

1: IN THE BEGINNING

1. In Connecticut, all town inhabitants were eligible to vote for ratification-convention delegates, whereas only town freemen—a narrower category de jure, and a much narrower category de facto—voted for ordinary state legislators. Charles J. Hoadly et al., eds., *Public Records of the State of Connecticut* (1894–), 6:355. Connecticut's state historian, Christopher Collier, estimates that there were almost twice as many inhabitants as freemen in the late 1780s. Conversation with ARA, August 2002; see also Christopher Collier, "A Constitutional History of the Connecticut General Assembly: A Preliminary Sketch" (paper prepared for the Connecticut Humanities Council Institute, Hartford, Conn., June 1988), 10–12. In North Carolina, all taxpayers could vote for the state house of commons, but only those with fifty-acre freeholds could vote for the state senate. Adams, *FAC*, 324. The ratification-convention elections tracked the more inclusive house rules. Walter Clark, ed., *The State Records of North Carolina* (1902), 20:196–97, 370–72, 514–16, 526–27; Charles Beard, *An Economic Interpretation of the Constitution* (1913; reprint, 1986), 240–41. New York also had different suffrage qualifications for its two state houses. Adams, *FAC*, 318. All these rules were waived in the 1788 election for ratification-convention delegates. *The New-York Journal and Daily Patriotic Register*, April 30, 1788, 3; John P. Kaminski, "New York: The Reluctant Pillar," in Stephen L. Schechter, ed., *The Reluctant Pillar: New York and the Adoption of the Federal Constitution* (1985), 75.
2. New Hampshire, Massachusetts, New York, New Jersey, Maryland, North Carolina, and South Carolina each had higher property qualifications for membership in the upper house than the lower house. Adams, *FAC*, 315–27. All seven declined to impose upper-house requirements on ratification-convention delegates; four—Massachusetts, Maryland, North Carolina, and South Carolina—did not impose even the lower-house property requirements on convention delegates; a fifth (New York) had no property qualifications for lower-house members and imposed none on convention delegates; while a sixth state (New Hampshire) widened delegate eligibility in a different way. Only New Jersey appeared to hold convention delegates to all the same eligibility rules applicable to its lower-house members.

In particular: New Hampshire provided that certain former loyalists ineligible to serve as representatives in the state's general court could nevertheless serve as convention delegates. Albert Stillman Batchellor, ed., *Early State Papers of New Hampshire* (1892), 21:165; cf. Beard, *Economic Interpretation*, 240. Although Massachusetts generally required each member of the state house of representatives to have a freehold of £100 or a ratable estate of £200, Adams, *FAC*, 316, the state imposed no property qualifications on convention delegates. It provided that the convention election should track lower-house rules of voter eligibility and apportionment, but said nothing about property

qualifications for delegates. *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts, Held in the Year 1788* (1856), 22–24. In New York, all freemen were eligible to serve as convention delegates, regardless of whether they met the freehold requirement for state senate membership. *The New-York Journal and Daily Patriotic Register*, April 30, 1788, 3; Adams, *FAC*, 318. New Jersey apparently applied its lower-house membership qualifications (a personal estate worth £50 proclamation money clear of debts, Adams, *FAC*, 319) to convention delegates in catchall language that delegate elections should “be conducted agreeably to the mode, and conformably with the Rules and Regulations prescribed for conducting . . . Elections” of “Representatives in General Assembly.” United States Department of State Bureau of Rolls and Library, *Documentary History of the Constitution of the United States of America, 1786–1870* (1894–1905; reprint, 1998–99), 2:61–62. Maryland explicitly provided that all resident citizens could serve as convention delegates, squarely rejecting a proposal from the state senate that delegates must meet the £500 property qualification for the state house of delegates. *Votes and Proceedings of the Senate of Maryland, November Session, 1787*, 5–7; Forrest McDonald, *We the People* (1958; reprint, 1992), 149; Adams, *FAC*, 322. For both its 1788 and 1789 conventions, North Carolina explicitly allowed all freeholders to serve as convention delegates, even though the state required members of its lower house of commons to meet a property qualification of one hundred acres freehold. Clarke, *Records of North Carolina*, 20:196–97, 370–72, 514–16, 526–27; Adams, *FAC*, 324. In South Carolina, the senate proposed to require delegates to meet the eligibility rules for the state house of representatives, but the house rejected this proposal. The final result was a law that explicitly limited the convention election to those “intitl’d to Vote for Representatives to the General Assembly” while leaving convention delegates unmentioned and—presumably—unlimited by any property qualification whatsoever. Michael E. Stevens, ed., *The State Records of South Carolina: Journals of the House of Representatives, 1787–1788* (1981), 330–33; Adams, *FAC*, 325.

It also bears notice that in Massachusetts ordinary laws could be vetoed, subject to a two-thirds vote to override in each house, by a governor obliged to meet even higher property thresholds than those applicable to state house and senate members. Adams, *FAC*, 316. In New York, the state governor and a council collectively wielded a defeasible veto; only freeholders were eligible to serve as governor. *Ibid.*, 318. Ratification by conventions bypassed these pro-property rules as well.

Although Connecticut did not impose higher property qualifications for membership in the legislature than for voting, it did require that both voters and lawmakers be freemen worth 40s. per year or with personal estates valued at £40. *Ibid.*, 317. The state did not impose these restrictions on con-

vention delegates in 1787. Hoadly, *Public Records of Connecticut*, 6:355. Pennsylvania allowed all taxpayers to vote for and all freemen to serve in the one-house state assembly. Georgia's rules for voting were almost as generous, but that state did impose property qualifications on members of the single-branch legislature. Adams, *FAC*, 320, 327.

Summing the various data from this and the preceding note, we find that ten of the thirteen states used broader suffrage rules for the convention and/or used broader delegate-qualification rules or simply had an especially expansive franchise to begin with. The three states outside this general pattern were Rhode Island, Delaware, and Virginia.

The data presented here contrast sharply with the picture painted by Charles Beard in his controversial 1913 book, *An Economic Interpretation of the Constitution*. Oddly, though Beard elsewhere lavished attention on the issue of property qualifications for representatives, he omitted all mention of the topic in analyzing the ratification process, focusing instead only on property qualifications for voters. Compare his fourth chapter, on "Property Safeguards in the Election of [Philadelphia] Delegates," with his eighth chapter, on "The Process of Ratification." Perhaps this striking inconsistency is explained by the simple fact that the convention-delegate qualification data undercut his general thesis. (For a reading of Beard's general method that might support this explanation, see Forrest McDonald's provocative introduction to the 1986 reprint edition of Beard's book.) Harder to explain, however, is the failure of later scholars, including Beard's many critics, to highlight the issue of convention-delegate qualifications.

3. "We the People of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia do ordain declare and establish the following Constitution for the Government of ourselves and of our Posterity." *Farrand's Records*, 2:152. For an earlier snippet in Wilson's hand, see *ibid.*, 150. Although Wilson penned these documents, they were composed as part of a five-man drafting committee. Possibly, the initial impetus behind the words "We the People" came from some other committee member(s) and Wilson was merely the scribe, but this seems unlikely. The distinctive emphasis on popular sovereignty in these opening words reverberated with themes that Wilson had sounded early and often at Philadelphia—see, e.g., *ibid.*, 1:49, 52, 68, 69, 127, 132–33, 151, 153–54, 179, 252–53, 259, 279, 359, 361, 365, 379, 405–6—and would continue to sound in the ratification debates and thereafter. Wilson's draft language also echoed the preamble of his 1776 state constitution: "We, the representatives of the freemen of Pennsylvania . . . [to] promote the general happiness of the people of this state, and their posterity, . . . do . . . ordain, declare and establish the following . . . CONSTITUTION of this com-