constitution was a purely secular document. In the states, traditionally established churches were disestablished completely or converted to one-among-several state-supported churches, at least in theory. Still, there was a wide perception that government needed the support of religion for the maintenance of that civic virtue, without which republicanism could not survive. Organizers of the processions included clergy prominently. As Rush explained: "Pains were taken to connect Ministers of the most dissimilar religious principles together, thereby to shew the influence of a free government in promoting christian charity. The Rabbi of the Jews, locked in the arms of two ministers of the gospel, was a most delightful sight. There could not have been a more happy emblem contrived, of that section of the constitution, which opens all its power and offices alike, not only to every sect of christians, but to worthy men of *every* religion" (373). Federalists were in the process of creating a "civil religion," Jürgen says, in which a secular government would be sanctified by religious beliefs of all kinds.

In Jürgen's view, these celebrations "laid the foundation for a distinct festive culture, whose forms, style, and spirit can still be observed in public life in the United States today" (374). As he describes and analyzes these events, he captures the Federalist paradigm of 1787–88, and really of the following decade. The "public sphere" has never been explicated better.

In 1997, the great historian of early America, Edmund S. Morgan, commented that the modern documentary editions of the Founding Fathers "stand as the single most important achievement of American historical scholarship in this century." More recently, Professor Max Edling wrote that, "thanks to the publication of *The Documentary History of the Ratification of the Constitution*, it is now possible to investigate the Federalist side of the debate [over the Constitution] more inclusively than has previously been the case." The mass of information, the detail, that Jürgen had at his disposal was possible because of the modern documentary editions he had at his disposal—in particular, the works of the Ratification Project at the University of Wisconsin–Madison. Jürgen spent a year in Madison searching

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the files thoroughly, and he was completely familiar with the volumes that had been published up to the time of his death. The depth of his research is reflected in the present remarkable account of the complex political, intellectual, and cultural process of ratifying the Constitution. It is the most complete description that has ever been written, and he has added to this mastery of fact an insightfulness characteristic of a great historian. As with all fine historical writing, Jürgen's work has been confirmed and amplified by those who came after him. This volume, now available in English for the first time, will have value for years to come.