

THE CAPITOL DOME



INSIDE THIS ISSUE:

Capitol Art
The Bill of Rights

History Painting
Washington in 1801

FROM THE EDITOR'S DESK

Every painting in the U.S. Capitol, just by virtue of its location, becomes a historical painting. But a “history painting” is something else entirely. And for much of the early history of the Republic, it represented the apex of the painter’s art. Portraiture paid the bills, but successful “Grand Manner” history painting was how any ambitious painter sought to win patronage and esteem. Sir Joshua Reynolds, the first president of the Royal Academy of Arts (1768), demanded that proper history painting be “poetic” by representing its subject in an idealized style. John Trumbull inherited that legacy and enshrined it in his series of history paintings about the American Revolutionary War. But while Trumbull’s four paintings in the Rotunda give him pride of place, others have been at work producing historical art in the Capitol—and of the Capitol.

Three articles in the current issue of *The Capitol Dome* pay tribute to that evolving tradition. Towering above Trumbull’s paintings—spatially, if not aesthetically—is the epic *Frieze of American History*. The third and fifteenth scenes in that cycle, by Constantino Brumidi and Filippo Costaggini respectively, fall under **Matthew Restall**’s microscopic analysis, which reveals how two separate conquests of Mexico, 400 years apart, were paired to serve the purpose of nation-building. Like Trumbull, William H. Powell won a coveted spot along the walls of the Rotunda for his monumental depiction of De Soto “discovering” the Mississippi. His *Battle of Lake Erie* is even larger, but for the past 150 years it has been installed in a ceremonial space where very few Capitol visitors are able to view it. Art historian **Debra Hanson** takes us there and describes how it, too, takes artistic license by disserving historical accuracy in order to serve the public. Rounding out the theme and this issue is a look at the work of a rare modern-day practitioner of history painting. **Peter Waddell**’s paintings of the Capitol are decidedly contemporary, in both their non-didactic purpose and their utterly candid composition—and the editorial staff hopes the interview format captures some of that unguarded spontaneity.

Ken Bowling offers a brief follow-up to his recent article on the Bill of Rights by surveying the physical fate of the manuscript copies sent out to the states for their ratification. Frequent *Dome* writer **Pam Scott** contextualizes a little-known primary source that sheds a fascinating perspective on one of the most obscure periods in the history of Congress—and one of the many displaced fathers who have served in it. Scott’s piece is her inaugural contribution as the Society’s Resident Scholar. The position was established during the summer, with the earmarked donations of individual Society members, and helps to extend the full-time staff’s effectiveness by providing assistance on a part-time, ad hoc basis. We hope you share our enthusiasm for welcoming Pam Scott and her regular submissions to *The Capitol Dome*.

William diGiacomantonio

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FRONT COVER:

William Powell’s *The Battle of Lake Erie* was painted between 1865 and 1873 and hangs in the east staircase of the Senate wing of the U.S. Capitol. For more about this painting and the battle it depicts, see Debra Hanson’s article beginning on page 13. This image appears courtesy the U.S. Senate Collection.

MONTEZUMA SURRENDERS IN THE CAPITOL

by Matthew Restall



Fig. 1. Partial view of the Dome and the Frieze of American History from the Rotunda floor

Year after year, in front of millions of witnesses, Montezuma, the great emperor of the Aztecs, surrenders in the U.S. Capitol.

The moment was a milestone in human history. Life in the New World—and before long, everywhere in the world—would never be the same after November 8, 1519, when Montezuma first met the invading Spanish conquistadors, led by Hernando Cortés, at the entrance to his spectacular island-capital. Most of the Spaniards at that meeting would be dead within the year, but more would soon come, proving to be merely the start of a centuries-long transformative flow into indigenous America by Europeans and enslaved Africans.¹

That encounter of 1519 is vividly represented at the base of

the Capitol's Dome, as part of the *Frieze of American History*. Yet many visitors probably miss it—and its significance. After all, the frieze is 58 feet from the floor, and the meeting of Cortés and Montezuma is but one of its nineteen scenes (fig. 1). Furthermore, Montezuma's surrender is a subtle one. His pose is one of proud welcome, not abject defeat. Yet the context and ramifications of the encounter seem clear. The forward motion of the scene is with the advancing, armed conquistadors; the Aztecs are adorned with feathers, not weapons, and one of three Aztec princesses is on her knees (fig. 2).²

Historians of Mexico have not commented on this scene in the Dome's frieze, probably because the U.S. Capitol seems an unlikely place to find Montezuma. Indeed, many visitors to



Fig. 2. "Cortes and Montezuma at Mexican Temple," scene #3 in the Frieze of American History

the Dome may wonder why the scene was included at all. The question is a good one, as its answer has a surprising twist. Adding to the mystery is this fact: while nobody disputes that Montezuma and his imperial entourage met Cortés and the conquistadors on that fall day in 1519, some historians question whether Montezuma actually surrendered. Evidence for his capitulation, on that day or at any point between then and his violent death seven months later, is murky and contradictory. Arguably, there was no such surrender.³ So why is an inaccurate portrayal of a Mexican scene preserved inside the Dome? Why is a lie enshrined in the Capitol?

SCENES OF SURRENDER

The depiction of Montezuma's welcome reception as a surrender was a claim first made in print by Cortés himself. He wrote a report to the king of Spain the following summer, after the Spaniards had been forcibly ejected from Montezuma's capital city of Tenochtitlan (today's Mexico City), some two-thirds of the invaders killed in the process. The fortunes of the conquistador company were at a low point, their prospects grim. But Cortés insisted that Montezuma, as the rightful ruler of the Aztec Empire, had accepted the sovereignty of the Spanish king over

Mexico at that first meeting, and, moreover, that the subjugated emperor had repeatedly restated his surrender and permitted the Spaniards to detain him for months. This meant that, according to Spanish law, the subsequent battle in the city was a rebellion, permitting the "legal" slaughter and enslavement of

tens (perhaps hundreds) of thousands of indigenous Mexicans during the 1520s. Cortés's report was published as soon as 1522 (fig. 3); it remains the foundational account of events, regardless of how blatant its distortions now appear.⁴ The invention of Montezuma's surrender went from a convenient lie to a crucial one, repeated for decades by conquistadors and chroniclers, quickly and widely believed, and then restated for centuries as a simple fact of history.

The repetition of the supposed fact of Montezuma's surrender was visual as well as textual. Painters and engravers favored three closely related scenes. One was the moment when Montezuma met Cortés for the first time. This scene gave artists an opportunity to depict the human and natural splendor of the occasion, complete with the Aztec imperial entourage and the parade of conquistadors. The subject was particularly popular in Mexico and Spain in the late seventeenth century, depicted on *biombos* (painted screens adapted in Mexico from Japanese *byōbu*) and in painting series (fig. 4, the original of which can be seen today not far from the Capitol, in the Library of Congress's Kislak Collection). Earlier versions tended to favor a rural setting, but an urban one was also common and was typical by the eighteenth century (figs. 5, 6). By the nineteenth century, the great encounter was



Fig. 3. The frontispiece and title page to the 1522 publication of Cortés's 1520 report (*carta de relación*) to the Spanish king



Fig. 4. "The Meeting of Cortés and Moctezuma" is part of the late-seventeenth-century Conquest of Mexico painting series in the Kislak Collection at the Library of Congress.



Fig. 5. "The Meeting of Cortés and Montezuma" from a 1724 London edition of Antonio de Solís's *The History of the Conquest of Mexico by the Spaniards*



Fig. 6. "Cortes meets Motezuma at Mexico" appears in *A World Displayed*, whose twenty volumes were first published in London in the 1760s.



Fig. 7. This 1741 engraving was used in various seventeenth- and eighteenth-century English books on the history of the Americas. Its sarcastic caption is "Spanish Gratitude. Cortes orders Moteczuma to be Fetter'd."

sometimes placed within the Aztec city itself, in order that stylized pyramids and temples could form the backdrop—as indeed is the case in the Capitol Dome's version.

The other two scenes favored by engravers and painters of the early modern centuries were that of Cortés placing Montezuma under arrest (figs. 7, 8), and Montezuma repeating his surrender, sometimes before a notary (fig. 10). The contradiction inherent in the Aztec emperor voluntarily capitulating and yet needing to be seized stemmed from the fact that the conquistadors had invented and imagined the surrender. But over the centuries that contradiction was interpreted in various ways; for example, in early modern England, Montezuma's detention was depicted as Spanish ingratitude towards a cooperative ruler (fig. 7), whereas in nineteenth-century Mexico it was explained to school children as the humiliating consequence of his original surrender (figs. 8-9).



Fig. 8-9. "The Imprisonment of Moctezuma, or the Final Insult" (above) and "Hernán Cortés before Moctezuma," two of a series of 110 fascicles or pamphlets published from 1899-1901 as a Library for Mexican Children.



Thus whatever the attempt at resolving the contradiction, it was typically buried under an emphasis on Montezuma's response to the arrival of Europeans: submission. In the era of Romanticism, the story's core concepts of "conquest," "surrender," and "submission" developed gendered, erotic metaphors (figs. 11-12). An imaginary love-affair began as a sub-plot in the seventeenth century, but by the nineteenth it was the heart of numerous renderings of the "Conquest of Mexico" in media ranging from operas to histories to paintings. The metaphorical romance was between Cortés (or a fictional brother or another Spanish captain) and an indigenous woman (typically a fictional Aztec princess, but eventually his indigenous interpreter, Malinztin or Malinche).

AN "AMERICAN" VISION

By the time the *Frieze of American History* was conceived, therefore, a tradition had been established regarding the significance and veracity of Montezuma's welcome to Cortés as a surrender. Some visual conventions regarding the depiction of the moment had also developed. For example, Cortés was usually dressed as an early modern gentleman and the conquistadors as soldiers, while the Aztecs were adorned in feathers. Aztec princesses in submissive pose often completed the picture. And whether the moment depicted was the first encounter or the alleged arrest, the consequential meaning of the scene was always that of capitulation.

That tradition and its conventions were certainly available to Constantino Brumidi (1805–1880), the Italian artist commissioned to create the Rotunda's frieze. He drew the original designs in 1859, imagining "American" history as primarily specific to the United States, but hemispheric where past events were seen as influencing the march of progress that was "American History." Each scene was a link in a chain of great events, beginning with Columbus's first landing in the hemisphere through to the discovery of gold in California. Although the appropriation of Columbus as a U.S. hero had begun by this time (indeed, John Vanderlyn's massive canvas of "Landing of Columbus" had been installed in the Rotunda in 1847), it would not reach its high point until the quadricentennial in 1892, so Brumidi's choice of an Italian as the germinator of the "American" genesis surely had some personal resonance.

Six of Brumidi's original sixteen scenes featured indigenous Americans and their encounters



Fig. 10. One of a series of 24 oil-on-copper paintings illustrating a 1783 Madrid edition of Solís's *History of the Conquest of Mexico*. The caption reads "Moctezuma names the King of Spain as the successor of his Empire: he gives him allegiance and tribute."

with Europeans. Following early modern European tradition, feathered costumes and headdresses identified "Indians," while Europeans were shown in relatively heavy clothing and with the technologies that symbolized their superiority (such as ships, swords, and guns). Only two of these scenes depicted violence. In the other four, indigenous people were shown in various poses of welcome, acceptance, and surrender—including the Cortés-Montezuma scene. That scene's inclusion (third in the series) might thus be seen as a link between Columbus's peaceful reception in 1492 (scene #2) and comparable receptions of Penn and Oglethorpe by "Indians" in North America in 1682 (scene #8) and 1732 (scene #10). The general impression given of the great encounter as a consensual one between confident, entitled Europeans and acquiescent "Indians" reflected the tenor of the great murals already installed in the rotunda—Vanderlyn's *Landing of Columbus* and, beside it, William Powell's *Discovery of the Mississippi by De Soto*—the interpretive significance of which "Brumidi would certainly have been conscious."⁵ Likewise, the larger



Figs. 11-12. Two examples from a lithograph series by the early-nineteenth-century Parisian, Nicolas-Eustache Maurin, inspired by contemporary Conquest of Mexico operas by the Italians Spontini and Pacini. Like the operas, the lithographs interspersed fictional and historical characters (here Cortés receives a princess from, and then shows mercy to, fictionalized Aztecs).





Fig. 13. "American Army Entering the City of Mexico," scene #15 in the Frieze of American History

story, of barbarism giving way to civilization, must have been equally clear to the early generations of viewers of Brumidi's frieze.

However, I suggest that another of Brumidi's scenes provided the more pressing rationale for including Cortés and Montezuma—one surprising to us, perhaps, but surely as obvious to late-nineteenth-century Americans as the hemispheric history of civilization's forward march. That scene was the fifteenth, "American Army Entering the City of Mexico," depicting U.S. troops taking possession of Mexico City in 1847 (fig. 13). The similarities between the two scenes overwhelm the differences: in both, victorious, armed invaders enter from the left to take peaceful possession of the very same capital city. The parallel is inescapable: General Scott is Cortés, and General Santa Ana is Montezuma; the two acts of surrender in Mexico City echo, illuminate, and legitimize each other, representing resonant moments in the march of progress that is "American History."

In Brumidi's lifetime, the Conquest of Mexico was very much on the minds of U.S. Americans and Mexicans, as the two carved out identities as independent nations, going to war with each other in the process. U.S. soldiers carried copies of William Prescott's *The Conquest of Mexico* on their march from Veracruz to Mexico City. The war made the book, published a few years before, a bestseller. It did the same for a special wartime edition of Robert Montgomery Bird's *Calavar; or The Knight of the Conquest: A Romance of Mexico*, whose new preface compared Scott to Cortés, reminding readers that both invaded "the same most magnificent of valleys" with equal "daring intrepidity," facing the same "petty forces." U.S. soldiers wrote home that they were walking in the footsteps of the great Cortés. Americans started calling their war "the Second Conquest," and Scott asked Prescott to follow his book with one on "the second Mexican war."⁶

William Jenkins Worth, one of the generals of the force that occupied Mexico City, later lionized as a war hero, was

certainly taken by the apparent parallels between 1519 and 1847. During the occupation, the general had a copy made of the portrait of Cortés that he found hanging in the Hospital de Jesús—which Cortés had built on the site where he had first met Montezuma. The copy was sent to the First Lady, Sarah Childress Polk, who hung it in the White House until the Polks retired in 1849 to Tennessee (where the painting remains to this day; fig. 14).⁷ The Cortés portrait was the basis for many published drawings of the conquistador, which Brumidi probably saw. And although he was in Rome during the months the copy hung in the White House, he likely saw the original in Mexico City in 1854 (where he was painting both a "Trinity" for the cathedral and other religious-themed oil paintings) and heard about the copy when he settled in Washington, DC at the end of that year. Just as Brumidi made sketches of the Aztec Calendar Stone when he was in Mexico, incorporating them into his frieze's scene #3, so too did the Hospital de Jesús/Polk portrait surely influence his own rendering of Cortés in the frieze.⁸

Thus Brumidi did not include Montezuma's surrender to Cortés in his frieze simply because it happened (it did not) or because he believed it happened (he surely did, as did his peers). It was included because Montezuma's surrender was seen as a momentous example of barbarism accepting the progressive march of civilization, a strong link in that chain of "American" history, reflecting how the United States sought to build itself and promote its legitimate place in the world.

COMPLETING THE CIRCLE

Brumidi was highly active in the Capitol, busy for decades creating works of art throughout the building, including the massive *Apotheosis of Washington*. The work of painting the *Frieze of American History* did not begin until 1877, so it was unfinished when the Italian died three years later. His assistant, Filippo Costaggini, painted the eight scenes that

remained from Brumidi's drawings, taking the story to the Gold Rush. But a miscalculation of measurements left a 30-foot gap. That mistake was viewed as fortuitous in the twentieth century, as it permitted the Capitol's great muralist of the era, Allyn Cox (1896–1982), to add three more scenes. Masterfully imitating Brumidi's style (as Costaggini had done, but this time without benefit of Brumidi's sketches), Cox added "Peace at the End of the Civil War" and a scene from the Spanish-American War.⁹ (It is notable that Cox did not choose to echo Brumidi's emphasis on surrenders or peaceful but uneven encounters; the peace of 1865 is presented as one between equals.)

Cox then ended the frieze with the Wright brothers and the "Birth of Aviation." Because of the frieze's circularity, Wilbur Wright is thus adjacent to Columbus, separated only by an allegorical female "America," who was Brumidi's original first scene. (The Wright-Columbus comparison was frequently made in the twentieth century, often updated since 1969 to pair the Genoese navigator with Neil Armstrong.¹⁰) This century's visitors to the Capitol can gaze up to see Columbus and the Wrights virtually side by side, just as they can see the mirrored pairs, across the Rotunda from each other, of Cortés and Scott, Montezuma and Santa Ana. The impression of the monumental weight of great events, of a predestined sequence of past moments, of facts carved in stone, is irresistible.

Yet the frieze is not carved in stone. It is a mural, painted in sepia-toned *grisaille*, a fresco of whites and browns designed to look like stone. Likewise, the frieze depicts a series of encounters that actually took place, but those encounters are styled and juxtaposed to eliminate their ambiguities and complexities, all in the service of a greater message. Thus the frieze's use of content, like its technique of composition, is an artful trick (literally, *trompe l'oeil*). We can let ourselves be fooled and accept Montezuma's surrender to Cortés as a fact carved in stone. Or we can open our eyes to the spectacular trickery of a lie that has lived for five hundred years—right beneath our eyes, or, in the case of the frieze, over our heads.



Fig. 14. This 1848 copy made for First Lady Sarah Childress Polk of the colonial-period portrait of Cortés in the Hospital de Jesús in Mexico City hung in the White House (1848–49) and then in Polk homes.

MATTHEW RESTALL is Edwin Erle Sparks Professor of Latin American History and Director of Latin American Studies at the Pennsylvania State University. He received his PhD from UCLA in 1992 and has since published some twenty books and fifty articles and essays on aspects of the history of the Mayas, of the African diaspora in Spanish America, and of the Spanish Conquest period. His best-known book, *Seven Myths of the Spanish Conquest* (2003), is available in six languages. His forthcoming book, titled *The Meeting*, is on Cortés, Montezuma, and the wars surrounding their first encounter in 1519. He will be resident in Washington, DC for part of 2017 as a Kislak Fellow at the Library of Congress.

NOTES

1. The relevant literature would take a book just to list, but starting points of various kinds include Matthew Restall, *Seven Myths of the Spanish Conquest* (New York, 2003), J. H. Elliott, *Empires of the Atlantic World: Britain and Spain in America, 1492-1830* (New Haven, 2006), Charles C. Mann, *1493: Uncovering the New World Columbus Created* (New York, 2011), and Matthew Restall and Kris Lane, *Latin America in Colonial Times* (Cambridge, 2011).

2. For images and historical information, see the official website on the Capitol and the frieze: aoc.gov/history-us-capitol-building. In the original drawing for the scene (preserved in the Capitol; see Barbara A. Wolanin, *Constantino Brumidi: Artist of the Capitol* [Washington, DC, 1998], p. 150), the seated Aztec woman looks more like an elderly ruler, an ambiguity that was removed when it was painted.

3. For my book-length argument on this point, see *The Meeting* (New York, forthcoming in 2018). This essay originated in an earlier version of a chapter from that book, and also from a lecture given at The George Washington University on March 24, 2016. I am grateful to Marcy Norton for arranging that lecture, to Ken Bowling and others in the audience for suggesting to William “Chuck” diGiacomantonio that he contact me regarding this essay, and to the latter for his invitation, encouragement, and suggestions.

4. There are many editions of what is usually called Cortés’s “Second Letter,” but the most commonly cited one, which includes three subsequent reports, is *Hernán Cortés: Letters from Mexico*, Anthony R. Pagden, trans. and ed. (New York, 1971).

5. Quote from Francis V. O’Connor, who imagines Brumidi “[g]azing down on the Rotunda” and its murals while pondering his sketches for the frieze; in “Symbolism in the

Rotunda,” in Wolanin, *Constantino Brumidi*, p. 148. The Powell mural was installed by 1855. I hope to pursue in greater detail an analysis of the European-indigenous encounter in the Rotunda’s frieze, murals, and relief sculpture.

6. Robert W. Johannsen, *To the Halls of the Montezumas: The Mexican War in the American Imagination* (New York, 1985), pp. 120, 150, 155-57, 179-83, 246-48. Also see Amy S. Greenberg, *A Wicked War: Polk, Clay, Lincoln, and the 1846 U.S. Invasion of Mexico* (New York, 2012). There are numerous editions of Prescott’s book, but I recommend *History of the Conquest of Mexico, with a preliminary view of the Ancient Mexican Civilization and the life of the conqueror Hernando Cortés*, Felipe Fernández-Armesto, intro. (London: 1994 [1843]).

7. The painting hung in the hallway of the Polk mansion in Nashville from 1849 until Sarah Childress Polk’s death in 1891; it remained in the Polk estate and is today preserved in the President Polk Home and Museum in Columbia, Tennessee. I thank the curator, Tom Price, for sharing information and images of the painting. Also see the White House Historical Association’s page, whitehousehistory.org/a-portrait-of-spanish-conquistador-hernan-cortes.

8. Wolanin, *Constantino Brumidi*, pp. 50, 239.

9. For book-length studies of Brumidi’s work in the Capitol, see Wolanin, *Constantino Brumidi*; and Amy Elizabeth Burton, ed., *To Make Beautiful the Capitol: Rediscovering the Art of Constantino Brumidi* (Washington, DC, 2014); on Cox, see Debra Hanson, “Modern Muralists of the Capitol: Allyn Cox and Jeffrey Greene,” *The Capitol Dome*, v. 52, 3(Winter 2015-16):2-10.

10. On the Columbus-Armstrong link, see Restall, *Seven Myths*, p. 2.

RIGHTS— LOST AND FOUND

by Kenneth R. Bowling

Editor's note: The following piece concludes the author's two-part investigation into the modern fate of the federal Bill of Rights, as both principles and parchment, since its meaning drew fresh attention around the time of its sesquicentennial in 1941. For the first part of this treatment, "Nazi Germany, the New Deal, and the Iconization of the Federal Bill of Rights," see The Capitol Dome, v. 53, 1(Summer 2016):26-32.

So what happened to the North Carolina copy of the Bill of Rights, which an attentive newspaper reporter spied on the wall of an Indianapolis office one day in 1897—and which hung, equally neglected, on the wall of an Indianapolis continuing care retirement community in the 1970s and 1980s?¹ And what about the other thirteen copies that congressional clerks Benjamin Bankson and William Lambert made during the last week of September 1789? In 2000, seven states and the federal archives had their copies, but like North Carolina, the states of New York, Pennsylvania, Delaware, Maryland, and Georgia did not.

In March 2003, in a sting operation for which my “expert opinion” was the basis, the FBI confiscated the North Carolina copy and returned it to the state.²

The New York copy almost certainly burned in the devastating 1911 Albany state Capitol fire that consumed so much of the state’s documentary history.

Georgia at some point after 1789 developed a “state of the art” filing system. It collected all the differently shaped and sized documents on a particular subject (such as communications with the federal government), transcribed them directly into a blank book, and then destroyed the originals.³

When Delaware ratified all but the first proposed Amendment, it simply annotated the document with its ratification and returned it to the federal government. In 2012 the National Archives sent it home for display and on the occasion of the 800th anniversary of Magna Carta in 2015 loaned it to the British Library for exhibit.⁴

The Pennsylvania copy was purloined from among the tens of thousands of unguarded official records housed in the Cap-

itol basement at Harrisburg in the late nineteenth century and carried to New York City by train—allegedly in a carpet bag. It became part of Thomas Emmet’s great manuscript collection, now at the New York Public Library. In a historically important agreement with the Commonwealth of Pennsylvania in 2013, the Library allows it to be displayed at the National Constitutional Center in Philadelphia from time to time on condition that Pennsylvania not claim for 99 years that it is its copy. Pennsylvania agreed and a generous Library trustee donated the money to construct the “terror proof” case in which it now permanently resides.⁵

In 1930 Maryland’s state archives sold to the famous book dealer Charles Goodspeed and Co. the cover letter that George Washington had written to Governor John Eager Howard on 2 October 1789—along with, presumably, the Amendments it covered when sent out for Maryland’s ratification. Whether or not A.S.W. Rosenbach acquired Maryland’s copy of the Amendments directly from Goodspeed, or from some intermediary owner, he was showing the document publicly before the end of the decade. On 15 December 1943, as part of a war bond drive, hundreds of New Yorkers viewed it on the steps of Federal Hall Memorial on Wall Street, and it remained on display inside the building through January 1944. At the time of the ceremony Rosenbach announced that he had sold it to Bernie Balaban, the son of Russian Jewish immigrants and the president of Paramount Pictures, on the condition that he donate it to the Library of Congress and link the gift to the war bond drive. Balaban did so in a ceremony on 21 February 1945, noting in a speech that his feeling was “one of humble gratitude toward the freedom found by my parents

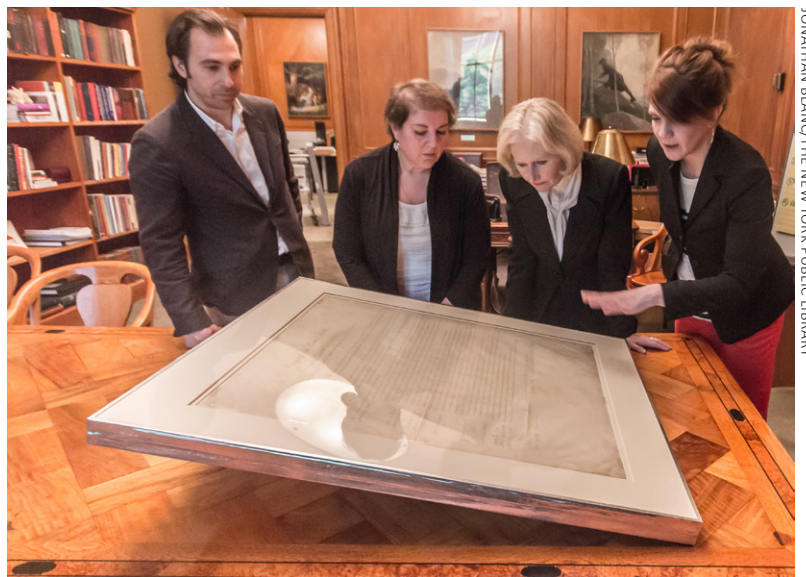
when they came to this country . . . and for the opportunity provided by these amendments to our Constitution.”⁶

The Library of Congress assumed it was accepting stolen property—which was not true if my presumption about Maryland selling its copy is correct. Five days before the ceremony, the Treasury Department overseeing the war bond drive expressed concern about the provenance of the document. Librarian of Congress Archibald MacLeish responded that the “Library will be happy to receive it as a gift without the establishment of origin which it would desire were it purchasing the document.”⁷ The Library presently makes the untenable claim that its copy was especially made for House Clerk John Beckley.⁸ But that claim is not supported by any facts. No fan of documents, Beckley would not have considered the proposed Amendments any more important than other House documents, most of which he destroyed while in office (1789–97 and 1801–07). In 1977 the editors of the First Federal Congress Project “concluded . . . that most of the documents missing from House records [for 1789–91] were deliberately destroyed while John Beckley was clerk,” and not by the fires set by the British in 1814.⁹



KENNETH BOWLING, a current board member of the Society, received his Ph.D. from the University of Wisconsin in 1968. He is the author of “‘Tub to the Whale’: The Founding Fathers and the Adoption of the Federal Bill of Rights,” *Journal of the Early Republic* 8(Fall 1988), and “Overshadowed by States’ Rights: Ratification of the Federal Bill of Rights,” Ronald Hoffman and Peter J. Albert, eds., *The Bill of Rights: Government Proscribed* (Charlottesville, VA and London, 1997). Along with his colleagues at the First Federal Congress Project, he edited *Creating the Bill of Rights: The Documentary Record from the First Federal Congress* (Baltimore, 1991).

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JONATHAN BLANCHET/NEW YORK PUBLIC LIBRARY

New York Public Library staff examine the Library’s original copy of the Bill of Rights in 2013. (l-r) Charles J. Liebman Curator of Manuscripts and Archives William Stingone; Aaron and Clara Greenhut Rabinowitz Assistant Director for Preservation Evelyn Frangakis; Brooke Russell Astor Director of Collections Strategy Victoria Steele; and head of conservation Shelly Smith.

NOTES

1. David Howard, *Lost Rights: The Misadventures of a Stolen American Relic* (Boston, 2010), p. 189.
2. Howard, *Lost Rights*, ch. 20.
3. [Georgia] *Augusta Chronicle*, 21 Jan. 2007.
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Fig. 1. William Powell's *The Battle of Lake Erie* (1865-73)

THE BATTLE OF LAKE ERIE BY WILLIAM POWELL: ART, HISTORY, AND CONTROVERSY

by Debra Hanson

Commissioned in 1865 by the Joint Committee on the Library—the group that oversees and manages the congressional art collection—William Powell's monumental (measuring approximately 17' x 27') painting *The Battle of Lake Erie* was completed in 1873 and dominates the east stairway in the Senate wing of the U.S. Capitol (see cover image). Picturing a significant naval engagement of the War of 1812, one of the early Republic's most celebrated military victories, it depicts Commodore Oliver Hazard Perry at the most decisive and dramatic moments of the battle: the transfer from his severely-damaged ship, the *Lawrence*, to the brig *Niagara* seen in the distance (fig. 1). The urgency of his mission is conveyed by the determined facial expressions and body language of

Perry and his men and reiterated by the debris and dead bodies visible in the foreground. Powell shows Perry's small boat advancing through a steady barrage of enemy fire; against all odds, as history tells us, he will reach the undamaged *Niagara*, assume command, outmaneuver the British, and win the battle, defeating one squadron of the most powerful naval force in the world. Buoyed by these deeds and the famous words that recorded them (fig. 2), it is little wonder that Perry soon entered the pantheon of American heroes celebrated in image, word, and song in the early decades of the nineteenth century. In the War of 1812, his victory came at a particularly auspicious moment.



Fig. 2. “We have met the enemy and they are ours,” Perry wrote to General William Henry Harrison following the battle. The message is emblazoned on the painting’s walnut frame, surrounded by oak and laurel leaves.

THE WAR

Referred to as a “second war of independence,” the War of 1812 was in part a struggle to reassert American economic and commercial freedom in the face of British incursions in those areas. Increasingly, policies of impressment—the involuntary conscription of seamen on merchant vessels into the Royal Navy—and British sanctions on U.S. trade with France and her allies were seen as impediments to the new nation’s economic growth. At the same time, there was congressional discord over the June 1812 declaration of war and recognition that America’s small navy and army were ill-equipped to confront the British military. For example, at the beginning of the war, the U.S. Navy was composed of 16 ships and approximately 2000 sailors, while the Royal Navy numbered 740 vessels and 145,000 men.¹ 1812 also saw Napoleon’s army decimated by his disastrous attempt to conquer Russia in the midst of winter; with its primary European adversary temporarily disabled, Britain could direct more attention westward toward its former colonies.

If many in the U.S. harbored doubts concerning the war effort, enthusiasm was further diminished by defeats on the Niagara and northwestern frontiers that placed the country’s northern border in jeopardy. Forts Detroit and Dearborn fell, after which it was decided to halt overland attempts by Gen. William H. Harrison and his troops to retake Detroit and its environs until American naval forces were able to gain control of Lake Erie and block British supply lines into that area (fig. 3). This required the rapid

construction, provisioning, arming, and manning of naval squadrons to be based on Lakes Ontario and Erie, the latter to be commanded by Oliver H. Perry.²

The son of a naval captain, Perry (1785-1819) served in the navy from the age of fourteen, sailing in the West Indies, the Mediterranean, and the Caribbean (fig. 4). Following the 1811 loss of a ship under his command off the coast of Rhode Island, he was court-martialed and exonerated but assigned to non-seagoing duty. Seeking to redeem his career, Perry petitioned for and was granted transfer to the Lake Erie squadron. It was operational by the end of July 1813 but still short of personnel, a situation remedied in part by the transfer of Commodore Jesse Elliott—an officer older and of the same rank as Perry, but nonetheless under his authority—and his seamen from Lake Ontario. Together, the two officers would command identical brigs that comprised the primary firepower of the fleet: Elliott the *Niagara*, and Perry the *Lawrence*.³

THE BATTLE

For some weeks prior to the September 10, 1813 battle on Lake Erie, American ships successfully blockaded the Royal Navy vessels commanded by Robert Barclay that were anchored near Fort Amherstburg, a British stronghold on the lower Detroit River (see fig. 3). Crucial to control of the western end of Lake Erie and the territories beyond, the fort housed British troops and their Native American allies; according to Barclay, “there were 14,000 Indians to victual...[as well as] the whole population of that part of the country, and the regular forces attached to Gen. Proctor.”⁴ As shortages became

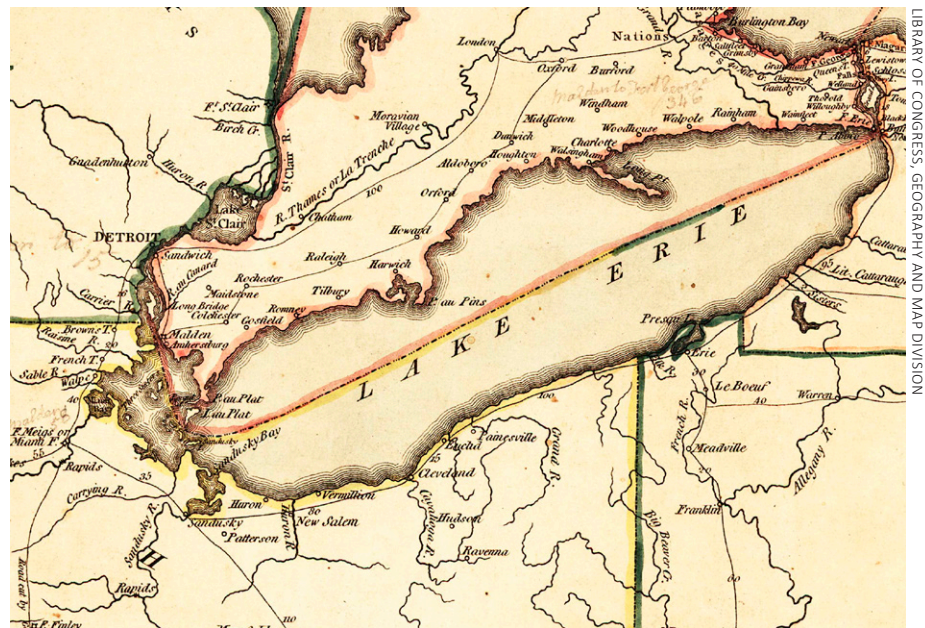


Fig. 3. “A Correct Map of the Seat of the War” (detail) by Lewis Samuel and John Conrad, c. 1812. Amherstburg is visible south of Detroit, and Put-in-Bay is located near Sandusky Bay on the southwest end of Lake Erie.



Fig. 4. Edward Mooney's Portrait of Commodore Oliver Perry (1839)

acute, Barclay had little choice but to confront the Americans despite the depletion of his men and supplies. His ships set sail on the night of September 9, "fully expecting to meet the enemy the next morning."⁵ His expectation was correct.

Enemy ships were sighted to the northwest of Put-in-Bay, the American base, in the early morning. As the U.S. squadron set sail, guns were loaded and combat preparations com-

pleted. On the *Lawrence*, Perry hoisted his "Don't Give Up the Ship" battle flag and rallied his crew (fig. 5).⁶ Like their commander, many had no previous experience in direct naval engagements; the Battle of Lake Erie was Perry's first (and last) major test in this regard.

As the *Lawrence* sailed into range, it took heavy fire from the long guns of the British ships *Detroit* and *Queen Charlotte*, but was not yet close enough to retaliate effectively with its own shorter-range carronades (fig. 6). The slower, smaller ships that carried most of the U.S. long guns were still out of range, as was the *Lawrence's* sister ship, the *Niagara*. While the total firepower of the U.S. ships exceeded that of the British, its uneven dispersal soon placed the *Lawrence* in an untenable position, giving Perry three options: close range and engage with the enemy, surrender, or pull back and reposition his squadron. In choosing the first course of action, he exposed his ship and crew to further bombardment; at the same time, he anticipated support from the rest of his fleet. Perry's pre-battle orders to his officers had been three-fold: engage your designated adversary, stay close to the *Lawrence*, and stay



Fig. 6. Perry's Victory on Lake Erie, Sept. 10th 1813 was drawn by J.J. Barralet and engraved by Benjamin Tanner c. 1814. It shows the many American and British ships engaged in battle at close quarters on Lake Erie.



Fig. 5. The U.S. Naval Academy Museum's collection includes the original "Don't Give Up the Ship" flag.

in line.⁷ The surgeon on board the *Lawrence* later recounted how "the *Niagara* did not make sail with the *Lawrence* and accompany her into close action as ordered...and did not follow her down toward the enemy's line, so as to encounter her own antagonist, the *Queen Charlotte*."⁸

This action—whether due to insubordination or a lack of wind and/or effective signaling at critical junctures, as Elliott and his defenders alleged—was a source of longstanding acrimony and debate that was never fully resolved. Whatever



Fig. 7. John Woodside's painting, *We Owe Allegiance to No Crown* (c. 1814), visualizes burgeoning American unity and confidence in the person of a sailor stepping on a broken crown and surrounded by symbols of America and liberty, including a large national flag, the liberty cap and broken chains of a newly-freed slave, and the laurel wreath of a victorious combatant.

Elliott's reason for keeping the *Niagara* out of steady engagement, the outcome was clear: the battle was prolonged, more lives lost, and the *Lawrence* almost completely destroyed. As one on-shore observer noted, "by 2:30 in the afternoon, the [ship] was a helpless wreck, with sails in tattered strips and guns out of action, and four out of every five men fit for duty either killed or badly wounded," as is shown in Powell's painting.⁹ After inflicting considerable damage on the British vessels, the *Lawrence* and its crew could do no more. Boarding a small skiff, Perry seized on his only chance of victory by transferring to the *Niagara*. Recognizing the significance of Perry's move, the British shifted fire in his direction. As we know, Perry nonetheless reached the *Niagara*, assumed command, and sent Elliott to direct the smaller vessels closer in. Perry closed range and attacked; in attempting to change position the British vessels *Detroit* and *Queen Charlotte* became entangled in their damaged riggings and were unable to defend themselves. Perry received the British surrender on the deck of the *Lawrence*, which had borne the brunt of the battle.

While it can be argued, as many have, that Perry's actions were brash and headstrong—adjectives often used to describe the twenty-seven-year-old officer himself—his decisive if reckless heroism was widely celebrated and viewed as embodying the independent spirit and daring of the young nation itself

(fig. 7). His victory inspired a burst of patriotic fervor that renewed support for the war effort, earning him a Congressional Gold Medal and promotion to the rank of captain.

The victories at Lake Erie and later in the War of 1812 were instrumental in bolstering the country's morale and confidence and creating a more unified national identity. In the words of then-Secretary of the Treasury Albert Gallatin, "the war has renewed and reinstated the national feelings and character which the Revolution had given.... [Americans] now feel and act more as a nation."¹⁰ In 1818, at the high-water mark of the rampant nationalism that came to characterize the "Era of Good Feeling," the chronicler of President James Monroe's visit to Lake Erie during his famous national tour the year before remarked on what Perry's victory represented at the time:

He gained the first victory . . . over a British squadron, in modern naval warfare. Other American commanders upon the ocean, had conquered single-handed; but Perry set the first example of conquering an entire British *fleet* in American waters. . . . He was the first American officer who followed the example of [British Admiral Horatio] Nelson, in fighting a passage through the line of an hostile fleet; and was the first in our country who made the hazardous attempt successful.¹¹

The Lake Erie victory advanced the reputation and growth of the nascent U.S. Navy and greater awareness of American presence on the world stage. In strategic terms, U.S. control of Lake Erie severed British supply lines and so was a factor in Gen. Harrison's defeat of the British and their Native American allies and the retaking of the Michigan territory. The death of the Shawnee chief Tecumseh at the Battle of the Thames triggered the end of the Native American confederacy he led and, ultimately, of native resistance to American expansion into the northwestern territories. In this way, Perry's victory was an indirect factor in America's westward expansion and the displacement of its native peoples.¹²

Perry saw no further action in the War of 1812. He later filed formal charges against Elliott, who then challenged his former superior to a duel. To avoid scandal, Perry was sent on a diplomatic mission to South America, but his death there in 1819 did not end ongoing controversy over the battle. The topic was popularized by writers Washington Irving and James Fenimore Cooper, and as late as 1882, writing in *The Naval War of 1812*, Theodore Roosevelt concluded that "the *Niagara*, the most efficient and best-manned of the American vessels, was . . . almost kept out of the action by her captain's misconduct."¹³

THE PAINTING, AND FURTHER CONTROVERSY

The Battle of Lake Erie was the second painting that Ohio



Fig. 8. Discovery of the Mississippi by De Soto A.D. 1541, William Powell, 1853

artist William H. Powell undertook for the U.S. Capitol, the first being his *Discovery of the Mississippi by De Soto A.D. 1541* (fig. 8), which was completed in 1853 and placed in the Capitol's Rotunda, the last of the eight large-scale history paintings recording America's discovery and early history. Both works feature bodies of water connected to America's westward expansion, and so refer to the concept of Manifest Destiny—the idea that the nation was divinely ordained to expand to the Pacific—and to the many political interests supporting it in this era. In his 1867 *Book of the Artists*, Henry Tuckerman noted that the *De Soto* commission was awarded to Powell “rather in deference to his Western origin than because of priority of claim in point of rank or age.”¹⁴ Although Powell claimed otherwise, Congress granted the commission reluctantly, and critical response to the painting was decidedly mixed; *Putnam's Magazine*, for example, noted its “overly melodramatic style,” claiming that “the picture is in every respect bad, and unworthy of being placed in a national capital.”¹⁵ Moreover, the entire project of history painting—with its emphasis on noble themes, figures, and actions represented in a European, Grand-Manner-derived style, as exemplified by works such as Benjamin West's *The Death of General Wolfe* (1771)—was problematic in the United States from its beginnings, due in part to its European origins, association with

the monarchical tradition, and ongoing debate over the propriety of federal support for the arts. John Trumbull's well-documented struggles to win government patronage and public support for his Revolutionary War series also illustrate these challenges to establishing the Grand Manner history painting tradition in the United States.¹⁶

In 1857, Powell was commissioned to paint Perry's victory at Lake Erie for the Ohio statehouse. His contract stipulated “completion of the work within five years, at a cost of not more than \$5,000,” but the painting was not completed until early 1865.¹⁷ Although already overdue in Ohio, Powell exhibited it in the Rotunda of the U.S. Capitol in March of that year, in hopes of securing another congressional commission and renegotiating his original fee.¹⁸

Since the Joint Committee on the Library's description of the commission for the Senate's east staircase specified only a work “illustrative of some naval victory,” why was Lake Erie chosen over other historically important and strategically vital battles?¹⁹ For whatever reason—the recent presence of Ohio's *Perry's Victory* at the Capitol, the influence of Powell's advocates in Congress, the growing population and political clout of the western territories—and despite problematic aspects of Powell's *De Soto* commission, it appears to have been understood that he would repeat the subject of Perry's victory on the

larger scale appropriate to its intended location.²⁰ The passage below, quoted in a March 1873 speech delivered by Rep. James Stevenson of Ohio, and entered into the record of *The Congressional Globe*, offers further insight into the process:

The subject of the great national naval picture . . . was left to the Library Committee and the artist, and they decided upon the historical event of our early history, 'The Battle of Lake Erie.' Some of the members were in favor of illustrating one of the brilliant naval achievements of the (then) recent rebellion; but the common-sense view prevailed that as the picture was intended for the whole nation, no disturbing element should be perpetuated in it.²¹

Since the idea of a Civil War subject was deemed too politically charged for display in the Capitol in a period of national reconstruction, Perry's victory must have been viewed as an acceptable and readily-available alternative. While the version that hangs in the Capitol is larger in scale and accordingly expands the background scenery, it otherwise reproduces the original Ohio composition.

While adhering to the basic narrative of Perry's actions, the accuracy of the painting's details have been questioned by some. Writing in 1925, Prof. Charles Lewis of the U.S. Naval

Academy noted the absence of "Perry's motto-flag, bearing the words 'don't give up the ship.' The flag . . . [on Perry's shoulder] in the picture is not that flag, for it had no stars at all."²²

Lewis also questioned the number of figures in Perry's skiff, as well as the presence of his twelve-year-old brother Alexander. Contemporary sources list four or five oarsmen rather than six, and none mention the presence of a young boy. While Alexander Perry did serve as a midshipman on board the *Lawrence*, eyewitnesses recorded that when his older brother returned to the *Lawrence* to accept the British surrender, he asked for Alexander who, having run orders throughout the battle, was found "asleep in his berth, exhausted by the excitement of the day," and so could not have accompanied Perry to the *Niagara*.²³

Lewis's critique suggests a larger issue: the relationship between history painting and historical fact. In Powell's defense, one might argue that his intention was to construct an image that privileged the "spirit" of the event—its national meanings, the lessons it taught, and the hero it celebrated—rather than its details. In this regard, he followed the parameters of academic history painting established in the writings of the eighteenth-century British academician Sir Joshua Reynolds, as did his contemporary Emanuel Leutze, painter of *Washington Crossing the Delaware* (1851) and *Westward the Course of Empire Takes Its Way* (1861–62), the large-scale mural that



Fig. 9a. *Washington Crossing the Delaware*, Emanuel Leutze, 1851