Were the Founding Fathers Democratic Reformers?


NO: Howard Zinn, from A People's History of the United States (Harper Collins, 1999)

ISSUE SUMMARY

YES: Political scientist John P. Roche asserts 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: According to radical historian Howard Zinn, the Founding Fathers were an elite group of northern money interests and southern slaveholders who used Shay's Rebellion in Massachusetts as a pretext to create a strong central government, which protected the property rights of the rich to the exclusion of slaves, Indians, and non-property-holding whites.

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, to 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 "personalty 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 of the following selections, which is a good example of consensus history, John P. Roche contends that although the Founding Fathers may have been revolutionaries, 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 lasting influence can be found in the second selection in which radical historian Howard Zinn argues from the Beardian perspective. The Founding Fathers, he argues, were an elite group of northern money interests and southern slaveholders who used Shay's Rebellion in Massachusetts as a pretext to create a strong central government, which protected the property rights of the rich to the exclusion of slaves, Indians, and non-property-holding whites.
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'etat, 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 bailiwicks. The Georgians, for example, wanted a strong central authority to provide military protection for their huge, underpopulated state against the Creek Confederacy; Jerseymen and Connecticuters 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] ambience 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 had served in Congress), and this was hardly a locale which inspired respect for the state governments. . . . Membership in the Congress under the Articles of Confederation 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 over-confidence 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 Resolutions—"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'-righters" 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 intervened 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—


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 sardonically 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-ender.” 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 Pennsylvanial) 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, the problem was non-existent; in other words, everybody present knew that under any system devised, George Washington would be President. Thus they were dealing in the future tense and to a body of working politicians the merits of the Brearley proposal were obvious: everybody got a piece of cake. (Or to put it more academically, each viewpoint could leave the Convention and argue to its constituents that it had really won the day.) First, the state legislatures had the right to determine the mode of selection of the electors; second, the small states received a bonus in the Electoral College in the form of a guaranteed minimum of three votes while the big states got acceptance of the principle of proportional power; third, if the state legislatures agreed (as six did in the first presidential election), the people could be involved directly in the choice of electors; and finally, if no candidate received a majority in the College, the right of decision passed to the National Legislature with each state exercising equal strength. (In the Brearley recommendation, the election went to the Senate, but a motion from the floor substituted the House; this was accepted on the ground that the Senate already had enough authority over the executive in its treaty and appointment powers.)

This compromise was almost too good to be true, and the Framers snapped it up with little debate or controversy. No one seemed to think well of the College as an institution; indeed, what evidence there is suggests that there was an assumption that once Washington had finished his tenure as President, the electors would cease to produce majorities and the chief executive would
usually be chosen in the House. George Mason observed casually that the selection would 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 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 committee'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 S[outhern] 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 Southn. 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 People’s History of the United States

To many Americans over the years, the Constitution drawn up in 1787 has seemed a work of genius put together by wise, humane men who created a legal framework for democracy and equality. This view is stated, a bit extravagantly, by the historian George Bancroft, writing in the early nineteenth century:

The Constitution establishes nothing that interferes with equality and individuality. It knows nothing of differences by descent, or opinions, of favored classes, or legalized religion, or the political power of property. It leaves the individual alongside of the individual... As the sea is made up of drops, American society is composed of separate, free, and constantly moving atoms, ever in reciprocal action... so that the institutions and laws of the country rise out of the masses of individual thought which, like the waters of the ocean, are rolling evermore.

Another view of the Constitution was put forward early in the twentieth century by the historian Charles Beard (arousing anger and indignation, including a denunciatory editorial in the New York Times). He wrote in his book An Economic Interpretation of the Constitution:

Inasmuch as the primary object of a government, beyond the mere repression of physical violence, is the making of the rules which determine the property relations of members of society, the dominant classes whose rights are thus to be determined must perforce obtain from the government such rules as are consonant with the larger interests necessary to the continuance of their economic processes, or they must themselves control the organs of government.

In short, Beard said, the rich must, in their own interest, either control the government directly or control the laws by which government operates.

Beard applied this general idea to the Constitution, by studying the economic backgrounds and political ideas of the fifty-five men who gathered in Philadelphia in 1787 to draw up the Constitution. He found that a majority of them were lawyers by profession, that most of them were men of wealth, in land, slaves, manufacturing, or shipping, that half of them had money loaned

out at interest, and that forty of the fifty-five held government bonds, according to the records of the Treasury Department.

Thus, Beard found that most of the makers of the Constitution had some direct economic interest in establishing a strong federal government: the manufacturers needed protective tariffs; the moneylenders wanted to stop the use of paper money to pay off debts; the land speculators wanted protection as they invaded Indian lands; slaveowners needed federal security against slave revolts and runaways; bondholders wanted a government able to raise money by nationwide taxation, to pay off those bonds.

Four groups, Beard noted, were not represented in the Constitutional Convention: slaves, indentured servants, women, men without property. And so the Constitution did not reflect the interests of those groups.

He wanted to make it clear that he did not think the Constitution was written merely to benefit the Founding Fathers personally, although one could not ignore the $150,000 fortune of Benjamin Franklin, the connections of Alexander Hamilton to wealthy interests through his father-in-law and brother-in-law, the great slave plantations of James Madison, the enormous landholdings of George Washington. Rather, it was to benefit the groups the Founders represented, the “economic interests they understood and felt in concrete, definite form through their own personal experience.”

Not everyone at the Philadelphia Convention fitted Beard’s scheme. Elbridge Gerry of Massachusetts was a holder of landed property, and yet he opposed the ratification of the Constitution. Similarly, Luther Martin of Maryland, whose ancestors had obtained large tracts of land in New Jersey, opposed ratification. But, with a few exceptions, Beard found a strong connection between wealth and support of the Constitution.

By 1787 there was not only a positive need for strong central government to protect the large economic interests, but also immediate fear of rebellion by discontented farmers. The chief event causing this fear was an uprising in the summer of 1786 in western Massachusetts, known as Shays’ Rebellion.

In the western towns of Massachusetts there was resentment against the legislature in Boston. The new Constitution of 1780 had raised the property qualifications for voting. No one could hold state office without being quite wealthy. Furthermore, the legislature was refusing to issue paper money, as had been done in some other states, like Rhode Island, to make it easier for debt-ridden farmers to pay off their creditors.

Illegal conventions began to assemble in some of the western counties to organize opposition to the legislature. At one of these, a man named Plough Jogger spoke his mind:

I have been greatly abused, have been obliged to do more than my part in the war; been loaded with class rates, town rates, province rates, Continental rates and all rates . . . been pulled and hauled by sheriffs, constables and collectors, and had my cattle sold for less than they were worth . . .

. . . The great men are going to get all we have and I think it is time for us to rise and put a stop to it, and have no more courts, nor sheriffs, nor collectors nor lawyers . . .
The chairman of that meeting used his gavel to cut short the applause. He and others wanted to redress their grievances, but peacefully, by petition to the General Court (the legislature) in Boston.

However, before the scheduled meeting of the General Court, there were going to be court proceedings in Hampshire County, in the towns of Northampton and Springfield, to seize the cattle of farmers who hadn’t paid their debts, to take away their land, now full of grain and ready for harvest. And so, veterans of the Continental army, also aggrieved because they had been treated poorly on discharge—given certificates for future redemption instead of immediate cash—began to organize the farmers into squads and companies. One of these veterans was Luke Day, who arrived the morning of court with a fife-and-drum corps, still angry with the memory of being locked up in debtors’ prison in the heat of the previous summer.

The sheriff looked to the local militia to defend the court against these armed farmers. But most of the militia was with Luke Day. The sheriff did manage to gather five hundred men, and the judges put on their black silk robes, waiting for the sheriff to protect their trip to the courthouse. But there at the courthouse steps, Luke Day stood with a petition, asserting the people’s constitutional right to protest the unconstitutional acts of the General Court, asking the judges to adjourn until the General Court could act on behalf of the farmers. Standing with Luke Day were fifteen hundred armed farmers. The judges adjourned.

Shortly after, at courthouses in Worcester and Athol, farmers with guns prevented the courts from meeting to take away their property, and the militia were too sympathetic to the farmers, or too outnumbered, to act. In Concord, a fifty-year-old veteran of two wars, Job Shattuck, led a caravan of carts, wagons, horses, and oxen onto the town green, while a message was sent to the judges:

The voice of the People of this county is such that the court shall not enter this courthouse until such time as the People shall have redress of the grievances they labor under at the present.

A county convention then suggested the judges adjourn, which they did.

At Great Barrington, a militia of a thousand faced a square crowded with armed men and boys. But the militia was split in its opinion. When the chief justice suggested the militia divide, those in favor of the court’s sitting to go on the right side of the road, and those against on the left, two hundred of the militia went to the right, eight hundred to the left, and the judges adjourned. Then the crowd went to the home of the chief justice, who agreed to sign a pledge that the court would not sit until the Massachusetts General Court met. The crowd went back to the square, broke open the county jail, and set free the debtors. The chief justice, a country doctor, said: “I have never heard anybody point out a better way to have their grievances redressed than the people have taken.”

The governor and the political leaders of Massachusetts became alarmed. Samuel Adams, once looked on as a radical leader in Boston, now insisted people act within the law. He said “British emissaries” were stirring up the
farmers. People in the town of Greenwich responded: You in Boston have the money, and we don’t. And didn’t you act illegally yourselves in the Revolution? The insurgents were now being called Regulators. Their emblem was a sprig of hemlock.

The problem went beyond Massachusetts. In Rhode Island, the debtors had taken over the legislature and were issuing paper money. In New Hampshire, several hundred men, in September of 1786, surrounded the legislature in Exeter, asking that taxes be returned and paper money issued; they dispersed only when military action was threatened.

Daniel Shays entered the scene in western Massachusetts. A poor farm hand when the revolution broke out, he joined the Continental army, fought at Lexington, Bunker Hill, and Saratoga, and was wounded in action. In 1780, not being paid, he resigned from the army, went home, and soon found himself in court for nonpayment of debts. He also saw what was happening to others: a sick woman, unable to pay, had her bed taken from under her.

What brought Shays fully into the situation was that on September 19, the Supreme Judicial Court of Massachusetts met in Worcester and indicted eleven leaders of the rebellion, including three of his friends, as “disorderly, riotous and seditious persons” who “unlawfully and by force of arms” prevented “the execution of justice and the laws of the commonwealth.” The Supreme Judicial Court planned to meet again in Springfield a week later, and there was talk of Luke Day’s being indicted.

Shays organized seven hundred armed farmers, most of them veterans of the war, and led them to Springfield. There they found a general with nine hundred soldiers and a cannon. Shays asked the general for permission to parade, which the general granted, so Shays and his men moved through the square, drums banging and fifes blowing. As they marched, their ranks grew. Some of the militia joined, and reinforcements began coming in from the countryside. The judges postponed hearings for a day, then adjourned the court.

Now the General Court, meeting in Boston, was told by Governor James Bowdoin to “vindicate the insulted dignity of government.” The recent rebels against England, secure in office, were calling for law and order. Sam Adams helped draw up a Riot Act, and a resolution suspending habeas corpus, to allow the authorities to keep people in jail without trial. At the same time, the legislature moved to make some concessions to the angry farmers, saying certain old taxes could now be paid in goods instead of money.

This didn’t help. In Worcester, 160 insurgents appeared at the courthouse. The sheriff read the Riot Act. The insurgents said they would disperse only if the judges did. The sheriff shouted something about hanging. Someone came up behind him and put a sprig of hemlock in his hat. The judges left.

Confrontations between farmers and militia now multiplied. The winter snows began to interfere with the trips of farmers to the courthouses. When Shays began marching a thousand men into Boston, a blizzard forced them back, and one of his men froze to death.

An army came into the field, led by General Benjamin Lincoln, on money raised by Boston merchants. In an artillery duel, three rebels were killed. One soldier stepped in front of his own artillery piece and lost both
arms. The winter grew worse. The rebels were outnumbered and on the run. Shays took refuge in Vermont, and his followers began to surrender. There were a few more deaths in battle, and then sporadic, disorganized, desperate acts of violence against authority: the burning of barns, the slaughter of a general’s horses. One government soldier was killed in an eerie night-time collision of two sleighs.

Captured rebels were put on trial in Northampton and six were sentenced to death. A note was left at the door of the high sheriff of Pittsfield:

I understand that there is a number of my countrymen condemned to die because they fought for justice. I pray have a care that you assist not in the execution of so horrid a crime, for by all that is above, he that condemns and he that executes shall share alike. . . . Prepare for death with speed, for your life or mine is short. When the woods are covered with leaves, I shall return and pay you a short visit.

Thirty-three more rebels were put on trial and six more condemned to death. Arguments took place over whether the hangings should go forward. General Lincoln urged mercy and a Commission of Clemency, but Samuel Adams said: “In monarchy the crime of treason may admit of being pardoned or lightly punished, but the man who dares rebel against the laws of a republic ought to suffer death.” Several hangings followed; some of the condemned were pardoned. Shays, in Vermont, was pardoned in 1788 and returned to Massachusetts, where he died, poor and obscure, in 1825.

It was Thomas Jefferson, in France as ambassador at the time of Shays’ Rebellion, who spoke of such uprisings as healthy for society. In a letter to a friend he wrote: “I hold it that a little rebellion now and then is a good thing. . . . It is a medicine necessary for the sound health of government. . . . God forbid that we should ever be twenty years without such a rebellion. . . . The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.”

But Jefferson was far from the scene. The political and economic elite of the country were not so tolerant. They worried that the example might spread. A veteran of Washington’s army, General Henry Knox, founded an organization of army veterans, “The Order of the Cincinnati,” presumably (as one historian put it) “for the purpose of cherishing the heroic memories of the struggle in which they had taken part,” but also, it seemed, to watch out for radicalism in the new country. Knox wrote to Washington in late 1786 about Shays’ Rebellion, and in doing so expressed the thoughts of many of the wealthy and powerful leaders of the country:

The people who are the insurgents have never paid any, or but very little taxes. But they see the weakness of government; they feel at once their own poverty, compared with the opulent, and their own force, and they are determined to make use of the latter, in order to remedy the former. Their creed is “That the property of the United States has been protected from the confiscations of Britain by the joint exertions of all, and therefore ought to be the common property of all. And he
that attempts opposition to this creed is an enemy to equity and justice and ought to be swept from off the face of the earth."

Alexander Hamilton, aide to Washington during the war, was one of the most forceful and astute leaders of the new aristocracy. He voiced his political philosophy:

All communities divide themselves into the few and the many. The first are the rich and well-born, the other the mass of the people. The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct permanent share in the government... Can a democratic assembly who annually revolve in the mass of the people be supposed steadily to pursue the public good? Nothing but a permanent body can check the imprudence of democracy....

At the Constitutional Convention, Hamilton suggested a President and Senate chosen for life.

The Convention did not take his suggestion. But neither did it provide for popular elections, except in the case of the House of Representatives, where the qualifications were set by the state legislatures (which required propertyholding for voting in almost all the states), and excluded women, Indians, slaves. The Constitution provided for Senators to be elected by the state legislators, for the President to be elected by electors chosen by the state legislators, and for the Supreme Court to be appointed by the President.

The problem of democracy in the post-Revolutionary society was not, however, the Constitutional limitations on voting. It lay deeper, beyond the Constitution, in the division of society into rich and poor. For if some people had great wealth and great influence; if they had the land, the money, the newspapers, the church, the educational system—how could voting, however broad, cut into such power? There was still another problem: wasn't it the nature of representative government, even when most broadly based, to be conservative, to prevent tumultuous change?

It came time to ratify the Constitution, to submit to a vote in state conventions, with approval of nine of the thirteen required to ratify it. In New York, where debate over ratification was intense, a series of newspaper articles appeared, anonymously, and they tell us much about the nature of the Constitution. These articles, favoring adoption of the Constitution, were written by James Madison, Alexander Hamilton, and John Jay, and came to be known as the Federalist Papers (opponents of the Constitution became known as anti-Federalists).

In Federalist Paper #10, James Madison argued that representative government was needed to maintain peace in a society ridden by factional disputes. These disputes came from "the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society." The problem, he said, was how to control the factional
struggles that came from inequalities in wealth. Minority factions could be controlled, he said, by the principle that decisions would be by vote of the majority.

So the real problem, according to Madison, was a majority faction, and here the solution was offered by the Constitution, to have “an extensive republic,” that is, a large nation ranging over thirteen states, for then “it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. . . . The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States.”

Madison’s argument can be seen as a sensible argument for having a government which can maintain peace and avoid continuous disorder. But is it the aim of government simply to maintain order, as a referee, between two equally matched fighters? Or is it that government has some special interest in maintaining a certain kind of order, a certain distribution of power and wealth, a distribution in which government officials are not neutral referees but participants? In that case, the disorder they might worry about is the disorder of popular rebellion against those monopolizing the society’s wealth. This interpretation makes sense when one looks at the economic interests, the social backgrounds, of the makers of the Constitution.

As part of his argument for a large republic to keep the peace, James Madison tells quite clearly, in Federalist #10, whose peace he wants to keep: “A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it.”

When economic interest is seen behind the political clauses of the Constitution, then the document becomes not simply the work of wise men trying to establish a decent and orderly society, but the work of certain groups trying to maintain their privileges, while giving just enough rights and liberties to enough of the people to ensure popular support.

In the new government, Madison would belong to one party (the Democrat-Republicans) along with Jefferson and Monroe. Hamilton would belong to the rival party (the Federalists) along with Washington and Adams. But both agreed—one a slaveholder from Virginia, the other a merchant from New York—on the aims of this new government they were establishing. They were anticipating the long-fundamental agreement of the two political parties in the American system. Hamilton wrote elsewhere in the Federalist Papers that the new Union would be able “to repress domestic faction and insurrection.” He referred directly to Shays’ Rebellion: “The tempestuous situation from which Massachusetts has scarcely emerged evinces that dangers of this kind are not merely speculative.”

It was either Madison or Hamilton (the authorship of the individual papers is not always known) who in Federalist Paper #63 argued the necessity of a “well-constructed Senate” as “sometimes necessary as a defense to the people against their own temporary errors and delusions” because “there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misted by the artful misrepresentations of
interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn.” And: “In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind?”

The Constitution was a compromise between slaveholding interests of the South and moneyed interests of the North. For the purpose of uniting the thirteen states into one great market for commerce, the northern delegates wanted laws regulating interstate commerce, and urged that such laws require only a majority of Congress to pass. The South agreed to this, in return for allowing the trade in slaves to continue for twenty years before being outlawed.

Charles Beard warned us that governments—including the government of the United States—are not neutral, that they represent the dominant economic interests, and that their constitutions are intended to serve these interests. One of his critics (Robert E. Brown, Charles Beard and the Constitution) raises an interesting point. Granted that the Constitution omitted the phrase “life, liberty and the pursuit of happiness,” which appeared in the Declaration of Independence, and substituted “life, liberty, or property”—well, why shouldn’t the Constitution protect property? As Brown says about Revolutionary America, “practically everybody was interested in the protection of property” because so many Americans owned property.

However, this is misleading. True, there were many property owners. But some people had much more than others. A few people had great amounts of property; many people had small amounts; others had none. Jackson Main found that one-third of the population in the Revolutionary period were small farmers, while only 3 percent of the population had truly large holdings and could be considered wealthy.

Still, one-third was a considerable number of people who felt they had something at stake in the stability of a new government. This was a larger base of support for government than anywhere in the world at the end of the eighteenth century. In addition, the city mechanics had an important interest in a government which would protect their work from foreign competition. As Staughton Lynd puts it: “How is it that the city workingmen all over America overwhelmingly and enthusiastically supported the United States Constitution?”

This was especially true in New York. When the ninth and tenth states had ratified the Constitution, four thousand New York City mechanics marched with floats and banners to celebrate. Bakers, blacksmiths, brewers, ship joiners and shipwrights, coopers, cartmen and tailors, all marched. What Lynd found was that these mechanics, while opposing elite rule in the colonies, were nationalist. Mechanics comprised perhaps half the New York population. Some were wealthy, some were poor, but all were better off than the ordinary laborer, the apprentice, the journeyman, and their prosperity required a government that would protect them against the British hats and shoes and other goods that were pouring into the colonies after the Revolution. As a result, the mechanics often supported wealthy conservatives at the ballot box.
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The Constitution, then, illustrates the complexity of the American system: that it serves the interests of a wealthy elite, but also does enough for small property owners, for middle-income mechanics and farmers, to build a broad base of support. The slightly prosperous people who make up this base of support are buffers against the blacks, the Indians, the very poor whites. They enable the elite to keep control with a minimum of coercion, a maximum of law—all made palatable by the fanfare of patriotism and unity.

The Constitution became even more acceptable to the public at large after the first Congress, responding to criticism, passed a series of amendments known as the Bill of Rights. These amendments seemed to make the new government a guardian of people’s liberties: to speak, to publish, to worship, to petition, to assemble, to be tried fairly, to be secure at home against official intrusion. It was, therefore, perfectly designed to build popular backing for the new government. What was not made clear—it was a time when the language of freedom was new and its reality untested—was the shakiness of anyone’s liberty when entrusted to a government of the rich and powerful.

Indeed, the same problem existed for the other provisions of the Constitution, like the clause forbidding states to “impair the obligation of contract,” or that giving Congress the power to tax the people and to appropriate money. They all sound benign and neutral until one asks: Tax who, for what? Appropriate what, for whom? To protect everyone’s contracts seems like an act of fairness, of equal treatment, until one considers that contracts made between rich and poor, between employer and employee, landlord and tenant, creditor and debtor, generally favor the more powerful of the two parties. Thus, to protect these contracts is to put the great power of the government, its laws, courts, sheriffs, police, on the side of the privileged—and to do it not, as in premodern times, as an exercise of brute force against the weak but as a matter of law.

The First Amendment of the Bill of Rights shows that quality of interest hiding behind innocence. Passed in 1791 by Congress, it provided that “Congress shall make no law . . . abridging the freedom of speech, or of the press. . . .” Yet, seven years after the First Amendment became part of the Constitution, Congress passed a law very clearly abridging the freedom of speech.

This was the Sedition Act of 1798, passed under John Adams’s administration, at a time when Irishmen and Frenchmen in the United States were looked on as dangerous revolutionaries because of the recent French Revolution and the Irish rebellions. The Sedition Act made it a crime to say or write anything “false, scandalous and malicious” against the government, Congress, or the President, with intent to defame them, bring them into disrepute, or excite popular hatreds against them.

This act seemed to directly violate the First Amendment. Yet, it was enforced. Ten Americans were put in prison for utterances against the government, and every member of the Supreme Court in 1798–1800, sitting as an appellate judge, held it constitutional.

There was a legal basis for this, one known to legal experts, but not to the ordinary American, who would read the First Amendment and feel confident
that he or she was protected in the exercise of free speech. That basis has been explained by historian Leonard Levy. Levy points out that it was generally understood (not in the population, but in higher circles) that, despite the First Amendment, the British common law of “sedition libel” still ruled in America. This meant that while the government could not exercise “prior restraint”—that is, prevent an utterance or publication in advance—it could legally punish the speaker or writer afterward. Thus, Congress has a convenient legal basis for the laws it has enacted since that time, making certain kinds of speech a crime. And, since punishment after the fact is an excellent deterrent to the exercise of free expression, the claim of “no prior restraint” itself is destroyed. This leaves the First Amendment much less than the stone wall of protection it seems at first glance.

Are the economic provisions in the Constitution enforced just as weakly? We have an instructive example almost immediately in Washington’s first administration, when Congress’s power to tax and appropriate money was immediately put to use by the Secretary of the Treasury, Alexander Hamilton.

Hamilton, believing that government must ally itself with the richest elements of society to make itself strong, proposed to Congress a series of laws, which it enacted, expressing this philosophy. A Bank of the United States was set up as a partnership between the government and certain banking interests. A tariff was passed to help the manufacturers. It was agreed to pay bondholders—most of the war bonds were now concentrated in a small group of wealthy people—the full value of their bonds. Tax laws were passed to raise money for this bond redemption.

One of these tax laws was the Whiskey Tax, which especially hurt small farmers who raised grain that they converted into whiskey and then sold. In 1794 the farmers of western Pennsylvania took up arms and rebelled against the collection of this tax. Secretary of the Treasury Hamilton led the troops to put them down. We see then, in the first years of the Constitution, that some of its provisions—even those paraded most flamboyantly (like the First Amendment)—might be treated lightly. Others (like the power to tax) would be powerfully enforced.

Still, the mythology around the Founding Fathers persists. To say, as one historian (Bernard Bailyn) has done recently, that “the destruction of privilege and the creation of a political system that demanded of its leaders the responsible and humane use of power were their highest aspirations” is to ignore what really happened in the America of these Founding Fathers.

Bailyn says:

Everyone knew the basic prescription for a wise and just government. It was so to balance the contending powers in society that no one power could overwhelm the others and, unchecked, destroy the liberties that belonged to all. The problem was how to arrange the institutions of government so that this balance could be achieved.

Were the Founding Fathers wise and just men trying to achieve a good balance? In fact, they did not want a balance, except one which kept things as
they were, a balance among the dominant forces at that time. They certainly did not want an equal balance between slaves and masters, propertyless and property holders, Indians and white.

As many as half the people were not even considered by the Founding Fathers as among Bailyn's "contending powers" in society. They were not mentioned in the Declaration of Independence, they were absent in the Constitution, they were invisible in the new political democracy. They were the women of early America.