# Framing the Constitution

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*In the following essay, which is adapted from The Supreme Court and the Constitution (1912), Charles Beard presents evidence that the framers of the Constitution were less interested in furthering democratic principles than in protecting private property and the interests of the wealthy class. Since this work was written over eighty years ago, there are a few anachronisms you may want to keep in mind. First, when Beard speaks of the "Confederacy," he is referring to the government that existed under the Articles of Confederation -- not to the Confederate states that seceded from the Union during the Civil War. Also, it is important to remember that the Senate was still not elected by popular vote when Beard was writing -- although that was changed in 1913 by the Seventeenth Amendment. Finally, when Beard speaks of "republican" or "democratic" tendencies, he is not referring to the Republican or Democratic parties, but is instead using the words in their more generic sense.*

*...The reason and spirit of a law are to be understood only by an inquiry into the circumstances of its enactment. The underlying purposes of the Constitution, therefore, are to be revealed only by a study of the conditions and events which led to formation and adoption.*

At the outset it must be remembered that there were two great parties at the time of the adoption of the Constitution -- one laying emphasis on strength and efficiency in government and the other on its popular aspects. Quite naturally the men who led in stirring up the revolt against Great Britain and in keeping the fighting temper of the Revolutionaries at the proper heat were the boldest and most radical thinkers -- men like Samuel Adams, Thomas Paine, Patrick Henry, and Thomas Jefferson.

They were not, generally speaking, men of large property interests or of much practical business experience. In a time of disorder, they could consistently lay more stress upon personal liberty than upon social control; and they pushed to the extreme limits those doctrines of individual rights which had been evolved in England during the struggles of the small landed proprietors and commercial classes against royal prerogative, and which corresponded to the economic conditions prevailing in America at the close of the eighteenth century. They associated strong government with monarchy, and came to believe that the best political system was one which governed least. A majority of the radicals viewed all government, especially if highly centralized, as a species of evil, tolerable only because necessary and always to be kept down to an irreducible minimum by a jealous vigilance.

Jefferson put the doctrine in concrete form when he declared that he preferred newspapers without government to government without newspapers. The Declaration of Independence, the first state Constitutions, and the Articles of Confederation bore the

impress of this philosophy. In their anxiety to defend the individual against all federal interference and to preserve to the states a large sphere of local autonomy, these Revolutionists had set up a system too weak to accomplish the accepted objects of government; namely, national defense, the protection of property, and the advancement of commerce. They were not unaware of the character of their handiwork, but they believed with Jefferson that "man was a rational animal endowed by nature with rights and with an innate sense of justice and that he could be restrained from wrong and protected in right by moderate powers confided to persons of his own choice." Occasional riots and disorders, they held, were preferable to too much government.

The new American political system based on these doctrines had scarcely gone into effect before it began to incur opposition from many sources. The close of the Revolutionary struggle removed the prime cause for radical agitation and brought a new group of thinkers into prominence. When independence had been gained, the practical work to be done was the maintenance of social order, the payment of the public debt, the provision of a sound financial system, and the establishment of conditions favorable to the development of the economic resources of the new country. The men who were principally concerned in this work of peaceful enterprise were not the philosophers, but men of business and property and the holders of public securities. For the most part, they had had no quarrel with the system of class rule and the strong centralization of government which had existed in England. It was on the question of policy, not of governmental structure, that they had broken with the British authorities. By no means all of them, in fact, had even resisted the policy of the mother country, for within the ranks of the conservatives were large numbers of Loyalists who had remained in America, and, as was to have been expected, cherished a bitter feeling against the Revolutionists, especially the radical section which had been boldest in denouncing the English system root and branch. In other words, after the heat and excitement of the War of Independence were over and the new government, state and national, was tested by the ordinary experiences of traders, financiers, and manufacturers, it was found inadequate, and these groups accordingly grew more and more determined to reconstruct the political system in such a fashion as to make it subserve their permanent interests.

Under the state constitutions and the Articles of Confederation established during the Revolution, every powerful economic class in the nation suffered either immediate losses or from impediments placed in the way of the development of their enterprises. The holders of the securities of the [government established by the Articles of Confederation] did not receive the interest on their loans. Those who owned Western lands or looked with longing eyes upon the rich opportunities for speculation there chaffed at the weakness of the government and its delays in establishing order on the frontiers. Traders and commercial men found their plans for commerce on a national scale impeded by local interference with interstate commerce. The currency of the states and the nation was hopelessly muddled. Creditors everywhere were angry about the depreciated paper money which the agrarians had made and were attempting to force upon those from whom they had borrowed specie. In short, it was a war between business and populism. Under the Articles of Confederation, populism had a free hand, for majorities in the state legislatures were omnipotent. Anyone who reads the economic history of the time will

see why the solid conservative interests of the country were weary of talk about the "rights of the people" and bent upon establishing firm guarantees for the rights of property.

The Congress of the Confederation was not long in discovering the true character of the futile authority which the Articles had conferred upon it. The necessity for new sources of revenue became apparent even while the struggle for independence was yet undecided, and, in 1871, Congress carried a resolution to the effect that it should be authorized to lay a duty of five percent on certain goods. This moderate proposition was defeated because Rhode Island rejected it on the grounds that "she regarded it the most precious jewel of sovereignty that no state shall be called upon to open its purse but by the authority of the state and by her own officers." Two years later, Congress prepared another amendment to the Articles providing for certain import duties, the receipts from which, collected by state officers, were to be applied to the payment of the public debt; but three years after the introduction of the measure, four states, including New York, still held out against its ratification, and the project was allowed to drop. At last, in 1786, Congress in a resolution declared that the requisitions for the last eight years had been so irregular in their operation, so uncertain in their collection, and so evidently unproductive that a reliance on them in the future would be no less dishonorable to the understandings of those who entertained it than it would be dangerous to the welfare and peace of the Union. Congress, thereupon, solemnly added that it had become its duty "to declare most explicitly that the crisis had arrived when the people of the United States, by whose will and for whose benefit the federal government was instituted, must decide whether they will support their rank as a nation by maintaining the public faith at home and abroad, or rather for the want of a timely exertion in establishing a general review and thereby giving strength to the Confederacy, they will hazard not only the existence of the Union but those great and invaluable privileges for which they have so arduously and so honorably contended."

In fact, the Articles of Confederation had hardly gone into effect before the leading citizens also began to feel that the powers of Congress were wholly inadequate. In 1780, even before their adoption, Alexander Hamilton proposed a general convention to frame a new constitution, and from that time forward he labored with remarkable zeal and wisdom to extend and popularize the idea of a strong national government. Two years later, the Assembly of the State of New York recommended a convention to revise the Articles and increase the power of the Congress. In 1783, Washington, in a circular letter to the governors, urged that it was indispensable to the happiness of the individual states that there should be lodged somewhere a supreme power to regulate and govern the general concerns of the confederation. Shortly afterward (1785), Governor Bowdoin, of Massachusetts, suggested to his state legislature the advisability of calling a national assembly to settle upon and define the powers of Congress; and the legislature resolved that the government under the Articles of Confederation was inadequate and should be reformed; but the resolution was never laid before Congress.

In January, 1786, Virginia invited all the other states to send delegates to a convention at Annapolis to consider the question of duties on imports and the commerce in general.

When this convention assembled in 1786, delegates from only five states were present, and they were disheartened at the limitations on their powers and the lack of interest the other states had shown in the project. With characteristic foresight, however, Alexander Hamilton seized the occasion to secure the adoption of a recommendation advising the states to choose representatives for another convention to meet in Philadelphia the following year "to consider the Articles of Confederation and to propose such changes therein as might render them adequate to the exigencies of the union." This recommendation was cautiously worded, for Hamilton did not want to raise any unnecessary alarm. He doubtless believed that a complete revolution in the old system was desirable, but he knew that, in the existing state of popular temper, it was not expedient to announce his complete program. Accordingly, no general reconstruction of the political system was suggested; the Articles of Confederation were merely to be "revised"; and the amendments were to be approved by the state legislatures as provided by that instrument.

The proposal of the Annapolis convention was transmitted to the state legislatures and laid before Congress. Congress thereupon resolved in February, 1787, that a convention should be held for the sole and express purpose of revising the Articles of Confederation and reporting to itself and the legislatures of the several states such alterations and provisions as would when agreed to by Congress and confirmed by the states render the federal constitution adequate to the exigencies of government and the preservation of the union.

In pursuance of this call, delegates to the new convention were chosen by the legislatures of the states or by the governors in conformity to authority conferred by the legislative assemblies. The delegates were given instructions of a general nature by their respective states, none of which, apparently, contemplated any very far-reaching changes. In fact, almost all of them expressly limited their representative to a mere revision of the Articles of Confederation. For example, Connecticut authorized her delegates to represent and confer for the purpose mentioned in the resolution of Congress and to discuss such measures "agreeable to the general principles of Republican government" as they should think proper to render the Union adequate. Delaware, however, went so far as to provide that none of the proposed alterations should extend to the fifth part of the Articles of Confederation guaranteeing that each state should be entitled to one vote.

It was a truly remarkable assembly of men that gathered in Philadelphia on May 17, 1787, to undertake the work of reconstructing the American system of government. It is not merely patriotic pride that compels one to assert that never in the history of assemblies has there been a convention of men richer in political experience and practical knowledge, or endowed with a profounder insight into the springs of human action and the intimate essence of government. It is indeed an astounding fact that at one time so many men skilled in statecraft could be found on the very frontiers of civilization among a population numbering about four million whites. It is no less a cause for admiration that their instrument of government should have survived the trials and crises of a century that saw the wreck of more than a score of paper constitutions.[] All the members had had a practical training in politics. Washington, as commander-in-chief of the Revolutionary

forces, had learned well the lessons and problems of war, and mastered successfully the no less difficult problems of administration. The two Morrises had distinguished themselves in grappling with financial questions as trying and perplexing as any which statesmen had ever been compelled to face. Seven of the delegates had gained political wisdom as governors of their native states; and no less than twenty-eight had served in Congress, either during the Revolution or under the Articles of Confederation. These were men trained in the law, versed in finance, skilled in administration, and learned in the political philosophy of their own and earlier times. Moreover, they were men destined to continue public service under the government which they had met to construct -- Presidents, Vice-Presidents, heads of departments, Justices of the Supreme Court were in that imposing body. ...

The makers of the Constitution represented the solid, conservative, commercial and financial interests of the country -- not the interests which denounced and proscribed judges in Rhode Island, New Jersey, and North Carolina, and stoned their houses in New York. The conservative interests, made desperate by the imbecilities of the Confederation and harried by state legislatures, roused themselves from the lethargy, drew together in a mighty effort to establish a government that would be strong enough to pay the national debt, regulate interstate and foreign commerce, provide for national defense, prevent fluctuations in the currency created by paper emissions, and control the propensities of legislative majorities to attack private rights...The radicals, however, like Patrick Henry, Jefferson, and Samuel Adams, were conspicuous by their absence from the Convention.

The Convention was convened to frame a government that would meet the practical issues that had arisen under the Articles of Confederation. The objections they entertained to direct popular government, and they were undoubtedly many, were based upon their experience with popular assemblies during the immediately preceding years. With many of the plain lessons of history before them, they naturally feared that the rights and privileges of the minority would be insecure if the principle of majority rule was definitely adopted and provisions made for its exercise. Furthermore, it will be remembered that up to that time the right of all men, as men, to share in the government had never been recognized in practice. Everywhere in Europe the government was in the hands of a ruling monarch or at best a ruling class; everywhere the mass of the people had been regarded principally as an arms-bearing and tax-paying multitude, uneducated, and with little hope or capacity for advancement. Two years were to elapse after the meeting of the grave assembly at Philadelphia before the transformation of the Estates General into the National Convention in France opened the floodgates of revolutionary ideas on human rights before whose rising tide old landmarks of government are still being submerged. It is small wonder, therefore, that, under the circumstances, many members of that august body held popular government in slight esteem and took the people into consideration only as far as it was imperative "to inspire them with the necessary confidence," as Mr. Gerry [one of the framers of the Constitution] frankly put it.

Indeed, every page of the laconic record of the proceedings of the convention, preserved to posterity by Mr. Madison, shows conclusively that the members of that assembly were

not seeking to realize any fine notions about democracy and equality, but were striving with all the resources of political wisdom at their command to set up a system of government that would be stable and efficient, safeguarded on the one hand against the possibilities of despotism and on the other against the onslaught of majorities. In the mind of Mr. Gerry, the evils they had experienced flowed "from the excess of democracy," and he confessed that while he was still republican, he "had been taught by experience the danger of the levelling spirit." Mr. Randolph, in offering to the consideration of the convention his plan of government, observed "that the general object was to provide a cure for the evils under which the United States labored; that, in tracing these evils to their origin, every man had found it in the turbulence and follies of democracy; that some check therefore was to be sought for against this tendency of our governments; and that a good Senate seemed most likely to answer the purpose." Mr. Hamilton, in advocating a life term for Senators, urged that "all communities divide themselves into the few and the many. The first are the rich and well born and the other the mass of the people who seldom judge or determine right."

Governor Morris wanted to check the "precipitancy, changeableness, and excess" of the representatives of the people by the ability and virtue of men" of great and established property -- aristocracy; men who from pride will support consistency and permanency...Such an aristocratic body will keep down the turbulence of democracy." While these extreme doctrines were somewhat counterbalanced by the democratic principles of Mr. Wilson, who urged that "the government ought to possess, not only first, the force, but second, the mind or sense of the people at large," Madison doubtless summed up in a brief sentence the general opinion of the convention when he said that to secure private rights against minority factions, and at the same time to preserve the spirit and form of popular government, was the great object to which their inquiries had been directed.

They were anxious above everything else to safeguard the rights of private property against any leveling tendencies on the part of the propertyless masses. Governor Morris, in speaking on the problem of apportioning representatives, correctly stated the sound historical fact when he declared: "Life and liberty were generally said to be of more value than property. An accurate view of the matter, nevertheless, would prove that property was the main object of society...If property, then was the main object of government, certainly it ought to be one measure of the influence due to those who were to be affected by the government." Mr. King also agreed that "property was the primary object of society," and Mr. Madison warned the convention that in framing a system which they wished to last for ages they must not lose sight of the changes which the ages would produce in the forms and distribution of property. In advocating a long term in order to give independence and firmness to the Senate, he described these impending changes: "An increase in the population will of necessity increase the proportion of those who will labor under all the hardships of life and secretly sigh for a more equitable distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this country, but symptoms of a levelling spirit, as we have understood have sufficiently appeared, in a certain quarter, to

give notice of the future danger." And again, in support of the argument for a property qualification on voters, Madison urged: "In future times, a great majority of the people will not only be without land, but without any other sort of property. These will either combine, under the influence of their common situation, -- in which case the rights of property and the public liberty will not be secure in their hands, -- or, what is more probable, they will become the tools of opulence and ambition; in which case there will be equal danger on another side." Various projects for setting up class rule by the establishment of property qualifications for voters and officers were advanced in the convention, but they were defeated....

The absence of such property qualifications is certainly not due to any belief in Jefferson's free and equal doctrine. It is due rather to the fact that the members of the convention could not agree on the nature and amount of the qualifications. Naturally, a landed qualification was suggested, but for obvious reasons it was rejected. Although it was satisfactory to the landed gentry of the South, it did not suit the financial, commercial, and manufacturing gentry of the North. If it was high, the latter would be excluded; if it was low, it would let in the populistic farmers who had already made so much trouble in the state legislatures with paper-money schemes and other devices for "relieving agriculture." One of the chief reasons for calling the convention and framing the Constitution was to promote commerce and industry and to protect personal property against the depredations of Jefferson's noble freeholders. On the other hand, a personal property qualification, high enough to please merchant princes like Robert Morris or Nathaniel Gorham would shut out Southern planters. Again, an alternative of land or personal property, high enough to afford safeguards to large interests, would doubtless bring about the rejection of the whole Constitution by the troublemaking farmers who had to pass upon the question of ratification.

Nevertheless, by the system of checks and balances placed in the government, the convention safeguarded the interests of property against attacks by majorities. The House of Representatives, Mr. Hamilton pointed out, "was so formed as to render it particularly the guardian of the poorer orders of citizens," while the Senate was to preserve the rights of property and the interests of the minority against the demands of the majority. In the tenth number of The Federalist, Mr. Madison argued in a philosophic vein in support of the proposition that it was necessary to base the political system on the actual conditions of "natural inequality." Uniformity of interests throughout the state, he contended, was impossible on account of the diversity in the faculties of men, from which the rights of property originated; the protection of these faculties was the first object of government; from the protection of different and unequal faculties of acquiring property the possession of different degrees and kinds of property immediately resulted; from the influence of these on the sentiments and views of the respective proprietors ensued a division of society into different interests and parties; the unequal distribution of wealth inevitably led to a clash of interests in which the majority was liable to carry out its policies at the expense of the minority; hence, he added, in concluding this splendid piece of logic, "the majority, having such coexistent passion or interest, must be rendered by their number and local situation unable to concert and carry into effect schemes of oppression"; and in his opinion, it was the great merit of the newly framed Constitution that it secured the

rights of the minority against "the superior force of an interested and overbearing majority."

This very system of checks and balances, which is undeniably the essential element of the Constitution, is built upon the doctrine that the popular branch of the government cannot be allowed full sway, and least of all in the enactment of laws touching the rights of property. The exclusion of the direct popular vote in the election of the President; the creation, again by indirect election, of a Senate which the framers hoped would represent the wealth and conservative interests of the country, and the establishment of an independent judiciary appointed by the President with the concurrence of the Senate -- all these devices bear witness to the fact that the underlying purpose of the Constitution was not the establishment of popular government by means of parliamentary majorities.

Page after page of The Federalist is directed to that portion of the electorate which was disgusted with the "mutability of public councils." Writing on the presidential veto, Hamilton says: "The propensity of the legislative department to intrude upon the rights and absorb the powers of other departments has already been suggested and repeated....It may perhaps be said that the power of preventing bad laws included the power of preventing good ones; and may be used to the one purpose as well as the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws which form the greater blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law-making and to keep things in the same state in which they happen to be at any given period, as more likely to do good than harm; because it is favorable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws will be amply compensated by the advantage of preventing a number of bad ones."

When the framers of the Constitution had completed the remarkable instrument which was to establish a national government capable of discharging effectively certain great functions and checking the propensities of popular legislatures to attack the rights of private property, a formidable task remained before them -- the task of securing the adoption of the new frame of government by states torn with popular dissentions. They knew very well that the state legislatures which had been so negligent in paying their quotas [of money] under the Articles of Confederation and which had been so jealous of their rights, would probably stick at ratifying such a national instrument of government. Accordingly, they cast aside that clause in the Articles requiring amendments to be ratified by the legislatures of all of the states; and advised that the new Constitution should be ratified by conventions in the several states composed of delegates chosen by the voters. It was largely because the framers of the Constitution knew the temper and class bias of the state legislatures that they arranged that the new Constitution should be ratified by conventions. They furthermore declared -- and this is an fundamental matter -- that when the conventions of nine states had ratified the Constitution the new government should go into effect so far as those states were concerned. The chief reason for resorting to ratifications by conventions is laid down by Hamilton in Federalist 22:

"*It has not a little contributed to the infirmities of the existing federal system that it never had a ratification by the people. Resting on no better foundation that the consent of the several legislatures, it has been exposed to frequent and intricate questions concerning the validity of its powers; and has in some instances given birth to the enormous doctrine of a right of legislative repeal. Owing its ratification to the law of a state, it has been contended that the same authority might repeal the law by which it was ratified. However gross a heresy it may be to maintain that a party to a compact has a right to revoke that compact, the doctrine itself has respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of the consent of the people. The streams of national power ought to flow immediately from that pure original foundation of all legitimate authority*."

Of course, the convention did not resort to the revolutionary policy of transmitting the Constitution directly to the conventions of the several states. It merely laid the finished instrument before the Confederate Congress with the suggestion that it should be submitted to "a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for them assent and ratification; and each convention assenting thereto and ratifying the same should give notice thereof to the United States in Congress assembled." The convention went on to suggest that when nine states had ratified the Constitution, the Confederate Congress should extinguish itself by making provisions for the elections necessary to put the new government into effect....

After the new Constitution was published and transmitted to the states, there began a long and bitter fight over ratification. A veritable flood of pamphlet literature descended upon the country, and a collection of these pamphlets by Hamilton, Madison, and Jay, brought together under the title of The Federalist -- though clearly a piece of campaign literature -- has remained a permanent part of the contemporary sources on the Constitution and has been regarded by many lawyers as a commentary second in value only to the decisions of the Supreme Court. Within a year the champions of the new government found themselves victorious, for on June 21, 1788, the ninth state, New Hampshire, ratified the Constitution, and accordingly the new government might go into effect as between the agreeing states. Within a few weeks, the nationalist party in Virginia and New York succeeded in winning these two states, and in spite of the fact that North Carolina and Rhode Island had not yet ratified the Constitution, Congress determined to put the instrument into effect in accordance with the recommendations of the convention.

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