

## THE TENTH FEDERALIST REVISITED

Adair's absorption with James Madison's *Federalist* Number 10 went back to his graduate school days at Yale. In his doctoral dissertation, "The Intellectual Origins of Jeffersonian Democracy: Republicanism, the Class Struggle, and the Virtuous Farmer" (which still deserves publication), Adair devoted substantial attention to the tenth *Federalist* (see pages 220–271). Adopting the basic organization he had followed in his dissertation, Adair conceived of a two-part article that would resemble in plan his treatment of "The Authorship of the Disputed Federalist Papers"—that is, he would first attend to the historiography of his topic and then make his own special contribution. This essay, the first of the two projected sections, appeared in the *William and Mary Quarterly* in January 1951.

As can happen so often, there were distractions and demands that delayed the delivery of the promised second part of "The Tenth Federalist Revisited." Readers of the *Quarterly* looked in vain for "the last half of this discussion" (see p. 131). When Adair did complete part two he was at Claremont and already a habitué of the Huntington Library. A Conference on Early American History was planned at the Huntington for February 1957, and Adair offered his essay. And so, in August 1957, part two appeared in the *Huntington Library Quarterly* under the title "That Politics May Be

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Reduced to a Science': David Hume, James Madison, and the Tenth Federalist." The two essays deserve to be read in tandem—as Adair intended.

ALTHOUGH JAMES MADISON wrote the tenth *Federalist* in 1787, it was not until 1913, 125 years later, that Charles A. Beard made this particular essay famous for students of the United States Constitution. Before Beard published *An Economic Interpretation of the Constitution*, practically no commentator on *The Federalist* or the Constitution, none of the biographers of Madison, had emphasized *Federalist* 10 as of special importance for understanding our "more perfect union"; after Beard's book appeared the tenth *Federalist* became the essay most often quoted to explain the philosophy of the Fathers and thus the "ultimate meaning" of the United States Constitution itself.

A sampling of the evidence for this generalization not only makes clear Beard's role in generating this latter-day fame for Madison's essay but also shows the peculiar twist that the historian gave to that fame—a twist, a perspective, an interpretation that still governs to a remarkable degree the contemporary view of *Federalist* 10, Madison, and the Constitution.

To note this fact is to acknowledge the special greatness of Charles Beard as a scholar and to recognize the long shadow that his *Economic Interpretation* still casts over a crucial area of the American thought about the past. Nor is the word "shadow" inexact; for although Beard's research threw a brilliant beam of light on certain facets of the Constitution, his aim was selective, and by highlighting special features of the document he thereby cast others into deep obscurity. Judged in terms of its effect on the thought of a whole generation, Beard's famous book is certainly the most significant piece of modern scholarship on the Constitution of 1787.<sup>1</sup> It was

1. A survey of the textbooks used today in college courses on United States history shows the powerful influence still exerted by Beard's monograph of 1913. Perhaps the most succinct statement of the questions posed by Beard and still debatable can be seen in the Amherst readings in "Problems in American Civiliza-

also, when it appeared in 1913, the most important party tract of the Progressive Era that used scholarship as a weapon for twentieth-century politics.

The fact that Madison's tenth *Federalist* was first widely publicized in this way and at this time in a monograph with a very special modern bias has had a curious aftereffect. The peculiar anachronisms of the Beardian school have effectively diverted attention from what are, *prima facie*, the most obvious questions to ask about Madison's exercise in political theory: what did the theory of *Federalist* 10 mean in 1787 when the Virginian enunciated it? What function did Madison's abstract theoretical speculations serve in the creation of the Constitution?

It will be the aim of the first section of this study to show, by describing the intellectual climate in which Charles Beard "discov-

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tion," Earl Latham, ed., *The Declaration of Independence and the Constitution* (New York, 1949), vi: "What was it the Founding Fathers did in Philadelphia in 1787? Were they selfless patriots bent upon establishing a new and enduring form of government that would save the fruits of successful Revolution which were threatened by the inadequacies of the confederation government? Or were they self-seekers bent instead upon protecting the material advantage of the propertied class at the expense of the political rights of the many? Did the Constitution of 1787 reaffirm or reject the doctrine of the Declaration of Independence?"

Since historians, even in writing textbooks, do not always express their position with complete clarity and precision, it is difficult to fit their writings into completely exclusive neat categories on this point. Certainly the volumes of Billington, Loewenberg, and Bockunier, Chitwood and Owsley, Faulkner, Harlow, Hicks, and Hockett state or imply that the Constitution rejected the doctrines of the Declaration. Most of these texts also imply or state with differing degrees of emphasis that the Fathers were intent on protecting the property of the few at the expense of the political rights of the many. All of them absolve the Fathers of being entirely motivated by desire "to line their own pockets" (Harlow's words), but seemingly subscribe to Chitwood and Owsley's belief that it is "impossible" to say exactly "to what extent the framers were influenced by these selfish motives." The texts of Dumond, Rae and Mahoney, and Wellborn argue that the Fathers undoubtedly were patriots intent on saving the fruits of the Revolution and that the Constitution was a consummation of the Declaration. Craven and Johnson, Morison and Commager, Saville and Barck, Wakefield and Lefler call them patriots but leave the relation of the Constitution to the Declaration unclear.

ered" *Federalist* 10, why the historian was only slightly concerned with Madison's theory as theory, but found in the Virginian's essay one element—the doctrine of class struggle—which, lifted out of context, served admirably the political causes of 1913 dear to Beard's heart. We shall see, as a result, that Beard was led to argue persuasively, but falsely, that Madison's *Federalist* theory expounded the doctrine that theories are unimportant in politics.

It will be the aim of the second half of this study to show by tracing the development of Madison's theory as he thought it out in the spring of 1787, before the Philadelphia Convention met and a year and a half before *Federalist* 10 was written, that Madison subscribed to no such naïve doctrine. Furthermore it will then be shown that Madison's theory as abstract speculative thought played a significant role in the writing and ratification of the United States Constitution.

DURING THE NINETEENTH CENTURY the tenth *Federalist* was generally ignored by commentators; nor is the reason difficult to discover, for it is a truism apparent to everyone who has reflected on American history that every generation sees mirrored in the Constitution its own deepest political interests. When James Madison died in 1836—just one year before the fiftieth anniversary of the Philadelphia Convention—the burning political issues of that day centered on the powers and structure of the federal Union and its relation to the state governments. In this atmosphere the *Federalist* essays which seemed of most importance were those that dealt with the powers of Congress; the relationship between the president, the Congress, the judiciary; and increasingly as the year 1860 drew closer, the rights of the states to nullify or otherwise protect themselves against obnoxious legislation. The tenth *Federalist* was not directly in point in the fierce debates that raged over these issues before the Civil War; so although thousands of Americans must have read the essay while seeking to obtain light on the meaning of the Constitution,

practically no one in this era publicly signaled it out for especial praise or comment.

The editors of the twelve editions of the *Federalist* published between 1818 and 1860 ignored Number 10, but indicated by reprinting Madison's Helvidius essays and Hamilton's Pacificus as an appendix to Publius, that Publius' most important topics related to the "strict" or "liberal" interpretation of the Constitution's powers.<sup>2</sup> The most able foreign interpreter of American democracy, de Tocqueville, describing *The Federalist* as an "excellent book, which ought to be familiar to the statesmen of all countries," specifically referred to more than fifty of the essays, but Madison's tenth was not among them.<sup>3</sup> The two chief historians of the formation of the Constitution who were read during this generation, Hildreth and Curtis, in like manner silently bypassed the essay.<sup>4</sup> Not even the stylistic pains that Madison took with *Federalist* 10 gained the paper inclusion in Griswold's famous anthology of *The Prose Writers of America*; Madison was indeed represented, but it was *Federalist* 37 that Griswold chose to show the Virginian as a literary artist.<sup>5</sup>

It is true that the two pre-Civil War biographies of Madison do mention *Federalist* 10, but the casualness of the reference is perhaps the most convincing proof that during the first half of the nineteenth century this essay was taken for granted and held to be of less

2. The editions of *The Federalist* printed before the Civil War are listed in Henry Cabot Lodge, ed., *The Federalist: A Commentary on the Constitution of the United States* . . . (New York, 1886), I, xxxv–xlii. The Gideon edition of 1818 set the precedent, followed by almost every early editor, of including the Pacificus and Helvidius essays.

3. Alexis de Tocqueville, *Democracy in America*, 4th ed. (New York, 1841), I, 115–145 *passim*. For quotation, see 119n.

4. Richard Hildreth ignores *The Federalist*, but George Ticknor Curtis, *History of the Origin, Formation and Adoption of the Constitution of the United States, with Notices of Its Principal Framers* (New York, 1854–1858), speaks of the work in some detail. See I, 417–418.

5. Rufus Wilmot Griswold, [ed.], *The Prose Writers of America. With a Survey of the History, Condition, and Prospects of American Literature* (New York, 1847).

immediate significance than other of the Virginian's commentaries on the Constitution. The first of these biographies, written in 1836 by John Quincy Adams—who here first baptized Madison "the father of the Constitution"<sup>6</sup>—discusses at some length the writing of all *The Federalist*, but Adams's analysis stresses lack of unity to be seen in Hamilton's and Madison's joint enterprise. "In examining closely the points selected by these two great co-operators . . . and their course of argument . . . it is not difficult to perceive that diversity of genius and character which afterwards separated them. . . ." Adams then offers as an example *Federalist* Numbers 9 and 10, where "the advantages of a confederated republic . . . to control [faction] . . . are insisted upon with equal energy in both—but the ninth number, written by Hamilton, draws its principal illustrations from the history of the Grecian Republics; while the tenth, written by Madison, searches for the disease and its remedies in the nature and faculties of MAN."<sup>7</sup> Adams, however, did not bother to elaborate on his praise or quote from Number 10; with manifest destiny looming on the political horizon he turned his attention and most of his space to

6. John Quincy Adams, "Eulogy on James Madison," in *The Lives of James Madison and James Monroe, Fourth and Fifth Presidents of the United States* (Buffalo, 1851). This sketch was delivered in a condensed form as a speech at Boston, Sept. 27, 1836; printed the same year, it was widely circulated. Adams did an immense amount of research in preparing it, and it still stands as an able, but dated, short biography. Adams's bestowal of the title of "father of the Constitution" on Madison was due largely to the recognition of the Virginian's great role in 1787–1788, but the use of the title was not divorced from Adams's strategy in using Madison's authority in the biography to belabor as constitutional heresies Jefferson's Kentucky Resolution of 1798 and the South Carolina nullification theories of 1831. Adams, who believed Madison to be "a greater and far more estimable man" than Jefferson, expected his treatment of the Alien and Sedition Acts to cause controversy since Madison's "party friends" considered his conduct of 1798–1799 "perhaps the greatest of his merits and services." Adams also expected attacks from idolators of Jefferson because of the "very explicit terms" in which he played Madison's theories off against Jefferson; see Charles Francis Adams, ed., *Memoirs of John Quincy Adams, Comprising Portions of His Diary from 1795 to 1848* (Philadelphia, 1874–1877), IX, 305–310.

7. Adams, "Eulogy," *Lives of Madison and Monroe*, 42.

discussion and gloss of Number 14, dealing with the maximum extent of territory that can be ruled by a republican government, "a question" which he felt in 1836 was of "transcendent interest, and of fearful portent to the people of the Union," who were even then eyeing the "alluring spoils" of Canada and Mexico.

Even more negative is the treatment of Madison's second biographer, William C. Rives. In his outline of all of the Virginian's essays, he cursorily praises Number 10 in one sentence for its "power of analysis" and its "abstract reasoning," and then devotes fifteen pages (with lengthy quotation) to *Federalists* 37–51, "that division of the work," according to Rives, "which was . . . peculiarly his [Madison's] own."<sup>8</sup> Moreover, if Rives's biography had carried Madison's career past 1796 he would probably have indicated that, with Adams, he felt Madison's most significant commentary on the Constitution was not any of the *Federalist* essays. For Adams, by allotment of space in his biography, showed clearly that he thought Madison's most crucial comment on the more perfect union lay in his exegesis of the Tenth Amendment in the Virginia Resolutions of 1798–1799—those Resolutions which figured so prominently in the nullification crisis of the 1830s and which were featured in every Democratic party platform from 1852 to 1860.

Madison was still "father" of the Constitution after Appomattox, for such tags once rooted in the textbooks seen impossible to eradicate; but he was a parent treated with increasing disrespect—a parent to be apologized for—by the most authoritative commentators who wrote on *The Federalist* and the Constitution between the Civil War and the end of the nineteenth century. The most widely read biography of the Virginian written during this period, Gay's, treated him with contempt and scorn; Henry Adams, in the great history of Madison's administration, etched his portrait of the president with

8. William C. Rives, *History of the Life and Times of James Madison* (Boston, 1859–1868), II, 487ff.

the acid of irony.<sup>9</sup> Henry Cabot Lodge, P. L. Ford, and Goodwin Smith in the process of editing *The Federalist* stole—the word is exact—twelve of the essays written by Madison and attributed them to Hamilton, who all these editors agreed was the greatest of the Founding Fathers.<sup>10</sup> It was no wonder, then, that in 1900, when a poll was taken by the promoters of the newly founded American Hall of Fame to determine which of our dead statesmen were worthy of enshrinement there, Madison ignobly failed to qualify.<sup>11</sup> By 1900 the Virginian's "fatherhood" of the Constitution was being explained by sophisticated historical experts as an accidental phenomenon. Madison's skill as a stenographer in reporting the Convention debates had misled the vulgar into attributing to him the paternity of the Constitution—so ran the argument—but this skill of a reporter was not to be compared with the truly great political genius that Hamilton exhibited at Philadelphia.<sup>12</sup>

One of the greatest triumphs of Charles Beard in 1913, thus, was

9. Sydney Howard Gay, *James Madison* (Boston, 1884); Henry Adams, *History of the United States during the Administrations of Jefferson and Madison* (New York, 1890–1891).

10. The Lodge, Ford, and Goodwin Smith editions of *The Federalist* appeared respectively in 1886, 1898, and 1901. For a discussion of the devices by which 15 numbers by Madison were stolen and allocated to Hamilton, see Douglass Adair, "The Authorship of the Disputed Federalist Papers," *WMQ*, 3d Ser., I (1944), 94–122 [Pt. I of essay 2 above].

11. The anonymous author of the sketch of Madison in John Howard Brown, ed., *Lamb's Biographical Dictionary of the United States* (Boston, 1900–1903), comments on the Hall of Fame vote and on the shameful neglect at that time of Madison's grave at Montpelier.

12. Worthington Chauncey Ford, "Alexander Hamilton's Notes in the Federal Convention of 1787," *American Historical Review*, X (1904–1905), 97. Ford, contrasting the forceful personality of Hamilton with the negative character of the Virginian, notes that "Madison's studies had produced almost a colorless attitude of mind, in which his learning threatened to neutralize his energy. . . . His influence in the convention was small in spite of the many times he took part in the debates, and it was exerted rather through others than through himself. This attitude made him the best possible recorder of the debates as he was in a receptive frame of mind . . . ready to study what others had to propose."

to reestablish Madison's reputation as a major statesman of the Convention rather than as its mere "reporter." Beard's magnification of Madison, however, was essentially a by-product of the strategy in *An Economic Interpretation* of using the tenth *Federalist* as a bomb to shatter the post-Appomattox interpretation of the Constitution—Alexander Hamilton's "Constitution"—which was proclaimed by conservatives and utilized by them in the party battles of the turn of the century.

The story of the historical revisionism which from the 1870s until the Progressive Era had devalued Madison's role in the creation of the Constitution while glorifying Alexander Hamilton's is too complicated to be told here in any detail. It is enough to note that the ruling groups in the new nation that emerged from the Civil War—a nation with its new pattern of industry, its deification of the businessman and the banker as the country's most valuable citizens—found the traditional agrarian interpretation of the Constitution—an interpretation personified by Madison and Jefferson and dominant from 1800 to 1860—politically and emotionally unsatisfactory.

The symbolic figure of Alexander Hamilton and a neo-Hamiltonian Constitutional philosophy, in contrast, suited the emotional needs and the political interests of the most potent social classes of America's Gilded Age. It was Hamilton's "Report on Manufactures" that with prophetic insight had first painted the vision of a powerful and rich industrialized nation—a vision that this generation of Americans, aided by tariffs and railroad subsidies, was turning into an actuality. To an age that applauded Carnegie's "gospel of wealth" and merged Darwinian biology with Spencerian sociology to justify the new rich as the most "fit" and the "best," Hamilton's eighteenth-century glorification of men of property as those best fitted to rule the state also seemed inspired social thinking. Finally Hamilton's pro-English orientation—his desire that the American Constitution approach the British in form and function, and above all his bitter denunciation of the French Revolution and "Gallic democracy"—appeared wholly admirable in

an era when the bloody work of the Paris Commune of 1871 seemed to prove once again the lesson of Robespierre's "Reign of Terror": pure majority-rule democracy—the Rousseauistic "tyranny of numbers"—inevitably would end in social anarchy and open class war.

It was this proletarian threat to the status quo—still small in the United States but nevertheless a recognized danger after the great railroad strikes of the seventies and the Haymarket Riot of 1886—that gave added emotional appeal to the message preached by such historians as von Holst, Henry Cabot Lodge, John Bach McMaster, Paul Leicester Ford, Theodore Roosevelt, William Graham Sumner, and dozens of lesser scholars and publicists: the greatest glory of the American system established by the Constitution was its political and economic conservatism. The *ethos* of this document, thanks to the "racial" wisdom of Hamilton and other of the Fathers, exemplified "the Anglo-Saxon" love of order, respect for the sacredness of property, and recognition that the only true liberty was the liberty of minority groups to be protected in their rights against the envy and malice of tyrannical majorities. This was the theme of von Holst's ponderous volumes.<sup>13</sup> This was the point of Gladstone's famous praise of the Constitution as "the most wonderful work ever struck off at a given time by the hand and purpose of man" and his comparison of the document with the British constitution.<sup>14</sup> In spite of the fact, Gladstone says, in spite of the fact that the American Constitution is an *artificial* creation, written in the age of a priori theory, of Rousseau and Tom Paine, of Voltaire and Jefferson, it has created a

13. [Hermann Edward] von Holst, *The Constitutional and Political History of the United States* (Chicago, 1877–1892); see esp. I, chap. 2, "The Worship of the Constitution, and its Real Character."

14. W. E. Gladstone, "Kin Beyond the Sea," *North American Review*, CXXVII (1878), 179–212. The famous quotation sentence can be found on p. 185, but the whole essay should be read, with its distinction between Anglo-American "ordered liberty" and the "autocracy" of Russia and France, and its warning to Americans in the concluding paragraph against "the proposal to tamper with the true monetary creed which the Tempter lately presented to the nation in the Silver Bill."

political society as stable, and orderly, and *natural* as that established by the English constitution, "which has proceeded from the womb and long gestation of progressive history."

In this climate of opinion, in which top American scholars vied with the most distinguished foreign commentators to sing the glories of the Constitution as an instrument of conservatism, even statesmen and students whose inherited allegiance was to Jefferson's and Madison's Democratic party echoed the philosophy of neo-Hamiltonianism. Grover Cleveland, the only Democrat to be president during the last half of the nineteenth century, in a speech made during the Centennial Celebration of the Constitution at Philadelphia, September 16, 1887, called for "business men" to participate more actively "in political affairs" and thus directly to help the nation follow policies that would advance prosperity. This counsel, Cleveland recognized, "might be considered at first a departure that would cause a diminution in personal profit," but the example of 1787 showed the reverse was true: the Constitution—"a triumph of patriotism over selfishness"—indicated that if the Fathers by public service sacrificed the quick cash rewards of private business their eventual repayment came from a sound government under which business and, consequently, all lesser interests flourished magnificently.<sup>15</sup> Hamilton's ghost could applaud such a sentiment; and it could applaud equally the remark, two years later, of a still unknown young Democrat named Woodrow Wilson: "Ever since I have had independent judgements of my own," said Wilson, Virginia-born, Georgia-raised, and educated at Madison's and Jefferson's colleges, "I have been a Federalist."<sup>16</sup>

15. Hampton L. Carson, ed., *History of the Celebration of the One Hundredth Anniversary of the Promulgation of the Constitution of the United States* (Philadelphia, 1889), I, 375. For the sporadic comments on anarchism that periodically appeared during the celebration see the speech of John A. Kasson, the president of the Centennial Committee, and the remarks of the French consul at Philadelphia, M. Voission, on the celebration, *ibid.*, 323, 447.

16. Letter to Albert Bushnell Hart, June 3, 1889, quoted in Arthur S. Link, *Wilson: The Road to the White House* (Princeton, N.J., 1947), 22.

It is necessary to remember this almost unanimous chorus of voices during the 1870s and 1880s, hymning the sacred conservatism of the Constitution, in order to evaluate the originality of Charles Beard's study of 1913. Clearly when Beard then called the "Fathers" conservative he was stating no novel doctrine; nor was there originality in his exhibiting Alexander Hamilton as "the colossal genius of the new system."<sup>17</sup> The shock quality of Beard's study of 1913 arose from two things; first, the shift in the political climate of opinion between 1887 and 1913 had turned the adjective "conservative" from a word of praise to one of censure; and, second, Beard was vastly original in offering, explicitly and by innuendo, historical evidence on the *motives* for the Fathers' conservatism. In short, Beard told a generation that gloried in calling itself "progressive" why the Constitution was the antithesis of progressivism.

The beginning of this major shift away from political conservatism, so evident by 1913, was first conspicuous during the great depression of 1893, at which time the pocket-slapping complacency that characterized the 1887 Centennial Celebration of the Constitution had evaporated, not to reappear in America until the Coolidge "normalcy" of the 1920s. Agrarian unrest in the South and West exploded into Populism; in the great industrial centers of the country an unprecedented number of strikes were marked with scenes of terrorism, violence, and class war reminiscent of the Paris Commune. Cleveland's invitation to businessmen to take a more active part in running the government (applauded generally in 1887 as an appeal to men of virtue and probity) now took on a sinister sound in circles listening

17. Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York, 1913), 100. Obviously, in reacting against certain features of the standpat Republican interpretation of the Constitution, Beard did not react against all of them. Most conspicuously he emphasized even more than Lodge *et al.* Alexander Hamilton's role at Philadelphia. Indeed in the key chapter, "The Economic Interests of the Members of the Convention," in which Beard proves that the Fathers were not "disinterested," approximately one-fifth of the discussion is concerned solely with Hamilton and the Hamilton connection.



to Tom Watson denounce the "Vampires of Wall Street" or reading Henry Demerest Lloyd's *Wealth v. Commonwealth*. As the economic disaster deepened and became more and more catastrophic, fear and hatred manifested themselves at every level of American society as the poor made the acquaintance of starvation and the rich shuddered to think what the starving might do.

Then from the 1895 spring term of the Supreme Court issued the three famous decisions on the sugar monopoly, on the Pullman strike injunction, and on the income tax, which cast the Constitution and Alexander Hamilton's *Federalist* 78, justifying judicial review, squarely into the very storm center of contemporary politics. The Court, the Constitution, and the writings of Publius were to stay there until the entrance of the United States in World War I diverted public attention from domestic reform.

The Debs and the Sugar Trust decisions seemed to outraged radicals and reformers to indicate that the Constitution, as interpreted by the Supreme Court, established a double standard of justice between labor and capital. The income tax decision appeared even more portentous. No matter if an overwhelming majority of the American people wished their representatives in Congress to tax the overgrown income of the wealthy, the words of the Founding Fathers inscribed in the Constitution forbade it; so said the Court. The economic expediency of an income tax, its justification as an equitable levy, all the arguments from public policy, were irrelevant weighed against those ghostly phrases of 1787.<sup>18</sup> Inevitably the justices were subjected

18. For a fascinating contemporary report of Joseph H. Choate's oral argument before the Court attacking the constitutionality of the income tax, see David Graham Phillips's news story written for the *New York World*, printed in Edward Sandford Martin, *The Life of Joseph Hodges Choate* . . . (New York, 1920), 7-15. See especially Phillips's conclusion: Choate "paid small attention to the arguments from public policy, from political economy with which his adversaries dealt so admirably. He kept close to the Constitution, and addressed himself to the interpreting of constitutional principles. And when he sat down everyone there present felt that . . . the income tax had had its worst blow."

to what the historian of the Court describes as "violent criticism" and "bitter attack."<sup>19</sup>

This constitutional crisis of 1895 and the years following, like the similar crises touched off by the Dred Scott opinion and the Court's overruling of New Deal legislation in 1936, produced two different reactions among critics of the decisions. There were some who accepted the Court's edicts as bad policy, but good constitutional law; others cried they were bad policy and bad law. In the first group was Debs himself, who spent his jail term reading socialist literature and came to the conclusion that his conviction did represent capitalist justice—the only kind of justice available under a capitalist constitution—and that the whole system should be revolutionized. By 1912 nearly a million Americans followed Debs to the polls and gave him their votes for president. Far more numerous, however, was the group who insisted that the Court had "usurped" power not granted it under the Constitution in order to twist that document's phrases to annul the intent of Congress and the wishes of the American people. This was the position taken by the Democratic platform in 1896; this was the semiofficial position of the Bull Moose party that rallied behind Theodore Roosevelt in 1912. And in the years between 1895 and 1912 hundreds of scholars, publicists, and politicians explored American constitutional history, reread *The Federalist*, and disputed over the intentions of the Founding Fathers in order either to justify demands for reform or to fortify the conservative position whose strongest inner citadel was the United States Constitution, as interpreted by Chief Justice Fuller's Court.<sup>20</sup> Charles Beard's *An*

19. Charles Warren, *The Supreme Court in United States History*, rev. ed. (Boston, 1937), II, 701-702. For Beard's contemporary criticism of the Court's policy from 1877 to 1914, see his *Contemporary American History* (New York, 1914), 6-7, 13-19, 54-84, 219-220, 313-314; for his sardonic comments on the Debs and income-tax cases, see 152-161.

20. A short but representative bibliography of the attacks on the Court from 1895 to 1912 can be found in the references listed in Warren's footnotes, *Supreme Court*, II, 703, 713, 743.

*Economic Interpretation of the Constitution*, published in 1913, was the climactic product of the left wing of "progressive" scholarship—a work whose artful selectivity dealt with those particular features of the Constitution which were most distressing to the American radicals of the first decade of the twentieth century.

Beard, before addressing himself to the meaning of the Constitution as a whole, had first explored the possibility that the Supreme Court of his day was "usurping" power not granted by the Fathers in overruling congressional legislation and thwarting the will of the people. His researches convinced him that there was no usurpation, that a majority of the Fathers approved of "judicial control," of majority will, and that the antidemocratic principle of judicial supremacy was in harmony with the whole spirit of the Constitution.<sup>21</sup> As Beard was to argue in *An Economic Interpretation*, "the keystone" of the whole constitutional structure of 1787 was the Court, whose position allowed it to use "the sanctity and mystery of the law" to "foil" democracy. It was thus historically impossible, in Beard's words, to give "the color of legality, so highly prized by revolutionaries as well as by apostles of law and order," to any movement "designed to strip the court of their political function."

What course was then open to radicals and reformers? Their project for making over America into a land where social justice prevailed

21. Beard's study in its earliest form appeared in the *Political Science Quarterly*, XXVII (1912), 1–35, with the title "The Supreme Court—Usurper or Grantee." The quotation is in the lead paragraph. The study was also published as a book in expanded detail the same year, *The Supreme Court and the Constitution* (New York, 1912). For evidence of Beard's view that "judicial control" was essentially and inevitably antidemocratic, see the way he uses the approval of the doctrine as the yardstick to measure the liberal or reactionary complexion of members of the Convention in *An Economic Interpretation*: Gunning Bedford of Delaware—of all people—and R. D. Spaight of North Carolina can by "inference" (the word is Beard's) be called democrats because they disapproved "judicial control" (pp. 191, 214), while George Wythe is set down as conservative on the bare evidence that he was a "warm advocate" of the doctrine (p. 216), and James Wilson, although "he took a democratic view on several matters" in the Convention, is flatly denied the title of "democrat" for the same reason (pp. 215–216).

was denied even the color of legality, not by a usurping court, but by the sacred words of the Constitution of 1787. Beard's answer in *An Economic Interpretation* was to expose the nature of that Constitution, to unmask its hidden features in order to show that it deserved no veneration, no respect, and should carry no authority to democratic Americans of the twentieth century. Indeed, by what amounted to a stroke of tactical genius, Beard divined that the most devastating attack on the Court of 1913, the most powerful thrust against the whole conservative political position, could be made by a "purely historical" study.<sup>22</sup> This approach would exclude explicit discussion of contemporary issues in order to strip "the sanctity and mystery" from that venerable Constitution on which the Court and the old guard were standing pat.<sup>23</sup>

The contemporary reform issues that were agitating the progressives were, of course, all treated in Beard's book by indirection—the theme of social justice, the unholy and corrupt alliance of business and politics that made economic injustice a regular feature of the American system, and, at greatest length, the sabotage of majority rule by a conspiracy of predatory minority groups concealing their operations behind the rhetorical false face of "We, the people." After Beard had had his say it became extremely difficult for even the

22. For a sketch of Beard's early political orientation by a student-disciple who became a close friend, see Matthew Josephson, "Charles A. Beard: A Memoir," *Virginia Quarterly Review*, XXV (1949), 593–595. For a brilliant analysis of Beard's political values as they are revealed in *The Development of Modern Europe: An Introduction to the Study of Current History* (Boston, 1907–1908), written with James Harvey Robinson, and in his *Contemporary American History* (1914), see Morton G. White, *Social Thought in America: The Revolt against Formalism* (New York, 1949), 32–58.

23. Beard's book ostentatiously masquerades throughout as a dull monograph whose findings will be of interest only to professional scholars. See, for example, the preface statement of the modest aim of the work as merely "designed to suggest new lines of historical research" and to encourage "a few of this generation of scholars . . . to turn away from barren 'political' history." Note how in his summary Beard speaks of the importance "for political science" of the conclusions warranted by "this long and arid survey."



most naïve conservatives to glorify the Constitution in quite the manner of Paul Leicester Ford in 1898, who in the introduction to his edition of *The Federalist* congratulated the American people on their great good luck that their "federal compact was the first deliberate attempt and assent of a majority to tie its own hands."

This same indirection conditioned the use to which Beard put James Madison and the tenth *Federalist*. All the evidence we have—and it will remain incomplete until we have an adequate biography of Charles Beard—indicates that the historian discovered Madison a good deal later than he discovered Karl Marx.<sup>24</sup> Certainly Beard's use of the concept of "economic determinism" in his famous study of 1913 is in many ways more Marxian than Madisonian. In fact, when Beard paraphrases from *Federalist* 10 what he calls Madison's "masterly statement of the theory," his method is to quote one passage of that essay incompletely; to change subtly, but decisively, a key element in Madison's theory into Marxian terms; and then to buttress this misstatement of Madison's "economic determinism" with a footnote which is almost a verbatim transcription of a paragraph by Engels.<sup>25</sup>

24. Matthew Josephson reports that Beard first read the Communist Manifesto while at DePauw College, 1895–1898, at a time when the future historian, deeply stirred by the free-silver campaign, was defending as a college debater the federal income tax and labor's right to organize. His postgraduate work in England, where he helped found Ruskin College, the first labor college at Oxford, threw Beard into close contact with young Socialist intelligentsia as well as English trade-union leaders. Certainly by 1907 when Beard published, with Robinson, *Development of Modern Europe*, he was familiar with the theories of Marx, which are adequately covered in that volume. Josephson reports that Beard described himself as "almost-a-socialist." If my reading of Beard's *Contemporary American History* is correct, the immediate program of reform that he desired to see carried through was the advancement of "direct democracy" (p. 284ff) by preferential primaries, the initiative, referendum, and recall, as a first step in what he and Robinson had called in 1908 the "war on poverty."

25. The section of *Federalist* 10 omitted in both Beard's paraphrases is the elaborate catalogue of noneconomic factions; the misstatement of Madison's theory is the denial of Madison's explicit point that "opinions concerning government"

Apparently Beard's use of Madison's tenth *Federalist* was, in part at least, a matter of political strategy—a device, quite self-consciously adopted, of wrapping himself in the American flag as he muckraked the motives of the Founding Fathers and, by implication, pointed to the Constitution as an instrument of class exploitation. My economic interpretation, Beard claimed, "is based upon the political science of James Madison, the father of the Constitution and later President of the Union he had done so much to create. . . . Those who are inclined to repudiate the hypothesis of economic determinism as a European importation [i.e. Marxism] must therefore revise their views on learning that one of the earliest and certainly one of the clearest statements of it came from a profound student of politics who sat in the convention that framed our fundamental law."<sup>26</sup>

It would be possible to show in detail how this special version of "economic determinism," created by Beard's grafting of Marx on Madison, colored the general conclusions reached in *An Economic Interpretation of the Constitution*. For the purposes of this paper, however, it is more important to note the ambiguous effect of Beard's book on Madison's reputation. Clearly, Beard's acclaim of *Federalist* 10, his praise of this essay's "master theory" of the Constitution publicized the essay and its author spectacularly among American

can be causes of "violent conflicts," which becomes in Beard's restatement: "The theories of government which men entertain are emotional reactions to their property interests." *Economic Interpretation*, 157, 15–16. The footnote quotation from Seligman's *Economic Interpretation of History* quoted by Beard (p. 15) is as Morton White points out verbatim from Engels. For White's acute discussion of the hybrid nature of Beard's "determinism" see *Social Thought in America*, 119–127.

26. Beard, *Economic Interpretation*, 14–16. I myself doubt very much if Beard was ever a thoroughgoing Marxist in his analysis; certainly his books were reformist rather than revolutionary in their mood. In effect then his stress on "economic determinism" and "the class struggle" was to call attention to legislation that would give disadvantaged groups in American society (women, Negroes, labor, etc.) more political power and consequently more favorable legislative treatment. It should be noted further that the connotations of the term "Marxist" are different in 1913 and 1951.

historians. Scholars, following Beard's lead, almost all came to subscribe, with varying degrees of enthusiasm, to an economic interpretation of history during the 1920s and 1930s.<sup>27</sup> In this period, particularly after 1930, the tenth *Federalist* became the most frequently quoted and most regularly anthologized essay of Publius.<sup>28</sup>

But what of Madison himself, the "master theorist" of 1787? Perhaps the most equivocal feature of Beard's latter-day revival of Madison's fame lies in the fact that the historian's major thesis about the Constitution can be taken to imply that "theory" played little or no part in the creation of the federal Union. The Fathers, as pictured by Beard, were "practical" men who, knowing exactly what they wanted in the way of concrete economic privileges, were willing to stage a "coup d'état" to gain their ends.<sup>29</sup> Collectively they were exhibited as being adepts in the use of force, fraud, and false propaganda.<sup>30</sup> Beard gives no hint, however, that political theory played

27. Henry Steele Commager, *The American Mind: An Interpretation of American Thought and Character since the 1880's* (New Haven, Conn., 1950), chap. 13, makes this point in his account of the transition in the style and content of historical writing that came in America after the 1890s. Commager also suggests reasons for the popularity of an economic interpretation during the 1920s in his estimate of Beard's mushrooming influence during that decade. *Ibid.*, 307.

28. Many of the pre-Beard anthologies and "libraries of American literature" made no mention of Madison or *The Federalist*. Among those that do, including the collections edited by E. C. Stedman, E. C. Alderman, J. C. Harris, and W. P. Trent, *Federalist* essays by Madison are printed but never Number 10. Even as late as 1918 the author of the essay on the political writings of the critical period published in *The Cambridge History of American Literature* dismisses all of Madison's Publius essays as written under the influence of Hamilton (I, 148). In amusing contrast, 30 years later when *Federalist* 10 had been printed and reprinted, Bernard Smith, anthologizing documents for *The Democratic Spirit: A Collection of American Writings from the Earliest Times to the Present Day* (New York, 1941), almost apologizes for not reprinting *Federalist* 10 but for substituting an essay of Madison's on religious liberty—a "phase" of Madison's thinking "not widely enough known."

29. Beard, *Economic Interpretation*, 62–63.

30. *Ibid.*, chap. 8, "The Process of Ratification." For fraud in Massachusetts see the heavy irony—"they are all—all honorable men"—with which King, Gorham, and Strong are treated (p. 228); for force in Pennsylvania see pp. 231–232; for false propaganda see Beard's explicit linking of "exaggeration of danger" characteristic of contemporary tariff propaganda with the federalist talk of commercial depression

any consequential role in creating the Constitution; speculation there was in plenty in the Convention, but it was land and debt speculation, not speculative thought.<sup>31</sup> Indeed, if it is possible to determine an individual's political motives by cataloguing his property, the irrelevance of theory should be apparent. It was thus easy to deduce from Beard's study—though he did not himself go on to make that deduction—that Madison's "master theory" merely revealed him as a writer who was indiscreet enough to reveal in the tenth *Federalist* the grinning death's head of economic exploitation concealed behind the decorous and misleading phrases of the Constitution. Certainly, this was the deduction made by Vernon Louis Parrington, Beard's most distinguished and influential disciple.

Parrington, in the fragment of autobiography entitled "A Chapter in American Liberalism," telling of the intellectual influences which shaped his early thinking, describes the explosive impact of Beard's volume.<sup>32</sup> First, he remembers, had come the muckrakers—Steffens, Russell, Tarbell, Myers, and Sinclair—blazing across the political sky like "the tail of a comet," indoctrinating Parrington and his fellow progressives "in the elementary principles of political realism," revealing the "hidden cess pool . . . fouling American life, . . . not one cess pool but many, under every city hall and beneath every state capitol—dug secretly by politicians in the pay of respectable business men." During this first period of education, Parrington reports, he hoped in vain that "a democratic electorate would speedily democratize" America. But the muckraking died off, and as the reform move-

in 1787 (p. 41); and finally the hypothesis tentatively advanced (pp. 47–48) that the "critical period" was "but a phantom of the imagination produced by some undoubted evils which could have been remedied without a political revolution."

31. In Beard's *Economic Interpretation*, 189–190, it is significant that Beard does not speak of political theories of the members of the Convention but describes what he calls their "doctrines."

32. Parrington's fragment of autobiography is printed as an addendum to Vol. III of *Main Currents in American Thought* (New York, 1927–1930), 401–403; all quotations in this paragraph are from this fragment.

ment entered its second stage, Parrington and his fellow liberals passed from political to economic programs. In Parrington's judgment "Professor Beard's notable study, *An Economic Interpretation of the Constitution* (1913), was the greatest intellectual achievement" of this second phase.<sup>33</sup> Beard's book offered "a discovery that struck home like a submarine torpedo—the discovery that the drift toward plutocracy was not a drift away from the spirit of the Constitution, but an inevitable unfolding from its premises; that instead of having been conceived by the Fathers as a democratic instrument, it had been conceived in a spirit designedly hostile to democracy; that it was in fact, a carefully formulated expression of eighteenth-century property consciousness, erected as a defense against the democratic spirit that had got out of hand during the Revolution. . . ." This, Parrington learned from Beard, was the secret of the continual frustration of American democracy—"the source of the weakness of the democratic principle in governmental practice." America had never been a democracy, Parrington believed, "for the sufficient reason that too many handicaps had been imposed upon the majority will. The democratic principle had been bound with withes like Sampson and had become a play thing for the Philistines. From the beginning . . . democracy and property had been at odds. . . ." Moreover "in this ceaseless struggle between the man and the dollar, between democracy and property the reasons for the persistent triumph of property" could be found in the provisions of that Constitution which James Madison had fathered.

Converted to "realism" by the dazzling light that Beard had thrown on the nature of the Constitution, Parrington labored for twenty years to document the never-ending struggle "between the man and

33. The other piece of scholarly writing on the Constitution praised by Parrington, but rated below Beard, is J. Allen Smith, *The Spirit of American Government. A Study of the Constitution: Its Origin, Influence and Relation to Democracy* (New York, 1907). *Main Currents* was dedicated to Smith, whose book is one of the earliest scholarly tracts during this period to contrast the "reactionary" Constitution with the "democratic" Declaration.

the dollar" throughout American history. Taking as the positive liberal pole of American experience Jefferson's Declaration of Independence—"it seemed incredible that honest men [before Beard] could have erred so greatly in confusing the Constitution and the Declaration"—Parrington set up in sharp contrast the Constitution as the negative pole of black reaction; and in his great *Main Currents in American Thought* he showed how all American history from colonial times to his own day had vibrated between the doctrines of these two documents.<sup>34</sup>

Parrington's discussion of Madison the theorist and author of *Federalist* 10 in *Main Currents in American Thought* illustrates the dilemma of a conscientious scholar carrying to a logical conclusion the half-hints, the deliberate ambiguities left unresolved by Beard. Parrington, of course, could not evade the problem as his master had done, for *Main Currents* was intellectual history. But Parrington's conclusion, oddly enough, while giving lip service to Madison as "a profound political thinker," resolutely denied that *Federalist* 10 represented original or profound thought, or even accurate political observation.

The tone of Parrington's estimate of Madison is set by the first sentence of the chapter—"The Great Debate"—in which he analyzes the creation of the Constitution.<sup>35</sup> "When one considers the bulk of the commentary that has grown up about the Constitution," the historian notes, "it is surprising how little abstract political speculation accompanied its makeup and adoption. . . . It was the work of able lawyers and men of affairs confronting a definite situation, rather than of political philosophers; and it was accompanied by none of that searching examination of fundamental rights and principles

34. This contrast was not a unique phenomenon of the Progressive era, but is the normal product of every major and prolonged constitutional crisis in American history, namely 1793ff, 1854ff, 1935ff.

35. Parrington, *Main Currents*, I, 279-291. All the quotations from Parrington that follow are taken from this chapter.

which made the earlier Puritan and later French debate—so rich in creative speculation.”

In Parrington’s view it was unfortunate that in 1787 the seventeenth-century doctrines of the “Commonwealth Levelers”—manhood suffrage and annual parliaments—were “buried too deep under Tory obloquy to be resurrected” and “French democratic theory still awaited the rise of Jacobinism to clarify its principles.” Consequently “the authorities bandied to and fro in the great debate” were such conservative English theorists as Hobbes, Locke, Harrington, Milton, Sidney, Halifax, Hume, and Blackstone, and a handful of Continental writers, Machiavelli, Vattel, Pufendorf, and Montesquieu.<sup>36</sup> Every one of these authorities “either distrusted or violently condemned democracy, yet they provided the major body of theory made use of by the Federalists.” Actually, Parrington argued, the antidemocratic nature of these authorities relied on by the Fathers was relatively unimportant in the first debate at Philadelphia, where “in the privacy of the convention the speakers were free to express interests openly acknowledged.” Indeed “in elaborating a system of checks and balances the members of the convention were influenced by the practical considerations of economic determinism more than by the theories of Montesquieu.” But in the second debate—the debate over ratification in 1788—when the case for the Constitution was argued “before the generality of voters without doors,” the lack of the democratic theory which would have been available after the French Revolution put the opponents of the Constitution at a great disadvantage. It was in this theoretical vacuum (Parrington felt) that the sophistries of Madison’s *Federalist* 10 proved so harmful to the democratic cause.

Parrington was frank to admit that despite the fame of *The Federal-*

36. It should be noticed that although Parrington as an intellectual historian is presumably aware of the great differences between the theories of Locke and Hobbes, for example, and the practical consequences of those theoretical differences in politics, he is content to lump crudely the whole group together in the simple and misleading category “anti-democratic.”

ist he could not value it as a truly great classic of political theory. In substance it was “the work of able lawyers, with whom was joined a notable political thinker,” but, “designed as a frankly partizan argument,” it is “in very large part . . . of interest only to students of early constitutional practice.” Yet the one essay of Publius that Parrington bothers to quote and analyze is “the remarkable tenth number, which compresses within a few pages pretty much the whole Federalist theory of political science.”

In Parrington’s analysis of this “remarkable” essay he finds three aspects of Madison’s argument worth comment: the Virginian’s theory of faction, his explanation of the cause of faction, and the false conclusions that Parrington feels Madison drew in favor of minority rule. No theory, Parrington believes, “is more representative of the time than the theory of faction” which served the purpose in 1787 of “a first line of defense thrown up against the advancing democratic movement” by giving political parties an evil name. In 1787, Parrington argues, “in a world moving inevitably towards manhood suffrage, a sharp alignment of parties with definite platforms was greatly feared by the minority, for the organization of the rank and file of the voters must end in majority control. An honest appeal to the people was the last thing desired by the Federalists, and the democratic machinery of recalls and referendums and rotation in office, which had developed during the war, was stigmatized as factional devices which in the end must destroy good government.” As a good progressive democrat Parrington could be contemptuous of such biased and faulty reasoning.

Madison, in the historian’s view, was more intelligent in tracing “political parties to economic sources.” The Virginian, however, was not original or unusually perspicacious in this insight, which was apparent to “the greater political thinkers of the past”; nor was he original or even logical in deducing from this premise the need for “a republican rather than a democratic form of government.” In this conclusion, Parrington felt sure, Madison was merely “adapting to

his purpose the views of Milton and other seventeenth century republicans" whose fear of the people led them to attempt "to manacle the native libertie of mankind." Then in a summary that practically stripped from the father of the Constitution all pretensions to profundity Parrington dismissed the theory of *Federalist* 10 with the remark, "It has long since become a commonplace of political observation that the minority and not the majority is the more dangerous to the common well-being, for it is the minority that most frequently uses government to its own ends."<sup>37</sup>

The surprising feature of Parrington's analysis of Madison as a thinker is not the derogatory conclusions reached—these, indeed, were implicit in any analysis that followed Beard's hints to a logical end or that allowed the Progressive Era's value judgments on political and economic democracy to be smuggled into the discussion—but the fact that in the forty years since Beard first publicized the *Federalist* 10 and in the twenty years since Parrington's feeble attempt at dissection, no scholar has examined directly *all* the theoretical elements of the essay or studied the part played by the theories during the *whole* period of constitutional creation. In regard to this second point it should be noted that the closely knit parts of *Federalist* 10 were not, as Parrington assumes, hastily worked up by Madison after the Convention was over, merely as an argument for ratification. All the ideas, the whole thesis of the essay we know as *Federalist* 10, had been systematically worked out as part of a research project by the Virginian immediately before the Philadelphia meeting. What was Madison's purpose in this? What place did he think a complicated piece of speculative political philosophy would have in a Convention

37. Entirely logical from Parrington's point of view was the final argument that Richard Henry Lee's anti-Constitution pamphlet, *Letters from the Federal Farmer*, was superior to *The Federalist* as political analysis and "in its frank and disinterested examination" of the Constitution. One of the curious, but not entirely logical, results of the progressives' attack on the Constitution as "anti-democratic" was the tendency to label anyone who opposed the Constitution a great democrat; see, for example, Beard on Luther Martin, Parrington on Patrick Henry.

of hardheaded "practical" men? And finally what of the separate but related themes of Madison's essay? Beard and his followers fixed on Madison's discussion of property and faction, calling it a theory of "economic determinism." How did Madison envision the relation of economic factions with those that he is careful to distinguish as growing out of noneconomic roots? What of the essay's obvious preoccupation with "justice"?

These are not merely hypothetical questions that have remained unanswered because they are unanswerable. Because of the special cast of Madison's personality, because of the special school of political philosophy to which he gave his intellectual allegiance, he has left ample evidence which makes it possible to trace the development of his theory from its "first shoots"—the phrase is Madison's own—until its final flowering in the tenth *Federalist*. In the process of studying the evolution of Madison's ideas it will become apparent that it is highly anachronistic to tag his theory "antidemocratic" in the nineteenth- or twentieth-century meaning of the term. Madison's tenth *Federalist* is eighteenth-century political theory directed to an eighteenth-century problem; and it is one of the great creative achievements of that intellectual movement that later ages have christened "Jeffersonian democracy."

To these points will be addressed the last half of this discussion.