Why is there a United States Constitution? What motivated its framers to create it? And what did they hope the document would accomplish? In this short (15 pages) but powerful article, Tom Cutterham reviews an important strand of recent scholarship on the American founding, offers an astute critique of that literature, and outlines a new synthesis that attempts to answer these questions. The Constitution, Cutterham argues, was the contract to secure all contracts.

The article takes as its starting point historian Drew McCoy’s assertion that David C. Hendrickson’s Peace Pact (2003) marked a paradigm shift in studies of the American founding.1 As his title indicates, Hendrickson argued that the Constitution was a pact among the American states, designed to stave off war between them and to present a united front to other nations.

Hendrickson’s book helped revitalize the study of early American diplomatic history. An outpouring of literature on what Cutterham calls “the international dimension” of the American founding followed the publication of Peace Pact.2 Recent scholarship by Daniel Deudney and Robbie Totten, for instance, clarified how security fears animated the framers of the Constitution and shaped the architecture of the state they created.3 Cutterham devotes particular attention to an influential law review article by David Golove and

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2 Though, as Cutterham points out, this perspective really had been gaining ground since the 1990s. See, most notably, Peter S. Onuf and Nicholas G. Onuf, Federal Union, Modern World: The Law of Nations in an Age of Revolutions, 1776-1814 (New York: Rowman & Littlefield, 1993).

Daniel Hulsebosch, which argues that the framers aimed to design a state that could follow the law of nations.  

Cutterham identifies at least two beneficial effects of the internationalist perspective. First, it throws into sharp relief the fact that the founders did not acknowledge a clear distinction between foreign and domestic affairs. Second, it helps explain a longstanding paradox. The Constitution at once expanded certain governmental powers and limited others. Following a line of argument famously set out by Charles Tilly—that war made the state and state made war—American historians have shown that security concerns led the framers to create a strong fiscal-military state. Yet the international context also emphasizes the importance the framers placed on balancing governmental powers.

That said, Cutterham is less convinced than McCoy that the internationalist literature constitutes a paradigm shift. The international perspective takes the founders’ words seriously, unabashedly so. In this way, Cutterham argues, it actually offers a repackaged rendition of the oldest interpretation of the Constitution’s origins: the Federalists’ own explanation (506). This fidelity to the founders’ words precludes a satisfactory explanation of their “political object” in creating the Constitution (503). The new literature thus “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” (515).

The international perspective sidesteps what Cutterham sees as the central question for historians of the founding: ‘what was the constitution for?’ On this question, Cutterham joins progressive and neo-progressive historians who argue that material interests and an aversion to democracy motivated the American founders. The framers designed the Constitution to defend the rights of private property, contracts, and public credit. To do this, they limited the power of democratic state legislatures over fiscal policy. To date, though, neo-progressives have taken a thoroughly domestic view of the period.

The internationalist perspective aimed to transcend debates dominated by the neo-progressive approach. Cutterham’s signal contribution is to synthesize these two literatures. The issues that “animated much of the Federalist program in the1780s through to ratification”—the property rights emphasized by neo-progressives, and the sanctity of treaties and international law emphasized by internationalist historians—“can be accurately reduced to a single principle: the sanctity of contract.” The founders created a “contractarian


document; itself a contract, designed to secure the protection of contractual rights as the determining feature of political, economic, and social life” (513). In a thoroughly neo-progressive formulation, Cutterham asserts that this commitment to contracts, and the sense of justice that underlay it, “bore a deep and vital correspondence with the class interests of the elites who upheld it” (514). The future of finance and commerce depended on the sanctity of contracts at all levels. The American founders believed this principle was under threat in the years leading up to 1787. “These,” Cutterham asserts, “were the motivating factors behind the campaign that resulted in the Constitution” (514).

Why, then, did Federalist rhetoric focus so much on geopolitics and diplomacy? Cutterham posits that doing so was necessary in order to make the founders’ position palatable to the American people. Fears of an external threat provided a convenient justification for undemocratic policies. This public relations gambit “generated the fear-filled writing which has spurred the internationalist interpretation of the Constitution” (514). On the one hand, Cutterham thus finds the international perspective compelling and endorses its central framework, that the international context matters. On the other hand, he denies that it can explain the United States Constitution. In Cutterham’s telling, the international perspective is incomplete without incorporating insights from the neo-progressives.

The logic of Cutterham’s argument is sound and his synthesis of major approaches to the American founding is deeply compelling. But it does not synthesize everything. Cutterham criticizes the internationalist perspective for hewing too closely to the Federalists’ own view of the period. Yet his revision rests on an analysis that also focuses almost exclusively on the Federalists. There is little room for the Anti-Federalists in Cutterham’s story. “It is quite wrong,” he argues, “to see the founding as fundamentally embodied in the ratification conflict and its compromises” (512-3). Whether or not that is correct, it would still be helpful to know if Anti-Federalists recognized how Federalists mobilized geopolitical fears to serve political ends. If so, how did Anti-Federalists contend with this line of argument? Answering these questions would only add to Cutterham’s overall argument.

But Cutterham argues that doing so is unnecessary. He maintains that those Anti-Federalists with “the most prominent roles in ratification debates” shared the basic Federalist position on contracts (512-3). Here Cutterham uses Saul Cornell’s insight that there were many different strands of opposition to the Constitution in order to dismiss large chunks of Anti-Federalists. Nevertheless, I am not convinced that even the most articulate Anti-Federalists bought into the Federalists’ logic regarding the relationship between contracts and geopolitics. In New York, for instance, the political and economic interests of some powerful and articulate Anti-Federalists were tied up with the state impost—a tax levied by the state on imported goods, but paid for mostly by consumers in neighboring states. This kept them from supporting a national impost during the mid-1780s. The New York state impost was just the sort of law that created tensions between states, which Hendrickson would argue the founders set out to eliminate. Likewise, neo-progressive historians might argue that it was just the sort of law that upset national and international commercial

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relations, threatened elite interests, and led the founders to support a new Constitution. These Anti-Federalists presented an obstacle to the commercial harmony that the Federalists yearned to create. Enough New York Anti-Federalists eventually relented and voted for the Constitution. Their decision ultimately to ratify the Constitution seems then to be a critical moment in the triumph of the vision of Cutterham’s elite Federalists. But their turnabout is fundamentally part of the story of ratification. The founding may not have been “fundamentally embodied” in ratification, but surely it is still mattered.

These are small quibbles about an impressive article, one that lays out an ambitious future research agenda. At stake in Cutterham’s work is nothing less than explaining how elites maintained and justified their power in a period of global upheaval. It is a problem that remains stubbornly relevant in our own time.


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7 For a neo-progressive take on the 1780s that emphasizes the importance of imposts, see Jackson Turner Main, *The Antifederalists; Critics of the Constitution, 1781-1788* (Chapel Hill: Published for the Institute of Early American History and Culture at Williamsburg, Va., by the University of North Carolina Press, 1961), 72–102.