Motives at Philadelphia, 1787: Gordon Wood's Neo-Beardian Thesis Reexamined

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Ever since Charles Beard published his seminal work, *An Economic Interpretation of the Constitution of the United States,* in 1913,[1] a vigorous debate has ensued among historians over the purpose and design of the Constitutional Convention.[2] Was it, as Beard claimed, a Thermidorean counterrevolution, a reaction to the leveling propensities unleashed by the Revolution, or was it a conclave of patriots dedicated to the preservation of the Union and intent on strengthening the federal government so as to overcome the centrifugal forces tearing the confederation apart? For about forty years after its appearance, Beard's interpretation reigned supreme. It became the accepted wisdom that the Founders had acted out of selfish class interests in fashioning a constitution that would serve to protect the forms of property with which they were particularly associated.[3] Subsequently,

1. Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan, 1913, 1935).

2. For excellent and comprehensive reviews of the debate on the struggle surrounding the adoption of the Constitution, see Jack P. Greene, ed., *The Reinterpretation of the American Revolution, 1763–1789* (New York: Harper & Row, 1968), Introduction; and James H. Hutson, "Country, Court, and Constitution: Antifederalism and the Historians," *William and Mary Quarterly,* 3d ser., 38 (1981): 337–68. Greene, incidentally, after surveying the critical literature, acknowledges "how giant a shadow Beard had cast." *Reinterpretation,* 66.

3. For the impact of Beard's study on later generations of scholars, see Maurice Blinkoff, *The Influence of Charles A. Beard upon American Historiography,* University of Buffalo Studies 12, Monographs in History 4 (1936), chap. 2. See also Max Lerner, *Ideas Are Weapons:*

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however, during the 1950s, Beard's analysis was subjected to more exacting scrutiny and found wanting. Vigorous challenges against his methodology and conclusions were raised by such writers as Douglass Adair, Cecelia M. Kenyon, Robert E. Brown, and Forrest McDonald.[4] In the wake of their analyses very little of Beard's thesis was left intact.

More recently, Beard's social approach to the events of the Founding received a new lease of life with the appearance of fresh revisionist writing. The publication of works by Merrill Jensen, Jackson Turner Main, and, in particular, Gordon Wood heralded a new appreciation of Beard's analysis.[5] Thus, while Wood dismisses Beard's interpretation as too narrow, he credits him with asking the right questions and being on the right track in his quest for answers:

> It seems obvious by now that Beard's notion that men's property holdings, particularly personalty holdings, determined their ideas and their behavior was so crude that no further time should be spent on it. Yet while Beard's interpretation of the origins of the Constitution in a narrow sense is undeniably dead, the general interpretation of the Progressive generation of historians—that the Constitution was in some sense an aristocratic document designed to curb the democratic excesses of the Revolution—still seems to me to be the most helpful framework for understanding the politics and ideology surrounding the Constitution.[6]

Wood's social approach to the Founding is, of course, also reflected in his most recent work, *The Radicalism of the American Revolution,* pub-

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The History and Uses of Ideas (New York: Viking, 1939), 152–69; Robert E. Brown, *Charles Beard and the Constitution: A Critical Analysis of "An Economic Interpretation of the Constitution"* (Princeton: Princeton University Press, 1956), Introduction; and Richard Hofstadter, *The Progressive Historians: Turner, Beard, Parrington* (New York: Knopf, 1968), chap. 6.

4. Douglass Adair, "The Tenth Federalist Revisited," *William and Mary Quarterly,* 3d ser., 8 (1951): 48–67; Cecelia M. Kenyon, "Men of Little Faith: The Anti-Federalists on the Nature of Representative Government," *William and Mary Quarterly,* 3d ser., 12 (1955): 3–43; Cecelia M. Kenyon, ed., *The Antifederalists* (Indianapolis: Bobbs-Merrill, 1966); Brown, *Charles Beard and the Constitution;* Forrest McDonald, *We the People: The Economic Origins of the Constitution* (Chicago: University of Chicago Press, 1958). See also McDonald's introduction to the 1986 edition of Beard, *An Economic Interpretation* (New York: The Free Press).

5. Merrill Jensen, *The New Nation: A History of the United States, 1781–1789* (New York: Knopf, 1950); Jackson Turner Main, *The Antifederalists: Critics of the Constitution, 1781–1788* (Chapel Hill: University of North Carolina Press, 1961); Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969).

6. Wood, *The Creation of the American Republic,* 626. See also, in the same vein, Joyce Appleby, "The American Heritage: The Heirs and the Disinherited," *Journal of American History* 74 (1987): 810–11.

lished in 1992. But his distinctive ideological interpretation of the Constitutional Convention receives its clearest exposition in his earlier study, *The Creation of the American Republic, 1776–1787,* and in his article, "Interests and Disinterestedness in the Making of the Constitution."[7] While Beard regarded the Federalists as a modernizing, forward-looking force, Wood sees them as members of a retrograde element who failed in the task they had set for themselves at the Constitutional Convention. In Wood's eyes, the Antifederalists were the progressive, modernizing component in the debate that arose over the adoption of the Constitution, and they were the ones who really shaped the face of America as we know it today. In effect, Wood's explanation of the significance of the Constitutional Convention for the development of the American republic is an obverse version of the Beard thesis. This article examines the manner in which Wood's thesis differs from Beard's; the strength of the evidentiary material adduced in support; whether the new variation is any more tenable than the original Beard thesis; and whether an alternative interpretation of the motives of the Founders is more plausible.[8]

From Beard to Wood

According to Beard, the Federalist drive to draft a new constitution for the United States was a product of the severe frustration felt by the entrepre-

7. In Richard Beeman, Stephen Botein, and Edward C. Carter II, eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill: University of North Carolina Press, 1987), 69–109. See also *The Radicalism of the American Revolution* (New York: Knopf, 1992).

8. In 1987, the *William and Mary Quarterly* invited twelve prominent historians to engage in a reassessment of Wood, *The Creation of the American Republic,* nearly twenty years after its appearance. Their comments, together with the author's reply, were published under the heading "Forum," *William and Mary Quarterly,* 3d ser., 44 (1987): 549–640 (hereinafter cited as "Forum"). The contributors uniformly praised the book while highlighting certain features that could have been handled differently or might have been expanded upon. (See, for example, the laudatory comments of Jack Rakove, who noted certain areas of research left undone by Wood [617–22]. In his recent monumental study, *Original Meanings: Politics and Ideas in the Making of the Constitution* [New York: Knopf, 1996], Rakove likewise extols *The Creation of the American Republic* without any serious criticism.) Several of the commentators take issue with Wood's discussion, in the last third of his book, of the Critical Period and the Constitutional Convention. (See, in particular, Ralph Ketcham, 576–82; Pauline Maier, 587–88; and Peter S. Onuf, 615–16.) These writers dispute the claim that the Constitution represented a counterrevolutionary step that radically departed from the ideals that underlay the Revolution. My article seeks to take this analysis a step further by questioning Wood's assertion that the Constitutional Convention was designed primarily to overcome the social turmoil besetting the states.

neurial class engaged in trade and commerce, who, because of the absence of an effective national government, suffered most from the chaotic economic conditions that plagued the country in the 1780s. With each state independently imposing taxes and customs and regulating commerce in accordance with its own interests, the national economy was in complete disarray.

Beard depicts the evolution of the "plot" that underlay the convening of the Constitutional Convention as follows: "Having failed to realize their great purposes through the regular means, the leaders in the movement set to work to secure by a circuitous route the assembling of a Convention to 'revise' the Articles of Confederation with the hope of obtaining, outside of the existing legal framework, the adoption of a revolutionary program."[9]

The class character of the contest surrounding the drafting and adoption of the Constitution is summed up by Beard in his work on Jeffersonian democracy: "The Constitution of the United States was the product of a conflict between capitalistic and agrarian interests."[10] Thus, in Beard's view, the Federalists were the dynamic, innovative element that set the United States on the broad path of capitalist development and promoted the transformation of the country into a giant industrial power. Beard was clearly unsympathetic to the Antifederalists whom he deemed hidebound, bent on preserving the agrarian character of the country and on thwarting the entry of the United States into the industrial age.[11]

While Wood accepts Beard's basic premise that the Constitutional Convention was conspiratorial in nature and designed to fulfill a social purpose,[12] he differs from Beard over the purpose involved and, more particularly, about the focus of the reforms contemplated. According to Beard, the Federalists were manifestly concerned with revising the Articles of Confederation and with correcting the deficiencies of the federal government that prevented it from coping with the national problems plaguing the Union. This goal, Wood thinks, was quite incidental, since the primary aim of the Federalists was to redress the chaotic social situation in the states and to restore virtuous government there. In short, they differ over wheth-

9. *An Economic Interpretation,* 61–63.

10. Charles Beard, *The Economic Origins of Jeffersonian Democracy* (New York: Macmillan, 1915), 464. Taking his analysis beyond the Constitutional Convention, Beard asserts: "The spokesmen of the Federalist and Republican parties, Hamilton and Jefferson, were respectively the spokesmen of capitalistic and agrarian interests." Ibid., 465–66.

11. Thus, according to one writer, Beard "identified with the Hamiltonian Federalist tradition and had nothing good to say about Jefferson or the Anti-Federalist opponents of the Constitution." Pope McCorkle, "The Historian as Intellectual: Charles Beard and the Constitution Reconsidered," *American Journal of Legal History* 28 (1984): 318.

12. See, in this regard, the comments of Ruth H. Bloch, John Patrick Diggins, and John M. Murrin, "Forum," 551, 564, 599.

er the Constitutional Convention was convened primarily to rectify matters on the national or on the state level. Flowing from this disagreement comes a further clash of opinion, namely, whether the Federalists succeeded in what they set out to achieve and whether America, in its modern manifestation, reflects more accurately the societal image of the Federalists or that of the Antifederalists.

According to Wood, the Federalists were convinced that "only by shifting the arena of reform to the federal level . . . could the evils of American politics be finally remedied."[13] These evils were present at the state level, but they could only be corrected on the federal plane. "In the end it was not pressure from above, from the manifest debility of the Confederation, that provided the main impulse for the Federalist movement of 1787; it was rather pressure from below, from the problems of politics within the separate states themselves, that eventually made constitutional reform of the central government possible."[14]

From this viewpoint, "the new national government was not . . . meant merely to save the Union, for strengthening the Confederation along the lines of the New Jersey plan could have done that."[15] The Federalists aimed for something far more ambitious and grandiose. They were interested in instituting a reform that would revamp the entire gamut of republican government in the United States. "Their focus was not so much on the politics of the Congress as it was on the politics of the states. To the Federalists the move for the new central government became the ultimate act of the entire Revolutionary era; it was both a progressive attempt to salvage the Revolution in the face of its imminent failure and a reactionary effort to restrain its excesses."[16] The bane of the Federalists was the rampant spirit of democracy that the Revolution had spawned and that permeated state politics. "The supporters of the new federal Constitution thus aimed to succeed where the states, not the Confederation, had failed, in protecting, in John Dickinson's phrase, 'the worthy against the licentious.'"[17] The Federalists looked at American society during the critical period and attributed most of its woes—"the atmosphere of mistrust, the breakdown of authority, the increase of debt, the depravity of manners, and the decline of virtue— . . . to a fundamental problem of social disarrangement. . . . More than anything else the Federalists' obsession with disorder in American society and politics accounts for the revolutionary nature of the nationalist proposals offered by men like Madison in 1787 and for the resultant Federalist Constitution."[18]

13. *The Creation of the American Republic,* 463.
14. Ibid., 465.
15. Ibid., 474–75.
16. Ibid., 475.
17. Ibid.
18. Ibid., 476.

It is only by taking account of "the Federalists' social perspective, their fears and anxieties about the disarray in American society," that one can appreciate "how they conceived of the Constitution as a political device designed to control the social forces the Revolution had released."[19] From this standpoint, "the move for a stronger national government thus became something more than a response to the obvious weaknesses of the Articles of Confederation. It became as well an answer to the problems of the state governments."[20]

The struggle over the ratification of the Constitution, Wood maintains, can also be best understood as a fundamental debate over social designs. "Both the proponents and opponents of the Constitution focused throughout the debates on an essential point of political sociology that ultimately must be used to distinguish a Federalist from an Antifederalist. The quarrel was fundamentally one between aristocracy and democracy."[21]

This sums up Wood's thesis on the Constitutional Convention as presented in *The Creation of the American Republic.* In "Interests and Disinterestedness in the Making of the Constitution," written in commemoration of the bicentennial of the Constitution, Wood takes his thesis a step further and posits that the Federalists failed in the goal they strove to attain. Moreover, the Federalists should not be thought of as modernists; this title should be reserved for the Antifederalists. It is wrong, Wood says, to consider the Founders as "masters of events, realistic pragmatists . . . farsighted, economically advanced, modern men in step with the movement of history," and the Antifederalists as "very tame and timid, narrow-minded and parochial men of no imagination and little faith, caught up in the ideological rigidities of the past—inflexible, suspicious men unable to look ahead and see where the United States was going."[22] The reverse was true. "The Federalists were not men of the future after all. . . . It was the Antifederalists who really saw best and farthest. . . . If either side in the conflict over the Constitution stood for modernity, perhaps it was the Antifederalists. They, and not the Federalists, may have been the real harbingers of the moral and political world we know—the liberal, democratic, commercially advanced world of individual pursuits of happiness." The Framers, Wood concludes, "failed, and failed miserably, in what they wanted it [the Constitution] to do."[23]

Wood notes the significance of the Virginia Plan to the final document. The Federalists acted out of a sense of "crisis in the society." But what crisis? "Certainly it was not the defects of the Articles of Confederation

19. Ibid.
20. Ibid., 467.
21. Ibid., 484–85.
22. "Interests and Disinterestedness," 69.
23. Ibid., 70.

that were causing this sense of crisis. These defects of the Confederation were remediable and were scarcely capable of eliciting horror and despair," says Wood. Reform of the Articles in some way or other—"particularly by granting the Congress a limited authority to tax and the power to regulate commerce"—could have been attended to within the existing system.

> The nationalists' aims and the Virginia Plan went way beyond what the weaknesses of the Articles demanded. Granting Congress the authority to raise revenue, to regulate trade, to pay off its debts, and to deal effectively in international affairs did not require the total scrapping of the Articles and the creation of an extraordinarily powerful and distant government, the like of which was virtually inconceivable to Americans a decade earlier. The Virginia Plan was the remedy for more than the obvious impotence of the Confederation; it was a remedy—and an aristocratic remedy—for what were often referred to as the excesses of American democracy. It was these excesses of democracy . . . popular politics, especially as practiced in the state legislatures, that lay behind the founders' sense of crisis. . . . The weaknesses of the Articles of Confederation were not the most important reasons for the making of the Constitution.[24] . . . Many of the delegates to the Philadelphia Convention were so ready to accept Madison's radical Virginia Plan and its proposed national authority to veto all state laws precisely because they shared his deep disgust with the localist and interest-ridden politics of the state legislatures.[25]

The frenzied pursuit of wealth by the masses was what really disturbed the Federalists and prompted them to institute a powerful new central government that would help contain the headlong rush for wealth and luxury. "Not the defects of the Articles of Confederation, but . . . promotion of entrepreneurial interests by ordinary people—their endless buying and selling, their bottomless passion for luxurious consumption—was what really frightened the Federalists."[26] "They designed the Constitution in order to save American republicanism from the deadly effects of these private pursuits of happiness.[27] . . . The Constitution thus looked backward as much as it looked forward."[28]

Before examining Wood's evidence, one might question, at the outset, a major assumption of his thesis: "that it was not the defects of the Articles of Confederation that were causing this sense of crisis," since these defects were "remediable" by granting Congress "a limited authority to tax and the power to regulate commerce." This is a remarkable statement, since Wood is certainly aware of the numerous efforts undertaken to amend the

24. Ibid., 72–73.
25. Ibid., 76.
26. Ibid., 80–81.
27. Ibid., 81.
28. Ibid., 92.

Articles that invariably ended in defeat, very often by the action of a single state. Every attempt to obtain approval for an impost was rejected. Members of the Congress were maddeningly frustrated at the impossible requirement of obtaining the unanimous ratification of the states before an amendment could enter into force.[29] Little wonder that the Articles of Confederation were never amended. And as for the despair that the Articles induced, one need only cite Madison's letter of February 24, 1787, to Edmund Pendleton:

> In general I find men of reflection much less sanguine as to a new than despondent as to the present System. Indeed the present System neither has nor deserves advocates; and if some very strong props are not applied will quickly tumble to the ground. No money is paid into the public treasury; no respect is paid to the federal authority. Not a single State complies with the requisitions, several pass them over in silence, and some positively reject them. The payments ever since the peace have been decreasing, and of late fall short even of the pittance necessary for the Civil list of the Confederacy. It is not possible that a Government can last long under these circumstances. If the appro[a]ching Convention should not agree on some remedy, I am persuaded that some very different arrangement will ensue.[30]

Innumerable similar quotations abound demonstrating how utterly exasperated the Founders were in their attempt to solve the nation's problems within the framework of the Articles of Confederation. It is difficult to understand, therefore, what Wood means when he suggests that a new constitution was unnecessary and that the matter could have been readily resolved by attaching a few amendments to the Articles. Even more formidable are the difficulties that his evidentiary material presents.

Wood's Evidence

The first thing to note about Wood's evidence is that it is remarkably sparse in relation to the one source that would provide the strongest indication of the motives of the founders: quotations from Convention participants de-

29. In this regard, it is worth recalling Madison's observations, in *Federalist,* No. 40, on the unanimity requirement. He spoke there of "the absurdity of subjecting the fate of 12 States to the perverseness or corruption of a thirteenth"; and of "the example of inflexible opposition given by *a majority* of 1–60th of the people of America to a measure approved and called for by the voice of twelve States, comprising 59–60ths of the people." This example, he said, was "still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country." (Emphasis in original.)

30. Robert Rutland et al., eds., *The Papers of James Madison* (Chicago: University of Chicago Press, 1975) (hereinafter: Madison, *Papers*), 9:294–95.

lineating the considerations that underlay the convening of the forum at Philadelphia or the purposes that the Constitution was meant to fulfill. In this category, Wood presents three citations in all: a letter by George Washington and two quotations from James Madison. (Notably absent are any references to the Convention debates themselves.)[31]

A. George Washington's letter of May 18, 1786, to John Jay

Wood writes: "It was popular politics, especially as practiced in the state legislatures, that lay behind the founders' sense of crisis. The legislatures were unwilling to do 'justice,' and this, said Washington, is 'the origin of the evils we now feel.'"[32]

Yet the passage cited by Wood nowhere mentions the situation in the states or the state legislatures. Washington writes:

> I think often of our situation and view it with concern. From the high ground we stood upon, from the plain path which invited our footsteps, to be so fallen! so lost! it is really mortifying; but virtue, I fear has, in a great degree, taken its departure from us; and the want of disposition to do justice is the source of the national embarrassments; for whatever guise or colorings are given to them, this I apprehend is the origin of the evils we now feel, and probably shall labour under for some time yet.[33]

Moreover, Wood, regrettably, does not quote Washington's letter more extensively, since Washington clearly concurs with Jay in attributing the crisis plaguing the Confederacy to the federal arrangements requiring reform:

> I coincide perfectly in sentiment with you, . . . that there are errors in our national Government which call for correction. . . . I scarcely know what opinion to entertain of a general Convention. That it is necessary to revise and amend the articles of confederation, I entertain *no* doubt; but what may be the consequences of such an attempt is doubtful. Yet something must be done, or the fabrick must fall, for it certainly is tottering.[34]

Wood might also have quoted from a second letter by Washington to Jay, written shortly thereafter, on August 1, 1786, that delineates most vividly Washington's view of the nature of the crisis.

> Your sentiments, that our affairs are drawing rapidly to a crisis, accord with my own. . . . I do not conceive we can exist long as a nation without having

31. See below, 547–50.

32. "Interests and Disinterestedness," 73. However, the correct citation from the *Writings of Washington* is, as the next note indicates, from vol. 28, not 18.

33. John C. Fitzpatrick, ed., *The Writings of George Washington* (Washington, D.C.: GPO, 1938), 28:431–32.

34. Ibid., 431 (emphasis in original).

> lodged somewhere a power which will pervade the whole union in as energetic a manner, as the authority of the State Governments extends over the several States. To be fearful of investing Congress, constituted as that body is, with ample authorities for national purposes, appears to me the very climax of popular absurdity & madness. . . . Requisitions are a perfect nihility, where thirteen sovereign, independent disunited States are in the habit of discussing & refusing compliance with them at their option. Requisitions are actually little better than a jest & a bye word throughout the land. If you tell the Legislatures they have violated the Treaty of Peace, & invaded the prerogatives of the confederacy they will laugh in your face—What then is to be done? Things cannot go on in the same train forever. . . . Would . . . that wise measures may be taken in time to avert the consequences we have but too much reason to apprehend.[35]

B. Madison on the "Vices of the Political System of the United States"

Wood writes:[36]

> Throughout the whole period of crisis, Madison, the father of the Constitution if there ever was one, never had any doubt where the main source of the troubles lay. In his working paper drafted in the late winter of 1787 entitled "Vices of the Political System of the United States," Madison spent very little time on the impotence of the Confederation. What was really on his mind was the deficiencies of the state governments: he devoted more than half his paper to the "multiplicity," "mutability," and "injustice" of the laws passed by the states.[37]

A review of the document, however, does not sustain Wood's interpretation.

The memorandum entitled "Vices of the Political system of the U. States" was prepared in April–June 1787 and listed some twelve "Vices."[38] Of these, eight, or fully two-thirds, related to the deficiencies of the national government and its inability to prevent state derelictions and infringement of federal authority. Only the last four of the twelve vices referred exclusively to

35. Ibid., 502–3. An extract from a letter written by Washington in 1785 illustrates the chaotic state of the varied values of the dollar. The following instructions were given by Washington to a messenger whom he sent to Boston harbor to collect a gift of two jackasses that had arrived from the Spanish government: "Keep an exact account of your expenses from the time you leave home until you return to it again; remembering that dollars in the States of Maryland, Delaware, Pennsylvania & part of New Jersey, pass at 7/6; bordering on New York, & in that State for 8/—and in all the New England Governments at 6/ as in Virginia—all other silver, & gold, in that proportion." Ibid., 299.

36. This is actually the second of Wood's two references to Madison, but chronologically it comes first, and therefore it is dealt with first here.

37. "Interests and Disinterestedness," 73.

38. Madison, *Papers,* 9:348–58; and see editor's comment, 345–48.

internal state affairs. A commentary was appended by Madison to each vice listed, except the last. As tabulated by Madison, the vices were:

1. Failure of the States to comply with the Constitutional requisitions.
2. Encroachments by the States on the federal authority.
3. Violations of the law of nations and of treaties.
4. Trespasses of the States on the rights of each other.
5. Want of concert in matters where common interest requires it.
6. Want of Guaranty to the States of their Constitutions & laws against internal violence.
7. Want of sanction to the laws, and of coercion in the Government of the Confederacy.
8. Want of ratification by the people of the articles of Confederation.
9. Multiplicity of laws in the several States.
10. Mutability of the laws of the States.
11. Injustice of the laws of States.
12. Impotence of the laws of the States.

Given this enumeration by Madison, Wood's assertion that "the impotence of the Confederation" concerned Madison "very little" is curious. The title of the Memorandum ("Vices of the Political system of the U. States"), the dominance of the "federal" vices in the list, and the sequence in which they appear—all confirm that Madison was concerned chiefly with the impotence of the national government and only secondarily, and somewhat incidentally, with the domestic situation in the states. Significantly, in presenting the last four vices, on the internal situation in the states, Madison appends an apologetic note:

> 9. In developing the evils which viciate the political system of the U.S. it is proper to include those which are found within the States individually, as well as those which directly affect the States collectively, since the former class have an indirect influence on the general malady and must not be overlooked in forming a compleat remedy.[39]

This is a far cry from any notion that the focal weakness of the United States lay in the condition of the state governments. That condition represents, for Madison, only a subordinate problem that, because of its "indirect influence" on the "general malady," "must not be overlooked."[40]

The heart of the problem in the federal system is outlined by Madison in his commentary on Vice 7:

39. Ibid., 353.

40. Apparently, Wood, and others before him, were misled by the size of the commentary

> A sanction is essential to the idea of law, as coercion is to that of Government. The federal system being destitute of both, wants the great vital principles of a Political Constitution. Under the form of such a Constitution, it is in fact nothing more than a treaty of amity of commerce and of alliance, between so many independent and Sovereign States.[41]

And, in conclusion, he states: "It is no longer doubted that a unanimous and punctual obedience of 13 independent bodies to the acts of the federal Government, ought not be calculated on."[42]

In sum, in his discussion of the vices affecting "the Political system of the U. States," Madison highlighted most the inadequacy of the federal system, the absence of power and coercion, "the great vital principles of a Political Constitution." This vice alone was deemed "fatal" to the whole system; the epithet was applied to none of the other enumerated vices. Wood's assertion that Madison devoted, in his memorandum, "little time to the impotence of the federal government" is not reconcilable with Madison's own words.

C. Madison's letter of October 24, 1787, to Thomas Jefferson

Wood writes:

> The abuses of the state legislatures, said Madison, were "so frequent and so flagrant as to alarm the most stedfast friends of Republicanism," and these abuses, he told Jefferson in the fall of 1787, "contributed more to that uneasiness which produced the Convention, and prepared the public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects."[43]

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on the last four vices, dealing with purely state derelictions, which equaled in length the commentary on the preceding eight vices. (See the editorial comment in Madison, *Papers,* 9:346, citing Edward S. Corwin.) However, in this case, the length of the commentary is not an accurate gauge for judging the importance of the proposed reform. The first eight vices were deemed so patently fatal to the system as not to require much elaboration. Above all, Madison's own comment clearly assigns predominant weight to the "federal" vices.

It might also be noted that Madison attached fistnotes to several of the federal vices listed, indicating their relative importance in his eyes. He attached no fistnotes to the last four vices dealing purely with state derelictions. See notes, ibid., 358.

41. Madison goes on to ask: "From what cause could so fatal an omission have happened in the articles of Confederation? from a mistaken confidence that the justice, the good faith, the honor, the sound policy, of the several legislative assemblies would render superfluous any appeal to the ordinary motives by which the laws secure the obedience of individuals: a confidence which does honor to the enthusiastic virtue of the compilers, as much as the inexperience of the crisis apologizes for their errors." Ibid, 351.

42. Ibid.

43. "Interests and Disinterestedness," 73.

On the surface, this source appears to be Wood's strongest card. Upon closer examination, however, it is seen to undermine his whole thesis about the ideological purpose of the Constitutional Convention. In order to gain perspective on Madison's comment to Jefferson, it is necessary to complete the picture of Madison's preparations for the Convention and to note how his plan fared at Philadelphia.

While the essay on the "Vices of the Political System" indicated the need for a wholesale revision of the constitutional system, Madison had not, as yet, worked out a detailed plan of government. His correspondence over the first few months of 1787 afforded him the opportunity to put his thoughts into more precise form, preparatory to the Constitutional Convention.

In a letter to Thomas Jefferson, dated March 19, 1787, Madison referred to "the mortal diseases of the existing constitution" and suggested several key points for inclusion in the proposed new document, including national supremacy and the separation of powers.[44] At the heart of his proposals was a suggestion for a national legislative veto:

> Over & above the positive power of regulating trade and sundry other matters in which uniformity is proper, to arm the federal head with a negative *in all cases whatsoever* on the local Legislatures. Without this defensive power . . . however ample the federal powers may be made, or however Clearly their boundaries may be delineated, on paper, they will be easily and continually baffled by the Legislative sovereignties of the States. The effects of this provision would be not only to guard the national rights and interests against invasion, but also to restrain the States from thwarting and molesting each other, and even from oppressing the minority within themselves by paper money and other unrighteous measures which favor the interest of the majority.[45]

44. Madison, *Papers,* 9:317–22. In his first point, Madison argued for ensuring the supremacy of the federal government over the states. To this end, it was necessary that "the new system" receive "ratification by the people . . . as will render it clearly paramount to their Legislative authorities." Ibid., 318. A further point related to the need for instituting the separation of powers on the federal level. "The limited powers now vested in Congs. are frequently mismanaged from the want of such a distribution of them." Ibid., 319.

45. Ibid., 318 (emphasis in original). Once again the priority that Madison gives to strengthening and securing the federal prerogative is manifest. The national negative is necessary to prevent encroachment by the states on federal authority and also to prevent the states from interfering with one another. A third, and clearly subsidiary consideration, is the prevention of injustices within the states. The same hierarchy of priorities is evident in Madison's letter to George Washington, 16 April 1787: "A negative *in all cases whatsoever* on the legislative acts of the States, as heretofore exercised by the Kingly prerogative, appears to me to be absolutely necessary, and to be the least possible encroachment on the State jurisdictions. Without this defensive power, every positive power that can be given on paper will be evaded & defeated. The States will continue to invade the national jurisdiction, to violate treaties and the law of nations & to harass each other with rival and spiteful measures dictated by mistaken views of interest. Another happy effect of this preroga-

In letters to Randolph and Washington, Madison elaborated upon his scheme and stressed that no partial revision of the Articles would be sufficient.[46] His "ideas" of "reform," he said, "strike so deeply at the old Confederation" as to lead to "a systematic change."[47]

The early arrival of the members of the Virginia delegation at Philadelphia enabled them to formulate what is known as the Virginia Plan.[48] Randolph, as governor of Virginia, was given the honor of presenting the plan to the Convention, but Madison's stamp is clearly visible on all four corners of the document. While the voice was the voice of Randolph, the handiwork was the handiwork of Madison.

In presenting the plan, Randolph "pointed out the various defects of the federal system, [and] the necessity of transforming it into a national efficient Government."[49] The confederation, he declared, was "incompetent to any *one* object for which it was instituted."[50] The full scope of federal power was spelled out in Article 6.

> Resolved . . . that the National Legislature ought to be impowered to enjoy the Legislative Rights vested in Congress by the Confederation & moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union agst. any member of the Union failing to fulfill its duty under the articles thereof.[51]

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tive would be its controul on the internal vicissitudes of State policy; and the aggressions of interested majorities on the rights of minorities and of individuals." Ibid, 383–84 (emphasis in original).

46. Madison to Randolph, 8 April 1787, ibid., 368–71; Madison to Washington, 16 April 1787, ibid., 382–87.

47. Ibid., 369. On the matter of national supremacy Madison was quite categorical: "I hold it for a fundamental point that an individual independence of the States, is utterly irreconcileable with the idea of an aggregate sovereignty. I think at the same time that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried then whether any middle ground can be taken which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful." Ibid.; repeated nearly verbatim, ibid., 383.

Additionally, Madison now advocated confirming national supremacy over the state judiciaries as well, lest state judges nullify the attempts of the national legislature to control state legislation. Madison to Washington, 16 April 1787, ibid., 384.

48. See letter of George Mason to his son, 20 May 1787. Max Farrand, ed., *The Records of the Federal Convention of 1787,* rev. ed. (New Haven: Yale University Press, 1937), 3:23.

49. Ibid., 1:18, n. 7.

50. Notes of James McHenry of Maryland, ibid., 26.

51. Ibid., 21.

The penultimate clause spells out the national veto that was so close to Madison's heart and upon which he had expounded in the pre-Convention correspondence. However, the clause incorporated a subtle, but important, change that drastically moderated the scope of the proposed national veto. Madison called for "a negative *in all cases whatsoever* on the legislative acts of the States, as heretofore exercised by the Kingly prerogative." The words emphasized by Madison and his reference to a "Kingly prerogative" indicate that he conceived of the veto as an absolute instrument in the hands of the national legislature with which to control the state governments.[52] But the Virginia delegates were obviously unwilling to acquiesce in such a sweeping national negative. At most, they were prepared to arm the legislature with the power to strike down state laws "contravening in the opinion of the National Legislature the articles of the Union." This was an early sign that the delegates to the Constitutional Convention, with all their resolve to enhance the powers of the national government at the expense of the states and to ensure federal supremacy in matters federal, were not inclined to meddle in the strictly internal affairs of the states. The action of the Virginia delegation had significantly modified Madison's scheme and had set clear limits to the federal constitutional enterprise.

Although the Virginia Plan had scotched the absolute legislative veto proposal, Madison adverted to it several times during the Convention debates.[53] The formula espoused by the Virginia Plan was accepted by the Committee of the Whole without "debate or dissent."[54] On June 8, Charles Pinckney of South Carolina moved that the legislative veto extend to "all Laws which they [members of the national legislature] shd. judge to be improper."[55] "A universality of the power was indispensably necessary to render it effectual," he said. "The States must be kept in due subordination to the nation." Madison seconded Pinckney's motion:

> [A]n indefinite power to negative legislative acts of the States . . . [was] absolutely necessary to a perfect system. Experience had evinced a constant

52. In the Convention debates Madison described the operation of the veto in the following terms: "The negative (on the State laws) proposed, will make it [the national legislature] an essential branch of the State Legislatures." Ibid., 447. One writer has aptly said: "Madison proposed nothing less than an organic union of the general and state governments." Charles F. Hobson, "The Negative on State Laws: James Madison, the Constitution, and the Crisis of Republican Government," *William and Mary Quarterly,* 3d ser., 36 (1979): 219.

53. See Farrand, *Records,* 1:318, 447; 2:440, 589.

54. The only change introduced was to make the veto also apply to any state act "contravening . . . any treaties subsisting under the authority of the Union." Ibid., 1:47, 54. This clause, added to the Constitution at the suggestion of Benjamin Franklin, was one of the few emendations that he initiated.

55. Ibid., 164.

> tendency in the States to encroach on the federal authority; to violate national Treaties, to infringe the rights & interests of each other; to oppress the weaker party within their respective jurisdictions. . . . Should no such precaution be engrafted, the only remedy wd. lie in an appeal to coercion. . . . The negative wd. render the use of force unnecessary. The States cd. of themselves then pass no operative act, any more than one branch of a Legislature where there are two branches, can proceed without the other.[56]

The Pinckney-Madison proposal was vigorously attacked. "The Natl. Legislature with such a power," declared Elbridge Gerry of Massachusetts, "may enslave the States. Such an idea as this will never be acceded to."[57] Gunning Bedford of Delaware raised practical considerations that he considered insuperable. "Are the laws of the States to be suspended in the most urgent cases until they can be sent seven or eight hundred miles, and undergo the deliberations of a body who may be incapable of Judging them? Is the National Legislature too to sit continually in order to revise the laws of the States?"[58] Madison attempted to resolve the difficulties by suggesting procedures for implementing the comprehensive negative, but his scheme was dismissed "as cutting off all hope of equal justice to the distant States." Pierce Butler of South Carolina said: "The people there would not . . . [even] give it a hearing." The suggestion to broaden the national legislative veto was voted down by a 3:7:1 majority.[59] The Report of the Committee of the Whole adhered basically to the pattern of the Virginia Plan, both in granting the national legislature power to legislate wherever the "harmony" of the United States was affected and in limiting the legislative veto to instances of unconstitutional state action.[60]

The issue of the national legislative veto was taken up again on July 17, immediately after the question of the composition of the second house was settled. The right of the national legislature to nullify state laws that, in its view, violated the constitution, was vigorously criticized.[61] Gouverneur Morris, a foremost nationalist, opposed the power "as likely to be terrible to the States, and not necessary, if sufficient Legislative authority should

56. Ibid., 164–65.

57. Ibid., 165.

58. Ibid., 167–68.

59. Ibid., 168. Subsequently, on August 23, Pinckney presented a revised version, under which the legislative veto would be exercised by a two-thirds vote of both houses and would apply to such state laws as "interfered . . . with the general interests and harmony of the Union." His proposal to commit to committee failed by a 5:6 vote. Ibid., 2:390–91. Rutledge, who had served as chairman of the Committee of Detail, was apparently outraged by the proposal. "If nothing else, this alone would damn and ought to damn the Constitution. Will any State ever agree to be bound hand & foot in this manner." Ibid., 391.

60. Ibid., 1:225, 229.

61. See ibid., 2:27–28, for Madison's notes on the debate.

be given to the Genl. Government." Roger Sherman of Connecticut "thought it unnecessary, as the Courts of the States would not consider as valid any law contravening the Authority of the Union." Luther Martin of Maryland "considered the power as improper & inadmissable." "Shall all the laws of the States be sent up to the Genl. Legislature before they shall be permitted to operate?" he asked. This criticism prompted Madison once again to expound on the essentiality of the veto "to the efficacy & security of the Genl. Govt." He adverted to the British example where "harmony & subordination of the various parts of the empire" were maintained thanks to "the prerogative by which means the Crown, stifles in the birth every Act of every part tending to discord or encroachment."[62] As the debate wore on, Gouverneur Morris indicated that he was "more & more opposed to the negative." It would, he declared, "disgust all the States. A law that ought to be negatived will be set aside in the Judiciary departmt. and if that security should fail; may be repealed by a Nationl. law." The opposition to the legislative veto was sufficiently strong to lead to its complete elimination from the draft constitution by a vote of 7:3.[63]

The foregoing review confirms that, while the Convention was determined to establish federal supremacy, it was equally determined that this supremacy be carefully circumscribed to the federal needs of the Union. Interference in the exclusively internal affairs of the states was not to be entertained. The debate had spotlighted the extreme divergence between Madison, who campaigned vigorously for a blanket legislative veto, and the majority, who were opposed to any legislative role in disallowing state laws, even those deemed manifestly unconstitutional.[64]

Furthermore, in addressing itself to the scope of federal power, the Convention was not content to revise merely one clause in Article 6 of the Virginia Plan (that relating to the legislative veto). It decided, in fact, to revamp the entire format of spelling out federal powers.

The Virginia Plan, it will be recalled, had set up broad categories of powers that the national legislature should control. This pattern was re-

62. For the purpose of examining state legislation, he suggested the possibility of some local review authority, empowered to give temporary effect to urgent laws. Ibid., 28.

63. Ibid. Immediately after the vote, Luther Martin moved the adoption of the supremacy clause, derived from the New Jersey Plan, which bound the state judiciaries to award paramountcy to federal law over contrary state law in their decisions. His proposal was unanimously adopted. Ibid., 28–29.

64. In lieu of a national veto, the Convention opted for judicial review as a means of umpiring the federal system and of nullifying state legislation inconsistent with the federal constitution. Judicial review of state legislation should be distinguished from judicial review of federal actions. There was widespread acceptance of the former at the Convention; much less of the latter.

tained throughout the deliberations and incorporated in the draft resolutions conveyed to the Committee of Detail on July 23.[65] By empowering the national government to legislate "in all Cases for the general Interests of the Union, and also in those Cases to which the States are separately incompetent, or in which the Harmony of the United States may be interrupted by the Exercise of individual Legislation," the Convention was saying, in effect, that federal power would be practically limitless. What topics could not be embraced under one of these categories? Members of the Committee of Detail were obviously disturbed by this format and replaced it, early on, with a detailed list of powers that the national legislature would exercise.[66] The list was reworked in several drafts by the Committee of Detail until it emerged in the final version on August 6, more or less in the form of the enumerated powers in Article 1, Section 8, of the final Constitution.[67]

In sum, while the Constitutional Convention was intent on providing the national government with both energy and supremacy, it was not prepared to buy the extreme Madisonian model in these matters and opted for the Patersonian model. It rejected any notion of a legislative veto, preferring to allow national supremacy to be enforced by the judiciary; and it circumscribed federal powers carefully by enumerating them one by one in the constitutional provision dealing with the subject. In these two key areas the Constitution is genuinely national *and* federal, as Madison described it in *Federalist,* No. 39. For, although the Constitution goes beyond the New Jersey Plan in the number and scope of the powers allotted the federal government, it does not bestow open-ended authority on that government as the Virginia Plan would have done. In the matter of powers—the cen-

65. Ibid., 131–32.

66. See Draft IV, ibid., 142–44. For a conspiratorial interpretation of the work of the Committee of Detail in this matter, see the note by John C. Hueston, "Altering the Course of the Constitutional Convention: The Role of the Committee of Detail in Establishing the Balance of State and Federal Powers," *Yale Law Journal* 100 (1990): 765–83. Rakove maintains that replacement of the original open-ended formula of the Virginia Plan with a finite list of powers was probably intended from the beginning. *Original Meanings,* 84 and 178. This conclusion, however, seems not to coincide with Madison's summation on the subject of powers as cited in the following footnote.

67. See Farrand, *Records,* 2:181–82. The Convention's handling of the subject of national powers is neatly summarized by Madison in his letter to Jefferson, 24 October 1787: "The second object, the due partition of power, between the General & local Governments, was perhaps of all, the most nice and difficult. A few contended for an entire abolition of the States; some for indefinite power of Legislation in the Congress, with a negative on the laws of the States: some for such a power without a negative: some for a limited power of legislation, with such a negative: the majority finally for a limited power without the negative." Madison, *Papers,* 10:209.

tral plank of the new constitution—the end result was a genuine synthesis of both plans.[68]

Given Madison's obsession with the national legislative veto, it is little wonder that he was deeply disappointed that it was not incorporated in the Constitution. So distressed was he by the omission that in two letters to Jefferson he described the Constitution as a failure. In his first letter, dated September 6, even before the Convention rose, he wrote: "I hazard an opinion . . . that the plan should it be adopted will neither effectually answer its national object nor prevent the local mischiefs which every where excite disgusts agst. the state governments. The grounds of this opinion will be the subject of a future letter."[69]

On October 24, 1787, Madison duly sent a lengthy essay to Jefferson analyzing the results of the Convention and explaining, in two numbered paragraphs, why a national legislative veto was critically important: 1) to ensure federal supremacy; and 2) to preclude abuses within the states.[70] The second paragraph contains the extract cited by Wood (supplied here in italics) as evidence that the primary purpose of the Constitutional Convention was reform of the states.

> 1. Without such a check in the whole over the parts, our system involves the evil of imperia in imperio [divided government]. . . . Encroachments of the States on the general authority, sacrifices of national to local interests, interferences of the measures of different States, form a great part of the history of our political system. . . . It may be said that the Judicial authority under our new system will keep the States within their proper limits, and supply the place of a negative on their laws.[71] The answer is, that it is more convenient to prevent the passage of a law, than to declare it void after it is passed; . . . and that a recurrence to force, which in the event of disobedience would be necessary, is an evil which the new Constitution meant to exclude as far as possible.

68. The foregoing discussion affords a fresh perspective on the relative contribution of the Virginia and New Jersey Plans to the final document of the Constitution.

69. Madison, *Papers,* 10:163–64.

70. Ibid., 209–14. Jefferson had earlier objected to Madison's proposal for a legislative veto as reaching too far. "It fails in an essential character, that the hole & the patch should be commensurate. But this proposes to mend a small hole by covering the whole garment." Ibid., 64 (20 June 1787). Thus, Madison's essay was also a reply to Jefferson's argument.

71. In his criticism of the proposed legislative veto, Jefferson had suggested that a federal judicial veto would be much better suited to control unconstitutional state legislation. "Would not an appeal from the state judicatures to a federal court, in all cases where the act of Confederation controuled the question, be as effectual a remedy, & exactly commensurate to the defect." Ibid. Thus, Madison's reply is directed also to showing why a national legislative veto is more effective than federal judicial review of state legislation. See also Hobson, "The Negative on State Laws," 229–30.

> 2. A constitutional negative on the laws of the States seems equally necessary to secure individuals agst. encroachments on their rights. The mutability of the laws of the States is found to be a serious evil. *The injustice of them has been so frequent and so flagrant as to alarm the most stedfast friends of Republicanism. I am persuaded I do not err in saying that the evils issuing from these sources contributed more to that uneasiness which produced the Convention, and prepared the public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects.* A reform therefore which does not make provision for private rights, must be materially defective. The restraints agst. paper emissions, and violations of contracts are not sufficient. Supposing them to be effectual as far as they go, they are short of the mark. Injustice may be effected by such an infinitude of legislative expedients, that where the disposition exists it can only be controuled by some provision which reaches all cases whatsoever.

Before examining the quotation from Madison, it is essential to query Wood's claim that "many delegates" were ready to accept "Madison's radical Virginia Plan and its proposed national authority to veto all state laws." To which veto is Wood referring? As noted, Madison's veto and that of the Virginia Plan were quite dissimilar, with the latter confined to unconstitutional state laws. Madison had little support for his comprehensive legislative veto even within the Virginia delegation, much less in the Convention generally. When Pinckney, seconded by Madison, raised the idea of an absolute veto in the plenum, it was roundly rejected.[72] But the plenum went further: it spurned even the Virginia Plan's mild legislative veto. In fact, all of Article 6 of the Virginia Plan was radically revised so as to strictly limit and define federal powers. Consequently, to the extent that Wood's thesis rests on the assumption that the Constitution incorporated intact elements of the Virginia Plan relating to federal powers, it is unsupportable. Even if correcting the abuses of the state legislatures was, for Madison, the principal function of the Convention—a debatable proposition, as will be seen—this was manifestly not the aim of the Federalists, or even of a majority of them. Even a nationalist like Gouverneur Morris refused to entertain a limited legislative veto, much less Madison's absolute variety. Rather than expressing "disgust with the localist and interest-ridden politics of the state legislatures," as Wood would have it, Gouverneur Morris, for one, insisted that any kind of federal veto "would disgust all the States." The Convention did not plan, nor was the Constitution designed, to meddle in the strictly domestic affairs of the states. If the situation within the states was deplorable, that was deemed to be their affair, so long as state

72. See above, at n. 59.

action did not encroach on the sphere of federal authority. As summed up by Gouverneur Morris: "Within the State itself a majority must rule, whatever may be the mischief done among themselves."[73] Where the delegates wished to inhibit state conduct, such as in matters of paper money or the validity of contracts, they did not hesitate to impose express prohibitions. But there was no desire to arm the national legislature with a broom with which to cleanse the states of "pollution."[74] Only a few delegates, such as Charles Pinckney, James Wilson, and John Mercer, supported Madison's absolute veto, and they were consistently outvoted.

To establish that for Madison (and his fellow delegates) reform of the states was the primary purpose of the Convention, Wood cites Madison's letter to Jefferson in which he wrote that the abuses in the states contributed more than the inadequacy of the Confederation "to that uneasiness which produced the Convention, and prepared the public mind for a general reform." More closely scrutinized, however, the cited passage clearly refers not to the aims of the Constitutional Convention but to the atmosphere that prepared public opinion for wholesale reform of the Articles. That atmosphere, Madison maintained, was fed more by the chaotic state of affairs in the states than by the impotent condition of the federal government, which rarely affected the average citizen. Madison, as one writer has said, was talking about "the climate of reform that produced the Federal Convention."[75] He was not talking about the Convention's principal purpose, which, even for him, was to remedy the institutional defects of the national government. In all his correspondence on the national legislative veto Madison gives priority to the need to prevent state encroachment on the sphere of federal powers and mentions only secondarily the benefit of such a veto for remedying the internal vicissitudes in the states. Never does Madison place the reform of the states first.

Wood and Farrand's Records

Wood's thesis, it would seem, progresses through the following steps: 1) Madison's national legislative veto is erroneously equated with the version in the Virginia Plan; 2) that plan, in turn, is said to have been incorporated in the Constitution. In fact, however, not only was the veto idea entirely scrapped; the Virginia Plan's scheme for open-ended federal powers was also abandoned in favor of the New Jersey Plan's format for enumerated

73. Farrand, *Records,* 2:439.
74. The expression of Henry Knox, cited by Wood, "Interests and Disinterestedness," 76.
75. Hobson, "The Negative on State Laws," 223.

and defined legislative powers.[76] The final constitutional document was a far cry from Madison's original conception.

Beyond that, Madison, too, is apparently misconstrued. As noted, his primary focus was and remained the reform of the federal system and the augmentation of national power. Intrastate defects required remedying in a supplementary and subsidiary way, to complete the cycle of reform. As Madison said, "a reform . . . which does not make provision for private rights, must be materially defective."[77]

Even if it could be established that Madison himself accorded intrastate reform priority over federal reform—a questionable assumption—his bitter complaint to Jefferson that the Convention had failed in its task by spurning his veto proposal demonstrates better than anything else that the majority opposed federal interference in state affairs. A program for reforming the states would have to come from within the states themselves, not from the Convention, whose purpose and agenda included no such task.

As noted, the Founding Fathers announced before the Convention that their purpose was to find a means of strengthening the national government. During the Convention they deliberated on how best to achieve that goal. In the subsequent ratification struggle, they debated with their opponents the wisdom and suitability of the institutional arrangements devised to invigorate the federal government. Why should we attribute other motives to them when the records of their private correspondence and the deliberations at Philadelphia are open for all to inspect? The ready availability of this source highlights a crucial deficiency in the evidentiary underpinning of Wood's argument. For if the Convention was actually engaged in a giant conspiracy to reform the social condition of the states, and this, rather than strengthening the federal government, was their real aim, why does Wood not prove his case by quoting chapter and verse from Farrand's minutes of the Convention?[78] The proceedings at Philadelphia were secret, and the delegates were at liberty to be absolutely candid. Had their goal been to remedy the social condition in the states, surely this theme would have appeared, and perhaps dominated, the Convention debates. Remark-

76. Clinton Rossiter writes: "The most important contribution of the committee of detail was to convert the general resolution on the law-making authority of the proposed government to a list of eighteen specific powers of Congress." *1787: The Grand Convention* (New York: Macmillan, 1966), 208.

77. Madison, *Papers,* 10:212.

78. For a similar complaint against Beard's *Economic Interpretation of the Constitution,* see Shlomo Slonim, "Beard's Historiography and the Constitutional Convention," *Perspectives in American History,* n.s., 3 (1987): 190–92. Beard "omitted to utilize the one unimpeachable source that could establish the clear motives of the Framers: the records of the Constitutional Convention." Ibid., 201.

ably, Wood's argument regarding the social motives of the Founders fails to cite this valuable source. Undoubtedly, many delegates were seriously concerned with the spirit of democracy that had gripped parts of the country, as the Records indicate,[79] and Wood correctly draws attention to this fact.[80] But it is one thing to acknowledge such concern as a factor in the search for stability in government,[81] and it is another to allege that the Framers were so alarmed by this development that they organized a whole convention principally to quash, or contain, the democratic spirit in the states.

The Convention records provide ample evidence that property occupied a central place in the political and constitutional thought of the Founding Fathers. Anxiety about the fate of property then and in the years to come surfaced on numerous occasions.[82] Rakove's examination of the documents has led him to conclude that property was Madison's "deepest concern" and that "his analysis of the dangers to property was paradigmatic for the program of reform he carried to Philadelphia in May 1787."[83] The prohibitions on the states enacted in Article 1, Section 10 of the Constitution reflected this anxiety. To what extent other provisions of the Constitution were also informed by this sentiment is a matter of some debate. Various writers, including Jennifer Nedelsky and Christopher Tomlins, have argued that preoccupation with the protection of property seriously compromised the democratic character of the constitutional document produced at Philadelphia. The notion of limited government, they contend, was devised

79. See, e.g., the following statements: Edmund Randolph: "Our chief danger arises from the democratic parts of our constitutions. . . . None of the constitutions have provided sufficient checks against the democracy." Farrand, *Records,* 1:26–27. Elbridge Gerry: "The evils we experience flow from the excess of democracy. The people do not want [lack] virtue; but are the dupes of pretended patriots." Ibid., 48. On the other hand, George Mason warned against denying the democratic voice its place in the institutions of government. "He admitted that we had been too democratic but was afraid we sd. incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people." Ibid., 48–49. See also Mason's remarks, ibid., 133–34, 359, 364.

80. Reference to the Convention records, it may be noted, would also have confirmed that at least on two occasions in the debate, Madison argued that the turbulent situation in the states led, or at least contributed significantly, to the holding of the Convention. Ibid., 134 and 318. Therefore, Wood need not have relied exclusively on the letter to Jefferson to establish that Madison deemed the situation in the states perilous to the future of republicanism in the United States. But, of course, this tells us nothing about Madison's relative rating of the two purposes—revitalizing the federal government, on the one hand, and reforming matters within the states, on the other.

81. See the comment of Randolph regarding the need for "a good Senate" to overcome "the turbulence and follies of democracy." Ibid., 51. See also the remarks of Madison on the formation of the upper house of the legislature. Ibid., 421–23, 430–31.

82. See the listings under the heading "Property" in the index of the Farrand volumes.

83. Rakove, *Original Meanings,* 332 and 314.

specifically to ensure that the rights of property would be secured, no matter what the vicissitudes of government.[84] Looking beyond Beard, these writers posit that it was not personal or direct economic interest that motivated the Framers but their broader interest in property as a fundamental right that, more than any other natural right, was peculiarly vulnerable to majoritarian invasion.[85] Other writers have presented the counterargument that concern over property, while certainly present at Philadelphia, did not dominate the constitutional debate as much as is often supposed.[86] The Wood thesis, of course, differs from all these approaches. It posits the Founding Fathers' preoccupation not with the property factor as such, but rather with intrastate extravagance and the breakdown of social values. It is in this sense that Wood sees the Constitution as "an aristocratic remedy" to "the excesses of American democracy" in the states. However, nothing in the Convention records substantiates the claim that reforming the social condition of the states was the central purpose of the delegates, Madison included, or of the Constitution that they produced.

Conclusions

On the basis of his analysis of the Founders' motives, Wood concludes that "their Constitution failed, and failed miserably, in what they wanted it to do."[87] This conclusion, of course, is premised on the assumption that the

84. "The urgent sense that property rights had to be protected from democratic legislatures became the focus for formulating the principle that individual rights set limits to the legitimate power of government. That property-centered formulation shaped the Constitution in 1787." Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism: The Madisonian Framework and its Legacy* (Chicago: University of Chicago Press, 1990), 2. "For Madison the utility of the new American state was heavily bound up in the prospect that it could offer a new model of governance to check unrestrained popular majorities." Christopher L. Tomlins, *Law, Labor, and Ideology in the Early American Republic* (New York: Cambridge University Press, 1993), 64.

85. See Nedelsky, *Private Property,* 3–9, and Tomlins, *Law, Labor, and Ideology,* 60–66. Joyce Appleby also concludes: "The Constitution closed the door on simple majoritarian government in the United States. Popular majorities animated by what people wanted to do at a particular moment would be forever constrained." "The American Heritage," 804. In so far as Madison saw property as a particularly vulnerable right, see also Rakove, *Original Meanings,* 314–16.

86. "Upon examination, . . . it becomes clear that every feature of the federal Constitution that Beard lists as an antimajoritarian device already existed in the state constitutions in one form or another. . . . It is one thing to recognize the Founders' desire to ensure the rights of property under the Constitution, in common with other rights, and it is another thing to attribute the very structure of government to a desire to serve a particular form of property by hamstringing popular rule." Slonim, "Beard's Historiography," 201 and 203.

87. Wood, "Interests and Disinterestedness," 70.

principal concern of the delegates was the turbulent scene in the states and that their Constitution was framed mainly to allow the aristocracy to overcome the tumultuous demands of democracy emanating from there. The foregoing examination of Wood's evidence establishes quite clearly that the Founders did not intend to effect a social revolution in the states. They convened for one essential purpose—to furnish the United States with an effective national government.[88] Since they never sought to produce a social revolution in the states, they cannot be charged with having failed to do so. With the removal of the premise, the conclusion regarding the "failure" of the Founders' constitutional enterprise falls to the ground of its own weight and requires no rebuttal.

The Founding Fathers eminently succeeded in the task they had set for themselves—forestalling the dismemberment of the Union and creating a powerful central government that would promote the national welfare of the United States. Therefore, it can hardly be said that the "farsighted Federalists had their eyes not on what was coming, but on what was passing." Wood's suggestion that the Federalists were "really the victims of events" rather than the "masters," and that, in fact, "it was the Antifederalists who really saw best and farthest,"[89] flies in the face of the facts. The United States in 1787 was on the verge of disintegration, and the Federalists boldly set the nation on the road of national cohesion and integration through the medium of a new constitution. This instrument of government reordered the division of powers between the states and the central government, thereby allowing the latter to weld the country into one powerful entity. The fate and destiny of the United States was determined for generations to come. It is to the credit of the Federalist Founders that they had the foresight and the tenacity with which to promote the realization of their vision, so that the United States could emerge from the crisis of the Critical Period capable of assuming its rightful place "among the Powers of the earth."

While the Antifederalists played a prominent role in securing the adoption of the Bill of Rights, they had no part in the vision underlying the drafting of the Constitution and can therefore scarcely be regarded as modernists. Cecelia Kenyon's description of them as "men of little faith" seems apt.[90] They sought to institute a much weaker national government, and it is questionable whether under their type of constitution the United States would have evolved into the powerful industrial giant that it is today.[91]

88. Onuf also criticizes Wood's discounting "the significance of 'pressure from above' in the reform movement." "Forum," 615.

89. Wood, "Interests and Disinterestedness," 69–70.

90. See n. 4, above, for Kenyon citations.

91. For a different, and more positive, assessment of the role of the Antifederalists in the constitutional debate, see Peter S. Onuf, "Reflections on the Founding: Constitutional Historiography in Bicentennial Perspective," *William and Mary Quarterly,* 3d ser., 46 (1989):

In all, Wood's attempt to provide an ideological, sociological interpretation for the Constitutional Convention is unsubstantiated. His portrayal of the Federalists as a retrograde, even reactionary, element and the Antifederalists as farsighted modernists is seen to be quite untenable. If, as Wood acknowledges, Beard's thesis, with its narrow economic analysis, is found wanting as an explanation for the adoption of the Constitution, his own thesis, with its rigid social dichotomy between aristocracy and democracy to define the events of the Constitutional Convention, is no less so. The revolution that the Founding Fathers sought to institute was neither economic, as Beard would have it, nor social, as Wood supposes, but political—reordering the division of powers between the central and state governments—so as to "render the federal constitution adequate to the exigencies of Government & the preservation of the Union."[92]

368–71. See also Bernard Bailyn, "Postscript: Fulfillment: A Commentary on the Constitution," in *The Ideological Origins of the American Revolution,* enlarged ed. (Cambridge, Mass.: Belknap Press, 1992), 331–51.

92. Resolution adopted by the United States in Congress Assembled, Feb. 21, 1787. Library of Congress, *Journals of the Continental Congress, 1774–1789* (Washington, D.C.: GPO, 1936), 74. Compare Bailyn's observation in the preface to the enlarged edition of his *Ideological Origins,* viii: "That document [the Constitution] . . . does not mark a Thermidorean reaction to the idealism of the early period engineered by either a capitalist junta or the proponents of rule by a leisured patriciate; . . . The earlier principles remained, though in new, more complicated forms, embodied in new institutions devised to perpetuate the received tradition into the modern world."

"Motives at Philadelphia": A Comment on Slonim

GORDON S. WOOD

I am grateful to the editor of *Law and History Review* for the opportunity to respond to Professor Shlomo Slonim's article criticizing my interpretation of the formation of the Constitution. I know Professor Slonim personally from a visit I made over a decade ago to Hebrew University where he was a very gracious host. I know too that he is an earnest and meticulous scholar of the United States Constitution who has spent a great deal of energy refuting Charles Beard. So in this brief response I wish to treat his criticism with respect while at the same time I hope to show where I believe he is wrong or has misunderstood and misinterpreted me.

Slonim is an earnest and meticulous scholar, but he is at the same time a very literal-minded one, someone who I believe sometimes has trouble seeing the woods for the trees. He often tends to miss the political context and the larger significance of the texts he has examined. Too often in dealing with my argument he has created straw men in order to more easily blow them away. His conception of what he calls "the Wood thesis" (550) is a figment of an overheated imagination. Throughout his paper he strains to make his case for the "foresight" (551) of the Federalist Founders and he repeatedly evades contradictory evidence. And finally, he has ignored the works of other historians who have refined and reinforced my interpretation made nearly thirty years ago.

Slonim says at the outset that I believe that correcting the deficiencies of the federal government was "quite incidental" to the aim of the Federalists (530) and that I suggested that "a new constitution was unnecessary" (534). And he claims that I think that the "the primary aim of the Federal-

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ists was to redress the chaotic social situation in the states and to restore virtuous government there" (530). None of these claims is true.

I have never suggested that the problems of the Confederation government were "incidental" to the movement to reform the Articles. Quite the contrary. The problems of the Confederation were a major force behind the calling of the Philadelphia Convention. In the since-published lectures on the formation of the Constitution that I gave in January 1987 at Hebrew University, where Professor Slonim was my host, I stated that there were "two levels of explanation for the Constitution, two distinct reform movements in the 1780s that eventually came together to form the Convention of 1787."

> One operated at the national level and involved problems of the Articles of Confederation. The other operated at the state level and involved problems in the state legislatures. The national problems account for the ready willingness of people in 1786–87 to accede to the convening of delegates at Philadelphia. But the state problems, problems that went to the heart of America's experiment in republicanism, account for the radical and unprecedented nature of the federal government created in Philadelphia.[1]

The national problems included the obvious weaknesses of the Confederation, especially its inability to tax, regulate commerce, and pay its debts, and its failure to stand up strong in international affairs and protect the territorial integrity of the United States. By 1787 nearly every political leader in the country, including those who later would be Anti-Federalists, was willing to grant substantial powers to the Confederation Congress, including the powers to tax and to regulate commerce. Slonim seems to think that he is refuting me by pointing out that efforts to amend the Articles in the prescribed way had been defeated earlier in the 1780s (533–34). I do not deny those defeats. In fact, that is why almost every political leader in 1787 more or less willingly acceded to the calling of the Convention in 1787 to reform the Articles—in an unprescribed manner that avoided the problems of getting the unanimous consent of the states. Contrary to what Slonim says, I have never suggested "that a new constitution was unnecessary" for these changes (534). In fact, a new constitution was precisely what was needed. By 1787 many people were prepared for radical change

1. Gordon S. Wood, *The Making of the Constitution* (Waco, Tex.: Baylor University Press, 1987), 9–10. I take Slonim's questioning of the amount of my "evidentiary material" (529, 534, 548) to be particularly unfair. Most commentators have accused me of having too much material. I tended to cite quotations only and could have easily piled up citations about the Federalists' concerns for the future of republicanism in the states. But such citations would not by themselves prove my point; that point is proven by the overall context of my argument, which includes my earlier discussion of the state constitutions and the importance of the states to Americans in 1776. Slonim ignores this kind of context.

in the Articles. Indeed, so acceptable and necessary seemed some sort of change in the Confederation that later Anti-Federalists like William Findley were remarkably casual about the upcoming meeting at Philadelphia. They expected changes in the Confederation, even a new constitution, that would grant the federal government power to tax and regulate commerce, but they never expected the kinds of fundamental changes the Philadelphia Convention proposed. My argument is that to explain these fundamental changes and the strong and unprecedented nature of the proposed national government, the like of which no one a decade earlier even imagined, we have to go to the second level of problems—those of the states.

I have always believed that both sets of problems—national and state—were important to the reform of the national government in 1787. And I have used Madison's working paper, "Vices of the Political System of the U. States," as important evidence for his thinking about these two sets of problems. Slonim knows that this a crucial document and he devotes a considerable amount of time to it. I believe, however, that he has misinterpreted Madison's memorandum. I meant what I said when I wrote that "Madison spent very little time on the impotence of the Confederation. What was really on his mind was the deficiencies of the state governments" (536). Slonim believes that he is refuting me by pointing out that eight of Madison's twelve "Vices" dealt with problems of the Confederation. But by saying that "Madison was concerned chiefly with the impotence of the national government and only secondarily, and somewhat incidentally, with the domestic situation in the states" (537) he has missed the point of the document, a point that has been fully explained by other historians besides me.[2] He pays no attention, for example, to Charles F. Hobson's contention that "the dominant theme of 'Vices of the Political System' was not the weaknesses of the Confederation government, serious as these were, but the 'multiplicity,' the 'mutability,' and above all the 'injustice' of state laws."[3] More important, Slonim ignores the significance of the fact that Madison attributes nearly all of the problems of the Confederation government, not to its weakness, but to the derelictions and encroachments of the states. So, even in the case of the problems at the national level, it is the states, according to Madison, that were really at fault.

2. Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Alfred A. Knopf, 1996), 46–50; Charles F. Hobson, "The Negative on State Laws: James Madison, the Constitution, and the Crisis of Republican Government," *William and Mary Quarterly,* 3d ser., 36 (1979): 220–22.

3. Hobson, "The Negative on State Laws," 221. Slonim seems to be straining when he explains why Madison devoted so much of his memorandum to internal state affairs by saying that "the first eight vices were deemed so patently fatal to the system as not to require much elaboration" (537–38, n. 40).

Thus I agree with Madison that it was ultimately the abuses of the state legislatures—abuses "so frequent and so flagrant as to alarm the most stedfast friends of Republicanism"—that "contributed more to that uneasiness which produced the Convention, and prepared the public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects" (538). Slonim realizes that this is a potent piece of evidence for my argument—indeed, I believe it is enough to clinch all I ever claimed to say—but he believes that he has refuted me by saying that this passage refers "not to the aims of the Constitutional Convention but to the atmosphere that prepared public opinion for wholesale reform of the Articles" (547). How Slonim distinguishes between the aims of the Convention and the public opinion that was ready for wholesale reform of the Articles is unclear, but I certainly agree with Madison (and apparently with Slonim)—it was the central point of my argument—that it was the evils coming out of the states that prepared public opinion for the wholesale reform of the federal government. Or at least the Federalist parts of public opinion. There were after all Anti-Federalists who wanted no such wholesale reform but who were willing to accept the idea of a convention to revise the Articles.

Although Slonim seems to concede that Madison's proposal for a federal negative on all state legislation suggests the reality of his fears of democratic excesses within the states, the fact that this negative was revised in the Virginia plan and was abandoned altogether by the Convention has convinced him that the problems of the states ultimately could not have been all that important to the Convention itself. In the end Slonim's entire case against my argument rests on his distinction between "the chaotic state of affairs in the states" (which he seems to concede) and what he calls "the Convention's principal purpose, which, even for [Madison], was to remedy the institutional defects of the national government" (547).[4]

Slonim points out that the Virginia plan changed the scope of Madison's initial idea of a national veto over all state laws. Instead of granting to the national government "a negative *in all cases whatsoever* on the legislative acts of the States," the Virginia plan's negative could only be exercised over those state laws "contravening in the opinion of the National Legislature the articles of Union" (541). Slonim sees this change in the Virginia plan as a real retreat—that the Virginia delegates "were not inclined to meddle in the strictly internal affairs of the states" (541)—but his notion that the Virginia plan had turned Madison's negative into simply a "mild legisla-

4. According to the most astute student of Madison's thinking, Jack N. Rakove, Madison's "agenda for the Federal Convention was not addressed to the woes of the Union alone, but to the underlying vices of the Republic." Rakove, *Original Meanings,* 55–56.

tive veto" (546) seems grossly exaggerated. No doubt Madison's original phrase of "*all cases whatsoever,*" with its echo of Parliament's Declaratory Act, would have been politically suicidal, and some change in wording was necessary. But the change was not as great as Slonim makes it out to be. Not only does the Virginia plan retain the essence of Madison's negative—he, after all, in his "Vices" essay thought that most of the state laws in the 1780s had contravened the articles of Union—but, more important, the Virginia plan left it to the national legislature to decide what state laws could be vetoed or not.

Much of Slonim's case against my interpretation rests on what happened to Madison's veto and other parts of the Virginia plan in the Convention. Since the delegates ultimately modified the Virginia plan in substantial ways, then, according to Slonim, they could not really have shared Madison's fears of democracy in the states. But other historians besides me think differently. "Though not persuaded of the merits of the negative, the framers of the Constitution," writes Hobson, "nevertheless shared Madison's concern to bring about a due subordination of the states and to establish some measure of control over their internal affairs."[5] By concentrating on the changes in the Virginia plan, Slonim misses the significance of what the Convention in the end actually did. It is true that the delegates finally substituted a list of specified powers in place of the Virginia plan's sweeping grant of national authority and eliminated the national negative. But to assume, as Slonim does, that the delegates had "opted for the Patersonian model" (544) and were uninterested in meddling "in the strictly domestic affairs of the states" (546) is mistaken. On June 19 Madison argued that the New Jersey plan would not "provide a Governmt. that will remedy the evils felt by the States both in their united and individual capacities," and the Convention agreed with him, rejecting Paterson's plan seven states to three with one divided.[6]

For better or worse the Convention had chosen the Virginia plan for its model. It went on to make all of its subsequent modifications without doing substantial violence to the national character of that plan. Despite its concession to equal state sovereignty in the Senate, the Convention in the end decisively substituted for a confederation of equal separate states a regular tripartite republican government operating directly on the people. To be sure, the Congress was not given a blanket grant of powers, as the Virginia plan proposed, but it was given a substantial list of powers. None has been added since 1787 and the federal government today does all right

5. Hobson, "Negative on State Laws," 228.

6. Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1937), 1:315–16.

for itself. Moreover, Slonim passes right over the significance of Article I, Section 10 of the Constitution, which prohibited the states from exercising an extraordinary number of powers, including the powers to levy customs duties, to print paper money, and to pass ex post facto laws and laws impairing contracts. If these prohibitions were not a design "to meddle in the strictly domestic affairs of the states," I do not know what would be. Since customs duties and emitting bills of credit were the principal means by which premodern governments raised money, these prohibitions tended to render the states economically weak. Article I, Section 10 was the Convention's practical substitute for Madison's unwieldy and unworkable proposal for a national veto. In addition, it indicates that, despite many of the delegates' fears of the consolidating and nationalizing implications of the Virginia plan, most were still as worried as Madison about the abuses of democracy in the states. Historian Jack N. Rakove perhaps puts it best: "In the end, the delegates' rejection of Madison's pet scheme of a federal veto matters less than their agreement that what was at stake was the relationship between the institutions of government and the nature of American society, broadly conceived."[7]

Slonim does not seem to appreciate fully the radical nature of the Virginia plan, which dealt with problems that went well beyond the imbecility of the Confederation. "What enabled the Convention to transcend the old boundaries of debate," writes Rakove, "was the realization that it had to analyze not merely the specific problems of Congress but, in effect, the whole history of the American republican experiment, thereby subsuming the debility of Congress and the political troubles of the states under one common rubric."[8] That such an outrageous scheme as the Virginia plan could become the Convention's working model and remain virtually intact for half the Convention's life says something about the fears and hopes of the delegates. That it was eventually changed and made less outrageous, of course, says something too about their political realism and the need for compromise. The Constitution as it finally emerged from the Convention was radical enough; it certainly aroused bitter and widespread opposition. The Virginia plan unchanged would never have been ratified, and most of the delegates knew that. Hence the changes. But it does not follow that most of the Federalists therefore were not concerned about constraining or mitigating the democratic excesses of the states.

The real source of the problem is Slonim's basic misreading of my argument. He accuses me of interpretations that I have never made—that the

7. Jack N. Rakove, *The Beginnings of National Politics: An Interpretative History of the Continental Congress* (Baltimore: The Johns Hopkins University Press, 1979), 394.
8. Ibid., 390.

Federalists were "engaged in a giant conspiracy to reform the social condition of the states" (548) and "sought to produce a social revolution in the states" (551). These are outlandish notions, and I have no idea where he got them. All I ever said was that the Federalists through the formation of the new federal government sought to create institutional mechanisms that might evade or mitigate the effects of localist democracy in the states. And they would do this, first, by having the federal government control lawmaking in the states either through a version of a national veto power, which failed of acceptance, or through an out-and-out prohibition of the most parochial and unjust state legislation, which succeeded and became Article I, Section 10 of the Constitution; and secondly, by elevating and expanding the arena of politics and reducing the number of elected officials.

This second scheme, resting on a particular insight into the sociology of American politics, was as important to Madison and many other Federalists as the national negative in dealing with the problems of the states, but Slonim pays no attention whatsoever to it. The Federalists hoped that the elevated national government and its expanded electorate would act as a kind of filter, refining the sorts of men who would become national leaders. In a larger arena with a smaller number of representatives, only the most notable, most cosmopolitan, and most well educated were likely to gain political office. If the people of North Carolina, for example, could elect only five men to the federal Congress, in contrast to the 232 they elected to their state assembly, they were more apt to ignore the kinds of obscure, narrow-minded, and parochial politicians who were responsible for the factious, vicious, and unjust state legislation of the 1780s and elect only those "who," as Madison put it in *Federalist,* No. 10, "possess the most attractive merit, and the most diffusive and established characters."

We have only to compare the small number of sixty-five representatives who were designated for the first national Congress with the thousand or more representatives in the state legislatures in order to understand what this narrowing and refining process of the Federalists might mean socially and politically. As one Georgia Federalist put it, in the new national government "none will be distinguished with places of trust but those who possess superior talents and accomplishments."[9]

But there was more to the Federalists' scheme of an extensive and elevated republic than extracting for leadership those "who possess most wisdom to discern, and most virtue to pursue, the common good of the society." Madison and other Federalists likewise believed that in an enlarged national arena "the society itself will be broken into so many parts, inter-

9. Herbert J. Storing, ed., *The Complete Anti-Federalist* (Chicago: University of Chicago Press, 1981), 1:51.

ests and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority." In other words, in the extended republic the people's interests would be so diverse and clashing that they would rarely be able to combine to create tyrannical majorities in the new national government as they had in the state legislatures. Madison understood that this process had worked in American religion: the multiplicity of religious sects in America prevented any one of them from dominating the state and permitted the enlightened reason of liberal gentlemen like Jefferson and himself to shape public policy and church-state relations and to protect the rights of minorities. "In a free government," wrote Madison in *Federalist,* No. 51, "the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects."[10]

None of this has anything to do with "a social revolution in the states," but all of it has social as well as political implications, implications that Slonim disregards completely. Slonim has his nose so close to the ground that he misses entirely the social significance of the new Constitution and its elevated government except to admit that concern for property was central to the Federalist scheme. But what does a concern for property mean? Does it not have social implications? Slonim seems to think that he can finesse the Convention's concern for property simply by denying its social significance and its relation to what was going on in the states. But a struggle over two different kinds of property lay at the heart of the politics in the states during the 1780s.

Madison and many of the other Federalists still conceived of property in premodern, almost classical terms—as rentier property, proprietary property, property as a source of authority and independence, not as a source of productivity and capitalistic investment. The most traditional kind of rentier property was of course land, but it could take other forms as well, such as government bonds and money out on loan. These kinds of fixed property were very vulnerable to inflation, which is why Madison and other Federalists were so frightened by the state assemblies' issuing of so much paper money in the 1780s. Inflation threatened not simply their livelihood but their authority and independence as citizens. Many of the Federalist gentry could at times regard the factional state majorities that promoted the paper money and debtor relief legislation of the 1780s as little better than levelers. Those majorities, however, were neither the propertyless masses nor radicals opposed to the private ownership of property. Such debtors believed in the sacredness of property as much as Madison and the other Federalists. But it was a different kind of property they were promoting—

10. *The Federalist,* Nos. 57, 51.

modern, risk-taking property; not static proprietary wealth, but dynamic venture capital; not money out on loan, but money borrowed; in fact, all the paper money that enterprising farmers and proto-businessmen clamored for in these years. Representatives of these debtor and paper money interests in the states, such as the ex-weaver William Findley of Pennsylvania and the part-time lawyer and shoemaker Abraham Yates of New York, realized only too well that the new Constitution, with its prohibition on the states' issuing bills of credit and passing debtor relief legislation and with its enlarged national arena, was designed to keep them and the interests they represented out of the decision-making processes of government.

Hence they opposed the new Constitution and called it an "aristocratic" scheme designed to constrain much of the democratic majoritarianism of the states. Slonim does not seem to appreciate that this charge was not my invention but was the accusation made by the Anti-Federalists at the time. He may not agree with that charge, but he at least has to confront it and explain what they meant. What Slonim calls my "rigid social dichotomy between aristocracy and democracy" (552) was precisely how many of the contemporaries described the debate over the Constitution. Most of the Anti-Federalists may have been narrow-minded localists, poorly educated, never having attended Harvard or Princeton, but they were not fools; they knew very well what the Constitution intended, and they fought it mainly on the grounds that it was an aristocratic attempt to evade the problems of democracy. In their calls for the most explicit representation of interests, occupations, and ethnicities and in their celebration of localism and equality, the Anti-Federalists stood for the future of America in a way that the Federalists could not match.

In his literal-minded way Slonim makes much of my whimsical suggestion, made as a hook for my "Interests and Disinterestedness" essay, that the Anti-Federalists ought to replace the Federalists as the bold and farsighted prophets of the democratic future. Of course, to the extent that former Speaker of the House Tip O'Neill is correct in saying that in America "all politics is local," the Anti-Federalists did foresee the future. But no historical participants ever really foresee the future, and it is no doubt foolish to judge them in these terms. We know that the Federalists furnished the United States with an effective national government, but, contrary to what Slonim says, they by themselves did not and could not determine its fate and destiny for generations to come. That took the turbulent history of several generations and a civil war, and the story is not over yet. Moreover, the Federalists had other aims than creating a national government, and with these they were not very successful. Their prohibition on the states' issuing of bills of credit, for example, was evaded by the states' chartering of banks, hundreds of them, that in turn issued the paper mon-

ey that the Anti-Federalists and their entrepreneurial supporters wanted. None of the Federalists anticipated the kind of bumptious, liberal, money-making, democratic world that emerged in the decades following the creation of the Constitution.

Although he quotes Joyce Appleby's statement that "[t]he Constitution closed the door on simple majoritarian government in the United States," he does not make anything of it (550, n. 85). Perhaps because he is an Israeli and not an American, Slonim may not fully appreciate the extent to which Americans over the past two centuries have sought to constrain and mitigate the effects of localist democratic majorities. We Americans have used a variety of devices to limit the force of what people want to do at any particular moment: we often elevate decision making beyond the reach of popular majorities, we give appointed judges power that no other judges in the world exercise, we insulate important issues like banking and currency control from elected officials, we protect minority and individual rights from popular majorities, and we do all this in the name of democracy. The Federalists were not trying "to effect a social revolution in the states," as Slonim accuses me of saying (551). They could never have done that in any case. All they were trying to do was to find some institutional ways of lessening the turbulent effects of too much localist democracy. They began something that has been used over and over in American history ever since.

Rejoinder to Gordon Wood

SHLOMO SLONIM

Gordon Wood mentions that in 1987, as part of the Hebrew University's program of events marking the bicentennial of the U.S. Constitution, he delivered the annual Samuel Paley Lectures in American Civilization at the University in Jerusalem. If I, as chairman of the Department of American Studies was, as he says, a gracious host, he was no less a gracious guest and, moreover, a fascinating lecturer.[1] A synopsis of his remarks is included in the volume that I edited, *The Constitutional Bases of Political and Social Change in the United States,*[2] comprising lectures delivered at a bicentennial conference later that year and attended by prominent American and Israeli constitutional scholars, including Ruth Bader Ginsburg, now Justice of the U.S. Supreme Court, and Aharon Barak, now President of the Israeli Supreme Court.

It is important to delineate what is at issue. My article contends that the neo-Beardian thesis developed by Wood in the final third of *The Creation of the American Republic* and in "Interests and Disinterestedness," an article published in honor of the bicentennial—that the Constitutional Convention was summoned essentially to arrest the turbulent spirit of democracy allegedly spawned by the Revolution and plaguing the states in the 1780s—does not conform with the historical record. The Federalists, I maintain, convened in order to endow the United States with an effective national government, something totally lacking under the Articles of Confederation. Concern over the social condition of the states was subordinate, even in Madison's thought, and never served as the leitmotif of the Framers in the drafting of the Constitution.

To refute my critique of his thesis, Wood cites an expanded version of his above-mentioned lectures published subsequently as an occasional paper, *The Making of the Constitution,* directed to a popular audience. But

1. Wood notes that I reside and teach in Israel. I feel obliged to point out, however, that I was born and educated in Australia (LL.B., Melb.), and received my graduate education in the United States (M.A. and Ph.D., Columbia).

2. New York: Praeger, 1990.

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I never referred to this work; I referred, by chapter and verse, to the central thesis developed in the last third of *Creation* and the "Interests" article, both significant scholarly works. In responding to an argument challenging his thesis, an author could be expected to respond with evidence from the work/s challenged to substantiate the charge that his views have been "misunderstood," "misinterpreted," and "misread," rather than to cite a third, far less prominent, work of his. It is, therefore, quite puzzling that Wood refers to *The Making of the Constitution* to establish the thrust of his thesis, unless, of course, he is suggesting that his current thinking is more accurately reflected in this essay than in his earlier works.

At the risk of repetition, I shall quote some key passages from those two major works to demonstrate the gravamen of my article—that according to Wood, the Constitutional Convention was summoned *primarily* to overcome the democratic turbulence in the states—and that I did not in any way misrepresent his views:

> It was not pressure from above, from the manifest debility of the Confederation, that provided the main impulse for the Federalist movement of 1787; it was rather pressure from below, from the problems of politics within the separate states themselves. (*Creation,* 465)
>
> Their [the Federalists'] focus was not so much on the politics of the Congress as it was on the politics of the states. (Ibid., 475)
>
> More than anything else the Federalists' obsession with disorder in American society and politics accounts for the revolutionary nature of the nationalist proposals offered by men like Madison in 1787 and for the resultant Federalist Constitution. (Ibid., 476)
>
> They conceived of the Constitution as a political device designed to control the social forces the Revolution had released. (Ibid.)
>
> The weaknesses of the Articles of Confederation were not the most important reasons for the making of the Constitution. ("Interests," 72–73)
>
> Not the defects of the Articles of Confederation but . . . promotion of entrepreneurial interests by ordinary people—their endless buying and selling, their bottomless passion for luxurious consumption—was what really frightened the Federalists. (Ibid., 80–81)
>
> They designed the Constitution in order to save American republicanism from the deadly effects of these private pursuits of happiness. (Ibid., 81)
>
> [The Framers] failed, and failed miserably in what they wanted it [the Constitution] to do. (Ibid., 70)

I also find it strange that, in discussing Madison's listing of "Vices of the Political System of the U. States," Wood states: "Madison attributes nearly all of the problems of the Confederation government, not to its weakness, but to the derelictions and encroachments of the states. So, even

in the case of the problems at the national level, it is the states, according to Madison, that were really at fault."[3] But state encroachments on federal powers simply reflect those very weaknesses of the Confederation government that Madison is deploring so strongly. It is not the condition of the states internally that engages his prime attention, as Wood's thesis would have it, but state invasion of national authority. Federal weaknesses and state encroachments were simply two sides of the same coin, and the only way for this fundamental flaw in the Articles to be remedied was to establish a new division of powers between the national and state governments, in a new constitution. Only thus could the federal government defend itself from state infringement of national authority.

I do not see anything new in the discussion of Nos. 10 and 51 of the *Federalist Papers,* nor is there any debate over the Convention's choice of the Virginia Plan over the New Jersey Plan as its working document. My point with regard to the enumeration of specific powers is that, in this matter, the Convention opted for the Paterson *format* rather than the Virginia model of broad heads of power that would have allowed for greater involvement of the central government in the affairs of the states. On this basis, Madison could subsequently claim (in *Federalist,* No. 39), with justice, that the Constitution was genuinely both national and federal.

I am not alone in taking issue with a genre of writing that seeks to "divine" the motives of historical actors, when the motives of these actors are clearly indicated in their private and public communications. And in the case of the Founders, nothing can match the authenticity of their unguarded comments at the Convention, as revealed in Farrand's *Records,* a source so rarely resorted to by Wood in support of his thesis. Thus, it must be recognized that examining trees can be important, especially when confronting theories based on imagined woods.

I admit that I am a textualist, and for very good reason. Historical analysis, I believe, must be grounded in the documentary record. Any imaginative thesis, as attractive as it may be, that does not coincide with that record remains, in the final analysis, mere speculation. In this regard, I must say that although Wood seeks to enlist noted historians Hobson and Rakove in his support, I find nothing upon which to take issue with them, since I do not read either of them to support the claim that the Constitution was "a political device designed to control the social forces the Revolution had released."[4] And finally, I draw attention to what Bernard Bailyn, doyen of the present generation of historians on the Founding, has written: "That

3. Gordon S. Wood, "'Motives at Philadelphia': A Comment on Slonim," *Law and History Review* 16 (1998): 555.

4. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969), 476.

document [the Constitution] . . . does not mark a Thermidorean reaction to the idealism of the early period engineered by either a capitalist junta or the proponents of rule by a leisured patriciate."[5] I believe this comment succinctly sums up my argument regarding the untenability of both the Beardian and neo-Beardian interpretations of the adoption of the U.S. Constitution.

5. Bailyn, *The Ideological Origins of the American Revolution,* enlarged ed. (Cambridge, Mass.: Belknap Press, 1992), vii.