

Moving Beyond Beard: A Symposium

Some of us were raised on Charles Beard's *Economic Interpretation of the Constitution*, many others on the revision and dismissal of that work. However familiar we are with the weaknesses of Beard's claim that the men who framed the Constitution aimed at immediate and personal gain from that document, it remains difficult to accept that theory's "irrelevance to modern scholarship."¹ I think the reluctance to abandon Beard arises from a legitimate source, namely, the insight that we need to ground the founding of the American nation in a history we can comprehend; the refusal to accept the immunity of the framers from a real world of social and economic interests. Along with the respondents in this symposium, this editor welcomes Alfred Young's interpretation of the Constitution, for while "moving beyond Beard," Young remains forthrightly committed to Beard's insistence that the founding be understood as a significant moment in eighteenth-century relations of class.

Readers familiar with Al Young's scholarship on Revolutionary America will recognize themes in this article. How did ruling groups secure and maintain their power? How did the activity and experience of more humble Americans influence the struggles of the Revolutionary Era? These interrelated questions have shaped Young's work for more than two decades.

Participants in the symposium have composed their comments independently: that is, each has responded to Young's article and not to the comments of other participants. As a result, the responses take a variety of directions. Linda Kerber, for example, suggests extensions of Young's argument and proposes questions for further research; James Henretta compares and, in some measure, assimilates Young's interpretation to the work of other historians who, from different political stances, similarly question the orthodoxy that

"republicanism" best explains the actions and ideas of the founders; by contrast, William Forbath considers how Young's article might be useful to practitioners of Critical Legal Studies and proposes a provocative reinterpretation of the constitutional tradition. From the same starting point, in other words, symposium participants have set themselves different tasks.

Despite that, the responses published here do speak to one another, and it seems important to underscore one essential way that they do. As I read it, the symposium brings forth emphatic disagreement about the implications of our concern with the eighteenth-century Constitution. Our relationship to the framers and to the popular movements of their era is variously assumed, asserted and, in Peter Dimock's brief essay, fundamentally questioned. Readers can trace the implications of this disagreement in the symposium below. Its existence alone, I believe, makes continuation of this discussion essential.

Barbara Clark Smith

1. Jon Kukla, "A Political Economy for the Republic's Beardless Youth," *Reviews in American History* 16 (June 1988), 210.



Alfred Young's article first appeared in In These Times, September 9-15, 1987. He would like to thank Ronald Hoffman, Gary Nash, Bruce Nelson and Steven Rosswurm for criticism of a draft of this essay.

Alfred F. Young: The Framers of the Constitution and the "Genius" of the People

On June 18, 1787, about three weeks into the Constitutional Convention at Philadelphia, Alexander Hamilton delivered a six-hour address that was easily the longest and most conservative the Convention would hear. Gouverneur Morris, a delegate from Pennsylvania, thought it was "the most able and impressive he had ever heard."

Beginning with the premise that "all communities divide themselves into the few and the many," "the wealthy well born" and "the people," Hamilton added the corollary that the "people are turbulent and changing; they seldom judge or determine right." Moving through history, the delegate from New York developed his ideal for a national government that would protect the few from "the imprudence of democracy" and guarantee "stability and permanence":

a president and senate indirectly elected for life ("to serve during good behavior") to balance a house directly elected by a popular vote every three years. This "elective monarch" would have an absolute veto over laws passed by Congress. And the national government would appoint the governors of the states, who in turn would have the power to veto any laws by the state legislatures.

If others quickly saw a resemblance in all of this to the King, House of Lords and House of Commons of Great Britain, with the states reduced to colonies ruled by royal governors, they were not mistaken. The British constitution, in Hamilton's view, remained "the best model the world has ever produced."

Three days later a delegate reported that Hamilton's proposals "had been praised by everybody," but "he has been supported by none." Acknowledging that his plan "went beyond the ideas of most members," Hamilton said he had brought it forward not "as a thing attainable by us, but as a model which we ought to approach as near as possible." When he signed the Constitution the framers finally agreed to on September 17, 1787, Hamilton could accurately say, "no plan was more remote from his own."

Why did the framers reject a plan so many admired? To ask this question is to go down a dark path into the heart of the Constitution few of its celebrants care to take. We have heard so much in our elementary and high school civics books about the "great compromises" within the Convention—between the large states and the small states, between the slaveholders and non-slaveholders, between North and South—that we have missed the much larger accommodation that was taking place between the delegates as a whole at the Convention and what they called "the people out of doors."

The Convention was unmistakably an elite body. The official exhibit for the bicentennial, "Miracle at Philadelphia," opens appropriately enough with a large oil portrait of Robert Morris, a delegate from Philadelphia, one of the richest merchants in America, and points out elsewhere that 11 out of 55 delegates were business associates of Morris'. The 55 were weighted with merchants, slaveholding planters and "monied men" who loaned money at interest. Among them were numerous lawyers and college graduates in a country where most men and only a few women had the rudiments of a formal education. They were far from a cross section of the four million or so Americans of that day, most of whom were farmers or artisans, fishermen or seamen, indentured servants or laborers, half of whom were women and about 600,000 of whom

were African-American slaves.

I. The First Accommodation

Why did this elite reject Hamilton's plan that many of them praised? James Madison, the Constitution's chief architect, had the nub of the matter. The Constitution was "intended for the ages." To last it had to conform to the "genius" of the American people. "Genius" was a word eighteenth-century political thinkers used to mean spirit: we might say character or underlying values.

James Wilson, second only to Madison in his influence at Philadelphia, elaborated on the idea. "The British government cannot be our model. We have no materials for a similar one. Our manners, our law, the abolition of entail and primogeniture," which made for a more equal distribution of property among sons, "the whole genius of the people, are opposed to it."

This was long-range political philosophy. There was a short-range political problem that moved other realistic delegates in the same direction. Called together to revise the old Articles of Confederation, the delegates instead decided to scrap it and frame an entirely new constitution. It would have to be submitted to the people for ratification, most likely to conventions elected especially for the purpose. Repeatedly, conservatives recoiled from extreme proposals for which they knew they could not win popular support.

In response to a proposal to extend the federal judiciary into the states, Pierce Butler, a South Carolina planter, argued, "the people will not bear such innovations. The states will revolt at such encroachments." His assumption was "we must follow the example of Solomon, who gave the Athenians not the best government he could devise but the best they would receive."

The suffrage debate epitomized this line of thinking. Gouverneur Morris, Hamilton's admirer, proposed that the national government limit voting for the House to men who owned a freehold, i.e. a substantial farm, or its equivalent. "Give the vote to people who have no property and they will sell them to the rich who will be able to buy them," he said with some prescience. George Mason, author of Virginia's Bill of Rights, was aghast. "Eight or nine states have extended the right of suffrage beyond the freeholders. What will people there say if they should be disfranchised?"

Benjamin Franklin, the patriarch, speaking for one of the few times in the convention, paid tribute to "the lower class of freemen" who should not be disfranchised. James Wilson explained, "it would

be very hard and disagreeable for the same person" who could vote for representatives for the state legislatures "to be excluded from a vote for this in the national legislature." Nathaniel Gorham, a Boston merchant, returned to the guiding principle: "the people will never allow" existing rights to suffrage to be abridged. "We must consult their rooted prejudices if we expect their concurrence in our propositions."

The result? Morris' proposal was defeated and the convention decided that whoever each state allowed to vote for its own assembly could vote for the House. It was a compromise that left the door open and in a matter of decades allowed states to introduce universal white male suffrage.

II. Ghosts of Years Past

Clearly there was a process of accommodation at work here. The popular movements of the Revolutionary Era were a presence at the Philadelphia Convention even if they were not present. The delegates, one might say, were haunted by ghosts, symbols of the broadly based movements elites had confronted in the making of the Revolution from 1765 to 1775, in waging the war from 1775 to 1781 and in the years since 1781 within their own states.

The first was the ghost of Thomas Paine, the most influential radical democrat of the Revolutionary Era. In 1776 Paine's pamphlet *Common Sense* (which sold at least 150,000 copies), in arguing for independence, rejected not only King George III but the principle of monarchy and the so-called checks and balances of the unwritten English constitution. In its place he offered a vision of a democratic government in which a single legislature would be supreme, the executive minimal, and representatives would be elected from small districts by a broad electorate for short terms so they could "return and mix again with the voters." John Adams considered *Common Sense* too "democratical," without even an attempt at "mixed government" that would balance "democracy" with "aristocracy."

The second ghost was that of Abraham Yates, a member of the state senate of New York typical of the new men who had risen to power in the 1780s in the state legislatures. We have forgotten him; Hamilton, who was very conscious of him, called him "an old Booby." He had begun as a shoemaker and was a self-taught lawyer and warm foe of the landlord aristocracy of the Hudson Valley which Hamilton had married into. As James Madison identified the "vices of the political system of the United States" in a memorandum

in 1787, the Abraham Yateses were the number-one problem. The state legislatures had "an itch for paper money" laws, laws that prevented foreclosure on farm mortgages, and tax laws that soaked the rich. As Madison saw it, this meant that "debtors defrauded their creditors" and "the landed interest has borne hard on the mercantile interest." This, too, is what Hamilton had in mind when he spoke of the "depredations which the democratic spirit is apt to make on property" and what others meant by the "excess of democracy" in the states.

The third ghost was a very fresh one—Daniel Shays. In 1786 Shays, a captain in the Revolution, led a rebellion of debtor farmers in western Massachusetts which the state quelled with its own somewhat unreliable militia. There were "combustibles in every state," as George Washington put it, raising the specter of "Shaysism." This Madison enumerated among the "vices" of the system as "a want of guaranty to the states against internal violence."



"Ghosts" at the Philadelphia Convention: Gen. Daniel Shays and Col. Job Shattuck. Woodcut. Artist unknown. *Bickerstaff's Boston Almanac for 1787*, 3rd. ed. Courtesy of the National Portrait Gallery, Smithsonian Institution, Washington, D.C.

Worse still, Shaysites in many states were turning to the political system to elect their own kind. If they succeeded they would produce legal Shaysism, a danger for which the elites had no remedy.

The fourth ghost we can name the ghost of Thomas Peters, although he had a thousand other names. In 1775, Peters, a Virginia slave, responded to a plea by the British to fight in their army and win their freedom. He served in an "Ethiopian Regiment," some of whose members bore the emblem "Liberty to Slaves" on their uniforms. After the war the British transported Peters and several thousand escaped slaves to Nova Scotia from whence Peters eventually led a group to return to Africa and the colony of Sierra Leone, a long odyssey to freedom. Eighteenth-century slaveholders, with no illusions about happy or contented slaves, were haunted by the specter of slaves in arms.

III. Elite Divisions

During the Revolutionary Era elites divided in response to these varied threats from below. One group, out of fear of "the mob" and then "the rabble in arms," embraced the British and became active Loyalists. After the war most of them went into exile. Another group who became patriots never lost their obsession with coercing popular movements.

"The mob begins to think and reason," Gouverneur Morris observed in 1774. "Poor reptiles, they bask in the sunshine and ere long they will bite." A snake had to be scotched. Others thought of the people as a horse that had to be whipped. This was coercion.

Far more important, however, were those patriot leaders who adopted a strategy of "swimming with a stream which it is impossible to stem." This was the metaphor of Robert R. Livingston, Jr., like Morris, a gentleman with a large tenanted estate in New York. Men of his class had to learn to "yield to the torrent if they hoped to direct its course."

Livingston and his group were able to shape New York's constitution, which some called a perfect blend of "aristocracy" and "democracy." John Hancock, the richest merchant in New England, had mastered this kind of politics and emerged as the most popular politician in Massachusetts. In Maryland Charles Carroll, a wealthy planter, instructed his anxious father about the need to "submit to partial losses" because "no great revolution can happen in a state without revolutions or mutations of private property. If we can save a third of our personal estate and all of our lands and Negroes, I shall

think ourselves well off."

The major leaders at the Constitutional Convention in 1787 were heirs to both traditions: coercion and accommodation—Hamilton and Gouverneur Morris to the former, James Madison and James Wilson much more to the latter.

They all agreed on coercion to slay the ghosts of Daniel Shays and Thomas Peters. The Constitution gave the national government the power to "suppress insurrections" and protect the states from "domestic violence." There would be a national army under the command of the president, and authority to nationalize the state militias and suspend the right of habeas corpus in "cases of rebellion or invasion." In 1794 Hamilton, as secretary of the treasury, would exercise such powers fully (and needlessly) to suppress the Whiskey Rebellion in western Pennsylvania.

Southern slaveholders correctly interpreted the same powers as available to shackle the ghost of Thomas Peters. As it turned out, Virginia would not need a federal army to deal with Gabriel Prosser's insurrection in 1800 or Nat Turner's rebellion in 1830, but a federal army would capture John Brown after his raid at Harpers Ferry in 1859.

But how to deal with the ghosts of Thomas Paine and Abraham Yates? Here Madison and Wilson blended coercion with accommodation. They had three solutions to the threat of democratic majorities in the states.

Their first was clearly coercive. Like Hamilton, Madison wanted some kind of national veto over the state legislatures. He got several very specific curbs on the states written into fundamental law: no state could "emit" paper money or pass "laws impairing the obligation of contracts." Wilson was so overjoyed with these two clauses that he argued that if they alone "were inserted in the Constitution I think they would be worth our adoption."

But Madison considered the overall mechanism adopted to curb the states "short of the mark." The Constitution, laws and treaties were the "supreme law of the land" and ultimately a federal court could declare state laws unconstitutional. But this, Madison lamented, would only catch "mischiefs" after the fact. Thus they had clipped the wings of Abraham Yates but he could still fly.

The second solution to the problem of the states was decidedly democratic. They wanted to do an end-run around the state legislatures. The Articles of Confederation, said Madison, rested on "the pillars" of the state legislatures who elected delegates to Congress. The "great fabric to be raised would be more stable and durable if it

should rest on the solid grounds of the people themselves"; hence, there would be popular elections to the House.

Wilson altered only the metaphor. He was for "raising the federal pyramid to a considerable altitude and for that reason wanted to give it as broad a base as possible." They would slay the ghost of Abraham Yates with the ghost of Thomas Paine.

This was risky business. They would reduce the risk by keeping the House of Representatives small. Under a ratio of one representative for every 30,000 people, the first house would have only 65 members; in 1776 Thomas Paine had suggested 390. But still, the House would be elected every two years, and with each state allowed to determine its own qualifications for voting, there was no telling who might end up in Congress.

There was also a risk in Madison's third solution to the problem of protecting propertied interests from democratic majorities: "extending the sphere" of government. Prevailing wisdom held that a republic could only succeed in a small geographic area; to rule an "extensive" country, some kind of despotism was considered inevitable.

Madison turned this idea on its head in his since famous *Federalist* essay No. 10. In a small republic, he argued, it was relatively easy for a majority to gang up on a particular "interest." "Extend the sphere," he wrote, and "you take in a greater variety of parties and interests." Then it would be more difficult for a majority "to discover their own strength and to act in unison with each other."

This was a prescription for a non-colonial empire that would expand across the continent, taking in new states as it dispossessed the Indians. The risk was there was no telling how far the "democratic" or "leveling" spirit might go in such likely would-be states as frontier Vermont, Kentucky and Tennessee.

IV. Democratic Divisions

In the spectrum of state constitutions adopted in the Revolutionary era, the federal Constitution of 1787 was, like New York's, somewhere between "aristocracy" and "democracy." It therefore should not surprise us—although it has eluded many modern critics of the Constitution—that in the contest over ratification in 1787-88, the democratic minded were divided.

Among agrarian democrats there was a gut feeling that the Constitution was the work of an old class enemy. "These lawyers and men of learning and monied men," argued Amos Singletary, a work-

ing farmer at the Massachusetts ratifying convention, "expect to be managers of this Constitution and get all the power and all the money into their own hands and then will swallow up all of us little folks . . . just as the whale swallowed up Jonah."

Democratic leaders like Melancton Smith of New York focused on the small size of the proposed House. Arguing from Paine's premise that the members of the legislature should "resemble those they represent," Smith feared that "a substantial yeoman of sense and discernment will hardly ever be chosen" and the government "will fall into the hands of the few and the great." Urban democrats, on the other hand, including a majority of the mechanics and tradesmen of the major cities who in the Revolution had been a bulwark of Paineite radicalism, were generally enthusiastic about the Constitution. They were impelled by their urgent stake in a stronger national government that would advance ocean-going commerce and protect American manufacturers from competition. But they would not have been as ardent about the new frame of government without its saving graces. It clearly preserved their rights to suffrage. And the process of ratification, like the Constitution itself, guaranteed them a voice. As early as 1776 the New York Committee of Mechanics held it as "a right which God has given them in common with all men to judge whether it be consistent with their interest to accept or reject a constitution."

Mechanics turned out en masse in the parades celebrating ratification, marching trade by trade. The slogans and symbols they carried expressed their political ideals. In New York the upholsterers had a float with an elegant "Federal Chair of State" flanked by the symbols of Liberty and Justice that they identified with the Constitution. In Philadelphia the bricklayers put on their banner "Both buildings and rulers are the work of our hands."

Democrats who were skeptical found it easier to come over because of the Constitution's redeeming features. Thomas Paine, off in Paris, considered the Constitution "a copy, though not quite as base as the original, of the form of the British government." He had always opposed a single executive and he objected to the "long duration of the Senate." But he was so convinced of "the absolute necessity" of a stronger federal government that "I would have voted for it myself had I been in America or even for a worse, rather than have none." It was crucial to Paine that there was an amending process, the means of "remedying its defects by the same appeal to the people by which it was to be established."

V. The Second Accommodation

In drafting the Constitution in 1787 the framers, self-styled Federalists, made their first accommodation with the "genius" of the people. In campaigning for its ratification in 1788 they made their second. At the outset, the conventions in the key states—Massachusetts, New York and Virginia—either had an anti-Federalist majority or were closely divided. To swing over a small group of "antis" in each state, Federalists had to promise that they would consider amendments. This was enough to secure ratification by narrow margins in Massachusetts, 187 to 168; in New York, 30 to 27; and in Virginia, 89 to 79.

What the anti-Federalists wanted were dozens of changes in the structure of the government that would cut back national power over the states, curb the powers of the presidency as well as protect individual liberties. What they got was far less. But in the first Congress in 1789, James Madison, true to his pledge, considered all the amendments and shepherded 12 amendments through both houses. The first two of these failed in the states; one would have enlarged the House. The 10 that were ratified by December 1791 were what we have since called the Bill of Rights, protecting freedom of expression and the rights of the accused before the law. Abraham Yates considered them "trivial and unimportant." But other democrats looked on them much more favorably. In time the limited meaning of freedom of speech in the First Amendment was broadened far beyond the framers' original intent. Later popular movements thought of the Bill of Rights as an essential part of the "constitutional" and "republican" rights that belonged to the people.

VI. The "Losers' " Role

There is a cautionary tale here that surely goes beyond the process of framing and adopting the Constitution and Bill of Rights from 1787 to 1791. The Constitution was as democratic as it was because of the influence of popular movements that were a presence, even if not present. The losers helped shape the results. We owe the Bill of Rights to the opponents of the Constitution, as we do many other features in the Constitution put in to anticipate opposition.

In American history popular movements often shaped elites, especially in times of crisis when elites were concerned with the "system." Elites have often divided in response to such threats and according to their perception of the "genius" of the people. Some have

turned to coercion, others to accommodation. We run serious risk if we ignore this distinction. Would that we had fewer Gouverneur Morris and Alexander Hamiltons and more James Madisons and James Wilsons to respond to the "genius" of the people.



Linda Kerber: Consensus History, With Complications

As we emerge, still perhaps a bit glazed, from bicentennial celebrations of 1987 and prepare ourselves to face those of the French Revolution and the Bill of Rights, Al Young's short essay comes as a breath of fresh air. Cutting through the usual seesaw of Federalist/Anti-Federalist countervailing argument to contend that a founding elite accommodated itself to "the genius of the people," Young offers a succinct interpretation that restores popular movements to a central place in post-revolutionary political history and that guides us through the complexities of the Convention and Ratification with grace and—you should excuse the expression—common sense.

Al Young's reconstruction of the political dynamics of the shaping of the Constitution offers us an alternative to comfortable but ahistorical myths. It denies the "miracle at Philadelphia" approach, which would give us demigods whose choices—even on slavery—are taken to represent the only conceivable successful outcome; an approach which sustains, as James Henretta remarks elsewhere in this symposium—a constitutional interpretation that privileges a jurisprudence based on original intent. Young also denies that the Constitution was "Thermidor," an approach which insists that—along with the squelching of Shay's Rebellion—Philadelphia marked not only the end but also the rejection of the Revolutionary Era. Instead Young calls on us to understand the Convention as an authentic expression of the work of a revolutionary generation, a stage on which was played out the complexities, ambivalence, and struggles of a leadership which had both invented and were also caught in the first revolution of modern times.

On second reading, however, one fears that Young has been seduced by a romantic interpretation that absorbs political conflict into something reminiscent of the consensus history of the 1950s.