



HOW DIFFERENT ARE THE EARLY VERSIONS OF THE UNITED STATES CONSTITUTION? AN EXAMINATION

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IN 1987, WHILE THE NATION WAS celebrating the bicentennial of the United States Constitution, Akhil Amar published a brief essay with the intriguing title “Our Forgotten Constitution.”¹ Its conclusion was at once dramatic and inconsequential: Virtually every copy of the Constitution published within living memory was a copy of the wrong document – but the wrong document was so close to the right one that lawyers and judges could probably safely go on using it.² In transcribing it, editors were at least guilty of no gross incompetence. Amar’s “wrong document” was not a clumsy forgery, but the authentic parchment signed by the delegates to the Philadelphia Convention as they wrapped up their work on September 17, 1787. The trouble was that the Constitution signed by the delegates was

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¹ Akhil Reed Amar, “Our Forgotten Constitution: A Bicentennial Comment,” 97 *Yale Law Journal* 281 (1987).

² *Ibid.* See also S. Doc. No. 49, 87th Cong., 1st Sess. (1961) (historical notes by Denys P. Myers).

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not – quite – the Constitution ratified by the people of the several states. That Constitution was a printed version of the text submitted by the Confederation Congress to the state legislatures in a circular letter dated September 28, some eleven days later.³ While the parchment now displayed in the National Archives sat unread in the files of Congress in New York,⁴ the September 28 version was reprinted *en masse* for distribution during the ratification campaign.⁵ Since “[t]his was the version submitted to the People of the United States as they chose their delegates to various ratifying conventions,” and “[t]his was the version that those ratifying conventions in turn used,” Amar concluded that this was the version that became the supreme law of the land.⁶

The purpose of the pages that follow is not to take any position on Amar’s conclusion, but to clarify what the stakes are. This is a study of constitutional minutiae: The parchment and the September 28 print have been carefully compared, and the most interesting results of the collation are reported below.⁷ Two other early versions of the Constitution – also dis-

³ I call this the September 28 print after the nominal date of the circular letter with which it was sent. It certainly could not have been printed any earlier than the 28th: it contains, on its last page, the September 28 resolution of Congress providing that the Constitution be forwarded to the state legislatures. But perhaps it was printed later. The circular letter may have been written on the 28th and sent on some subsequent date, when the printed Constitutions were ready. On this print and a sister edition which also could not have been printed before the 28th (it contains the same resolution), see Leonard Rapport, “Printing the Constitution: The Convention and Newspaper Imprints, August–November 1787,” 2 *Prologue* 69 (1970), 84. If Rapport is correct that this other edition was printed first, it may be reasonable to suppose that the “September 28 print” was in fact printed after September 28.

⁴ Rapport, “Printing the Constitution,” 75–77.

⁵ Amar, “Our Forgotten Constitution,” 283, citing S. Doc. No. 49, at 70. Myers (the author of the latter) observes that “most of the States printed editions in 5,000 to 10,000 lots,” and adds that “[p]robably the Congress copy was sent to the printers for most of those editions.” S. Doc. No. 49, at 70. The situation is complicated, however: even if every state sent the September 28 version to the printers, we would expect variations to slip in as the text was reset.

⁶ Amar, “Our Forgotten Constitution,” 283–84.

⁷ For an exhaustive look at the variants, see my “The Constitution of the United States: A Variorium,” available at ssrn.com/abstract=2778049. That digital edition, through a combination of text and footnotes, simultaneously shows all four versions of the Constitution discussed in this essay.

cussed by Amar – have been collated for this Examination as well. The first is an edition printed by John Dunlap and David C. Claypoole at the Philadelphia Convention’s behest and distributed to members of the convention on September 18, the day after the parchment was signed.⁸ Although this version was neither signed by the delegates nor submitted by Congress to the states, it formed the basis for the earliest newspaper printings of the Constitution, and if for no other reason is of great historical interest.⁹ The second is the version printed two years later by Francis Childs and John Swaine in their *Acts Passed at a Congress of the United States of America, Begun and Held at the City of New-York, on Wednesday the Fourth of March, in the Year 1789*.¹⁰ As the title page of that volume boasts, Childs and Swaine were official “Printers to the United States,” and their copy of the Constitution is prefaced by a resolution of Congress that “there be prefixed to the Publication of the Acts of the present Session of Congress, a correct Copy of the Con-

⁸ I will refer to this version, after the precedent of Myers and Amar, as the September 18 print. But I am not aware of any decisive evidence that it was first *printed* on the 18th, and Leonard Rapport has plausibly suggested that the text was likely set on the 17th and printed in some quantity that same day. See Rapport, “Printing the Constitution,” 70, 75. Those pages stop just short of saying this; on page 87, an editorial note states flatly that “September 17 is the anniversary of the signing of the Constitution and of Dunlap and Claypoole’s official convention imprint.”

⁹ We also know that “[s]everal members of the Federal Convention, including Washington, sent it to friends by letters dated September 18, 1787 and later.” S. Doc. No. 49, at 54 n.19. Among the recipients was Thomas Jefferson. See Letter from George Washington, 18 Sept. 1787, in Julian P. Boyd, ed., *The Papers of Thomas Jefferson*, vol. 12 (Princeton: Princeton University Press, 1955), 149. This September 18 text made a second appearance on September 19, in Dunlap and Claypoole’s *Pennsylvania Packet, and Daily Advertiser*, but with at least one alteration: the stark misprint of <one thousand seven hundred and eight> in Article V was corrected to <one thousand eight hundred and eight>. S. Doc. No. 49, at 54 n.20. Dunlap and Claypoole were able to reuse the September 18 print’s set type; the other early newspaper printings were newly set copies of the September 18 text.

¹⁰ *Acts Passed at a Congress of the United States of America, Begun and Held at the City of New-York, on Wednesday the Fourth of March, in the Year 1789* (New York: Francis Childs and John Swaine, n.d.), v-xii. This volume contains only the laws of the first session, which ended in September 1789. The dating of the volume to 1789 is conjectural – the title page lacks a date – but not radically so. At least one other edition of the same session laws is clearly dated to that year. See *Acts Passed at a Congress of the United States of America, Begun and Held at the City of New-York, on Wednesday the Fourth of March, in the Year 1789* (New York: Hodge, Allen, and Campbell, 1789).

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stitution of the United States.”¹¹ It therefore tells us something about then-prevailing opinion that Childs and Swaine clearly used the September 28 text as their authority.¹² Adding their version to the comparison allows us to see just how closely they followed it.

There are, then, four early texts of the Constitution with a special claim on our attention. Partly for the sake of brevity, and partly because their natural names are ill-defined, I will refer to them by abbreviation:¹³

P Parchment (Engrossed 17 September 1787)

F 18 September 1787 Print

C 28 September 1787 Print

CS The 1789 Childs-Swaine *Acts Passed at a Congress* (etc.)

P and *C*, the two texts with some claim to authoritativeness, are the subject of Part I of this Examination. Careful collation shows that while the variants between them are probably interpretively harmless, not all of them are purely cosmetic. The differences between the three printed versions, *C*, *F*, and *CS*, are taken up in Part II. These variants are relatively few in number, but the most interesting of them are arguably more significant than any of the variants between *P* and *C*. Part III touches on the implications of this Examination for those who, like Amar, believe that *C* is the canonical text of the Constitution.

I

How different are *P* and *C* – the Constitution as signed by the delegates, and the Constitution as received by the states? The least misleading answer is that the two differ greatly in form, but probably not at all in substance.¹⁴ In words, the texts are *almost* identical, and the two exceptions

¹¹ *Acts Passed at a Congress* (Childs and Swaine), iv.

¹² See S. Doc. No. 49, at 60. As discussed below, even one typographical error in the September 28 print is reproduced (with capitalization adjustments) in the Childs-Swaine text.

¹³ Any system will feel a little arbitrary. I have chosen *P* for parchment, *F* for first printed edition, *C* for Confederation Congress, and *CS* for Childs-Swaine.

¹⁴ Cf. Amar, “Our Forgotten Constitution,” 286 (“few, if any, important legal issues should turn on our choice of text”); S. Doc. No. 49, at 91 (“Not even differences in punctuation have raised questions of legal interpretation”).

are unexciting: each is the result of a typographical error in *C*. The first occurs in the impeachment clause of Article II, § 4, where the parchment reads that “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” *C* refers instead to “all civil officers of of the United States” – the duplicate “of” ruining the grammar but not the meaning. The second is a little more interesting. In its parchment form, Article III, § 1 reads that “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior.” *C* substitutes *court* for *Courts*, making it sound as if there can be a maximum of one inferior court in the federal judiciary. But the posts of lower-court judges are safe even if *C* is taken as America’s real Constitution, and its interpretation falls into the hands of strict textualists. In both texts, the very preceding sentence of Article III, § 1 speaks of inferior *courts* (plural), and Article I, § 8 – again in both texts – gives Congress the power to establish *tribunals* (plural) inferior to the Supreme Court.

P and *C* are differently punctuated, and the differences sometimes have subtle but interesting effects on the text. Only one of them, however, has the potential to affect meaning, and it is a slim potential. In Article III, § 3, cl. 2, *P* reads that “no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.” *C* adds a comma after the word “forfeiture,” opening up a new interpretive possibility: the exception might in principle be taken as applying to corruption of blood as well. Suppose a man is found guilty of treason, and by a validly enacted law forfeiture and corruption of blood are called for. While he is still living, his father dies, and by the ordinary laws of inheritance his father’s estate should pass to him. Now neither he nor any child of his can inherit the estate¹⁵ – if the enacted law is constitutional. *C* makes it *grammatically* possible to conclude that it is, though the interpretation is unlikely to have many takers.

Though none of the other punctuation variants seem to affect the meaning of the text, if by that one means its legal import, a handful do

¹⁵ 2 William Blackstone, *Commentaries* *254 (the attainted person “obstruct[s] the descent of lands or tenements to his posterity, in all cases where they are obliged to derive their title through him from any remoter ancestor”). Accord 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1294, at 171 (1833).

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change how the text is read. A good example of a harmless but interesting variant of this sort may be found in the second clause of Article II, § 1, where the Constitution is on the verge of introducing the Electoral College. *P* reads:

[The President] shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be *elected*, as follows

C's punctuation differs ever so subtly:

[The President] shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be *elected* as follows:—

The legal rule is the same: Whether *P* or *C* is taken as the supreme law of the land, the president's term lasts the same four years and he is to be elected pursuant to the same procedure. But the two texts speak in subtly different voices. Where *P* seems to make a point of the president's being elected, *C* simply presupposes it.

Similarly subtle but similarly interesting is a slight adjustment to the Extradition Clause,¹⁶ which in the familiar parchment reads:

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, *shall* on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

This time, *C* has the additional comma:

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, *shall*, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

One has to have a real love of detail to be intrigued by the change, but the new comma may not be entirely neutral. *P*'s Extradition Clause can naturally be read as presupposing that the "Person charged" *will* be demanded.

¹⁶ U.S. Const. art. IV, § 2, cl. 2.

The extra pause of *C*'s Extradition Clause gives a more if-then flavor to the rule (the person shall – *supposing* he is demanded – be delivered up). Unless one wants to argue that the parchment might be read as imposing on governors a federal-law obligation to demand fugitives in flight (which does not sound very promising), there is nothing for a lawyer to worry about here, but the comma does alter the way the thought is presented.

Punctuation variants are scattered throughout the text, but most of them lack even this lesser form of significance.¹⁷ A final example, found in the Full Faith and Credit Clause,¹⁸ is more typical of the broader class (and will be of interest only to those with a strong opinion on the Oxford comma):

Full Faith and Credit shall be given in each State to the public Acts,
Records, and judicial Proceedings of every other State. (*P*)

Full faith and credit shall be given in each state to the public acts,
records and judicial proceedings of every other state. (*C*)

On a visual level, what immediately set *C* and *P* apart are the enormous number of capitalization variants between them. Jacob Shallus, the engrosser of the parchment Constitution, famously capitalized virtually every noun in the text, whether proper or common. In dropping this convention *C* introduced one or more variants into every clause, but (though they strip the text of some of its Old World flair) the changes are interpretively un-

¹⁷ For colons replaced with semicolons, see Article I, § 3, cl. 7; *ibid.* § 9, cl. 6; and *ibid.* § 10, cl. 2.
• For semicolons replaced with colons, see Article I, § 4, cl. 1; *ibid.* § 8; and Article V.
• For added, adjusted, or dropped dashes, see Article I, § 8, cl. 17; Article II, § 1, cls. 1, 8; and Article III, § 2, cl. 1.
• For a colon replaced with a period, see Article II, § 2, cl. 2.
• For a comma replaced with a period, see the Attestation Clause.
• For periods simply added, see Article I, § 5, cl. 2 (where the addition is a typographical error) and the Attestation Clause.
• For periods replaced with commas (each of these is a typographical error), see Article I, § 10, cl. 2 and Article II, § 1, cl. 7.
• For semicolons replaced with commas, see Article III, § 2, cl. 1.
• For commas simply added, see Article I, § 6, cl. 2; *ibid.* § 7, cl. 3; Article II, § 1, cl. 6; Article III, § 3, cl. 2; Article IV, § 2, cl. 2; Article V; and the Attestation Clause.
• For commas simply deleted, see Article I, § 5, cl. 4; *ibid.* § 7, cl. 2; *ibid.* § 8, cl. 16; *ibid.* § 9, cl. 8; Article II, § 1, cl. 1; *ibid.* § 2, cl. 2; *ibid.* § 4; and Article IV, § 1.

¹⁸ U.S. Const. art. IV, § 1.

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remarkable. The three instances in which *C* actually capitalizes a word that *P* did not are just as trivial.¹⁹ What is most noteworthy here is actually not a variant at all, but a surprising case of agreement. The parchment's Guarantee Clause reads that "The United States shall guarantee to every State in this Union a Republican Form of Government." Shallus did not ordinarily capitalize adjectives, save at the beginning of sentences, but he made an exception for the word "republican," perhaps sensing that <republican Form of Government> would be a little unsightly. *C*, which might have been expected to substitute <republican form of government>, in fact reads <Republican form of government>. Whatever the motive, the effect is to make the word *Republican* a little more prominent in *C* than it was in *P*.²⁰

The only other differences between *P* and *C* are the result of 32 new hyphens,²¹ four adjustments in paragraph breaks,²² four spelling vari-

¹⁹ The first occurs in the Preamble, where Shallus's text speaks of <domestic Tranquility> and the <general Welfare> but the <common defence>. *C* follows Shallus's capital-nouns policy in the Preamble, and follows it consistently (<common defence> becoming <common Defence>). The second occurs in the "inferior officers" sub-clause of Article II, § 2, cl. 2. Because *C* treats the sub-clause as an independent sentence, it capitalizes its first word, <But>. The third and last occurs in the Attestation Clause, which Shallus began with a Gothic <done>, but which *C* begins with a roman <DONE>.

²⁰ U.S. Const. art. IV, § 4. For completeness's sake, two other differences should quickly be touched on: The first words of the Preamble and Article I, which are treated normally in *P*, are set in all capital letters in *C* ("WE" and "ALL"). And in the Preamble, *C* renders the word "Constitution" in small caps ("CONSTITUTION").

²¹ In *C*, the fraction <two thirds> becomes <two-thirds> in nine places, <three fourths> becomes <three-fourths> in two places, and in one place each <three fifths> becomes <three-fifths>, <one third> <one-third>, and <one fifth> <one-fifth>. The numbers <twenty five>, <thirty five>, and <Eighty seven> are rendered <twenty-five>, <thirty-five>, and <eighty-seven> in one place each. In one place each, <New Hampshire> becomes <New-Hampshire>, <New Jersey> becomes <New-Jersey>, <North Carolina> becomes <North-Carolina>, and <South Carolina> becomes <South-Carolina>. <Vice President> becomes <Vice-President> seven times, and <vice-president> once. Finally, once each, <repassed> becomes <re-passed>, <Post Offices> becomes <post-offices>, and <post Roads> becomes <post-roads>.

²² In Article I, § 9, cls. 5-6 and Article I, § 10, cls. 2-3, *C* merges two paragraphs dealing with similar material – treatment of states' commerce in the former case, and restrictions on state power in the latter. In two other places, paragraph breaks are added: In Article I, § 8, cl. 1, Shallus left an unusually large space between <The Congress shall have Power> and <To lay and collect Taxes, Duties, Imposts and Excises> (*et cetera*). *C* replaces the space with a paragraph break. And in Article II, § 1, cl. 8, *C* adds a paragraph break before

ants,²³ and the italicization of Latin terms.²⁴ Since the topics are as unpromising as they sound, I have disposed of them in the footnotes.

II

One can easily get the impression, reading Myers or Amar, that while the differences between *P* and *C* are interesting, the differences between the three printed versions are entirely trivial. There are certainly far fewer variants between any two of these texts than there are between any one of them and *P*,²⁵ but raw numbers turn out to be a poor guide. The differences between *C* and *F* are arguably *more* interesting than the differences between *C* and *P*. And even *C* and *CS* are not quite interchangeable with each other.

There are only two interesting variants between *F* and *C*, but they carry a lot of weight. In one place, the texts differ importantly in meaning – the result of a mishandled number. Article I, § 9 of the Constitution protects the slave trade²⁶ against congressional interference until the year 1808 and requires that any direct tax be laid in proportion to the census. Article V lays it down – or does in *P*, *C*, and *CS* – that no amendment made prior to

the presidential oath.

²³ *C* prefers <authorised> to <authorized> (art. I, § 5, cl. 1) and <Independence> to <Independance> (Attestation Clause). And it consistently uses <its> to form the possessive form of *it*, whereas *P* twice (of eight times) uses the now-deprecated <it's> (art. I, § 10, cl. 2; art. V). In all other respects, the spelling of the two texts is identical.

²⁴ *C* sets the terms *pro tempore*, *habeas corpus*, *ex post facto*, and even *census* in italics; Shallus wrote them in his normal cursive. A sufficiently daring lawyer might attempt to make something out of the last change. (“In placing *census* in italics, the Constitution signals that the term is being used in its Latin sense, and should be interpreted in light of Roman census practices.”) But would a sufficiently daring *judge* be found?

²⁵ If one looks, however, only at “minimally interesting variants” – those that bear on the wording, grammar, or sound of the text – *P* no longer looks like such an outlier. *C* and *F* are still closer to each other than either is to *P*, but the 10 variants between them are only marginally fewer than the 14 variants between *P* and *F*. *P* and *F* are in fact tied with *C* and *CS* for the second closest pair of texts, and they are closer to each other than *F* and *CS* (with their 18 variants) are. There are 20 variants between *C* and *P*, and 26 between *P* and *CS*.

²⁶ The constitutional language actually sweeps more broadly, embracing the “Migration” as well as “Importation” of “such Persons as any of the States now existing shall think proper to admit” (quotation from *P*; *C*, *F*, and *CS* are identical in all relevant respects).

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the year 1808 can affect these provisions. *F* substitutes 1708 for 1808, so that the framers are made to create a restriction on the amendments power that expired nearly 80 years before the Constitution was drafted.²⁷ A judge, looking at this unlikely rule, might well call it a scrivener's error and substitute "eight" for "seven" on the strength of the legislative history. But taking every word at face value, this is the most interesting variant anywhere in the four texts, the only one that forces a change in meaning.²⁸ The other interesting variant between *F* and *C* occurs in the second clause of Article III, § 3, and is a "replay" of a variant between *C* and the parchment. *F* (like *P*) lacks a comma after "forfeiture," making it clear that the exception for "the life of the person attainted" applies only to forfeiture.²⁹

At first encounter, *C* and *CS* seem almost unreasonably close – so much so that *CS* reproduces one of *C*'s typographical errors.³⁰ But these texts, too, have a small number of minorly significant variants between them. The most interesting is in the Original Jurisdiction Clause.³¹ There, in *CS*, <party> becomes <a party> – the only verbal variant anywhere in the four texts that makes both grammatical and contextual sense.³² The two other interesting variants are small punctuation changes. In the Direct Taxes Clause,³³ *C*'s version reads:

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

²⁷ In all four texts, the slave-trade language of Article I, § 9, cl. 1 refers to 1808. The scrivener's error in *F*'s version of Article V was corrected in all but one of the five newspaper printings the next day, but the *Pennsylvania Journal* reproduced it literally, and it enjoyed additional circulation in two derivative pamphlets (one of which was late enough to include a September 29 resolution of the Pennsylvania General Assembly). Rapport, "Printing the Constitution," 82, 83.

²⁸ *F* has neither of *C*'s verbal slips: it reads <supreme and inferior courts> in Article III, § 1, and <civil officers of the United States> in Article II, § 4. But with these two exceptions and the much more significant one mentioned in the text, *F* and *C* are verbally identical.

²⁹ It may also be worthy of note that *F* (contra *C* and *CS*) does not italicize Latin terms.

³⁰ In Article III, *C* prints <the supreme and inferior courts> rather than <the supreme and inferior courts>. *CS* alters only the capitalization: <the Supreme and Inferior Court>.

³¹ U.S. Const. art. III, § 2, cl. 2.

³² It of course has no effect on meaning. *CS* is otherwise verbally identical to *C* outside of Article II, § 4, where *CS* corrects *C*'s <of of> to <of>.

³³ U.S. Const. art. I, § 9, cl. 4.

CS omits the comma between “direct” and “tax” – a minutia, to be sure, but a grammatically significant one. This small change introduces what might almost be called a verbal variant. The first comma is converted into a grammatically insignificant marker of an awkward pause; and “capitation” becomes a standalone noun, rather than an adjective modifying “tax” (so that the sense is “capitation” rather than “capitation tax”). The meaning is the same, but the form has changed. The last minorly significant variant is found in the Emoluments Clause.³⁴ There *C* reads:

no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince or foreign state.

CS omits the comma after “title,” with the consequence that it perhaps becomes a little more natural than it was in *C* to take “of any kind whatever” as modifying only that one word (“title”), and not the whole series (“present, emolument, office, or title”).

III

Amar may well be right that *C* rather than *P* should be regarded as the canonical text of the American Constitution. But it is worth stressing a point that has already implicitly been made: No text can uniquely claim to be “the People’s Constitution” – the one form that the people themselves saw and considered while the Constitution was awaiting their assent. Before *C* was even struck, a large number of newspaper printings had appeared, all of them drawing (of necessity) either directly or indirectly on *F*.³⁵ It is true that (typographical errors aside) *F* and *C* are “close enough” – in the sense that no legal controversy seems to turn on any of the variants between

³⁴ U.S. Const. art. I, § 9, cl. 8.

³⁵ For a list and discussion of early newspaper printings of the Constitution, see Rapport, “Printing the Constitution,” 82-89. Even a conservative count identifies about two dozen for the period between *F* and *C* – and this does not include pamphlets. Though it was *F* that was being copied, the copying process was imperfect, and it is not implausible that a fair number of pre-*C* newspaper and pamphlet printings resemble *C* as much or more than *F*. Two or three of them were in fact lineal predecessors of *C*. See *ibid.*, 83-84. The natural guess, however, is that most of them are (by whatever chosen metric) closer to *F*.

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them. In the same sense, *P* and *C* are close enough. But if it is a definite form of the Constitution's text we are pursuing, no two texts can be "close enough" unless they are actually identical. *F* and *C* are not that.

And the situation is more complicated than even this lets on. From the standpoint of the average voter, *P*, *F*, and *C* were all equally out of reach. *P* was housed with Congress; *F* and *C* were printed in limited quantities and seen by few. The Constitutions that ordinary voters read were reprints, at various removes, of *F* and *C*; and it is likely that every time the text was newly set a new form of the text was introduced. Even if *F* and *C* had been identical down to the last capital letter and semicolon, variants would inevitably have slipped in as the text was continually reset and reprinted.³⁶ The technology all but ensured as much.

No verdict on Amar's thesis follows from any of this. If *C* is America's real Constitution, it is not because it is the People's Constitution: the People's Constitution does not exist. It is for nuanced and technical reasons, reasons it might take pages of argument to unpack. But those reasons may exist. Certain questions have to be answered: Who possessed what authority, and in what sense did they possess it? What did various actors in the process regard themselves as doing – and what were they regarded by others as doing? It may even be asked whether the Constitution should really be regarded as a single text at all, rather than as a body of words which might take a number of equally legitimate textual forms. But when all these questions are answered, *C*'s claim to authoritativeness may yet be vindicated. Here it is enough to note that the historical data are too messy for any simple solution to be possible.



³⁶ *CS* was clearly copied from *C*, but there are still 14 minimally interesting variants between them (see note 25).