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The International Dimension of the Federal Constitution

TOM CUTTERHAM

This article surveys recent literature in both history and political science associated with an international and diplomatic approach to the American founding. It assesses Drew McCoy's claim that this approach, as represented by David Hendrickson's *Peace Pact* (2003), "may well mark an important paradigm shift in early American history." An international approach to the Constitution may mean interpreting the document either as primarily a diplomatic treaty in its own right, or as primarily influenced in its design and adoption by diplomatic and international concerns. Several significant new studies have been published since McCoy's review, both building on and revising Hendrickson's work, but his "unionist paradigm" has had less impact on historians of the Constitution and of founding than on historians of the later early republic. David Golove and Daniel Hulsebosch in 2011 reprised an internationalist approach to the Constitution by arguing that fealty to international treaties and desire for recognition structured Federalists' approach to domestic politics. This article suggests a synthesis that would reintegrate the internationalist approach with recent domestically focussed historiography. Building on the insights of internationalist scholarship, it posits the Constitution as fundamentally oriented around sanctity of contract as a scalable principle, spanning individual, state, and international spheres.

Writing in the *American Historical Review* in 2004, Drew McCoy declared that David Hendrickson's book *Peace Pact: The Lost World of the American Founding*, "if it has the influence it deserves, may well mark an important paradigm shift in early American history." Early in 2012, *Diplomatic History* published a substantial recapitulation of recent scholarship on "the diplomatic and security dimension of the making of the Constitution," in which *Peace Pact* played a principal role. The *Diplomatic History* article indicates that the "call to revolution" issued by Emily Rosenberg in that journal in 1998 has been heeded. Rosenberg and her colleagues wanted to "urge historians of U. S. foreign relations to show renewed interest in the revolutionary and early national eras." This essay assesses the impact of the diplomatic approach to the Constitution, and the role of political scientists and scholars of international

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relations in pursuing that approach, from the perspective of historians of the American founding. Have we in fact experienced a “paradigm shift”? Have we recovered a “lost world”? And if not, why not?¹

A paradigm shift can be characterized by a radically different answer to a central question: what is the relationship between our planet and the celestial bodies, for example. The question around which scholarship of the founding presently orbits is, in one historian’s words, “if the most compelling motive for the Constitution was not to safeguard civil liberties, what was it?” What was the Constitution *for*? Hendrickson frames his study in just this way. In the light of his analysis, “the American founding appears as a distinctive and most remarkable attempt to turn back the tide of war – that is, as a peace pact.” McCoy’s assessment rests on how innovative and convincing this answer is, and what hitherto resistant historical problems it helps us unknnot.²

As a work of intellectual history, *Peace Pact* seeks to address a problem in the ideological interpretation of the founding: the hoary impasse between “liberal” and “republican” ideas. Hendrickson proposes to leap this apparent hurdle on the back of yet another paradigm, “the unionist paradigm.” This was “as much a set of questions as a resume of foreordained conclusions”:

how to allocate the division of responsibilities among levels of government, how to arrive at an equitable sharing of the burdens of the association, how to ensure fair representation and thus to obtain the consent on which the system would rest, how to balance power at home and abroad, where to locate sovereignty.

If we take Hendrickson at his word, and if we take McCoy’s suggestion seriously, it should be this proposal and this set of issues that interests us most. Historians of the early republic have indeed taken Hendrickson’s framework on board. But of all the conceptual elements in *Peace Pact*, the notion of a “unionist paradigm” has had the least impact on subsequent historiography of the founding itself. There are two reasons for this.³

¹ Drew McCoy, “David C. Hendrickson. *Peace Pact: The Lost World of the American Founding*,” *American Historical Review*, 109, 3 (June 2004), 897; Robbie J. Totten, “Security, Two Diplomacies, and the Formation of the U.S. Constitution: Review, Interpretation, and New Directions for the Study of the Early American Period,” *Diplomatic History*, 36, 1 (Jan. 2012) 77–117, 79; Emily S. Rosenberg, “A Call to Revolution: A Roundtable on Early U. S. Foreign Relations,” *Diplomatic History*, 22, 1 (Winter 1998) 63–70, 63. For an earlier historiographical overview see Alan Gibson, *Interpreting the American Founding: Guide to the Enduring Debate over the Origins and Foundations of the American Republic*, 2nd edn, rev. and expanded (Lawrence: University of Kansas Press, 2009), chapter 8.

² Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York: Hill and Wang, 2007), xi; David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence: University Press of Kansas, 2003), x–xi.

³ Hendrickson, 17, 14–15. See Brian Schoen, *The Fragile Fabric of Union: Cotton, Federal Politics, and the Global Origins of the Civil War* (Baltimore: Johns Hopkins University Press, 2009); David Armitage, James E. Lewis, et al., reviews in *H-Diplo Roundtable Review*, 10, 25 (2009);

One is that the set of questions listed above does not correlate well with the policy aims or motivations behind the Constitution. Rather, they represent political dilemmas that necessitated major compromises, with which nobody at the time was very pleased. The consent of the small states was bought at the cost of a significant portion of James Madison's vision, which required the federal government to represent *American* citizens proportionately by population, rather than as citizens of the states. The division of responsibilities and the sharing of burdens was an issue largely left to be dealt with by Treasury Secretary Alexander Hamilton, whose manner of doing so defined the political antagonisms of the 1790s. The question of the location of sovereignty resulted in what could be described simultaneously as the greatest stroke of political genius, the greatest rhetorical coup, or the greatest PR fudge in American history – the theory of popular sovereignty elaborated most effectively by James Wilson – but this, like the others, was a problem that emerged from the constitutional reform movement, rather than driving it. What Hendrickson's "how to" list lacks is a political object: how were these things to be done *in order to achieve what*? If the implied answer given by the book's title is "peace," that still doesn't go far enough. What kind of peace? What kind of society? These are questions neither Hendrickson's book nor the concept of the "unionist paradigm" can answer.

In fact the "unionist paradigm" answered a historiographical need that had already disappeared. Hendrickson writes that "the antagonism between those two paradigms," republicanism and liberalism, "is often exaggerated. 'We are all liberals, we are all republicans' is a better gauge of the early American outlook than the assumption that these ideologies stood in sharp contrast with one another." This is a commonplace; it was already a commonplace in 2003. It is all the more puzzling that Hendrickson would pose it as a significant problem, requiring the invention of a new "paradigm," considering the influence of Peter Onuf's work on his own. Onuf (along with Lance Banning, whom Hendrickson does cite in this regard) played a principle and much-to-be-lauded role in defusing the republican-liberal problem in the 1980s and 1990s. This was not a problem that needed to be solved, so much as simply forgotten. Onuf led that process by taking new and more interesting directions.⁴

John Hammond, *Slavery, Freedom and Expansion in the Early American West* (Charlottesville: University Press of Virginia, 2007).

⁴ Hendrickson, *Peace Pact*, 17. See Peter McNamara, "Peace Pact: The Lost World of the American Founding by David C. Hendrickson," *Review of Politics*, 66, 2 (Spring, 2004), 314: "it is not clear whether Hendrickson has discovered a new paradigm or whether he has simply skilfully elaborated an important and neglected part of what is essentially Lockean liberalism." On the republican-liberal problem, see both Onuf and Banning in Milton Klein et al.,

Principal among the questions Onuf introduced – or, more accurately, revived – was the international dimension of the Constitution, which he addressed as early as 1983 in terms of the jurisdictional conflicts between the American states. Ten years later he published with his brother Nicholas Onuf *Federal Union, Modern World*, which foreshadows in less sweeping and forceful terms what Hendrickson was to write in *Peace Pact*. Aside from noting that “liberalism and republicanism did not represent radical alternatives to the eighteenth-century mind,” the Onufs – a pairing of historian and political scientist – concluded that the US Constitution could be defined as a “perfected law of nations.” “The distinction between foreign and domestic spheres, and therefore between international and constitutional thought, was not clearly drawn in this period.” Except for the “unionist paradigm” itself, there is very little in *Peace Pact* which could not already have been found in *Federal Union, Modern World*.⁵

Among the elements common to both books is a somewhat under-emphasized historical narrative. As much as they ask readers to rethink the conceptual distinction between inside and outside, domestic and foreign, they also achieve a diachronic vision of these relationships, tracing the way American thought *changed* over the course of the founding era. Playing on Peter Onuf’s internationalist interpretation of the Declaration of Independence, and on Thomas Jefferson’s own assessment of that document as “the fundamental act of union of these states,” Hendrickson suggests that “it would be more accurate to say that the declaration was the fundamental act that committed Americans to making the union of the states; certainly by itself it could not resolve the ambiguities inherent in both disuniting Britain and uniting among themselves.” The Declaration was “an act that fell well short of a regular marriage” between the states, the Constitution a “formalization of their vows.”⁶ The question is, why the wait?

Here it is worth taking a detour via a book, Daniel Deudney’s *Bounding Power*, that does not offer a historical sense of the founding. Deudney analyses the “Philadelphian system” of the US Constitution in order to glean clues for the construction of a global federal government, or at least a new theory of international order. Deudney reconstructs a tradition of “republican security theory,” in which “the American founding [was] *the* pivotal development

eds., *The Republican Synthesis Revisited: Essays in Honor of George Athan Billias* (Worcester, MA: American Antiquarian Society, 1992).

⁵ Nicholas Onuf and Peter Onuf, *Federal Union, Modern World: The Law of Nations in an Age of Revolutions, 1776–1814* (Madison, WI: Madison House, 1993), 21, 95, 108; Peter Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775–1787* (Philadelphia: University of Pennsylvania Press, 1983).

⁶ Peter Onuf, “A Declaration of Independence for Diplomatic Historians,” *Diplomatic History*, 22, 1 (Winter 1998), 71–83; Jefferson quoted *ibid.*, 71; Hendrickson, *Peace Pact*, 126.

in the enduring project of simultaneously avoiding the extremes of anarchy and hierarchy over larger spaces.” “Publius, starting from the historical reality of acute republican vulnerability, advances federal union as a means for republics to achieve the size, and thus security, previously available only to monarchic states and despotic empires.” The thrust of all this is that Philadelphian federal union is a model for balancing the anarchy of uncoordinated international relations against the tyranny of hierarchical state power. It is, in other words, a system of “republican restraint,” with useful lessons for contemporary geopolitics.⁷

It might be unfair to hold Deudney’s account up to historical scrutiny, since that is evidently not the book’s intention. What it does do is help illuminate the nuances of Hendrickson’s account. Both authors are concerned with the multi level problem at the founding, what Robbie Totten summarizes as “a state-system within a larger international system” and the “security exigencies that this dynamic placed on the leaders of the period.” But Hendrickson importantly recognizes that the layers overlap, that “Americans . . . belonged to multiple communities and had multiple identities and loyalties, and it was the relationship among these communities, identities, and loyalties that constituted the essence of their political problem during this period.” In this way his work ties into the ongoing project of examining the history of American identities. Unlike Deudney, Hendrickson does not take *The Federalist Papers* to be a definitive exegesis of the Constitution; and following Saul Cornell, he includes the Antifederalists’ crucial role in shaping that document.⁸

Returning to the question of a founding narrative, both Hendrickson and the Onufs characterize the period between 1776 and 1787 as a “loss of innocence” in which initial “optimistic” hopes “could not be sustained.” “Revolutionary foreign policy,” the Onufs write, “epitomized Enlightenment faith in harmony and progress.” If Grotius and Vattel were correct about the law of nations, Americans could expect independent sovereign states to avoid war and instead pursue “mutually beneficial trade relations.” Yet Congressional diplomats were consistently rebuffed and humiliated in their quest to establish a new international order. Not only that, but the “fragility of peace and harmony among the American states became apparent as American diplomats were frustrated in their efforts to promote national interests and

⁷ Daniel Deudney, *Bounding Power: Republican Security Theory from the Polis to the Global Village* (Princeton, NJ: Princeton University Press, 2007), 20 (emphasis in original), 182, 271; see also Deudney, “The Philadelphian System: Sovereignty, Arms Control, and Balance of Power in the American States-Union, circa 1787–1861,” *International Organization*, 49, 2 (Spring, 1995) 191–228.

⁸ Totten, 79–80; Hendrickson, *Peace Pact*, 17, 219; Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788–1828* (Chapel Hill: University of North Carolina Press, 1999).

Enlightenment ideals.” Moreover, it was becoming clear, as Hendrickson writes, that “the treaty of 1783 was less a peace than an armistice.” As clouds darkened over the American continent through the 1780s, the founders apparently faced “a menacing crisis of internal dissolution.”⁹

This is, in other words, the international aspect of the Federalists’ own narrative, updated for the nineteenth century by John Fiske, and for the twentieth by, among others, Frederick Marks in his 1973 book *Independence on Trial*. Hendrickson is quite aware of the potential for skepticism. But he declares that his “working assumption has been the unconventional and daring view that the Federalists of 1788 said what they meant, and meant what they said.” This view is indeed unconventional and daring, since it involves ignoring the quite well-established notion that words are said and written to do things, and do not straightforwardly represent reality. To answer the question what the Constitution was for requires more than anything else a plausible account of what motivated its Federalist backers. The account given in *Peace Pact* relies on their genuine fear “that divisions among the American sections, fueled by the rivalries of European powers, would lead . . . to anarchy, war, and despotism.”¹⁰ This isn’t much of a new paradigm. In fact it’s the oldest one there is.

Peace Pact, however, is far from the end of the story for the internationalist interpretation of the Constitution. In a substantial article in the *New York University Law Review*, David Golove and Daniel Hulsebosch reprised Hendrickson’s approach while eliminating his reliance on the threat of war. Like their predecessors, Golove and Hulsebosch declare that “the United States’ founding instrument is best understood, in historical perspective, as a fundamentally international document.” They argue that “the fundamental purpose of the Federal Constitution was to create a nation-state that the European powers would recognize” and thereby “facilitate the new nation’s integration into the Atlantic world of commerce and civilization.” Their interest is much less in relations between the United States than in the construction of a united front on the Atlantic stage, and they argue that the purpose of this united front was much less to protect against invasion or domination than it was to “earn a favorable reception abroad.”¹¹

⁹ Hendrickson, *Peace Pact*, 115, original emphasis; Onuf and Onuf, 93–95; Hendrickson, *Peace Pact*, 202, 257.

¹⁰ Hendrickson, *Peace Pact*, 177; John Fiske, *The Critical Period of American History, 1783–1789* (Boston: Houghton, Mifflin and Company, 1888); Frederick W. Marks, *Independence on Trial: Foreign Affairs and the Making of the Constitution* (Baton Rouge: Louisiana State University Press, 1973).

¹¹ David M. Golove and Daniel J. Hulsebosch, “A Civilized Nation: The Early American Constitution, the Law of Nations, and the Pursuit of International Recognition,” *New York*

According to Golove and Hulsebosch, the key to earning the respect of Europe was “to ensure that the new republic would comply with its obligations under treaties and the law of nations,” and the American founders designed the Constitution to that end. The advantages of recognition as a “civilized nation” were several. It was both “imperative” for “economic development” and “essential for security,” but there was more than that; indeed, “a complex mix of moral, social and existential elements”:

The European law of nations was not just an externally imposed demand, but also an important part of the Enlightenment project to which the founders were profoundly committed . . . Moreover, the quest for recognition fed into many of the founders’ sense of destiny: the fame they wished to earn among posterity for themselves and their collective creation.

Far from the shadows cast by Hendrickson, this world is decidedly sunny. “[I]n the eighteenth century, commerce yielded benefits beyond wealth. It was thought to encourage everything from good manners to peaceful and humanitarian sentiments, and it supposedly sustained the highest stage of human civilization.” To enter this happy club, it was only necessary to “play by the rules.”¹²

This account bears a strong resemblance to the “optimistic” Vattelien vision of the Revolutionary diplomats portrayed by the Onufs. But if Americans were not in fact disillusioned by their transatlantic encounters, what changed between 1776 and 1787? Golove and Hulsebosch present a narrative of the 1780s quite different from Hendrickson’s. “There was a tentative, revocable quality to the recognition accorded the United States” during this period, they write. If Americans did not prove themselves by respecting their treaty obligations, their “reputation in the world – and therefore the viability of independence” was in danger. The problem was “the fragmentary nature of sovereignty in the United States.” Nobody could compel state legislatures to abide by the treaty stipulations, and so Europeans could not trust Congressional diplomats. It was these “diplomatic frustrations,” not threats of anarchy and war, that “helped create the atmosphere of crisis that motivated profederal forces to organize and write a constitution.”¹³

Golove and Hulsebosch thus identify, in the sovereign independence of the individual states, a significantly different problem than does Hendrickson at the root of the Constitution. Nicholas and Peter Onuf refer to this problem

University Law Review, 85 (Oct. 2010), 934–36; see also Eliga H. Gould, *Among the Powers of the Earth: The American Revolution and the Making of a New World Empire* (Cambridge, MA: Harvard University Press, 2012), 3: “the only way to achieve these goals [independence] was to conform to European norms and expectations.”

¹² Golove and Hulsebosch, 936–38, 975–76, 977.

¹³ *Ibid.*, 953, 955, 957, 934–35.

when they characterize the Constitution as “a model world order, a system in which member states eschewed the illusory and destructive prerogatives of ‘sovereignty’ for the solid benefits of republican self-government and civil liberty.” In both the Onufs’ and Golove and Hulsebosch’s accounts, the ability of state legislatures to make their own rules and decisions is incompatible with the existence – or at least, in the latter case, the flourishing – of republican government in America. Golove and Hulsebosch go further than this. They champion not only the Federalists’ original critique of the state governments, but also their critique of democracy itself. “Even after eliminating the possibility of state interference,” they write, “the framers believed that it was essential to structure the national government in a way that best ensured the nation’s international duties would be respected.”¹⁴

How would the framers prevent “the law of nations and national treaty commitments” from being “left subject to the shifting winds of popular opinion”? This is the problem that occupied them at Philadelphia. They “incorporated a series of mechanisms” in the Constitution that would “ensure . . . that excessive popular passions would not unduly influence national policy when the rights of foreign sovereigns were at stake.” These mechanisms included establishing the supremacy of treaties and the law of nations over both state and federal laws; “self-executing treaties made without participation by the House of Representatives; and an executive charged with executing the laws, including the law of nations.” At the same time, the Constitution vested war-making powers in Congress, a symbol of popular sovereignty that also significantly checked the President’s executive capabilities. The framers, indeed, trusted neither legislatures nor Presidents, no matter how large the electoral districts. The purpose of the Constitution was to put as much out of the hands of politicians as possible; according to Golove and Hulsebosch, it thereby “signaled the nation’s capacity and resolution to be a responsible member in the community of civilized nations.”¹⁵

What is missing from Golove and Hulsebosch’s argument is a convincing reason to make international affairs the *principal* motivating factor at the American founding, or to see the Constitution as “a *fundamentally* international document.” Why was it so important for the founders to gain recognition as a “civilized nation” on European terms? References to their “philosophical worldview” and profound commitment to “the Enlightenment project” are not well enough articulated to be very satisfactory.¹⁶ They certainly would not be convincing to Joseph Parent, author of the final work

¹⁴ Onuf and Onuf, 135; Golove and Hulsebosch, 981.

¹⁵ Golove and Hulsebosch, 981, 994, 1065–66, 1011–12, 989.

¹⁶ *Ibid.*, 934, 937–38, my emphasis.

under discussion here, who employs a more self-consciously rigorous test of what may and may not count as explanatory.

Uniting States is a comparative study dealing with the question “what causes voluntary political union?” If the Constitution is the act of union between America’s states, as Parent agrees it is, then the question can be rendered quite accurately as a historically specific one: what motivation lies behind the Constitution? Or, in other words, what was the Constitution *for*? Like the Onufs, Hendrickson, and Deudney, and unlike Hulsebosch and Golove, Parent argues that “security threats are the critical impetus to political integration,” and were so in the case of the United States. “In order for union to occur, states must balance against an optimally intense, indefinite, symmetrically afflicting threat. Second, elites must exploit a security crisis to trigger rethinking of foreign policy.”¹⁷ This formula is derived from the two examples of successful voluntary union under analysis, the US and Switzerland. We can safely ignore here whether the smallness of the sample weakens Parent’s general conclusions; what matters is his historical interpretation of the American founding.

More than any other scholar examined here, Parent rejects the Federalist narrative of crisis in the 1780s. In doing so, he returns to Merrill Jensen for an assessment of America under the Articles of Confederation. They were “actually quite impressive and hardly demanded radical revision,” he writes. “From a security perspective, they had beaten back a great power and negotiated a favorable peace . . . From an economic standpoint, the Articles had weathered a postwar depression,” and now “the economy was in positive shape.” There was “little sense of national crisis” among ordinary Americans. What distinguishes Parent’s account further, and where he parts company from Jensen, is his sense that a threat did exist, but was not widely appreciated. “Winning the Revolutionary War would not keep Britain at bay, but only some political elites were in a position to know this.” The United States had fought Britain “to a standoff, but just barely, and now their position was eroding. Yet few were in a privileged position to feel these changes.”¹⁸

The Federalist ratification campaign provides the evidence for this assessment. “During ratification,” Parent points out, “security concerns were front and center.” This includes *The Federalist Papers*, of which “the early essays zero in on defense.” Moreover, “not only were their authors primarily concerned with security, their audience was too. Essays 1–6 and 8–9 were the most reprinted of all Publius’ essays.” It was crucial for the ratification

¹⁷ Joseph Parent, *Uniting States: Voluntary Union in World Politics* (New York: Oxford University Press, 2011), 4.

¹⁸ *Ibid.*, 32–33, 59, 60; Merrill Jensen, *The New Nation: A History of the United States Under the Confederation, 1781–1789* (New York: Knopf, 1950).

campaign to convince Americans that there was a substantial security threat. To do so, they were willing to resort to “fraud.” “The founders could not call for radical change without tying it into (fictionalized) current events,” which is why they exaggerated the danger posed by Shays’ Rebellion. Federalists “were worried about Britain using unrest to subvert governments and take advantage of American weakness.” In part because “they were better able to manipulate the content and flow of information,” the Federalists convinced the public of their fears, and thus succeeded in ratifying the Constitution.¹⁹

Parent makes a convincing case that only dire existential threat could have led the states into union. This is the centerpiece of his more general descriptive claim. But he makes only a very weak claim that it was this sense of threat that motivated the Federalist cause at its root. Most of the discussion is concerned with how Americans were convinced of a danger that they had failed to notice for themselves. Might the founders have been disingenuous? The ratification campaign, according to Parent, was one of fraud, fiction, and manipulation. “Journalists were beholden to elites.” “The most democratic, best-informed states were the most opposed to ratification.” Yet he concludes that “without a worthy threat, no elites in the world could have created a sustainable union.”²⁰ Despite his habitual rigor, Parent does not support this claim. What seems to determine his position is rather a lack of plausible alternatives. What else could possibly have motivated American elites? In the final section of this essay, I will suggest the outlines of a synthesis.

When historians of the founding emphasize the Federalist rhetoric of military threat, whether from European empires or backcountry rebels, they invoke a strand of scholarship that has gained strength alongside, but not entirely within, the rise of internationalist approaches. As Robbie Totten notes, this tradition follows from Charles Tilly’s historical sociology of state building, and his dictum that “the state made war, war made the state.” John Brewer’s account of the creation of a British fiscal–military state after 1688 provided the theoretical lineaments for the most important recent work on early American state building, Max Edling’s *A Revolution in Favor of Government*. This scholarship supports recent attempts by scholars of later periods to reassess and reconceptualize the strength of the American state. It also builds on a tradition

¹⁹ Parent, 61, 65–66; chapter 3 is entitled “Force, Fraud, and the Founding of the American Constitution.”

²⁰ *Ibid.*, 66, 71, 153. See also Michael C. Evans, “The Dangerous Necessity of An External Enemy: James Madison on the Republican Uses of International Anarchy and the Impossibility of a World Republic,” paper presented at the American Political Science Association, 2010 Annual Meeting, Washington, DC.

that emphasizes the founding role of Alexander Hamilton, the Treasury secretary whose public credit program did most to establish the Americans' own fiscal–military state. “In the modern era,” writes Edling, “no nation could hope to remain free, independent, and prosperous unless protected by a sufficiently strong state.”²¹

State building, then, is an international concern. Yet the internationalist vision of the American founding has also helped to counterbalance the rise of this state-building approach, which derives much of its power from the way it runs counter to conventional libertarian interpretations of the Constitution. Peter and Nicholas Onuf, and David Hendrickson, remind us of the enormous difficulties and tensions inherent in any project of consolidation within a state that is also a state-system, characterized by multiple overlapping identities and communities. Daniel Deudney, Michael Golove, and Daniel Hulsebosch go further than that. Their accounts return the notion of “republican restraint” and the constriction of government power to the analysis of the Constitution. Deudney’s neologism “negarchy” captures the sense of a structure designed to bind itself against itself, “by setting power against power,” that was once the pre-eminent understanding of the framers’ political accomplishment.²² Golove and Hulsebosch build on this by focussing on the ways the framers sought to constrain not only states’ but also the federal government’s power in foreign affairs.

A compelling account of the founding needs to account for both sides of this balance between centralizing (or power-building) and centrifugal (or power-limiting) forces. We have already shown that it is not sufficient to point to the negotiation and compromise of the Philadelphia Convention and ratification process. The limiting aspects of the Constitution were not simply concessions to Anti-Federalist demands; likewise, its centralizing aspects were not the minimum possible response to a national or republican security crisis. To understand what the Constitution was for, we have to begin by returning to the motivation of those who were most instrumental in creating it. To do

²¹ Totten, “Security, Two Diplomacies,” 85; Charles Tilly, ed., *The Formation of National States in Western Europe* (Princeton, NJ: Princeton University Press, 1975); Max Edling, *A Revolution in Favor of Government: Origins of the U. S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), 70; John Brewer, *The Sinews of Power: War, Money, and the English State, 1688–1783* (New York: Unwin Hyman, 1989). On Hamilton see Karl-Friedrich Walling, *Republican Empire: Alexander Hamilton on War and Free Government* (Lawrence: University Press of Kansas, 1999); and Gerald Stourzh, *Alexander Hamilton and the Idea of Republican Government* (Stanford, CA: Stanford University Press, 1970). On the strength of the state see Brian Balogh, *A Government out of Sight: The Mystery of National Authority in Nineteenth-Century America* (New York: Cambridge University Press, 2009); and William J. Novak, “The Myth of the ‘Weak’ American State,” *American Historical Review*, 113, 3 (2008) 752–72.

²² Deudney, “Philadelphian System,” 208; Deudney, *Bounding Power*, 180.

that, I'm afraid it will be necessary to take in yet another strand of recent scholarship.

While Charles Beard's hundred-year-old interpretation is generally reviled and repudiated, some modern scholarship can nonetheless be characterized as neo-Beardian. These are works which seek to explain the framers' strong interest in defending the rights of private property and contract. They emphasize, on one hand, the framers' determination to remove state legislatures' power to issue fiat money and manipulate tender laws and, on the other, their compulsion to establish public credit through the regularization of the economy and, most importantly, the prompt and full payment of debts. These accounts do consider the importance of international finance as a factor in the framers' programme. America's founders sought to create a hospitable environment for foreign investment. But in contrast to the works examined above, neo-Beardians are characteristically domestic in their approach to the founding. That is, to follow Carl Becker's distinction, they are concerned not only with the war for home rule, but also with the battle for who rules at home. While internationalist accounts take pains to reject the notion that the Federalist program was "reflexively anti-democratic" or "driven by" their "material interests," these are precisely the arguments scholars like Woody Holton and Terry Bouton make.²³ The two schools seem difficult to reconcile. But much of the evidence cited by the internationalists, and many aspects of their interpretations, align remarkably well with neo-Beardian perspectives.

The internationalist approach to the Constitution helps us to more fully appreciate the legal, political, and economic logic of the founders' vision. Fundamental to that vision was the desire to enshrine certain values above the level of ordinary law, outside the realm of ordinary politics. The issues of credit, paper money, and respect for treaties, which animated much of the Federalist program in the 1780s through to ratification, can be accurately reduced to a single principle: the sanctity of contract. Both recalcitrant or outright populist state governments and Shaysite rebels were the primary opponents of this vision. They, and with them many of the ordinary Americans whose voices went unheard in the making of the Constitution, did not trace the economic malaise of the mid-1780s to widespread breach of

²³ Golove and Hulsebosch, "A Civilized Nation," 970; see Terry Bouton, *Taming Democracy: "The People," the Founders, and the Troubled Ending of the American Revolution* (New York: Oxford University Press, 2007); Holton, *Unruly Americans*; Calvin Johnson, *Righteous Anger at the Wicked States: The Meaning of the Founders' Constitution* (New York: Cambridge University Press, 2005). Both Holton and Bouton acknowledge their extensive debts to Roger H. Brown, *Redeeming the Republic: Federalists, Taxation, and the Origins of the Constitution* (Baltimore: Johns Hopkins University Press, 1993), which is also foundational to the state-formation tradition of Edling et al. (see note 21 above).

contract. But it is worth noting that those who dissented from the Federalist framers on this question do not include those Anti-Federalists who had the most prominent roles in ratification debates. As David Hendrickson points out, the Anti-Federalists were founders too, and the Constitution was partly of their making. It is quite wrong to see the founding as fundamentally embodied in the ratification conflict and its compromises. On the principle nearest to the hearts of American elites, those who had a substantial voice agreed; as Patrick Henry put it, “we are at peace on this issue.”²⁴

A few additional quotations will have to suffice to illustrate the point here. A committee of Congress wrote, in 1786, that “the most fatal evils will inevitably flow from a breach of public faith, pledged by solemn contract, and a violation of those principles of justice, which are the only solid basis of the honor and prosperity of Nations.” No less a democrat than Thomas Paine argued the same year that “the people in their original compact of equal justice or first principles of a republic, renounced, as despotic, detestable and unjust, the assuming a right of breaking and violating their engagements, contracts and compacts.” In *Federalist* 44, Madison declared, “Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact and to every principle of sound legislation.”²⁵

The Constitution was a contractarian document; itself a contract, designed to secure the protection of contractual rights as the determining feature of political, economic, and social life. This principle, as the internationalist approach has helped demonstrate, was no respecter of the division between domestic and foreign affairs. Rather, it drives a deconstructive logic that continues to operate by bringing into question the meaning of international boundaries and distinctions. If, as Golove and Hulsebosch argue, “personal and national morality overlapped in substance and method,” the substance and method they refer to are combined in the notion of contract. “These gentlemen would do well to reflect that a treaty is only another name for a bargain . . . made, not by only one of the contracting parties, but by both,” as John Jay wrote in *Federalist* 64. “Perhaps the central principle of the law of nations,” Hendrickson writes, “was the maxim that the pacts the nations made among themselves were to be religiously observed.” It was indeed by a “domestic analogy” that this maxim was established, for the “norms,

²⁴ Patrick Henry in Herbert J. Storing, ed., *The Complete Anti-Federalist*, Volume V (Chicago: The University of Chicago Press, 1981), 229.

²⁵ J. C. A. Stagg, ed., *The Papers of James Madison Digital Edition* (Charlottesville, 2010), “Bill Providing for Delegates to the Convention of 1787,” note 2, <http://rotunda.upress.virginia.edu/founders/JSMN-01-09-02-0071>; Thomas Paine, *Dissertations on Government* (Philadelphia, 1786), Evans #19880, 8; Lawrence Goldman, ed., *The Federalist Papers* (Oxford: Oxford University Press, 2008), 223.

procedures, and institutions” that the framers had in mind were those establishing the rule of contract over individuals.²⁶

Why did the founders care so much about contracts? We might look to their intellectual, social, and moral background. Enlightenment and commonsense philosophy relied on the principle of contract to define political and economic relationships. The theories of Hobbes and Locke, which stood at the foundation of English political thought as it came down to the founders in the eighteenth century, equally revolve around consent and contract. The gentlemanly code of honor, by which American along with European elites bound themselves, put the fulfillment of promises at its centre. Contract also had a central role in Christian theology, under the name of covenant. One’s word, one’s bond, one’s contract, one’s covenant: to honor and obey these things was the basis of the founders’ understanding of justice. This understanding, naturally, bore a deep and vital correspondence with the class interests of the elites who upheld it. At its simplest, fidelity to contracts made future contracting possible: finance and commerce, the stuff of life not only for merchants but for landlords, lawyers, and virtually everyone else whether they liked it or not, depended on the security of obligations. “Law,” as Charles Beard once wrote, “is not an abstract thing.”²⁷

State legislatures of the 1780s threatened the sanctity of contract in many various ways. They failed to honor their obligations to the Confederation, to each other, and to foreign states. Even when their very actions, in attempting to raise taxes and impose fiscal austerity, stirred popular unrest like Shays’ rebellion and contributed to economic stagnation, Federalists believed they showed a worrying reticence or weakness in rebuffing populist movements and egalitarian demands. They manipulated their own laws to alter contracted debts and corporate arrangements. These were the motivating factors behind the campaign that resulted in the Constitution. Joseph Parent and others have rightly argued that the Federalists needed to create an exaggerated impression of external threat in order to win over the American people. This effort generated the fear-filled writing which has spurred the internationalist interpretation of the Constitution.

I have argued here that the scholarship contributing to that interpretation suffers from several important defects. Without the contribution of scholarship concerned with politics on the ground, from countinghouse to courthouse, the international interpretation can give us only a hollow account of the structure of politics in the post-Revolutionary republic. Hendrickson’s

²⁶ Golove and Hulsebosch, “A Civilized Nation,” 974; Jay quoted in *ibid.*, 1010; Hendrickson, *Peace Pact*, 173, 15.

²⁷ Charles Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Free Press, 1965; first published 1913), 12.

“unionist paradigm” identifies the international scope of the problems faced by the new nation, but without considering the type of society and the various identities that nation would house and foster. Yet his and others’ work has had a salutary effect on the study of the American founding. By challenging the too easy separation of inside from outside, of plural from singular, and of the diplomatic from the political, the international interpretation allows us to see in a new and perhaps a clearer light the object and nature of the Constitution.