

Chapter One

ERRATUM, Page 34: Should be Massachusetts had named not residents of Massachusetts had named

EN 5. In the predawn quiet of April 21, 1775, hours after the battles of Lexington and Concord but days before news of the skirmishes would reach Virginia, an armed squad of British sailors tried to disable the colonial arsenal in Williamsburg by removing half-barrels of gunpowder under cover of darkness. Colonists detected the removal; outrage and unrest ensued. Led by provincial lawyer Patrick Henry, local militiamen mobilized against Lord Dunmore, the royal Virginia governor who had secretly ordered the removal. In early June, Dunmore fled the governor's mansion and boarded the *Fowey*, then anchored in the York River. Dunmore tried to govern Virginia from the *Fowey*, but when the frigate was ordered north in July to reinforce troops in Boston, he relocated to other floating fortresses. The *Fowey* saw heavy action against American rebels throughout the Revolutionary War and was scuttled during the 1781 battle of Yorktown. See C. Thomas Long, "Britain's Green Water Navy in the Revolutionary Chesapeake: Long-Range Asymmetric Warfare in the Littoral," *International Journal of Naval History* 8 (2009): issue 2

EN 45. Here is how Thucydides described his method of historical investigation and reporting:

With reference to the speeches in this history, some were delivered before the war began, others while it was going on; some I heard myself, others I got from various quarters. [It] was in all cases difficult to carry them word for word in one's memory, so my habit has been to make the speakers say what was in my opinion demanded of them by the various occasions, *of course adhering as closely as possible to the general sense of what they really said*. And with reference to the narrative of events, far from permitting myself to derive it from the first source that came to hand, *I did not even trust my own impressions*, but it rests partly on what I saw myself, partly on what others saw for me, *the accuracy of the report being always tried by the most severe and detailed tests possible*. My conclusions have cost me some labour from the want of coincidence between accounts of the same occurrences by different eyewitnesses, *arising sometimes from imperfect memory, sometimes from undue partiality for one side or the other*. *The absence of romance in my history will, I fear, detract somewhat from its interest*; but if it be judged useful by those inquirers *who desire an exact knowledge of the past* as an aid to the interpretation of the future, which in the course of human things must resemble if it does not reflect it, I shall be content. In fine, I have written my work, not as an essay which is to win the applause of the moment, but as a possession for all time.

The History of the Peloponnesian War, Book 1, Chapter One (Richard Crawley translation) (emphasis added).

EN 47. On Trumbull's artistic license, as encouraged by Adams himself (and also Jefferson), see generally David McCullough, "An Icon's Secret," *Wall Street Journal*, June 30, 2007; Emily Sneff, "Unsullied by Falsehood: No John Trumbull," June 27, 2016, <https://declaration.fas.harvard.edu/blog/trumbull>.

For one eye-opening, albeit far from contemporaneous, account of voting and signing details, along with a tally of some the differences between those who voted on July 4 and those who later signed, see Letter of Thomas McKean to JA, Jan. 1814. Both letter-signer and letter-recipient voted for the document on July 4 and later signed it. Recent scholarship supports McKean's general account and indeed suggests the gaps between voters and signers are even greater than McKean identified. See Ray Raphael, "Was the Declaration of Independence Signed on July 4? How Memory Plays Tricks with History," *Journal of the American Revolution*, Oct. 10, 2017.

EN 53 After the Civil War, when the reputation of New England Yankees was at its peak and Virginia's reputation at its nadir, old Adams's story began to gain traction. One key development was the 1865 publication of *Quincy's Reports*, compiling various contemporaneous accounts of Bay Province Superior Court decisions between 1761 and 1772. The reports had initially been composed by Josiah Quincy, Jr. (aka Josiah Quincy II), whose uncle Samuel Quincy had attended the February 1761 oral argument with young Adams. In 1761 young Quincy was a Harvard undergraduate whose interest in the writs case was likely piqued by Adams's conversations with the youngster's father and uncle. Whereas Adams himself missed the November follow-up hearing, young Quincy attended and kept notes of this and many subsequent cases. Quincy died in 1775, but his son, Josiah Quincy III, kept his father's papers and later became a prominent Boston politician and the president of Harvard. Quincy Junior's great grandson, Samuel M. Quincy, eventually published Quincy Junior's reports and included a massive appendix on the writs of assistance controversy, composed by a Harvard-trained Boston lawyer, Horace Gray. Gray later became Hutchinson's successor of sorts as Chief Justice of the Massachusetts Supreme Judicial Court and, later still, an Associate Justice of the U.S. Supreme Court. In 1886, the latter Court decided its first major constitutional search-and-seizure case. The Court rightly devoted considerable attention to Lord Camden's high-profile rulings in the English controversy over general warrants in the mid-1760s. Thanks to Gray, the Court also included a brief excerpt drawn from the elderly Adams. *Boyd v. United States*, 116 U.S. 616, 624-30 (1886) ("in February, 1761, in Boston, [a] famous debate...occurred [that] was perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country. 'Then and there' said John Adams, 'then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born.'").

After *Boyd*, justices on many occasions have invoked old Adams's account of the writs case. The most influential and most effusive invocations have overwhelmingly come from justices who studied law at Harvard. See *Davis v. United States*, 328 U.S. 582, 604-05 (1946) (Frankfurter, J. dissenting); *Harris v. United States*, 331 U.S. 145, 157-59 & n.3 (1947) (Frankfurter, J., dissenting); *United States v. Rabinowitz*, 339 U.S. 56, 69-70 & n.1 (1950) (Frankfurter, J. dissenting); *Frank v. Maryland*, 359 U.S. 360, 364 & nn. 2-3 (1959) (opinion of the Court per Frankfurter, J.); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 286 n. 8 (1990) (Brennan, J., dissenting); *Riley v. California*, 573 U.S. 373, 403 (2014) (opinion of the Court per Roberts, C.J.); *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018) (opinion of the Court per Roberts, C.J.). Note that Frankfurter was not only a graduate of, but also for many years a prominent professor at, Harvard Law School. For a more restrained invocation of Otis from a justice who not only studied law at Harvard, but later served as Gray's law clerk, see *Olmstead v. United States*, 277 U.S. 438, 474 & n.1 (1928) (Brandeis, J., dissenting).

For a notable Adamsonian opinion per Justice Potter Stewart, who attended Yale for both college and law school, see *Stanford v. Texas*, 379 U.S. 476, 481-82 (1965). Justice William Douglas, Sterling Professor of Law at Yale prior to taking the bench, also repeatedly invoked Otis and old Adams in Harvardian fashion, but these opinions have been less influential. See *Draper v. United States*, 358 U.S. 307, 317 (1959) (Douglas, J., dissenting); *Gilbert v. California*, 388 U.S. 263, 286 (1967) (Douglas, J., concurring in part and dissenting in part); *United States v. United States Dist. Court*, 407 U.S. 297, 328-29 & n.6 (1972) (Douglas, J., concurring). See also *Messerschmidt v. Millender*, 565 U.S. 535, 560 (2012) (Sotomayor, J., dissenting—another Yale Law School graduate). For the rare invocation of old Adams by a non-Northeastern (albeit Northern) justice, see *United States v. 92 Buena Vista Ave.*, 507 U.S. 111, 118-19 & n.10 (1993) (opinion of the Court per Stevens, J., a graduate of the University of Chicago and Northwestern Law School).

EN 59. See generally Edmund S. Morgan, “The Revolution Considered as an Intellectual Movement,” in *The Challenge of the American Revolution* (1976), 87 (“Americans found scope for the talents that the Revolution had uncovered. Jefferson, Hamilton, Madison, and John Adams received from national politics the stimulus that made them great.”); Morgan, “Challenge and Response: Perspectives on the Bicentennial,” in *ibid.*, 205 (“British rule...offered no opportunity for a colonist with political talent to use that talent in contributing to the direction of the great empire that demanded his loyalty.”); Morgan, *The Meaning of Independence*, 12 (“It was one of the weaknesses of the empire that it offered no arena larger than that of provincial politics for the political talents of its colonial subjects.”); *ibid.*, 34-35 (“Washington...was mortally offended by a captain in the British army who appeared on the scene and claimed to outrank all provincials, even those of a higher nominal grade. Washington later resigned his commission rather than submit to that kind of dishonor. Thereafter he sought in vain for a royal commission in the regular British army in order to avoid such embarrassment.”). See also Gordon S. Wood, *The Creation of the American Republic* (1969), 106 (“The contempt shown by the royally commissioned officers for the provincial militia officers had angered the colonials and driven a young and ambitious George Washington into a fury.”); Maier, *From Resistance*, 16 (describing how the “arrogance and arbitrariness” of British agents in many colonies caused colonial “estrangement of...Affections”). For more on Franklin’s and Washington’s adverse emotional reactions to “shabby treatment” by British overlords, see Edward J. Larson, *Franklin & Washington: The Founding Partnership* (2020), 98. See also Edward J. Larson, *A Magnificent Catastrophe: The Tumultuous Election of 1800, America’s First Presidential Campaign* (2007), 12 (“the British Empire offered only bit parts to colonial actors” such as Adams and Jefferson, and “[p]erhaps that fed their disillusionment with the imperial regime”).

Chapter Two

ERRATUM, Page 70: Should be Like Wilkes not As with Wilkes

ERRATUM, Page 87: Should be this point quite early on not this point this early on

EN 1. On the social, cultural and political significance of Revolutionary-era lawyers and others posing as simple “farmers,” see Gordon S. Wood, “The Legacy of Rome in the American Revolution,” in *The Idea of America: Reflections on the Birth of the United States* (2011), 71-72; “Interests and Disinterestedness in the Making of the Constitution,” in *ibid.*, 145-146; Gordon S. Wood, *Revolutionary Characters: What Made the Founders Different* (2006), 18; ; Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (2009), 22-27.

EN 8 On “Ravens,” see *New-York Mercury*, 4-2-1764; *New-York Gazette*, 4-5-1764; *Pennsylvania Journal*, 4-5-1764; *Boston Gazette*, 4-9-1764; *Boston Post-Boy*, 4-9-1764; *Boston Evening-Post*, 4-9-1764; *Newport Mercury*, 4-9-1764; *Boston News-Letter*, 4-13-1764; *New-Hampshire Gazette*, 4-13-1764; *Providence Gazette*, 4-14-1764. For other warnings, see *Georgia Gazette*, 4-19-1764; *New-York Mercury*, 4-23-1764; *Boston Gazette*, 4-30-1764.

EN 9 *Boston Evening-Post*, 5-7-1764; *Boston Gazette*, 5-7-1764; *Boston Post-Boy*, 5-7-1764; *Boston News-Letter*, 5-10-1764; *New-London Gazette*, 5-11-1764; *New-York Gazette*, 5-14-1764; *Pennsylvania Gazette*, 5-17-1764; *New Hampshire Gazette*, 5-18-1764; *Maryland Gazette*, 5-24-1764; *Boston Gazette*, 6-11-1764; *Pennsylvania Journal and Weekly Advertiser*, 6-14-1764; *Newport Mercury*, 6-18-1764; *New-London Gazette*, 6-22-1764; *Providence Gazette*, 6-23-1764.

ERRATUM, Page 60: Should be home colony not home state

ERRATUM, Page 61: Should be colony’s assembly not state assembly

EN 69 See, e.g., *Newport Mercury*, 2-20-1764; *New-York Gazette*, 3-3-1766; *Pennsylvania Journal*, 3-6-1766; *Newport Mercury*, 3-10-1766; *Newport Mercury*, 6-2-1766; *Boston Gazette*, 8-4-1766.

EN 77 *New Hampshire Gazette*, 3-16-1770 (four-coffin imitation); Queen Street broadside (“Poem In Memory of the (never to be forgotten) fifth of March, 1770”) (five-coffin imitation), 1770; *Boston Gazette*, 3-19-1770 (Carr’s fifth coffin by Revere); Revere flier, 1770 (“On the death of five young men who was [sic] murdered March 5, 1770, by the 29th Regiment”) (five coffins). Note that Revere himself, in his now famous engraving of the Massacre, apparently borrowed heavily (and perhaps unscrupulously?) from Henry Pelham, the younger half-brother of John Singleton Copley.

EN 82 The details of the Sons’ operation that night—exactly who did what, when—remain shrouded in mystery. Tradition awards Samuel Adams the honor of formally signaling his co-conspirators to commence the party when it became clear that Hutchinson would not bend, but the evidence on this key detail is mixed and murky. Still, there is broad agreement that the Sons threw the party; that Adams was a, if not the, leading Son in town; that he was “a central figure in [colonial Boston’s] extra-legal politics”; and that the party beautifully fit his general

philosophy and praxis of extra-legal mob action. See generally Maier, *The Old Revolutionaries*, 5, 27-28 & n.32.

EN 98 *Boston News-Letter*, 1-7-1773; *Massachusetts Spy*, 1-7-1773; *Boston Post-Boy*, 1-11-1773; *Newport Mercury*, 2-15-1773. Hutchinson's address was also published in London, see Morgan, *Benjamin Franklin*, 193

EN 103 Act of Settlement, 12 and 13 Will. 2, c. 2, sec. 3 (1701):“In case the Crown and imperial dignity of this Realm shall hereafter come to any person, not being a native of this Kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the Crown of England, without the consent of Parliament.... [N]o person who shall hereafter come to the possession of this Crown, shall go out of the dominions of England, Scotland, or Ireland, without the consent of Parliament.”

Chapter Three

ERRATUM, Page 145: Should be Coercive Acts and much more, and openly not Coercive Acts, and much more, openly

EN 33 *Pennsylvania Evening Post*, 7-5-1777; *Pennsylvania Packet*, 7-8-1777; *Pennsylvania Gazette*, 7-9-1777; *Pennsylvania Journal*, 7-9-1777; *Dunlap's Maryland Gazette*, 7-15-1777; *Maryland Journal*, 7-15-1777; *Virginia Gazette* (Dixon and Hunter), 7-18-1777; *Norwich Packet*, 7-21-1777; *Boston Gazette*, 7-28-1777.

EN 34 *Pennsylvania Packet*, 7-8-1776; *Dunlap's Maryland Gazette*, 7-9-1776; *Maryland Journal*, 7-10-1776; *Pennsylvania Gazette*, 7-10-1776; *Pennsylvania Journal*, 7-10-1776; *Constitutional Gazette* (New York), 7-10-1776; *New-York Journal*, 7-11-1776; *Connecticut Gazette*, 7-12-1776 (New London); *Providence Gazette*, 7-13-1776; *Pennsylvania Ledger*, 7-13-1776; *Norwich Packet*, 7-8-1776; *Connecticut Courant*, 7-15-1776; *New-York Gazette*, 7-15-1776; *American Gazette*, 7-16-1776 (Salem); *Connecticut Gazette*, 7-17-1776; *Massachusetts Spy*, 7-17-1776 (Worcester); *New-England Chronicle*, 7-18-1776 (Boston); *Continental Journal*, 7-18-1776 (Boston); *Newport Mercury*, 7-18-1776; *Essex Journal*, 7-19-1776 (Newburyport); *New-Hampshire Gazette*, 7-20-1776; *Virginia Gazette* (Dixon and Hunter), 7-20-1776; *Boston Gazette*, 7-22-1776 (Watertown); *Virginia Gazette* (Purdie), 7-26-1776.

EN 68. Consider Jill Lepore, *These Truths: A History of the United States* (2018), 94: “Not the taxes and the tea, not the shots at Lexington and Concord, not the siege of Boston; rather it was this act, Dunmore's offer of freedom to slaves, that tipped the scales in favor of American independence.” Lepore's huge causal claim is based on flimsy evidence and faulty analysis. The only scrap of proof adduced is a Dec. 8, 1775 letter from one single South Carolina patriot, Edward Rutledge, to another, Ralph Izard. But white South Carolinians always had a cockeyed view of slavery and were hardly representative of colonists to the North. The letter was merely one hopeful South Carolinian patriot's prediction of what Dunmore's proclamation *would*

“effectuate” rather than a sober assessment of what the proclamation did in fact “effectuate.” Lepore ignores the key fact that the proclamation aimed only at *rebel* slaves. Thus, at least some slave-holding fence-sitters, predicting that Britain would win the war should independence be declared, probably tried to protect their land and chattel post-proclamation by disavowing the patriots and embracing *loyalism*. (That was Dunmore’s bet.) In any event, Dunmore’s November 1775 proclamation came only *after* most patriots in most parts of America had already backed armed conflict and de facto independence. The proclamation was more the *consequence* of the actual war already underway than its *cause*. Pre-proclamation, there were more than “shots” at Lexington and Concord in 1774. More than a hundred men died. (Lepore, oddly, counts only twelve, *ibid.*, 92.) There was more than a “siege” in Boston. More than a thousand men died or suffered grievous injury in ferocious fighting on or near Bunker Hill, a key June 1775 episode all but unmentioned in Lepore’s sweeping tome. Long before Dunmore’s proclamation, Washington had taken charge of a vast and self-described *continental* army; George III had proclaimed all the mainland colonies to be in revolt; and indeed the monarch had formally told Parliament that “the rebellious war now levied is become more general, and is manifestly carried on for the purpose of establishing an independent empire.” Speech of Oct. 27, 1775. Lepore’s general narrative sidesteps these key facts and also scants the myriad issues arising out of “the taxes and the tea”—especially the existential issues raised by the Coercive Acts. Many of these issues—the backbone of standard accounts of the American Revolution—centered on Boston, where slavery was not rampant and was in fact abolished by patriots in the early 1780s. The yearlong delay between Bunker Hill and formal independence had rather little to do with Dunmore’s Virginia, which had already in effect joined Adams’s convoy. Rather, formal independence was delayed mainly because of the sluggishness of the middle colonies, including Quaker-filled Pennsylvania, which had few slaves and which took steps to end slavery soon after independence. For an incisive analysis of middle-colony moderates in 1774-1776 that tellingly makes no mention of Dunmore, see Jack N. Rakove, *Revolutionaries: A New History of the Invention of America* (2010), 71-111. Most of the key moderates highlighted by Rakove were notably anti-slavery: Pennsylvania/Delaware’s John Dickinson, who freed all his slaves in 1777, Pennsylvania’s James Wilson, and New York’s John Jay and James Duane.

Granted, New York was another important laggard colony, and slavery loomed larger there than in Pennsylvania. But Lepore offers no proof that Dunmore’s proclamation in fact galvanized New York patriots. (For Lepore’s earlier prizewinning work on Manhattan slavery in the early 1740s, see *New York Burning; Liberty, Slavery, and Conspiracy in Eighteenth-Century Manhattan* (2006).)

Even if some Americans revolted to preserve slavery, many other Americans surely had other ideas. Thus, several newly independent states abolished slavery not long after declaring independence—among the world’s first acts of *abolition* as distinct from *emancipation*. The new union also abolished slavery in its northwestern backcountry.

. Chapter Four

ERRATUM, EN 20 page 734: At end of note, add See also *DHRC Digital*, 22:2138 (R.R. Livingston in New York ratifying convention, July 11, 1788); *ibid.*, 4:211 (“Examiner,” *Massachusetts Gazette*, 11-9-1787).

Chapter Five

EN 6. In his Autobiography, Adams at some point added to his initial diary entry of June 2, 1775 some interesting language. “We must realize the Theories of the Wisest Writers and invite the People, to erect the whole Building with their own hands upon the broadest foundation. That this could be done only by Conventions of Representatives chosen by the People in the several Colonies, in the most exact proportions. That it was my Opinion, that Congress ought now [in 1775] to recommend to the People of every Colony to call such Conventions immediately and set up Governments of their own, under their own Authority: for the People were the Source of all Authority and Original of all Power.” These words may have been written long after 1775. In this 1776 “Thoughts” essay, Adams did stress the idea that a representative body should be “an exact portrait of the people at large.” But in “Thoughts,” this envisioned body was merely one part of ordinary government (the lower house) and not a special ad hoc “convention.” Note also that this Autobiographical entry did not claim that in 1775 Adams was envisioning popular ratification of whatever an ad hoc convention might draft.

EN19 In the New York ratifying convention, Madison’s Publian partner, Alexander Hamilton, echoed some of *The Federalist* 54 in defending the Three-Fifths Clause. (*The Federalist* operated as a debater’s handbook in several ratifying conventions, especially Virginia’s and New York’s.) *Elliot’s Debates*, 2:237 (June 20). Compared to Madison, however, the staunchly anti-slavery Hamilton did many more things throughout his career to advance the cause of abolition and racial equality. See generally Ron Chernow, *Alexander Hamilton* (2004); see also Stanley Elkins and Eric McKittrick. *The Age of Federalism* (1993), 99, 251.

EN 38 Franklin’s speech appeared in the *Massachusetts Spy* on Nov. 29; the *Boston Gazette* on Dec.3; the *Massachusetts Centinel* and the *Virginia Independent Chronicle* on Dec. 5; Maine’s *Cumberland Gazette* and Providence’s *United States Chronicle* on Dec. 6; the *New-Hampshire Spy* on Dec. 7; the *Providence Gazette* on Dec. 8; Boston’s *American Herald*, Hartford’s *American Mercury*, the *Connecticut Courant*, the *New-York Journal* and *New-York Post* on Dec. 10; New York’s *Daily Advertiser* and the *Salem Mercury* on Dec. 11; Northampton’s *Hampshire Gazette* on Dec. 12; the *New-Haven Gazette* and the *Virginia Journal* on Dec.13; New Hampshire’s *Freeman’s Oracle* on Dec.15; the *Litchfield Monitor* on Dec. 17; the *New Jersey Journal* on Dec.19; the *Newport Herald* on Dec.20; the *Connecticut Gazette* on Dec. 21; and Charleston’s *City Journal* on Dec. 27.

One additional and important early discussion of convention deliberations deserves mention alongside the items mentioned in the paragraph beginning “Post-ratification”: In the House debates about the Hamilton plan to assume state war debts, Gerry and Madison traded contrasting recollections of the closed-door sessions of August 21-22, 1787. *Annals*, 2: 1409-10 (Gerry, February 25, 1790), 1591 (Madison, April 22, 1790). Cf. *Farrand’s Records*, 2:355-67, 377.

ERRATUM, EN 15 page 738: Should be 736-37n4, not 736n67.

Chapter Six

ERRATUM, Page 237: Should be institutions not insitutions.

EN 2 *Pennsylvania Packet*, 9-19-1787; *Pennsylvania Gazette*, 9-19-1787; *Freeman's Journal*, 9-19-1787 (Philadelphia); *Independent Gazetteer*, 9-19-1787 (Philadelphia); *Pennsylvania Evening Herald*, 9-20-1787; *Pennsylvania Mercury*, 9-21-1787; *New-York Packet*, 9-21-1787; *Independent Journal*, 9-22-1787 (New York); *Maryland Journal*, 9-25-1787; *Massachusetts Centinel*, 9-26-1787; *Connecticut Journal*, 9-26-1787; *New-Jersey Journal*, 9-26-1787 (Elizabeth Town); *Carlisle Gazette*, 9-26-1787; *Maryland Chronicle*, 9-26-1787 (Frederick); *Independent Chronicle*, 9-27-1787 (Boston); *United States Chronicle*, 9-27-1787 (Providence); *Virginia Gazette*, 9-27-1787; *Virginia Journal*, 9-27-1787; *Maryland Gazette* 9-27-1787 (Annapolis); *Massachusetts Spy*, 9-27-1787 (Worcester); *Norwich Packet*, 9-27-1787; *New-Haven Gazette*, 9-27-1787; *New York Journal and Weekly Register*, 9-27-1787; *Massachusetts Gazette*, 9-28-1787; *Connecticut Gazette*, 9-28-1787 (New London); *Norfolk and Portsmouth Journal*, 9-28-1787; *New-Hampshire Spy*, 9-29-1787; *Providence Gazette*, 9-29-1787; *American Herald*, 9-30-1787 (Boston); *Connecticut Courant*, 10-1-1787; *American Mercury*, 10-1-1787 (Hartford); *Boston Gazette*, 10-1-1787; *Middlesex Gazette*, 10-1-1787 (Middletown); *Weekly Monitor*, 10-1-1787 (Litchfield); *Vermont Gazette*, 10-1-1787; *Columbian Herald*, 10-2-1787 (Charleston); *Salem Mercury*, 10-2-1787; *Country Journal*, 9-26-1787 and 10-3-1787 (Poughkeepsie); *Hampshire Gazette*, 10-3-1787 (Northampton); *Essex Journal*, 10-3-1787 (Newburyport); *State Gazette of North-Carolina*, 10-4-1787 (New Bern); *Cumberland Gazette*, 10-4-1787 (Portland); *Pittsburgh Gazette*, 10-6-1787; *Newport Mercury*, 10-8-1787; *Virginia Herald*, 10-4-1787 and 10-11-1787 (Fredericksburg); *Spooner's Vermont Journal*, 10-15-1787 (Windsor).

EN 6 In *The Federalist* No. 78, Hamilton/Publius took aim at certain Anti-Federalists who had slighted Americans' right to alter their systems of government. He explicitly identified two targets: "Protest of the Minority of the Convention of Pennsylvania" (a publication by Keystone State Anti-Federalist delegates who had been outmaneuvered and outvoted by James Wilson and his allies) and "Martin's speech" (a reference to disaffected Philadelphia delegate Luther Martin's tattling oral report in to the Maryland House of Delegates). Much of the rest of No. 78 pointedly refuted essays on federal judicial power by the Anti-Federalist essayist, "Brutus," but did not mention "Brutus" by name. In *The Federalist* No. 67, Hamilton/Publius called out the Anti-Federalist essay "Cato V" for its erroneous claim that the president could fill Senate vacancies. In *The Federalist* No. 68, Hamilton/Publius was more gracious toward the Anti-Federalist "Federal Farmer," whom No. 68 described as one of the Constitution's "more plausible" critics. (If the "Federal Farmer" was Melancton Smith, as some scholars believe, Publius's charity here was infinitely rewarded; in the New York ratifying Convention, Smith ended up being the swing figure who ultimately threw his support to the Federalists, enabling them to win by a single vote.) In the concluding *Federalist* No. 85, Hamilton/Publius had even nicer things to say about "an excellent little pamphlet, lately published in this city," *An Address to the People of New York*. (The pamphlet, highlighting the geostrategic argument for union, was pseudonymously written by John Jay, himself of course a sometime Publius.) Madison/Publius was often more vague in his rejoinders and references, but his *Federalist* No. 38 addressed sundry Anti-Federalist criticisms without naming the critics. Other examples abound; no one who reads *The Federalist* with care can miss that Publius was writing in rapid response to contemporaries in the great ratification debate all around him.

EN 7 . See, e.g., *Independent Chronicle*, 1-17-1788; *ibid.*, 2-7-1788; *ibid.*, 2-28-1788; *ibid.*, 5-8-1788; *ibid.*, 6-12-1788; *ibid.*, 6-26-1788; *ibid.*, 7-10-1788; *Massachusetts Gazette*, 1-18-1788; *American Mercury* (Hartford), 1-21-1788; *Freeman's Oracle* (Exeter), 1-25-1788; *ibid.*, 6-13-1788; *ibid.*, 6-27-1788; *Fairfield Gazette*, 1-30-1788; *New-Hampshire Spy*, 2-8-1788; *ibid.*, 6-24-1788; *ibid.*, 7-8-188; *ibid.*, 8-12-1788; 8-16-1788; *Essex Journal* (Newburyport), 2-13-1788; *ibid.*, 8-6-1788; *Daily Advertiser*, (New York) 2-14-1788; *ibid.*, 2-18-1788; *ibid.*, 3-6-1788; *ibid.*, 5-20-1788; *ibid.*, 7-28-1788; *ibid.*, 8-2-1788; *New-York Packet*, 2-15-1788; *ibid.*, 6-27-1788; *ibid.*, 8-5-1788; *Hampshire Gazette* (Northampton), 2-20-1788; *ibid.*, 6-25-1788; *ibid.*, 8-6-1788; *Pennsylvania Gazette*, 3-5-1788; *ibid.*, 7-2-1788; *ibid.*, 8-9-1788; *American Herald* (Boston), 5-8-1788; *Salem Mercury*, 5-13-1788; *Massachusetts Gazette*, 5-20-1788; *ibid.*, 8-15-1788; *Pennsylvania Mercury*, 5-27-1788, *ibid.*, 7-1-1788; *City Gazette* (Charleston), 5-28-1788; *ibid.*, 7-16-1788; *ibid.*, 7-22-1788; *ibid.*, 8-11-1788; *New-Hampshire Gazette*, 6-19-1788; *ibid.*, 6-26-1788; *Connecticut Courant*, 6-30-1788; *Maryland Journal*, 7-1-1788; *Boston Gazette*, 7-7-1788; *Middlesex Gazette* (Middletown), 7-7-1788; *Wilmington Centinel*, 7-9-1788; *Hampshire Chronicle* (Springfield), 7-9-1788; *ibid.*, 8-6-1788; *Massachusetts Spy*, 7-10-1788; *New-York Morning Post*, 8-4-1788; *New-Haven Gazette*, 8-7-1788; *Connecticut Gazette*, 8-8-1788; *Pennsylvania Journal*, 8-9-1788; *Impartial Gazetteer*, 8-9-1788. This tally does not include any of the notable later (post 8-16) references to Russell's motifs.

EN 20 *Independent Chronicle*, 1-17-1788; *Massachusetts Gazette*, 1-18-1788; *Massachusetts Centinel*, 1-19-1788; *American Herald*, 1-21-1778; *Connecticut Courant*, 1-21-1788; *New-Hampshire Spy*, 1-22-1788; *Salem Mercury*, 1-22-1788; *Connecticut Journal*, 1-23-1788; *Essex Journal*, 1-23-1788; *New-Hampshire Gazette*, 1-23-1788 *Worcester Magazine*, fourth week in January, 1788; *Newport Herald*, 1-24-1788; ; *United States Chronicle* (Providence), 1-24-1788; *New-York Journal*, 1-28-1788; *Boston Gazette*, 1-28-1788; *Providence Gazette*, 1-28-1788; *Hampshire Gazette*, 1-30-1788; *New-Hampshire Mercury*, 1-30-1788; *Cumberland Gazette*, 1-31-1788; *New-Haven Gazette*, 1-31-1788; *Pennsylvania Packet*, 1-31-1788; *Providence Gazette*, 2-2-1788; *Pennsylvania Journal*, 2-2-1788; *Collier's (Litchfield) Weekly Monitor*, 2-4-1788; *Norwich Packet*, 2-7-1788.

ERRATUM, EN 29: Should be 112-13 not 12-13.

EN 43 In the key passage of a recent book published to considerable hype, the author claims, erroneously and indeed preposterously, that:

Neither Virginia nor New York would have ratified the Constitution without reserving the right to secede from the Union. Though the Constitution itself was silent on secession, contemporaries clearly believed ratification could be withdrawn the same way it had been tendered; by popularly elected delegates voting at a statewide convention. No state would have joined the Union had its citizens not believed that such a right was necessarily implied.

Richard Kreitner, *Break It Up: Secession, Division, and the Secret History of America's Imperfect Union* (2020), 95, 408. Let us now count the ways that this key passage is clearly wrong. *First*: Both New York and Virginia expressly *did* ratify without reserving such a right and indeed New York rejected the alleged right squarely and decisively. Virginia's Madison

expressly said that *all* pre-New York states—obviously, including his own—had ratified the Constitution *in toto* and *for ever*, and New York, as has been seen, very pointedly followed suit. Kreitner garbles the matter at his endnote page 408 (accompanying the above-quoted passage at page 95), misattributing Madison’s words to Hamilton and claiming that Hamilton was an outlier (“unusual”). In fact, Hamilton, backed by Virginia’s Madison, spoke for all New York Federalists on this point; and the New York Federalists prevailed on this point in as clean and dramatic a manner as it is possible to imagine, as the rest of America (including South Carolina!) looked on and applauded. *Second*: the Virginia and New York convention “reserv[ations]” that Kreitner points to did not say that the people *of any single state* could *unilaterally* withdraw from the Constitution, but rather that *the people of America as a whole* reserved their basic James Wilsonian popular-sovereignty right to alter or abolish government at will. “The powers granted under the Constitution, being derived from *the people of the United States*, may be resumed by *them*, whensoever the same shall be perverted to their injury or oppression.” *Elliot’s Debates* 1:327 (Virginia, June 26, 1788) (my emphasis added); *ibid.* (New York, July 26, 1788: “the powers of government may be reassumed by the people [note: not the people *of this state*] whensoever it shall become necessary to their happiness”). This New York language was adopted immediately after Hamiltonians prevailed in the focused secession debate. *Third*: As a matter of basic contract law (and common sense), the fact that A and B each must agree to a contract *ex ante* surely does not, contra Kreitner, invariably give A and B each a symmetric (“same way”) right to undo the deal at any time, *ex post*. It all depends on the nature of the deal. For example, in a corporate merger of companies A and B, neither A nor B, post-merger, can unilaterally undo the merger, even if the merged company, United A&B, retains A and B as intact subdivisions within the new united company. So too with the U.S. Constitution—a merger/consolidation of states that were *independent sovereigns before* the deal and *subdivisions thereafter*. *Fourth* and related: As we have seen in great detail, the Constitution is not really “silent” on secession, although it does not use that word. The document’s letter, spirit, purpose, and enactment history plainly repudiated the idea of unilateral secession. Kreitner’s claims in his key passage are thus plainly wrong—based on profound legal, historical, and syntactical misunderstandings and shoddy research. The above-quoted passage is crucial to *Break It Up*’s basic thesis, the flimsy pillar on which the entire book stands, insofar as it is a supposed work of serious *constitutional* analysis. The errors in this crucial passage suggest that readers should be wary of the book’s other historical, legal, and interpretive claims.

EN 55 *Massachusetts Centinel*, 2-13-1788; *Independent Chronicle*, 2-14-1788; *Massachusetts Gazette*, 2-15-1788; *Boston Gazette*, 2-18-1788; *Salem Mercury*, 2-26-1788; *Essex Journal*, 2-27-1788; *Worcester Magazine*, fourth week of February, 1788; *Newport Herald*, 3-6-1788; *Connecticut Gazette*, 3-7-1788; *New-York Journal*, 3-11-1788; *Hampshire Gazette*, 3-12-1788; *Connecticut Courant*, 3-24-1788; *Pennsylvania Packet*, 3-24-1788; *United States Chronicle* (Providence) 5-22-1788.

Chapter Seven

Page 286 The Massachusetts Constitution’s condemnation of hereditary officeholding as “absurd and unnatural” borrowed from George Mason’s widely republished initial draft of the 1776 Virginia Declaration of Rights.

EN 45 *Pennsylvania Journal*, 2-19-1754; *ibid.*, 10-24-1754; *Boston News-Letter*, 3-7-1754; *ibid.*, 3-28-1754; *ibid.*, 4-11-1754; *ibid.*, 5-23-1754; *ibid.*, 7-4-1754; *ibid.*, 7-18-1754; *ibid.*, 8-1-1754; *ibid.*, 12-12-1754; *Pennsylvania Gazette*, 3-12-1754; *ibid.*, 3-26-1754; *ibid.*, 4-4-1754; *ibid.*, 5-2-1754; *ibid.*, 5-9-1754; *ibid.*, 6-27-1754; *ibid.*, 7-4-1754; *ibid.*, 8-22-1754; *ibid.*, 10-3-1754; *ibid.*, 10-24-1754; *New-York Mercury*, 3-25-1754; *ibid.*, 4-1-1754; *ibid.*, 4-8-1754; *ibid.*, 5-13-1754; *ibid.*, 6-24-1754; *ibid.*, 7-8-1754; *ibid.*, 7-22-1754; *ibid.*, 7-29-1754; *ibid.*, 8-5-1754; *Boston Gazette*, 3-26-1754; *ibid.*, 4-16-1754; *ibid.*, 4-23-1754; *ibid.*, 4-30-1754; *ibid.*, 5-7-1754; *ibid.*, 5-14-1754; *ibid.*, 5-21-1754; *ibid.*, 7-2-1754; *ibid.*, 7-16-1754; *ibid.*, 7-30-1754; *ibid.*, 8-27-1754; *Boston Post-Boy*, 4-1-1754; *ibid.*, 7-1-1754; *ibid.*, 7-15-1754; *ibid.*, 7-22-1754; *ibid.*, 7-29-1754; *ibid.*, 8-26-1754; *Boston Evening Post*, 4-1-1754; *ibid.*, 5-20-1754; 7-1-1754; *ibid.*, 7-15-1754; *ibid.*, 7-29-1754; *ibid.*, 8-26-1754.

Chapter Eight

ERRATUM, Page 340: Should be Tompkins not Thomkins.

ERRATUM, Page 341: Should be well-placed not some twenty

ERRATUM, Page 395: Should be 1796 not 1797.

ERRATUM, EN 10: Should be Joseph H. Smith not William H. Smith

Chapter Nine

ERRATUM, Page 422: Should be Mary not Martha

EN 3 On damning John Jay, see John Jay [the grandson], *New Plottings In Aid of the Rebel Doctrine of State Sovereignty: Mr. Jay's Second Letter on Dawson's Introduction to the Federalist*, (1864), 19. On the stoning of Hamilton, see Ron Chernow, *Alexander Hamilton* (2004), 489-91. On Jay effigies, see *Washington Spy*, 7-2-1794; *New Jersey State Gazette*, 9-24-1794; *Gazette of the United States* (Philadelphia), 12-1-1794; *Independent Gazetteer*, 7-8-1795; *Greenleaf's New York Journal*, 7-8-1795; *Woods's Newark Gazette*, 7-8-1795; *Aurora General Advertiser*, 7-9-1795; *The Argus*, 7-10-1795; *Federal Intelligencer* (Baltimore), 7-13-1795; *Impartial Herald* (Newburyport, MA), 7-14-1795.

EN 37 *Republican or Anti-Democrat* (Baltimore), 9-11-1802; *New-York Gazette*, 9-11-1802; *Salem Register*, 9-13-1802; *Albany Gazette*, 9-16-1802; *Connecticut Courant*, 9-20-1802; *Oracle of Dauphin and Harrisburg Advertiser*, 9-27-1802; *Farmer's Museum* (Walpole, NH), 9-28-1802

EN 53 ; *Greenleaf's New York Journal*, 11-14-1798; *Farmer's Register* (Chambersburg), 11-14-1798; *Universal Gazette* (Philadelphia), 11-15-1798; *Independent Chronicle* (Boston), 11-22-1798; *Telegraphe and Daily Advertiser* (Baltimore), 11-23-1798; *Herald of Liberty* (Washington, PA), 11-26-1798; *City Gazette* (Charleston), 11-28-1798.

EN 62 *Aurora General Advertiser*, 12-22-1798; *Claypoole's American Daily Advertiser*, 12-25-1798; *Federal Gazette* (Baltimore), 12-26-1798; *City Gazette* (Charlestown), 12-29-1798; *ibid.*, 1-9-1799; *Spectator* (New York), 12-29-1798; *New-Jersey Journal*, 1-1-1799; *Independent Chronicle* (Boston), 12-31-1798; *Bee* (New London), 1-2-1799; *Maryland Herald*, 1-3-1799; *Genius of Liberty* (Morristown), 1-3-1799; *Centinel of Freedom* (Newark), 1-8-1799; *Gazette of the United States* (Philadelphia), 1-8-1799; *Independent Chronicle* (Boston), 1-14-1799; *Farmer's Register* (Chambersburg), 1-14-1799; *Rutland Herald*, 1-14-1799; *Kline's Carlisle Weekly Gazette*, 1-16-1799; *Litchfield Monitor*, 1-16-1799; *Georgia Gazette*, 1-17-1799; *Herald of Liberty* (Washington, PA), 1-21-1799; *Medley* (New Bedford), 2-1-1799.

EN 82 *Federal Gazette* (Baltimore), 10-6-1798; *Commercial Advertiser* (New York), 10-10-1798; *Alexandria Advertiser*, 10-11-1798; *Philadelphia Gazette*, 10-12-1798; *Spectator* (New York), 10-13-1798; *Newport Mercury*, 10-16-1798; *Universal Gazette* (Philadelphia), 10-18-1798; *New-Jersey Journal*, 10-23-1798; *Connecticut Journal*, 10-24-1798; *Eastern Herald* (Portland), 10-28-1798; *Newburyport Herald*, 10-30-1798; *Litchfield Monitor*, 10-31-1798; *The Sun* (Dover, NH), 10-31-1798; *Minerva* (Dedham), 11-1-1798; *Norwich Courier*, 11-1-1798; *Federal Galaxy* (Brattleboro), 11-3-1798; *Genius of Liberty* (Morristown), 11-8-1798; *Windham Herald*, 11-8-1798; *Eagle* (Hanover), 11-13-1798; *Impartial Herald* (Suffield, CT), 11-13-1798; *Journal of the Times* (Stonington, CT), 12-5-1798.

Chapter Ten

ERRATUM, Page 577: Should be gracious to a fault not gracious to fault

And should be according to the not according to a the

EN 6 *Alexandria Advertiser*, 1-2-1801; *ibid.*, 1-3-1801; *Washington Federalist*, 1-6-1801; *Philadelphia Gazette*, 1-16-1801; *Newport Mercury*, 1-20-1801; *Boston Commercial Gazette*, 1-26-1801; *Courier of New Hampshire*, 2-6-1801.

ERRATUM, EN 24: Should be Stephens not Stevens.

EN 37 *Boston Mercury and New-England Palladium*, 1-20-1801 (quoted in Simpson, "Political Significance," 322); *Connecticut Courant*, 1-26-1801; *Philadelphia Gazette*, 1-28-1801; *Western Star* (Stockbridge), 8-10-1801. For similar statements see *Columbian Centinel*, 12-24-1800; *Newburyport Herald*, 12-26-1800; *Philadelphia Gazette* 12-31-1800; *Washington Federalist*, 1-14-1801; *Vergennes Gazette*, 1-23-1801; *Boston Mercury*; *New-England Palladium*, 1-27-1801 (cited in Ackerman, *Failure*, 304 n. 48).

EN 38 *Columbian Centinel*, 12-27-1800; *United States Chronicle* (Providence), 1-1-1801; *New-York Gazette*, 1-2-1801; *Philadelphia Gazette*, 1-2-1801; *Gazette of the United States* (Philadelphia), 1-2-1801; *Albany Centinel*, 1-2-1801; *American Citizen* (New York), 1-6-1801; *Republican Watch-Tower* (New York), 1-7-1801; *New-Brunswick Advertiser*, 1-8-1801; *Windham Herald*, 1-9-1801; *Pittsburgh Gazette*, 1-23-1801; *Kline's Carlisle Weekly Gazette*, 1-28-1801.

Chapter Eleven

EN 7 See, e.g., *National Intelligencer*, 3-13-1819; *Philadelphia Gazette*, 3-15&16-1819; *City of Washington Gazette*, 3-15&17-1819; *Franklin Gazette*, 3-16-1819; *Baltimore Patriot*, 3-17&18-1819; *Alexandria Herald*, 3-17&19-1819; *New-York Spectator*, 3-19-1819; *American Beacon* (Norfolk), 3-19&20-1819; *Boston Daily Advertiser*, 3-19&20&22-1819; *The Repertory*, (Boston), 3-20&23-1819; *Southern Patriot* (Charleston), 3-23&24-1819; *The American* (New York), 3-20&24&27-1819; *Western Star* (Lebanon, Ohio), 4-6&13-1819; *Argus of Western America* (Frankfort, KY), 4-16-1819.

EN 33 Alas, on the particular issue mentioned by Story, he was more right the first time. As a young Jeffersonian, he had correctly condemned the Sedition Act as unconstitutional. Otis had supported the Act and in 1818, Story graciously wrote to Otis that “for many years I have entertained no more doubt of the constitutional power of Congress to enact that law, than any other in the Statute book.” Perhaps, however, the elder Story meant only to concede that the Jeffersonian Tenth Amendment argument against the Act was mistaken—Congressional power did exist over this domain—without also conceding that Madison had erred in claiming that the Sedition Act violated the First Amendment and related rights of citizen expression. On Madison’s view, Congress surely had no proper authority to adopt a sedition act akin to the 1798 law even if such an act were limited to domains of express and exclusive Congressional legislative competence such as federal territories or the national capital. In other words: For Jefferson, the Sedition Act of 1798 violated federalism and states’ rights; for Madison, freedom and citizen rights. Perhaps Story in 1818 only meant to concede error on the federalism issue.

Chapter Twelve

ERRATUM, Page 591: Should be more than 2,000 not nearly 2,500. And should be less than 200 not some 300

Page 601, middle paragraph (“Jackson and Calhoun . . .”) Although the word “federal” appeared consistently in contemporaneous newspaper accounts of Jackson’s toast, leading biographers have claimed that this word was not in fact uttered by Jackson in the decisive moment of oral confrontation, but rather was immediately penciled in for press-release purposes. See Robert V. Remini, *The Life of Andrew Jackson* (1977), 196-97; Robert V. Remini, *Andrew Jackson and the Course of American Freedom, 1822-1832* (1981), 233-36; Sean Wilentz, *Andrew Jackson* (2005), 65; Jon Meacham, *American Lion: Andrew Jackson in the White House* (2008), 135-36. For one notable eyewitness account published long after the fact that supports this view, see Martin Van Buren, *Autobiography of Martin Van Buren*, ed. John C. Fitzpatrick (1920), 2:413-

17. For another notable eyewitness account, also published much later, that makes no mention of any initial verbal omission and immediate revision, see Thomas Hart Benton, *Thirty Years' View* (1854), 1:148. Note also that my reference to Jackson's "steely gaze" directed at Calhoun, "as if in a duel," is a deductive interpolation on my part; it is hard to imagine Jackson doing anything less in the moment.

ERRATUM, Page 603: Should be March not February

ERRATUM, Page 609: Should be states' rights objection not stated objection

ERRATUM, Page 635: Should be Tecumseh's War not Tecuhmseh's War

EN 26 Jackson advanced other specific constitutional and quasi-constitutional objections beyond issues of states' rights. Most notably, he disliked certain monopolistic features of the bank and thought the current Congress had no proper right to, in effect, delegate away certain key legislative powers to a quasi-private institution that was being given too much insulation from public control and promised too much immunity from possible future congressional legislation. None of the president's objections, however, was insuperable; Jackson expressly declared that, if asked, his administration could craft a proper bank bill that would satisfy his stated constitutional scruples.

Postscript

ERRATUM, Page 688: Should be 1796 not 1797.

ERRATUM, PAGE 696: Should be 1820 not 1819.

EN 13 Michael Klarman's own evidence shows that Anti-Federalist criticism "quickly dissipated" and "rapidly decline[d]" and did so in various places even before the document went into effect. Klarman, *The Framers' Coup*, at 619-20. In one passage that sums up much of the attitude and affect of his 2016 book—which remains, despite its serious drawbacks, the best and most important modern work in the neo-Beardian debunking tradition—Klarman says the following: "Only a ratifying process that was less participatory than the governance norms employed in many states could have secured endorsement of a constitution that was less democratic in its substance than were all state constitutions of the era." *Ibid.*, 618. This is wrong on virtually every count. The Constitution's popular ratification process was far more inclusive than that of almost every state's popular ratification process (nonexistent in most states); and also more inclusive than the ordinary state election process, which typically featured higher property qualifications. As for the day-to-day substance of federal norms, the federal Constitution's rejection of property rules for public service, its commitment to a regular census and reapportionment, its generous suffrage rules, its ban on religious tests, its promises of federal salaries to lawmakers, its anti-dynastic age rules, and much more made it on balance more democratic than most state counterparts. Also, the document of course created a directly elected House of Representatives that was surely more democratic than the old Congress under the Confederation. Klarman's complaints are based on a slew of analytically undefended claims and

implicit assumptions. Apparently, he thinks that annual elections are always better, democratically, than biannual ones (really? and on this logic would monthly elections be better still?); that binding instruction of legislators is a democratic virtue (it isn't); that term limits are likewise a democratic leap forward (not necessarily—and they do limit voters' choices on election day); and that a robust executive is intrinsically undemocratic (wrong again). Over the course of American history, beginning as early as 1790, many state constitutions have migrated toward the federal model on many of these issues—electoral timing, noninstruction, executive power, and so on—and states have done so in genuinely democratic fashion. Serious readers should treat Klarman's sweeping claims about democracy with skepticism and should compare his account to the detailed analysis contained in Amar, *America's Constitution*—a work that Klarman oddly fails to engage