

YES

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A CONSTITUTION FOR THE FEW

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

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

CLASS POWER AND CONFLICT IN EARLY AMERICA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTAINING THE SPREAD OF DEMOCRACY

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

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

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

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

1. Regulate commerce among the states and with foreign nations and Indian tribes
2. Lay and collect taxes and impose duties and tariffs on imports but not on commercial exports
3. Establish a national currency and regulate its value
4. "Borrow Money on the credit of the United States"—a measure of special interest to creditors
5. Fix the standard of weights and measures necessary for trade
6. Protect the value of securities and currency against counterfeiting
7. Establish "uniform Laws on the subject of Bankruptcies throughout the United States"
8. "Pay the Debts and provide for the common Defence and general Welfare of the United States"

Congress was limited to powers specifically delegated to it by the Constitution or implied as "necessary and proper" for the performance of the delegated powers. Over the years, under this "implied power" clause, federal intervention in the private economy grew to an extraordinary magnitude.

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

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

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

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

The framers believed the states acted with insufficient force against popular

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

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

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

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

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

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

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

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

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

PLOTTERS OR PATRIOTS?

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

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

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

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

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

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

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

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

If the founders sought to “check power with power,” they seemed chiefly concerned with restraining mass power, while assuring the perpetuation of their own class power. They supposedly had a “realistic” opinion of the rapacious nature of human beings—readily evidenced when they talked about the common people—yet they held a remarkably sanguine view of the self-interested impulses of their own class, which they saw as inhabited largely by virtuous men of “principle and property.” According to Madison, wealthy men (the “minority faction”) would be unable to sacrifice “the rights of other citizens” or mask their “violence under the forms of the

Constitution." They would never jeopardize the institution of property and wealth and the untrammelled uses thereof, which in the eyes of the framers constituted the essence of "liberty."

AN ELITIST DOCUMENT

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

The Constitution championed the rights of property over the rights and liberties of persons. For the founders, liberty meant something different from and antithetical to democracy. It meant liberty to invest, speculate, trade, and accumulate wealth and to secure its possession without encroachment by sovereign or populace. The civil liberties designed to give all individuals the right to engage in public affairs won little support from the delegates. When Colonel Mason recommended that a committee be formed to draft "a Bill of Rights," a task he said could be accomplished "in a few hours," the other convention members offered little discussion on the motion and voted unanimously against it.

If the Constitution was so blatantly elitist, how did it manage to win ratifica-

tion? Actually, it did not have a wide backing, initially being opposed in most of the states. But the same superiority of wealth, organization, and control of political office and the press that allowed the rich to monopolize the Philadelphia Convention enabled them to orchestrate a successful ratification campaign. The Federalists also used bribes, intimidation, and other discouragements against opponents of the Constitution. What's more, *the Constitution never was submitted to a popular vote*. Ratification was by state convention composed of delegates drawn mostly from the same affluent strata as the framers. Those who voted for these delegates were themselves usually subjected to property qualifications.

DEMOCRATIC CONCESSIONS

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

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

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

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

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

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

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

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

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