

RECOGNIZING MELANCTON SMITH

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New York's ratification of the U.S. Constitution was, by no means, a sure thing. Rightly, Alexander Hamilton has earned high acclaim for his role as a founder, advancing the idea of a centralized national union, based on the Constitution drafted in Philadelphia in September of 1787. Much of the credit for ratification, however, belongs to a member of the opposition, Melancton Smith, who has not had much credit in the eyes of history.

As a contemporary, Melancton Smith (1744-1798) had argued that centralization—without adequate protections against the potential abuse of power—was antithetical to the country's goals. He was one of Hamilton's most formidable opponents on these issues, particularly in 1788, when New York was debating whether to ratify the Constitution.

It is, however, worth studying antifederalist writings, in which Smith's stand out, as they treat valuable concepts, such as the allocation of political power, checks and balances, representational democracy, and the importance of a vigorous bill of rights.¹

James Kent (1763-1847), later a towering figure in American law, attended the convention as a 25-year-old-spectator. He drew the scene:

There was no difficulty in deciding at once on which side of the house the superiority in debate existed, yet in the ordinary range of the discussion, it was found that the dignity, candor, and strength of Jay, the polished address and elegant erudition of Chancellor Livingston, the profound sagacity and exhaustive researches of Hamilton, were met with equal pretensions by their opponents, supported by the simplicity and unpretending good sense of Clinton, the popular opinions and plausible deductions of Lansing, the metaphysical mind, prepossessing plainness, and embarrassing subtleties of Smith.

Kent was struck by the tenor of the debates and of Hamilton's brilliance:

Mr. Hamilton maintained the ascendancy on every question, and being the only person present who had signed the Constitution, he felt and sustained the weight of the responsibility which belonged to his party.

In one of the few contemporary descriptions of Smith, Kent said of him:

Melancton Smith was equally the most prominent and the most responsible speaker on the Anti-Federal side of the Convention. There was no person to be

¹ See, e.g. Herbert J. Storing, *The Anti-Federalist* (1985) at 1-4, also referring generally to the work of Merrill Jensen as having inspired a full historical account of the Anti-Federalist movement, and the comprehensive, multi-volume work edited by John Kaminski on the *Documentary History of the Ratification of the Constitution*. See also, Saul A. Cornell, The Changing Historical Fortunes of the Anti-Federalists 84 Nw. U.L. Rev. 39 (Fall, 1989) See also, Saul A. Cornell, in *The Other Founders, Anti-Federalism in the Dissenting Tradition in America, 1788- 1828* (1999) on the importance of the antifederalist vision in America.

compared to him in his powers of acute and logical discussion. He was Mr. Hamilton's most persevering and formidable antagonist. But even Smith was routed in every contest.

Disposed to the federalist side, we can appreciate Kent's description of Smith's demeanor:

The style and manner of Smith's speaking was dry, plain, and syllogistic, and it behooved his adversary to examine well the ground on which they started, and not to concede too much at the beginning, or he would find it somewhat embarrassing to extricate himself from a subtle web of sophistry, unless indeed he happened to possess the giant strength of Hamilton, which nothing could withstand. Mr. Smith was a man of remarkable simplicity, and of the most gentle, liberal, and amiable disposition.²

Historian William Dunlop (1766-1839) said of Smith: "He was a man of rough exterior, powerful in bodily appearance and undaunted in expressing his mind which he did in plain language, but with a sarcasm that was cutting, and a humour correct and playful."³ Broadus Mitchell said that Smith's integrity and intellect made him a particularly imposing opponent of Hamilton.⁴

Although Smith was able to stand up to Hamilton, had this been a debating contest, Hamilton would have won. But at the end of the day, it was not rhetoric, but a pragmatic decision, a compromise brokered by Smith, a businessman, who carried the day.

After Hamilton's side prevailed, his star deservedly rose, while Smith and others were put down as parochial, "antifederalist" losers.

The "Anti" In "Antifederalism"

In the dialogue between the constitutionalists and their opponents, the division took on labels. Somehow, the former group came to be called "federalists" and the latter, "antifederalists," even though labels can be problematic.⁵ Months later, during New York's Convention in June 1788, Smith said that he hoped that those in Robert R. Livingston's ("Federalist") camp would be willing to change names "with those who disliked the Constitution, as it appeared from [Livingston's] own concession that they [who disliked the Constitution] were Federalists, and those who advocated it, Anti-Federalists."⁶

The nomenclature, however, has become second nature, and when we speak of Hamilton as a federalist, everyone readily identifies the association. The other camp, including Melancton Smith, has become identified with the "anti" label.

² William Kent, James Kent, *Memoirs and Letters of James Kent* (1898) at 304-306.

³ William Dunlap, *History of the New Netherlands, Province of New York and State of New York*, Vol 2, at 260, online at <https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t89g5w046&view=lup&seq=264&skin=2021>

⁴ Broadus Mitchell, *Alexander Hamilton, Youth to maturity*, (1957) at 433

⁵ See, Pauline Maier, *Ratification* (2010) xiv, xv, 92-95;

⁶ June 20, 1788, see XXII Kaminski at 1713.

How did this happen?

The earliest writings and newspaper articles offer some clues. *The Federalist Papers* may well have invited opposition called “antifederalist.” The Federalist #1 appeared in print on October 27, 1787, six weeks after the Constitutional Convention adjourned.⁷ Even before that, the terminology appeared in the press. Advocates for and against the Constitution had a vituperative exchange of letters in Pennsylvania from September 26, 1787 to October 4, 1787.⁸

Perhaps the first use of the term “antifederalist” appears in a letter from “Tar and Feathers” in the October 2, 1787 Philadelphia *Independent Gazetteer*, stating “When we had the honor of addressing you a few days since, we hoped our caution to the modern TORIES, alias ANTIFEDERALISTS, might not be amiss.”⁹ It was obviously intended as a derogatory reference. Indeed, “Fair Play” responded in the same newspaper on October 4, 1787 stating “It is a fact, I believe, that will not be denied, that many of those who arrange themselves under the banners of those who call themselves Federalists were either downright Tories, lukewarm Whigs, or disaffected to the cause of America and the Revolution; and who now eagerly wish to seize the present opportunity to gratify their revenge and to retaliate on the real Whigs of 1775 and 1776.”¹⁰

In the *New York Journal* of December 13, 1787, De Witt Clinton expressed irritation at being considered an “anti,” suggesting that the titles be switched:

[I]t would appear but a trifling matter, puzzled us exceedingly, that is, the names the different writers have fixed upon one another; for we found that those who are for abiding by the confederation and strengthening it, so as to make it lasting, are called antifederalists; and the other party who are for throwing it aside, and having nothing farther to do with it, but are for making of us into one solid government, are called federalists.¹¹

In the debates over the adoption of the constitution, writers on both sides used pseudonyms, and scholars have feasted on debates over who wrote what. “Brutus,” the “Federal Farmer,” and “A plebeian” are regarded as among the most cogent of the antifederalist authors increasingly (although in debates, at one level, one hopes will never end) some of these writings have been attributed to Melancton Smith,¹² at least they were produced by a circle of like-minded writers.

⁷ New York *Independent Journal*, October 27, 1787.

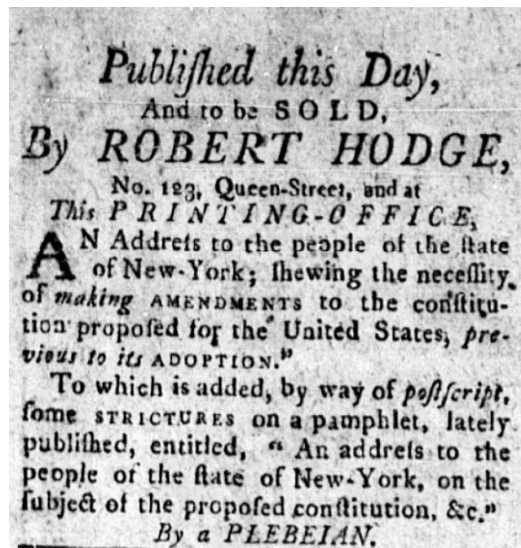
⁸ II *Documentary History of the Ratification of the Constitution*, Merrill Jensen, ed. (1976) (Pennsylvania) 146-158. In her book *Ratification* (2010) at 329, historian Pauline Maier states that the Federalists invented the term “Anti-Federalist.”

⁹ Online at https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/5. Tar_and_Feathers.pdf

¹⁰ Online at https://archive.csac.history.wisc.edu/7. Fair_Play.pdf

¹¹ XIX Kaminski at 406. For an excellent reconstruction of the origin of the terms, see Center for the Study of the American Constitution, University of Wisconsin, *Federalist and Antifederalist: The Origin of the Terms*, online at <https://csac.history.wisc.edu/document-collections/popular-culture-and-ratification/federalist-and-antifederalist/> ; See also, Saul Cornell, *The Other Founders, Anti-Federalism in the Dissenting Tradition in America, 1788- 1828* (1999) 168-170 [continued use of the term as a political slur].

¹² See, 19 *The Documentary History of the Ratification of the United States Constitution*, 103, John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber, & Margaret A. Hogan eds., 2003, hereinafter,



April 17, 1788, Thomas Greenleaf's *New York Journal and Weekly Register*. Plebeian is often attributed to Melancton Smith

Kaminski et al; online at <https://digicoll.library.wisc.edu/cgi-bin/History/History-idx?type=turn&id=History.DHRCv19&entity=History.DHRCv19.p0196&q1=brutus>

See, also, Gaspare J. Saladino, Pseudonyms used in the Newspaper Debate over the Ratification of the United States Constitution in the State of New York, September 1787 - July 1788, in S.L. Schechter and R. B. Bernstein, *New York and the Union* (1990) 298-325.

See also, Michael P. Zuckert and Derek Webb, *The Anti-Federalist Writings of the Melancton Smith Circle* (2009), 397-419 (a masterful authorship analysis ascribing to Melancton Smith the writings of Federal Farmer and Brutus.); see also, Joseph Kent McGaughy, "The Authorship of "The Letters from the Federal Farmer," Revisited., " *New York History* 70, no. 2 (1989): 153-70; Robert H. Webking, "Melancton Smith and the Letters from the Federal Farmer," *The William and Mary Quarterly* 44, no. 3 (1987): 510-28.

A letter in the Hartford *Connecticut Courant* of December 24, 1787, with the pseudonym "New-England" identifies Richard Henry Lee, as Federal Farmer. That may have supported those opting for Lee being the Federal Farmer. In his *Documentary History* Vol 19 (2003), John Kaminski favors Elbridge Gerry (at p. 205) and in an email to me on May 30, 2021 he still favors Gerry. In his October 18, 1787 objections to the Constitution, Gerry's points were much like those of the Federal Farmer and of Melancton Smith. Gerry stated: "My principal objections to the plan, are that there is no adequate provision for a representation of the People—that they have no security for the right of election—that some of the powers of the Legislature are ambiguous, & others indefinite & dangerous—that the executive is blended with & will have an undue influence over the legislature—that the Judicial department will be oppressive—that treaties of the highest importance may be formed by the president with the advice of two thirds of a quorum of the Senate— & that the System is without the Security of a Bill of rights, these are objections which are not local, but apply equally to all the States" See, Teaching American History, Ashbrook Center at Ashland University online at <https://teachingamericanhistory.org/library/document/elbridge-gerrys-objections/>

¹² Michael P. Zuckert and Derek Webb, in *The Anti-federalist Writings of the Melancton Smith Circle* (2009) propose that Smith authored the essays of a Federal Republican (at 357) and Lucius (at 367.) See also, 37 Kaminski at 139, as to Smith's authorship of "A Republican."

Who Was Melancton Smith?

One reads of Melancton Smith as an antifederalist writer and exponent, but little as to his origins, his offspring, the location of his remains, and even what he looked like.

There has been no real biography of Smith, the closest being Robin Brooks' excellent 1964 PhD thesis, cited in several of our footnotes.¹³

Melancton Smith was born on May 7, 1744. His father, Samuel Smith, (1700-1779) a Justice of the Peace, and his mother Elizabeth Bayles Smith (1701-1778), lived on a 200- acre farm in Jamaica, Queens, New York.¹⁴

The lines of both Samuel Smith and Elizabeth Bayles trace back to early settlers, before 1700.¹⁵ Melancton Smith's parents were married on January 22, 1733. He was one of 13 children, including half-siblings from Samuel Smith's marriage to his first wife, Elizabeth Waters (d.1732) whom he had wed on January 23, 1723.¹⁶

We know little of their lives in Jamaica, but there is an intriguing entry in a Queens history book, noting that in 1773, Royal Governor William Tryon, by a *writ of supersedeas*, removed Samuel Smith as Justice of the Peace.¹⁷ No reason is given; perhaps it had to do with anti-British activities or attitudes that Melancton and his father may have shared. Queens had an appreciable loyalist population, and we might only guess that Samuel Smith did not hew the line closely enough to please the Royal Governor.

¹³ Robin Brooks, *Melancton Smith New York Anti-Federalist, 1744-1798* in Partial Fulfillment of the Requirements for Doctor of Philosophy, Department of History, University of Rochester, 1964.

For a short biographical type account, see, e. g. Garraty and Carnes, 20 American National Biography (1999) at 255; For a good, nine-page biographical account, see Thomas Shevory, Melancton Smith and the Articulation of New York Antifederalism (1744-1798) in S. L. Schechter and R. B. Bernstein, New York and the Union (1990) 534-543

¹⁴ As advertised in *Independent Gazette*, (New York, New York) February 12, 1784, 2,

¹⁵ J. Wilson Poucher, Melancton Smith, Dutchess County Historical Society Yearbook, 1925 at 39; See also family trees online at <https://www.ancestry.com/family-tree/person/tree/50168480/person/282038778434/facts> and online at <https://www.wikitree.com/wiki/Smith-77648>; see, also,

<https://www.smithsworldwide.org/tng/familygroup.php?familyID=F8881&tree=tree1>; For Will of Samuel Smith (1700-1779) dated February 9, 1775, see William S. Pelletreau, Wills-of-the-Smith-Families-of-New-York-and-Long-Island, 1664-1794 (1898) at 99 online at

<https://archive.org/details/cu31924029771726/page/n119/mode/2up?q=melancthonone> page on screen

For Samuel Smith (1700-1779) see [https://www.ancestry.com/mediaui-viewer/tree/67935280/person/260132018863/media/c301b99c-1239-41f5-aadb-](https://www.ancestry.com/mediaui-viewer/tree/67935280/person/260132018863/media/c301b99c-1239-41f5-aadb-5ee8f4367fd2?_phsrc=TvP20&_phstart=successSource)

[5ee8f4367fd2?_phsrc=TvP20&_phstart=successSource](https://www.ancestry.com/mediaui-viewer/tree/67935280/person/260132018863/media/c301b99c-1239-41f5-aadb-5ee8f4367fd2?_phsrc=TvP20&_phstart=successSource). For Melancton Smith's mother, Elizabeth Bayles/ Bayless,

see online at <https://www.ancestry.com/family-tree/person/tree/50168480/person/282038778434/facts>

For Melancton Smith's lineage see, also, <https://sites.rootsweb.com/~rclarke/page1/smith-b.htm> (#186)

¹⁶ Melancton's half-siblings, from his father's first marriage, were Waters Smith (1725-1782), Antony (1728-1730), and Elizabeth (1732-1732). His full siblings were Hannah (1734-1737), Theodosia (1738-1739), Samuel (1736-1786), Melancton (1740-1743), Hannah (second) (1742- ?), Benjamin (1746-1785), Israel (1748-1791 Captain Israel Smith of Poughkeepsie, NY), Theodosia (second) (1750-?), Mary (1751-1776) see, Dutchess County Historical Society Yearbook, 1926, at 42, by J. Wilson Poucher. The most accurate information comes from him, in the Dutchess County Historical Society Yearbook, (1925) at 39, in which he relied on the Smith family Bible.

¹⁷ *History of Queens County, New York*. W.W. Munsell, and Co. (1882) at 50 and online at <https://babel.hathitrust.org/cgi/pt?id=nnc2.ark:/13960/t9n32m641&view=1up&seq=60>

As a young man, Melancton Smith left Queens to take up residence in Manhattan.¹⁸



Sidebar: Smith's Likeness

What we know of Smith's likeness rests solely on a pencil sketch discovered years after his death. It has carried an air of authenticity, but we do not know who drew it or how accurate it is. Nonetheless, several artists sketches drew on it.

The following is from an article by Henry A. Chaney in the *Green Bag* in 1891:

The likeness of Melancton Smith, which is kindly furnished by his granddaughter, Mrs. Elizabeth S. Martin (1817-1902) of Green Bay, Wis., is from a rude drawing which was found in 1839, and which her husband, the late Morgan L. Martin, Esq., caused at that time to be engraved by Rawson, Hatch & Co.... The only known portrait of him was a pen and ink sketch [above], found forty years after his death, in an old trunk; on it were the words: "Mr Smith — 1787- C. Congress... That it was recognized by those who had known her grandfather—especially, I believe, by Vice-Chancellor Jones, who was, I understand, a relation — as an undoubted portrait of Melancton Smith.¹⁹

In its Thomas A. Emmet Collection, the New York Public Library has correspondence on the subject, as to how the image came into its hands. In a May 19, 1891 letter to Emmet, Chaney states that Elizabeth (nee Smith) Martin told him that she had found the original "overhauling the

¹⁸ Robin Brooks at 3, deduces this from Smith having witnessed a Will in a March 24, 1763, proceeding, when he was 19 years old, See, Abstracts of Wills on file in the Surrogates Office, City of New York, Vol. VI, p. 223, records online at <https://babel.hathitrust.org/cgi/pt?id=coo.31924067113500&view=1up&seq=241&q1=melancthon>

¹⁹ Henry A. Chaney, *Nathan Dane*, The Green Bag, First Series, Issue 12, December 1891, 548, 553.

contents of a long disused trunk, in 1839,” soon after her marriage. The chronology works out nicely, as she married Morgan L. Martin in 1837.²⁰

Elizabeth (nee Smith) Martin (1817-1902) was the daughter of Col. Melancton Smith (1780-1818), whose father was Melancton Smith (1744-1798) in the pencil sketch above. She was the sister of Admiral Melancton Smith (1810-1893).²¹



This image, in the possession of the New York Public Library, bears a notation indicating it was enhanced by David Mc Stauffer (in 1885?) "from a crude pencil sketch. Plattsburgh, N.Y. in the family."

A series of letters in the late 1800s sheds some light on the images and their provenance.²²

²⁰ See online at <https://digicoll.library.wisc.edu/WIReader/WER0442.html>

For Judge Morgan L. Martin, a prominent figure in Wisconsin history, see <https://www.newspapers.com/clip/2208135/morgan-louis-martin-1805-1887/>

²¹ For the information at the New York Public Library, see The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Print Collection, the New York Public Library. *Melancton Smith*. Retrieved from <https://digitalcollections.nypl.org/items/b9b8db5c-25ab-0160-e040-e00a18064d4a>; see also *Calendar of the [Thomas Addis] Emmet Collection of Manuscripts etc. Relating to American History Presented to the New York Public Library by John S. Kennedy, New York Public Library 1959*, at p. 48, online at http://archives.nypl.org/uploads/documents/other_finding_aid/emmetcalendar.pdf
See probate proceedings of Admiral Melancton Smith (1810- 1893) online at https://www.ancestry.com/imageviewer/collections/8800/images/005038524_00109?treeid=&personid=&rc=&usePUB=true&_phsrc=yxt229&_phstart=successSource&pid=10737261

²² In a letter dated February 12, 1885, the writer [illegible; presumably Elizabeth Smith Martin (1817-1902)] identifies herself as a granddaughter of Melancton Smith (1744-1798) and a niece of Captain Sidney Smith (1782-1827) son of Melancton Smith (1744-1798). Responding to an inquiry from Thomas Addis Emmet, a prominent collector, she states that there is no portrait of Melancton Smith in the family, but that she does have “a lithograph engraving in profile, with a facsimile of autograph attached but the lines are so obscure that it looks like a pen tracing,” adding that Mrs. Palmer was a Smith [evidently referring to Margaret Palmer (1817-1906)], who married Peter Saily Palmer, the daughter of Capt. Sidney Smith of the Navy – my uncle. My grandfather [Melancton Smith



*In this mural, by Gerald Foster (1900-1987) of the Ratification of the Constitution in 1788, Melancton Smith has his hand on the back of Governor George Clinton, who is shaking hands with Alexander Hamilton. The mural is in the U.S. Post Office in Poughkeepsie, New York.*²³

(1744-1798)] late in life left out the “h” and spelled his first name Melancton. If the sketch I have described does not correspond to the one furnished by Mrs. Palmer, mine will be at your service.”

On March 26, 1885, Dr. J. B. Nichols, of Plattsburgh, another member of the family, whose “mother was born a Smith,” wrote to Ennis, asking for a copy of the copy of the sketch.

On July 10, 1885, H. Walworth of Plattsburgh, New York, wrote to Emmet, suggesting he contact Mrs. Morgan Martin [Elizabeth (nee Smith) Martin (1817-1902)] of Green Bay, Wisconsin, concerning the history of the image of Melancton Smith (1744-1798).

On May 19, 1891, the author of the Green Bag article, Henry A. Chaney, wrote to Emmet, stating that Mrs. Martin had sent him “a copperplate reproduction of the rough sketch” that *she* had found in the trunk in 1839. He adds that “it had upon it the inscription M. Smith – 1787 – C Congress,” and that Morgan Martin had sent it to Rawson, Hatch & Co. to be engraved and it was never returned. The original pencil sketch, however, does appear to exist, in the New York Public Library Collection.

²³ Art History Professor William B. Rhoads of the College at New Paltz was kind enough to share with me a letter he received from Foster in July 1979, who stated that he relied on an earlier portrait of Melancton Smith (obviously the pencil sketch or one of the enhancements above). For an extended discussion of the mural, see William B. Rhoads, *New York History*, July 1990, 308-321.



From a drawing based on the pencil sketch Ray Burdick Smith, History of the State of New York (1922) at 163.

Domestic and political life in Dutchess County, New York

In 1766, at age 22, Smith married 20-year-old Sarah Smith of New Jersey.²⁴ Several months later, in a March 1767 newspaper ad, he offered goods for sale, “intending to quit housekeeping.” In what looks like a sidewalk sale of his bachelor household goods in Manhattan, he directed prospective buyers to the street “leading from the Oswego Market to the N. River.”

On WEDNESDAY,
At 10 o'Clock, will begin the Sale of the Household Furniture of
Mr. MELANCTON SMITH, intending to quit House-keeping,
in the Street leading from the Oswego-Market to the N. River ;
CONSISTING of Beds, Looking-Glasses, Mahogany and Com-
mon Chairs, Table Sets of China, a Chintz Bed and Window
Curtains, Tables, Carpets, &c.

New York Mercury, March 16, 1767

Two years later, in 1769, Melancton and his older brother Samuel bought a large tract of land from Joseph Doty, in the Charlotte District of Dutchess County, New York where, we infer, Melancton would set up residence with his young wife, Sarah. That year, he also established himself as an industrious member of the Crum Elbow Precinct of the Presbyterian Church,

²⁴ Marriage of June 18, 1766, online at <https://search.ancestry.com/cgi-bin/sse.dll?indiv=1&dbid=4205&h=14691&tid=&pid=&queryId=316498369e50c99bd6a7475b9432e80a&usePUB=true&phsrc=yxt174&phstart=success> Source and online at <https://www.ancestry.com/family-tree/person/tree/8211110/person/-874234035/facts?phsrc=TvP9&phstart=successsource>

agreeing to help repair the meeting house, in which he and his brother, Samuel, had bought pews.²⁵ Sadly, Sarah died the very next year.²⁶

As a 27-year-old widower courting Margaret Mott, Smith wrote a gem of a letter to his friend, Henry Livingston, criticizing the “House of Asses” (the Provisional Assembly of New York) and the “shameless Conduct” of those in power, which Smith could abide only because “I firmly believe a God of infinite Wisdom and immaculate goodness presiding over human affairs.” In a more mundane passage, he cautions Livingston not to allow his passion to run away with his reason and describes own his courtship with Margaret as “Tragi Comedy,” in that her stepfather, Ezekiel Cooper, had forbade him from visiting her. “It [is] not impossible but what we shall yet join, in matrimonial Bands, however, it is uncertain as all sublunary things are. I think I have learned the folly, of seeking bliss below the skies.”²⁷ Smith and the 23-year-old Margaret prevailed, and in 1772 were wed.²⁸

The Motts were Quakers, a theme that runs through their history in Long Island, including their early manumission of slaves, which may have influenced Melancton Smith’s antislavery views.²⁹ It did not take long for Smith to enter public life. By 1769, at age 25, he joined the Dutchess County branch of the Sons of Liberty,³⁰ a colonial society advocating resistance to English political actions in New York, and eventual independence from England.³¹ Four years later he took his first official post, a local job, as Poor Master.³²

²⁵ James H. Smith, *History of Dutchess County*, D. Mason and Co Syracuse 1882, p. 312 online at https://www.google.com/books/edition/History_of_Dutchess_County_New_York/6f5HAQAAMAAJ?hl=en&gbpv=1&dq=%22nothing+is+recorded+until+%22ye+19th+September+%22&pg=PA312&printsec=frontcover. See, also, Anthony P. Musso, Poughkeepsie Journal May 2, 2017 (history of the church)

²⁶ <https://www.ancestry.com/family-tree/pt/PersonMatch.aspx?tid=8211110&pid=-874234035> (Death of Sarah Smith). See <https://www.ancestry.com/family-tree/pt/PersonMatch.aspx?tid=8211110&pid=-874234035> (re Sarah Smith’s death in 1770)

²⁷ Smith to Henry Livingston, February 2, 1771, in Michael P. Zuckert and Derek A. Webb, *The Anti-Federalist Writings of the Melancton Smith Circle* (2009), at 14. Smith’s vocabulary was impressive, and he may have had a sense of humor about it. In a letter he had written in 1767, at age 23, he wrote: “I suppose it was nothing more than the ebullitions (pardon the expression) of that (sometimes I don’t know what to call it, but I mean nothing vicious.” (id at 13)

²⁸ Re marriage to Mott March 17, 1772 see https://search.ancestry.com/cgi-bin/sse.dll?dbid=4205&h=14690&indiv=try&o_vc=Record:OtherRecord&rhSource=61157 and <https://search.ancestry.com/cgi-bin/sse.dll?indiv=1&dbid=4205&h=14690&tid=&pid=&queryId=e4d29b9c67a6947137cf109a3ed9f330&usePUB=true&phsrc=yxt176&phstart=successSource>

As for Margaret Mott (1749-1819) see also, Thomas C. Cornell, *Adam and Anne Mott, Their Ancestors and Their Descendants* (1890) at 208 and online at

https://archive.org/stream/adamandannemott00corngoog/adamandannemott00corngoog_djvu.txt; As for the Mott Family, see, also, the family history compiled by Herbert Armstrong Poole, online at <http://www.antonymaitland.com/hptext/hp0282.txt>

²⁹ As to the Mott Family and their Quaker religion, see Thomas C. Cornell, *Adam and Anne Mott, Their Ancestors and Their Descendants* (1890), 16.

³⁰ Joseph Kent McGaughey, *The Authorship of the Letters from the Federal Farmer, Revisited New York History* 70, no. 2 (1989): 153, 161.

³¹ See, Henry B. Dawson, *The Sons of Liberty in New York* (1859) online at https://archive.org/stream/sonsoflibertyinn00daws/sonsoflibertyinn00daws_djvu.txt

³² Terri O’Shea, *Melancton Smith, New York Anti-Federalist, A “Middling Man”* (1976) at 5 (Thesis at Vassar College Department of History)

Around that time, colonial grievances were broadcast, exacerbated by the Boston massacre of 1770, the Tea Act of 1773, and other points of friction.

By 1775, Smith would be commanding a Dutchess County Regiment, not long before the outbreak of war.³³ In May of that year, he became a delegate to the First New York Provincial Congress.³⁴

The following month, a committee of the New York Provincial Congress reported out the draft plan of accommodation, laying out the respective obligations of the Colony and of England to one another. The plan, however, contained no article on religion. Smith proposed an addition, declaring:

And as the free enjoyment of the rights of conscience is of all others the most valuable branch of human liberty, and the indulgence and establishment of Popery all along the interior confines of the old Protestant Colonies tends not only to obstruct their growth, but to weaken their security; all concerns of a religious and ecclesiastical nature, so far as they may be under the cognizance and controul of civil authority, ought to remain exclusively with the respective Colony Legislatures as the most inestimable object of their internal police.³⁵

In Dutchess County, Smith engaged energetically in the Revolutionary movement. The county had Patriot and Loyalist elements, with Smith squarely on the Patriot side, vigilant in identifying Loyalists, even before the Declaration of Independence. He raised the first company of Minute Men in the region, serving as its captain in February 1776.³⁶

³³ Frank Hasbrouck *History of Dutchess County* at 120 Online at <https://archive.org/details/cu31924028853327/page/120/mode/2up?q=melancthon>; as for Queens County during that time, see Tiedemann, Joseph S. "A Revolution Foiled: Queens County, New York, 1775-1776." *The Journal of American History* 75, no. 2 (1988): 417-44. Accessed March 31, 2021. doi:10.2307/1887865.

³⁴ Peter Force, *American Archives*, 4th series, Vol II, (1839) at p. 1245, online at https://www.google.com/books/edition/American_Archives/1VIYQAAMAAJ?hl=en&gbpv=1&bsq=smith%20york%20%201775%20melancton%20OR%20melancthon%20%22provincial%20congress%22; See, also, Biographical Directory of the United States Congress, 1774- Present

³⁵ Report of June 24, 1775. Gouverneur Morris then produced its final wording: "that neither the Parliament of Great Britain, or any other earthly legislature or tribunal, ought or can interfere or interpose in any wise howsoever, in the religious and ecclesiastical concerns of the Colonies." Above from "Gouverneur Morris to John Jay, 30 June 1775," *Founders Online*, National Archives, <https://founders.archives.gov/documents/Jay/01-01-02-0082>. [Original source: *The Selected Papers of John Jay*, vol. 1, 1760-1779, ed. Elizabeth M. Nuxoll. Charlottesville: University of Virginia Press, 2010, pp. 126-128.] Online at <https://founders.archives.gov/?q=melancton&s=1111311111&sa=&r=1&sr=1> Also in Journals of the New York Provincial Congress, online at https://archive.org/stream/journalsofprovin01newy/journalsofprovin01newy_djvu.txt

In referring to the dangers of "popery" Smith was echoing what had been historic discrimination against Catholics (See, Richard Albert, *Religion in the New Republic*, 67 La. L. Rev. 1, 28- 30, Fall 2006; Chester James Antieau et al., *Freedom from Federal Establishment* 94 (1964); Thomas F. O'Connor, *Religious Toleration in New York*, *New York History*, Vol. 17, No. 4, Oct. 1936, 391-410.

³⁶ I Journal of the Provincial Congress, 320, online at https://heinonline-org.proxy.library.nyu.edu/HOL/Page?collection=newyork&handle=hein.beal/provcop0001&id=326&men_tab=srch_results; as for Loyalist sentiment in Poughkeepsie, New York, see Jonathan Clark, *The Problem of Allegiance in Revolutionary Poughkeepsie*, in *Saints and Revolutionaries*, ed. by David D. Hall, John M. Murrin, and Thad Tate (1984, at 285).

“I could only make up my bedding by stealth” Mrs. Smith afterwards used to say “for if the judge came in and found me sewing upon a pair of sheets, he would request the cloth be put into shirts for half the naked soldiers of Washington’s army.”³⁷

Some of Smith’s activities, however, created conflicts of interest. In October 1779 New York enacted confiscatory legislation to punish Loyalists. Its statute, entitled: “*An Act for the Forfeiture and Sale of the Estates of Persons who have adhered to the Enemies of this State, and for declaring the Sovereignty of the People of this State, in respect to all Property within the same*” empowered the state to seize and sell Loyalist property.³⁸

The courts on which Smith served dealt with indictments for these offenses, but it appears that he himself had traded in confiscated loyalist properties.³⁹ Interestingly, selling off these properties had a democratizing effect. By and large, purchasers were not the wealthy, baronial landowners, but, like Smith, merchants and yeoman farmers.⁴⁰

After two years as Sheriff of Dutchess County,⁴¹ Smith entered the judiciary, in 1781, as Justice of the Peace, and then in various county level judgeships including the Inferior Court of Common Pleas, and the Court of General Sessions.⁴² At the same time he continued his commercial activities beyond Dutchess County.⁴³

During the Revolutionary War, Smith engaged in commissary duties for the military, where he served his country and, at the same time, advanced his mercantile gain.⁴⁴ Although there were

In June 1776, he was named captain, and later major, of a group to protect against potentially dangerous Loyalists, and he also served that year on a committee to exchange British and American prisoners.

³⁷ Peter Saily Palmer, *History of Lake Champlain, From it First Exploration by the French in 1609, to the Close of the Year 1814* (1866) at 166 online at

<https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t24b37flc&view=1up&seq=174&q1=shirts>

³⁸ New York Laws, 3rd session, Ch. 25, online at

<http://genealogytrails.com/ny/putnam/history/pellatreau/chapter6.html> and at

<https://archives.gnb.ca/exhibits/forthavoc/html/NY-Attainder.aspx?culture=en-CA>

³⁹ Alexander C. Flick, *Loyalism in New York* (1901) online at

<https://archives.gnb.ca/exhibits/forthavoc/html/NY-Loyalism.aspx?culture=en-CA>; See also, Robin Brooks at 65;

see, also, Harry B. Yoshpe, *The Disposition of Loyalist Estates in the Southern District of the State of New York* (1939) at 46 noting a purchase by Smith. See also, Staughton Lynd, *Anti-Federalism in Dutchess County, New York*, (1962) at 28, 76; Frederic D. Mather, *The Refugees of 1776 from Long Island to Connecticut* (1913) at 176 (describing Senate petition of Thomas McFarren and Melancthon Smith concerning lands purchased at public auction forfeited by attainder and conviction of William Bayard, online at

<https://archive.org/details/refugeesof1776fr00mathuoft/page/716/mode/2up>;

⁴⁰ See, John T. Reilly "Sale of Loyalist Estates in Dutchess County: The Effect on Landholding Patterns" Dutchess County Historical Society Yearbook, Vol. 67, 1982, p. 37.

⁴¹ Charles Z. Lincoln, *The Constitutional History of New York* (1906) at 563

⁴² James H. Smith, *History of Dutchess County, New York*, (1882) at 126

online at https://archive.org/stream/cu31924100747272/cu31924100747272_djvu.txt and

https://www.google.com/books/edition/History_of_Dutchess_County_New_York/mPYonQEACAAJ?hl=en&gbpv=1&bsq=melancton (appointment as Sheriff.) Smith’s judicial service appears in Dutchess County records, for which I thank County Historian William Tatum. The Court of General Sessions was a county-level court with jurisdiction over all felony cases not punishable by death.

⁴³ Joel Munsell, *Annals of Albany* (1859) Vol. 10, at 153 (Application for the right to do business in Albany)

⁴⁴ Staughton Lynd, *Anti-Federalism in Dutchess County* (1962) at 62.

newspaper protests about “engrossing merchants” who made money off of the war, potential conflicts of interest of that kind were not uncommon. Smith, who was purchasing agent for the legislature in 1777 and 1778 “falls somewhere along the middle of this spectrum,” said Robin Brook.⁴⁵

By 1788, when he went head-to-head with Hamilton, Smith would be speaking from his experience in business, law, and politics, having served as a member of the Continental Congress from 1785 to 1787.⁴⁶

His reputation was also enhanced by having helped settle a land dispute, in 1786, between Massachusetts and New York.⁴⁷ He even had a commercial transaction with George Washington.⁴⁸

Smith also had broadened his commercial dealings, particularly land speculation, joining Zephaniah Platt of Poughkeepsie in purchasing land in what was to become Plattsburgh, New York, becoming one of its original proprietors. Eventually, a branch of his family settled there. Smith also acquired large land holdings in Broome, Oneida, and Schuyler counties in New York State.⁴⁹

These speculative ventures, and other financial activities, took a toll on Smith, who did not strike it rich, but suffered financial reversals and indebtedness.⁵⁰

Education

Hamilton had attended Kings College (Columbia) from 1774 to 1776, engaging in topflight academic studies. Smith had no such educational credentials, and yet, during the ratification

⁴⁵ Brook at 34.

⁴⁶ [https://history.house.gov/People/Listing/S/SMITH,-Melancton-\(S000592\)/](https://history.house.gov/People/Listing/S/SMITH,-Melancton-(S000592)/)

⁴⁷ The *Independent Gazetteer*, Philadelphia, December 28, 1786.; Council of Revision, State of New York, Ed. Alfred B. Street, (1859) at 154, 160.

⁴⁸ In October, 1784. See, Founders Online, online at

[https://founders.archives.gov/?q=melancton&s=1111311111&sa=&r=7&sr=](https://founders.archives.gov/?q=melancton&s=1111311111&sa=&r=7&sr=;); and December 20, 1784, online at

<https://founders.archives.gov/documents/Washington/04-02-02-0164#GEWN-04-02-02-0164-fn-0001>

Washington had thought well enough of Smith to appoint him in 1782 to a commission to settle a dispute between the army and contractors at West point and elsewhere. (The Debate on the Constitution, Part Two, 1993, Bernard Bailyn, ed. at 1012).

⁴⁹ Smith acquired 900 acres in Plattsburgh in 1784, and additional acreage in 1787, see

Peter Saily Palmer, *History of Plattsburgh, N.Y., From its First Settlement to Jan, 1, 1876*, at 10; see also, Brooks at 68-69; H.P. Smith, *History of Broome County* (1885) at 90- 91, online at

<https://archive.org/details/historyofbroomec00smit/page/n185/mode/2up>. See also, Barbara H. Bell, Irelandville, in *Crooked Lake Review*, July 1991 (Schuyler County) online at

https://www.crookedlakereview.com/articles/34_66/40july1991/40bell.html

In 1786 Governor Clinton gave Smith a patent for land in Montgomery County, see

<https://www.abebooks.com/signed/Letters-Patent-Melancton-Smith-Lot-640/30619184266/bd>

⁵⁰ Alfred F. Young, *The Democratic Republicans of New York*, 1967, at 3-4. One commentator has speculated that because Smith was helped out of debt by federalist acquaintances, he never claimed credit for writing his pseudonymous letters. Joseph Kent McGauhy, *The Letters from the Federal Farmer, Revisited, New York History*, April 1989, Vol. 70, No. 2 at 166.

debates, and in his earlier writings, possibly as Brutus, he drew freely on classical works, citing Beccaria and Montesquieu, the Ephori in Sparta, and the tribunes in Rome.⁵¹ How did these teachings come to him?

One might assume that, having grown up in an 18th century rural setting, he was entirely home-schooled. Likely, he received some education from his parents, and certainly he acquired a love of learning in his early years. But we cannot look upon Jamaica in the 1700s as an education desert. Schools had existed since 1676, when Richard Jones received permission to use the meeting house, provided he keep “ye window es from breaking and keep it deasent & clean [on] Saturday nights against ye Lords day & seats to be placed in order.”⁵²

Although spotty, records show a plethora of schools in early Queens, many sponsored by religious institutions, notably Presbyterian and Quaker, making sure that in addition to English, Latin, writing, and arithmetic, students became well versed in the Lord’s Prayer, catechism, and the Ten Commandments. Although tuition- based, about half of the students in a Jamaica school received the lessons gratis.⁵³

In 1726, Melancton’s father was one of a committee to try to raise funds for a free school in Jamaica.⁵⁴ This may or may not have succeeded, but a series of school masters taught in Jamaica during the next couple of decades. In 1756, when Melancton would have been about 12 years old, an Episcopal schoolmaster, William Sherlock, held forth. The school was sold five years later, just in time for Melancton to strike out on his own.⁵⁵ Whatever formal education had come his way, he could not have had more than what we call a high-school education, and he expanded his literary horizons, Lincoln-style. He also dealt in some interesting jurisprudence.

Rutgers v. Waddington (1784)

Judicial review connotes the power of American courts to assess the constitutionality of statutes or actions by government officials. Most associate the concept with Chief Justice John

⁵¹ In this article I equate Smith and Brutus, although I recognize that the issue might yet be open to debate. On October 18, 1787, as Brutus, in support of smaller government and of the dangers of large government, Melancton Smith cited Beccaria and Montesquieu (XIX Kaminski at 110)

During the Ratification debates, on June 21, 1788, Smith invoked Beccaria, in speaking of the dangers of putting government in the hands of the rich and powerful (XXII Kaminski at 1752, 1762, 1794.) Smith was referring to the Marquis di Beccaria’s introduction to *An Essay on Crimes and Punishments* (1764) as quoted in the second continental Congress’ address to the inhabitants of Quebec (see XXII Kaminski 1794, footnote 6); see also, XXII Kaminski 1912 (Smith invoking Montesquieu)

John D. Bessler, *The Italian Enlightenment and the American Revolution: Cesare Beccaria's Forgotten Influence on American Law* 37 Hamline J. Pub. L. & Pol’y 1 (2017) (Beccarian notion of equality and its expression in Smith’s remarks.)

⁵² *History of Queens County, New York*, W.W. Munsell, and Co. (1882) at 200, 226-228 and online at <https://babel.hathitrust.org/cgi/pt?id=nnc2.ark:/13960/t9n32m641&view=lup&seq=215>

⁵³ id at 227

⁵⁴ id at 200

⁵⁵ id at 226-229

Marshall's decision in *Marbury v Madison* in 1803, but its American roots go back earlier, to a case called *Rutgers v Waddington*.⁵⁶

Melancton Smith played a key role in the legal and political implications of this important case that took place just after the Revolutionary War.

The episode began when the New York legislature in March 1783 passed "*An act for granting more effectual relief in cases of trespass.*" The Trespass Act was designed to enable the Whigs to recover rent from the Tories, for any landed estate that Tories might have occupied. The law expressly prohibited Tories from pleading "justification [based on] any military order or command whatsoever for such occupancy."

Elizabeth Rutgers sued Joshua Waddington, a British merchant, in the Mayor's Court of the City of New-York, to recover rent for his having taken over her brewhouse, when the English had occupied New York during the War. As Waddington's lawyer, Alexander Hamilton urged the court to strike down the Trespass Act, as violative of the law of nations and the law of war.⁵⁷ Hamilton had also published his "Letter from Phocion to the Considerate Citizens of New York" in January 1784, attacking the legislation as unfair.⁵⁸

The case was argued in 1784, before James Duane as Mayor, Richard Varick as Recorder, and five members of the City Council. The court ruled that by the law of nations, Waddington was justified in occupying the brewery insofar as it was under the aegis of the British commander.⁵⁹ For the time that it was not under his aegis, however, the jury awarded Mrs. Rutgers 800 pounds and change.⁶⁰

Irate over the court's ruling insofar as it sustained Waddington's justification defense for part of the occupancy, the Whigs convened at Mrs. Vandewater's tavern in Manhattan and appointed a committee led by Melancton Smith. By that time, his life was centered more in New York City than in Dutchess County.⁶¹

⁵⁶ William Michael Treanor, *Judicial Review before Marbury*, 58 Stan. L. Rev. 455 (2005); Daniel J. Hulsebosch, *A Discrete and Cosmopolitan Minority: The Loyalists, the Atlantic World, and the Origins of Judicial Review*, 81 Chi.-Kent L. Rev. 825 (2006) online at <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3549&context=cklawreview>; James Duane, the judge in *Rutgers*, construed New York's Trespass Act in a way that avoided conflict between it and either the law of nations or the common law, but that was inconsistent with its apparent meaning, a group of individuals, including Melancton Smith, published a sharp criticism of the holding in the newspaper *The New York Packet*.

⁵⁷ Michael P. Zuckert and Derek Webb, in *The Anti-federalist Writings of the Melancton Smith Circle* (2009) at 3-11.

⁵⁸ See, Founders online, at <https://founders.archives.gov/documents/Hamilton/01-03-02-0314>; Also published in several newspapers, including the *Pennsylvania Gazette*, March 3, 1784, 2.

⁵⁹ The case was argued on June 29, 1784. The decision, rendered on August 27, 1784, was reported in the *Connecticut Courant*, August 31, 1784, 3.

⁶⁰ *New York Packet*, September 6, 1784, 2.

⁶¹ Smith was, by then, increasingly active as a merchant in New York, joining its Chamber of Commerce shortly after it was organized on April 20, 1784 (Brook at 47).

The notice for the meeting reflected the group's anger at the decision: "If the Judges of the Mayor's Court have acted erroneously, let their error be rectified by an appeal to a higher tribunal; if they have acted corruptly, let them be impeached."⁶²

Incensed by the idea of a court overruling a legislative act, Smith warned of the decision's "judicial tyranny...dangerous to the freedom of our government, and that a perseverance in that principle would leave our legislature nothing but a name, and render their sessions nothing more than an expensive form of government...That there should be a power vested in courts of judicature, whereby they might control the supreme legislative power we think is absurd in itself."⁶³

This may have animated his later concern—several months after the Constitution was drafted—that a national supreme court would be "uncontroulable, and not amenable to any other power in any decision they make."⁶⁴

The bout between Hamilton and Smith in the *Rutgers* case in 1784 forecast the battle lines in the Constitutional ratification debates in 1788. Hamilton was a patriot, but he felt that Tory talent should not be sacrificed in the name of patriotism. He thought the postwar anti-Tory laws adverse to the protection of property rights, and to the country's position in world affairs and trade.⁶⁵

The Northwest Ordinance: Smith and Nathan Dane

As a member of Congress in 1785, Smith played a role in the enactment of the Northwest Ordinance—a pathway to statehood for territory northwest of the Ohio River, to include what would become the states of Illinois, Indiana, Michigan, Ohio, Wisconsin, and part of Minnesota. Smith wanted to make the territory's land more affordable—at a half-dollar per acre—to potential settlers.⁶⁶ Although Congress did not reduce the price to that extent, it did lead to a compromise at a dollar an acre.⁶⁷

⁶² *New York Packet*, September 13, 1784, 2; Philip Hamburger, *Law and Judicial Duty* (2008) at 353-356

⁶³ See, Evans Early American Imprint Collection, online at <https://quod.lib.umich.edu/e/evans/N14462.0001.001?rgn=main;view=fulltext>; See, also, Henry W. Scott, *The Courts of the State of New York*, (1909) at 227. As to Smith's concern over the prospect of overarching power of federal courts and the influence of the antifederalists in how state and federal courts function under our system, see Tyler D. Moore, *Trimming the Least Dangerous Branch: The Anti-Federalists and the Implementation of Article III*, 56 *Tulsa L. Rev.* 1 (Fall 2020); see also, *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938) (Federal courts must generally apply state substantive law in diversity of citizenship cases)

⁶⁴ Smith to Abraham Yates, Jr., January 23, 1788, XX Kaminski at 638. The *Federal Farmer* expressed related concerns (October 10, 1787, Zuckert and Webb at 44.

⁶⁵ See, David A. Weinstein, *Rutgers v. Waddington, Judicial Notice*, No. 9 (2013) p. 26-42.

⁶⁶ See A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875, Journals of the Continental Congress, 1774-1789, April 23, 1785. For a timetable of the various measures adopted by Congress leading to the final adoption of the Northwest Ordinance of 1787 and other events of national importance, see Stephen L. Schechter, *The Reluctant Pillar* (1985) at 235-236.

⁶⁷ See Brook at 122-123.

During the debates over the Ordinance, Congress considered the use of lands to support religious purposes, which Smith and William Ellery of Rhode Island successfully blocked.⁶⁸

In his work on the Northwest Ordinance, Smith also collaborated in Congress with Nathan Dane of Massachusetts.⁶⁹ Their warm relationship may have been a factor in Smith's stance at the Ratification Convention in Poughkeepsie in 1788, as Dane had eventually favored ratification. The two exchanged letters at a critical stage in Smith's eventual decision to do so.⁷⁰

Owing to Dane's efforts, and in keeping with Smith's anti-slavery views, the Northwest Ordinance of 1787 prohibited slavery in the territory. The prohibition passed in Congress, unopposed by slaveholder interests, ostensibly because the South did not want a competing plantation economy to develop in the North. Slavepower, however, acquired a provision for the return of runaway slaves, as in the Constitution's Fugitive Slave Clause.⁷¹

Article 6 of the Northwest Ordinance prohibits slavery in the territory, but contemplates the return of fugitive slaves.

The Constitution's Fugitive Slave Clause also contemplated the return of runaway slaves, but unlike the Northwest Ordinance, tacitly allowed slavery by the slave states, whereas the Ordinance prohibits it in the Northwest Territory.

On Slavery

Two months after the 1787 Constitutional Convention, Smith (as Brutus) challenged the document's "three-fifths" clause:

What a strange and unnecessary accumulation of words are here used to conceal from the public eye, what might have been expressed in the following concise manner...If [the enslaved] have no share in government, why is the number of members in the assembly, to be increased on their account? Is it because in some of the states, a considerable part of the property of the inhabitants consists in a number of their fellow men, who are held in bondage, in defiance of every idea of benevolence, justice, and religion, and contrary to all the principles of liberty,

⁶⁸ See *National Archives, Founders online*, at <https://founders.archives.gov/?q=melancton&s=1111311111&sa=&r=14&sr=>

⁶⁹ See *Journals of the Continental Congress, 1774-1789*, online at https://archive.org/stream/journalsofcontin31unit/journalsofcontin31unit_djvu.txt; See, also, George Bancroft, *History of the Formation of the Constitution of the United States*, Vol 2 at 111-112 (1882); the two also served on a committee together in connection with a navigation matter in September 1787 online at <https://founders.archives.gov/?q=nathan%20dane&s=1111311111&sa=&r=11&sr=>

⁷⁰ XXIII Kaminski at 2369, Smith to Dane, July 15, 1788; online at [https://www.google.com/books/edition/The_Debate_on_the_Constitution_Part_2_Fe/9Mg6zkk9tgYC?hl=en&gbpv=1&dq=dane+%22+time+and+patience+is+necessary+to+bring+our+party%22&pg=PT1160&printsec=frontcover](https://www.google.com/books/edition/The_Debate_on_the_Constitution_Part_2_Fe/9Mg6zkk9tgYC?hl=en&gbpv=1&dq=dane+%22+time+and+patience+is+necessary+to+bring+our+party%22&pg=PT1160&printsec=frontcover;); XXI Kaminski at 1254 (Dane to Smith, July 3, 1788), online at https://archive.csac.history.wisc.edu/nathandane_to_melanctonsmith.pdf;

Michael P. Zuckert and Derek Webb, in *The Anti-federalist Writings of the Melancton Smith Circle* (2009) at 337 (Smith to Dane, June 28, 1788) online at https://archive.csac.history.wisc.edu/melanctonsmith_to_nathandane.pdf;

⁷¹ John Kaminski, *A Necessary Evil? Slavery and the Debate Over the Constitution* (1995) at 39.

which have been publickly avowed in the late glorious revolution? If this be a just ground for representation, the horses in some of the states, and the oxen in others, ought to be represented--for a great share of property in some of them, consists in these animals; and they have as much controul over their own actions, as these poor unhappy creatures, who are intended to be described in the above recited clause, by the words, "all other persons."

Smith denounced not only the inhumanity of slavery, but the pernicious political nature of the three-fifths clause, insofar as it rewarded slavepower, increasing its political muscle with each additional slave:

What adds to the evil is, that these states are to be permitted to continue the inhuman traffic of importing slaves, until the year 1808--and for every cargo of these unhappy people, which unfeeling, unprincipled, barbarous, and avaricious wretches, may tear from their country, friends and tender connections, and bring into those states, they are to be rewarded by having an increase of members in the general assembly.⁷²

At the Ratification Convention, Smith continued his attack on the inhumanity of slavery and the perversity of the three-fifths clause: He "could not see any rule by which slaves were to be included in the ratio of representation. The principle of a representation being that every free agent should be concerned in governing himself, it was absurd in giving that power to a man who could not exercise it. Slaves have no will of their own. The very operation of it was to give certain privileges to those people who were so wicked as to keep slaves." He knew it would be admitted that this rule of apportionment was founded on unjust principles, but that it was the result of accommodation; which, he supposed, we should be under the necessity of admitting, if we meant to be in union with the Southern States, though utterly repugnant to his feelings.⁷³

⁷² Brutus Letter III, November 15, 1787, See, John Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution, Volume XIX: Ratification of the Constitution by the States* (New York 2005), 253. Above online at https://press-pubs.uchicago.edu/founders/documents/a1_2_3s5.html and online at <https://constitution.org/1-Constitution/afp/brutus03.htm>

The Federal Farmer also pointed out the prospect of the three-fifths clause giving undue political power to the South, in Federal Farmer Letter V, October 13, 1787, in XIX Kaminski at 238. The three-fifths clause is said to have given the slaveholding states an 11 percent bonus.

See Patrick Rael, *A Compact for the Good of America? Slavery and the Three-Fifths Compromise* online at <https://www.aaihs.org/a-compact-for-the-good-of-america-slavery-and-the-three-fifths-compromise>. See, also John Kaminski, *A Necessary Evil? Slavery and the Debate Over the Constitution* (1995), 127.

In New York, Smith was not alone in his stance on the three-fifths clause. Hugh Hughes, a New York City member of the Sons of Liberty, noted that "one hundred planters [in the slave states] each having five hundred slaves, will have a right of representation, when it will require five thousand of our northern farmers, supposing their families each to average six persons, to entitle them to the same right." See, XX Kaminski at 665; see also, Mark. Boonshoft *"Doughfaces at the Founding: Federalists, Anti-Federalists, Slavery, and the Ratification of the Constitution in New York."* *New York History* 93, no. 3 (2012): 187 at 197- 198. For a discussion of the three-fifths clause in the various state ratification conventions, see John P. Kaminski, *A Necessary Evil?* (1995) 43-55.

⁷³ Elliot's *Debates*, Volume 2, p. 226-227, online at <https://teachingamericanhistory.org/resources/ratification/elliott/vol2/newyork0620/> and online at <https://investigatinghistory.ashp.cuny.edu/module3C.php> and online at [http://memory.loc.gov/cgi-bin/ampage?collId=llcd&fileName=002/llcd002.db&recNum=238&itemLink=r?ammem/hlaw:@field\(DOCID+@lit\(ed0027\)\)%230020237&linkText=1](http://memory.loc.gov/cgi-bin/ampage?collId=llcd&fileName=002/llcd002.db&recNum=238&itemLink=r?ammem/hlaw:@field(DOCID+@lit(ed0027))%230020237&linkText=1); See, also, XXII Kaminski at 1715 (so wicked as to keep slaves), and 1719

Worse yet, said Smith, was the prospect the “free Inhabitants of one State Shall have greater Privileges because they are so wicked as to keep more Slaves than their neighbours.”⁷⁴

Hamilton, also deploring the treatment of the enslaved as property, said that they had been degraded to that condition and asked, rhetorically, whether it would be fair to compute the enslaved only in the assessment in taxes to the exclusion of apportionment in congressional representation⁷⁵—a point emphasized in Federalist 54.

At the New York ratification convention, anti-slavery discussion was muted. Like Hamilton and Smith, many of the delegates had no stomach for slavery, but in the name of accommodation and union, they abided its provisions in the Constitution.⁷⁶

Three years earlier, in 1785, Hamilton and Smith had joined in forming the New York Manumission Society, advocating the education of slaves, to be better equipped, when emancipated, to function in a free society.⁷⁷ Some members were slaveowners.⁷⁸

In an article reported in the Philadelphia *Independent Gazetteer* of November 27, 1786, Smith eloquently presented the case for manumission:

When it is considered that a good education in early life [lays] a foundation for usefulness in society; and that from the unhappy circumstances in which this class of our fellow creatures have generally been held, they have hitherto been almost deprived of instruction. No doubt can be entertained, but that the humane and benevolent of all denominations, and of every rank, will contribute liberally, to carry into execution a plan so consistent with the feelings of humanity, the dictates of Christianity, and the principle of sound policy.

(more slaves than their neighbors.); XXII Kaminski at 1748, 1759, 1802 (Smith’s candid acknowledgment that the three-fifths apportionment was the result of accommodation); See, also, Herbert J. Storing, *The Anti-Federalist*, (1981), at 336.

⁷⁴ John McKesson’s Notes on the Poughkeepsie Ratification Convention, June 20, 1788 online at <https://www.consource.org/document/john-mckessons-notes-of-the-new-york-ratification-convention-debates-1788-6-20/#highlight-50fe4e8dfbed7d0aacb9b928>

⁷⁵ At the debates, on June 20, 1788, in XXII Kaminski, at 1728;

⁷⁶ For an excellent article on this point, see Mark Boonshoft, “Doughfaces at the Founding: Federalists, Anti-Federalists, Slavery, and the Ratification of the Constitution in New York.” *New York History*, 93, no. 3 (2012): 187-218.

⁷⁷ See, Founders Online, minutes of the Manumission Society, February 4, 1785 online at <https://founders.archives.gov/?q=melancton&s=1111311111&sa=&r=10&sr=>; see also, Loudon’s *New York Packet*, February 21, 1785, 2.

⁷⁸ There is an article in *Plattsburgh Press- Republican* of September 13, 2014 by Robin Caudell, stating that Donald Papon, had discovered that Melancton Smith had owned a slave named Maria Haynes. Online at https://www.pressrepublican.com/news/local_news/witness-to-change/article_fc9b4a47-8675-56fd-bef3-c5898a124e0c.html; See also, Mrs. George Fuller Tuttle, *Three Centuries in Champlain Valley* (1909) at 432, online at <https://ia802505.us.archive.org/34/items/threecenturiesin00tuttuoft/threecenturiesin00tuttuoft.pdf>

Hamilton went even further, proposing (unsuccessfully) that slave-owning members must free their slaves under a strict timetable. Some, including Smith, felt that members should proceed at their own pace.⁷⁹

The Decade from the Articles of Confederation to the Constitution, 1777-1787

It did not take long after the Declaration of Independence for the American colonies to craft the Articles of Confederation—loosely stitching themselves together.⁸⁰ Lacking in a unitary executive and in meaningful national power over commerce, taxation, and foreign affairs, the Articles soon proved inadequate to the task of governing a new nation.

Few disputed that the Articles needed improvement, but the debate eventually centered around the means—whether by amendment or by replacing it with a new plan.

Virginia called a convention of the states to consider commercial matters. Commissioners from only New Jersey, Pennsylvania, Delaware, Virginia, and New York—represented by Hamilton and Egbert Benson—attended in Annapolis, Maryland in mid-September 1786 and recommended a general convention of the states to meet in Philadelphia to consider amending and revising the Articles of Confederation.⁸¹

Smith was not involved in the Annapolis Convention, but he was busy in other ways, in his role in the Northwest Ordinance, and in the New York Manumission Society.

Improving on the Articles of Confederation, however, was taking center stage, and Smith had begun to express the views that had linked him historically with the 1788 Ratification convention. His notes for a speech in 1786, as a member of Congress are revealing, referring to the “miserable” financial condition of the country, while defending New York’s provisos in its ratification of Congress’ proposed Impost of 1783.⁸²

⁷⁹ Ron Chernow, *Hamilton*, 2004, at 215. The records of the First Baptist Church, where Smith, as a member of the church was buried, reveal that the church admitted slaves but that no member was allowed to own a slave (See, Gustav Niebuhr, “Celebrating 250 Years of Perseverance,” *New York Times*, December 23, 1995)

⁸⁰ The *Documentary History of the Ratification of the Constitution*: Volume I, *Constitutional Documents and Records, 1776-1787*, Merrill Jensen, ed. (1976) at 78-94.

⁸¹ For the text of the Annapolis Convention Report of September 14, 1786, see <https://founders.archives.gov/documents/Hamilton/01-03-02-0556>

⁸² See, A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875, Letters of Delegates to Congress: Volume 23 November 7, 1785-November 5, 1786, Letters of Delegates to Congress, Volume 23 November 7, 1785-November 5, 1786
Melancton Smith's Notes for a Speech, July 27, 1786. Online at https://memory.loc.gov/cgi-bin/query/D?hlaw:2::/temp/~ammem_Ttbu

The 1787 Constitutional Convention in Philadelphia

In the spring of 1787, New York's legislature chose Alexander Hamilton, John Lansing, Jr., and Robert Yates as its delegates to the Constitutional Convention in Philadelphia.⁸³ After attaining a quorum on May 25, divisions soon sharpened between those delegates who wanted to amend the Articles of Confederation and those who wanted to replace them entirely, in favor of what would become the Constitution.⁸⁴

Governor George Clinton and Melancton Smith, along with Lansing and Yates, were New York's chief proponents of the amendment route, with Hamilton in the other corner. By June, matters came to a head.

James Madison had come to appreciate that Lansing and Yates were unalterably lined up in the amendment camp, Lansing having said that New York "would never have concurred in sending deputies to the convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government."⁸⁵

The Convention, nevertheless, rejected the New Jersey Amendment plan and approved Virginia's Resolutions, committing itself to creating a strong central government. Disenchanted, Yates and Lansing left the convention in mid-July, never to return for the Convention's last two months.⁸⁶ Eleven days later, in a newspaper article, Hamilton attacked Clinton, accusing him of elevating his own political interests above the nation's.⁸⁷

Over the summer, the delegates in Philadelphia continued their work, producing the new Constitution on September 17, 1787, which was sent to Congress, bearing the signatures of the delegates, including Hamilton's.⁸⁸ In his diary, George Washington wrote "Met in Convention when the Constitution received the Unanimous assent of 11 States and Colo. Hamilton's from New York (the only delegate from thence in Convention) and was subscribed to by every

⁸³ XIX Kaminski, 514- 525; see also Stephen L. Schecter, ed., *The Reluctant Pillar* (1985), 59-60 choosing Alexander Hamilton, John Lansing, and Robert Yates (Poughkeepsie *Country Journal*, March 14, 1787, 5.) Robert Yates (1738-1801) was the nephew of antifederalist Abraham Yates, Jr. (1724-1796, pseudonym Sidney and Rough Hower) see Paul A. Gilje and William Pencak, *New York in the Age of the Constitution, 1775-1800* (1992) 153-155.

⁸⁴ XIX Kaminski at 9.

⁸⁵ See, Constitutional Sources Project (ConSource) James Madison's Notes, June 16, 1787, online at <https://www.consource.org/document/james-madisons-notes-of-the-constitutional-convention-1787-6-16/>

⁸⁶ The Convention approved Virginia's resolution on June 19, 1787; Lansing and Yates left Philadelphia on July 10, 1787, see XIX Kaminski at 102; see also, Susan Westbury, "Robert Yates and John Lansing, Jr.: New York Delegates Abandon the Constitutional Convention." *New York History*, 82, no. 4 (2001): 313-35, online at <http://www.jstor.org/stable/42677797>. They gave their reasons at length in a December 21, 1787 writing published in *New York Journal* on January 14, 1788, 3 and in the *Pennsylvania Evening Herald*, January 19, 1788, 3, online at https://archive.csac.history.wisc.edu/assessments_25.pdf

⁸⁷ *New York Daily Advertiser*, July 21, 1787.

⁸⁸ XIX Kaminski at lxxxv; Washington's cover letter presenting the Constitution to Congress, online at <https://www.let.rug.nl/usa/documents/1786-1800/the-letter-presenting-the-constitution.php>

Member present except Govr. Randolph and Colo. Mason from Virginia & Mr. Gerry from Massachusetts.”⁸⁹

In Congress, Nathan Dane moved that the Constitution be submitted to the *states* for ratification, explaining that the original plan was to amend the Articles of Confederation, but that the Constitution “appears to be intended as an entire system in itself and not as any part of or alteration of the Articles of Confederation.”

Congress, he said, cannot lawfully authorize the change in concept and so it must be submitted to the states themselves.⁹⁰

The next day, in the Congress, Smith seconded Richard Henry Lee’s motion that Congress had the power to amend the Articles of Confederation, but not the power to create a confederacy of nine states, and that the plan for a new federal government be sent to the states. Congress then duly sent the Constitution to the states, setting the stage for a lengthy public debate over ratification.⁹¹

New York’s Ratification Convention in Poughkeepsie, June-July 1788

In January 1788, four months after the Constitution was promulgated, New York’s legislature called for a Convention in June, to consider ratification.⁹² As battle lines were being drawn, with the election of delegates, both sides appreciated the importance of newspaper coverage.⁹³

In February, Smith was nominated as a delegate.⁹⁴ The elections were held over a five-day period in late April to early May, and when the ballots were opened, there were no surprises. In

⁸⁹ Washington’s September 17, 1787 diary entry online at <https://founders.archives.gov/documents/Washington/01-05-02-0002-0009-0017>

That Hamilton alone signed--as one of three New York delegates, two of whom willfully departed the convention — has generated discussion on the technical aspects involved. See, Michael Coenen, *The Significance of Signatures: Why the Framers Signed the Constitution and What They Meant by Doing So*, 119 *Yale L.J.* 966, 991-992 (March 2010).

⁹⁰ Dane made the motion on September 26, 1787, See, *The Documentary History of the Ratification of the Constitution* ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009. online at https://archive.csac.history.wisc.edu/confederation_7.pdf (Dane’s motion, September 26, 1787)

⁹¹ 33 Journal of the Continental Congress 549, online at <https://www.loc.gov/resource/bdsdcc.22801/?st=gallery>

⁹² XIX Kaminski at xix.

⁹³ The antifederalists, concerned about the Albany newspapers favoring the federalists, looked to Melancton Smith, then in New York City, to see if he could prevail on publisher Thomas Greenleaf (editor of the antifederalist *New York Journal*) to set up an “impartial” newspaper in Albany. See XX Kaminski 834, see also, letter of March 1, 1788 from Abraham Lansing and others to Smith, in Manuscripts and Archives Division, The New York Public Library. “Lansing, Abraham G.” New York Public Library Digital Collections. NYPL IMAGE ID5831654 NYPL online at <https://digitalcollections.nypl.org/items/076bf310-0109-0134-9aaf-00505686a51c>

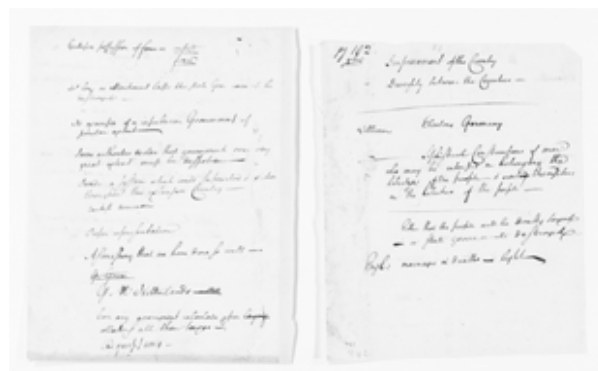
In the Albany election for delegates to the Ratification convention, the antifederalists prevailed, see, A New Nation Votes, American Election Returns, 1787-1825 online at <https://elections.lib.tufts.edu/catalog/qv33rx80g>

⁹⁴ Poughkeepsie *Country Journal*, March 4, 1788, 2.

Manhattan, the federalist stronghold, John Jay, on the federalist ticket, was the top vote-getter, outpacing Governor George Clinton, the top antifederalist vote-getter, by a 10-1 margin, 2735 to 135.⁹⁵ New York City, however, was outdistanced by upstate antifederalists, so that statewide, antifederalists won 46 seats and the federalists 19.⁹⁶ Smith had been elected as a delegate from Dutchess County, winning 1748 votes compared to top vote-getter, antifederalist Zephaniah Platt, with 1765 votes, and the nearest federalist candidate with half that number.⁹⁷ Hamilton wrote to Gouverneur Morris, lamenting that it looked as if “the elections had gone wrong.”⁹⁸

Delegates from New York City began to arrive in Poughkeepsie in time for the June 16, 1788 opening. Abraham G. Lansing (brother of John Lansing) had told of a colleagues’ sloop being delayed by the Hudson River winds blowing south.⁹⁹

With his opening oration, Smith established himself as the most formidable antifederalist speaker, after Robert R. Livingston and John Lansing had spoken for, and against, the Constitution, the previous day.¹⁰⁰



Alexander Hamilton's notes on a speech by Melancton Smith during the New York Ratifying Convention, 1788. Library of Congress, Manuscript Division, Alexander Hamilton Papers.

Approaching the topic with calm deliberation, Smith laid out his case. Conceding the shortcomings of the Articles, he asked rhetorically whether the new Constitution would make things better, or, as he asserted, worse.

Respectful and measured, Smith's speeches and his style helped establish his reputation as “a man of a religious frame of mind, familiar with metaphysical discussions, of undaunted courage, and gifted with the power of moderation.”¹⁰¹

Postulating that a national government would take on power at the expense of the states, he concentrated first on how citizens would be represented under the new plan, identifying three

⁹⁵ A New Nation Votes, American Election Returns, 1787- 1825, online at <https://elections.lib.tufts.edu/catalog/zg64tm78v>

⁹⁶ Pauline Maier, *Ratification* (2010) at 341.

⁹⁷ Poughkeepsie *Country Journal*, June 3, 1788, 3.

⁹⁸ Letter dated May 19, 1788, see XX Kaminski 1104.

⁹⁹ XX Kaminski, 1172.

¹⁰⁰ Smith began his orations on June 20, 1788, see XXII Kaminski at 1704-1712.

¹⁰¹ George Bancroft, *History of the Formation of the Constitution of the United States*, Vol 2 at 341(1882).

concerns: First, that the rule of apportionment was unjust under the three-fifths clause, second, that the House of Representatives could be easily reduced to too few delegates, and third, that the apportionment was inadequate, given that the number of delegates would never exceed one to every thirty thousand inhabitants.

If as projected, he said, only 65 Representatives were to speak for three million people, it would open the process to domination by an aristocratic class, out of touch with the needs of the rest of the population, particularly its backbone, the “middling” class.¹⁰²

With allusions to Holland, the Germanic Confederacy, the ancient republics, Samuel, the command of God, Montesquieu, and the Jewish theocracy, he pressed his concerns, concluding with a motion that the number of representatives be fixed at one for every 20,000.¹⁰³

In the same vein, on the following day, he extolled the “middling class” as the constituency most trustworthy for the representatives to resemble, as better inclined than the “natural aristocracy” to set bounds to their passions and appetites. He would not exclude the former, given their talents, but he would have them under the “controul” of the middling class, rather than the other way around.¹⁰⁴

Concerned over the prospect of perpetually entrenched power, he advocated for the rotation of senators, bringing in a wider assortment of talent and participation,¹⁰⁵ a point Hamilton rebutted, stressing the need for stability.¹⁰⁶ Concerned with the powers of the President, Smith moved that it be limited to a single term of seven years and that there be a Council to advise the President in the appointment of officers.¹⁰⁷

Smith and others were chiefly concerned about the sweeping powers of the federal government, subordinating the states, which Smith saw as trusted, manageable units of governance.¹⁰⁸ Beyond the power of the purse and of the sword, it extended to the importance of state constitutions as guardians of liberty.

¹⁰² See, Forrest McDonald, *We the People, The Economic Origins of the Constitution* (1958) for an interesting breakdown of the economic interests of the various delegates to New York’s 1788 Ratification Convention, 283-321.

¹⁰³ XXII Kaminski at 1712-1718, 1748-1786; Zuckert and Webb, at 289-296; See also generally, Herbert J. Storing, Vol 1 *The Complete Anti-Federalist*, Ch 13, Representation, Melancton Smith, New York Ratifying Convention, online at <https://press-pubs.uchicago.edu/founders/documents/v1ch13s37.html>

¹⁰⁴ June 21, 1788, See, Zuckert and Webb, at 296-301, esp. 303; and at XXII Kaminski at 1733. Smith cited Beccaria when arguing that the aristocratic class does not empathize with the rest of the population. See, *Roots of the Republic*, Stephen L. Schechter (1990) 398, 428.

¹⁰⁵ June 25, 1788, Zuckert and Webb, at 306-312; XXII Kaminski at 1877.

¹⁰⁶ June 24, 1788, XXII Kaminski at 1861-1866

¹⁰⁷ XXII Kaminski 2095, 2096.

¹⁰⁸ See, Smith, as Brutus, October 18, 1787, in Zuckert and Webb, at 170; See also, M.N.S. Sellers, *American Republicanism* (1994) at 193-195.

Smith declared: “I contemplate the abolition of the state constitutions as an event fatal to the liberties of America.”¹⁰⁹ These concerns made a lasting impression, eventually resulting in the Constitution’s structural design by which, under the Ninth and Tenth Amendments, the Constitution listed federal powers while preserving residuary powers to the states and to the people, and establishing that other fundamental rights exist even if not expressly enumerated in the Bill of Rights.¹¹⁰ This has become an integral part of our constitutional structure.¹¹¹ Moreover, Smith’s regard for the continued vitality of the state constitutions has been a part of America’s jurisprudence. In addition to drawing upon the federal Bill of Rights, state courts have increasingly invoked state constitutions to safeguard rights.¹¹²

Apart from the importance of a bill of rights, two additional features drove New York’s ratification convention. First, that the antifederalists felt betrayed by the shift, in Philadelphia, from amending the Articles, to the creation of a new system. After more than two weeks into the ratification convention, Smith revealed his displeasure when the delegates took up Article 7 of the Constitution, by which nine of the thirteen states could establish the Constitution.

“I consider this,” Smith said,” as a notorious breach of faith. By the Confederation, the States Solemnly [pledged] their faith to abide by that Confederation unless amended [unanimously] as therein provided — Here the Convention have recommended An Article which will be founded in a Breach of Faith.”¹¹³

Impost Begat Convention

Second, the impost. In 1783, Congress had proposed a national impost, seeking to share the revenue that had been flowing into New York and Philadelphia, based on their tariff on imports. New York was unenthusiastic about giving up this sizeable source of revenue. It funded a large portion of its annual expenses, which, along with monies from confiscated Loyalist estates, helped keep its other taxes relatively low.¹¹⁴ Hamilton was in favor of Congress’s proposal.¹¹⁵ It failed, however, to receive the necessary unanimous approval of the state legislatures, with the

¹⁰⁹ June 27, 1788, See, Zuckert and Webb, *The Anti-Federalist Writings of the Melancton Smith Circle* (2009) at 315; See, also, John Kaminski, *The Documentary History of the Ratification of the Constitution*, remarks of Melancton Smith, June 27, 1788, at p 1924, online at https://constitution.org/1-Constitution/rc/rat_ny.htm

¹¹⁰ As to the vision of the antifederalists and promulgation of Ninth and Tenth Amendments in the scheme of federalism, see Peter J. Smith, *Sources of Federalism: An Empirical Analysis of the Court's Quest for Original Meaning*, 52 UCLA L. Rev. 217 (October, 2004); Timothy Zick, *Statehood as the New Personhood: the Discovery of Fundamental “States’ Rights”* 46 Wm. & Mary L. Rev. 213 (2004).

¹¹¹ See, *Gregory v Ashcroft*, 501 US 452, 457 (1991); See also, Saul Cornell, *The Changing Historical Fortunes of the Anti-Federalists*, 84 Nw. U.L. Rev. 39, 70-71 (1989).

¹¹² See Justin Long, *Intermittent State Constitutionalism*, 34 Pepp. L. Rev. (2006).; *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983). See also, Jeffrey S. Sutton *51 Imperfect Solutions: States and the Making of American Constitutional Law* (2018).

¹¹³ See, John McKesson’s notes of July 7, 1787 online at <https://www.consource.org/document/john-mckessons-notes-of-the-new-york-ratification-convention-debates-1788-7-7/>; XX Kaminski at 2109

¹¹⁴ Pauline Maier, *Ratification* (2010) at 323-324. By confiscating Loyalist properties, New York raised almost \$4,000,000 (XIX Kaminski at xxxi). As to New York’s resistance to nationalizing the impost, see XIX Kaminski at xxxvi.

¹¹⁵ See, Founders online for a supporting missive (January-March 1786) attributed to him, online at <https://founders.archives.gov/documents/Hamilton/01-03-02-0492>.

ironic result that Congress resolved in February 1787 to call a Constitutional Convention to revise and amend the Articles of Confederation. Midway through New York's Ratification Convention, Hamilton is said to have noted that the "Impost begat Convention."¹¹⁶

As the Poughkeepsie convention progressed, Smith wrote to Nathan Dane, asking for his thoughts on proposed constitutional amendments, which included fixing the rate at one Representative for every 20,000 in population; restricting senatorial service to no more than 6 years in any period of 12 years; preventing Congress from regulating state elections for U.S. Senators or Representatives; barring Senators and representatives from holding any other federal office, and restricting Congress' taxing powers. Smith added: "Hamilton is the champion, he speaks frequently, very long and very vehemently—has, like publius, much to say not very applicable to the subject."¹¹⁷

Dane responded congenially, noting that he and Smith both sought "the peaceable establishment of a general Government on genuine federal and republican principles."¹¹⁸

As the momentum was shifting toward ratification, Smith wrote back, tellingly, as to his task: "The [Convention] have gone through the proposal of amendments and are now deliberating what to do with them. In this we do not accord in sentiments, but I am not without hopes, we shall become of one mind. I am entirely in accord with you in opinion and shall if necessary avow them. Time and patience is necessary to bring our party to accord, which I arduously wish. ... You may be assured, that time & great industry is requisite to bring us to act properly — My task is arduous and disagreeable."¹¹⁹

The situation had reached a crisis, when on June 21, 1788 New Hampshire—the ninth and decisive state in forming the Union—ratified, and news of it reached Poughkeepsie on June 24. The final blow was struck when Virginia ratified on June 25, and news of it reached Poughkeepsie on July 2, 1788.¹²⁰

In reacting, the antifederalists were not of a single mind. Some had favored ratification with conditional amendments, others with only recommendatory ones, and others would ratify on the condition that amendments take place within a given time.¹²¹

¹¹⁶ July 17, 1788. See XXIII Kaminski at 2197 and 2217 footnote 11. See also, Calvin H. Johnson *'Impost Begat Convention': Albany and New York Confront the Ratification of the Constitution*, 8 Albany L. Rev. 1489 (January 2018).

¹¹⁷ Smith to Dane, June 28, 1788, in XXII Kaminski at 2028-2031; Zuckert and Webb at 337. Online at https://archive.csac.history.wisc.edu/melanctonsmith_to_nathandane.pdf.

¹¹⁸ Dane to Smith, July 3, 1788, online at https://archive.csac.history.wisc.edu/nathandane_to_melanctonsmith.pdf.

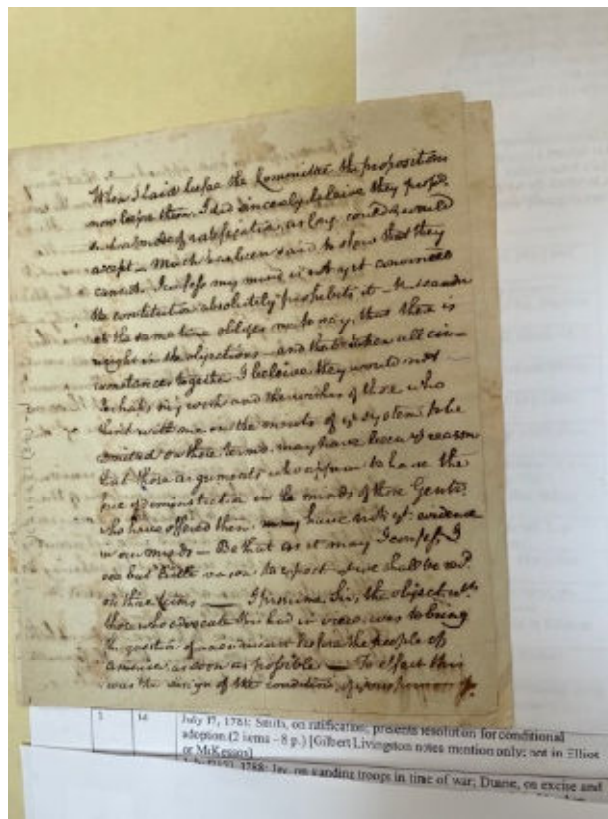
¹¹⁹ Smith to Dane, ca July 15, 1788, in XXIII Kaminski at 2369 and https://www.google.com/books/edition/The_Debate_on_the_Constitution_Part_2_Fe/9Mg6zkk9tgYC?hl=en&gbpv=1&dq=dane+%22time+and+patience+is+necessary+to+bring+our+party%22&pg=PT1160&printsec=frontcover The orig letter is in the John Wingate Thornton collection of the New England Historic Genealogical Society as per Pillar 117 fn 163 I emailed them March 27, 2021 asking for copy of orig of letter.

¹²⁰ Richard Leffler, *The Constitution of the United States: The End of the Revolution*, in *The Reluctant Pillar*, ed. by Stephen L. Schechter (1985) at 46-47.

¹²¹ Jay to Washington, 4[-8] July 1788, online at [https://founders.archives.gov/?q=jay%20to%20washington%20july%201788&s=1111311111&sa=&r=46&sr=](https://founders.archives.gov/?q=jay%20to%20washington%20july%201788&s=1111311111&sa=&r=46&sr=;); See, also, Hamilton to James Madison, [8 July 1788] online at

From “Upon Condition” to “In Full Confidence”

After the delegates floated various proposals for conditional ratification and other measures short of unconditional ratification, Madison, in response to a letter from Hamilton, wrote a letter that proved pivotal, saying “My opinion is that a reservation of a right to withdraw if amendments be not decided on under the form of the Constitution within a certain time, is a *conditional* ratification, that it does not make N. York a member of the New Union, and consequently that she could not be received on that plan. ...In short any *condition* whatever must viciate the ratification.” In a PS, Madison hammered home the point, saying that “the idea of reserving [a] right to withdraw was started at Richmd & considered as a conditional ratification which was itself considered as worse than a rejection.”¹²²



July 17, 1788 Melancton Smith, on ratification, presents resolution for conditional adoption; Gilbert Livingston's notes. Melancton Smith Papers, 1767-1795 (SC 14382) from the collections of the New York State Library, Manuscripts and Special Collections, Albany, New York. See, XXIII Kaminski at 2211.

The tide had turned irreversibly, evaporating the antifederalist bargaining position, leaving them with the choice of either cutting loose (and possibly losing New York City in the process) or

<https://founders.archives.gov/?q=hamilton%20to%20madison%20&s=1111311111&sa=&r=367&sr=> See, also, XXII Kaminski at 1672-1675.

Saul Cornell, in *The Other Founders* lists nine issues that often appeared in Anti-Federalist writings, as consolidation, aristocracy, representation, separation of powers, judicial tyranny, the absence of a bill of rights, taxes, standing army, and executive powers.

¹²² Madison to Hamilton, July 20, 1788, in XXIII Kaminski at 2374; see Founders online, <https://founders.archives.gov/?q=madison%20to%20hamilton%20july%201788&s=1111311111&sa=&r=33&sr=>

remaining in the tent, for the best possible result the circumstances permitted. Smith said that while he favored conditional ratification, and had proposed it, he thought, candidly, that it could bar New York's entry into the Union. This was a major turning point in the convention.¹²³ Rejecting ratification would have opened a boxful of historical "what – ifs" had New York refused to join the Union.

Smith, however, was unwilling to go so far as to reject the Constitution, and, using his business-like negotiating skills, he orchestrated the final result. On a motion by Samuel Jones, carried by a vote of 30-27, the delegates deleted the conditional ratification wording, and ratified "*in full confidence*" that a convention be convened for proposing amendments. Historian Martha Lamb described the Ratification in Poughkeepsie: "Thus turned the pivot in the history of the English-speaking race."¹²⁴

New York also included a lengthy list of amendments and adopted a circular letter to be sent to other states, calling for a second constitutional convention.¹²⁵

Three months later, Smith and others met at Fraunces Tavern in Manhattan to form the "Federal Republican Committee" to secure a second federal convention.¹²⁶

¹²³ July 17, 1788, XXIII Kaminski 2211--2215 Online at <https://digicoll.library.wisc.edu/cgi-bin/History/History-idx?type=turn&id=History.DHRCv23&entity=History.DHRCv23.p0082&q1=candor>.

Hamilton touched on the prospect of New York City separating from the state if the state did not join the Union. See, XXIII Kaminski 2195 online at <https://digicoll.library.wisc.edu/cgi-bin/History/History-idx?type=turn&id=History.DHRCv23&entity=History.DHRCv23.p0066&q1=warmly%20attachd>; See also, *New York Times*, July 26, 1963, at 24.

¹²⁴ Lamb, M. *History of the City of New York*, Vol. 2, p. 321.

¹²⁵ XXII Kaminski at 1673-1674; XXIII Kaminski at 2279-2280; *New York Daily Advertiser*, July 28, 1788, 2 ("In full confidence"); *New York Packet*, July 29, 1788, 2 ("In full confidence"); *New York Journal*, July 31, 1788, 3 ("In full confidence");

Poughkeepsie Country Journal, July 29, 1788, 2.; See also *Poughkeepsie Country Journal*, July 22, 1788, 2 (reporting on the events of July 16th and 17th).

For a detailed, day by day description as to the sequence of motions and votes preceding the final 30-27 tally, see Brooks, 202-224, and XXII Kaminski 1877—2166, covering June 25, 1788-July 12, 1788 and XXIII Kaminski 2169-2340, covering July 14, 1788 –July 26, 1788 and the Circular Letter).

For New York's July 26, 1788 list of all proposed amendments accompanying the 30-27 final ratification, see XXIII Kaminski at 2326-2334. For the Circular Letter of the same date, see p. 2335- 2340.

The wording as to ratification was "Under these impressions and declaring that the rights aforesaid cannot be abridged or violated, and that the Explanations aforesaid are consistent with the said Constitution, And in confidence that the Amendments which shall have been proposed to the said Constitution will receive an early and mature Consideration: We the said Delegates, in the Name and in the behalf of the People of the State of New York Do by these presents Assent to and Ratify the said Constitution. In full Confidence nevertheless that until a Convention shall be called and convened for proposing Amendments to the said Constitution the Militia of this State will not be continued in Service out of this State for a longer term than six weeks without the Consent of the Legislature thereof" and other restrictions on Congress.

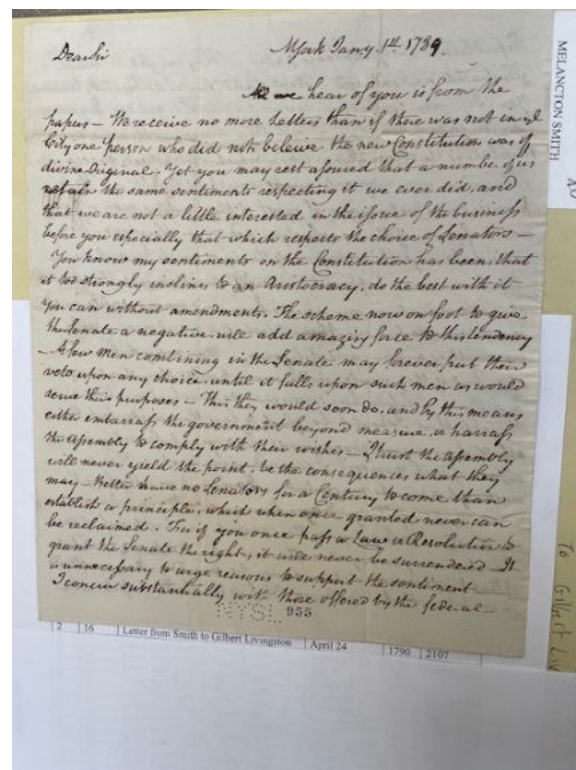
Online at https://avalon.law.yale.edu/18th_century/ratny.asp and online at <https://digicoll.library.wisc.edu/cgi-bin/History/History-idx?type=goto&id=History.DHRCv23&isize=M&submit=Go+to+page&page=2326>.

Virginia had included similar provisions, online at https://avalon.law.yale.edu/18th_century/ratva.a

¹²⁶ October 30, 1788 meeting. See XXIII Kaminski 2475.

None was ever held, the Bill of Rights having been later promulgated, taking the steam out of any need for another convention.¹²⁷

Even so, Smith was not without some misgivings concerning the structure of the Constitution. Writing to his friend Assemblyman Gilbert Livingston several months after the ratification, he said “You know my sentiments on the Constitution has been that it inclines to an Aristocracy....” Revealing his religious side, he added that the politics of the matter “may carry its influence upon the state & condition of the Kingdom which can never be moved. May we stand in our lot in that Kingdom, blessed by the King of it, all things are under his controul, and however great the ambition of frail mortals may be, he will conduct every event to produce the best end.” That past summer, Livingston had joined Smith and some other antifederalists in ratifying.¹²⁸



Letter, Melancton Smith to Gilbert Livingston, January 1, 1789, Melancton Smith Papers, 1767-1795 (SC 14382) from the collections of the New York State Library, Manuscripts and Special Collections, Albany, New York

After the Convention

Having left the stage at the Ratification convention, Smith lived for only 10 years, dying in 1798 at age 54, a victim of the yellow fever epidemic.

He spent those years, for the most part, as a New York City merchant. In 1789, the New York Manufacturing Society was formed “for the purpose of establishing useful manufactures in the

¹²⁷ See, Linda Grant DePauw, *The Eleventh Pillar* (1966) at 265-279.

¹²⁸ Smith to Livingston, January 1, 1789, XXIII Kaminski at 2496- 2498.

city of New York, and for the purpose of furnishing employment for the honest industrious poor.” Smith and Hamilton were among the first subscribers.¹²⁹

The following year, the New York legislature appointed Smith along with Egbert Benson, Robert Yates, and John Lansing, and others to meet in Stockbridge. Massachusetts with Vermont commissioners, including Elijah Paine, Sr., concerning territorial jurisdiction between New York and Vermont—which they successfully resolved.¹³⁰

That year, Hamilton, as Secretary of the Treasury, gave Smith the contract to supply West Point and a Massachusetts facility with rations.¹³¹

Owing to the split among the antis at the Poughkeepsie convention, Smith lost ground with some of them, which may have cost him a seat in the United States Senate.¹³² In that regard, Federalist Rufus King (1755-1827) recounted a June 1789 conversation with Governor George Clinton, in which Clinton said that Melancton Smith “had disgusted many of the Antifeds by acceding to the Ratification of the Constitution.”¹³³

Smith retained enough political strength, however, to be elected New York assemblyman in 1791, and was one of the canvassers in connection with a vote counting dispute in the 1792 gubernatorial election between George Clinton and John Jay.¹³⁴ He also continued his commercial activities in New York City, even writing the charter, as a stockholder of the “Million Bank of New York.”¹³⁵

¹²⁹ Joseph C. Davis, *Essays in the Earlier History of American Corporations*, Number IV (1917) at 275

¹³⁰ See, John P. Kaminski, ed. Et al., *The Documentary History of the Ratification of the Constitution, Ratification of the Constitution by the States, Vermont* (2020) at 12-26 online at

<https://asset.library.wisc.edu/1711.dl/67AZXDTE53WZX8M/R/file-9cdecb.pdf>

See, Philadelphia Inquirer, October 13, 1790, 2 (Successful resolution of the dispute); *Documentary History of the Ratification of the Constitution, Vermont* [Supplement] 2020, at 12, 18, 24, 26, 28. Online at

<https://asset.library.wisc.edu/1711.dl/67AZXDTE53WZX8M/R/file-9cdecb.pdf>

Smith had also continued to have a hand in Dutchess County real estate, see, *New York Journal*, November 12, 1894, 4. Elijah Paine was the father of Elijah Paine, Jr., judge in the Lemmon Slave case (1852-1860)

¹³¹ *From National Archives, Founders online*, online at

<https://founders.archives.gov/documents/Hamilton/01-26-02-0002-0180>

Smith became active enough to join the New York City Chamber of Commerce’s Board of Directors, See, Lawrence A. Peskin, “From Protection to Encouragement: Manufacturing and Mercantilism in New York City’s Public Sphere, 1783-1795.” *Journal of the Early Republic* 18, no. 4 (1998): 589-615, at 603, 607, 611; *Poughkeepsie Country Journal*, June 2, 1791, 2.

¹³² Alfred Young, (1968). *The William and Mary Quarterly*, 25(2), 286, 288.

¹³³ *The Life and Correspondence of Rufus King* (1894) ed. by Charles R. King, Vol 1 at 355; Alfred F. Young, *The Democratic Republicans of New York* (1967), at 3-4.

¹³⁴ A New Nation Votes, American Election Returns, 1787-1825 online at

<https://elections.lib.tufts.edu/catalog/pz50gx74x> (Assembly election); John P. Kaminski, *George Clinton, Yeoman Politician of the New Republic* (1993) at 215 and 322 n. 89; *Albany Gazette*, June 25, 1792, 5 (Smith as vote canvasser joining the majority report declaring Clinton winner).

¹³⁵ Brooks at 258; A New Nation Votes, American Election Returns, 1787-1825 online at

<https://elections.lib.tufts.edu/catalog/pz50gx74x> (Assembly election)

Philadelphia Inquirer, January 21, 1792, 3; Joseph C. Davis, *Essays in the Earlier History of American Corporations*, Number IV (1917) at 82 1 (Million Bank) In Longworth’s *American Almanac New York Register and City Directory* Smith is listed as having an office at 49 Front Street and residing at 52 Greenwich St. in 1798 online at <https://archive.org/details/longworthsameric1798newy/page/n543/mode/2up>, whereas according to another source

In September 1792, as New York State assemblyman, Smith appears to have been walking a thin line between supporting George Clinton or Aaron Burr for Vice-President, saying that the two were not opponents and that he liked both, but favored Burr, considering that Clinton said he was not interested in the nomination.¹³⁶ Madison and Monroe responded, saying they sided with Clinton, who, in their view would give the country a firmly republican Vice-President, in preference to Federalist John Adams, whom they wanted to unseat.¹³⁷ When the Republicans met in Philadelphia in October, they endorsed Clinton, to whom Smith then pledged his support.¹³⁸ As it turned out, incumbent John Adams as the Federalist nominee defeated Clinton.

Smith continued to be active in politics, urging voters, in a newspaper article, to vote for Judge Robert Yates for governor in the 1795 election, in preference to John Jay, the federalist candidate.¹³⁹

Sidebar: Melancton Smith and the Bill of Rights

Shortly after the Constitution was signed, Virginia's Richard Henry Lee had moved that Congress include a bill of rights—which Smith supported.¹⁴⁰

The Federal Farmer (a pamphlet attributed to Smith and made up of a number of letters to “a Republican”) then wrote a nine-point essay advocating a bill of rights,¹⁴¹ repeating the assertion two months later.¹⁴²

The Brutus series, also attributed to Smith, elaborated on the need for bill of rights, to include “rights of conscience, freedom of the press, the right of confrontation and against self-incrimination, trial by jury, bail, the right to be informed of the charges, and protections against unreasonable searches and seizure.”¹⁴³

he lived on Crown Street (See, Vol. VIII, Public Papers of George Clinton (1904) at p. xvii) online at <https://babel.hathitrust.org/cgi/pt?id=nyp.33433062495829&view=1up&seq=59&q1=melancton>

¹³⁶ See, letter of September 12, 1792 from Marinus Willett (sheriff of New York City) and Melancton Smith to James Madison and James Monroe, and Monroe's letter of October 9, 1792 to Madison online at <https://founders.archives.gov/?q=willett%201792&s=1111311111&sa=&r=20&sr=> See also Alfred F. Young, *The Democratic Republicans of New York* (1967), at 200 n. 48.; Kaminski, *George Clinton, Yeoman Politician of the New Republic* (1993) at 230-236.

¹³⁷ Ralph Ketcham, *James Madison* (1990) at 335.

¹³⁸ Alfred F. Young, *The Democratic Republicans of New York* (1967), at 326-330.

¹³⁹ *Albany Gazette*, April 27, 1795, 2

¹⁴⁰ See Letter, James Madison to George Washington September 30, 1787 online at <https://digioll.library.wisc.edu/cgi-bin/History/History-idx?type=turn&entity=History.DHRCv1.p0347&id=History.DHRCv1&size=M&q1=50%20dishes>; see, also, online at <https://founders.archives.gov/?q=%22find%20on%20my%20arrival%20here%20that%20certain%20ideas%22&s=1111311111&sa=&r=1&sr=>; see, also, XIX Kaminski at 57.

¹⁴¹ Essay of October 9, 1787, see Zuckert and Webb at 27-31; In Poughkeepsie *Country Journal* November 21, 1787, 1; Evans Early American Imprints Collection Text Creation Partnership online at <https://quod.lib.umich.edu/e/evans/N15980.0001.001/1:2.2?rgn=div2;view=fulltext>

¹⁴² Federal Farmer VI, December 25, 1787, Zuckert and Webb at 58-67, at 65.

¹⁴³ Webb and Z at 178.

The Federal Farmer again picked up on the theme, as to the need to *enumerate* rights—adding indictment, speedy trial, and search and seizure language.¹⁴⁴

In his *Address to the People of New-York, on the subject of the Constitution*, John Jay rejected the other camp's complaints about the lack of a bill of rights in the new Constitution, pointing out that the New York's own Constitution of 1777 likewise had none.¹⁴⁵

Smith's response was particularly forceful, admitting that while the omission of a bill of rights in New York's Constitution might be an "imperfection," it nonetheless established the common law and statute law of England and the laws of the colony, which had analogous protections.¹⁴⁶ New York, one might add, had also enacted a *statutory* bill of rights on January 26, 1787 that included the phrase "Due Process of Law."¹⁴⁷

There is no reason to think that Jay was opposed to a bill of rights. On the contrary, it was he who helped achieve that goal by generating a "circular letter," at the culmination of the Convention, urging other states to support constitutional amendments.¹⁴⁸ Hamilton, at the Ratification convention, also gave his blessing to a bill of rights, provided it was not a *condition* of ratification that would jeopardize New York's entry into the Union.¹⁴⁹ A bill of rights was indeed proposed in Congress in June 1789; twelve amendments were adopted by Congress in September, and sent to the states on October 2.¹⁵⁰

Putting aside whether Smith was the Federal Farmer, or Brutus, or A Plebeian, or all three, his concern for a bill of rights as a constitutional imperative is clear from his authorship of a comprehensive bill of rights, which John Lansing advanced at New York's Ratification Convention. It included a provision that "No person ought to be taken, imprisoned, or disseized of his freehold, or be exiled, or be deprived of his privileges, franchises, *life, liberty, or property*,

¹⁴⁴ Webb and Z 136-145, at 137-138.

¹⁴⁵ See XX Kaminski at 933, and online at Library of Congress- online at <https://www.loc.gov/resource/bdsdcc.c0501/?st=text>. For an interesting article as to the absence of a bill of rights in New York's first Constitution (1777), see Milton H. Klein, "Origins of the Bill of Rights in Colonial New York, 72 *New York History*, No. 4, October 1991 at 389-406; see also: Robert Emery, New York's Statutory Bill of Rights. A Constitutional Coelacanth, 19 *Touro L. Rev.* 363 (2003), and Charles Z. Lincoln 1 *Constitutional History of New York* (1906) at 728.

¹⁴⁶ *An Address to the People of the State of New-York: Showing the necessity of making Amendments to the Constitution, proposed for the United States, previous to its Adoption*, April, 1788, online at https://thirty-thousand.org/pages/MSmith_address_1788.htm;

¹⁴⁷ L. 1787, ch 1 Sec 10 and online at https://www.nycourts.gov/history/legal-history-new-york/documents/Publications_New-York-Bill-Of-Rights.pdf

¹⁴⁸ Letter of July 26, 1788, online at <https://founders.archives.gov/documents/Hamilton/01-05-02-0012-0101>

¹⁴⁹ XXIII Kaminski at 2178; In Federalist No. 84, Hamilton opined that a bill of rights was unnecessary and even dangerous, in that listing rights may by implication exclude unlisted rights. Concerns of that kind, however, were later alleviated in the Ninth and Tenth Amendments.

¹⁵⁰ XXIII Kaminski at xviii; See also, Richard B. Bernstein, Hot-Wiring the Convention, 1787, *New York Times*, July 17, 1992; See also John P. Kaminski, *George Clinton, Yeoman Politician of the New Republic* (1993) at 169, pointing out that some suggested that Madison helped introduce the Amendments as a "tub to the whale," meaning that the Amendments would satisfy the antifederalists well enough that they would forego another convention. Online at https://www.google.com/books/edition/George_Clinton/CzENUsPxfoC?hl=en&gbpv=1

but by due process of law, phrasing that later found its way into the 5th Amendment of the United States Constitution.¹⁵¹

The Remains of Melancton Smith

In contrast to Alexander Hamilton's well-known tomb in lower Manhattan, the location of Melancton Smith's remains has been an elusive mystery. In an edition of *Marquis Who Was Who in America, 1607-1896*, at 492, he is listed as being buried in Jamaica (Prospect) Cemetery. This appears incorrect. There is no gravestone for him on the site, nor is he listed among those buried there.

According to contemporary newspaper accounts and obituaries, Smith's remains were laid to rest at the Anabaptist Burial Ground, on Gold Street in lower Manhattan. Smith was one of the incorporating trustees of the church in 1784.¹⁵² The site no longer exists.¹⁵³

Because the burial ground has been long covered over by skyscrapers and other buildings, it has been impossible to state what became of Smith's remains, although there are stones to his memory, and to his wife's, at the Riverside Cemetery in Plattsburgh, New York.

Patriotism, In the Military, Among Smith's Offspring

Melancton Smith had four children.

Richbell (Richbill) Mott Smith (1778/1780?-1800)

His oldest, Richbell (Richbill) Mott Smith (1778/1780?-1800), a talented artist, died off the coast of Japan at age 20 or 22.¹⁵⁴

¹⁵¹See XXIII Kaminski at 2234-2242 incl p 2235 with the "due process" language. These proposals include over 20 rights. On July 15 Smith had proposed a similar version of the Bill of Rights. See also, Betsy L Rosenblatt, "New York's Role in the Creation and Adoption of the Bill of Rights," 72 *New York History*, Vol. 4, October 1991, 407-420; See also, XXII Kaminski at 2111; See, generally, Herbert J. Storing, *The Complete Anti-Federalist*, Vol 1, Ch 8 Bill of Rights, 64-70, online at

https://www.google.com/books/edition/The_Complete_Anti_Federalist/8MO_vGomQOIC?hl=en&gbpv=1; See, also, Edward Dumbauld, *State Precedents for the Bill of Rights*, Journal of Public Law, 7, No. 2 (Fall, 1958) at 339.

¹⁵² See, *New York Argus*, July 31, 1798, 3 *Aurora General Advertiser*, Philadelphia, August 2, 1798, 3; See also, Mrs. George Fuller Tuttle, *Three Centuries in Champlain Valley* (1909) at 236, who states that the internment was at the Gold Street Churchyard, though there are stones to his memory, and his wife's, at the Riverside Cemetery in Plattsburgh, NY., online at https://archive.org/stream/threecenturiesin00tuttuoft/threecenturiesin00tuttuoft_djvu.txt Letter to me on May 25, 1993, from Ruth Clenace, First Baptist Church at 265 W. 79th St. in Manhattan.

¹⁵³See, Baptist Church History online at <https://www.landmarkwest.org/building/broadway-and-79th-street-first-baptist-church/>. See, also, <http://www.nycago.org/organs/nyc/html/FirstBaptist.html>; see, also, <https://hdc.org/buildings/abyssinian-baptist-church-and-community-house/>; see, also, <https://nycemetery.wordpress.com/tag/baptist-cemeteries/>; See also, *New York Times*, June 20, 1870, 3; Gustav Niebuhr, Celebrating 250 Years of Perseverance, *New York Times*, December 23, 1995. The church existed at the Gold Street location from the early 1760s until 1840 (Jonathan Greenleaf, *A History of the Churches of All Denominations in the City of New York* [1846] at 224-226.)

¹⁵⁴ See, Thomas C. Cornell, *Adam and Anne Mott, Their Ancestors and Their Descendants* (1890) at 209, see also, Rootsweb <https://sites.rootsweb.com/~rclarke/page1/richbell.htm>; See, also, https://www.myheritage.com/names/richbell_smith



Richbell (Richbill) Smith (1778/1780? 1800) Courtesy Brown County Historical Society, Green Bay Wisconsin

Colonel Melancton Smith (1780-1818) was the second son of Melancton Smith (1744-1798). During the War of 1812, Colonel Smith commanded the principal fort at the battle of Plattsburgh, New York in 1814.¹⁵⁵ He was also the first editor of the *Plattsburgh Republican*, in 1811.¹⁵⁶

Captain Sidney Smith (1782-1827) the third son of Melancton Smith (1744-1798) had been a captain in the U.S. Navy, and commanded the American forces on Lake Champlain shortly after the outbreak of the War of 1812.¹⁵⁷

Phoebe Mott Smith (1785-1817) Melancton Smith's youngest child, in 1802 married John Bleecker (1774-1841), a major in the War of 1812.

See, also

https://www.ancestry.com/imageviewer/collections/8800/images/005523619_00082?usePUB=true&_phsrc=yxt186&_phstart=successSource&usePUBJs=true&pId=1377552 (Letters of administration to his brother on March 11, 1801) commo

¹⁵⁵ *Appleton's Cyclopedia of American Biography*, Vol 5 (1888) at 579- 580; see also Francis B. Heitman, *Historical Register and Dictionary of the United States Army*, Vol 1, 1903, at 901.

¹⁵⁶ Marjorie L. Porter, *Old Plattsburgh* (1944) at 31. See also, *Plattsburgh Republican*, April 20, 1872, 3; December 12, 1891, 1.

¹⁵⁷ See, William S. Dudley, *The Naval War of 1812* (1985) at 275 online at

<http://ibiblio.org/pha/USN/Navy/1812-1.pdf> and http://ibiblio.org/anrs/docs/E/E3/dh_1812_v02c03.pdf

See also, Benson J. Lossing, *Pictorial Field Book of the War of 1812*, Ch XXIX, online at

<http://freepages.rootsweb.com/~wcarr1/history/Lossing2/Chap29.html>

After his naval service, he moved to Plattsburgh, New York, where his mother Margaret Smith (Melancton's widow) joined him in her later years, and she passed away at the location in 1819, see *New York Evening Post*, May 28, 1819, 2. Margaret Street in Plattsburgh is named after her. (See North County Notes, Clinton County Historical Association, September. 1972

So far as we have been able to discern, this is the only direct line from Melancton Smith (1744- 1798) that has living offspring, namely Nicole Guy, residing in California.

Commodore (Admiral) Melancton Smith (1810-1893) was the son of Colonel Melancton Smith (1780-1818) and grandson of Melancton Smith (1744-1798).



Commodore Melancton Smith (1810-1893), grandson of Melancton Smith (1744-1798) At the outbreak of the Civil War, with his vessel, the *Massachusetts*, Commadore Smith engaged the Confederate fort and steamers off Ship Island and later forced the surrender of the fort at Biloxi Mississippi.¹⁵⁸

Melancton Smith's Legacy

Smith died in New York on July 29, 1798, a victim of the yellow fever epidemic.¹⁵⁹ In all, and despite his occasional lapses in conflicts of interest, his voice carries sincerity and rectitude. As a member of what we might call “the loyal opposition,” Smith and others like him played a role in our national political structure, so that we emerged with both a Constitution *and* a Bill of Rights. On June 21, 1788, during the ratification debates, he said: “Our duty is to frame a government friendly to liberty and the rights of mankind which will tend to cherish and cultivate a love of liberty among our citizens.”¹⁶⁰

¹⁵⁸ See, *The National Cyclopaedia of American Biography* Vol 5, at 52; *Dictionary of American Biography*, ed. Dumas Malone, Vol. 9, at 320; *Appleton's Cyclopedia of American Biography*, Vol 5 (1888) at 580; See also, Joel Headley, *Farragut, and our Naval Commanders* (1867) Chapter XXVIII Commodore Melancton Smith, 531-541; See also Reuben Gold Thwaites, Rear Admiral Melancton Smith, 1810-1893 online at http://www.drwilliambeaumont.com/smith_melancton.htm; See also *Plattsburgh Republican*, March 14, 1818 (proposed for the New York Assembly).

¹⁵⁹ Obituaries include *New York Commercial Advertiser*, July 30, 1798, 3; *Greenleaf's New York Journal and Patriotic Register*, August 1, 1798, 3; *Aurora General Advertiser*, Philadelphia, August 2, 1798, 3; *Poughkeepsie Journal*, August 2, 1798, 3.

¹⁶⁰ XXII Kaminski 1754.

For his Last Will and Testament, see Abstracts of wills, New York County Surrogate's Office. City of New York, Volume XV Liber 42, page 526, online at <https://www.familysearch.org/library/books/records/item/477149-abstracts-of-wills-on-file-in-the-surrogate-s-office-city-of-new-york-1665-1801-v-15?viewer=1&offset=0#page=139&viewer=picture&o=&n=0&q=>. In his will, dated August 15, 1793, Smith gave a life estate in his property to his wife, Margaret (Peggy) and after her decease to be divided equally among his four children, Richbill, Melancton, Sidney, and Phebe, appointing Ezekiel Robins, Seth Johnson, and David Gelston

executors. After Smith died, litigation ensued in Chancery Court in Manhattan, through the year 1802, involving court orders issued by Chancellors John Lansing and Robert R. Livingston