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**A New Framing?**  
**Constitutional Representation at Philadelphia's**  
**National Constitution Center**

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**Abstract:** The National Constitution Center (NCC) in Philadelphia orients its representation of the Constitution around the role of “We the People” in the conduct of constitutional politics. The self-presentation of the NCC explicitly connects its participatory interpretation of the Constitution to the interactivity of the museum experience itself, and announces its aspiration that visitors “get involved!” In so doing the NCC is drawing upon an emerging edge in museum theory that emphasizes the capacity of museums to support political citizenship. Although the museum’s aspiration to enact participatory citizenship is laudable, its exhibits –because of their technologies, use of space, and content--- subvert, rather than sustain, the participatory ideal.

Although the National Constitution Center assures us that the American Constitution “is as important today as it was 216 years ago,”<sup>i</sup> efforts to celebrate, memorialize, and educate the public on its significance have been episodic.<sup>ii</sup> Many of the few Constitution celebrations in U.S. history have been met with tepid receptions by the American people-- the Golden Jubilee in 1837 attracted little attention, and the 1887 Centennial in Philadelphia was poorly-organized, marked by the absence of many states and the presence of only second-rate poets.<sup>iii</sup> Even the bill authorizing the Bicentennial as a national holiday was defeated in Congress when legislators decided that the cost of a national holiday would be too great given the historic significance of the occasion.<sup>iv</sup> The actual physical document of the Constitution was almost completely neglected until 1921, when Warren Harding directed that it be displayed at the Library of Congress along with the Declaration of Independence (the Bill of Rights was left in cellar storage).<sup>v</sup> And, although the idea for a permanent constitutional memorial in Philadelphia emerged in 1886, it failed to garner adequate support for over a hundred years.<sup>vi</sup>

Efforts towards celebration and memorialization that have occurred have largely been motivated by nationalistic or ideological impulses. For example, the Centennial was motivated in part by the desire to educate and assimilate new immigrants, and in the 1920s, the most ardent advocates for Constitution Clubs and Constitution Day offered those programs as tools to help defend the country from socialism.<sup>vii</sup> Harding’s decision to display the documents was also wedded to an explicitly statist impulse-- to help bolster Americans in resisting bolshevism. The Federal Commission on the Bicentennial announced in their advertisements that “there is no better way for you as an American to reaffirm the principles for which our country stands than to learn more about the Constitution”—but not a single one of their bicentennial ads mentioned that

these fine principles could also be reaffirmed by engaging in partisan or contestatory political activity.<sup>viii</sup>

Against this bleak background, the establishment of the National Constitution Center (NCC) has been an astounding success. The National Constitution Center is the first and only museum dedicated to the Constitution, and welcomes about a million visitors per year.<sup>ix</sup> The Center was authorized with a federal statute, the Constitution Heritage Act, in 1988. It opened in Philadelphia in 2003 with the broad support of government, business, and private philanthropy, and to journalistic acclaim.<sup>x</sup> But just as significant as its attendance figures is the fact that the Center does not offer itself in service of any explicitly statist ends. Its enabling legislation emphasizes “disseminating information . . . on a nonpartisan basis in order to increase the awareness and understanding of the Constitution among the American people.”<sup>xi</sup> One of the bill’s cosponsors, California Republican Rep. Lagomarsino, was known, not for his zeal in defending the state from ideological attacks, but rather for his efforts on behalf of colleges, libraries, and vocational educational centers.<sup>xii</sup> The NCC generically dedicates itself to “increasing public understanding of, and appreciation for, the Constitution, its history, and its contemporary relevance.”<sup>xiii</sup> There is no evidence that the Center was established to pursue any political agenda beyond the simple illumination of the Constitution and its history.

The meaning of the Constitution is obviously open to interpretation. The interpretive angle that the Center has placed on its mandate is a participatory one-- to emphasize the role of “We the People” in the conduct of constitutional affairs. In fact, the subject of the NCC is almost entirely the American people themselves, who are also most of the visitors. The Center focuses attention on the crucial role that citizens play in constitutional maintenance. With its invitation to “participate in a national conversation about the Constitution,”<sup>xiv</sup> computers with instant links to

Congressional offices, a place for visitors to take the Presidential oath of office, voting and polling devices, boards for visitors to post their political opinions, and an exhibit whose content highlights controversial and accessible constitutional participants including Larry Flynt and members of the Little Rock Nine, the Center repeatedly emphasizes the importance of broad political participation in carrying out the Constitution's promise. The museum also uses interactive, high-tech video equipment to create an entertaining, easily accessible, and exciting visual experience that is available to children, non-English speakers, and visitors who might be shut out by an overly literary or academic approach. This exciting interactivity is meant to support the participation of visitors in their museum experience. NCC promotional materials are explicit about the Center's valuation of participation; the Center has promised that you will "enter as a visitor, leave as a citizen" and urges us to "get involved!"<sup>xv</sup>

The Center's aspirations for itself build upon a larger movement within museum theory. Turning away from a vision where museums are conceived as "an instrument of public instruction [through] which the rough and raucous might learn to civilize themselves,"<sup>xvi</sup> theorists and curators have been admitting for decades now "that some museums are more coercive than others."<sup>xvii</sup> This insight has driven work in 'the new museology,' which is characterized by its increased emphasis on "institutional reflexivity," on representing histories of non-elite groups, and on defining the museum voice as an "interpreter" rather than "legislator" of culture.<sup>xviii</sup> Central to these strategies has been an effort to destabilize the authority of the museum's voice. As such, curators have developed intriguing methods for drawing visitors more deeply into a participatory experience with exhibit materials. Proponents of the 'new museology' have started to intentionally bring the voice, knowledge, and opinions of visitors into the heart of their exhibits rather than asking visitors to rely solely on the museum's expertise. Techniques for

achieving this participatory experience have included open timelines, the presentation of multiple interpretations of events or artifacts, the use of informal and personal voices on artifact labels instead of the formal scholarly voice, the creation of exhibits on themes of common experience, open and multiple pathways through exhibits, people-centered instead of object-centered interpretations of artifacts, and discussion groups.<sup>xix</sup> The connection between these techniques and political participation is often made explicit by theorists of this movement, who speak of “enfranchisement,” “inclusion,” and even “democracy.”<sup>xx</sup>

The NCC has taken the obvious next step of connecting this curatorial movement to a theme that is uniquely well-suited to a museum on the Constitution: participation itself. The decision to tell the story of the Constitution through the theme of “We the People” brilliantly connects this emerging edge in museology with that emerging edge of constitutional theory emphasizing the significance of popular participation for constitutional maintenance.<sup>xxi</sup> The Center’s goal is not merely to represent the Constitution, or to inform visitors about the Constitution in a relatively entertaining way. Its goal is to enact the experience of political participation for museum visitors. To that end the NCC’s rhetoric explicitly connects the interactivity of an engaged museum experience with the participation of a citizen in constitutional politics. Although it may seem that the NCC is aiming too high—can we really expect every visitor to leave with a strong commitment to political participation? – its aspiration is laudable, and, as we shall see, developments in the ‘new museology’ can help us apply fairly straightforward criteria for evaluating how this museum relates museum participation and constitutional citizenship.

I share the Center’s commitment to political inclusion and constitutional participation. Unfortunately, however, the NCC has failed so far to enact its vision. Here I would like to

describe the portrait of constitutional citizenship that the NCC implicitly advances through the form and content of its exhibits.<sup>xxii</sup> In this article, I highlight the experience of a visitor traveling through the museum, moving from exhibit to exhibit, over a period of time, and I note what this experience reveals about the NCC's enactment of constitutional themes. Central to this method is a commitment to scrutinizing how the medium of the NCC's self-presentation interacts with its presentation of a constitutional argument.

This article is organized as follows: I first describe the experience of visiting the physical space of the Center; second, the NCC's treatment and enactment of political participation; third, the Center's representation of the Constitution; and finally, the Center's conception of constitutional change. I resist one trend in museum theory to expose museums as essentially coercive and disciplinary institutions.<sup>xxiii</sup> But I do argue that, in this case, the performance of the NCC consistently undermines the promise of the Center's own aims. Through its use of space, the content and format of its exhibits, its limited treatment of contentious questions in constitutional theory and development, and its flat depiction of constitutional history, the Center undercuts the conditions for actual political exchange even as its flashy graphics emphasize the importance of that exchange for constitutional maintenance.

### **1. A typical visit to the Center**

A visit to the Center begins in a large, beautiful foyer, open and airy, a perfect place for lectures and receptions. This promise of open and easy accessibility is disappointed when the visitor realizes that the only way to see the exhibits is to sit through a movie, *Freedom Rising*, the Kimmel Theatre's "dazzling multimedia experience," staged in a circular amphitheater with a sophisticated surround-sound system.<sup>xxiv</sup> Visitors wait for the movie in an odd donut-shaped

hallway that surrounds the theater and makes it difficult to register the presence of others waiting alongside. (When the doors to the theater opened and we were allowed to enter, I was surprised by how many people turned out to be in that hallway.) In the waiting area, audio feeds play the sounds of public discourse in the framing era. It is a highly idealized discussion. The characters are identified as “Man 1,” “Man 2,” “Woman 1,” and so forth, and, although they are articulating positions on constitutional ratification, their conversations are vehicles for history lessons (referencing Shay’s Rebellion and explaining basic features of colonial politics) rather than arguments that could appear in a plausible conversation. For me, the lack of windows, the close quarters with strangers, my uncertainty about how many people were around me, and the audio exhibits that could not be turned off or avoided combined to provoke a mild claustrophobia. On two different visits, I asked to skip the movie but was told there was no other way to enter the exhibit. On my third visit, the staff did allow me to skip the movie.

The movie itself is, indeed, dazzling. It features stunning graphics, a 360 degree display, and seating that puts the viewers in a circle. A live narrator structures the story told in the video. The video relates the “miracle” of Philadelphia, the significant exclusions of the original Constitution, the Civil War, and the efforts of concerned citizens since then to hold the Constitution to its promise of full political and legal inclusion. Its images are moving, and seeing a projection of Martin Luther King, Jr. on a huge screen with vivid sound is electrifying. The movie concludes with a question, asking us what we will do with our inheritance of liberty. Exiting the theater, one realizes that the movies are timed so that the previous group of visitors will have left the exhibit space before a new group enters. There is only one path through the exhibit. This means that visitors stay with the same group throughout the entire experience;

people move through the exhibit space in surges. The exhibit space is in a circle, and its exit brings visitors back to the main foyer.

The exhibits themselves are colorful and stimulating. One of the very first is the “National American Tree,” a tower of pictures of people who played important roles in American constitutional development. Viewers can touch a screen to select portraits and read more about each person’s contribution. There is a voting booth where visitors can “vote” on their favorite president, and see whom others have chosen. A constitutional timeline works its way around the edge of the exhibit space and features clips of documentaries made for the museum, point/counterpoint debates on historic constitutional controversies, interactive Constitutions, and the usual assortment of maps and news reels. There are areas which describe how each branch of government works. In the area on the Supreme Court, visitors are asked to turn a cube to see what different methods are available for constitutional interpretation. The cube reveals two faces, one for “originalism” and one for “non-originalism.” My favorite exhibit was the board for post-it notes, now expanded to a series of boards (“town hall wall panels”). The NCC poses questions on contemporary constitutional controversies, and visitors are asked to write their responses on post-it notes. Some post-its make their way to areas other than the post-it boards. From the main exhibit hall, visitors are led to a hall of life-sized statues of the framers (Signers’ Hall). We can walk among these statues, allowing us to imagine ourselves truly in the company of these men. There we are asked to reflect on whether we wish to sign the Constitution, and to actually sign if we so desire. There is an original copy of a public (newspaper) printing of the Constitution, but it is strangely hidden in what is almost a closet. I imagine that many visitors do not register its presence. The hall then opens back up to a foyer with stairs down to the Center gift shop and the Delegates Restaurant.

## **2. Participation**

A fruitful place for understanding the Center's relationship to political participation begins with how the public participated in the Center's own development. Modern curators have different approaches to public participation.<sup>xxv</sup> For some, public participation is thought to risk compromising the intellectual substance of the exhibit. The lesson that some take from Enola Gay is that the public prefers "a seamless and uncontested past devoid of controversy or recrimination . . . Americans seek solace in a nostalgic past."<sup>xxvi</sup> For other curators, public participation is necessary to make sure that museums do not harm people in their treatment of highly sensitive historical events. The success of the Holocaust Memorial Museum, for example, is often described in terms of its collaborative partnership with groups of Holocaust victims. Those groups at times used their influence to veto particular displays, not on intellectual grounds, but on the grounds that the proposed exhibits would be too personally traumatic.<sup>xxvii</sup> In yet other cases, public participation is valued as a way of bringing substantive issues to the curator's attention that otherwise risk being overlooked; the participation of Native American groups in revising the Little Bighorn Battlefield National Monument has this quality.

Yet a fourth model of public participation is suggested by the Center's own self-presentation. That is the model of community development precisely through engagement with the materials of the exhibit. Advocates of the new museology have explicitly recommended such approaches, offering as an example the epochal 1969-70 exhibit *The Rat: Man's Invited Affliction*. John Kinard, then director of the Anacostia Neighborhood Museum, developed the materials of that exhibit by talking to the people of his neighborhood and exploring their everyday concerns. This method of exhibit and community development through dialogue "made

the Anacostia Neighborhood Museum a worldwide model and a prototype for something new—a neighborhood museum. The museum was an experience that enfranchised a community of people and enabled them to talk about their lives and to take greater responsibility for the reconstruction of themselves and their children.”<sup>xxviii</sup> Today, in the NCC’s own neighborhood, the Philadelphia Mural Project orients itself towards similar goals. From the beginning, the Mural Arts project was concerned, not just with beautifying Philadelphia, but with providing the impetus for local communities to develop structures of political participation. Neighbors had to meet together and talk to decide what murals they wanted. These conversations resulted in the strengthening of local institutions of participation or, in some case, their development from scratch. Those institutions, in turn, have contributed to the well-being of their communities beyond mural creation and preservation.<sup>xxix</sup>

It would be perverse if the NCC’s attitude towards public participation were skeptical. The expressed point of the museum is to emphasize the necessity of citizen participation for the right conduct of constitutional affairs. But the Center itself has been developed largely by philanthropists, a professional staff and professional teams, the mayor, and an academic advisory committee that met few times. Although public participation opens the ‘risk’ of politicization, one of the most interesting things about *this* Center is precisely that it has raised no controversy--no controversy about cultural appropriateness, none about representation, none about historic legitimacy. The lack of controversy could indicate that the Center truly is such a remarkable accomplishment that visitors are left only applauding. And, of course, there is nothing logically inconsistent in the belief that participation is necessary for constitutional maintenance but not for museum design. But the NCC explicitly commits itself to fostering participation—announcing its intention that museum-goers enter as visitors and leave as citizens. As I shall describe, the lack

of controversy surrounding its exhibits most plausibly reflects, not a worked-out theory of museum/public relations, nor a universally-recognized curatorial success, but rather the Center's failure to provide a space for actual engagement with constitutional issues.

Work in the new museology shows us that, beyond the development of materials themselves, museums advance the value of participation both through the physical arrangement of their exhibits (i.e., seating that is conducive to conversation) and through exhibit content (content that evokes a desire to talk and a belief that one's perspectives are relevant and worth sharing— achieved with strategies like the treatment of controversial subject matter, themes that are very familiar to visitors, or open timelines and multiple interpretations). For political themes, these dimensions may be related insofar as the revelation or evocation of contestation in the exhibit's content is often what provokes the actual practice of visitors talking to one another, writing letters, and so forth.

The NCC's participatory experience falls short on both dimensions. This might be due to the museum's compromised understanding of what participation entails. Upon entrance to the lobby, the NCC offers one view of participation on its board honoring philanthropists. Ranked by donation size, philanthropists (or "founding donors") are prominently honored with categories including "signers," "framers," "founders," "patriots," and "ratifiers."<sup>xxx</sup> Those who contributed in quite different ways, for example through their time or creative energy, are not awarded titles. Although it is appropriate for museums to honor their philanthropists, it was surprising to me that financial donations, and only financial donations, would be so explicitly thematized as exemplars of constitutional citizenship. The Center should have generated other honorific titles for their philanthropists, or, if the NCC is committed to using titles of political participation and citizenship, the plaque should have included notice of those who contributed in non-monetary

ways. As it stands, the NCC's equation between constitutional citizenship and monetary donations was my first clue that the Center's conception of participation is not necessarily egalitarian. It was also the first clue that contemporary debates over the relationship between property and citizenship would not be treated in a self-conscious way, and hence that visitors would not be stimulated to develop their positions on this question. The relationship between property and citizenship has always been a fundamental constitutional question, whether in early connections between corporate charters and political constitutions, in movements to expand the suffrage to property-less men and covertured women, or in the debates of the 1890s over the political consequences of the consolidation of economic power. The question remains relevant today in debates about campaign finance, the political and social rights of welfare recipients, and economic globalization and the political power of corporations.<sup>xxxii</sup> The plaque honoring Coca-Cola as a Founder – but bearing no mention of the volunteers who also helped conceive the Center, and support its programs today -- promises that this relationship between property and political authority, which is of fundamental constitutional significance, will barely be treated in the Center at all.<sup>xxxiii</sup>

Several features of the exhibit itself intensify the sense that there is something disturbing about the Center's enactment of participation. The first is that the visitor's experience of the Center is highly controlled. Visitors move through in a large group, and there is only one path through the exhibit. Such controlled movement is highly appropriate in the Holocaust Museum, where one of the efforts of the design is precisely to reproduce the feeling of being trapped, of being moved chaotically and without sense to an unknown and terrible destination.<sup>xxxiii</sup> But for a Center emphasizing freedom and individuality, this controlled use of space is a terrible oversight.

The exhibit space is also highly impressive, almost spectacular. Gordon Wood, co-chair of the academic advisory committee, emphasized this feature as part of the museum's appeal; when I asked him how he evaluated whether the museum was a success, Wood mentioned that people were "impressed" with the building, that they saw the building and were "overwhelmed," and that they walked around the exhibits with their "eyes wide open."<sup>xxxiv</sup> The architectural message of the museum does emphasize grandiosity; that emphasis might be in service of portraying citizenship as a noble enterprise.<sup>xxxv</sup> The dominant sense of space within the Center is also one of vast height and brilliant light and color (achieved with video displays). The walls tower up magnificently, and their reflective surfaces bounce the color and movement of the video screens throughout the space. Many of the video screens are placed far above the heads of viewers, meaning that the visitor is often looking at something high up, far above herself. The sounds of the videos overlay each other; it is difficult to listen to only one sound at a time, and as a result, it is often difficult to get the attention of others traveling the exhibit with you. It is hard to overemphasize how distracting this cacophony is. Even when the exhibit space has few people, it feels crowded from so many noises, and lingering with the exhibits is difficult.<sup>xxxvi</sup> Hence ultimately this larger-than-human-scale, impressive, overwhelming, and cacophonous space does little to support the visitor's imagination about being involved in a common political project.

Contrast this to two other spaces that treat the theme of political founding: the house where the Philadelphia Convention actually met, and Romania's "House of the People." Independence Hall is small, intimate, and entirely lacking in grandeur. It is a familiar setting, a simple room with windows and chairs and desks. It is a place where people came to do their business. This simplicity is the source of the impressiveness of that space, for it highlights the

fact that even extraordinary political accomplishments use, at base, the ordinary tools of ordinary politics. The “miracle” of Philadelphia required a meeting room where people could hear each other’s voices, some tables and chairs, and a space that was open enough to be used for the many conversations that the men gathered there wanted to have. It is a “miracle” that is accessible from within the ordinary experience of political life.<sup>xxxvii</sup> Now consider the Casa Poporului, the House of the People in Bucharest. That building was constructed on the ruins of a historical district, cutting the city in half. It contains enormous marble hallways and legislative chambers so monumental that human voices are lost inside. The House of the People is magnificently impressive, the second-largest building in the world, dwarfed in size only by the Pentagon.<sup>xxxviii</sup> But it is not a place for dialogue. There is a difference between an impressiveness that overwhelms the viewer, and an impressiveness that draws the viewer into imagining how the materials of his own life might be turned towards political accomplishment. This contrast shows us how important it is that the Constitution Center can barely be imagined as a place for the intimate and engaged exploration of political issues.

The concept of participation is not necessarily difficult or abstract. It need mean only that people actually talk to one another, that they send a letter, perhaps even that they vote—but mostly that they talk and think outside of the museum experience itself. The participation that is most concrete is not the imagining of oneself as an abstract “participant” in constitutional development, but rather the actual engagement in a conversation with a friend about what the Constitution’s development should be. Many museums evoke this form of participation. Evocative exhibits such as the New York Historical Society’s “Slavery in the Making of New York” (2005-06) make people want to talk about what they have seen, and if there is seating available to continue the conversation, or areas where visitors are invited to imagine themselves

as slaves around a well, or materials that allow us to imagine slave work on objects in common use today, so much the better. By contrast, the NCC offers a kind of participation that is more appropriately designated as “interactivity.” This interactivity is so highly idealized that it is placed beyond the political experience of actual visitors.<sup>xxxix</sup> For example, the ratification discourse before the movie offers almost no context for situating the relationship between the political, social, and economic identities of the speakers and their respective political visions. The NCC would have done much better to have used actual conversations between constitutional participants, perhaps using more tools of oral history, a theme I will return to shortly. Visitors can also “participate” in that they can press buttons to make different pictures appear on a screen, as when we touch Mickey Mouse’s face to discover his role in the Copyright Term Extension Act; but this is far from the kind of interactivity that supports political citizenship. Alternatively, we can “participate” by “voting” for our favorite presidents and seeing whom others have chosen, but since we vote on a touch-screen with pictures instead of a mock ballot, and since votes are straightforwardly tallied instead of filtered through an electoral college, a valuable moment for exposing visitors to the actual technologies of voting in the U.S. is lost. Lost, too, is a moment for considering whether voting and polling data really offer the same kind of information about public sentiments.

This critique of the NCC’s interactivity notwithstanding, the gem of the Center’s interactive approach is the “National American Tree.” The interactivity of the exhibit consists of the possibility of touching different faces to see what contribution each person made. Hence the exhibit is dedicated to discussing constitutional participation through the stories of people who have importantly affected the evolution of constitutional politics. The idea is wonderful; stories of individual people allow for imaginative entering into the lives that concretely affect politics.

The tree also includes some truly unsung heroes. Prudence Crandall, Martha Lum, and Mary Katherine Goddard were new names to me, and it is delightful to read about constitutional politics from the point of view of non-canonical figures. Adding to the appeal of the exhibit, the Center provides a box for suggestions about who should be included. The opportunity to register an opinion that could have an impact on the content of the Center's actual exhibits – a moment of participation, as opposed to interaction-- provides an opportunity for visitors to think about their own concepts of constitutional heroism.

Unfortunately, the promise of this exhibit is underdeveloped, and its effect is undermined by the format of the presentation and by the environment of the exhibit space. With all the surrounding noise, it is difficult to pay attention for as long as one might like. With the lack of information about who is included (the faces float by on screens in a random fashion), the opportunity for visitors to synthesize a sense of what 'counts' as constitutional citizenship – or to develop critiques of what the museum has synthesized-- is lost.<sup>xl</sup> Furthermore, although the efforts of some of these heroes came to very little, the exhibit does not highlight those failures, nor does it interrogate the relationship of their failures to the structural forces of the Constitution that operate against change. We see little, too, about the efforts of citizens whose conception of active constitutional citizenship would seem closer to the NCC's own: for example, Martin Luther King, Jr., is represented, but Ella Baker is not, although in her leadership of the SCLC she advanced a vision of the civil rights movement that was far more participatory and grassroots than was that of King.<sup>xli</sup> Finally, the museum offers no explicit evaluations of the contributions of these heroes, although the Center has clearly made some judgments about whose contributions 'count.' (I didn't find any Southern secessionists, for example. Charles Sumner is represented, but Preston Brooks is not.) By excluding secessionists, the NCC is not only engaging in

defensible line-drawing but also is implicitly legitimizing the efforts of those who are included. The Center conceals the contestability of these judgments by preserving the neutral authority of the museum voice with statements like “All [of the represented] are heroes of liberty whose roots come from around the world.”<sup>xlii</sup> Surely this is disputable. Why not expose the disputes? Was Kenneth Starr a hero? Was Anna Adams Gordon, leader of the Women’s Christian Temperance Union when Prohibition was passed? The museum never formulates these questions on the visitor’s behalf, and without a complete list of who is represented, visitors are not supported in realizing that normative criteria do lurk behind the NCC’s presentation (or in scrutinizing those criteria). The fact of contestable judgment is not exposed for viewers to discuss. Hence the promise of this wonderful opportunity for visitors to intensify their understandings of what participation entails, of its costs and possibilities, and of whose participation we should value on what terms, is undermined.

The only opportunities for exchange between actual visitors are the post-it note boards and Signers’ Hall. The post-it note boards offer a real gathering place, and on my visits this area has been especially crowded with people. Visitors seemed energized by questions about executive power, gun control, and gay marriage and curious to read each other’s responses. Signers’ Hall, too, supports interaction with other visitors—walking among the life-sized statues, it is sometimes easy to mistake actual visitors for statues and vice versa, a funny situation that creates the conditions for interesting conversation. These boards and the Signers’ Hall is where all of the (limited) interaction I had with strangers took place. It is easy to imagine placing seating in these areas where visitors could face each other and be supported in their efforts to explore each other’s responses to constitutional questions. Another natural place for seating would have been the terminals where visitors are invited to write letters to their legislators. It is

not clear how much can be composed while standing up in a brightly-lit, movement-filled room; the terminals seem to be places where participation is encouraged, but they do not support visitors in taking actual steps to write an actual letter.

Unlike South Africa's Constitutional Court (a building created "to embody the openness and transparency called for by the Constitution itself" and also to emphasize the role of "We the People"), which has dedicated itself to creating the largest human rights library in the southern hemisphere, and which contains public reading rooms and inviting gathering places, the Constitution Center contains no public reading room at all.<sup>xliii</sup> Nor does it offer comfortable or appealing gathering places. The interactivity that the Center does bill for itself consists of interaction with multimedia. The content of this media is largely lectures that the museum has prepared, lectures that will not allow for deviation. The viewer cannot control the video experience beyond choosing, or not, to watch it. She cannot rewind or pause. If she is distracted, she cannot go back to the previous panel, but rather must wait for the video feed to loop once again. Although multimedia may be more familiar to audiences than textual information, the Center does not use it to support multi-voiced or "dialogic" interpretation, and hence the media does not ultimately strongly support the visitor's development of her own political agency.<sup>xliv</sup>

### **3. Representation of the Constitution**

The Center portrays the Constitution as a unique, singular creation. The virtual tour of the museum calls the Constitution "a unique experiment in the whole history of government"; "the document that would change the world"; and emphasizes that "no other nation on earth has lived by the same set of rules on paper for as long as the United States."<sup>xlv</sup> *Freedom Rising* emphasizes the same points, calling the American constitutional experience "the most powerful experience

of freedom the world has ever known.” The problems of the document, the NCC leads us to believe, are entirely describable in terms of deficiencies the Constitution has since overcome—for instance, its legal exclusion of African-Americans and women. The implication is that the Constitution has already been redeemed.

But the Center fails to discuss the more ordinary types of violence that surrounded the Constitution’s ratification, for example the threats to Rhode Island if it withheld its consent, or the violence used to create a forum in the Pennsylvania assembly so that the legislature could enact provisions for the ratifying convention. Some violence is a common feature of political founding, and arguably the Constitution was notable for the low levels of violence and fraud that accompanied its ratification.<sup>xlvi</sup> But ‘low levels’ of violence, fraud, and exclusion is meaningfully different from an imaginary miracle whereby the Constitution’s ratification exists as a pure example of the operation of reason in politics. The NCC’s neglect of constitutional violence is not isolated to the founding era. The Center also offers no discussion of American colonialism or the historic controversy over whether the Constitution “follows the flag.”<sup>xlvii</sup> Finally, although its constitutional timeline does notice *Korematsu* (a case where the judiciary sanctioned the internment of Japanese Americans into “relocation camps” in one of the major civil rights violations of the 20<sup>th</sup> century), this constitutional failure is treated as a historic event but not integrated into an evaluation of the Supreme Court as a constitutional actor. (In fact, none of the sections on the three branches actually evaluates whether the branches are very good at performing their duties.) Finally, the Center offers no comparative work to describe how the Constitution might appear to a person in other parts of the world, or what reasons other countries might have had for revising their “rules on paper.” Might a South African be dismayed by the lack of judicially-enforceable social welfare rights in the U.S. Constitution? Might a citizen of

Switzerland regard the failure to revise “rules on paper” as a symptom of negligence, rather than as a political strength? The representation of the Constitution as an exceptional and redeemed charter does not support the idea that there is a *reason* for visitors to “get involved.”

The constitutional history that the Center presents is communicated almost entirely through video displays and text panels. History is flattened in this way, and a flat history is not one that invites participation, that supports agency or a sense of possibility. The Center should have looked for additional ways of communicating that are capable of inviting participants into deeper processes of thoughtful and emotional engagement. Oral history, sometimes called history “from the bottom up,” would seem to be an especially powerful technique for a Center dedicated to developing a conception of the Constitution through the eyes of constitutional participants.<sup>xlviii</sup> Oral history can respond to the concern that the Center be concrete and accessible to ordinary people, while exposing a distinction between people’s own experience of participation and the museum’s representation of other people’s participation.<sup>xlix</sup> It can draw out how people experienced political life around them, and how those experiences eventually led to significant and transforming constitutional engagement.

Oral history can draw out the experiences that lead people into activism on behalf of the Constitution—for example, one historian has used oral history to show how activism for gay rights was spurred by both a toleration that soldiers actually demonstrated for homosexual behavior in WWII, and by gay men’s memories of war contributions.<sup>1</sup> The testimony of civil rights protestors, interviews with lobbyists for groups that engage issues of constitutional significance (the NRA, the Family Research Council, the ACLU, NARAL, America at its Best), recordings of actual arguments in the Supreme Court, testimonies of Senators involved in the passage of the Civil Rights Acts, and interviews with guards at Korematsu or guards in

contemporary prisons all could have added depth to the museum's claim that the Constitution has been shaped as much by its citizen participants as by the state. The Center also could have conducted interviews with contemporaries who worked on behalf of key constitutionalist legislation like the Religious Freedom Restoration Act. Unfortunately, such lived presence of constitutional participants is nowhere felt at the NCC.

#### **4. Constitutional Change**

Our conceptualization of history does a great deal to support (or undermine) our sense of our own political agency. For example, history can “denaturalize the present,” revealing that what appears as necessary is actually quite contingent; it can recover alternative political visions; and it can allow for effective political action by “lay[ing] bare past political settlements” and alerting us to the “forces to be reckoned with in our own time.”<sup>li</sup> One benefit of an effort to expose fuller stories of constitutional participation would have been the revelation of the inadequacy of any linear concept of constitutional progress. That conception of progress implies that citizens can safely sit back and let constitutional politics develop to its natural, liberal egalitarian conclusion. But there are almost no stories of constitutional progress that lack their dark elements; and there are few constitutional ‘heroes’ we should be sanguine about offering to children as models. The stories behind the heroes that the Center applauds are filled with complexity and nuance. The suffragists were not above racist appeals; King’s ideas on economic justice would appall many Americans today; the victory of labor unions was initially and partially at the expense of African-American workers; the movement towards justice for blacks can carry costs to free association ideals; and many of our most important free speech defenders have been unseemly, at best, or truly subversive at worst.<sup>lii</sup> Constitutional history is filled with

despicable characters rising to noble heights, as well as the dark concessions of heroes. None of these receive any attention or development.<sup>liii</sup> Yet these compromises must be portrayed if visitors are to be truly prepared for the demands of participatory politics.

Prior to the Civil War, the Constitution was thought too divisive to function as a national symbol.<sup>liv</sup> The Constitution Center makes it is hard to see what the worry was about. The heroes on the American National Tree are all presented together as heroes. But are we to believe that Disney's understanding of the Constitution is the same as Larry Flynt's, or Barbara Jordan's? The problem is not just one of widely-acknowledged moral failings or incomplete political understanding-- the fact, emphasized at the NCC, that the founders had slaves. It is also a question of what the Constitution *is*, and which Constitution is worth struggling for. How can all of these people be constitutional heroes, if the Constitutions they were working for were so different? The museum conceals this dilemma by referring to the Constitution as a framework of separated powers within which these participants struggled. But the meaning of the framework itself was contested. Which or whose framework should we adopt?

Consider the efforts of one other public memorial concerned about representing multiplicity and participation. Edward Linenthal calls the Little Bighorn Battlefield National Monument "one of the great success stories of American public history" because of how the site opens itself to multiple stories of the American people. Prior to 1976, the dominant narrative of the monument characterized Custer and the Seventh Cavalry as heroes and the "Indians" as brave and barbarous. The visitor center was located adjacent to Custer Hill so that visitors saw the battlefield from the perspective of Custer and the Seventh. In response to controversy about the center among Native American groups, the Park Service took a new look at its portrayal of this event and brought Native Americans into a planning process that involved the installation of new

plaques and the revision of park materials. When some members of the American Indian Movement protested the lack of an Indian memorial and broke in to the park to add a commemoration for the Native Americans who had died there, the Park Service put their commemoration on display in the visitor center with a description of the history of the dispute. This move made visitors themselves a part of the public history of the site, “helping them understand that their presence and reaction were a continuing part of the history [there].”<sup>lv</sup> In Linenthal’s words, “it is a place where different American stories are told, side by side, a place where Custerphiles and Custerphobes and all those in between can come and appreciate the way an epochal event resonates in radically different ways for various Americans. . . It has become, in many ways, an open site, ‘owned’ by no particular community of interpretation.”<sup>lvi</sup> The Constitution, too, is contested and its capacity to support divergent interpretations may be one of its greatest strengths.<sup>lvii</sup> The NCC’s failure to represent this feature – to enact it, as opposed to describing it– is a profound one.

The NCC emphasizes the liberal and democratic impulses of the American Constitution and, although it mentions dispute and controversy, it enacts a liberal consensus view of American political culture that is familiar to us from Hartz, Tocqueville, and Hofstadter.<sup>lviii</sup> Nothing about the NCC’s emphasis on the Constitution’s failures of inclusion threatens this liberal consensus view, because those failures are easily conceptualized *as* failures through reference to the Constitution’s own claim to inclusivity (present in the Preamble, and reinforced with the Civil War and Reconstruction Amendments). Nor does the presentation of historical conflict necessarily threaten this view, because the NCC consistently presents the conflict as resolved for the better. It is true that slavery and Jim Crow have been legally ‘solved’ in the U.S. (although it is far from true that slavery is “unthinkable today,” as *Freedom Rising* claims).<sup>lix</sup>

But might the modern penal system represent a re-enactment of the cruelties of slavery and segregation through less obvious means? The NCC never connects the conflicts of yesterday to modern political dilemmas, a failure which makes it easy for visitors to leave the museum believing that political development under the Constitution is a story of straightforward progress.

The revelation that American constitutional development contains exclusionary, assimilationist, and racist conceptions of national identity is not the same as a recognition that Americans have had to overcome many challenges on their route to full self-realization. It is rather a recognition that Americans have been conflicted about what political self-realization would and does entail. Even beyond the challenges of obviously problematic ideologies like racism and nativism, though, there are *attractive* vantage points within American political development that can sustain the conditions for constitutional critique. Strangely, almost no attention is given to Anti-Federalists or to developing the full challenge of Anti-Federalist thought, although the resources for doing so are amply available, and although the Constitution's opponents—Brutus—may have advanced some clearer perceptions about the workings of major elements of the Constitution than did its proponents.<sup>lx</sup> Calhoun may be neglected because of his identification with a repudiated Confederate politics, but his writings on pluralism contain insights that are reflected in the work of contemporary progressives and certainly provide an alternative view of the relationship of states to the national government than that enacted at the NCC.<sup>lxi</sup> The NCC's neglect of these perspectives reinforces its enactment of an American consensus.

The problem is that stories of consensus write out the contingency, and hence significance, of political choice. It is possible that the NCC shied away from developing critiques of the American Constitution because it wanted to avoid the trap of a cynical and skeptical

unmasking, an approach that can be equally dismissive of the significance of individual political agency.<sup>lxii</sup> And yet, as we see with Little Bighorn, and as revealed through the literature on the new museology, museums have found ways to perform the contingency, significance, and contestable nature of our political choices without falling into this trap.<sup>lxiii</sup> Visitors can be exposed to the difficult choices of constitutional politics and choose for themselves which threads, stories, values and choices they wish to affirm. This would be a more true exercise of the visitor's agency, and supports the development of critical qualities of constitutional citizenship.

These features make the Center's final attempt at encouraging participation, its asking visitors whether they would have signed to ratify the Constitution, almost a farce. Visitors are asked for their opinions, but little in the exhibit itself has drawn out what reasons there might be for not signing.<sup>lxiv</sup> The constitutional problems that the Center does acknowledge—slavery, Jim Crow, the exclusion of women from the vote—have been solved. The Center's lack of comparative analysis of constitutions also constricts the critical standard available to visitors. (We are told that Tocqueville "loved" the American Constitution and that Havel was inspired by it, but what do we make of the American Constitution's presidentialism considering the experiences of Chile, Venezuela, and Brazil? What do we make of the constitutionalization of significant welfare rights in the areas of health, education, and housing that are present in South African and Indian constitutional law? How does the constitutional status of ethnic or religious minorities differ in Canada, India, Switzerland, or Australia, and are there reasons for believing that the U.S. Constitution might be improved on this front?)<sup>lxv</sup> Finally, even within the U.S. experience, the museum fails to show the distinctiveness of different constitutional visions. Barbara Jordon and Strom Thurmond may both pledge constitutional fidelity, but what does this fidelity mean when they construct the document so differently? By extension, what does it mean

for the visitor to pledge his or her own fidelity? The museum provides little support for engaging these questions.

What intellectual commitments could explain the NCC's subversion of its own participatory ideal? One possibility relates to the NCC's dominant constitutional storyline, whereby the Constitution's flaws are steadily rectified through the inclusion of more people under its legal guarantee of rights. Constitutional theory contains a voluminous literature on the possible tensions between democratic participation and guarantees of rights. A common argument is that certain institutional choices present in the Constitution which are justified, in part, according to their capacity to protect rights—including large electoral districts, the fragmentation of political authority, and an empowered, appointed judiciary—actually undermine democratic values of participation. Hence some scholars posit a tension, if not outright contradiction, between the institutional conditions for rights protection and those necessary for democratic empowerment.<sup>lxvi</sup> The NCC's insistence on evaluating constitutional history almost solely through the lens of the expansion of civil and political rights for citizens would then *explain* the NCC's subversion of the participatory ideal. The participatory ideal must be subverted if rights are to be protected; legitimacy (in the sociological sense) requires citizens to imagine themselves as serious political participants, while justice requires keeping serious political decisions firmly in the hands of elites. This kind of argument may find a comfortable home with some of the framers, and it is articulated in contemporary times as well.<sup>lxvii</sup> But it is extremely problematic, for many reasons, not least of which is that there are academic proponents of the participatory ideal – as well as academic proponents of a strong rights-based constitutionalism—who do not accept that there is *necessarily* an institutional or theoretical tension between participation and rights-protection at all.<sup>lxviii</sup> The relationship between what is

required to protect rights, and what is required to support political participation, is a matter of great controversy. To expose this controversy, to interrogate visitors' conceptions about the relationship between various desired ends and institutional design, should be part of the point of a Constitution museum. This is not only a requirement that stems from the Center's announced intention to support citizenship. It is also a matter of curatorial professionalism.

But the NCC never explicitly engages the relationship between rights and participation at all. Hence I find it more likely that the NCC's subversion of the participatory ideal is a result of its emphasis on 'balance,' a word that did come up repeatedly in conversation with NCC staff and planners. This is a museum that sets itself the task of presenting a "balanced" picture. Gordon Wood, the co-chair of the academic committee, emphasized that academic input was largely structured to help the museum avoid political controversy. (Wood was proud of this, mentioning several times in an interview that they had been "very conscious of politics," wanted to emphasize "balance," and that they had chosen people to develop the exhibits "who were not political arguers.")<sup>lxix</sup> Wood and Steve Frank, the current Vice President of Education and Exhibits at the museum, both mentioned that Justice Scalia and Justice Breyer had both liked the exhibit, and that the goal would be for visitors to leave the museum with a "balanced" view of the Constitution.<sup>lxx</sup> Balance, though, can work at odds with the participatory ideal. As should be clear to anyone with experience in participatory teaching or participatory politics, when scholars, voters, students, and other participants actually engage political questions, there can be no guarantee of arriving at 'balanced' conclusions. Supporting others in developing their own political responses requires keeping in touch with the personal instincts of the participants themselves, and personal instincts are usually not 'balanced.' Hence a successful course in constitutional ethics is one in which students leave with a wide variety of responses, none of

which may be 'balanced' in the sense of being politically neutral, but all of which can be defended with logic and integrity.<sup>lxxi</sup> A successful mobilization effort is one in which people become aware of what their own perspectives are, are supported in developing what is useful in those perspectives, and then are supported in experiencing the possibilities of political action for advancing those perspectives. Emphasizing these links is rarely a matter of showing 'both sides of an issue,' as if constitutional issues had two sides. It is more a matter of offering and developing a multiplicity of arguments, all of which take positions but few of which take the same position, so that participants can be supported in considering how they themselves wish to integrate the complexity of the considerations that we all bring to politics. A strong emphasis on 'balance' (as opposed to 'rigor,' 'integrity,' or 'evidence,' for example) requires maintaining control over the conclusions that visitors draw in a way that can be deadening to the process of developing good political thinking. The NCC's instinct that the museum should not be partisan, that it should be intellectually open and responsive, is a healthy one. But much work remains to be done to ensure that the emphasis on balance does not overly narrow the extent to which the Center is able to pose critical questions or develop potentially troubling lines of investigation.

There is one most disturbing possibility of all. It may be that this central criticism—that the NCC fails to provide the conditions for actual engagement with constitutional meaning—is a criticism, not of the Center, but of the U.S. Constitution itself. The Constitution Center may be an accurate and faithful representation, not because the Center is especially enlightening, but because it re-creates the nation of spectators and observers that the Constitution itself originally constituted. After all, the U.S. Constitution is remarkable for its circuitous pathways of political accountability, for the incredible priority it gives to the achievement of national wealth, and for its capacity to sustain the scientific and economic development that is necessary to put men on

the moon but not to sustain the conditions necessary to educate all of the nation's children. Could the Constitution Center be a success precisely because it draws out so effectively the logic of political participation embodied in the Constitution itself?

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<sup>i</sup> <http://www.constitutioncenter.org/visiting/ExhibitExperience/index.shtml> (Accessed March 25, 2006)

<sup>ii</sup> The Golden Jubilee (1837), the Centennial (1887), and the Sesquicentennial (1937) “failed to generate much enthusiasm.” Kammen 1987, xviii.

<sup>iii</sup> Kammen 1987, 128, 137.

<sup>iv</sup> See the *Congressional Record* July 23, 1987, 133: H 6581-6598. See also Levin 1999, 13.

<sup>v</sup> Kammen 1987, 73.

<sup>vi</sup> Kammen 1987, 131.

<sup>vii</sup> Kammen 1987, 220. Kammen identifies the American Rights League, the American Defense Society, the Boy Scouts of America, leaders of the Bar Associations, Congressmen, and other speakers at Constitution Day as motivated by these aims, and directs us towards the many orations offered on Constitution Day throughout the early part of the 20<sup>th</sup> century praising the Constitution as a “bulwark against communism and fascism.” (223)

<sup>viii</sup> On Harding see Kammen 1987, 223. On the Bicentennial ads, see Levin 1999, 60.

<sup>ix</sup> [http://www.constitutioncenter.org/about\\_us/Mission&History/index.shtml](http://www.constitutioncenter.org/about_us/Mission&History/index.shtml) (accessed March 25, 2006)

<sup>x</sup> Cohen (18 August 2003); Greenhouse (17 August 2003); Klein (18 July 2003).

<sup>xi</sup> House Congressional Record, 100th Cong. 2nd Sess., 134 *Cong Rec H* 7307 (September 8, 1988)

<sup>xii</sup> See Rep. Robert J. Lagomarsino's biography at California State University, <http://content.cdlib.org/view?docId=kt9b69p2xh&chunk.id=a2&brand=oac> (accessed September 27, 2007). The other cosponsor, Rep. Bruce Vento (D-MN), was known for his work on wilderness protection and his messages on the importance of life-long learning. See [http://news.minnesota.publicradio.org/features/200010/10\\_zdechlikm\\_vento/](http://news.minnesota.publicradio.org/features/200010/10_zdechlikm_vento/) (accessed September 27, 2007)

<sup>xiii</sup> [http://www.constitutioncenter.org/about\\_us/Mission&History/index.shtml](http://www.constitutioncenter.org/about_us/Mission&History/index.shtml) (accessed March 25, 2006)

<sup>xiv</sup> National Constitution Center podcasts, <http://feeds.feedburner.com/NCCPrograms> (accessed September 24, 2007)

<sup>xv</sup> Quotes are from National Constitution Center virtual tour, <http://www.constitutioncenter.org/visiting/ExhibitExperience/VirtualTour.shtml> (accessed March 25, 2006) and the NCC website, <http://www.constitutioncenter.org/CitizenAction/GetInvolved!/index.shtml> (accessed September 24, 2007)

<sup>xvi</sup> Bennett 1995, 28 as cited in Conn 1998, 6. For analysis of the origins of the museum in princely displays of power, see Duncan 1991, 92. The concept of "civilizing rituals" originates with Duncan 1995.

<sup>xvii</sup> Jordanova 1989, 33.

<sup>xviii</sup> Ross 2004. See also Krouse 2006; Vergo 1997. On interpretation versus legislation, see Bauman 1987. For discussion of tensions between 'official' and 'vernacular' memory from the

perspective of concern for political inclusion, see Bodnar 1992.

<sup>xix</sup> Kavanagh 2000; Pearce 1992; Perin 1992; Smith 1997; Vogel 1991.

<sup>xx</sup> Gaither 1992; Gurian 1991; Ross 2004.

<sup>xxi</sup> For academic work on popular constitutionalism, see Devins and Fisher 2004; Katyal 2001; Kramer 2004; Post 2003; Post and Siegel 2003; Tushnet 1999; Waldron 1999; Whittington 2002; Murphy 1986.

<sup>xxii</sup> As Ivan Karp, director of the O.K. Harris Gallery in New York, writes, “[a]s significant elements in civil society, museums articulate social ideas. They define relations with communities whether they intend to or not.” Karp 1992, 6. See also Conn 1998, ch.1 for a discussion of how museums (particular museums and the movement towards museums) enact various worldviews.

<sup>xxiii</sup> Bennett 1994, 1995; Crimp 1993; Duncan 1995; Hooper-Greenhill 1992.

<sup>xxiv</sup> Quoting from the NCC’s virtual tour at <http://www.constitutioncenter.org/visiting/ExhibitExperience/VirtualTour.shtml> (March 25, 2006)

<sup>xxv</sup> For discussion of the relationship between museums and their publics, see especially Annis 1994; Blatti 1987; Hudson 1987; Kavanagh 2000; Lang et al 2006.

<sup>xxvi</sup> Woods 1995, 1114, citing Gulliford 1992, 206. Enola Gay, the plane used to drop the A-bomb in Japan, was to be displayed as part of an exhibit called *The Last Act* investigating the human cost of the decision to drop the bomb. Controversy over this content led to the cancellation of the exhibit. Enola Gay was a major moment in the development of the ‘history wars.’ See the symposium dedicated to this question in *The Journal of American History* (December 1995); see also Englehardt and Linenthal 1996.

<sup>xxvii</sup> Linenthal 1994a.

<sup>xxviii</sup> Gaither 1992, 61. For a portrait of Kinard, see Alexander 1997.

<sup>xxix</sup> Golden et al 2002.

<sup>xxx</sup> Directly across from these plaques, a wall quotes Theodore Roosevelt with “The people themselves must be the ultimate makers of their own Constitution.”

<sup>xxxi</sup> See, for example, Amar 1987; Foner 1995; Goodhart 2001; Hertz 1977; Keyssar 2000; Pope 1989; Ritter 1997.

<sup>xxxii</sup> The construction company, museum designers, academic advisory board, and others do receive mention in a less conspicuous part of the museum, but they are not identified as exemplars of constitutional citizenship.

<sup>xxxiii</sup> Linenthal 1994a, 410.

<sup>xxxiv</sup> Conversation between author and Gordon Wood, Providence RI (March 22, 2006)

<sup>xxxv</sup> The term “architectural message” is from Conn 1998, 121. For a discussion of how a commercial museum in Philadelphia aimed to persuade visitors that commerce was a noble enterprise, see Conn 1998, 122.

<sup>xxxvi</sup> Museums divide audiences into various categories depending on how much time visitors are likely to invest in the exhibit. (see the categorization of visitors as “streakers,” “strollers” and “readers” in Perin 1992). The noise in the NCC exhibit hall turns would-be “readers” into “strollers” or “streakers,” instead of the other way around.

<sup>xxxvii</sup> For a discussion of the continuing use Americans have made of Independence Hall as a site for political contestation, see Mires 1999, 49-64.

<sup>xxxviii</sup> According to the Romanian tourism bureau. See

<http://www.romaniatourism.com/main.html> (Accessed February 28, 2006)

<sup>xxxix</sup> Thanks are due to Eran Ben-Porath for his insight on this point. See also Witcomb 2003.

<sup>xi</sup> The faces float by at random on computer screens, and visitors cannot access a full list of who is and is not included in the National Tree. A computer in the lobby does allow visitors to look up the names of people who have donated even small sums of money to the NCC, so the technology for such look-ups is already present in the Center. Providing a simple list as text next to the exhibit would be quite easy.

<sup>xli</sup> See Morris 1984, especially ch. 5.

<sup>xlii</sup> Satell 2004.

<sup>xliii</sup> See the Constitutional Court's website,

<http://www.constitutionalcourt.org.za/site/thecourt/thebuilding.htm> (accessed September 27, 2007). See also the virtual tour of South Africa's Constitutional Court,

<http://www.concourt.gov.za/site/takeatour/courtbuilding.htm#> (accessed January 29, 2007)

<sup>xliv</sup> For work on interactivity and participation, see Abramson et al 1988; MacDonald 1992; Schickler 1994; Whitcomb 2003.

<sup>xlv</sup> Peter Jennings, in *A Virtual Tour of the Museum*

<http://www.constitutioncenter.org/visiting/ExhibitExperience/VirtualTour.shtml> (Accessed March 10, 2006). For a discussion of the roots of the idea of American exceptionalism in post-Revolutionary nation- and party-building practices, see Appleby 1992.

<sup>xlvi</sup> See Amar 2005.

<sup>xlvii</sup> *Korematsu v. United States* 323 U.S. 214 (1944). On colonialism, see Burnett and Marshall 2001. For the connections between colonialism and the constitutional claims of secessionists, see Burnett 2005.

<sup>xlviii</sup> Horowitz 1995, 620.

<sup>xlix</sup> Crane 1997.

<sup>1</sup> Bérubé 1990.

<sup>li</sup> Hattam 2000, 335. On Whiggish history, see Jardine 2003.

<sup>lii</sup> See Marilley 1996; Andolsen 1986; Kersch 2004; Levy 1985; Rabban 1997; Washington 1986, especially King's "A Time for Hope" (1968), "Where Do We Go From Here?" (1967), and Playboy interview (1968).

<sup>liii</sup> This is not the Center's intention. Steve Frank, Vice President of Education and Exhibits, expressed alarm at the idea that the Center would enact a "Whiggish" conception of history, and alerted me that the multiple "Can you Vote?" terminals, where visitors see whether (and in what states) they would have been able to vote at various moments in constitutional history, is meant to resist a linear conception of history by showing how voting rights have both expanded and contracted over time. (Conversation between author and Steve Frank, September 2007). It is an excellent idea. Unfortunately, the effort that a visitor would need to put into the exhibit to arrive at this conclusion is tremendous (entering the appropriate set of voting characteristics at perhaps ten different terminals to track the variance). Success in apprehending the full lessons of these terminals also requires some relatively sophisticated background knowledge. Probably few visitors indicate that they have been convicted of a crime, and few contemplate the role of the war on drugs in expanding the U.S. prison population. This means that, exhibit notwithstanding, visitors can easily miss one of the most significant suffrage issues of the day. They also would miss the plausibility of the idea (plausible mainly because of the circumstances of historic timing) that voting rules, the penal system, and the war on drugs have together picked up where Jim Crow left off in the disenfranchisement of African Americans. See Brown-Dean 2007; Austin 2004-05; Robben 2007.

<sup>liv</sup> Kammen 1987, 73. See also Max Lerner (1937) and Edwin Corwin (1936) on the “cult of the Constitution”— the use of the Constitution to signify political stability and safety against disorder.

<sup>lv</sup> Linenthal 1994b, 987.

<sup>lvi</sup> Linenthal 2000, 260-1.

<sup>lvii</sup> For expanded or alternate political conceptions of the constitutional order, see Berk 1993; Hattam 1993; Norton 1989; Ritter 1997; Rodgers 1987; Rogin 1987; Smith 1999.

<sup>lviii</sup> See Bercovitch 1979; Boorstin 1953; Hartz 1955; Hofstadter 1999; Tocqueville 2000.

<sup>lix</sup> See Bales 1999; Farr 2004; Jones 2006; Anti-Slavery International, especially their briefing papers and reports (<http://www.antislavery.org/>) (accessed September 24, 2007)

<sup>lx</sup> Storing 1981, 1985; Cornell 1999. Especially compare Brutus’ letters on the judiciary in the Storing 1981 volume to Federalist 78. Also see Hemberger 2001 for an exploration of just how contestable the framer’s choices regarding foreign affairs, military and taxation, and representation truly were, and for an argument that we have too easily accepted the Federalists’ own characterization of what they were doing.

<sup>lxi</sup> Calhoun and Lence 1992. See also Williams 1998, especially pp 42-45, 51-56.

<sup>lxii</sup> For an argument that both doctrinal understandings of the Constitution and radical unmasking critiques share the same conception of the existing Constitution as a “single dominant pattern,” see Greenstone 1988.

<sup>lxiii</sup> The Yorktown Victory Center offers conflicting interpretations of the events of the American Revolution, open space at the end of its timeline, and spotlights on the experiences of ordinary people using their own words and documents. See Smith 1997.

<sup>lxiv</sup> Sanford Levinson refused to sign at this opportunity, taking the question to be in part about “whether I wish to encourage my fellow citizens to reaffirm it in a relatively thoughtless manner.” 2006, 5.

<sup>lxv</sup> Linz and Valenzuela 1994; Goldsworthy 2006.

<sup>lxvi</sup> For the clearest articulation of the tension between constitutionalism and democratic participation, see Murphy 1980. See also Dworkin’s elaboration that “decisions about rights against the majority are not issues that in fairness ought to be left to the majority,” (1978), 142. See also Hirschl 2004; Barber 1988.

<sup>lxvii</sup> Federalist 85 in Hamilton 1992; Read 2000; Crozier, Huntington, and Watanuki 1975.

<sup>lxviii</sup> Brettschneider 2007; Gutmann and Thompson 2004; Waldron 1999. Jane Mansbridge (1986) shows how the achievement of the Equal Rights Amendment for women may have been undermined by judicial rulings protective of women’s rights, demonstrating how in at least one case, both rights expansion and popular participation may have been subverted by an independent judiciary.

<sup>lxix</sup> Conversation between author and Gordon Wood (former co-chair of the executive committee), Providence RI (March 2006). Another member of the committee, Sanford Levinson, noted that Gov. Ed Rendell, then the governor of Pennsylvania and by all accounts a very important promoter of the museum, was not interested in engaging contentious issues (Conversation between author and Sanford Levinson, August 2007). Other sources have cited Rendell’s interest in using the NCC to promote “the new Philadelphia” as a tourist attraction (Conversation between author and Stanley Katz, May 2004). This would be consistent with Rendell’s interest in using the “Avenue of Arts’ project as a central vehicle for expanding Philadelphia’s tourism industry. Conn 1998, 259.

<sup>lxx</sup> Conversations between author and Gordon Wood (March 2006) and between author and Steve Frank, VP of Education and Exhibits at the NCC (September 2007). Stanley Katz has also pointed out how the NCC's programming aims at "balance." (Conversation with author, May 2004)

<sup>lxxi</sup> See Louis Fisher's memo to Daniel Mulhollan, Director of the Congressional Research Service, regarding neutrality as opposed to "integrity, credibility, and logic." (January 31, 2004). On file with author, also available at <http://www.fas.org/sgp/crs/fisher013104.pdf> (accessed September 26, 2007).