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CHAPTER I

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# The Founding Fathers: An Age of Realism

Wherever the real power in a government lies, there is the danger of oppression. In our Government the real power lies in the majority of the community. . . .

—JAMES MADISON

Power naturally grows . . . because human passions are insatiable. But that power alone can grow which already is too great; that which is unchecked, that which has no equal power to control it.

—JOHN ADAMS

*Richard Hofstadter, The Age of Reason  
Political Thought  
(1998)*

Long ago Horace White observed that the Constitution of the United States "is based upon the philosophy of Hobbes and the religion of Calvin. It assumes that the natural state of mankind is a state of war, and that the carnal mind is at enmity with God." Of course the Constitution was founded more upon experience than any such abstract theory, but it was also an event in the intellectual history of Western civilization. The men who drew up the Constitution in Philadelphia during the summer of 1787 had a vivid Calvinistic sense of human evil and damnation and believed with Hobbes that men are selfish and contentious. They were men of affairs, merchants, lawyers, planter-businessmen, speculators, investors. Having seen human nature on display in the marketplace, the courtroom, the legislative chamber, and in every secret path and alleyway where wealth and power are courted, they felt they knew it in all its frailty. To them a human being was an atom of self-interest. They did not believe in man, but they did believe in the power of a good political constitution to control him.

This may be an abstract notion to ascribe to practical men, but it follows the language that the Fathers themselves used. General Knox, for example, wrote in disgust to Washington after the Shays Rebellion that Americans were, after all, "men—actual men possessing all the turbulent

passions belonging to that animal." Throughout the secret discussions at the Constitutional Convention it was clear that this distrust of man was first and foremost a distrust of the common man and democratic rule. As the Revolution took away the restraining hand of the British government, old colonial grievances of farmers, debtors, and squatters against merchants, investors, and large landholders had flared up anew; the lower orders took advantage of new democratic constitutions in several states, and the possessing classes were frightened. The members of the Constitutional Convention were concerned to create a government that could not only regulate commerce and pay its debts but also prevent currency inflation and stay laws, and check such uprisings as the Shays Rebellion.

Cribbing and confining the popular spirit that had been at large since 1776 were essential to the purposes of the new Constitution. Edmund Randolph, saying to the Convention that the evils from which the country suffered originated in "the turbulence and follies of democracy," and that the great danger lay in "the democratic parts of our constitutions"; Elbridge Gerry, speaking of democracy as "the worst of all political evils"; Roger Sherman, hoping that "the people . . . have as little to do as may be about the government"; William Livingston, saying that "the people have ever been and ever will be unfit to retain the exercise of power in their own hands"; George Washington, the presiding officer, urging the delegates not to produce a document of which they themselves could not approve simply in order to "please the people"; Hamilton, charging that the "turbulent and changing" masses "seldom judge or determine right" and advising a permanent governmental body to "check the imprudence of democracy"; the wealthy young planter Charles Pinckney, proposing that no one be president who was not worth at least one hundred thousand dollars—all these were quite representative of the spirit in which the problems of government were treated.

Democratic ideas are most likely to take root among discontented and oppressed classes, rising middle classes, or perhaps some sections of an old, alienated, and partially disinherited aristocracy, but they do not appeal to a privileged class that is still amplifying its privileges. With a half-dozen exceptions at the most, the men of the Philadelphia Convention were sons of men who had considerable position and wealth, and as a group they had advanced well beyond their fathers. Only one of them, William Few of Georgia, could be said in any sense to represent the yeoman farmer class which constituted the overwhelming majority of the free population. In the late eighteenth century "the better kind of people" found themselves set off from the mass by a hundred visible, tangible, and audible distinctions of dress, speech, manners, and education. There was a continuous lineage of upper-class contempt, from pre-Revolutionary Tories like Peggy Hutchinson, the Governor's daughter, who wrote one day: "The dirty mob was all about me as I drove into town," to a Federalist like Hamilton, who candidly disdained the people. Mass unrest was often received in the spirit of young Gouverneur Morris: "The mob begin to think and reason. Poor reptiles! . . . They bask in the sun, and ere noon they will bite, depend upon it. The gentry begin to fear this." Nowhere in America or Europe—not even among the great liberated thinkers of the Enlightenment—did democratic ideas appear respectable to the cultivated classes. Whether the Fathers looked to the cynically illuminated intellectuals of contemporary Europe or to their own Christian heritage of the idea of original sin, they found quick confirmation of the notion that man is an unregenerate rebel who has to be controlled.

And yet there was another side to the picture. The Fathers were intellectual heirs of seventeenth-century English republicanism with its opposition to arbitrary rule and faith in popular sovereignty. If they feared the advance of democracy, they also had misgivings about turning to the

extreme right. Having recently experienced a bitter revolutionary struggle with an external power beyond their control, they were in no mood to follow Hobbes to his conclusion that any kind of government must be accepted in order to avert the anarchy and terror of a state of nature. They were uneasily aware that both military dictatorship and a return to monarchy were being seriously discussed in some quarters—the former chiefly among unpaid and discontented army officers, the latter in rich and fashionable Northern circles. John Jay, familiar with sentiment among New York's mercantile aristocracy, wrote to Washington, June 27, 1786, that he feared that "the better kind of people (by which I mean the people who are orderly and industrious, who are content with their situations, and not uneasy in their circumstances) will be led, by the insecurity of property, the loss of confidence in their rulers, and the want of public faith and rectitude, to consider the charms of liberty as imaginary and delusive." Such men, he thought, might be prepared for "almost any change that may promise them quiet and security." Washington, who had already repudiated a suggestion that he become a military dictator, agreed, remarking that "we are apt to run from one extreme to the other."

Unwilling to turn their backs on republicanism, the Fathers also wished to avoid violating the prejudices of the people. "Notwithstanding the oppression and injustice experienced among us from democracy," said George Mason, "the genius of the people is in favor of it, and the genius of the people must be consulted." Mason admitted "that we had been too democratic," but feared that "we should incautiously run into the opposite extreme." James Madison, who has quite rightfully been called the philosopher of the Constitution, told the delegates: "It seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them." James Wil-

son, the outstanding jurist of the age, later appointed to the Supreme Court by Washington, said again and again that the ultimate power of government must of necessity reside in the people. This the Fathers commonly accepted, for if government did not proceed from the people, from what other source could it legitimately come? To adopt any other premise not only would be inconsistent with everything they had said against British rule in the past but would open the gates to an extreme concentration of power in the future. Hamilton saw the sharp distinction in the Convention when he said that "the members most tenacious of republicanism were as loud as any in declaiming the vices of democracy." There was no better expression of the dilemma of a man who has no faith in the people but insists that government be based upon them than that of Jeremy Belknap, a New England clergyman, who wrote to a friend: "Let it stand as a principle that government originates from the people; but let the people be taught . . . that they are not able to govern themselves."

II

If the masses were turbulent and unregenerate, and yet if government must be founded upon their suffrage and consent, what could a Constitution-maker do? One thing that the Fathers did not propose to do, because they thought it impossible, was to change the nature of man to conform with a more ideal system. They were inordinately confident that they knew what man always had been and what he always would be. The eighteenth-century mind had great faith in universals. Its method, as Carl Becker has said, was "to go up and down the field of history looking for man in general, the universal man, stripped of the accidents of time and place." Madison declared that the causes of political differences and of the formation of factions were "sown in

the nature of man" and could never be eradicated. "It is universally acknowledged," David Hume had written, "that there is a great uniformity among the actions of men, in all nations and ages, and that human nature remains still the same, in its principles and operations. The same motives always produce the same actions. The same events always follow from the same causes."

Since man was an unchangeable creature of self-interest, it would not do to leave anything to his capacity for restraint. It was too much to expect that vice could be checked by virtue; the Fathers relied instead upon checking vice with vice. Madison once objected during the Convention that Gouverneur Morris was "forever inculcating the utter political depravity of men and the necessity of opposing one vice and interest to another vice and interest." And yet Madison himself in the *Federalist* number 51 later set forth an excellent statement of the same thesis:

Ambition must be made to counteract ambition. . . . It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. . . . In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed, and in the next place oblige it to control itself.

Political economists of the *laissez-faire* school were saying that private vices could be public benefits, that an

<sup>1</sup> Cf. the words of Hamilton to the New York ratifying convention: "Men will pursue their interests. It is as easy to change human nature as to oppose the strong current of selfish passions. A wise legislator will gently divert the channel, and direct it, if possible, to the public good."

economically beneficent result would be providentially or "naturally" achieved if self-interest were left free from state interference and allowed to pursue its ends. But the Fathers were not so optimistic about politics. If, in a state that lacked constitutional balance, one class or one interest gained control, they believed, it would surely plunder all other interests. The Fathers, of course, were especially fearful that the poor would plunder the rich, but most of them would probably have admitted that the rich, unrestrained, would also plunder the poor. Even Gouverneur Morris, who stood as close to the extreme aristocratic position as candor and intelligence would allow, told the Convention: "Wealth tends to corrupt the mind and to nourish its love of power, and to stimulate it to oppression. History proves this to be the spirit of the opulent."

What the Fathers wanted was known as "balanced government," an idea at least as old as Aristotle and Polybius. This ancient conception had won new sanction in the eighteenth century, which was dominated intellectually by the scientific work of Newton, and in which mechanical metaphors sprang as naturally to men's minds as did biological metaphors in the Darwinian atmosphere of the late nineteenth century. Men had found a rational order in the universe and they hoped that it could be transferred to politics, or, as John Adams put it, that governments could be "erected on the simple principles of nature." Madison spoke in the most precise Newtonian language when he said that such a "natural" government must be so constructed "that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places." A properly designed state, the Fathers believed, would check interest with interest, class with class, faction with faction, and one branch of government with another in a harmonious system of mutual frustration.

In practical form, therefore, the quest of the Fathers reduced primarily to a search for constitutional devices that

would force various interests to check and control one another. Among those who favored the federal Constitution three such devices were distinguished.

The first of these was the advantage of a federated government in maintaining order against popular uprising or majority rule. In a single state a faction might arise and take complete control by force; but if the states were bound in a federation, the central government could step in and prevent it. Hamilton quoted Montesquieu: "Should a popular insurrection happen in one of the confederate states, the others are able to quell it." Further, as Madison argued in the *Federalist* number 10, a majority would be the most dangerous of all factions that might arise, for the majority would be the most capable of gaining complete ascendancy. If the political society were very extensive, however, and embraced a large number and variety of local interests, the citizens who shared a common majority interest "must be rendered by their number and local situation, unable to concert and carry into effect their schemes of oppression." The chief propertied interests would then be safer from "a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project."

The second advantage of good constitutional government resided in the mechanism of representation itself. In a small direct democracy the unstable passions of the people would dominate lawmaking; but a representative government, as Madison said, would "refine and enlarge the public views by passing them through the medium of a chosen body of citizens." Representatives chosen by the people were wiser and more deliberate than the people themselves in mass assemblage. Hamilton frankly anticipated a kind of syndical paternalism in which the wealthy and dominant members of every trade or industry would represent the others in politics. Merchants, for example, were "the natural representatives" of their employees and of the mechanics and artisans they dealt with. Hamilton expected that Con-

gress, "with too few exceptions to have any influence on the spirit of the government, will be composed of landholders, merchants, and men of the learned professions."

The third advantage of the government the Fathers were designing was pointed out most elaborately by John Adams in the first volume of his *Defence of the Constitutions of Government of the United States of America*, which reached Philadelphia while the Convention was in session and was cited with approval by several delegates.<sup>2</sup> Adams believed that the aristocracy and the democracy must be made to neutralize each other. Each element should be given its own house of the legislature, and over both houses there should be set a capable, strong, and impartial executive armed with the veto power. This split assembly would contain within itself an organic check and would be capable of self-control under the governance of the executive. The whole system was to be capped by an independent judiciary. The inevitable tendency of the rich and the poor to plunder each other would be kept in hand.

III

It is ironical that the Constitution, which Americans venerate so deeply, is based upon a political theory that at one crucial point stands in direct antithesis to the mainstream of American democratic faith. Modern American folklore assumes that democracy and liberty are all but identical, and when democratic writers take the trouble to make the

<sup>2</sup> "Mr. Adams' book," wrote Benjamin Rush, often in the company of the delegates, "has diffused such excellent principles among us that there is little doubt of our adopting a vigorous and compounded Federal Legislature. Our illustrious Minister in this gift to his country has done us more service than if he had obtained alliances for us with all the nations of Europe."

distinction, they usually assume that democracy is necessary to liberty. But the Founding Fathers thought that the liberty with which they were most concerned was menaced by democracy. In their minds liberty was linked not to democracy but to property.

What did the Fathers mean by liberty? What did Jay mean when he spoke of "the charms of liberty"? Or Madison when he declared that to destroy liberty in order to destroy factions would be a remedy worse than the disease? Certainly the men who met at Philadelphia were not interested in extending liberty to those classes in America, the Negro slaves and the indentured servants, who were most in need of it, for slavery was recognized in the organic structure of the Constitution and indentured servitude was no concern of the Convention. Nor was the regard of the delegates for civil liberties any too tender. It was the opponents of the Constitution who were most active in demanding such vital liberties as freedom of religion, freedom of speech and press, jury trial, due process, and protection from "unreasonable searches and seizures." These guarantees had to be incorporated in the first ten amendments because the Convention neglected to put them in the original document. Turning to economic issues, it was not freedom of trade in the modern sense that the Fathers were striving for. Although they did not believe in impeding trade unnecessarily, they felt that failure to regulate it was one of the central weaknesses of the Articles of Confederation, and they stood closer to the mercantilists than to Adam Smith. Again, liberty to them did not mean free access to the nation's unappropriated wealth. At least fourteen of them were land speculators. They did not believe in the right of the squatter to occupy unused land, but rather in the right of the absentee owner or speculator to preempt it.

The liberties that the constitutionalists hoped to gain were chiefly negative. They wanted freedom from fiscal uncertainty and irregularities in the currency, from trade wars

among the states, from economic discrimination by more powerful foreign governments, from attacks on the creditor class or on property, from popular insurrection. They aimed to create a government that would act as an honest broker among a variety of propertied interests, giving them all protection from their common enemies and preventing any one of them from becoming too powerful. The Convention was a fraternity of types of absentee ownership. All property should be permitted to have its proportionate voice in government. Individual property interests might have to be sacrificed at times, but only for the community of propertied interests. Freedom for property would result in liberty for men—perhaps not for all men, but at least for all worthy men.<sup>3</sup> Because men have different faculties and abilities, the Fathers believed, they acquire different amounts of property. To protect property is only to protect men in the exercise of their natural faculties. Among the many liberties, therefore, freedom to hold and dispose property is paramount. Democracy, unchecked rule by the masses, is sure to bring arbitrary redistribution of property, destroying the very essence of liberty.

The Fathers' conception of democracy, shaped by their practical experience with the aggressive dirt farmers in the

<sup>3</sup> The Fathers probably would have accepted the argument of the Declaration of Independence that "all men are created equal," but only as a legal, not as a political or psychological proposition. Jefferson himself believed in the existence of "natural aristocrats," but he thought they were likely to appear in any class of society. However, for those who interpreted the natural-rights philosophy more conservatively than he, the idea that all men are equal did not mean that uneducated dirt farmers or grimy-handed ship calkers were in any sense the equals of the Schuylers, Washingtons, or Pinckneys. It meant only that British colonials had as much natural right to self-government as Britons at home, that the average American was the legal peer of the average Briton. Among the signers of the Constitution, it is worth noting, there were only six men who had also signed the Declaration of Independence.

American states and the urban mobs of the Revolutionary period, was supplemented by their reading in history and political science. Fear of what Madison called "the superior force of an interested and overbearing majority" was the dominant emotion aroused by their study of historical examples. The chief examples of republics were among the city-states of antiquity, medieval Europe, and early modern times. Now, the history of these republics—a history, as Hamilton said, "of perpetual vibration between the extremes of tyranny and anarchy"—was alarming. Further, most of the men who had overthrown the liberties of republics had "begun their career by paying an obsequious court to the people; commencing demagogues and ending tyrants."

All the constitutional devices that the Fathers praised in their writings were attempts to guarantee the future of the United States against the "troubled" political cycles of previous republics. By "democracy," they meant a system of government which directly expressed the will of the majority of the people, usually through such an assemblage of the people as was possible in the small area of the city-state.

A cardinal tenet in the faith of the men who made the Constitution was the belief that democracy can never be more than a transitional stage in government, that it always evolves into either a tyranny (the rule of the rich demagogue who has patronized the mob) or an aristocracy (the original leaders of the democratic elements). "Remember," wrote the dogmatic John Adams in one of his letters to John Taylor of Caroline, "democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet that did not commit suicide."<sup>4</sup> Again:

<sup>4</sup> Taylor labored to confute Adams, but in 1814, after many discouraging years in American politics, he conceded a great part of Adams's case: "All parties, however loyal to principles at first, degenerate into aristocracies

If you give more than a share in the sovereignty to the democrats, that is, if you give them the command or preponderance in the . . . legislature, they will vote all property out of the hands of you aristocrats, and if they let you escape with your lives, it will be more humanity, consideration, and generosity than any triumphant democracy ever displayed since the creation. And what will follow? The aristocracy among the democrats will take your places, and treat their fellows as severely and sternly as you have treated them.

Government, thought the Fathers, is based on property. Men who have no property lack the necessary stake in an orderly society to make stable or reliable citizens. Dread of the propertyless masses of the towns was all but universal. George Washington, Gouverneur Morris, John Dickinson, and James Madison spoke of their anxieties about the urban working class that might arise some time in the future—"men without property and principle," as Dickinson described them—and even the democratic Jefferson shared this prejudice. Madison, stating the problem, came close to anticipating the modern threats to conservative republicanism from both communism and fascism:

In future times a great majority of the people will not only be without landed but 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 be-

of interest at last, and unless a nation is capable of discerning the point where integrity ends and fraud begins, popular parties are among the surest modes of introducing an aristocracy."



come the tools of opulence and ambition, in which case there will be equal danger on another side.

What encouraged the Fathers about their own era, however, was the broad dispersion of landed property. The small land-owning farmers had been troublesome in recent years, but there was a general conviction that under a property made Constitution a *modus vivendi* could be worked out with them. The possession of moderate plots of property presumably gave them a sufficient stake in society to be safe and responsible citizens under the restraints of balanced government. Influence in government would be proportionate to property: merchants and great landholders would be dominant, but small property-owners would have an independent and far from negligible voice. It was "politic as well as just," said Madison, "that the interests and rights of every class should be duly represented and understood in the public councils," and John Adams declared that there could be "no free government without a democratical branch in the constitution."

The farming element already satisfied the property requirements for suffrage in most of the states, and the Fathers generally had no quarrel with their enfranchisement. But when they spoke of the necessity of founding government upon the consent of "the people," it was only these small property-holders that they had in mind. For example, the famous Virginia Bill of Rights, written by George Mason, explicitly defined those eligible for suffrage as all men "having sufficient evidence of permanent common interest with and attachment to the community"—which meant, in brief, sufficient property.

However, the original intention of the Fathers to admit the yeoman into an important but sharply limited partnership in affairs of state could not be perfectly realized. At the time the Constitution was made, Southern planters and Northern merchants were setting their differences aside in

order to meet common dangers—from radicals within and more powerful nations without. After the Constitution was adopted, conflict between the ruling classes broke out anew, especially after powerful planters were offended by the favoritism of Hamilton's policies to Northern commercial interests. The planters turned to the farmers to form an agrarian alliance, and for more than half a century this powerful coalition embraced the bulk of the articulate interests of the country. As time went on, therefore, the mainstream of American political conviction deviated more and more from the antidemocratic position of the Constitution-makers. Yet, curiously, their general satisfaction with the Constitution together with their growing nationalism made Americans deeply reverent of the founding generation, with the result that as it grew stronger, this deviation was increasingly overlooked.

There is common agreement among modern critics that the debates over the Constitution were carried on at an intellectual level that is rare in politics, and that the Constitution itself is one of the world's masterpieces of practical statecraft. On other grounds there has been controversy. At the very beginning contemporary opponents of the Constitution foresaw an apocalyptic destruction of local government and popular institutions, while conservative Europeans of the old regime thought the young American Republic was a dangerous leftist experiment. Modern critical scholarship, which reached a high point in Charles A. Beard's *An Economic Interpretation of the Constitution of the United States*, started a new turn in the debate. The antagonism, long latent, between the philosophy of the Constitution and the philosophy of American democracy again came into the open. Professor Beard's work appeared in 1913 at the peak of the Progressive era, when the muck-raking fever was still high, some readers tended to conclude from his findings that the Fathers were selfish reactionaries

who do not deserve their high place in American esteem. Still more recently, other writers, inverting this logic, have used Beard's facts to praise the Fathers for their opposition to "democracy" and as an argument for returning again to the idea of a "republic."

In fact, the Father's image of themselves as moderate republicans standing between political extremes was quite accurate. They were impelled by class motives more than pietistic writers like to admit, but they were also controlled, as Professor Beard himself has recently emphasized, by a statesmanlike sense of moderation and a scrupulously republican philosophy. Any attempt, however, to tear their ideas out of the eighteenth-century context is sure to make them seem starkly reactionary. Consider, for example, the favorite maxim of John Jay: "The people who own the country ought to govern it." To the Fathers this was simply a swift axiomatic statement of the stake-in-society theory of political rights, a moderate conservative position under eighteenth-century conditions of property distribution in America. Under modern property relations this maxim demands a drastic restriction of the base of political power. A large portion of the modern middle class—and it is the strength of this class upon which balanced government depends—is propertyless; and the urban proletariat, which the Fathers so greatly feared, is almost one half the population. Further, the separation of ownership from control that has come with the corporation deprives Jay's maxim of twentieth-century meaning even for many propertied people. The six hundred thousand stockholders of the American Telephone & Telegraph Company not only do not acquire political power by virtue of their stock-ownership, but they do not even acquire economic power: they cannot control their own company.

From a humanistic standpoint there is a serious dilemma in the philosophy of the Fathers, which derives from their conception of man. They thought man was a creature

of rapacious self-interest, and yet they wanted him to be free—free, in essence, to contend, to engage in an umpired strife, to use property to get property. They accepted the mercantile image of life as an eternal battleground, and assumed the Hobbesian war of each against all; they did not propose to put an end to this war, but merely to stabilize it and make it less murderous. They had no hope and they offered none for any ultimate organic change in the way men conduct themselves. The result was that while they thought self-interest the most dangerous and unbrookable quality of man, they necessarily underwrote it in trying to control it. They succeeded in both respects: under the competitive capitalism of the nineteenth century America continued to be an arena for various grasping and contending interests, and the federal government continued to provide a stable and acceptable medium within which they could contend; further, it usually showed the wholesome bias on behalf of property which the Fathers expected. But no man who is as well abreast of modern science as the Fathers were of eighteenth-century science believes any longer in unchanging human nature. Modern humanistic thinkers who seek for a means by which society may transcend eternal conflict and rigid adherence to property rights as its integrating principles can expect no answer in the philosophy of balanced government as it was set down by the Constitution-makers of 1787.