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The Historian as Intellectual: Charles Beard and the Constitution Reconsidered

by POPE McCORKLE*

I. INTRODUCTION

One of the two titles mentioned most frequently by American intellectuals in the *New Republic's* 1938 survey of "Books That Changed Our Minds"¹ was Charles Beard's *An Economic Interpretation of the Constitution of the United States*.² Beard's monograph finished ahead of the works of Sigmund Freud as well as John Dewey and was tied only by Thorstein Veblen's *The Theory of the Leisure Class*.³ In an article honoring the selection of the work, Max

* The author graduated from the Duke Law School in May 1984. He is now clerking for the United States Court of Appeals for the Sixth Circuit. The initial version of this essay was written for a Constitutional History Tutorial conducted by Professor Walter Dellinger of the Duke Law School. The main argument of the essay stems from my undergraduate senior thesis at Princeton University, *Getting Right with Twentieth-Century American Historical Writing*. I would like to acknowledge the generous assistance of Professor Dellinger and my two thesis advisors, Professors John Murrin and Eric Foner. I am especially indebted to Professor Eric Goldman who first inspired my reconsideration of Beard and his work. Finally, I would like to thank the following people who read and commented on versions of this manuscript: Professor William Van Alstyne, Professor Walter Pratt, Professor Sanford Levinson, Wendy J. McCorkle, and Ben Edwards.

1. When the results were initially announced in the periodical, AN ECONOMIC INTERPRETATION was listed third among other books. Cowley, *Books That Changed Our Minds*, NEW REPUBLIC, Dec. 21, 1938, at 205, 207. Yet when the final version was published in book form with essays on the chosen books, Beard's book was tied with Thorstein Veblen's THE THEORY OF THE LEISURE CLASS (1899). See BOOKS THAT CHANGED OUR MINDS 19 (M. Cowley and B. Smith eds. 1939). Beard also finished as the second most frequently mentioned author behind Veblen and his works. *Id.* at 20. Beard as well enjoyed the honor of having the volume dedicated to him, and was the only intellectual who contributed an essay on another intellectual. See Beard, *Turner's The Frontier in American History*, *supra*, at 61.

2. AN ECONOMIC INTERPRETATION was originally published in 1913 and reprinted seven times in the next two decades. The book was reissued with a new introduction by BEARD in 1935. This 1935 edition is the source for citation throughout the essay. The text proper is the same in the two editions and the pagination is identical. For agreement on this point, see F. McDONALD: WE THE PEOPLE: THE ECONOMIC ORIGINS OF THE CONSTITUTION 4 n. 2 (1958) [hereinafter cited as WE THE PEOPLE].

3. BOOKS THAT CHANGED OUR MINDS, *supra* note 1, at 19-20.

Lerner remarked that *An Economic Interpretation* was “one of those books that had become a legend—which are more discussed than read and which are known more for their title than their analysis.”⁴ The influence of Beard had become so wide-ranging that a general “Beardian” approach to historical writing had been recognized,⁵ and the master’s work was more of an inspirational model than a text to be critically examined.

Almost three decades later, Richard Hofstadter noted that his intellectual contemporaries also did not closely read *An Economic Interpretation* or any of Beard’s other works. However, according to Hofstadter, the failure to read Beard in the second half of the twentieth century was a result of the fact that “today Beard’s reputation stands like an imposing ruin in the landscape of American historiography. What was once the grandest home in the province is now a ravaged survival.”⁶ Beard’s reputation had suffered perhaps the most dramatic reversal in the history of twentieth-century American intellectuals.⁷

From the age of the robber barons up through the depression, the “Beardian” view of the American political system presented a quite compelling critique to many intellectuals.⁸ The argument gleaned from Beard’s writings was that the Constitution systematically aimed to protect the property and power of the capitalist elite. Moreover, the constitutional checking function of judicial review claimed for the courts by Federalist Justice John Marshall in *Marbury v. Madison*⁹ was designed to frustrate the democratic will of legislative majorities. Thus, the Beardian approach, according to Lerner, provided a dissenting ideological view that saw “the triumph of the oligarchs” in twentieth-century America as not contrary to but “a logical culmination” of “the origins of the American state.”¹⁰ Al-

4. Lerner, *Beard’s Economic Interpretation*, NEW REPUBLIC, May 10, 1939, at 7, 11.

5. See M. BLINKOFF, THE INFLUENCE OF CHARLES A. BEARD UPON AMERICAN HISTORIOGRAPHY (University of Buffalo Studies, XII, 1936).

6. R. HOFSTADTER, THE PROGRESSIVE HISTORIANS: TURNER, BEARD AND PAR-RINGTON 220 (1968) [hereinafter cited as R. HOFSTADTER, THE PROGRESSIVE HISTORIANS]. See also Hofstadter, *Beard and the Constitution: The History of An Idea*, 2 AM. Q. 195 (1950), [hereinafter cited as *Beard and the Constitution*] reprinted in CHARLES A. BEARD: AN APPRAISAL 75 (H. Beale ed. 1954) [hereinafter cited as CHARLES A. BEARD].

7. Diggins, *Power and Authority in American History: The Case of Charles A. Beard and His Critics*, 86 AM. HIST. REV. 701 (1981). (“[P]erhaps no historian has been so esteemed in one period and so systematically criticized in another as Charles A. Beard.”)

8. On Beard and the pre-World War II intellectual mood, see M. WHITE, SOCIAL THOUGHT IN AMERICA: THE REVOLT AGAINST FORMALISM (1949); see also the relevant chapters C. LASCH, THE NEW RADICALISM IN AMERICA, 1889-1963 (1965).

9. 5 U.S. (1 Cranch) 137 (1803).

10. Lerner, *supra* note 4, at 10.

though more explicitly populist than Marxist, the Beardian view represented a tough-minded alternative to the patriotic idealism and innocence that ultimately led in the early 1930's to political and economic disaster.¹¹

Yet after the triumph of American virtue in World War II and the subsequent onset of the age of affluence, most intellectuals and scholars were no longer in the mood to honor such a critical view. Many intellectuals instead launched a grand rapprochement with the American political tradition.¹² A whole wave of works juxtaposed the democratic essence of the American political system with the totalitarianism of vanquished Nazi Germany and that of the unvanquished Stalinist Soviet Union.¹³ The Constitution regained intellectual stature as the prime symbol of the pragmatic political genius that saved America from the ideological temptations of the political left or right.¹⁴

The Beardian interpretation of the Constitution consequently came under furious attack. Critics began by questioning Beard's often crude and casual economic analysis.¹⁵ As in the case of the previous enshrinement of Beard, however, intellectual attention quickly moved from the form to the political content of the Beardian critique. The most bitter reaction came because, as Robert E. Brown declared in his polemic *Charles Beard and the Constitution*,

11. On left-wing intellectual thought in the 1930's, see generally R. PELLIS, *RADICAL VISIONS AND AMERICAN DREAMS: CULTURE AND SOCIAL THOUGHT IN THE DEPRESSION YEARS* (1973).

12. See e.g., the famous symposium *Our Country and Our Culture*, (pts. 1 & 2) 19 *PARTISAN REV.* 282 (May-June 1952), 19 *PARTISAN REV.* 420 (July-Aug. 1952). For a discussion of the symposium's significance, see R. HOFSTADTER, *ANTI-INTELLECTUALISM IN AMERICAN LIFE* 394 (1963).

13. R. SKOTHEIM, *TOTALITARIANISM AND AMERICAN SOCIAL THOUGHT* (1971); and E. PURCELL, *THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUES* (1973).

14. Belz, *Changing Conceptions of Constitutionalism in the Era of World War II and the Cold War*, 59 *J. AM. HIST.* 640 (1972). For a good example of the effort to rehabilitate the Constitution's stature in light of World War II and the Cold War experience, see C. ROSSITER, *1787: THE GRAND CONVENTION* 14 (1966) (the Constitutional Convention as "a case-study in the political process of constitutional democracy."). See also Diamond, *Democracy and The Federalist: A Reconsideration of the Framers' Intent*, 53 *AM. POL. SC. REV.* 52 (1959); and Roche, *The Founding Fathers: A Reform Caucus in Action*, 55 *AM. POL. SC. REV.* 799 (1961).

15. The counterattack against Beard's economic analysis culminated in the two-volume revisionist effort by historian F. McDONALD, *WE THE PEOPLE*, *supra* note 2, and E PLURIBUS UNUM: *THE FORMATION OF THE AMERICAN REPUBLIC, 1776-1790* (1965). The early state studies challenging Beard's analysis and the general points of controversy are summarized in McDonald, *Charles A. Beard*, in *PASTMASTERS: SOME ESSAYS ON AMERICAN HISTORIANS* 110, 116 (M. Cunliffe and R. Winks eds. 1969). McDonald's attack in *WE THE PEOPLE* on Beard's historical evidence was in turn vigorously challenged by, among others, historian J.T. Main. See, e.g., Main, *Book Review*, 17 *WM. & MARY Q.* 86 (1960), and J. T. MAIN, *THE ANTI-FEDERALISTS* (1960).

Beard believed that the Constitution “was put over undemocratically in an undemocratic society.”¹⁶

Even many progressive or left-leaning intellectuals were unwilling to continue the Beardian approach or tradition.¹⁷ During World War II, Beard seemed to expose the wrong-headedness of his general viewpoint in lashing out at American military involvement from a stubbornly isolationist position.¹⁸ His outlandish criticisms of FDR’s foreign policy and apparent indifference to the threat of Hitler turned the Beardian imprimatur into a very mixed blessing even among some of his most ardent followers.¹⁹ When a new cycle of political dissent among intellectuals emerged in the 1960’s, a number of “New Left” intellectuals tried to distance themselves from the Beardian label by belittling his aegis or simply announcing their determination to go “beyond Beard.”²⁰

16. R.E. BROWN, *CHARLES BEARD AND THE CONSTITUTION: A CRITICAL ANALYSIS OF AN ECONOMIC INTERPRETATION OF THE CONSTITUTION* 194 (1956). For a similar denunciation of the Beardian viewpoint, see Morison, *The Faith of a Historian*, 56 *AM. HIST. REV.* 271 (1951). However, the most steady barrage of counterattacks against the Beardian approach appeared in pieces published in *THE WILLIAM AND MARY QUARTERLY*. The anti-Beardian cycle can be at least traced back to the influential article by the journal’s editor Douglas Adair, *The Tenth Federalist Revisited*, 8 *WM. & MARY Q.* 48 (1951). Among other articles in the journal, see Kenyon, “Men of Little Faith”: *The Anti-Federalists on the Nature of Representative Government*, 12 *WM. & MARY Q.* 3 (1955); Morris, *The Confederation Period and the Historian*, 13 *WM. & MARY Q.* 139 (1956); and Morgan, *The American Revolution: Revisions in Need of Revising*, 14 *WM. & MARY Q.* 3 (1957).

17. The best example of this change is the post-World War II work of Lerner, who had done so much to define and popularize the so-called “Beardian” critical approach. For an example of such popularization and definition, see Lerner, *supra* note 4. For the best example of the changes in Lerner’s post-World War II approach, see M. LERNER, *AMERICA AS A CIVILIZATION* (1957). For incisive observations on the changes in Lerner’s post-World War II approach to that of the pre-War context, see Daniel Bell’s review essay, *The Refractions of the American Past: On the Question of National Character*, in D. BELL, *THE END OF IDEOLOGY: ON THE EXHAUSTION OF POLITICAL IDEAS IN THE FIFTIES* 95 (1960).

18. See, e.g., C. BEARD, *PRESIDENT ROOSEVELT AND THE COMING OF THE WAR* (1948). On Beard’s views, see, e.g., R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 318-48; T. KENNEDY, *CHARLES BEARD AND AMERICAN FOREIGN POLICY* (1975); and R. RADOSH, *PROPHETS ON THE RIGHT: PROFILES OF CONSERVATIVE CRITICS OF AMERICAN GLOBALISM* 17-66 (1975).

19. Beale, *Preface*, in CHARLES A. BEARD, *supra* note 6, at vi. (One of the major difficulties in putting together a collection of essays to honor Beard was that many of those “who had loved Beard came to dislike him bitterly.”)

20. The phrase *Beyond Beard* appears as the title of an essay by New Left historian Lynd in *TOWARDS A NEW PAST: DISSENTING ESSAYS IN AMERICAN HISTORY* 46 (B. Bernstein ed. 1968). See also the critical distancing from Beard’s views on the Civil War in Genovese’s essay in the same volume, *Marxian Interpretations of the Slave South*, at 90. For a historiographical commentary emphasizing this point, see Huston, *Country, Court, and the Constitution: Antifederalism and the Historians*, 38 *WM. & MARY Q.* 337, 349 (1981) (historians labeled as neo-Beardian often issued “a litany of disclaimers”).

In essence, therefore, Beard's *An Economic Interpretation* has gone from beyond critical scrutiny to beneath intellectual respectability. The argument of this essay, however, suggests that Beard was never read closely enough by most "Beardians" or "anti-Beardians."²¹ Beard actually conformed to neither sides' simplistic ideological preconceptions about his alleged anti-Constitutional viewpoint.²² Beard was a patriotic celebrant of the Founding Fathers' handiwork but thought that their document needed to be amended and reinterpreted. He was an ardent Progressive reformer who, nevertheless, identified with the Hamiltonian Federalist tradition and had nothing good to say about Jefferson or the Anti-Federalist opponents of the Constitution. Beard attacked the conservative Supreme Court of his own era but praised the Supreme Court of arch-Federalist John Marshall. Beard also ridiculed the egalitarian ideology of radical democrats while making the case for a strong centralized welfare state. Most important, Beard saw late eighteenth-century America as a premodern and predemocratic political world. It represented a "lost world" unless Federalist political and constitutional doctrine was recast into a modern twentieth-century framework.

21. For the purposes of this essay, the archetypal pro-Beardian misinterpretations of AN ECONOMIC INTERPRETATION and his other works can be considered Lerner, *supra* note 4. The archetypal anti-Beardian misinterpretation is represented by Adair, *supra* note 16.

22. It should be noted that the simplistic Anti-Federalist view of Beard shared by most of his critics and admirers was previously challenged in an often unfairly dismissed review essay by Thomas, *A Reappraisal of Charles A. Beard's An Economic Interpretation of the Constitution of the United States*, 57 AM. HIST. REV. 370 (1952). My essay essentially supports Thomas's argument that Beard's AN ECONOMIC INTERPRETATION displayed a "Federalist orientation" and that his other works exhibited "an extreme Federalist bias." *Id.* at 371.

Ironically enough, Thomas was in no way a defender of Beard's historical work. He subsequently published an article arguing that Beard greatly exaggerated the capitalist-agrarian split in Virginia over the Constitution. Thomas, *The Virginia Convention of 1788: A Criticism of Beard's An Economic Interpretation*, 19 J. S. HIST. 3 (1953). Yet Thomas's presentation of the case for Beard's "Federalism" was too fragmentary to have much impact on the anti-Beardian climate of opinion. Moreover, Thomas hurt his own case by mixing in references from works written by Beard twenty and thirty years later. Thomas's essay thus seemed to ignore all possible contextual changes in Beard's thought. Finally, Thomas's essay cited very little evidence directly from AN ECONOMIC INTERPRETATION. Therefore, although far closer to the mark than most of Beard's critics, Thomas hardly seemed to present an authoritative revisionist interpretation of AN ECONOMIC INTERPRETATION or Beard's pre-World War I stance.

My purpose is to present the argument for Beard as a pro-Federalist historian in a more convincing and exhaustive fashion. However, the even greater weakness in Thomas's *Reappraisal* was that he tried to replace the simplistic Anti-Federalist populist of Beard with an equally simplistic image of him as a *politically conservative* intellectual. This essay argues that neither the Anti-Federalist nor neo-Federalist conservative stereotype captures Beard's heterodox intellectual stance.

The goal of this essay is to reconstruct Beard's heterodox intellectual stance during the period in which he wrote *An Economic Interpretation*.²³ This essay does not propose to prove the historical validity of the themes actually found in Beard's writings on the Constitution.²⁴ In a recent provocative essay, Professor John Diggins has stated that Beard should be considered "an intellectual who happened to be a historian."²⁵ The suggestion will be followed here in the treatment of Beard because his prime contemporary political concerns did so obviously overlap and even merge with his historical writings on the Constitution.²⁶

The attempt to reconstruct Beard's intellectual stance should not be regarded as a mere exercise in intellectual antiquarianism. If the essay succeeds in turning the record around on Beard and the Constitution, his general intellectual reputation would seem to de-

23. Thus, this essay follows the approach in Hofstadter, *Beard and the Constitution*, *supra* note 6, at 195-96 (purpose in essay was not "to make another 'reevaluation'" of Beard's historical accuracy but rather to place "the ideas of the volume [AN ECONOMIC INTERPRETATION] in their historical context"). In this 1950 article, Hofstadter was significantly more sympathetic to Beard and his work than in his later study, *THE PROGRESSIVE HISTORIANS*, *supra* note 6. Yet the suggestion in the present essay is that neither effort by Hofstadter satisfactorily illuminated the actual viewpoint of Beard. For a perceptive critique of the early Hofstadter on Beard, see Williams, *Charles Austin Beard's Search for a General Theory of Causation* in his *HISTORY AS A WAY OF LEARNING* 171, 185 (1973), originally published in 62 *AM. HIST. REV.* 59 (1956) (Hofstadter reads the generalized character of the progressive movement back into Beard. This creates a fictional protagonist in place of a historical character). For an effort similar to Hofstadter's approach that more strongly informs the argument of this essay, see Goldman, *The Origins of Beard's Economic Interpretation of the Constitution*, 13 *J. HIST. IDEAS* 234 (1952).

24. It should be noted, however, the degree to which the essence of Beard's historical analysis has actually stood the test of the time. Critics have picked away at his evidence that the conflict over the Constitution pit emerging capitalistic elites against the mainly small-propertied agrarian classes. Yet, after surveying all the historical criticism, Hofstadter, for example, acknowledged that Beard was "basically right" in his "awareness of the difference between the interests and values of agrarian society and the cosmopolitan trading classes of the towns, [and] of the active and dynamic role played by the latter classes in making the Constitution." Moreover, Beard may have exaggerated but still was essentially correct in arguing that "as one moves upward in the scale of wealth and power one finds a progressively stronger commitment to the Constitution." *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 22. See also the more recent and somewhat similar observations of historian Gordon Wood in *Heroics*, *New York Review of Books*, Apr. 2, 1981, at 18.

25. Diggins, *supra* note 7, at 730.

26. For the suggestion that Beard was "as much a political thinker using historical techniques as he was a historian using political insights," see Lerner, *Charles Beard's Political Theory* in *CHARLES A. BEARD*, *supra* note 6, and the approving citation of this notion in Williams, *supra* note 23, at 171.

serve serious critical reconsideration.²⁷ Furthermore, demonstration of Beard's pro-Constitutional viewpoint should represent a powerful cautionary tale about "the loose generalizations made about the interpretations of historians"²⁸ by historians and the general intellectual community.

The first section of the essay is devoted to establishing that Beard's historical viewpoint definitely favored the pro-Constitutional Federalists. It also argues, however, that the simple reverse notion of Beard as a conservative or antireform intellectual cannot account for his numerous progressive political commitments.

The second section of the essay attempts to explain the paradox of Beard's historical Federalism and contemporary Progressivism. It suggests that a trio of intellectual characterizations help place Beard's pro-Constitutional viewpoint in the context of a coherent intellectual stance. At the most general level, any reconstruction of Beard's viewpoint must recognize his affinity for the Hamiltonian "New Nationalist" wing of the Progressive movement. More specifically, Beard possessed an idiosyncratic "Tory Radical" mix of conservative and left-wing attitudes. Finally, Beard's "modernist" frame of historical reference provides the key reconciling element in his embrace of the Federalists and the Progressive reform movement.

The final section of the essay indicates how this reconstruction of Beard's viewpoint transforms his legacy. In explaining how Beard wrote in sympathy with the Federalists from his position as a twentieth-century Progressive, the reconstruction illuminates the almost completely ignored central themes in *An Economic Interpretation*. The essay concludes by remarking on the significance of continuing misinterpretation of Beard.

27. Diggins, *supra* note 7, has made a major contribution to restoring Beard's intellectual reputation. Unfortunately, however, Diggins essentially accepts the anti-Constitutional stereotype of Beard. See, e.g., *id.* at 702 (Beard believed that the proponents of the Constitution "had maneuvered undemocratically to foist upon the nation a new federal system of government"). In recent years a few other scholars have also more generously analyzed elements of Beard's writings. For a thoroughgoing defense of Beard's controversial foreign policy views, see R. RADOSH, *supra* note 18, at 17-66. For a defense of Beard relativistic philosophy of history, see Nore, *Charles A. Beard's Act of Faith: Context and Content*, 66 J. AM. HIST. 850 (1980). Professor Nore's recently published CHARLES A. BEARD: AN INTELLECTUAL BIOGRAPHY (1983), should especially help in resuscitating Beard's aegis. Although not focusing at length on Beard's exact stance toward the Constitution, Professor Nore's views on Beard and the Constitution, and on his larger intellectual viewpoint seem generally compatible with those presented in this essay. *Id.* at 51-71.

28. M. JENSEN, *THE AMERICAN REVOLUTION WITHIN AMERICA*, 223-24 (1976); for Jensen's specific views on the misreading of Beard, see *infra* text accompanying notes 79-80.

II. AGAINST THE TRADITIONAL STEREOTYPE: BEARD AS A PRO-FEDERALIST HISTORIAN

As Beard's intellectual reputation began to come under increasing attack after his death in 1948, a few defenders responded that the old master had actually expounded a pro-Constitutional viewpoint during the period in which he wrote *An Economic Interpretation*. According to friend and fellow historian Howard Beale, Beard did not hold the view "that to recognize the fathers' awareness of the association of ideas and interests was to brand them ignoble. To Beard, this merely proved the fathers to be political realists, and Beard respected realism far more than fine-sounding principles detached from reality."²⁹ In further defense of his colleague, Beale declared that "Beard was proud of America, particularly proud of her Constitution, which he regarded as among the greatest creations of all time, and proudest of all the Americans who had the wisdom to create it."³⁰

Such views in defense of Beard were apparently dismissed with quick dispatch as the retrospective rationalizations of overly-loyal followers.³¹ Yet the works written by Beard immediately before and after *An Economic Interpretation* are literally filled with evidence of his pro-Constitutional viewpoint. It seems quite sensible to suggest that these pro-Federalist statements should carry a good deal of weight in the determination of Beard's intellectual stance. For while Beard rather unequivocally declared his position in these other works, he strived to write *An Economic Interpretation* in a coolly detached monographic style.³² Moreover, despite Beard's efforts at

29. Beale, *Beard's Historical Writings*, in CHARLES A. BEARD *supra* note 6, at 127-28. A similar interpretation of Beard's position was emphasized in Goldman, *J. Allen Smith, The Reformer and His Dilemma*, 35 PAC. NW. Q. 195, 202 (1943). (Beard wrote "without Jeffersonian wrath and "in the spirit of the Constitution.") Although this view of Beard is not as strongly emphasized, see also Goldman, *The Origins of Beard's An Economic Interpretation*, *supra* note 23, and Goldman, *Charles Beard: An Impression*, in CHARLES A. BEARD, *supra* note 6, at 1.

30. Beale, *Beard's Historical Writings*, in CHARLES A. BEARD *supra* note 6, at 128.

31. None of the critical works on Beard read by this author even acknowledge the defending views of Beale and Goldman, *supra* note 29, that he possessed a pro-Constitutional viewpoint in *AN ECONOMIC INTERPRETATION* and other works.

32. In his 1935 introduction Beard claimed that he attempted to write the book in a "coldly neutral" manner. *AN ECONOMIC INTERPRETATION*, *supra* note 2, at ix. It is hard to believe, however, that Beard still actually thought of the book as possessing a Rankean objectivity in light of his embrace of Karl Mannheim's more relativistic views about the sociology of intellectual knowledge. See, e.g., the views expressed three years later in Beard, *Historiography and the Constitution*, in *THE CONSTITUTION RECONSIDERED* 159, 161 (C. Read ed. 1938). (Beard refers to Mannheim, and states that "every discussion of the Constitution proceeds on some level of competence, with reference to some conception or conceptions, it is carried on by particular persons at a given moment and in a given place. It is not timeless, placeless, un-earthly, omniscient). On Beard's relativistic views, see Nore, *supra* note 27.

impartiality, his pro-Federalist sentiments actually appear throughout *An Economic Interpretation*.

A. *Beard's Pro-Federalist Position in Works Immediately Before and After An Economic Interpretation*

Beard's slim 1912 volume *The Supreme Court and the Constitution*³³ provides a clear example of his viewpoint immediately before publication of *An Economic Interpretation*.³⁴ The work hardly fits the conventional image because Beard directly challenged Progressive critics of judicial review.³⁵ The radical lawyer-intellectual Louis B. Boudin, among others, had argued that the judiciary did not possess the constitutional power to strike down popularly-mandated legislation.³⁶ Boudin asserted that Justice Marshall usurped this role for the Court in *Marbury v. Madison*. According to Beard, however, Boudin relied too heavily on Anti-Federalist sympathizers in making his argument that the "temper of the people" in 1787 did not embrace judicial review.³⁷ Beard presented a strong case for the opposite position that the "chief" goal of the founders was "to find a way of preventing . . . what they deemed 'legislative tyranny.'"³⁸

Some other Progressive intellectuals came to the same historical conclusion as Beard did in *The Supreme Court*. They then aimed

33. C. BEARD, *THE SUPREME COURT AND THE CONSTITUTION* (A.F. Westin ed. 1962, originally published 1912) [hereinafter cited as *THE SUPREME COURT*] (edition contains both an introduction by Westin and bibliography on judicial review debate).

34. The analysis in this essay is primarily limited to a study of Beard's writings from 1912 to 1917. This choice possesses the basically coincidental advantage of conforming to the periodization found in the classic work by H. MAY, *THE END OF AMERICAN INNOCENCE: A STUDY OF THE FIRST YEARS OF OUR TIME, 1912-1917* (1959). For May's passing but insightful treatment of Beard, see *infra* text accompanying note 245. The limited periodization in this essay should be understood solely as a way to allay any doubts of readers that the essay stretches across too wide a historical expanse in order to find support for its thesis.

35. For an acknowledgment of Beard's pro-Federalist viewpoint in *THE SUPREME COURT*, see R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 205 ("[W]hat arrests our attention, particularly in the light of shrill accusations later levied against Beard—that in 1913 [in *AN ECONOMIC INTERPRETATION*] he was merely trying to discredit the Founding Fathers—is the very positive terms in which, in 1912, he portrayed their aims, motives, capacities, and frame of mind"). For Hofstadter's attempted explanation of this divergence from the conventional image, see *infra* text accompanying note 159. Such less discerning critics as R. C. BROWN, *supra* note 16, simply ignore *THE SUPREME COURT* and other works by Beard.

36. See Boudin, *Government By Judiciary*, 26 *POL. SCI. Q.* 238 (1911). Beard's initial response to Boudin and others was published by the same journal. See Beard's *Supreme Court—Usurper or Grantee*, 27 *POL. SCI. Q.* 1 (1912).

37. *THE SUPREME COURT*, *supra* note 33, at 84, citing Boudin, *supra* note 36 at 247.

38. *THE SUPREME COURT*, *supra* note 33, at 84-85.

their critical fire at the founders for enshrining the judicial activism of Marshall and his conservative successors on the Court. "It is to call attention to the spirit of the Constitution, its inherent opposition to democracy, the obstacles which it has placed in the way of majority rule that this volume has been written," declared J. Allen Smith in *The Spirit of American Government*.³⁹ "[H]istorically considered perhaps the chief contribution of the Progressive movement to American political thought," similarly remarked the well-known Progressive intellectual Vernon Parrington, "was the discovery of the undemocratic character of the Constitution."⁴⁰

The conventional historiographical view has encouraged the notion that Beard shared Smith and Parrington's intellectual stance against the Constitution.⁴¹ In *The Supreme Court*, however, Beard approvingly described "the makers of the federal Constitution as representing the solid, conservative, commercial interests of the country."⁴² On the other hand, the Anti-Federalists, in Beard's unflattering estimation, "represented interests which denounced and proscribed judges . . . and stoned their houses" in various states across the nation.⁴³ Furthermore, in *The Supreme Court* Beard actually penned some of the most unblushing passages of celebration for the members of the Constitutional Convention in modern intellectual commentary. He, for example, declared:

It was a truly remarkable assembly of men that gathered in Philadelphia on May 14, 1787, to undertake the work of reconstructing the American system of government. It is not merely patriotic pride that compels one to assert that never in the his-

39. J.A. SMITH, *THE SPIRIT OF AMERICAN GOVERNMENT* xii (C. Strout ed. 1965, originally published 1907).

40. Introduction to J.A. SMITH, *THE GROWTH AND DECADENCE OF CONSTITUTIONAL GOVERNMENT* (1930). Smith was Parrington's acknowledged intellectual mentor and long-time colleague at the University of Washington. Parrington dedicated his famous three-volume historical work, *MAIN CURRENTS IN AMERICAN THOUGHT* (1927-1929) to Smith.

41. All three of these figures supposedly shared the same Jeffersonian "Progressive" viewpoint or "paradigm." See, e.g., G. WISE, *AMERICAN HISTORICAL EXPLANATIONS* 87 (1973) (Parrington's views as "characteristic of Progressive school").

Two of the most perceptive conventional critics of Beard, Hofstadter and Cushing Strout, have suggestively noted differences between Beard and Smith. In discussing *THE SPIRIT OF AMERICAN GOVERNMENT*, Strout, *supra* note 39, at xxvi, noted that the "linkage" between Smith and Beard was "complex" due to "Beard's admiration for the framers and respect for judicial review." Hofstadter similarly noted that Beard's writings stayed "curiously aloof, as though he did not want to be identified with Smith's view of the framers." *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 182-83 n.5. As Hofstadter also pointed out, *id.*, Beard wrote a brief and wholly reportorial review of Smith's *THE SPIRIT* in 23 *POL. SCI. Q.* 136 (1908).

42. *THE SUPREME COURT*, *supra* note 33, at 85.

43. *Id.*

tory of assemblies has there been a convention of men richer in political experience and in practical knowledge, or endowed with a profounder insight into the springs of human action and the intimate essence of government. It is indeed an astounding fact that at one time so many men skilled in statecraft could be found on the very frontiers of civilization among a population numbering about four million white. It is no less a cause for admiration that their instrument of government should have survived the trials and crises of a century that saw the wreck of more than a score of paper constitutions.⁴⁴

In *An Economic Basis of Politics*—a series of wide-ranging lectures originally delivered in 1916⁴⁵—Beard proved that his admiration for the founders had not suddenly expired after the publication of *The Supreme Court*. In these lectures Beard again had high praise for “the wise founders of this Republic.”⁴⁶ In striking contrast Beard attacked the egalitarian political thought of Rousseau and its influence on the French Revolution. Even though Rousseau’s *Social Contract* was supposedly “written to exalt the individual,” stated Beard, egalitarian political theory subjects the individual “to a new tyranny—the will of a temporary majority.”⁴⁷ Beard similarly found the Marxian “contention” about the possibility of a classless society to be “as great a fiction as the [Rousseauian] theory of political equality.”⁴⁸ In opposition to such left-wing ideological sentiments, Beard endorsed “the grand conclusion” of James Madison in *Federalist No. 10* that “unequal distribution of property is unavoidable.”⁴⁹ According to Beard’s Madisonian understanding,

44. *Id.* at 91.

45. C. BEARD, *THE ECONOMIC BASIS OF POLITICS* [hereinafter cited as *POLITICS*] was first published in 1922. Beard stated in the introduction that he had rewritten only the last of the four lectures during the intervening years. And Beard insisted that “the main conclusions” of even the last lecture “have not been altered.” *POLITICS* was republished in 1945 with a new chapter by Beard on the rise of fascism. The 1945 edition is the source for citation throughout this essay, but the new chapter added by Beard is not used.

One commentator has suggested that Beard’s invocation of Madison’s *FEDERALIST NO. 10* in the last original lecture reflects a post-World War I “pluralistic” softening in Beard’s Anti-Federalist position. Bourke, *The Pluralist Reading of James Madison’s Tenth Federalist*, in 9 *PERSPECTIVES IN AMERICAN HISTORY* 271, 293 (1975). Yet the evidence presented in this essay regarding the other chapters in *POLITICS* and other pre-War writings supports Beard’s proclamation, *supra*, that “the main conclusions” of the last lecture “have not been altered” due to the events that transpired between 1916 and 1922.

46. *POLITICS*, *supra* note 45, at 43

47. *Id.* at 53-54.

48. *Id.* at 68.

49. *Id.* at 18.

“[I]n every civilized society, there will be persons holding different kinds and amounts of property.”⁵⁰

Beard also demonstrated his distaste for liberal political thought by holding back praise for Thomas Jefferson. Beard believed that Jefferson’s Declaration of Independence had allowed the dangerous Rousseauian “doctrine of universal political equality to find a foothold in the United States.”⁵¹ He suggested that Jefferson had been carried away by his ardor for the American Revolution. “[I]n the fervor of the moment,” wrote Beard, “Jefferson, while bent on justifying the revolt against George III, in fact challenged the rule of property which was guaranteed by the state constitutions drafted by his fellow revolutionists in that very epoch.”⁵² Beard noted that “even Jeffersonians, when confronted, like Rousseau’s followers, with the logical consequences of their doctrines shrank from applying it.”⁵³ Yet *The Economic Basis of Politics* left no question that Beard considered Jefferson an unsound political thinker.

In Beard’s era such criticism of Jefferson and the Declaration of Independence possessed an especially charged political significance. Most intellectuals traditionally drew a major political distinction by speaking in terms of a “Jeffersonian” versus a “Hamiltonian” political position.⁵⁴ The Articles of Confederation and the Declaration of Independence constituted the liberal Jeffersonian tradition, while the Constitution represented the conservative Hamiltonian tradition.⁵⁵ The conflict between the virtuous Jeffersonian and the corrupt Hamiltonian tradition was traced throughout American history by such Progressive writers as Smith, Parrington, and Claude Bowers.⁵⁶

Beard’s contrasting Hamiltonian views were especially strong in his contemporaneous work on Jeffersonian democracy. In a 1914 article entitled “Some Origins of Jeffersonian Democracy,”⁵⁷ Beard

50. *Id.*

51. *Id.* at 56.

52. *Id.* at 58.

53. *Id.*

54. See generally M. PETERSON, *THE JEFFERSON IMAGE IN THE AMERICAN MIND* (1960).

55. See R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 266 (stating that this “dualistic” conception of American history represented traditional “Populist-Progressive view”).

56. For works of Smith and Parrington expressing this Jefferson dualistic view, see *supra* notes 39-40. On Parrington, see also discussion in M. PETERSON, *supra* note 54, at 321. For by far the most seminal popularization of this dualistic view, see C. BOWERS, *HAMILTON AND JEFFERSON: THE STRUGGLE FOR DEMOCRACY IN AMERICA* (1925). On Bowers’s work, see discussion in M. PETERSON, *supra* note 54 at 347.

57. Beard, *Some Economic Origins of Jeffersonian Democracy*, 19 *AM. HIST. REV.* 282 (1914) [hereinafter cited as *Jeffersonian Democracy*].

delivered a clear slap at the pretensions of the Jeffersonian tradition and a defense of Hamilton and the Federalists. The article investigated congressional passage of the economic policy promoted by Treasury Secretary Hamilton directly after the establishment of the new Constitutional system. Jefferson contended that most of those congressmen who supported Hamilton's centralizing fiscal measures were wealthy holders of public securities out to stabilize and enhance their personal fortunes at the expense of the public.⁵⁸ Beard acknowledged that the battle was another instance of the recurring conflict between capitalistic and agrarian interests in American history.⁵⁹ He, nevertheless, disagreed with Jefferson's characterization of the battle as a conflict between a corrupt group of capitalists and those who exhibited a disinterested "cherishment of the people."⁶⁰ Beard insisted that Jefferson's view was extremely self-serving:

[N]early all of the members, security holders and non-security holders alike, represented the dominant economic interests of their respective constituencies rather than their personal interests. In many instances there was, it is evident, a singular coincidence between public service, as the members conceived it, and private advantage; but the charge of mere corruption must fall to the ground. *It was a clear case of a collision of economic interests: fluid capital versus agrarianism.* The representation of one interest was as legitimate as the other, and there is no more ground for denouncing the members of Congress who held securities and voted to sustain the public credit than there is for denouncing the slave-owners who voted against the Quaker memorials against slavery on March 23, 1790.⁶¹

Beard then directly attacked Jefferson's idealistic rhetoric about "the people" versus the self-interested Hamiltonian Federalists:

By way of conclusion, one is moved to conjecture what kind of government could have been established under the Constitution, if there had been excluded from voting on the great fiscal measures all 'interested' representatives, and the decision of such momentous issues had been left to those highly etherealized persons who 'cherished the people'—and nothing more.⁶²

58. Beard referred to Jefferson's citation about the Republican "cherishment" of the people in 10 *THE WORKS OF THOMAS JEFFERSON* 227 (P.L. Ford, ed. 1899).

59. *Jeffersonian Democracy*, *supra* note 57, at 298.

60. *Id.* at 262.

61. *Id.* at 298 (emphasis added).

62. *Id.*

Beard included this article defending Hamiltonian policy in his full-length study entitled *Economic Origins of Jeffersonian Democracy*.⁶³ The main thrust of the book was to deflate the traditional liberal claim that Jefferson's ascension to the presidency—the supposed “Revolution of 1800”⁶⁴—ushered in a golden egalitarian age. “Jeffersonian Democracy did not imply any abandonment of the property, and particularly the landed, qualifications on the suffrage or office-holding,” concluded Beard. “Jeffersonian Democracy simply meant the possession of the federal government by the agrarian masses led by an aristocracy of slave-owning planters, and the theoretical repudiation of the right to use the government for the benefit of any capitalistic groups.”⁶⁵

In *Jeffersonian Democracy* Beard also lavished further praise on the representative man of pro-Constitutional Federalism. Hamilton, according to Beard,

knew that the government could not stand if its sole basis was the platonic support of genial well-wishers. He knew that it had been created in response to interested demands and not out of any fine-spun theories of political science. Therein he displayed that penetrating wisdom which placed him among the great statesmen of all time.⁶⁶

Moreover, Beard ascribed the relative success enjoyed by Jefferson in office to his abandonment of agrarian principles in favor of Hamiltonian principles, which “propitiated, rather than alienated, the capitalistic interests.”⁶⁷ Such comments by Beard led historian Merrill Peterson in his study *The Jefferson Image in the American Mind* to take issue with the usual characterization of Beard's book as being “on the Jeffersonian side of the perennial debate.”⁶⁸ Beard,

63. C. BEARD, *THE ECONOMIC ORIGINS OF JEFFERSONIAN DEMOCRACY* 195 (1915) [hereinafter cited as *JEFFERSONIAN DEMOCRACY*] (Chapter VI “Security Holding and Politics”).

64. On the “Revolution of 1800” concept in political thought, see M. PETERSON, *supra* note 54, at 10-11.

65. *JEFFERSONIAN DEMOCRACY*, *supra* note 63, at 467.

66. *Id.* at 131.

67. *Id.* at 466-67.

68. M. PETERSON, *supra* note 54, at 319-20. Peterson unfortunately gave close critical examination only to Beard's *JEFFERSONIAN DEMOCRACY*. Thus he essentially accepted the conventional view of Beard's *AN ECONOMIC INTERPRETATION*. His explanation for the apparent dichotomy suggested that *AN ECONOMIC INTERPRETATION* was “aimed at the conservatives” and “exploded the myth of the Constitution.” *JEFFERSONIAN DEMOCRACY*, however, “was aimed at liberals like himself” and “dispelled the aura that surrounded the Jeffersonian democratic tradition.” M. PETERSON, *supra* note 54, at 316. In contrast, this essay argues that both of Beard's works were simultaneously aimed at liberals and conservatives of his era with the purpose of challenging their respective political and historical stances.

as Peterson acknowledged, “unquestionably” held the opinion that “Hamilton and the Federalists were superior to Jefferson and the Republicans.”⁶⁹

Beard similarly revealed a Federalist position in his assumptions about the condition of the American political economy under the Articles of Confederation. From 1787 until Beard’s day, defenders of the Constitution had argued that the social fabric of the new nation was disintegrating due to the almost complete absence of centralized control over the monetary and commercial system of the country.⁷⁰ According to this pro-Federalist view, the founders came to the fore in this emergency situation and set the nation on a stable course by vesting monetary control and more commercial regulatory power in the national government. The late nineteenth-century historian John Fiske epitomized this pro-Federalist view by entitling his book on the Articles of Confederation era as *The Critical Period in American History*.⁷¹ Anti-Constitutional writers responded that the so-called “critical period” actually witnessed a flourishing of democracy and general prosperity. Thus, according to this dissenting viewpoint, the Founding Fathers were not patriots who saved the country. They instead constituted a conspiratorial clique that subverted the democratic way until Jefferson restored “the people” to power in 1800.⁷²

Beard left no doubt that he sided with the pro-Federalist side of the debate concerning “the critical period” under the Articles of Confederation. In *The Supreme Court and the Constitution*, for example, Beard described the Articles as establishing a political system “too weak to accomplish the accepted objects of government: namely, national defence, the protection of property, and the advancement of commerce.”⁷³ Beard then went on to describe the Federalists as undertaking heroic action to save the country:

69. *Id.*

70. For background discussion on the critical period thesis and its historiography, see Morris, *supra* note 16.

71. J. FISKE, *THE CRITICAL PERIOD IN AMERICAN HISTORY, 1783-1789* (1888). For the history of the critical period concept and the characterization of Fiske’s work as “the classic exposition” of the Federalist viewpoint, see Morris, *supra* note 16, at 144.

72. One of the best-known statements of this view came from a writer who was also directly involved in the Anti-Federalist cause, Mercy Otis Warren. See M.O. WARREN, *HISTORY OF THE RISE, PROGRESS, AND TERMINATION OF THE AMERICAN REVOLUTION* (1805). On Warren, see Cohen, *Explaining the Revolution: Ideology and Ethics in Mercy Otis Warren’s Historical Theory*, 37 WM. & MARY Q. 200 (1976). Especially after the Civil War, however, most historians wrote from a pro-Federalist viewpoint. See Huston, *supra* note 20 at 340.

73. SUPREME COURT, *supra* note 33, at 88.

The conservative interests, made desperate by the imbecilities of the Confederation and harried by state legislatures, roused themselves from their lethargy, drew together in a mighty effort to establish a government that would be strong enough to pay the national debt, regulate interstate and foreign commerce, provide for national defence, prevent fluctuations in the currency created by paper emissions, and control the propensities of legislative majorities to attack private rights.⁷⁴

Three years later in *Jeffersonian Democracy*, Beard again emphasized that “the capitalistic interests had been harried almost to death, during the few years preceding the adoption of the Constitution, by stay legislation and by the *weaknesses* and *futility* of the government under the Articles of Confederation.”⁷⁵

Beard’s views explain why the scholar most responsible for subsequently keeping alive an intellectual defense of the Articles rejected the common belief that Beard displayed an Anti-Federalist viewpoint. In such works as *The Articles of Confederation* and *The New Nation*, the late historian Merrill Jensen squarely took issue with the pro-Federalist view that the country was coming apart at the seams during the so-called critical period.⁷⁶ Jensen sympathized with what he considered the decentralizing and democratic political traditions of the Anti-Federalists.⁷⁷ Jensen was consequently tagged as a “Beardian” or “neo-Beardian.”⁷⁸ Yet it is widely ignored that Jensen pointed to the work of Beard as a “case [where] words have been misread, read with little care, or not read at all.”⁷⁹ Beard’s writings, according to Jensen, “repeatedly praised” the founders

74. *Id.* at 85.

75. *JEFFERSONIAN DEMOCRACY*, *supra* note 63, at 465 (emphasis added).

76. The relevant works by Merrill Jensen include: *THE ARTICLES OF CONFEDERATION: AN INTERPRETATION OF THE SOCIAL-CONSTITUTIONAL HISTORY OF THE AMERICAN REVOLUTION* (1940); *THE NEW NATION: A HISTORY OF THE UNITED STATES DURING THE ARTICLES OF CONFEDERATION* (1950); *THE AMERICAN REVOLUTION WITHIN AMERICA* (1975). On Jensen and the critical period thesis, see the handful of reviews of *THE NEW NATION*, *supra* collected in *THE REVOLUTION, CONFEDERATION, AND CONSTITUTION* 74-88 (S.G. Brown ed. 1971). On the influence and status of Jensen’s position in current historiographical debate, see Huston, *supra* note 20, at 350.

77. See, e.g., M. JENSEN, *THE ARTICLES OF CONFEDERATION*, *supra* note 76, at 245 (the overthrowing of the Articles represented “the culmination of an anti-democratic crusade”); see also relevant passages from *THE NEW NATION* cited by reviewers in *THE REVOLUTION, CONFEDERATION, AND CONSTITUTION*, *supra* note 76, at 74-88.

78. See, e.g., R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 438, 481, and Morris, *supra* note 16, at 150.

79. M. JENSEN, *THE AMERICAN REVOLUTION*, *supra* note 76, at 222-23.

“for their realism as opposed to the romanticism of their [anti-Federalist] opponents.”⁸⁰

B. Beard's Pro-Federalist Viewpoint in An Economic Interpretation

The first pages of *An Economic Interpretation* hardly disguised the strong pro-Federalist historical viewpoint that Beard expressed in other contemporaneous works. The first chapter, “Historical Interpretation in the United States,” immediately singled out George Bancroft—an ardent nineteenth-century Jacksonian Democrat—as one of Beard’s prime historiographical opponents.⁸¹ In his epic *History of the Formation of the Constitution of the United States*, Bancroft’s praise for the founders had been just as abundant as Beard’s in *The Supreme Court*.⁸² Yet Bancroft provided a quasi-Rousseauian and quasi-religious picture of the Constitution being propelled by “the movement of the divine power.”⁸³ Beard strongly objected to this romantic liberal conception of, in his words, a “people acting under a divine guidance.”⁸⁴

Beard, in contrast, saw the Constitution as borne of bitter social and economic conflict. He thus turned to the property-based “political science of James Madison, the father of the Constitution” to explicate his theoretical viewpoint.⁸⁵ And near the end of the book Beard turned to the esteemed Federalist Chief Justice John Marshall to support his historiographical position.⁸⁶ Like many other Federalist histories, Marshall’s biographical work on the life of Washington had painted the new Constitution as pitting clear-thinking members of the economic elite classes against the narrow-minded debtor and agrarian classes.⁸⁷ Marshall’s work, according to

80. *Id.*

81. AN ECONOMIC INTERPRETATION, *supra* note 2, at 1.

82. G. BANCROFT, HISTORY OF THE FORMATION OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA (1882). Bancroft’s support for the Constitution tracked the views of his presidential hero Jackson. During the Nullification crisis of 1832, Jackson expressed a “view of the Confederation period [that] was the view of the nationalist commentators on the Constitution.” Morris, *supra* note 16, at 143. In characteristic Jacksonian fashion, however, Bancroft treated Anti-Federalist debtors and agrarian groups with more “sympathy and understanding” than that shown by conservative Federalist historians. *Id.* at 144.

83. G. BANCROFT, *supra* note 82, at 284.

84. AN ECONOMIC INTERPRETATION, *supra* note 2, at 1.

85. *Id.* at 14.

86. *Id.* at 295.

87. See, e.g., R. HILDRETH, THE HISTORY OF THE UNITED STATES OF AMERICA (1851). For a good discussion of Marshall’s and Hildreth’s views, see Henderson, *The First Party System*, in PERSPECTIVES ON EARLY AMERICAN HISTORY: ESSAYS IN HONOR OF RICHARD B. MORRIS 327-38 (A. Vaughan and G.A. Billias eds. 1973).

Beard, "sketched with unerring hand the economic conflict which led to the adoption of the Constitution, and impressed itself upon the nature of the instrument."⁸⁸ Among all historians, in Beard's opinion, Marshall "probably understood best the nature of the new instrument [the Constitution], the social forces which produced it, and the *great objects* it was designed to accomplish."⁸⁹ In Beard's eyes, therefore, Marshall was hardly an illegitimate usurper of constitutional power or an apologist for an unworthy document.

Beard, nevertheless, presented most of the argument of *An Economic Interpretation* in a subdued monographic style. His chapters moved in workmanlike chronological fashion from the origins of the Federalist movement to eventual state ratification of the document drafted in Philadelphia. The chapters were ordered in five pairs of matching "structural" and "actor" analyses. Chapter II, for example, presented a brief analysis of class structure in 1787,⁹⁰ while Chapter III followed with an analysis of those general groups of actors demanding a new Constitutional system.⁹¹ The next pair of chapters first analyzed the voting mechanisms by which delegates were elected to the convention,⁹² and then focused on the economic interests of those who became delegates.⁹³ The third pair of chapters presented an analysis of "The Constitution as an Economic Document"⁹⁴ and "The Political Doctrines of the Members of the Convention."⁹⁵ The fourth pair of chapters considered the plebiscitary procedure for electing delegates to state ratifying conventions⁹⁶ and the degree of popular participation in the process.⁹⁷ Finally, Chapter X analyzed "The Economics of the Vote on the Constitution,"⁹⁸ and Chapter XI discussed "The Economic Conflict Over Ratification As Viewed by Contemporaries."⁹⁹ *An Economic Interpretation* ended with a brief section of thirteen "Conclusions,"¹⁰⁰ which briefly restated the major themes of the preceding chapters.

88. AN ECONOMIC INTERPRETATION, *supra* note 2, at 296.

89. *Id.*

90. *Id.* at 19 (Chapter II "A Survey of Economic Interests in 1787").

91. *Id.* at 52 (Chapter III "The Movement for the Constitution").

92. *Id.* at 64 (Chapter IV "Property Safeguards in the Election of Delegates").

93. *Id.* at 73 (Chapter V "The Economic Interests of the Members of the Convention").

94. *Id.* at 152.

95. *Id.* at 189.

96. *Id.* at 217 (Chapter VII "The Process of Ratification").

97. *Id.* at 239 ("The Popular Vote on the Constitution").

98. *Id.* at 253.

99. *Id.* at 292.

100. *Id.* at 324-25.

Beard also strived to assume a professionally detached viewpoint throughout *An Economic Interpretation*. In the midst of Chapter II's economic class analysis, for example, Beard declared that "it is idle to inquire whether the rapacity of the creditors or the total depravity of the debtors . . . was responsible for . . . [the] bitter antagonism" between classes that developed after the American Revolution.¹⁰¹ At another point in Chapter II, Beard similarly denigrated the reliability of all partisan accounts about the conflict over the Constitution. While "the inflamed declaration[s]" of Anti-Federalists "are not to be taken as representing accurately the state of the people . . .," continued Beard, "just as certainly the alarmist letters and pamphlets of interested persons on the other side are not to be accepted without discount."¹⁰² Furthermore, while full of all kinds of possible ideological implications, Beard's exceedingly terse framing of his thirteen conclusions seemed designed to avoid any explicit affirmation of the Federalists or Anti-Federalists.¹⁰³

Yet Beard's suppressed pro-Constitutional stance still surfaced frequently in *An Economic Interpretation*. For example, in Chapter VIII's discussion concerning the process of ratification in the states, Beard praised Madison's *Federalist* defense of the proposed Constitution as presenting "an unanswerable case for his side."¹⁰⁴ Even when straining for impartiality in Chapter II's "Survey of Economic Interests in 1787," Beard let down his intellectual guard. He referred to the pro-Federalist financiers who funded the Revolutionary War debt as the "*patriots* who risked their money" for the country.¹⁰⁵ After explaining that passage of the new Constitution made possible the redemption of the debts owed to these and other creditors, Beard affirmed his support for such Federalist financial policies. "The

101. *Id.* at 32.

102. *Id.* at 48. Many critics have completely misinterpreted this particular passage from Beard as showing his explicit Anti-Federalist rejection of the "critical period" thesis. *E.g.*, Morris, *supra* note 16, at 149 ("Beard found that the 'critical period' was really not so critical after all."), and Adair, *supra* note 16, at 54 n.30. (Beard advances "the hypothesis" that the "critical period" was a "phantom" of the Federalist imagination.) It is clear, however, that Beard was advancing no such position in these remarks, and that he adopted the critical period thesis elsewhere in *AN ECONOMIC INTERPRETATION*. For confirmation on this point, see *WE THE PEOPLE*, *supra* note 2, at 9 n.4. (In the above cited passage "Beard considers the possibility that this picture [of the critical period] might be largely the fictitious creation of contemporary propagandists and later historians, but proceeds to accept the picture explicitly as generally sound, and implicitly as a working hypothesis").

103. *Id.* at 324-25. For discussion of Beard's conclusions, see *infra* text accompanying notes 267-76.

104. *Id.* at 222.

105. *Id.* at 22 (emphasis added).

ethics of redeeming the debt at face value is not here considered," Beard wrote in a footnote, "*although the present writer believes that the success of the national government could not have been secured under any other policy than that secured by Hamilton.*"¹⁰⁶ Beard was siding with the view of Hamilton and the Federalists that the decentralized monetary policies allowed by the Articles of Confederation had thrown the new nation into an emergency critical period. In Chapter V, Beard went on to confirm his Federalist point of view by actually referring to the era of the Confederation as "the critical period."¹⁰⁷

Beard especially demonstrated his pro-Federalist position in Chapter V's profile of Hamilton. The section on Hamilton was by far the largest profile of any Founding Father and was even of comparable length to other whole chapters in *An Economic Interpretation*.¹⁰⁸ Beard's profile began by announcing that Hamilton represented "the colossal genius of the new system . . . [I]t was his organizing ability that made it [the Constitution] a real instrument bottomed on all the substantial [financial and manufacturing] interests of the time."¹⁰⁹ Beard launched a full-fledged defense of Hamilton's mercantilist policies as the first Secretary of Treasury under the new Constitution. He dismissed the general political criticisms of Hamilton's opponents by noting in a curt fashion that Anti-Federalists "attack[ed] his [Hamilton's] policies as inimical to public interest, *i.e., their own interests.*"¹¹⁰

In striking contrast to its praise for Hamilton, *An Economic Interpretation* did not even mention the Declaration of Independence or Jefferson's views on the Constitution. Beard similarly provided not one iota of praise for the Anti-Federalist position. He failed even to make a passing reference to what is undoubtedly the Anti-Federalists' greatest political contribution to the Constitution—their demand that a Bill of Rights be annexed to the document.¹¹¹ As in his other works, Beard instead praised the Federalists' establishment of the system of general judicial review as "the most unique contribution to the science of government which

106. *Id.* at 35 n.1 (emphasis added).

107. *Id.* at 83.

108. *Id.* at 100-14 (fourteen-page subchapter on Hamilton longer than three other chapters in book).

109. *Id.* at 100.

110. *Id.* at 103 (emphasis added).

111. *Cf.* the ironically more generous treatment in R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 263 ("The Anti-Federalists performed an indispensable function—that of seeing to it that the Constitution received a thorough and demanding scrutiny—and won a majority on one count, their demand for the inclusion of a bill of rights, on which their arguments seem far more impressive than those of their opponents").

has been made by American political genius.”¹¹² Furthermore, the only time that Beard explicitly mentioned “a class bias” in the conflict over the Constitution *was in reference to the Anti-Federalists*.¹¹³

The conventional view, therefore, captures only half of the truth in focusing exclusively on *An Economic Interpretation's* emphasis that the Founding Fathers were motivated by economic self-interest. The Anti-Federalists, in Beard's opinion, were also acting to protect their economic self-interest. In Chapter X on “The Economics of the Vote on the Constitution” in the state-ratifying conventions, Beard dismissed the notion of the conflict between the Federalist mean-spirited “aristocrats” and virtuous Anti-Federalist “democrats.”¹¹⁴ This naive conception only camouflaged “the fact that one class of property interests was in conflict with another.”¹¹⁵

Beard also refused to frame the conflict as merely a struggle between two economically-determined classes. Seeing the Federalists as superior in political consciousness, he argued further that the Federalists' political economy was better for the nation's interests. Thus Beard's last conclusion in Chapter V on “The Economic Interests of the Members of the Convention” was that the Founding Fathers built “the new government upon the only foundation which could be stable: fundamental economic interests.”¹¹⁶ He also emphasized that “as a group of [ideological] doctrinaries . . . they [the founders] would have failed miserably.”¹¹⁷

It is true that Beard expressed signs of distaste for the aggrandizement of political power and economic fortune that he found in some less influential members of the constitutional convention.¹¹⁸

112. AN ECONOMIC INTERPRETATION, *supra* note 2, at 162.

113. *Id.* at 294.

114. *Id.* at 258.

115. *Id.* at 294.

116. *Id.* at 151.

117. *Id.*

118. It should be pointed out, however, that Beard expressed the most obvious signs of distaste against the likes of controversial convention member, Elbridge Gerry, who refused to sign the Constitution and thus was not technically a Founding Father. *Id.* at 94-99. In a footnote to his discussion of Gerry, Beard stated that “‘bare-faced selfishness’ was not monopolized by Gerry in the Constitution.” *Id.* at 98 n.1. Yet in reading through Chapter V's profile of the convention members' economic interests, one is still struck that Beard's distaste is mainly directed at less prominent founders. He was especially generous to the Middle States capitalist financiers grouped around Robert Morris. *Id.* at 135-36 (referring to this group of founders as “‘eminent men’” and praising Morris as contributing more than any other person to “‘the stability of our national institutions.’” *Cf.* the ironically less generous treatment of the Morris group in F. McDONALD, *E PLURIBUS UNUM*, *supra* note 15, at 34 (describing the Morris group as the greediest, most ruthless, and most insistent in demanding political action on their behalf.’).

Yet these traces of discomfort were overshadowed by the *lack of economic selfishness and greed* that Beard discovered in such key Founding Fathers as Hamilton and Madison. Beard's laudatory profile concluded, for example, that Hamilton "was swayed throughout by the formation of the large policies of government—not by any of the personal interests so often ascribed to him."¹¹⁹ In his economic profile of Madison, Beard similarly wrote that the author of *Federalist No. 10* was devoted "to political pursuits rather than commercial or economic interests of any kind."¹²⁰

Beard hardly meant to suggest that Hamilton and Madison represented idealistic armchair political theorists. As Beard wrote about Hamilton, "[I]t is apparent . . . that it was no mere abstract political science which dominated his principles of government."¹²¹ Beard instead pictured Hamilton as understanding that the interests of nascent capitalism happened to constitute the crucial element in establishing a workable political system. Hamilton, according to Beard,

saw that by identifying their [the commercial] interests with those of the new government, the latter would be secure. It has been charged that he always was on the side of financial interest against the public [B]ut it must be remembered that at the time the new system went into effect, the public had no credit, and financiers were not willing to forego their gains and profits for an abstraction.¹²²

Rather than emphasizing such passages in *An Economic Interpretation*, critics and admirers have stressed that Beard in Chapter VIII on "The Process of Ratification" likened the making of the new Constitution to a "coup d'etat."¹²³ This example, however, actually proves the flimsiness of the evidence for the conventional position. Beard used the phrase in discussing the founders' decision to bypass the amendment procedure prescribed in the Articles of Confederation for ratification of the new Constitution. The founders decreed that the new document required approval of only nine states (after it was first submitted to Congress). Beard wrote:

This whole process was a departure from the provisions of the then fundamental law of the land—the Articles of the Confederation—which provided that all alterations and amendments should be made by Congress and receive the ap-

119. AN ECONOMIC INTERPRETATION, *supra* note 2, at 114.

120. *Id.* at 125.

121. *Id.* at 101.

122. *Id.*

123. *See, e.g.,* R.E. BROWN, *supra* note 16, at 138.

proval of the legislature of every state The revolutionary nature of the work of the Philadelphia Convention is correctly characterized by Professor John W. Burgess when he states that had such acts been performed by Julius or Napoleon, they would have been pronounced *coup d'etat*.¹²⁴

What most critics and admirers have failed to acknowledge or understand is the significance of Beard's reference to Professor John W. Burgess as the author of the "coup d'etat" phrase.¹²⁵ Burgess was the embodiment of the neo-Federalist intellectual tradition at Columbia while Beard was a graduate student and then a young professor at the university.¹²⁶ For such neo-Federalist intellectuals, demonstration of the anti-majoritarian nature of the founders represented a staple response to attacks on the judiciary's protection of vested interests.¹²⁷ Burgess's argument that the Founding Fathers were so anti-majoritarian as to engage in a coup d'etat was simply part of this blunt defense of "conservative spokesmen in their attempts to hold the line judicially against majoritarian protest."¹²⁸ Such pro-Federalist spokesmen insisted "that the Constitution-makers themselves were great anti-majoritarians and that to be true to the Constitution, the judiciary had no alternative but to apply anti-majoritarian interpretations."¹²⁹

Beard's coup d'etat passage in *An Economic Interpretation* was simply expressing agreement with the viewpoint of the neo-Federalist Burgess. In both of their opinions, the extraordinary actions of the founders were necessary to escape from what Beard in Chapter V called "the imbecilities of the Articles of Confederation."¹³⁰ At the beginning of Chapter IV on "Property Safeguards in the Election of Delegates" Beard spoke of "the heroic measures which the circumstances demanded."¹³¹

Beard as well as Burgess, moreover, used the coup d'etat analogy loosely. In a footnote on the same page, for example, Beard quoted in full the coup d'etat passage from Burgess's *Political Science and Comparative Constitutional Law*. Burgess's passage first

124. AN ECONOMIC INTREPRETATION, *supra* note 2, at 218.

125. *But see* R. HOFSTADTER, THE PROGRESSIVE HISTORIANS, *supra* note 6, at 264 (although not placing any interpretative emphasis on point, Hofstadter notes that Beard was quoting Burgess's coup d'etat phrase.).

126. On Burgess, see, e.g., *id.* at 25-30.

127. For acknowledgment of this neo-Federalist position, see R. HOFSTADTER, THE PROGRESSIVE HISTORIANS, *supra* note 6, at 195.

128. *Id.*, quoting A. PAUL, CONSERVATIVE CRISIS AND THE RULE OF LAW: ATTITUDES OF BAR AND BENCH, 1887-1895 199 (1960).

129. *Id.*

130. AN ECONOMIC INTERPRETATION, *supra* note 2, at 145.

131. *Id.* at 64.

argued that the Founders established a “constitution of government and liberty.”¹³² Burgess then stated that the Founders’ revolutionary action resembled those of Julius Caesar and Napoleon in “demand[ing] a *plebiscite* . . . [on the new Constitution] over the heads of all existing legally organized powers.”¹³³ Neither Beard nor Burgess, therefore, were likening the plebiscitary-based overhaul of the confederation to a mere secret or palace coup. In Chapter VI on “The Constitution as an Economic Document,” Beard even pointed out that the Federalists conciliated and compromised with the “rural interests” on such a major issue as Congress’s taxing power.¹³⁴

Beard similarly refused to view the founders as apologists for political oligarchy. In Chapter VII on the political doctrines of the convention members, Beard suggested that the common ideological standard for the founders was “the doctrines of balanced classes in the government, as expounded in [John] Adam’s *Defence of American Constitution*.”¹³⁵ Beard acknowledged that Adams’s Federalist conception desired “a balanced government independent of ‘popular whims’ and endowed with plenty of strength.”¹³⁶ Yet Beard hardly equated Adams’s Federalist ideology with a class-dominated despotism. Beard explicitly defended Adams’s Federalist ideology in *Jeffersonian Democracy*:

This ‘balanced’ system based upon the recognition of the division of society into rich and poor and of the necessity of preventing either class from conquering the other, by having an independent executive and judiciary to act as “mediators” laid Adams open to the charge of being a monarchist or aristocrat at heart. In fact, however, he was not much concerned with titles as such; he was more concerned with the substance than the fictions of government.¹³⁷

In *The Supreme Court and The Constitution*, Beard had likewise placed the political philosophy of the founders in the “vital center” of their age:

Every page of the laconic record of the proceedings of the convention preserved to posterity by Mr. Madison shows conclu-

132. *Id.* at 218 n.1, quoting J.W. BURGESS, 1 POLITICAL SCIENCE AND COMPARATIVE CONSTITUTIONAL LAW 105 (1890).

133. *Id.*

134. *Id.* at 169.

135. *See id.* at, e.g., 194, 192, 201, 206. *But see id.* at 201-02 (Beard’s acknowledgment of explicitly anti-Adams views of founder William Livingston.).

136. *Id.* at 201.

137. JEFFERSONIAN DEMOCRACY, *supra* note 63, at 313.

sively that the members of that assembly were not seeking to realize any fine notions about democracy and equality, but were striving with all the resources of political wisdom at their command to set up a system of government that would be stable and efficient, safeguarded on one hand against the possibilities of despotism and on the other against the onslaught of majorities.¹³⁸

C. The Problem with the Revisionist Image of Beard as a Neo-Federalist Conservative

The heretical notion of Beard as a pro-Federalist intellectual unquestionably captures the viewpoint projected throughout *An Economic Interpretation* better than the conventional Jeffersonian or anti-Constitutional image. Moreover, the totally reverse notion of Beard as a neo-Federalist conservative also seems to capture the sociopolitical flavor of Beard's family background. For Beard certainly did not resemble the famous populist leader known as "Sockless" Jerry Simpson.¹³⁹ Beard came from a prosperous Indiana family; in Eric Goldman's description, the Beards stood as the most prominent family or "the first citizens" of Spiceland, Indiana, and "took unembarrassed pride in their fertile acres and their extensive business holdings."¹⁴⁰ As Hofstadter similarly wrote, "Beard was raised to assume that respectable Americans would be Republicans. His family's political heritage was close to the intellectual tradition that had come down through the Federalists, Whigs, and Republicans, a tradition which had always embodied a strong vein of realism."¹⁴¹

Later in his life Beard himself emphasized the importance of his conservative intellectual background. He especially thought that his conservative roots helped explain the differences between his viewpoint and that of fellow historian Frederick Jackson Turner—the famed proponent of the frontier thesis concerning the rise of American democracy.¹⁴² Beard pointed out that "my father was named *William Henry Harrison Beard* [for the winning Whig presidential

138. SUPREME COURT, *supra* note 33, at 93.

139. On Simpson, see E. GOLDMAN, *RENDEZVOUS WITH DESTINY: A HISTORY OF MODERN AMERICAN REFORM* 49 (1952).

140. Goldman, *Charles A. Beard: An Impression*, in CHARLES A. BEARD, *supra* note 6, at 2.

141. R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 169.

142. For the seminal statement of the frontier thesis, see the 1893 essay by F.J. TURNER, *The Significance of the Frontier in American History*, in *THE FRONTIER IN AMERICAN HISTORY* 1 (1920). On Turner, see R.A. BILLINGTON, *FREDERICK JACKSON TURNER: HISTORIAN, SCHOLAR, AND TEACHER* (1973); *see also* R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 47-164.

candidate in 1840], and you will understand better some of the differences in the approach of Frederick Jackson Turner and myself if I add that his father was named *Andrew Jackson Turner*.”¹⁴³ On another occasion Beard remarked, “[P]eople ask me why I emphasize economic questions so much. They should have been present in the family parlor, where my father and his friends gathered to discuss public affairs.”¹⁴⁴

A revisionist conception of Beard as a conservative intellectual, however, cannot explain the numerous examples of his reformist political activities during this period. Merrill Jensen and at least one other unorthodox commentator have actually suggested that Beard’s Progressive political positions are as fictional as his supposed Anti-Federalist historical sympathies.¹⁴⁵ Yet the evidence of Beard’s Progressive political commitments is overwhelming.

Beard’s reformist sentiments can be traced throughout the first decades of the twentieth century. In the decade before *An Economic Interpretation*, Beard was befriending and politically associating with socialist and Laborite intellectuals while studying in England.¹⁴⁶ He even took a major role in establishing the labor-reform

143. Cited in Goldman, *Charles Beard: An Impression*, in CHARLES A. BEARD, *supra* note 6, at 2.

144. *Id.*

145. Jensen, *Historians and The Nature of The American Revolution*, in THE RE-INTERPRETATION OF EARLY AMERICAN HISTORY 127 n.88 (R.A. Billington ed. 1975) (Beard was “one of the leading academic opponents of the Progressive politicians and their ideas.”); Jensen, *supra* note 79 at 223-24. To support this view of Beard as an anti-Progressive conservative, Jensen relied on the argument in Thomas, *supra* note 22. Thomas declared that Beard was a lifelong Republican as well as “a consistent and ardent admirer of the Supreme Court.” *Id.* at 371.

The only evidence adduced by Thomas to prove Beard’s alleged lifelong affiliation with the Republican party was an inconclusive autobiographical passage in Beard’s later work, *THE REPUBLIC: CONVERSATIONS ON FUNDAMENTALS* (1943). In the particular passage cited by Thomas, Beard stated only that “I was *born and raised* a Republican.” *Id.* at 187 (emphasis added). Three years later Beard even wrote to fellow historian Arthur M. Schlesinger, Sr., that “I left the G.O.P. on imperialism in 1900 and have found no home anywhere since that year.” Cited in R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 171. Associates have also insisted that Beard usually stood independent from both major parties for most of his intellectual career. See Laski, *Charles Beard: An English View*, in CHARLES A. BEARD, *supra* note 6, at 16. Contrary to the view implied in Jensen and Thomas, however, Beard stood as a strong supporter of FDR’s New Deal domestic reformism in the 1930’s. Braeman, *The Historian As Activist: Beard and the New Deal*, 79 S. ATL. Q. 364 (1980). Thomas’s complementary notion that Beard was a consistent and ardent admirer of the Supreme Court is refuted *infra* in text accompanying notes 151-53, 158.

It should be pointed out, however, that Thomas also suggested the possibility of viewing Beard as a member of the “Croly-Roosevelt” wing of Progressivism. Thomas, *supra* note 22, at 372. This fruitful suggestion is explored *infra* in text accompanying notes 160-77, 196-205.

146. Braeman, *Charles A. Beard: The English Experience*, 15 J. AM. STUD. 165, 175 (1981).

enclave at Oxford known as Ruskin Hall.¹⁴⁷ In the same year as the publication of *An Economic Interpretation*, Beard published a brief article in the *Intercollegiate Socialist* encouraging the study of socialism.¹⁴⁸ He has even been quoted as describing himself during this period as “almost a socialist.”¹⁴⁹ Beard was an early supporter of women’s rights and an advocate of the movement for women’s suffrage that culminated in the nineteenth amendment.¹⁵⁰

Beard also showed a special disgust for the conservative Supreme Court and the Traditional legalism of his era. In 1915 the *New York Times* reported that Beard had drawn up a plan for a group of civic, religious, and labor reformers “designed to make easier the method of altering the Constitution of the U.S.”¹⁵¹ That same year, in a letter written to Arthur Schlesinger, Sr., Beard also exclaimed: “Isn’t most of the stuff given forth by standpat lawyers on the mystery and sanctity of the judiciary too comical for words.”¹⁵² And in a 1919 correspondence with former Senator Albert Beveridge, he declared: “Nearly every time the court has set aside a federal act of importance, the court has been wrong, and reversed by the judgment of history.”¹⁵³

Beard unmistakably demonstrated his reformist viewpoint in actively supporting Herbert Croly’s launching of the *New Republic* in 1914.¹⁵⁴ Croly had already outlined his political vision in *The Promise of American Life*.¹⁵⁵ The *New Republic* consistently re-

147. *Id.* at 174. For Beard’s own later recollection that he suggested the name “Ruskin Hall,” see Beard, *Ruskin and the Babble of Tongues*, *NEW REPUBLIC*, Aug. 5, 1936, at 370.

148. Beard, *Why Study Socialism?*, 1 *INTERCOLLEGIATE SOCIALIST* 3 (1913).

149. Cited in Williams, *Beard’s Search*, *supra* note 2, at 175 (quoting article by Beard’s friend Matthew Josephson, *Charles A. Beard: A Memoir*, 25 *VA. Q. REV.* 585, 591 (1949)).

150. For an informative discussion of Beard’s views on female suffrage and the influence of his wife Mary Ritter Beard, see E. NORE, *supra* note 27 at 46-49. See also Braeman, *Beard: Historian and Progressive*, in CHARLES A. BEARD 47 (M. Swanson ed. 1976). For examples of his views of the suffrage issue, see, e.g., Beard, *Woman Suffrage and Strategy*, *NEW REPUBLIC*, Dec. 12, 1914, at 22.

151. *Id.* at 55 (citing *New Plan to Revise U.S. Constitution*, *N.Y. Times*, Jan. 18, 1915, at 6, news story on Beard’s design of amendment plan for constitutional reform committee):

152. *Id.* at 54.

153. *Id.*

154. For Beard’s support of the periodical, see C. FORCEY, *THE CROSSROADS OF LIBERALISM: CROLY, WEYL, LIPPMANN, AND THE PROGRESSIVE ERA, 1900-1925* 182, 208 (1961).

155. H. CROLY, *THE PROMISE OF AMERICAN LIFE* (A. Schlesinger, Jr., ed., 1965; originally published 1909). On Croly and *THE PROMISE*, see C. FORCEY, *supra* note 154, at 3-51.

flected Croly's advocacy in *The Promise* of such Progressive positions as a strong centralized government, the promotion of labor unions, and the firm regulation of business.¹⁵⁶ In his own contributions to the *New Republic*, moreover, Beard expressed his disgust for what he called legal and political "stand-patters."¹⁵⁷ He, for example, scathingly wrote in 1917 that:

Political science in the United States has always been under bondage to the lawyers. This is mainly due . . . to the nature of our system of government which places constitutionality above all other earthly consideration in the discussion of public measures. In England the first question raised in parliament during the debates on a bill is not about its constitutionality but its expediency, economy, justice, popular support . . . [Yet] the elucidation of our national issues has called for the lawyer's technology and rhetoric although they have been at the bottom matters of politics and public policy. Moreover, when powerful economic groups in the country have sought to block progressive and humane legislation and logic has failed in the forum, the mysteries of constitutional law have invoked with firm assurance. *Pollock v. The Farmers Loan and Trust Company* and *Lochner v. New York*—there they stand, not forever, but until political and social forces (not forgetting the grim reaper, Death), change the courts.¹⁵⁸

Such evidence makes clear that neither the element of Progressive intellectual or the Federalist historian can be downplayed in reconstructing Beard's viewpoint. Any persuasive explanation must take into account both aspects of Beard's stance.

III. RECONCILING BEARD'S FEDERALISM AND PROGRESSIVISM

Those few commentators who have recognized both Beard's Federalist and Progressive sympathies have attributed the paradox

156. C. FORCEY, *supra* note 154, at 36, 190. For evidence that the magazine's unorthodox blend of Federalist elitism and reform sympathies seemed insufficiently "progressive" to many political reformers, see Bourke, *The Status of Politics, 1909-1919*, 3 J. AM. STUD. 57 (1969).

157. For Beard's attack on legal "standpatters," see *supra* text accompanying note 152.

158. Beard, *Political Science in the Crucible*, NEW REPUBLIC, Nov. 17, 1917, at 3. The two famous Supreme Court cases to which Beard alluded were *Pollock v. Farmer's Loan and Trust Co.*, 157 U.S. 429 (1895), and *on rehearing* 158 U.S. 601 (1895) (ruling that Income Tax Act of 1894 violated Article I limitations on imposition of "direct" tax); and *Lochner v. New York*, 198 U.S. 45 (1905) (ruling that state legislation mandating maximum working hour limit for bakers violated "liberty of contract" protected by fourteenth amendment).

to a supposed “ambivalence in his mind and temperament.”¹⁵⁹ Such tensions undoubtedly can be located in perhaps every modern reformer with an upper middle-class background. The point nevertheless remains that Beard saw his historical and political sympathies as part of an entirely consistent intellectual stance. His works show that he was not particularly torn between sympathy for the allegedly conservative Federalists and the allegedly more liberal Anti-Federalists. Regardless of traditional political conceptions, Beard resolutely saw the Federalists as the progressive forerunners in 1787. While a psychosociological analysis may help illuminate the reasons for Beard’s heterodox stance, his viewpoint also deserves serious intellectual examination.

A. *Beard’s Affinity With Hamiltonian New Nationalism*

The first step in placing Beard’s viewpoint in proper perspective is to recognize that he was not alone among Progressives in embracing Hamilton and the Federalist tradition. Without mentioning Beard in particular, Merrill Peterson has noted the strong “appeal of Hamilton and the Hamiltonian tradition to a small but significant segment of the Progressive mind.”¹⁶⁰ The prime source of the Progressive attraction to Hamilton, according to Peterson, “lay in his [Hamilton’s] bold use of the powers of government for constructive national purposes.”¹⁶¹ To the “New Hamiltonians” of the Progressive movement, however, the Federalist patriarch also stood for a larger untraditional amalgam of “advanced political ideas.”¹⁶² Hamilton, as Peterson explained, “symbolized political ‘mastery’ against Jeffersonian ‘drift’, the positive state against *laissez faire*, socially useful privileges against equal rights for all, aristocratic distinction against leveling democracy, world power against isolation.”¹⁶³

The two most prominent examples of this New Hamiltonianism were Beard’s *New Republic* friend Herbert Croly and former President Theodore Roosevelt.¹⁶⁴ In *The Promise of American Life* Croly

159. R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 216. Without explicitly saying so, Hofstadter’s Columbia colleague Richard B. Morris also seemed to view Beard as an intellectual split personality. *See* Morris, *supra* note 16, at 149-50. Another commentator who has grasped this supposed pro-Federalist “other side” of Beard is legal historian, Leonard Levy; *See* his introductory notes in *ESSAYS ON THE MAKING OF THE CONSTITUTION* xx-xxii, 3-7 (L. Levy ed. 1969).

160. M. PETERSON, *supra* note 54, at 333.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* (The New Hamiltonian movement “had . . . its philosopher in Herbert Croly, its exemplar statesman in Theodore Roosevelt.”)

bluntly declared that "on the whole my own preferences are on the side of Hamilton rather than Jefferson."¹⁶⁵ Croly went on to criticize those reformers who "stick faithfully" to "the spirit of the true Jeffersonian faith."¹⁶⁶ It is well known that Croly in *The Promise* described his own Progressive viewpoint as the "new Nationalism."¹⁶⁷ Yet in *The Promise* Croly alternately referred to the position that he was mapping out as the "new Federalism."¹⁶⁸

Roosevelt subsequently adopted the phrase "new Nationalism" to describe his new reform position in the 1912 presidential campaign.¹⁶⁹ Roosevelt had also used the label "New Federalism" while serving as a contributing editor to an older journal called the *Outlook*.¹⁷⁰ In 1910 Croly described Roosevelt as "the original and supreme Hamiltonian revivalist."¹⁷¹ Roosevelt, likewise, had always seen himself as a partisan of the Hamiltonian tradition. In a 1906 correspondence, for example, President Roosevelt declared, "I think the worship of Jefferson a discredit to my country; and I have small use for the ordinary Jeffersonian."¹⁷²

Moreover, in the first year of the *New Republic*, Croly and his other pro-Roosevelt editors engaged in a running attack against the Jeffersonian tone of Democratic President Woodrow Wilson's "New Freedom."¹⁷³ It is not surprising, therefore, that the *New Republic* represented a convenient place for Beard to vent his neo-Federalist Progressive views. He in fact delivered perhaps the most striking example of his thorough-going historical and political

165. H. CROLY, *supra* note 155, at 29.

166. *Id.* at 154.

167. *Id.* at 169. However as C. FORCEY, *supra* note 154, at 129, points out, Croly used the phrase "new Nationalism" only in this particular passage.

168. H. CROLY, *supra* note 155, at 129.

169. C. FORCEY, *supra* note 154, at 127. For a searching examination of the relationship between Croly's use and Roosevelt's adoption of the "New Nationalism," see *id.* at 121-52.

170. *Id.* at 136. "Virtually every issue of the *Outlook* from Jan[uary] 1909 contains some expression of its 'New Federalism.'" *Id.* at 330.

171. *Id.* at 129 (citing Croly letter to fellow New Nationalist Learned Hand).

172. 5 THE LETTERS OF THEODORE ROOSEVELT 352 (E.E. Morison ed. 1952). Roosevelt wrote these words in a letter to the English author Fredrick Scott Oliver in praise of his work, ALEXANDER HAMILTON: AN ESSAY ON AMERICAN UNION (1906). *Id.* Merrill Peterson described Oliver's work as "remarkably influential" in the New Hamiltonian movement. M. PETERSON, *supra* note 54, at 333.

173. C. FORCEY, *supra* note 154, at 178, 189, 210. See, e.g., *The Tide of Reaction*, NEW REPUBLIC, Jan. 16, 1915, at 6, 7 (editorial attacking Wilson's "attempt to convert progressivism into a Jeffersonian Democratic revival"). Ironically, in his earlier scholarly writings, Wilson had clearly sided with the Anglophile Federalist tradition against the Francophile Jeffersonians. Yet Wilson gradually embraced the Jeffersonian mantle of the Democratic party as his political career advanced. See discussion in M. PETERSON, *supra* note 54, at 343-44.

anti-Jeffersonian stance one year after *An Economic Interpretation* in the second issue of the periodical. In a piece entitled "Jefferson and the New Freedom," Beard blasted the "Wilsonian Democrats" for embracing the Jeffersonian political tradition.¹⁷⁴ The New Freedom reformers were confronted with "the problems of modern industrialism" just as Jefferson was called upon to face the emergence of "the rising capitalistic system" at the end of the eighteenth century.¹⁷⁵ Yet, according to Beard, "Agrarian democracy was the goal of Jefferson's analysis, just as the equally unreal and unattainable democracy of small business is Wilson's goal."¹⁷⁶ He thought that Jefferson's denigrating characterizations of the urban landless classes as "mobs of the great cities" and "sores on 'the body politic'" still summed up too much of the attitude of Wilson's New Freedom.¹⁷⁷ Beard's polemic ended by rhetorically dismissing the relevance of Jeffersonian liberalism:

Today nearly half of us belong to the 'mobs of the great cities'—sores on the body politic. What message has the sage of Monticello for us? What message have the statesmen and their followers whose political science is derived from Jefferson?¹⁷⁸

Yet Beard's full-length study, *Contemporary American History, 1877-1913*,¹⁷⁹ also published one year after *An Economic Interpretation*, best displayed the fusion of Beard's historical Federalism and contemporary Progressivism. Beard explicitly likened the political situation in the early twentieth century to that of the critical period in the eighteenth century. The "discontent" with the present American political system, declared Beard, was "scarcely less keen and critical than that which was manifested with the Articles of Confederation during those years of our history

174. Beard, *Jefferson and The New Freedom*, NEW REPUBLIC, Nov. 14, 1914, at 18, 19. Beard's political salvos against the Jeffersonian liberal tradition had begun at least by the time Croly's PROMISE OF AMERICAN LIFE was published in 1909. See, e.g., Beard, *The Ballot's Burden*, 24 POL. SCI. Q. 589, 597, 612 (1909). For another example of manifestation of this neo-Federalist Progressive stance, see Beard, *Reconstructing State Governments*, NEW REPUBLIC, Aug. 21, 1915 (Supp.) 1, 4 (praising document in favor of proposed New York constitution in 1915 as "a new Federalist" and describing original FEDERALIST as "that great commentary on the Constitution"); E. NORE, *supra* note 27, at 42-43, indicates that this document published under auspices of New York Bureau of Municipal Research was co-authored by Beard).

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.* at 19.

179. C. BEARD, *CONTEMPORARY AMERICAN HISTORY, 1877-1913* 314 (1914) [hereinafter cited as HISTORY]. For insightful discussion of Beard's HISTORY, see M. WHITE, *supra* note 8, at 32-46.

which John Fiske has denominated the Critical Period.”¹⁸⁰ Beard thought that the solution to the contemporary impasse lay in a renewed Federalist spirit that would further centralize positive policy-making power in the national government. Although in a more restrained fashion than Croly,¹⁸¹ Beard painted Roosevelt as a modern Hamiltonian figure. He quoted extensively from Roosevelt’s famous 1910 “New Nationalism” speech in Osawatamie, Kansas, which called for a new centralization of governmental power.¹⁸² Beard approvingly saw Roosevelt as launching an attack on “the idea of a neutral zone between the national and state legislatures . . . guarded only by the Federal judiciary” and demanding a “strengthening of the Federal government so as to make it competent for every purpose.”¹⁸³

Embrace of this neo-Hamiltonian viewpoint provided Beard with a firm critical perspective on the conservative Supreme Court majority of his era. In *Contemporary American History*, for example, Beard ridiculed the Court’s penchant for “writing laissez-faire into the Constitution.”¹⁸⁴ He specifically contrasted the more “broad” interpretation of congressional regulatory power under the commerce clause advocated by Hamilton and followed by Justice Marshall.¹⁸⁵ Beard thus refused to allow the laissez-faire conservatism of the early twentieth-century Court to claim the mantle of the Hamiltonian tradition.

At the same time, however, the Federalist elements in Beard’s legal perspective distinguished his critique from more populist or Jeffersonian opponents of the Court. Beard, as previously pointed

180. HISTORY, *supra* note 179, at 305.

181. Beard was not overly impressed by Roosevelt’s two terms as President. See HISTORY, *supra* note 179, at 261. (“Mr. Roosevelt, in all of his recommendations, took the ground that the prevailing system of production and distribution of wealth was sound, that substantial justice was now being worked out between man and man, and that only a few painful excrescences needed to be lopped off.”) And although Beard believed that Roosevelt’s rejuvenated New Nationalist stance moved away from this superficial consensus viewpoint, he still entertained doubts about the genuine progressive character of Roosevelt. He quoted rather extensively from the critique launched against Roosevelt by Progressive rival Robert La Follette, Sr. *Id.* at 348-49 (citing La Follette’s argument that Roosevelt’s “talk was generally at right angles to his legislative policy” as president.) In private correspondence with La Follette, Beard even wrote that La Follette’s “analysis of Roosevelt” was “true to the last degree” and had reinforced the view he had “always had concerning that shifty gentleman.” Cited in E. NORE, *supra* note 27, at 46. At the same time, however, Beard criticized La Follette’s own positions for being insufficiently forthcoming on major issues of economic policy. *Id.*

182. HISTORY, *supra* note 179, at 315.

183. *Id.*

184. *Id.* at 55.

185. *Id.* at 309.

out, branded laissez-faire constitutionalism as almost always “wrong” in rejecting “*federal* acts of importance.”¹⁸⁶ Nevertheless, in *Contemporary American History*, Beard defended judicial review as an “essential tool” in the workings of the American government.¹⁸⁷ He criticized “advocates of leveling democracy” for “failing to distinguish the power itself [judicial review] and the manner of its exercise.”¹⁸⁸ Moreover, he thought judicial review was an especially crucial check on *state* legislatures. He flatly rejected the characteristic Anti-Federalist assumption that the nation could survive and prosper under decentralized state rule. “The regulation of a national economic system by forty or more local legislatures,” declared Beard, “would be nothing short of an attempt to combine economic unity with local anarchy.”¹⁸⁹

Beard also invoked a typically Federalist historical lesson to support his position. He pointed to “the breezy days of ‘wild-cat’ currency, repudiation, and broken faith which characterized the thirty years preceding the Civil War when the Federal judiciary was under the dominance of the states’ rights school.”¹⁹⁰ Beard, in contrast, lauded the Marshall Court’s previous refusal “to regulate, penalize, and blackmail corporations” during the first evolving stages of the nation’s “economic system.”¹⁹¹

There were some undeniably “conservative” tinges to this New Hamiltonianism of Beard and like-minded reformers.¹⁹² A number of the more corporate-minded Hamiltonian reformers desired “nationalizing” reforms in order to transfer regulatory power away

186. (Emphasis added). See *supra* text accompanying note 153.

187. HISTORY, *supra* note 179, at 86.

188. *Id.*

189. *Id.* at 87. The distinction between judicial review of state versus federal legislation was also emphasized by Justice Oliver Wendell Holmes. See O. W. HOLMES, COLLECTED LEGAL PAPERS 295-96 (1920). (“I do not think the United States would come to an end if we [the members of the Supreme Court] lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several states.”) See also Thayer, *The Origin and Scope of the American Doctrine of Constitutional Law*, 7 HARV. L. REV. 129, 154-55 (1893).

190. HISTORY, *supra* note 179, at 86-87.

191. *Id.* at 86.

192. The “conservative” elements of Theodore Roosevelt’s Progressive faith were nicely captured by Richard Hofstadter in his seminal revisionist essay *Theodore Roosevelt: The Conservative As Progressive* in R. HOFSTADTER, THE AMERICAN POLITICAL TRADITION 203 (1948). Ironically and unfortunately, Hofstadter failed to explore the plausibility of extending this kind of analysis to Beard. See also G. KOLKO, THE TRIUMPH OF CONSERVATISM: A REINTERPRETATION OF AMERICAN HISTORY, 1900-1916 (1963) (arguing that recognition of conservatism in movement is the key to understanding Progressivism).

from the more populist hands of state legislatures.¹⁹³ Both Roosevelt and Croly thought of the Progressive movement as a counterpoise to ward off more genuinely radical political schemes.¹⁹⁴ Beard himself referred to Roosevelt's New Nationalism as a "Counter-Reformation" that tried to deal constructively with the "abuses" in the capitalistic system pointed out by "misguided" populist reformers.¹⁹⁵

B. Beard as Tory-Radical Intellectual

Such evidence may seem to suggest the reversal of the conventional populist image of Beard and his branding as a "corporate liberal."¹⁹⁶ His Hamiltonian emphasis on the need for governmental centralization could be viewed as a sophisticated call for insuring the continued dominance of the propertied classes and their large corporate institutions. Or, in a more benign manner, Beard might be characterized as a mugwumpish reformer who attempted to find some

193. A clear example of this conservative nationalization thrust can be found in the support for federal chartering or licensing of corporations. See Urofsky, *Proposed Federal Incorporation in the Progressive Era*, 26 AM. J. LEGAL HIST. 160 (1982). Roosevelt endorsed federal incorporation throughout his two administrations. *Id.* at 168, 177-78. The measure was endorsed in H. CROLY, *supra* note 155, at 360. The reform measure also gained the backing of such prominent business leaders as John Rockefeller, Sr., and George W. Perkins of the Morgan Bank. *Id.* at 167, 175. Segments of organized labor and some reformers supported corporate nationalization as a means to control the network of trusts across the nation. *Id.* at 179. Yet the measure gained the approval of major business leaders, according to the contemporary business journal FINANCIAL AMERICA, "as means of affording relief from oppressive state legislation" Cited in C. LASCH, *THE WORLD OF NATIONS: REFLECTIONS ON AMERICAN HISTORY POLITICS, AND CULTURE* 90 (1973) (essay on Progressive era entitled *The Moral and Intellectual Rehabilitation of the Ruling Class*).

I have not discovered whether Beard expressed a position on national incorporation during the Progressive era. However, he spoke on behalf of the measure when it was proposed again during the New Deal. See Beard, Statement, U.S. Cong., Sen., *Federal Licensing of Corporations: Hearings Before A Subcomm. of the Comm. on the Judiciary*, Sen. Bill 10, Part I, 70, 71, 74, 75th Cong., 1st Sess. (1937).

194. On the counter-reform nature of Croly's vision, see Kaplan, *Social Engineers as Saviors: Effects of World War I on Some American Liberals*, J. HIST. IDEAS 347, 354-55 (1956); on Roosevelt, see R. HOFSTADTER, *supra* note 192.

195. HISTORY, *supra* note 179, at 303.

196. The critique of modern liberal reformism as primarily an effort to protect and stabilize the corporate way of life in America was developed by the "New Left" historians of the 1960's. The general shape of "corporate liberal" critique owes much to the work and influence of William Appleman Williams. For his most elaborate statement, see W.A. WILLIAMS, *THE CONTOURS OF AMERICAN HISTORY* (1961). For a full-length work on the Progressive era written from this general theoretical viewpoint, see J. WEINSTEIN, *THE CORPORATE IDEAL IN THE LIBERAL STATE, 1900-1918* (1968). For a somewhat different New Left formulation, see G. KOLKO, *supra* note 192. For Williams's opting not to apply the corporate liberal thesis to Beard, see *infra* text accompanying note 206.

middle-ground between laissez-faire conservatives and radical populists.¹⁹⁷ His fellow New Hamiltonian Croly, for example, envisioned the ultimate reconciliation of business and worker in a thriving middle-class capitalistic democracy.¹⁹⁸ Croly and Roosevelt often referred to their ideal consensus vision as a revised Hamiltonian nationalism that had absorbed Jeffersonian democratic tenets.¹⁹⁹

Beard's particular views, however, were at once more idiosyncratically conservative and radical than either the corporate liberal or mugwump characterization indicates.²⁰⁰ He definitely saw the New

197. The label "Mugwump" traditionally refers to the groupings of mainly North-eastern Republicans who swung their support to the Democrats in the 1884 presidential election and other contemporaneous races. The Mugwumps were repulsed by the perceived corruption as well as economic protectionist and imperialist policies of the post-Reconstruction Republican *status quo*. On the Mugwumps, see the essays in *MORALISTS OR PRAGMATISTS? THE MUGWUMPS, 1884-1900* (G.W. McFarland ed. 1975), and the historiographical essay by Blodgett, *The Mugwump Reputation, 1870 to the Present*, 66 J. AM. HIST. 867 (1980).

Richard Hofstadter expanded the use of the "mugwump" characterization to distinguish the "good government" political style of most Northeastern and some Midwestern Progressives from that of their more western agrarian counterparts. See R. HOFSTADTER, *THE AGE OF REFORM: FROM BRYAN TO F.D.R.* (1955). Thus the label mugwump Progressive includes such individuals as Theodore Roosevelt, who in the 1880's refused to bolt from the Republican party (but did so in 1912). For the argument that the pragmatic type of mugwumpish reformism exemplified by Roosevelt ultimately became indistinguishable from the corporate liberal position, see C. LASCH, *supra* note 193.

Beard's upper-middle class Midwestern and Republican background would qualify him as a mugwump Progressive type. Beard exhibited rather lukewarm approval of the original Mugwump reformers. HISTORY, *supra* note 179, at 99, 130-32. Yet his appraisal contrasted dramatically with the more uniformly negative attitude of more populist critics. Blodgett, *supra*, at 871.

198. See, e.g., H. CROLY, *supra* note 155, at 387 (arguing that labor unions represented the most "effective mechanisms for the economic and social amelioration of the laboring class" due to their ability to raise workers' standards of living to middle-class levels while also increasing organizational efficiency of the corporation.)

199. See, e.g., H. CROLY, *supra* note 155, at 28-29 (arguing that "neither the Jeffersonian nor the Hamiltonian doctrine was entirely adequate," and thus "a combination must be made of both Federalism and Republicanism"); see, e.g., 7 THE LETTERS OF THEODORE ROOSEVELT, *supra* note 172, at 228-29 (a 1911 letter to English New Hamiltonian writer Oliver, see *supra* note 172, speaking of his effort "to get a proper mixture of the principles of Hamilton and Jefferson into the political movement of the present day.").

Both Croly and Roosevelt pictured Lincoln as the embodiment of this revised Hamiltonian political synthesis. H. CROLY, *supra* note 155, at 85-99 (chapter section entitled "Lincoln as More Than An American"), and 5 THE LETTERS OF THEODORE ROOSEVELT, *supra* note 172, at 352 (1906 letter to Oliver arguing that Lincoln "unconsciously carried out the Hamiltonian tradition").

200. For a recent penetrating critique of the corporate liberal theory, see Block, *Beyond Corporate Liberalism*, 24 Soc. PROB. 352 (1977). For an apparent acknowledgement that the intellectual utility of corporate liberal theory has greatly depreciated, see Williams, *Our Invested Interests*, THE NATION, May 7, 1977, at 565 (book review suggesting that national political elite in early twentieth century has "become punching bags for everyone").

Nationalism's class incorporation ideal as superior to Wilson's New Freedom. In the *New Republic* and elsewhere Beard proclaimed that the Jeffersonian New Freedom ignored the plight of the working class in favor the present middle class *status quo*.²⁰¹ Beard still rejected even the ideal of class incorporation or consensus as hopelessly utopian.²⁰² In *The Economic Basis of Politics* Beard endorsed the more uncompromising conservative Federalist position that "different classes activated by different sentiments and views" would "grow up of necessity in all great societies."²⁰³

Yet Beard's undiluted Federalist assumption about the permanence of class consciousness led to a more radical conclusion than that found among most Progressive reformers. He thought that each major class in society would have to possess a sizable independent chunk of political power. Although leaving his alternative vision rather ill-defined, Beard still sounded a more radical theme in calling for a constitutional system reflecting a "balance" of power among the conflicting interests of the upper, middle, and working classes.²⁰⁴ He was essentially searching for an updated version of the old English ideal of "mixed" or balanced class government that allegedly played such an influential role in the founders thinking.²⁰⁵

201. For Beard's NEW REPUBLIC blast against Wilson, see text accompanying notes 173-78. For a similar attack, see Beard's review in 29 POL. SCI. Q. 506-07 (1914) of Wilson's 1912 collected campaign speeches entitled THE NEW FREEDOM (1913).

202. For Beard's impatience with this moderate reformist outlook, see his review in 30 POL. SCI. Q. 510, 511 (1915) of R.T. ELY, PROPERTY AND CONTRACT IN THEIR RELATION TO THE DISTRIBUTION OF WEALTH (1914) (Ely does not actually confront problems of "capitalist accumulation" and instead attempts only to "moralize" laissez-faire theory.)

203. POLITICS, *supra* note 45, at 18.

204. Beard likened his emphasis on a "balance of classes" to J.S. MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT (1859). Although somewhat skeptical about Mill's specific proposals for proportional and minority representation, Beard approvingly declared that Mill's "solution . . . was designed to reintroduce, without rigid legal divisions, the scheme of class representation which had been for centuries the basis of all parliamentary systems." POLITICS, *supra* note 37, at 64-65.

This somewhat more left-wing position helps explain why Beard may have described himself as "almost a socialist," see *supra* text accompanying note 149, and wrote approvingly of the study of socialism for the Intercollegiate Socialist Society's publication, see *supra* text accompanying note 148. The very fact that Beard wrote for this college socialist publication separates him dramatically from those corporate-oriented reformers discussed in J. WEINSTEIN, *supra* note 196. Weinstein points out that such reformers were especially alarmed and worked to diminish "the spread of the Intercollegiate Socialist Society and other [left-wing] groups." *Id.* at 119.

205. POLITICS, *supra* note 45, at 29-45 (Chapter II "Economic Groups and The Structure of the State" emphasizing the balance of class power doctrine as pervading English political history and very influential during Constitutional era in America).

William Appleman Williams nicely captured this Beardian mix of conservative philosophy and left-wing sentiments as a "Tory-Radical intellectual stance."²⁰⁶ Beard's conservative political assumptions, as Williams explained, often led to leftist political conclusions.²⁰⁷ Williams's penetrating characterization is especially enhanced by the fact that Beard "carried [John] Ruskin's *Unto This Last* around with him for years."²⁰⁸ Ruskin represented the quintessential nineteenth-century English Tory Radical.²⁰⁹ "I am, and my father was before me, a violent Tory of the old school," once wrote Ruskin. But he then added that he was "the reddest also of the red."²¹⁰

In such works as *Unto This Last* Ruskin demonstrated a dramatic mixture of reformist sentiments and conservative philosophical instincts. He passionately argued for the passage of an array of welfare-state proposals including a guaranteed annual wage and old-age benefits.²¹¹ Ruskin thought that such regulations were needed to establish a standard of social decency.²¹² But he also emphasized the Tory or paternalistic flavor of his proposals by declaring "that if there is any one point insisted on throughout my works more frequently than another, that one point is the impossibility of Equality."²¹³ Ruskin adamantly contended that his proposals stopped "far

206. *Charles Austin Beard: The Intellectual as Tory-Radical* in W.A. WILLIAMS, *supra* note 23, at 230, originally published in *AMERICAN RADICALS: SOME PROBLEMS AND PERSONALITIES* 295 (H. Goldberg ed. 1957).

207. *Id.*

208. Goldman, *supra* note 23, at 4. Beard approvingly cites Ruskin while discussing the doctrines of (in Beard's opinion) the most sagacious philosophers of political economy in *POLITICS*, *supra* note 45, at 6. Later in his life Beard acknowledged his allegiance to Ruskin even more clearly. Beard, *Ruskin and The Babble of Tongues*, *NEW REPUBLIC*, Aug. 5, 1936, at 370. See also R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 173 ("Beard's response to [Ruskin's] *UNTO THIS LAST* may be taken as a clue . . . not just to the young man, but to the mature scholar.")

Nevertheless, I do not mean to overemphasize the direct influence of the Ruskin legacy on Beard's intellectual stance. It is simply the most obvious manifestation that the elitist or paternalistic style of certain segments of English reformism fit very nicely with Beard's own background and intellectual proclivities. As Merrill Peterson stated, the general New Hamiltonian movement could be considered as a "New Toryism" with a "reform passion." M. PETERSON, *supra* note 54, at 337, 339.

For a discussion of the central differences between the thought of Beard and Ruskin, see *supra* text accompanying notes 226-32. Some of these specific differences might explain Beard's apparent reluctance to cite Ruskin more frequently in his writings.

209. On Ruskin's Tory-Radical stance, see R. WILLIAMS, *CULTURE AND SOCIETY, 1780-1950* 139 (1958).

210. *27 THE WORKS OF JOHN RUSKIN* 116 (E.T. Cooke and H. Wedderburn eds. 1907) [hereinafter cited as *WORKS OF RUSKIN*].

211. On Ruskin's political views, see J.D. ROSENBERG, *THE DARKENING GLASS: A PORTRAIT OF RUSKIN'S GENIUS* 95-101 (1961).

212. *Id.*

213. *WORKS OF RUSKIN*, *supra* note 210, at 141.

from invalidating the secure possession of property.’’²¹⁴ A few years later Ruskin even wrote:

The first necessity of all economical government is to secure the unquestioned and unquestionable working of the great law of Property Whatever evil, luxury, inequity, may seem to result from it, this is nevertheless the first of all Equities, and to the enforcement of this, by law and police-enforcement, the nation must always primarily set its mind.²¹⁵

Ruskin’s influence on Beard has not been adequately explored by commentators.²¹⁶ Yet the general Ruskinian character of Beard’s intellectual stance was unmistakably exhibited in the 1914 textbook *American Citizenship* written with his wife Mary Ritter Beard.²¹⁷ In a discussion regarding “safeguarding property rights by constitutions,” for example, the Beards opened with a Ruskinian Tory statement:

Although we speak of property rights as distinct from human rights, they are not so in fact. A property right is a human right to use and enjoy material things necessary to life—houses, clothes, food, land, wages and so on. Property rights also have to do with ways of securing food, clothing and shelter. They underlie all other rights, for without property of some kind one cannot live at all. Property rights are, therefore, sacred rights in all times and places.²¹⁸

The Beards then went on to mention major ways in which “the Federal Constitution protects property.’’²¹⁹ They pointed, for instance, to the prohibition against state impairment of contract and the more general due process requirements concerning governmental taking or transferring of property.²²⁰ However, in similar fashion to Ruskin, the Beards added that regulations could be imposed on the way “that property was used” in order to create a civilized society.²²¹ They applauded such reform legislation dealing with “how houses shall be built, and managed in cities, how factories

214. *Id.* at 75.

215. *Id.* at 192-93.

216. Even Hofstadter, who recognized Ruskin’s impact on Beard, *see supra* note 208, only went on to mention in passing the very general influence of Ruskin’s moralistic condemnation of laissez-faire economic principles. R. HOFSTADTER, *THE PROGRESSIVE HISTORIANS*, *supra* note 6, at 173.

217. C. & M. BEARD, *AMERICAN CITIZENSHIP* (1919, originally published 1914).

218. *Id.* at 54.

219. *Id.* at 55.

220. *Id.*

221. *Id.*

shall be ventilated, how dairies shall be conducted in the country in order to guarantee pure milk, how railways shall be operated, and what rates they shall charge for their services."²²²

It would be fatuous to claim that a Ruskinian understanding of Beard's views on private property prove them to be without contradictory tension. But a Ruskinian view of Beard helps to explain why he considered the general concept of private property important enough to attack socialists in *The Economic Basis of Politics* for their "drastic solution [of] the ownership of all productive property by society and the consequent destruction of both the capitalist class and the working class."²²³ From Beard's viewpoint, Ruskin represented one of the last thinkers who agreed with "the great political philosophers . . . before the nineteenth century"—such as Madison and Hamilton in the *Federalist*—that property and class were the unchangeable "fundamental" elements in political science.²²⁴ Other nineteenth-century political thinkers—whether of the Marxist, Rousseauian, or laissez-faire vintage—dangerously "ignore[d]" or attempted to "destroy economic classes or economic inequalities" in establishing the individual rights of "man" over the collective rights of the "people."²²⁵

C. Beard as a Modernist Historian

Beard's differences with Ruskin's views, however, are also crucial to understanding Beard's intellectual stance. Ruskin castigated the modern machine age as a brutal devolution from the high and humane civilization of the Middle Ages.²²⁶ But by the time Beard encountered the Ruskinian legacy in English reform thought, a generation of Laborite thinkers had worked to root out its uncompromisingly antimodernist elements.²²⁷ The Ruskinian view re-

222. *Id.*

223. POLITICS, *supra* note 45, at 66.

224. *Id.* at 46.

225. *Id.* For his apparent lumping of Marx together with "republican idealists" for failing to believe in the permanence of class conflict, see Beard, Book Review, 27 POL. SCI. Q. 512 (1911) (reviewing H.A.L. FISHER, *THE REPUBLICAN TRADITION IN EUROPE*).

226. In his insightful survey of English cultural and social criticism, Raymond Williams argues that Ruskin's "mediaevalism" always served more as a polemical vehicle to criticize the *status quo* rather than a nostalgic belief in a golden age. R. WILLIAMS, *supra* note 209, at 140, 147, 155.

227. Braeman, *The English Experience*, *supra* note 146, at 174-75. The widely read book JOHN RUSKIN: SOCIAL REFORMER (1898) by reformer John Hobson not only played a key role in sanitizing and modernizing the Ruskinian legacy but also apparently inspired Beard's advocacy of the name "Ruskin Hall" for the labor enclave at Oxford. *Id.* See also E. NORE, *supra* note 27, at 233 n.4.

mained a paternalistic reform critique of the contemporary capitalist *status quo*. Yet it gained a new “progressive” twist that accepted the possibility and even acknowledged the fact of beneficial social evolution. Beard joined with such neo-Ruskinian intellectuals in refusing to long for a turning back of the clock before the Industrial Revolution.²²⁸ Beard also expressed no hostility to the widening of political suffrage under modern democracies. “While no one can be blind to the evils which have been associated with democracy in the United States,” concluded Beard in a 1912 essay, “no serious student . . . can doubt for an instant that as between democracy and the outworn systems of the past there can be no choice.”²²⁹

Beard thus adopted an explicitly evolutionary view in order to justify reforms never contemplated by the nineteenth-century Ruskin or the eighteenth-century Federalists. In their *American Citizenship* discussion of property rights, for example, Beard and his wife declared that “the kinds of property rights and the ways in which property may be used, vary greatly from age to age.”²³⁰ The Beards especially stressed such examples as the movement away from the idea that other humans could be considered private property and towards the idea that women could hold property in their own right.²³¹ In a similar vein the Beards discussed evolving ideas about kinds of property that belong to all citizens and should be held in trust by government—roads, railways, electrical facilities, and water works.²³²

From this evolutionary perspective Beard displayed no hesitation in acknowledging that the constitutional *status quo* was outmoded in certain important respects. For example, because he saw no reason to accept eighteenth-century political assumptions about the status of women, Beard strongly endorsed the passage of a constitutional amendment guaranteeing their right to vote.²³³ Similarly, in

228. Braeman, *Beard: The English Experience*, *supra* note 146, at 184-85. See, e.g., Beard's early work, *THE INDUSTRIAL REVOLUTION* (1902) (arguing that rise of modern industrialism was leading to progress of civilization). Beard later exhibited his rejection of the concomitant anti-industrial “arts-and-crafts” ideology commonly associated with Ruskin. See Beard, *The American Invasion of Europe*, 158 *HARPER'S* 477 (1928) (Beard rejects the idea that “the machine system is more dehumanizing than agriculture and handicrafts, beautiful as the latter may seem to dreamers who have never wielded a manure-fork or swung an axe.”) For an examination of Ruskin's influence in the Arts and Crafts ideology in America at the turn of the century, see J. LEARS, *NO PLACE OF GRACE: ANTIMODERNISM AND THE TRANSFORMATION OF AMERICAN CULTURE, 1880-1920* 62-66 (1981).

229. *DOCUMENTS ON THE STATE-WIDE INITIATIVE, REFERENDUM, AND RECALL* 14 (C.A. Beard and B.E. Shultz 1970; originally published 1912).

230. *AMERICAN CITIZENSHIP*, *supra* note 217, at 55.

231. *Id.* at 57-58.

232. *Id.* at 58-59.

233. See *supra* text accompanying note 150.

Contemporary American History Beard argued that the “centralized national economy” engineered by such mammoth combines as the Rockefeller and Morgan interests had overwhelmed the more fragmented system of governmental power originally authorized by the Constitution.²³⁴ He thought that the constitutional amending system in general should be more open to change and that the national legislative branch should be granted more power to cope with new social transformations.²³⁵

Yet Beard’s evolutionary viewpoint also allowed him to absolve the founders of blame for the problems of the modern era. The Constitution was constructed, according to Beard, “when economic conditions were totally different from what they are today.”²³⁶ The modern “economic revolution” in American life, in Beard’s opinion, did not fully take place until after the Civil War.²³⁷ In *The Economic Basis of Politics* Beard even declared that the existence of unquestioned caste and class distinctions in eighteenth-century America meant that the Constitution was forged in “the midst of medieval forms and institutions.”²³⁸ In this medieval setting the Founders had acted heroically to solve the problems of their critical period. The blame for the contemporary critical period belonged to the conservative standpatters of the modern era who would not follow the example of the Founders and move swiftly to revamp the constitutional system.

Furthermore, Beard’s evolutionary viewpoint was not “progressive” in the sense of a simplistic Whiggish optimism about the inevitable upward course of history.²³⁹ He believed that people could control their destinies *if* they could go beyond idealistic ideological sentiments and grasp the permanent economic class realities of political life.²⁴⁰ Beard, however, was convinced that all contemporary political ideologies lacked such crucial class consciousness. He feared that the modern critical period would remain a futile battle pitting either ineffectual Wilsonian liberals or misguided populists and socialists against recalcitrant laissez-faire conservatives.

Beard consequently retained a Ruskinian skepticism about modern political thought. He believed that the twentieth century was in critical

234. HISTORY, *supra* note 179, at 307.

235. See *supra* text accompanying note 151.

236. HISTORY, *supra* note 179, at 305.

237. *Id.* at 50.

238. POLITICS, *supra* note 45, at 41.

239. For the classic critique of this presumption of inevitable historical progress, see H. BUTTERFIELD, *THE WHIG INTERPRETATION OF HISTORY* (1951).

240. See *supra* text accompanying note 228.

need of some updated Federalist class theory. Rather than establishing a synthesis of Jeffersonian idealism and Hamiltonian realism, Beard's avowed goal was, as he wrote in *The Economic Basis of Politics*, to express Federalist thought in "modern terms."²⁴¹ He wanted to modernize the Federalist political message that economic class could neither be ignored nor obliterated.²⁴² And he specifically acknowledged the desire to recycle Madison's prophetic conclusion in *Federalist No. 10* that "the regulation" of these different class interests would form "the principal task" of "modern legislation."²⁴³

This belief that the nation was facing a new critical period separated Beard from other more optimistic Progressive thinkers. His sense of present crisis and the inadequacy of dominant American traditions actually pushed Beard's viewpoint more in the direction of the alienated skepticism found among the emerging cadre of "modernist" literary and artistic intellectuals.²⁴⁴ Although not fully aware of Beard's heterodox embrace of Federalism, Professor Henry May was therefore quite correct in characterizing his philosophical stance as at least "halfway out of the majority progressive camp."²⁴⁵

IV. THE RECONSTRUCTED LEGACY OF AN ECONOMIC INTERPRETATION

The preceding reconstruction of Beard's viewpoint wipes out any possibility that he was a latter-day Anti-Federalist critic of the Constitution. It also establishes, however, that Beard was not interested in making a traditional conservative apology for the Federalists. The author of *An Economic Interpretation* expressed pro-Federalist sympathies from a decidedly Progressive reform stance. The movement for the Constitution represented, from Beard's unorthodox viewpoint, an exemplary reformist push for national centralization of governmental power. The founders consti-

241. *Id.* at 70.

242. See *supra* text accompanying note 225.

243. POLITICS, *supra* note 45, at 70 (emphasis added). For Madison's statement in FEDERALIST NO. 10, see THE FEDERALIST PAPERS (C. Rossiter ed. 1961).

244. On the emergence of the modern American intelligentsia in the pre-World War I era, see generally H. MAY, THE END OF AMERICAN INNOCENCE: A STUDY OF THE FIRST YEARS OF OUR OWN TIME, 1912-1917 (1959). For a casual recognition of this point, see R. HOFSTADTER, *supra* note 6, at 184 (noting that during this period of Beard's intellectual career "[m]odernism, in thought as in art, was dawning upon the American mind. Beard's book on the Constitution fittingly appeared in the same year as the New York Armory show . . .") For a brief discussion of the modernist painting exhibit at the Armory Show of 1913, see H. MAY, *supra*, 244-47.

245. H. MAY, *supra* note 244, at 29. For emphasis on the point that Beard remained resolutely optimistic throughout the years despite his often pessimistic-sounding analyses, see E. NORE, *supra* note 27, at 183.

tuted a progressive political elite who succeeded because their class consciousness precluded flirtation with liberal or utopian ideology. Although their handiwork was coming apart in the modern industrial age, the only solution to the problems of the new critical period could come from an updated resurgence of Federalist political wisdom.

The stereotypical image of Beard has blocked recognition of this heterodox viewpoint in *An Economic Interpretation*. Yet, after the misleading preconceptions of admirers and critics are dropped, the genuinely Beardian themes appear quite plainly in the book.

*A. The Modernist Nature of Beard's Neo-Federalist
Progressivism in An Economic Interpretation*

Beard most clearly manifested his viewpoint in *An Economic Interpretation* by arguing that 1787 represented a premodern political world. Thus, instead of representing quintessential conservative standpatters, the founders were exemplary progressive forerunners who paved the way for America's modern emergence.

Beard immediately announced his modernist assumptions in Chapter II's analysis of "the structure of American society in 1787."²⁴⁶ In explaining the strategy of his "economic interpretation," Beard stated that his goal was to "discover . . . what classes and social groups existed in the United States just previous to the adoption of the Constitution."²⁴⁷ And his analysis left no doubt that the political configuration did not resemble that emerging in the modern era. He first announced that such numerous groups as women, blacks, and the white poor were "politically non-existent" due to their inability to own property or vote.²⁴⁸ Moreover, 1787 offered an even more striking contrast to the modern era because there existed no labor movement. "In no state, apparently, had the working-class developed," according to Beard, "a consciousness of a separate interest or an organization."²⁴⁹ Beard even concluded that the modern problems created by the rise of the industrial working class were foreign to eighteenth-century thinkers:

In turning over the hundreds of pages of writing left by eighteenth-century thinkers one cannot help being impressed with the fact that the existence and special problems of a working class, then already sufficiently numerous to form a considerable portion of society, were outside the realm of politics,

246. AN ECONOMIC INTERPRETATION, *supra* note 2, at 24.

247. *Id.* at 19.

248. *Id.* at 26.

249. *Id.* at 25.

except in so far as the future power of the proletariat was foreseen and feared So far as social policy is concerned . . . the working-class problem had not made any impression on the statesmen of the time. Hamilton, in his report on manufacturers, dismisses the subject with scant notice.²⁵⁰

Beard furthermore hardly intended his analysis of “the disfranchised” in 1787 as an indictment of the founders.²⁵¹ He was quite aware that the barriers to “universal manhood suffrage” detailed in Chapter IV, for example, *existed in almost every state under the decentralized regime of the Articles of Confederation*.²⁵² Such forms of political disfranchisement were simply facts of premodern political life in eighteenth-century America. This complete exclusion of the propertyless classes insured, as Beard wrote in Chapter XI, that the battle over the Constitution would pit “one class of property interests . . . in conflict with another.”²⁵³

Beard acknowledged that the rhetoric of the Anti-Federalists sometimes resembled that of modern egalitarian democrats. Their diatribes against the Constitution, according to Beard, often emphasized “the inherent antagonism between democracy and the Federalist concept of government” in a manner that resembled the “warmest advocate[s]” of direct democracy in the twentieth century.²⁵⁴ Beard, however, specifically deflated the apparent connection by pointing out that the supposed “levelling democrats” of the eighteenth century championed a “mass” that was composed almost exclusively of landed “property holders.”²⁵⁵

Moreover, Beard identified a prepolitical mentality among the citizenry and not property qualifications as the central bar to widespread political participation in the battle over the Constitution. “Far more were disfranchised through apathy and lack of understanding of the significance of politics,” stated Beard in Chapter IX on “The Popular Vote on the Constitution.”²⁵⁶ Beard supported his view by emphasizing the difference between landed property qualifications in the eighteenth and twentieth centuries. He noted that “only about 3 percent of the population dwelt in towns of over 8,000 inhabitants in 1790”²⁵⁷ He also stated that the pos-

250. *Id.*

251. *Id.* at 24.

252. *Id.* at 64-72.

253. *Id.* at 294.

254. *Id.* at 313.

255. *Id.* at 314.

256. *Id.* at 242.

257. *Id.*

session of qualifying freeholds in the relatively spacious environs of eighteenth-century America was “widely distributed, especially in New England.”²⁵⁸ Therefore, according to Beard, “nothing like the same proportion was disfranchised by the property qualifications as would be today under similar qualifications.”²⁵⁹ He estimated that “nowhere were more than one-third of the adult [white] males disfranchised by the property qualifications.”²⁶⁰

Emphasis on Beard’s modernist frame of reference in *An Economic Interpretation* does not mean that Beard saw no resemblance at all between the political conflicts of 1787 and 1913. He certainly saw the eighteenth-century Anti-Federalists as predecessors of the petit-bourgeois outlook displayed by backward-looking reformers of his own era. But, in his opinion, the Anti-Federalists were the actual standpatters of the eighteenth century. According to Beard, the “working-men in the cities . . . would have doubtless voted with the major interests of the cities in favor of the Constitution as against the agrarians had they been enfranchised.”²⁶¹

Another superficial similarity was that twentieth-century conservatives followed the Federalists in using “the sanctity and mystery of the law as a foil” against challenges by petit-bourgeois or more radical opponents.²⁶² The Federalists, however, were dynamic and pragmatic activists for progressive change in 1787. Twentieth-century conservatives were unfortunate prisoners of this unreconstructed eighteenth-century viewpoint that had hardened into a reactionary legalistic dogmatism. Beard spoke of the Founders’ “adoption of a *revolutionary* programme” and their establishment of the new Constitution as a “*revolution* that overthrew the Articles of Confederation.”²⁶³ In describing Madison’s arguments in the *Federalist*, Beard similarly pictured him as “frankly pleading the justification of revolution if the legal arguments which he advanced were deemed insufficient.”²⁶⁴ Beard furthermore acknowledged that from a modern perspective “the powers for positive action conferred upon the new government [by the Federalists] were few” and obviously inadequate in the twentieth century.²⁶⁵ Yet, according to Beard, the new constitutional powers of government “were

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.* at 25 n. 1.

262. *Id.* at 161.

263. *Id.* at 33, 63 (emphasis added).

264. *Id.* at 222.

265. *Id.* at 169.

adequate to the purposes of the framers'' in the eighteenth century.²⁶⁶

The modernist nature of Beard's neo-Federalist Progressivism also unifies the terse and often misinterpreted melange of thirteen "Conclusions" that Beard tacked onto *An Economic Interpretation*. In keeping with Beard's view of the eighteenth century as a pre-democratic age, four of his conclusions emphasized the relative lack of democratic procedures and mass participation during the making of the Constitution. These "predemocratic" conclusions were the following:

[3] No popular vote was taken directly or indirectly on the proposition to call the Convention which drafted the Constitution.

[4] A large propertyless mass was, under the prevailing suffrage qualifications, excluded at the outset from participation (through representatives) in the work of framing the Constitution.

.....

[8] In the ratification of the Constitution, about three-fourths of the adult males failed to vote on the question, having abstained from the elections at which delegates to the state conventions were chosen, either on account of their indifference or their disfranchisement by property qualifications.

[9] The Constitution was ratified by a vote of probably not more than one-sixth of the adult males.²⁶⁷

It is important to note that, unlike conventional admirers as well as critics, Beard pointedly refused to brand this process "undemocratic" in any of the conclusions.²⁶⁸ Elsewhere in *An Economic Interpretation*, as noted previously, Beard dismissed the use of such labels as meaningless.²⁶⁹ He especially thought that questions about the degree of democracy in the process were ill-suited in the still apathy-ridden political world of 1787.²⁷⁰ In Chapter IX on "The

266. *Id.*

267. *Id.* at 324-25.

268. For the egregious example of Robert E. Brown's charges about Beard's presentation of the founders as antidemocratic, see *supra* text accompanying note 16. On this particular point, I identify the waywardness of Brown's critique in a diametrically opposed fashion from the charge in E. NORE, *supra* note 27, at 57 (arguing that Brown failed to understand Beard's supposed belief that American politics was undemocratic not only in 1787 but *relatively unchanged* in the 1900's).

269. See *supra* text accompanying notes 114-15, 253-55.

270. See, e.g., AMERICAN CITIZENSHIP, *supra* note 217, at 160 (good example of "confusion" about word "democracy" is belief that framers "thought they were establishing a democracy;" on the contrary, "at the time of the American Revolution and the formation of the Constitution the word democracy was in disfavor in the United States as well as in Europe.").

Popular Vote of the Constitution," Beard even downplayed any emphasis on the founders' opting for ratification by elected state conventions rather than the modern mechanism of direct referendum. "The referendum was not unknown at that time," stated Beard, "but it was not a fixed principle of American politics."²⁷¹

Another set of four conclusions stressed that economic class interest propelled the Federalist movement into collision with the predominantly agrarian and small propertied classes:

[1] The movement for the Constitution of the United States was originated and carried through principally by four groups of personality interests which had been adversely affected under the Articles of Confederation: money, public securities, manufactures, and trade and shipping.

. . . .

[5] The members of the Philadelphia Convention which drafted the Constitution were, with a few exceptions, immediately, directly, and personally interested in, and derived economic advantages from, the establishment of the new system.

. . . .

[11] The leaders who supported the Constitution in the ratifying conventions represented the same economic groups as the members of the Philadelphia Convention; and in a large number of instances they were also directly and personally interested in the outcome of their efforts.

[12] In the ratification, it became manifest that the line of cleavage for and against the Constitution was between substantial personality interests on the one hand and the small farming and debtor interests on the other.²⁷²

From his class-oriented Madisonian and Ruskinian viewpoint, Beard considered such conflict over economic interest between politically conscious groups as quite sensible. More important, he hoped that the emergence of such new politically conscious groups as the modern working class would establish a new balance of economic power. The battle of the Constitution was not an embarrassingly grubby and greedy conflict. From Beard's viewpoint it was instead the model of a realistic political struggle.

The remaining set of conclusions emphasized that the Constitution was the product of an activist elite that believed in the political primacy of private property and held no faith in the general will of pure majoritarian action:

271. AN ECONOMIC INTERPRETATION, *supra* note 2, at 239.

272. *Id.* at 324-25.

[2] The first firm steps toward the formation of the Constitution were taken by a small and active group of men immediately interested through their personal possessions in the outcome of their labors.

. . . .

[6] The Constitution was essentially an economic document based upon the concept that the fundamental private rights of property are anterior to government and morally beyond the reach of popular majorities.

[7] The major portion of the members of the Convention are on record as recognizing the claim of property to a special and defensive position in the Constitution.

. . . .

[10] It is questionable whether a majority of the voters participating in the elections for the state conventions in New York, Massachusetts, New Hampshire, Virginia, and South Carolina, actually approved the ratification of the Constitution.

. . . .

[13] The Constitution was not created by "the whole people" as the jurists have said; neither was it created by "the states" as Southern nullifiers long contended; but it was the work of a consolidated group whose interests knew no state boundaries and were truly national in their scope.²⁷³

These conclusions were consistent with Beard's belief that the founders were exemplary political activists. Although not sharing their exact eighteenth-century conceptions, the Ruskinian Beard applauded their general recognition of the permanence of property distinctions and economic inequality. They were not deluded by modern liberal or utopian notions about the possibility of overcoming class distinctions. As Beard wrote elsewhere in *An Economic Interpretation*, the founders "were not far removed from that frank recognition of class rights which characterized English society."²⁷⁴ These thinkers "were not under the necessity of obscuring—at least to the same extent as modern partisan writers—the essential economic antagonisms featuring in law and constitution making."²⁷⁵ He actually hoped that Progressive reformers (like himself) who desired to establish a new and different balance of power among new political groups could follow the example of the founders. As a Hamiltonian New Nationalist, Beard certainly hoped that Progress-

273. *Id.*

274. *Id.* at 189.

275. *Id.*

sive reformers could form “a consolidated group whose interests knew no state boundaries and were truly national in scope.”²⁷⁶

V. CONCLUSION

In the introduction to the 1935 edition of *An Economic Interpretation*—at a time when he was at the height of his intellectual reputation—Beard bemoaned the fact that the book had been so misunderstood. “When my book [*An Economic Interpretation*] appeared,” remarked Beard, “it was roundly condemned by conservative Republicans, including ex-President Taft, and praised with about the same amount of discrimination, by Progressives and others on the left wing.”²⁷⁷ As this essay has strived to demonstrate, Beard’s ironic lament about the fate of *An Economic Interpretation* was quite justified.

Yet it is not surprising that most liberal or conservative intellectual contemporaries failed to comprehend his position. A work by a politically-engaged intellectual dealing with such a highly symbolic historical conflict was inevitably going to be interpreted as enlisting on either the traditional Jeffersonian progressive or Hamiltonian conservative side. And Beard’s well-known reputation as a reformer was bound to have a more influential impact on contemporaries than his unorthodox view of the founders as exemplary class-conscious political activists. Even such a premier legal realist as Justice Holmes was scandalized by Beard’s unsentimental economic analysis of the founders’ motivations. Thus, Holmes joined traditional conservative interpreters in arguing that Beard had unfairly attempted to rob the founders of any “high-mindedness.”²⁷⁸

The tragedy, however, is that intellectuals and scholars of the post-Progressive era have uncritically accepted and reinforced the confusions of Beard’s own generation about his viewpoint. Historians have come to recognize the intellectual contortions involved in tracing an unbroken liberal reform tradition from Jefferson to FDR and beyond.²⁷⁹ Legal scholars now more commonly acknowledge that it is a “misconceived quest” for jurists to attempt a literal

276. *Id.* at 324-25.

277. *Id.* at viii.

278. THE HOLMES-POLLOCK LETTERS, 223 (M.D. Howe ed. 1941). For a discussion of Holmes’s reaction to Beard’s AN ECONOMIC INTERPRETATION, see M. WHITE, *supra* note 8, at 107.

279. After Beard, the historian who most trenchantly conducted the critical questioning about the alleged continuity of the liberal reform tradition was Richard Hofstadter. See R. HOFSTADTER, THE AGE OF REFORM: FROM BRYAN TO F.D.R. 302 (1955) (arguing that New Deal was departure from traditional liberal reformism reflected by Progressives and Populists).

rendering of the founders' original constitutional intentions.²⁸⁰ Intellectuals in various fields have accepted an emphasis on class structure and consciousness as necessary to the understanding of political conflict.²⁸¹ Beard, however, is neither studied nor honored as a thinker who pioneered such insights in American intellectual commentary. He is unjustifiably kicked around as a cranky old populist muckraker who could not possibly have entertained such sophisticated notions.²⁸²

This mistreatment of Beard also stands as an embarrassing indictment of modern intellectual commentary. It is true that determining Beard's complicated viewpoint purely from the often ice-cold monographic prose of *An Economic Interpretation* represents a difficult task. Whole books and lengthy articles, nevertheless, have been directed to exposing the allegedly simplistic viewpoint of Beard in *An Economic Interpretation*.²⁸³ Most of these efforts have been conducted not only without reference to Beard's contemporaneous works but also without adequate professional sensitivity to the themes evident in *An Economic Interpretation*. Beard has been honored and now condemned for almost completely wrong intellectual reasons.

280. See, e.g., Brest, *The Misconceived Quest for An Original Understanding*, 60 B.U.L. REV. 204 (1980); see also J. ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 11 (1980) (arguing for "the impossibility of a clause-bound interpretivism").

281. See generally *THE LEFT ACADEMY: MARXIST SCHOLARSHIP ON AMERICAN CAMPUSES* (B. Ollman ed. 1982).

282. See, e.g., treatment of Beard in G. WILLS, *EXPLAINING AMERICA: THE FEDERALIST* (1979) and most of the essays in *HOW DEMOCRATIC IS THE CONSTITUTION?* (R.A. Goldwin and W.A. Schramba eds. 1980).

283. See, e.g., works mentioned in notes 4, 6, 16.