

ISSUE 8

Were the Founding Fathers Democratic Reformers?

YES: John P. Roche, from "The Founding Fathers: A Reform Caucus in Action," *American Political Science Review* (December 1961)

NO: Michael Parenti, from *Democracy for the Few*, 5th ed. (St. Martin's Press, 1988)

ISSUE SUMMARY

YES: Political scientist John P. Roche believes that the Founding Fathers were not only revolutionaries but also superb democratic politicians who created a Constitution that supported the needs of the nation and at the same time was acceptable to the people.

NO: Political scientist Michael Parenti argues that the Constitution was framed by financially successful planters, merchants, and creditors in order to protect the rights of property rather than the rights and liberties of individuals.

The United States possesses the oldest written constitution of any major power. The 55 men who attended the Philadelphia Convention of 1787 could scarcely have dreamed that 200 years later the nation would venerate them as the most "enlightened statesmen" of their time. James Madison, the principal architect of the document, may have argued that the Founding Fathers had created a system that might "decide forever the fate of Republican Government which we wish to last for ages," but Madison also told Thomas Jefferson in October 1787 that he did not think the document would be adopted, and if it was, it would not work.

The enlightened statesmen view of the Founding Fathers, presented by nineteenth-century historians like John Fiske, became the accepted interpretation among the general public until the Progressive Era. In 1913 Columbia University professor Charles A. Beard's *An Economic Interpretation of the Constitution of the United States* (Free Press, 1913, 1986) caused a storm of controversy because it questioned the motivations of the Founding Fathers. The Founding Fathers supported the creation of a stronger central government, argued Beard, not for patriotic reasons but because they wanted to protect their own economic interests.

Beard's research method was fairly simple. Drawing upon a collection of old, previously unexamined treasury records in the National Archives, he discovered that a number of delegates to the Philadelphia Convention and, later, the state ratifying conventions, held substantial amounts of continental securities that would sharply increase in value if a strong national government were established. In addition to attributing economic motives to the Founding Fathers, Beard included a Marxist class conflict interpretation in his book. Those who supported the Constitution, he said, represented "personally interests which had been adversely affected under the Articles of Confederation: money, public securities, manufactures, and trade and shipping." Those who opposed ratification of the Constitution were the small farmers and debtors.

Beard's socioeconomic conflict interpretation of the supporters and opponents of the Constitution raised another issue: How was the Constitution ratified if the majority of Americans opposed it? Beard's answer was that most Americans could not vote because they did not own property. Therefore, the entire process, from the calling of the Philadelphia Convention to the state ratifying conventions, was nonrepresentative and nondemocratic.

An Economic Interpretation was a product of its times. Economists, sociologists, and political scientists had been analyzing the conflicts that resulted from the Industrial Revolution, which America had been experiencing at the turn of the twentieth century. Beard joined a group of progressive historians who were interested in reforming the society in which they lived and who also shared his discontent with the old-fashioned institutional approach. The role of the new historians was to rewrite history and discover the real reason why things happened. For the progressive historians, reality consisted of uncovering the hidden social and economic conflicts within society.

In the years between the world wars, the general public held steadfastly to the enlightened statesmen view of the Founding Fathers, but Beard's thesis on the Constitution became the new orthodoxy in most college texts on American history and government. The post-World War II period witnessed the emergence of the neoconservative historians, who viewed the Beardian approach to the Constitution as overly simplistic.

In the first selection, which is a good example of consensus history, John P. Roche presents a sophisticated version of the enlightened statesmen view of the Founding Fathers. The Founding Fathers may have been revolutionaries, says Roche, but they were also superb democratic politicians who framed a Constitution that supported the needs of the nation and at the same time was acceptable to the people. A good example of Beard's influence lasting into the 1980s can be found in the second selection, in which Michael Parenti argues that the Constitution is an elitist document that was framed by financially successful planters, merchants, and creditors in order to protect the rights of property over the rights and liberties of individuals.

THE FOUNDING FATHERS: A REFORM CAUCUS IN ACTION

The work of the Constitutional Convention and the motives of the Founding Fathers have been analyzed under a number of different ideological auspices. To one generation of historians, the hand of God was moving in the assembly; under a later dispensation, the dialectic (at various levels of philosophical sophistication) replaced the Deity: "relationships of production" moved into the niche previously reserved for Love of Country. . . . The Framers have undergone miraculous metamorphoses: at one time acclaimed as liberals and bold social engineers, today they appear in the guise of sound Burkean conservatives, men who in our time would subscribe to *Fortune*. . . .

The "Fathers" have thus been admitted to our best circles; the revolutionary ferocity which confiscated all Tory property in reach . . . has been converted . . . into a benign dedication to "consensus" and "prescriptive rights." . . . It is not my purpose here to argue that the "Fathers" were, in fact, radical revolutionaries; that proposition has been brilliantly demonstrated. . . . My concern is with the further position that not only were they revolutionaries, but also they were democrats. Indeed, in my view, there is one fundamental truth about the Founding Fathers . . . : They were first and foremost superb democratic politicians. . . . As recent research into the nature of American politics in the 1780s confirms, they were committed (perhaps willy-nilly) to working within the democratic framework, within a universe of public approval. . . . The Philadelphia Convention was not a College of Cardinals or a council of Platonic guardians working within a manipulative, pre-democratic framework; it was a nationalist reform caucus which had to operate with great delicacy and skill in a political cosmos full of enemies to achieve the one definitive goal—popular approbation. . . .

What they did was to hammer out a pragmatic compromise which would both bolster the "national interest" and be acceptable to the people. What inspiration they got came from their collective experience as professional politicians in a democratic society. As John Dickinson put it to his fellow

delegates on August 13, "Experience must be our guide. Reason may mislead us."

In this context, let us examine the problems they confronted and the solutions they evolved. The Convention has been described picturesquely as a counter-revolutionary junta and the Constitution as a coup d'état, but this has been accomplished by withdrawing the whole history of the movement for constitutional reform from its true context. No doubt the goals of the constitutional elite were "subversive" to the existing political order, but it is overlooked that their subversion could only have succeeded if the people of the United States endorsed it by regularized procedures. . . .

I

When the Constitutionalists went forth to subvert the Confederation, they utilized the mechanisms of political legitimacy. And the roadblocks which confronted them were formidable. At the same time, they were endowed with certain potent political assets. The history of the United States from 1786 to 1790 was largely one of a masterful employment of political expertise by the Constitutionalists as against bumbling, erratic behavior by the opponents of reform. Effectively, the Constitutionalists had to induce the states, by democratic techniques of coercion, to emasculate themselves. . . . And at the risk of becoming boring, it must be reiterated that the only weapon in the Constitutionalist arsenal was an effective mobilization of public opinion.

The group which undertook this struggle was an interesting amalgam of a few dedicated nationalists with the self-interested spokesmen of various parochial balliwicks. The Georgians, for example,

wanted a strong central authority to provide military protection for their huge, underpopulated state against the Creek Confederacy; Jerseymen and Connecticuturs wanted to escape from economic bondage to New York; the Virginians hoped to establish a system which would give that great state its rightful place in the councils of the republic. The dominant figures in the politics of these states therefore cooperated in the call for the Convention. In other states, the thrust towards national reform was taken up by opposition groups who added the "national interest" to their weapons system; in Pennsylvania, for instance, the group fighting to revise the Constitution of 1776 came out four-square behind the Constitutionalists, and in New York, [Alexander] Hamilton and the Schuyler [family] ambiance took the same tack against George Clinton. There was, of course, a large element of personality in the affair: there is reason to suspect that Patrick Henry's opposition to the Convention and the Constitution was founded on his conviction that Jefferson was behind both, and a close study of local politics elsewhere would surely reveal that others supported the Constitution for the simple (and politically quite sufficient) reason that the "wrong" people were against it. . . .

What distinguished the leaders of the Constitutionalist caucus from their enemies was a "Continental" approach to political, economic and military issues. To the extent that they shared an institutional base of operations, it was the Continental Congress (thirty-nine of the delegates to the Federal Convention has served in Congress), and this was hardly a locale which inspired respect for the state governments. . . . Membership in the Congress under the Articles of Con-

federation worked to establish a continental frame of reference, that a Congressman from Pennsylvania and one from North Carolina would share. . . . This was particularly true with respect to external affairs: the average state legislator was probably about as concerned with foreign policy than as he is today, but Congressmen were constantly forced to take the broad view of American prestige, were compelled to listen to the reports of Secretary John Jay and to the dispatches and pleas from their frustrated envoys in Britain, France and Spain. From considerations such as these, a "Continental" ideology developed which seems to have demanded a revision of our domestic institutions primarily on the ground that only by invigorating our general government could we assume our rightful place in the international arena. . . .

Note that I am not endorsing the "Critical Period" thesis; on the contrary, Merrill Jensen seems to me quite sound in his view that for most Americans, engaged as they were in self-sustaining agriculture, the "Critical Period" was not particularly critical. In fact, the great achievement of the Constitutionalists was their ultimate success in convincing the elected representatives of a majority of the white male population that change was imperative. A small group of political leaders with a Continental vision and essentially a consciousness of the United States' international impotence, provided the matrix of the movement. To their standard other leaders rallied with their own parallel ambitions. Their great assets were (1) the presence in their caucus of the one authentic American "father figure," George Washington, whose prestige was enormous; (2) the energy and talent of their leadership (in which one must include

the towering intellectuals of the time, John Adams and Thomas Jefferson, despite their absence abroad), and their communications "network," which was far superior to anything on the opposition side; (3) the preemptive skill which made "their" issue The Issue and kept the locally oriented opposition permanently on the defensive; and (4) the subjective consideration that these men were spokesmen of a new and compelling credo: American nationalism, that ill-defined but nonetheless potent sense of collective purpose that emerged from the American Revolution. . . .

The Constitutionalists got the jump on the "opposition" (a collective noun: oppositions would be more correct) at the outset with the demand for a Convention. Their opponents were caught in an old political trap: they were not being asked to approve any specific program of reform, but only to endorse a meeting to discuss and recommend needed reforms. If they took a hard line at the first stage, they were put in the position of glorifying the status quo and of denying the need for any changes. Moreover, the Constitutionalists could go to the people with a persuasive argument for "fair play"—"How can you condemn reform before you know precisely what is involved?" Since the state legislatures obviously would have the final say on any proposals that might emerge from the Convention, the Constitutionalists were merely reasonable men asking for a chance. Besides, since they did not make any concrete proposals at that stage, they were in a position to capitalize on every sort of generalized discontent with the Confederation.

Perhaps because of their poor intelligence system, perhaps because of overconfidence generated by the failure of all

previous efforts to alter the Articles, the opposition awoke too late to the dangers that confronted them in 1787. Not only did the Constitutionalists manage to get every state but Rhode Island . . . to appoint delegates to Philadelphia, but when the results were in, it appeared that they dominated the delegations. Given the apathy of the opposition, this was a natural phenomenon: in an ideologically nonpolarized political atmosphere those who get appointed to a special committee are likely to be the men who supported the movement for its creation. . . . Much has been made of the fact that the delegates to Philadelphia were not elected by the people; some have adduced this fact as evidence of the "undemocratic" character of the gathering. But put in the context of the time, this argument is wholly specious: the central government under the Articles was considered a creature of the component states and in all the states but Rhode Island, Connecticut and New Hampshire, members of the national Congress were chosen by the state legislatures. This was not a consequence of elitism or fear of the mob; it was a logical extension of states' rights doctrine to guarantee that the national institution did not end-run the state legislatures and make direct contact with the people.

II

With delegations safely named, the focus shifted to Philadelphia. While waiting for a quorum to assemble, James Madison got busy and drafted the so-called Randolph or Virginia Plan with the aid of the Virginia delegation. This was a political master-stroke. Its consequence was that once business got under way, the framework of discussion was established

on Madison's terms. There was no interminable argument over agenda; instead the delegates took the Virginia Resolution—"just for purposes of discussion"—as their point of departure. And along with Madison's proposals, many of which were buried in the course of the summer, went his major premise: a new start on a Constitution rather than piecemeal amendment. . . .

Standard treatments of the Convention divide the delegates into "nationalists" and "states'-rights" with various improvised shadings ("moderate nationalists," etc.), but these are a posteriori categories which obfuscate more than they clarify. What is striking to one who analyzes the Convention as a case-study in democratic politics is the lack of clear-cut ideological divisions in the Convention. Indeed, I submit that the evidence—Madison's Notes, the correspondence of the delegates, and debates on ratification—indicates that this was a remarkably homogeneous body on the ideological level. [Robert] Yates and [John] Lansing [of New York], who favored the New Jersey Plan . . . left in disgust on July 10. . . . Luther Martin, Maryland's bibulous narcissist, left on September 4 in a huff when he discovered that others did not share his self-esteem; others went home for personal reasons. But the hard core of delegates accepted a grinding regimen throughout the attrition of a Philadelphia summer precisely because they shared the Constitutionalist goal.

Basic differences of opinion emerged, of course, but these were not ideological; they were structural. If the so-called "states'-rights" group had not accepted the fundamental purposes of the Convention, they could simply have pulled out and by doing so have aborted the whole enterprise. Instead of bolting, they

returned day after day to argue and to compromise. An interesting symbol of this basic homogeneity was the initial agreement on secrecy: these professional politicians did not want to become prisoners of publicity; they wanted to retain that freedom of maneuver which is only possible when men are not forced to take public stands in the preliminary stages of negotiation. There was no legal means of binding the tongues of the delegates: at any stage in the game a delegate with basic principled objections to the emerging project could have taken the stump (as Luther Martin did after his exit) and denounced the convention to the skies. Yet . . . the delegates generally observed the injunction. Secrecy is certainly uncharacteristic of any assembly marked by strong ideological polarization. . . .

Commentators on the Constitution who have read *The Federalist* in lieu of reading the actual debates have credited the Fathers with the invention of a sublime concept called "Federalism." . . . Federalism, as the theory is generally defined, was an improvisation which was later promoted into a political theory. Experts on "federalism" should take to heart the advice of David Hume, who warned . . . "there is no subject in which we must proceed with more caution than in [history], lest we assign causes which never existed and reduce what is merely contingent to stable and universal principles." In any event, the final balance in the Constitution between the states and the nation must have come as a great disappointment to Madison. . . .

It is indeed astonishing how those who have glibly designated James Madison the "father" of Federalism have overlooked the solid body of fact which indicates that he shared Hamilton's quest for a unitary central government. To be

specific, they have avoided examining the clear import of the Madison-Virginia Plan, and have disregarded Madison's dogged inch-by-inch retreat from the bastions of centralization. The Virginia Plan envisioned a unitary national government effectively freed from and dominant over the states. The lower house of the national legislature was to be elected directly by the people of the states with membership proportional to population. The upper house was to be selected by the lower and the two chambers would elect the executive and choose the judges. The national legislature was to be empowered to disallow the acts of state legislatures, and the central government was vested, in addition to the powers of the nation under which the Articles of Confederation, with plenary authority wherever . . . the separate States are incompetent or in which the harmony of the United States may be interrupted by the exercise of individual legislation." Finally, just to lock the door against state intrusion, the national Congress was to be given the power to use military force on recalcitrant states. This was Madison's "model" of an ideal national government, though it later received little publicity in *The Federalist*.

The interesting thing was the reaction of the Convention to this militant program for a strong autonomous central government. Some delegates were startled, some obviously leery of so comprehensive a project of reform, but nobody set off any fireworks and nobody walked out. Moreover, in the two weeks that followed, the Virginia Plan received substantial endorsement *en principe*; the initial temper of the gathering can be deduced from the approval "without debate or dissent," on May 31, of the Sixth Resolution which granted Congress the

authority to disallow state legislation " . . . contravening in its opinion the Articles of Union." Indeed, an amendment was included to bar states from contravening national treaties.

The Virginia Plan may therefore be considered, in ideological terms, as the delegates' Utopia, but as the discussions continued and became more specific, many of those present began to have second thoughts. . . . They were practical politicians in a democratic society, and no matter what their private dreams might be, they had to take home an acceptable package and defend it—and their own political futures—against predictable attack. On June 14 the breaking point between dream and reality took place. Apparently realizing that under the Virginia Plan, Massachusetts, Virginia and Pennsylvania could virtually dominate the national government—and probably appreciating that to sell this program to "the folks back home" would be impossible—the delegates from the small states dug in their heels and demanded time for a consideration of alternatives. . . .

Now the process of accommodation was put into action smoothly—and wisely, given the character and strength of the doubters. Madison had the votes, but this was one of those situations where the enforcement of mechanical majoritarianism could easily have destroyed the objectives of the majority: the Constitutionalists were in quest of a qualitative as well as a quantitative consensus; . . . it was a political imperative if they were to attain ratification.

III

According to the standard script, at this point the "states'-rights" group inter-

vened in force behind the New Jersey Plan, which has been characteristically portrayed as a revision to the status quo under the Articles of Confederation with but minor modifications. A careful examination of the evidence indicates that only in a marginal sense is this an accurate description. It is true that the New Jersey Plan put the states back into the institutional picture, but one could argue that to do so was a recognition of political reality rather than an affirmation of states'-rights. A serious case can be made that the advocates of the New Jersey Plan, far from being ideological addicts of states'-rights, intended to substitute for the Virginia Plan a system which would both retain strong national power and have a chance of adoption in the states. The leading spokesman for the project asserted quite clearly that his views were based more on counsels of expediency than on principle. . . . In his preliminary speech on June 9, Paterson had stated " . . . to the public mind we must accommodate ourselves," and in his notes for this and his later effort as well, the emphasis is the same. The structure of government under the Articles should be retained:

2. Because it accords with the Sentiments of the People
[Proof:] 1. Coms. [Commissions from state legislatures defining the jurisdiction of the delegates]
2. News-papers—Political Barometer. Jersey never would have sent Delegates under the first [Virginia] Plan—

Not here to sport Opinions of my own. Wt. [What] can be done. A little practicable Virtue preferable to Theory.

This was a defense of political acumen, not of states'-rights. . . .

In other words, the advocates of the New Jersey Plan concentrated their fire on what they held to be the political liabilities of the Virginia Plan—which were matters of institutional structure—rather than on the proposed scope of national authority. Indeed, the Supremacy Clause of the Constitution first saw the light of day in Paterson's Sixth Resolution; the New Jersey Plan contemplated the use of military force to secure compliance with national law; and finally Paterson made clear his view that under either the Virginia or the New Jersey systems, the general government would . . . act on individuals and not on states." From the states'-rights viewpoint, this was heresy: the fundament of that doctrine was the proposition that any central government had as its constituents the states, not the people, and could only reach the people through the agency of the state government.

Paterson then reopened the agenda of the Convention, but he did so within a distinctly naturalist framework. Paterson's position was one of favoring a strong central government in principle, but opposing one which in fact put the big states in the saddle.

How attached would the Virginians have been to their reform principles if Virginia were to disappear as a component geographical unit (the largest) for representational purposes? Up to this point, the Virginians had been in the happy position of supporting high ideals with that inner confidence born of knowledge that the "public interest" they endorsed would nourish their private interest. Worse, they had shown little willingness to compromise. Now the delegates from the small states announced

that they were unprepared to be offered up as sacrificial victims to a "national interest" which reflected Virginia's parochial ambition. Caustic Charles Pinckney was not far off when he remarked satirically that " . . . the whole [conflict] comes to this": Give N. Jersey an equal vote, and she will dismiss her scruples, and concur in the Natl. system." What he rather unfairly did not add was that the Jersey delegates were not free agents who could adhere to their private convictions; they had to take back, sponsor and risk their reputations on the reforms approved by the Convention—and in New Jersey, not in Virginia. . . .

IV

On Tuesday morning, June 19, . . . James Madison led off with a long, carefully reasoned speech analyzing the New Jersey Plan which, while intellectually vigorous in its criticisms, was quite conciliatory in mood. "The great difficulty," he observed, "lies in the affair of Representation; and if this could be adjusted, all others would be surmountable." (As events were to demonstrate, this diagnosis was correct.) When he finished, a vote was taken on whether to continue with the Virginia Plan as the nucleus for a new constitution: seven states voted "Yes"; New York, New Jersey, and Delaware voted "No"; and Maryland, whose position often depended on which delegates happened to be on the floor, divided. Paterson, it seems, lost decisively; yet in a fundamental sense he and his allies had achieved their purpose: from that day onward, it could never be forgotten that the state governments loomed ominously in the background. . . . Moreover, nobody bolted the convention: Paterson and his colleagues took

their defeat in stride and set to work to modify the Virginia Plan, particularly with respect to its provisions on representation in the national legislature. Indeed, they won an immediate rhetorical bonus; when Oliver Ellsworth of Connecticut rose to move that the word "national" be expunged from the Third Virginia Resolution ("Resolved that a national Government ought to be established consisting of a supreme Legislative, Executive and Judiciary"), Randolph agreed and the motion passed unanimously. The process of compromise had begun.

For the next two weeks, the delegates circled around the problem of legislative representation. The Connecticut delegation appears to have evolved a possible compromise quite early in the debates, but the Virginians and particularly Madison (unaware that he would later be acclaimed as the prophet of "federalism") fought obdurately against providing for equal representation of states in the second chamber. . . . On July 2, the ice began to break when through a number of fortuitous events—and one that seems deliberate—the majority against equality of representation was converted into a dead tie. The Convention had reached the stage where it was "ripe" for a solution (presumably all the therapeutic speeches had been made), and the South Carolinians proposed a committee. Madison and James Wilson wanted none of it, but with only Pennsylvania dissenting, the body voted to establish a working party on the problem of representation.

The members of this committee, one from each state, were elected by the delegates—and a very interesting committee it was. Despite the fact that the Virginia Plan had held majority support up to that date, neither Madison nor Randolph

was selected (Mason was the Virginian) and Baldwin of Georgia, whose shift in position had resulted in the tie, was chosen. From the composition, it was clear that this was not to be a "fighting" committee: the emphasis in membership was on what might be described as "second-level political entrepreneurs." On the basis of the discussions up to that time, only Luther Martin of Maryland could be described as a "bitter-end." Admittedly, some divination enters into this sort of analysis, but one does get a sense of the mood of the delegates from these choices—including the interesting selection of Benjamin Franklin, despite his age and intellectual wobbliness, over the brilliant and incisive Wilson or the sharp, polemical Gouverneur Morris, to represent Pennsylvania. His passion for conciliation was more valuable at this juncture than Wilson's logical genius, or Morris' acerbic wit. . . .

It would be tedious to continue a blow-by-blow analysis of the work of the delegates; the critical fight was over representation of the states and once the Connecticut Compromise was adopted on July 17, the Convention was over the hump. Madison, James Wilson, and Gouverneur Morris of New York (who was there representing Pennsylvania!) fought the compromise all the way in a last-ditch effort to get a unitary state with parliamentary supremacy. But their allies deserted them. . . . Moreover, once the compromise had carried (by five states to four, with one state divided), its advocates threw themselves vigorously into the job of strengthening the general government's substantive powers—as might have been predicted, indeed, from Paterson's early statements. It nourishes an increased respect for Madison's devotion to the art of politics, to realize that this

dogged fighter could sit down six months later and prepare essays for *The Federalist* in contradiction to his basic convictions about the true course the Convention should have taken.

V

Two tricky issues will serve to illustrate the later process of accommodation. The first was the institutional position of the Executive. Madison argued for an executive chosen by the National Legislature and on May 29 this had been adopted with a provision that after his seven-year term was concluded, the chief magistrate should not be eligible for reelection. In late July this was reopened and for a week the matter was argued from several different points of view. . . . One group felt that the states should have a hand in the process; another small but influential circle urged direct election by the people. There were a number of proposals: election by the people, election by state governors, by electors chosen by state legislatures, by the National Legislature, . . . and there was some resemblance to three-dimensional chess in the dispute because of the presence of two other variables, length of tenure and reeligibility. Finally, after opening, reopening, and re-reopening the debate, the thorny problem was consigned to a committee for resolution.

The Brearley Committee on Postponed Matters was a superb aggregation of talent and its compromise on the Executive was a masterpiece of political improvisation. (The Electoral College, its creation, however, had little in its favor as an institution—as the delegates well appreciated.) The point of departure for all discussion about the presidency in the Convention was that in immediate terms,

be made in the House nineteen times in twenty and no one seriously disputed this point. The vital aspect of the Electoral College was that it got the Convention over the hurdle and protected everybody's interests. . . .

In short, the Framers did not in their wisdom endow the United States with a College of Cardinals—the Electoral College was neither an exercise in applied Platonism nor an experiment in indirect government based on elitist distrust of the masses. It was merely a jerry-rigged improvisation which has subsequently been endowed with a high theoretical content. . . .

The second issue on which some substantial practical bargaining took place was slavery. The morality of slavery was, by design, not at issue; but in its other concrete aspects, slavery colored the arguments over taxation, commerce, and representation. The "Three-Fifths Compromise," that three-fifths of the slaves would be counted both for representation and for purposes of direct taxation (which was drawn from the past—it was a formula of Madison's utilized by Congress in 1783 to establish the basis of state contributions to the Confederation treasury) had allayed some Northern fears about Southern over-representation. . . .

The Southerners, on the other hand, were afraid that Congressional control over commerce would lead to the exclusion of slaves or to their excessive taxation as imports. Moreover, the Southerners were disturbed over "navigation acts," i.e., tariffs or special legislation providing, for example, that exports be carried only in American ships; as a section depending upon exports, they wanted protection from the potential voracity of their commercial brethren of the Eastern states. To achieve this end, Mason and others urged that

the Constitution include a proviso that navigation and commercial laws should require a two-thirds vote in Congress.

These problems came to a head in late August and, as usual were handed to a committee in the hope that, in Gouverneur Morris' words, " . . . these things may form a bargain among the Northern and Southern states." The Committee reported its measures of reconciliation on August 25, and on August 29 the package was wrapped up and delivered. What occurred can best be described in George Mason's dour version (he anticipated Calhoun in his conviction that permitting navigation acts to pass by majority vote would put the South in economic bondage to the North—it was mainly on this ground that he refused to sign the Constitution):

The Constitution as agreed to till a fortnight before the Convention rose was such a one as he would have set his hand and heart to. . . . [Until that time] The 3 New England States were constantly with us in all questions . . . so that it was these three States with the 5 Southern ones against Pennsylvania, Jersey and Delaware. With respect to the importation of slaves, [decision-making] was left to Congress. This disturbed the two Southernmost States who knew that Congress would immediately suppress the importation of slaves. Those two States therefore struck up a bargain with the three New England States. If they would join to admit slaves for some years, the two Southernmost States would join in changing the clause which required the $\frac{2}{3}$ of the Legislature in any vote [on navigation acts]. It was done.

On the floor of the Convention there was a virtual love-feast on this happy occasion. Charles Pinckney of South Carolina attempted to overturn the com-

mittee's decision, when the compromise was reported to the Convention, by insisting that the South needed protection from the imperialism of the Northern states. But his Southern colleagues were not prepared to rock the boat and General C. C. Pinckney arose to spread oil on the suddenly ruffled waters; he admitted that:

It was in the true interest of the [Southern] States to have no regulation of commerce; but considering the loss brought on the commerce of the Eastern States by the Revolution, their liberal conduct towards the views of South Carolina [on the regulation of the slave trade] and the interests the weak Southern States had in being united with the strong Eastern states, he thought it proper that no fetters should be imposed on the power of making commercial regulations; and that his constituents, though prejudiced against the Eastern States, would be reconciled to this liberality. He had himself prejudices against the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

Pierce Butler took the same tack, essentially arguing that he was not too happy about the possible consequences, but that a deal was a deal. . . .

VI

Drawing on their vast collective political experience, utilizing every weapon in the politician's arsenal, looking constantly over their shoulders at their constituents, the delegates put together a Constitution. It was a makeshift affair; some sticky issues (for example, the qualification of voters) they ducked entirely; others they mastered with that ancient instrument of political sagacity, studied

ambiguity (for example, citizenship), and some they just overlooked. In this last category, I suspect, fell the matter of the power of the federal courts to determine the constitutionality of acts of Congress. When the judicial article was formulated (Article III of the Constitution), deliberations were still in the stage where the legislature was endowed with broad power under the Randolph formulation, authority which by its own terms was scarcely amenable to judicial review. In essence, courts could hardly determine when " . . . the separate States are incompetent or . . . the harmony of the United States may be interrupted"; the National Legislature, as critics pointed out, was free to define its own jurisdiction. Later the definition of legislative authority was changed into the form we know, a series of stipulated powers, but the delegates never seriously reexamined the jurisdiction of the judiciary under this new limited formulation. All arguments on the intention of the Framers in this matter are thus deductive and a posteriori, though some obviously make more sense than others.

The Framers were busy and distinguished men, anxious to get back to their families, their positions, and their constituents. . . . They were trying to do an important job, and do it in such a fashion that their handiwork would be acceptable to very diverse constituencies. No one was rhapsodic about the final document, but it was a beginning, a move in the right direction, and one they had reason to believe the people would endorse. In addition, since they had modified the impossible amendment provisions of the Articles . . . to one demanding approval by only three-quarters of the states, they seemed confident that gaps in the fabric which experience would

reveal could be rewoven without undue difficulty.

So with a neat phrase introduced by Benjamin Franklin (but devised by Gouverneur Morris) which made their decision sound unanimous, and an inspired benediction by the Old Doctor urging doubters to doubt their own infallibility, the Constitution was accepted and signed. Curiously, Edmund Randolph, who had played so vital a role throughout, refused to sign, as did his fellow Virginian George Mason and Elbridge Gerry of Massachusetts. Randolph's behavior was eccentric; . . . the best explanation seems to be that he was afraid that the Constitution would prove to be a liability in Virginia politics, where Patrick Henry was burning up the countryside with impassioned denunciations. Presumably, Randolph wanted to check the temper of the populace before he risked his reputation, and perhaps his job, in a fight with both Henry and Richard Henry Lee. Events lend some justification to this speculation: after much temporizing . . . Randolph endorsed ratification in Virginia and ended up getting the best of both worlds. . . .

The Constitution, then, was an apotheosis of "constitutionalism," a triumph of architectonic genius; it was a patchwork sewn together under the pressure of both time and events by a group of extremely talented democratic politicians. They refused to attempt the establishment of a strong, centralized sovereignty on the principle of legislative supremacy for the excellent reason that the people would not accept it. They risked their political fortunes by opposing the established doctrines of state sovereignty because they were convinced that the existing system was leading to national impotence and probably foreign domination. For two

years, they worked to get a convention established. For over three months, in what must have seemed to the faithful participants an endless process of give-and-take, they reasoned, cajoled, threatened, and bargained amongst themselves. The result was a Constitution which the people, in fact, by democratic processes, did accept, and a new and far better national government was established. . . .

To conclude, the Constitution was neither a victory for abstract theory nor a great practical success. Well over half a million men had to die on the battlefields of the Civil War before certain constitutional principles could be defined—a baleful consideration which is somehow overlooked in our customary tributes to the farsighted genius of the Framers and to the supposed American talent for "constitutionalism." The Constitution was, however, a vivid demonstration of effective democratic political action, and of the forging of a national elite which literally persuaded its countrymen to hoist themselves by their own boot straps.

A CONSTITUTION FOR THE FEW

To help us understand the American political system, let us investigate its origins and its formal structure, the rules under which it operates, and the interests it represents, beginning with the Constitution and the men who wrote it. Why was a central government and a Constitution created? By whom? And for what purposes?

It is commonly taught that in the eighteenth and nineteenth centuries men of property preferred a *laissez-faire* government, one that kept its activities to a minimum. In actuality, while they wanted government to leave them free in all matters of trade and commerce, not for a moment did they desire a weak, inactive government. Rather, they strove to erect a civil authority that worked *for* rather than against the interests of wealth, and they frequently advocated an extension rather than a diminution of state power. They readily agreed with Adam Smith, who said that government was "instituted for the defense of the rich against the poor" and "grows up with the acquisition of valuable property."

CLASS POWER AND CONFLICT IN EARLY AMERICA

During the period between the Revolution and the Constitutional Convention, the "rich and the wellborn" played a dominant role in public affairs.

Their power was born of place, position, and fortune. They were located at or near the seats of government and they were in direct contact with legislatures and government officers. They influenced and often dominated the local newspapers which voiced the ideas and interests of commerce and identified them with the good of the whole people, the state, and the nation. The published writings of the leaders of the period are almost without exception those of merchants, of their lawyers, or of politicians sympathetic with them.

The United States of 1787 has been described as an "egalitarian" society free from the extremes of want and wealth that characterized the Old World, but there were landed estates and colonial mansions that bespoke an

impressive munificence. From the earliest English settlements, men of influence had received vast land grants from the crown. By 1700, three-fourths of the acreage in New York belonged to fewer than a dozen persons. In the interior of Virginia, seven persons owned a total of 1,732,000 acres. By 1760, fewer than 500 men in five colonial cities controlled most of the commerce, banking, mining, and manufacturing on the eastern seaboard and owned much of the land.

As of 1787, property qualifications left perhaps more than a third of the White male population disfranchised. Property qualifications for holding office were so steep as to prevent most voters from qualifying as candidates. Thus, a member of the New Jersey legislature had to be worth at least 1,000 pounds, while state senators in South Carolina were required to possess estates worth at least 7,000 pounds, clear of debt. In addition, the practice of oral voting, rather than use of a secret ballot, and an "absence of a real choice among candidates and programs" led to "widespread apathy." As a result, men of substance monopolized the important offices. Not long before the Constitutional Convention, the French *chargé d'affaires* wrote to his Foreign Minister:

Although there are no nobles in America, there is a class of men denominated "gentlemen." . . . Almost all of them dread the efforts of the people to despoil them of their possessions, and, moreover, they are creditors, and therefore interested in strengthening the government, and watching over the execution of the law. . . . The majority of them being merchants, it is for their interest to establish the credit of the United States in Europe on a solid foundation by the exact payment of debts,

and to grant to Congress powers extensive enough to compel the people to contribute for this purpose.

The Constitution was framed by financially successful planters, merchants, and creditors, many linked by kinship and marriage and by years of service in Congress, the military, or diplomatic service. They congregated in Philadelphia in 1787 for the professed purpose of revising the Articles of Confederation and strengthening the powers of the central government. They were aware of the weaknesses of the United States in its commercial and diplomatic dealings with other nations. There were also problems among the thirteen states involving trade, customs duties, and currency differences, but these have been exaggerated and in fact, some reforms were being instituted under the Articles.

Most troublesome to the framers of the Constitution was the increasingly insurgent spirit evidenced among the people. Fearing the popular takeover of state governments, the wealthy class looked to a national government as a means of protecting their interests. Even in states where they were inclined to avoid strong federation, the rich, once faced with the threat of popular rule "and realizing that a political alliance with conservatives from other states would be a safeguard if the radicals should capture the state government . . . gave up 'state rights' for 'nationalism' without hesitation."

The nationalist conviction that arose so swiftly among men of wealth during the 1780s was not the product of inspiration; it was not a "dream of nation-building" that suddenly possessed them. (If so, they kept it a secret in their public and private communications.) Rather, their newly acquired nationalism was a practical response to material conditions af-

fecting them in a most immediate way. Their like-minded commitment to federalism was born of a common class interest that transcended state boundaries.

The populace of that day has been portrayed as irresponsible and parochial spendthrifts who never paid their debts and who believed in nothing more than timid state governments and inflated paper money. Most scholars say little about the actual plight of the common people, the great bulk of whom lived at a subsistence level. Most of the agrarian population consisted of poor freeholders, tenants, and indentured hands (the latter lived in conditions of servitude). Small farmers were burdened by heavy rents, ruinous taxes, and low incomes. To survive, they frequently had to borrow money at high interest rates. To meet their debts, they mortgaged their future crops and went still deeper into debt. Large numbers were caught in that cycle of rural indebtedness which is today still the common fate of agrarian peoples in many countries.

Throughout this period, newspapers complained of the "increasing numbers of young beggars in the streets." Economic prisoners crowded the jails. In 1786, one county jail in Massachusetts held eighty-eight persons of whom eighty-four were incarcerated for debts or nonpayment of taxes. Among the people there grew the feeling that the revolution against the English crown had been fought for naught. Angry armed crowds in several states began blocking foreclosures and forcibly freeing debtors from jail. Disorders of a violent but organized kind occurred in a number of states. In the winter of 1787, debtor farmers in western Massachusetts led by Daniel Shays took up arms. But their rebellion was forcibly put down by the state militia

after several skirmishes that left eleven men dead and scores wounded.

CONTAINING THE SPREAD OF DEMOCRACY

The specter of Shays' Rebellion hovered over the delegates who gathered in Philadelphia three months later, confirming their worst fears. They were determined that persons of birth and fortune should control the affairs of the nation and check the "leveling impulses" of the propertyless multitude that composed "the majority faction." "To secure the public good and private rights against the danger of such a faction," wrote James Madison in *Federalist* No. 10, "and at the same time preserve the spirit and form of popular government is then the great object to which our inquiries are directed." Here Madison touched the heart of the matter: how to keep the *spirit* and *form* of popular government with only a minimum of the *substance*; how to construct a government that would win some popular support but would not tamper with the existing class structure, a government strong enough to service the growing needs of an entrepreneurial class while withstanding the democratic egalitarian demands of the popular class.

The framers of the Constitution could agree with Madison when he wrote in the same *Federalist* No. 10 that "the most common and durable source of faction has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society" and "the first object of government" is "the protection of different and unequal faculties of acquiring property." The

framers were of the opinion that democracy was "the worst of all political evils," as Elbridge Gerry put it. Both he and Madison warned of "the danger of the leveling spirit." "The people," said Roger Sherman, "should have as little to do as may be about the Government." And according to Alexander Hamilton, "All communities divide themselves into the few and the many. The first are the rich and the well-born, the other the mass of the people. . . . The people are turbulent and changing; they seldom judge or determine right."

The delegates spent many weeks debating their interests, but these were the differences of merchants, slave owners, and manufacturers, a debate of haves versus have-nots in which each group sought safeguards within the new Constitution for its particular concerns. Added to this were disagreements about how best to achieve agreed-upon ends. Questions of structure and authority occupied a good deal of the delegates' time: How much representation should the large and small states have? How might the legislature be organized? How should the executive be selected? What length of tenure should exist for the different officeholders? Yet questions of enormous significance, relating to the new government's ability to protect the interests of property, were agreed upon with surprisingly little debate. On these issues, there were no dirt farmers or poor artisans attending the convention to proffer an opposing viewpoint. The debate between haves and have-nots never occurred. Thus Article I, Section 8 of the Constitution, which gives the federal government the power to support commerce and protect the interests of property, was adopted within a few days with little debate. It empowered Congress to:

1. Regulate commerce among the states and with foreign nations and Indian tribes
 2. Lay and collect taxes and impose duties and tariffs on imports but not on commercial exports
 3. Establish a national currency and regulate its value
 4. "Borrow Money on the credit of the United States"—a measure of special interest to creditors
 5. Fix the standard of weights and measures necessary for trade
 6. Protect the value of securities and currency against counterfeiting
 7. Establish "uniform Laws on the subject of Bankruptcies throughout the United States"
 8. "Pay the Debts and provide for the common Defence and general Welfare of the United States"
- Congress was limited to powers specifically delegated to it by the Constitution or implied as "necessary and proper" for the performance of the delegated powers. Over the years, under this "implied power" clause, federal intervention in the private economy grew to an extraordinary magnitude.

Some of the delegates were land speculators who expressed a concern about western holdings. Accordingly, Congress was given the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Some delegates speculated in highly inflated and nearly worthless Confederate securities. Under Article VI, all debts incurred by the Confederation were valid against the new government, a provision that allowed speculators to make enormous profits when their securities, bought for a trifle, were honored at face value.

By assuming this debt, the federal government—under the policies of the first Secretary of the Treasury, Alexander Hamilton—"monetarized" the economy, using the public treasury to create a vast amount of credit for a propertied class that could then invest further in commerce and industry. The eventual payment of this assumed debt would come out of the pockets of the general public. In effect, the government helped greatly to finance the early process of capital accumulation. In assuming the debt, Hamilton was using the federal power to bolster not only the special interests of speculators and creditors but also the overall interest of an emerging capitalist class.

In the interest of merchants and creditors, the states were prohibited from issuing paper money or imposing duties on imports and exports or interfering with the payment of debts by passing any "Law impairing the Obligation of Contracts." The Constitution guaranteed "Full Faith and Credit" in each state "to the Acts, Records, and judicial Proceedings" of other states, thus allowing creditors to pursue their debtors across state lines.

Slavery—another form of property—was afforded special accommodation in the Constitution. Three-fifths of the slave population in each state were to be counted when calculating representation in the lower house. The importation of slaves was given constitutional protection for another twenty years. And slaves who escaped from one state to another had to be delivered up to the original owner upon claim, a provision that was unanimously adopted at the Convention.

The framers believed the states acted with insufficient force against popular

uprisings, so Congress was given the task of "organizing, arming, and disciplining the Militia" and calling it forth, among other reasons, to "suppress Insurrections." The federal government was empowered to protect the states "against domestic Violence." Provision was made for "the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings" and for the maintenance of an army and navy for both national defense and to establish an armed federal presence within the potentially insurrectionary states—a provision that was to prove a godsend to the industrial barons a century later when the army was used repeatedly to break strikes by miners and railroad and factory workers.

In keeping with their desire to contain the majority, the founders inserted "auxiliary precautions" designed to *fragment power without democratizing it*. By separating the executive, legislative, and judicial functions and then providing a system of checks and balances among the various branches, including staggered elections, executive veto, Senate confirmation of appointments and ratification of treaties, and a bicameral legislature, they hoped to dilute the impact of popular sentiments. They contrived an elaborate and difficult process for amending the Constitution, requiring proposal by two-thirds of both the Senate and the House, and ratification by three-fourths of the state legislatures. (Such strictures operate with anti-majoritarian effect to this day. Thus, although national polls show a substantial majority of Americans supports the Equal Rights Amendment, the proposal failed to make its way through the constitutional labyrinth.) To the extent that it existed at all, the majoritarian principle was tightly locked into a system

of minority vetoes, making swift and sweeping popular action less likely.

The propertyless majority, as Madison pointed out in *Federalist* No. 10, must not be allowed to concert in common cause against the established social order. First, it was necessary to prevent a unity of public sentiment by enlarging the polity and then compartmentalizing it into geographically insulated political communities. The larger the nation, the greater the "variety of parties and interests" and the more difficult it would be for a majority to find itself and act in unison. As Madison argued, "A rage for paper money, for an abolition of debts, for an equal division of property, or for any other wicked project will be less apt to pervade the whole body of the Union than a particular member of it." An uprising of impoverished farmers may threaten Massachusetts at one time and Rhode Island at another, but a national government will be large and varied enough to contain each of these and insulate the rest of the nation from the contamination of rebellion.

Second, not only must the majority be prevented from finding horizontal cohesion, but its vertical force—that is, its upward thrust upon government—should be blunted by interjecting indirect forms of representation. Thus, senators from each state were to be elected by their respective state legislatures. The chief executive was to be selected by an electoral college voted by the people but, as anticipated by the framers, composed of political leaders and men of substance who would gather in their various states and choose a president of their own liking. It was believed that they would usually be unable to muster a majority for any one candidate, and that the final selection would be left to the House,

with each state delegation therein having only one vote. The Supreme Court was to be elected by no one, its justices being appointed to life tenure by the president and confirmed by the Senate. In time, of course, the electoral college proved to be something of a rubber stamp, and the Seventeenth Amendment, adopted in 1913, provided for popular election of the Senate—demonstrating that the Constitution is modifiable in democratic directions, but only with great difficulty.

The only portion of government directly elected by the people was the House of Representatives. Many of the delegates would have preferred excluding the public entirely from direct representation: John Mercer observed that he found nothing in the proposed Constitution more objectionable than "the mode of election by the people. The people cannot know and judge of the characters of Candidates. The worst possible choice will be made." Others were concerned that demagogues would ride into office on a populist tide only to pillage the treasury and wreak havoc on all. "The time is not distant," warned Gouverneur Morris, "when this Country will abound with mechanics [artisans] and manufacturers [industrial workers] who will receive their bread from their employers. Will such men be the secure and faithful Guardians of liberty? . . . Children do not vote. Why? Because they want prudence, because they have no will of their own. The ignorant and dependent can be as little trusted with the public interest."

When the delegates finally agreed to having "the people" elect the lower house, they were referring to a select portion of the population. Property qualifications disfranchised the poorest White males in various states. Half the adult population was denied suffrage be-

cause they were women. American Indians had no access to the ballot. About one-fourth, both men and women, had no vote because they were held in bondage, and even of the Blacks who had gained their legal freedom, in both the North and the South, none was allowed to vote until the passage of the Fourteenth Amendment, after the Civil War.

PLOTTERS OR PATRIOTS?

The question of whether the framers of the Constitution were motivated by financial or national interest has been debated ever since Charles Beard published *An Economic Interpretation of the Constitution* in 1913. Beard believed that the "founding fathers" were guided by their class interests. Arguing against Beard are those who say that the framers were concerned with higher things than just lining their purses. True, they were moneyed men who profited directly from policies initiated under the new Constitution, but they were motivated by a concern for nation building that went beyond their particular class interests, the argument goes. To paraphrase Justice Holmes, these men invested their belief to make a nation; they did not make a nation because they had invested. "High-mindedness is not impossible to man," Holmes reminds us.

That is exactly the point: high-mindedness is a common attribute among people even when, or especially when, they are pursuing their personal and class interests. The fallacy is to presume that there is a dichotomy between the desire to build a strong nation and the desire to protect wealth and that the framers could not have been motivated by both. In fact, like most other people, they be-

lieved that what was good for themselves was ultimately good for the entire society. Their universal values and their class interests went hand in hand, and to discover the existence of the "higher" sentiment does not eliminate the self-interested one.

Most persons believe in their own virtue. The founders never doubted the nobility of their effort and its importance for the generations to come. Just as many of them could feel dedicated to the principle of "liberty for all" and at the same time own slaves, so could they serve both their nation and their estates. The point is not that they were devoid of the grander sentiments of nation building but that *there was nothing in their concept of nation that worked against their class interest and a great deal that worked for it.*

People tend to perceive issues in accordance with the position they occupy in the social structure; that position is largely—although not exclusively—determined by their class status. Even if we deny that the framers were motivated by the desire for personal gain that moves others, we cannot dismiss the existence of their class interest. They may not have been solely concerned with getting their own hands in the till, although enough of them did, but they were admittedly preoccupied with defending the wealthy few from the laboring many—for the ultimate benefit of all, as they understood it. "The Constitution," as Staughton Lynd noted, "was the settlement of a revolution. What was at stake for Hamilton, Livingston, and their opponents, was more than speculative windfalls in securities; it was the question, what kind of society would emerge from the revolution when the dust had settled, and on which class the political center of gravity would come to rest."

The small farmers and debtors, who opposed a central government that was even farther beyond their reach than the local and state governments, have been described as motivated by self-serving, parochial interests—unlike the supposedly higher-minded statesmen who journeyed to Philadelphia and others of their class who supported ratification. How and why the wealthy became visionary nation-builders is never explained. Not too long before, many of them had been proponents of laissez-faire and had opposed a strong central mercantile government. In truth, it was not their minds that were so much broader but their economic interests. Their motives were neither higher nor lower than those of any other social group struggling for place and power in the United States of 1787. They pursued their material interests as might any small freeholder. But possessing more time, money, information, and organization, they enjoyed superior results.

How could they have acted otherwise? For them to have ignored the conditions of governance necessary for the maintenance of the social order that meant everything to them would have amounted to committing class suicide—and they were not about to do that. They were a rising bourgeoisie rallying around a central power in order to develop the kind of national powers that would (a) better provide for the growing needs of a national commercial economy, (b) protect their overseas trading and diplomatic interests, and (c) defend their class interests from the competing claims of other classes within their own society. Some of us are quite willing to accept the existence of such a material-based nationalism in the history of other countries, but not in our own.

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Finally, those who argue that the founders were motivated primarily by high-minded objectives consistently overlook the fact that the delegates repeatedly stated their intention to erect a government strong enough to protect the haves from the have-nots. They gave voice to the crassest class prejudices and never found it necessary to disguise the fact—as have latter-day apologists—that their concern was to diminish popular control and resist all tendencies toward class equalization (or "leveling," as it was called). Their opposition to democracy and their dedication to moneyed interests were unabashedly and openly avowed. Their preoccupation with their class interests was so pronounced that one delegate, James Wilson of Pennsylvania, did finally complain of hearing too much about how the sole or primary object of government was property. The cultivation and improvement of the human mind, he maintained, was the most noble object—a fine sentiment that evoked no opposition from his colleagues as they continued about their business.

If the founders sought to "check power with power," they seemed chiefly concerned with restraining mass power, while assuring the perpetuation of their own class power. They supposedly had a "realistic" opinion of the rapacious nature of human beings—readily evidenced when they talked about the common people—yet they held a remarkably sanguine view of the self-interested impulses of their own class, which they saw as inhabited largely by virtuous men of "principle and property." According to Madison, wealthy men (the "minority faction") would be unable to sacrifice "the rights of other citizens" or mask their "violence under the forms of the Constitution." They would never jeopard-

dize the institution of property and wealth and the untrammelled uses thereof, which in the eyes of the framers constituted the essence of "liberty."

AN ELITIST DOCUMENT

More important than to conjecture about the framers' motives is to look at the Constitution they fashioned, for it tells us a good deal about their objectives. The Constitution was consciously designed as a conservative document, elaborately equipped with a system of minority checks and vetoes, making it easier for entrenched interests to endure. It provided ample power to build the services and protections of state needed by a growing capitalist class but made difficult the transition of rule to a different class. The Constitution was a historically successful ruling-class undertaking whose effects are still very much with us. . . .

The Constitution championed the rights of property over the rights and liberties of persons. For the founders, liberty meant something different from and antithetical to democracy. It meant liberty to invest, speculate, trade, and accumulate wealth and to secure its possession without encroachment by sovereign or populace. The civil liberties designed to give all individuals the right to engage in public affairs won little support from the delegates. When Colonel Mason recommended that a committee be formed to draft "a Bill of Rights," a task he said could be accomplished "in a few hours," the other convention members offered little discussion on the motion and voted unanimously against it. If the Constitution was so blatantly elitist, how did it manage to win ratification? Actually, it did not have a wide

backing, initially being opposed in most of the states. But the same superiority of wealth, organization, and control of political office and the press that allowed the rich to monopolize the Philadelphia Convention enabled them to orchestrate a successful ratification campaign. The Federalists also used bribes, intimidation, and other discouragements against opponents of the Constitution. What's more, *the Constitution never was submitted to a popular vote*. Ratification was by state convention composed of delegates drawn mostly from the same affluent strata as the framers. Those who voted for these delegates were themselves usually subjected to property qualifications.

DEMOCRATIC CONCESSIONS

For all its undemocratic aspects, the Constitution was not without its historically progressive features. Consider the following:

1. The very existence of a written constitution with specifically limited powers represented an advance over more autocratic forms of government.
2. No property qualifications were required for any federal officeholder, unlike in England and most of the states. And salaries were provided for all officials, thus rejecting the common practice of treating public office as a voluntary service, which only the rich could afford.
3. The president and all other officeholders were elected for limited terms. No one could claim a life tenure on any office.
4. Article VI reads: "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States," a feature that represented a distinct advance over a number

of state constitutions that banned Catholics, Jews, and nonbelievers from holding office.

5. Bills of attainder, the practice of declaring by legislative fiat a specific person or group of people guilty of an offense, without benefit of a trial, were made unconstitutional. Also outlawed were ex post facto laws, the practice of declaring an act a crime and punishing those who had committed it *before* it had been unlawful.

6. As noted earlier, the framers showed no interest in a Bill of Rights, but supporters of the new Constitution soon recognized their tactical error and pledged the swift adoption of such a bill as a condition for ratification. So, in the first session of Congress, the first ten amendments were swiftly passed and then adopted by the states; these rights included freedom of speech and religion; freedom to assemble peaceably and to petition for redress of grievances; the right to keep arms; freedom from unreasonable searches and seizures, self-incrimination, double jeopardy, cruel and unusual punishment, and excessive bail and fines; the right to a fair and impartial trial; and other forms of due process.

7. The Constitution guarantees a republican form of government and explicitly repudiates monarchy and aristocracy; hence, Article I, Section 9 states: "No title of Nobility shall be granted by the United States. . . ." According to James McHenry, a delegate from Maryland, at least twenty-one of the fifty-five delegates favored some form of monarchy. Yet few dared venture in that direction out of fear of popular opposition. Furthermore, delegates like Madison believed that stability for their class order was best assured by a republican form of government. The time had come for the bour-

geoisie to rule directly without the baneful intrusions of kings and nobles.

Time and again during the Philadelphia Convention, this assemblage of men who feared and loathed democracy found it necessary to show some regard for popular sentiment (as with the direct election of the lower house). If the Constitution was going to be accepted by the states and if the new government was to have any stability, it had to gain some measure of popular acceptance; hence, the founders felt compelled to leave something for the people. While the delegates and their class dominated the events of 1787-1789, they were far from omnipotent. The class system they sought to preserve was itself the cause of marked restiveness among the people.

Land seizures by the poor, food riots, and other violent disturbances occurred throughout the eighteenth century in just about every state and erstwhile colony. This popular ferment spurred the framers in their effort to erect a strong central government *but it also set a limit on what they could do*. The delegates "gave" nothing to popular interests, rather—as with the Bill of Rights—they reluctantly made concessions under the threat of democratic rebellion. They kept what they could and grudgingly relinquished what they felt they had to, driven not by a love of democracy but by a fear of it, not by a love of the people but by a prudent desire to avoid popular uprisings. The Constitution, then, was a product not only of class privilege but of class struggle—a struggle that continued and intensified as the corporate economy and the government grew.

POSTSCRIPT

Were the Founding Fathers Democratic Reformers?

Parenti is a radical political scientist. In *Democracy for the Few*, he extends the underlying assumption of Charles A. Beard's *An Economic Interpretation* throughout his own examination of the operations of the present-day American government. Like Beard, Parenti assumes that the Constitution was written to protect the economic interests of the upper classes. The checks and balances system, he argues, was designed to protect the property of the elite while pretending to give some political power to the masses.

Roche, on the other hand, stresses the political reasons for writing a new Constitution. In a spirited essay that reflects great admiration for the Founding Fathers as enlightened politicians, Roche describes the Constitution as "a triumph of architectonic genius; it was a patch-work sewn together under the pressure of both time and events by a group of extremely talented democratic politicians."

Roche narrates the events of the convention of 1787 with a clarity rarely seen in the writings on this period. He makes the telling point that once the dissenters left Philadelphia, the delegates were able to hammer out a new Constitution. All the Founding Fathers agreed to create a stronger national government, but differences centered around the shape the new government would take. The delegates' major concern was to create as strong a national government as possible that would be acceptable to all states. Had the ratifying conventions rejected the new Constitution, the United States might have disintegrated into 13 separate countries.

Roche's interpretation draws heavily upon the consensus interpretation of Richard Hofstadter's "The Founding Fathers: An Age of Realism," from Hofstadter's classic *The American Political Tradition and the Men Who Made It* (Random House, 1948, 1973). Roche also borrows some ideas from the nationalist synthesis of Stanley Elkins and Eric McKittrick's "The Fathers: Young Men of the Revolution," a widely reprinted article that first appeared in the June 1961 issue of the *Political Science Quarterly*.

One may quibble with several of Roche's interpretations. For example, does he overstate the democratic tendencies of the Founding Fathers? The new national government was actually a republic (indirect representation), not a democracy (direct ruling by the people). Only members of the House of Representatives were directly elected by the people; the president, U.S. senators, and Supreme Court justices were chosen by indirect means. It is also possible that Roche goes too far when he describes the Founding Fathers as twentieth-century, horse-trading politicians.

Historian Gordon S. Wood tries to recapture the eighteenth-century world in *The Creation of the American Republic, 1776-1787* (University of North

Carolina Press, 1969), a seminal work that has replaced Beard as the starting point for scholarship on this topic. Wood has also summarized his major ideas in several essays. See "Democracy and the Constitution," in Robert A. Goldwin and William A. Schambra, eds., *How Democratic Is the Constitution?* (American Enterprise Institute for Public Policy Research, 1980).

Wood takes a position that differs from those of both Parenti and Roche. Although he agrees with the class conflict theories of Beard and Parenti regarding the supporters and opponents of the Constitution, he stresses social and ideological, not economic, motivations. Wood argues that the Federalists were upper-class aristocrats who believed that the national government, which they controlled, provided a more cosmopolitan and enlightened outlook than the local and provincial interests of the "humbler sort" who ran the state assemblies. "The Founding Fathers," he says, "argued for the new government in 'Democratic' language to avoid charges of setting up an 'aristocratic' government."

Wood's ideological interpretation of the Founding Fathers has not gone unchallenged. Michael MacGiffert has edited "A Symposium of Views and Reviews" on Woods's *The Creation of the American Republic, 1776-1787* for the *William and Mary Quarterly* (July 1987). A devastating critique of the methodological fallacies of Wood and other intellectual writers on this period can be found in Ralph Lerner's "The Constitution of the Thinking Revolutionary," in Richard Beeman et al., eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (University of North Carolina Press, 1987).

The bicentennial celebration of the Constitution in the 1980s witnessed the publication of numerous works on this period. Three in particular stand out: Richard B. Morris, *The Forging of the Union, 1781-1789* (Harper & Row, 1987) summarizes a lifetime of scholarship by one of the most knowledgeable historians of this period; Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (Alfred A. Knopf, 1986) elaborates on the place the Constitution has occupied "in the public consciousness and symbolic life of the American people"; and Forrest McDonald places the Founding Fathers within the intellectual climate of the late eighteenth century in *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (University of Kansas Press, 1985).

Students should also consult the following works: Leonard W. Levy and Dennis J. Mahoney, eds., *The Framing and Ratification of the Constitution* (MacMillan, 1987), a series of short, scholarly essays on the subject; Peter S. Onaf's "Reflections on the Founding: Constitutional Historiography in Bicentennial Perspective," *William and Mary Quarterly* (April 1989), essential reading for advanced students because of its sophisticated analysis and voluminous references; and all essays written by Edmund S. Morgan on this period, particularly his review of 19 recent studies of the Constitutional period in the June 29, 1987, issue of *The New Republic*.