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PROFITS,
AND THE
STRUGGLE
FOR THE
CONSTITUTION

LAWRENCE GOLDSTONE

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We the People

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WALKER & COMPANY

NEW YORK

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Published by Walker Publishing Company, Inc., New York
Distributed to the trade by Holtzbrnck Publishers

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The Library of Congress has cataloged the hardcover edition of this book as follows:

Goldstone, Lawrence, 1947-

Dark bargain : slavery, profits, and the struggle for the Constitution / Lawrence Goldstone.
p. cm.

Includes bibliographical references and index.

1. United States. Constitutional Convention (1787)—History. 2. Constitutional history—United States. 3. Slavery—Law and legislation—United States—History. 4- United States—Politics and governmental783-1789. I. Title.

KF4510.G65 2005

342.73202'9—dc22

2005042315

First published in the United States in 2005 by Walker & Company
This paperback edition published in 2006

eISBN: 978-0-802-71836-5

Visit Walker & Company's Web site at www.walkerbooks.com

1 3 5 7 9 10 8 6 4 2

Book design by Maura Fadden Rosenthal/Mspace

Typeset by Westchester Book Group

Printed in the United States of America by Quebecor World Fairfield

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Dark Bargain

PROLOGUE

Fulcrum

On the morning of Thursday, January 17, 1788, General Charles Cotesworth Pinckney rose to address his colleagues in the South Carolina General Assembly. One of the state's most distinguished and respected citizens, famed for his exploits in both peace and war, the general was a fourth-generation Carolinian who could trace his lineage to a vassal of William the Conqueror.

Born in 1746, son of a future chief justice of the South Carolina courts, Pinckney had been sent to Oxford to study law, where he read with the great legal theorist William Blackstone. He had returned to set up his own practice, but soon joined the struggle for independence as an aide-de-camp to General Washington. Pinckney won quick promotion and in 1780 was one of the officers charged with resisting the British siege at Charleston. Even in the face of overwhelming force, he had advocated fighting on, only agreeing to surrender after intense persuasion by his fellow officers. As a result, he spent the next year as a British prisoner of war. When his captors tried to persuade him to change sides, Pinckney said, "If I had a vein that did not beat with the love of my Country, I myself would open it. If I had a drop of blood that could flow dishonourable, I myself would let it out."¹

For all his lineage and fame, however, on that January morning in 1788, General Pinckney, described as "an indifferent Orator,"² faced possibly the greatest challenge of his life. The debate he was about to join, which had begun the previous day and would continue for two more, was crucial not only to the future of his state, but quite possibly would determine the very survival of the fledgling nation he had battled for and been imprisoned to secure. The subject was whether to call a convention to ratify the proposed new Constitution.

The Constitution had been drafted the previous summer in Philadelphia, fifty-five men from twelve states participating in often rancorous debate on how best to rescue the United States from the obviously inadequate Articles of Confederation.* General Pinckney, along with his younger cousin Charles,³ had been one of the four delegates chosen to represent South Carolina.

According to the plan that had emerged from the convention, nine states would have to ratify the new Constitution if the Articles were to be replaced. *Fulcrum* By the time the South Carolina legislature took up the question of whether to authorize a ratifying convention, five states had already approved the document and conventions to take up the question were scheduled in a number of others. Still, adoption was very much in doubt. Intense opposition existed in New York, and ratification was far from certain in Massachusetts. Virginia, perhaps the most important state in the Union in terms of wealth and strategic location, would not even meet to consider the new Constitution for months, and sentiment in the Old Dominion was not encouraging. Virginia's governor, Patrick Henry, a rabid opponent of ratification, was already famous for his refusal to even attend the convention. "I smelt a rat," he had noted with typical understatement. If the South Carolina legislature declined to call a ratifying convention, it could well start a cascade of rejection.

Many South Carolinians were leery of ceding local prerogative to a central government, particularly one that might be dominated by the North. Under the Articles, each state voted as a unit, and at least nine votes were required to pass even the most basic legislation. As a result, the five southern states effectively maintained veto power over any measure that might be rammed through by the eight states to the north. Under the voting rules of the new Constitution that blanket veto would be lost. Fear that tyranny and despotism were therefore just around the corner had to be overcome if South Carolina were to approve the new Constitution.

Heading the opposition was a figure of equal stature, Rawlms Lowndes, who had been South Carolina's second president.⁴ At the close of the Wednesday session, Lowndes had insisted that while "he believed the gentlemen that went from this state to represent us in Convention possessed as much integrity, and stood as high in point of character, as any gentlemen that could have been selected," the plan would be a disaster.⁵

"It has been said that this new government was to be considered as an experiment," Lowndes had said.* "He really was afraid it would prove a fatal one to our peace and happiness. An experiment! What, risk the loss of political existence on experiment! So far from having any expectation of success from such experiments, he sincerely believed that, when this new Constitution should be adopted, the sun of the Southern States would set, never to rise again."⁶

Lowndes's proclamation had ended a day of long and grueling debate. It had begun with Charles Pinckney, the general's cousin, giving a lengthy description of the plan that had emerged the previous September. The younger Pinckney, headstrong and brilliant—he had lied about his age so as to appear to be the youngest delegate in Philadelphia—had spoken for most of the morning. When he finally concluded his remarks, the delegates had eschewed a paragraph-by-paragraph reading of the new Constitution, but had instead launched immediately into a debate on the aspect of the plan that they found most frightening. Since, as one of the representatives put it, the president of the United States "was not likely ever to be chosen from South Carolina or Georgia" (a prediction that remained accurate for almost two centuries),⁷ executive power seemed to be of the most concern. Curiously, of all the powers of the presidency, it was the authority to negotiate treaties on which the delegates focused.

Almost the entire afternoon was spent discussing the treaty power, both in terms of its being binding on individual states and the need for a two-thirds vote in the Senate to ratify. Still, there was a surprising lack of specifics as to just what sort of treaties the South Carolinians found most objectionable. Instead, the debate was conducted on a philosophical plane, filled with comparisons to other governments—England and France, especially—and the theoretical dangers of treaty making and the potential for despotism. Then, just before the delegates were to adjourn for the day, Lowndes rose to speak, and the meaning of the previous debates became clear.

"The interest of the Northern States would so predominate, as to divest us of any pretensions to the title of a republic," he protested. "In the first place, what cause was there for jealousy of our importing negroes? Why confine us to twenty years* or rather why limit us at all? For his part, he thought this trade could be justified on the principles of religion, humanity, and justice; for certainly to translate a set of human beings from a bad country to a better, was fulfilling every part of these principles.⁸—But they don't like our slaves, because they have none themselves, and therefore want to exclude us from this great advantage. Why should the Southern States allow of this . . . ?"

Slavery, as Lowndes made clear, was at the very heart of the matter. "Without negroes, this

state is one of the most contemptible in the Union . . . Negroes were our wealth, our only natural resource; yet behold how our kind friends in the north were determined soon to tie up our hands, and drain us of what we had!"

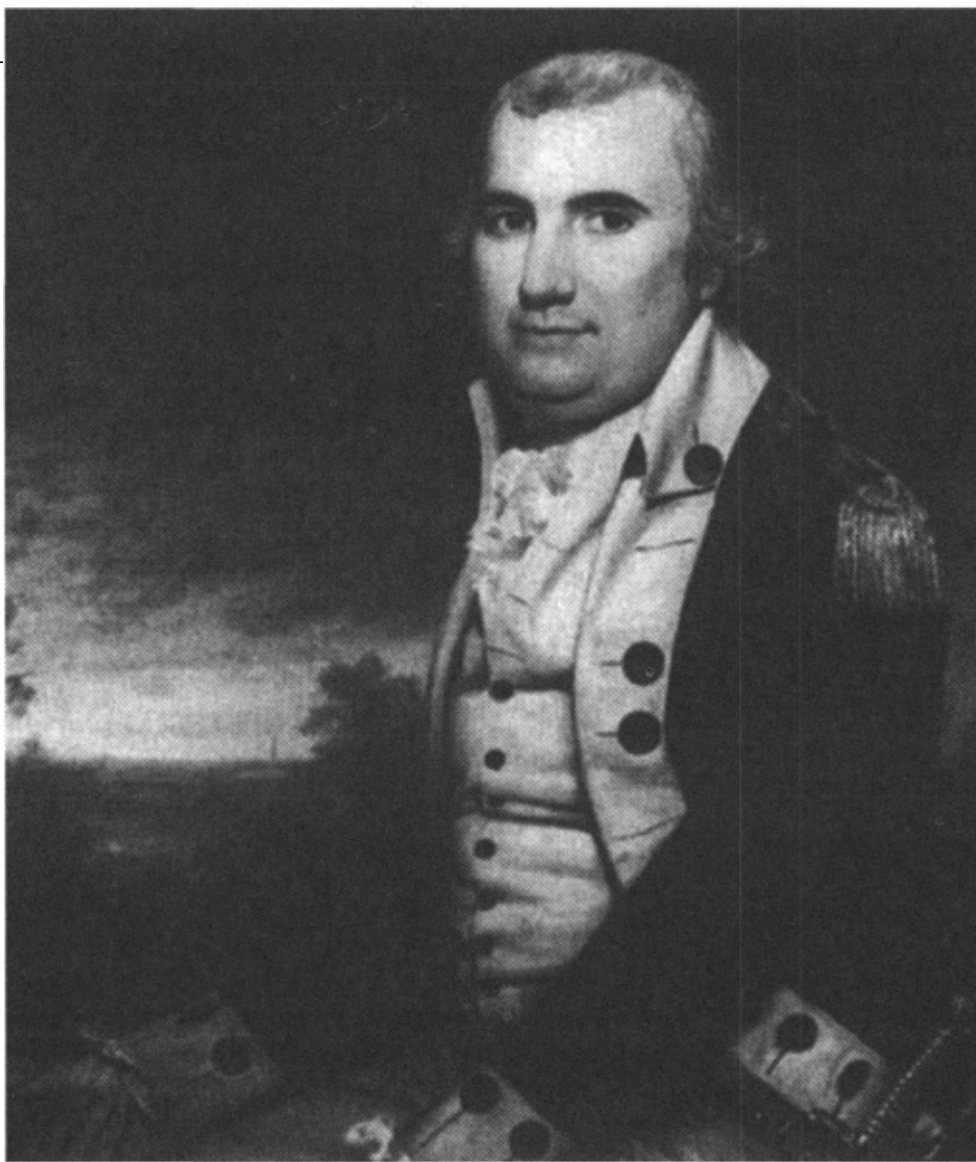
The session ended and the delegates were left to spend the night pondering a South Carolina in which, because of treaties with foreign powers or Congressional fiat, slavery had withered away or had been prohibited altogether. Thus, when General Pinckney rose to speak on Thursday morning, he likely felt that in order to save the United States, he had to persuade his fellow Carolinians of what he himself was already convinced and had struggled for four long months to achieve—that the new Constitution did, in fact, protect and even encourage the institution of slavery.

He immediately went on the attack, refuting Lowndes point by point. Due to the rule of secrecy under which the debates in Philadelphia had been conducted, only the general and the other three members of the South Carolina delegation had any idea of what had actually been said, and all of them favored the plan. He was therefore able to both slant his description of the proceedings and assure his suspicious fellow planters that the Yankees were not the conniving ogres that Lowndes had made them out to be. The northerners, in fact, General Pinckney observed, had turned out to be a group of quite reasonable fellows, eager to find middle ground.

When, for example, he described the compromise over apportionment, the general noted, "As we have found it necessary to give very extensive powers to the federal government both over the persons and estates of the citizens, we thought it right to draw one branch of the legislature immediately from the people, and that both wealth and numbers should be considered in the representation. We were at a loss, for some time, for a rule to ascertain the proportionate wealth of the states. At last we thought that the productive labor of the inhabitants was the best rule for ascertaining their wealth."

Not having been present in Philadelphia, Lowndes and the other opponents of the plan could not have known that this statement was patently false, that wealth had been repeatedly rejected as a means of apportionment, and productive labor had never been seriously considered as a standard.

"In conformity to this rule, joined to a spirit of concession," General Pinckney went on, "we determined that representatives should be apportioned among the several states, by adding to the whole number of free persons three fifths of the slaves. We thus obtained a representation for our property; and I confess I did not expect that we had conceded too much to the Eastern States, when they allowed us a representation for a species of property which they have not among them."



Charles Cotesworth Pinckney

This was, once again, less than a fully accurate account. Northern acquiescence in allowing slaves to be counted in apportionment of legislators was a victory for southerners, to be sure, but Pinckney and the rest of the South Carolina delegation had continually urged that slaves be counted in full and been rebuffed not just by northerners, but even by their slaveholding brethren in Virginia and Maryland.

"The first House of Representatives will consist of sixty-five members," the general continued. "South Carolina will send five of them. Each state has the same representation in the Senate that she has at present; so that South Carolina will have, under the new Constitution, a thirteenth share in the government, which is the proportion she has under the old Confederation: and when it is considered that the Eastern States are full of men, and that we must necessarily increase rapidly to the southward and south-westward, I do not think that the Southern States will have an inadequate share in the representation. The honorable gentleman alleges that the Southern States are weak. I sincerely agree with him. We are so weak that by ourselves we could not form a union strong enough for the purpose of effectually protecting each other. Without union with the other states, South Carolina must soon fall."

When Pinckney moved on to the most volatile issue of all, that of the slave trade, he was on firmer ground. "By this settlement we have secured an unlimited importation of negroes for

twenty years. Nor is it declared that the importation shall be then stopped; it may be continued."*

"I am of the same opinion now as I was two years ago . . . that, while there remained one acre of swampland uncleared of South Carolina, I would raise my voice against restricting the importation of negroes. I am as thoroughly convinced as that gentleman is, that the nature of our climate, and the flat, swampy situation of our country, obliges us to cultivate our lands with negroes, and that without them South Carolina would soon be a desert waste."

General Pinckney then persuasively summed up the many advantages that the new Constitution offered to slaveholders. "We have a security that the general government can never emancipate them, for no such authority is granted; and it is admitted, on all hands, that the general government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several states. We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all circumstances, we have made the best terms for the security of this species of property it was in our power to make. We would have made better if we could; but, on the whole, I do not think them bad."

Immediately after the general ended his remarks and took his seat, another legislator, Dr. David Ramsay, observed that he "thought our delegates had made a most excellent bargain for us, by transferring an immense sum of Continental debt, which we were pledged to pay, upon the Eastern States, some of whom (Connecticut, for instance) could not expect to receive any material advantage from us. He considered the old Confederation as dissolved."

Lowndes continued to oppose the Constitution personally, but Pinckney's performance had been powerful and persuasive. When the vote to call a ratifying convention was held a day later, it passed unanimously. Even Lowndes himself was forced to grudgingly acknowledge that perhaps South Carolina should allow a ratifying convention to consider the plan. Charles Cotesworth Pinckney had convinced the planters of South Carolina. Acting in the interest of their social system, slaveholders had helped preserve the chance of union.

*Rhode Island—"Rogue's Island" to some—by this time dominated by what was popularly seen as a radical agrarian government, had refused to send a delegation.

*Both in the records of legislative meetings and the notes to the Constitutional Convention, speakers were often referred to in the third person by whoever was taking the notes. Although in countering a speaker referred to as "he" takes some getting used to, for accuracy and to give a flavor of the proceedings, these records will always be cited as written. In this case, for example, the "he" in the following sentence is Lowndes himself and the statement is a quote, not a paraphrase. This treatment will be adhered to with respect to convention delegates as well. Therefore, unless specifically noted to the contrary, quoted passages will always be those of the speaker indicated.

*Alluding to a prohibition on the slave trade that was to take effect in 1808.

*This interpretation of the twenty-year extension of the slave trade was exactly the opposite of the argument that James Madison was making to the citizens of New York as "Publius" in the *Federalist*.

PART I

Reluctant Nation

1. DEVIL IN THE MIST

Few milestones in the history of humanity's struggle for self-rule have been as significant as the United States Constitution. The four months in which the Constitution came into being—from May to September 1787—were as dramatic and compelling as the document itself, and the delegates as intriguing a group of characters as has ever sat down to create a country. Lawyers, farmers, shippers, plantation owners, scientists, a philosopher or two, and a lot of speculators—these men were a study in extremes, geographically, politically, and socially.

The youngest was not the thirty-year-old Charles Pinckney but rather a callow twenty-seven-year-old from New Jersey named Jonathan Dayton, who barely opened his mouth, but nonetheless later had a city in Ohio named for him. The oldest was the eighty-one-year-old, gout-ridden Benjamin Franklin, "a short, fat, trunched old man"¹—who was carried to the meetings on a chair borne by four convicts. From Massachusetts came the quixotic capitalist Elbridge Gerry; from North Carolina, the scientist and physician Hugh Williamson; and from Maryland, the besotted Luther Martin, about whom it was later said, "the times must be momentous indeed . . . for the whole week Luther Martin has resided in Washington, he has not once been seen intoxicated in the public streets!"² Sometimes extremes existed within delegations: John Langdon, the richest man in New Hampshire, was forced to pay the expenses of his fellow delegate Nicholas Gilman who was virtually penniless. To add gravitas to the proceedings, a reluctant George Washington had been induced to once again leave his beloved Mount Vernon and join the Virginia delegation.

No Adams would be present, nor would a Lee. Patrick Henry stayed home and Thomas Jefferson was in Paris. But each delegate who did attend was a man of power and prestige in his home state—Jefferson called them "demi-Gods"—used to deference and respect, now thrown into a room with other men accustomed to the same treatment. Many were meeting for the first time after years of commitment to a similar cause. Others were meeting after years of contention. Vain, imperious George Mason of Virginia, one of the richest of the delegates, set eyes on Benjamin Franklin for the first time in May 1787, after more than two decades of furious competition with the crafty Pennsylvanian in the race to buy up and settle land in the West. Inevitably, the clash of personalities in Philadelphia would be as intense as the advocacy of ideas or ideals.

Although there was ample contrast in Philadelphia among individual delegates, the greatest disparity lay between the states themselves, and the deepest gulf was between South and North, slave states and free.

While only five of the thirteen states were primarily slaveholding,³ each of the five—particularly Virginia and South Carolina—was ruled by a genteel, landed aristocracy whose members had more in common with the British upper classes they had just kicked out than with their new countrymen in the North. They were Church of England, owned sprawling estates, ruled tenant farmers in addition to slaves, wore powdered wigs, imported fine silks in the latest fashions, held fancy balls, and provided their children with a classical education, often in Europe. Although they loved wealth, they thought there was something unseemly about handling money, and as a result, many were in debt.

Northerners, on the other hand, were often flinty, parsimonious, hardheaded merchants or capitalists who dressed in dark wool, had few servants, no tenants, and only borrowed money to

expand their businesses. Some were presbyters who didn't dance, carouse, or stay up late. They also loved wealth, but found nothing demeaning about counting their money, often repeatedly.

To add to the challenge, these delegates had no model on which to base their efforts—no document of this kind had ever been drafted before. In the drive to find a workable formula, they drew from the Greeks, French *philosophes*, and English reformers, but mostly they relied on their own sense of practicality. They might not have known exactly what they wanted the new government to look like, but they certainly knew what they did *not* want it to look like, although even here different delegates held different opinions as to what they most wished to avoid.

Sometimes they sought resolution through debate on the floor of the convention; other times by assigning committees to draft compromise agreements in secret; and still others by meeting at night in small groups in the back rooms of Philadelphia's inns and taverns. The debates themselves played out with high tension—grand declarations interspersed with sarcasm, spite, and invective, the future of the embryonic democracy teetering on every petty squabble. Delegates regularly threatened to walk out if a favored proposal were voted down or a repugnant one agreed to. Some did leave, becoming fierce opponents of ratification in their home states.

Aware of what was at stake, the delegates knew they had to speak candidly, expressing sentiments they dared not voice in public. In order that none would be held accountable for anything said in the chamber, the proceedings remained strictly secret, conducted behind locked doors that were guarded at all times by armed sentries. To bar eavesdropping, the windows of the State House were kept bolted, intensifying the already oppressive heat and humidity of a Philadelphia summer where, at one point, the temperature reached ninety-six degrees.

The public was meant to be unaware of the proceedings not just as they occurred, but in perpetuity. The official minutes were kept intentionally sketchy, little more than a journal of motions and the ensuing votes, and even that cursory record was not released to the public for decades afterward.* The most copious notes were kept by James Madison and these would not be published until 1840. To Madison (and, in the early weeks, Robert Yates of New York) we owe almost all of our knowledge as to what went on behind those locked doors.

That a Constitution was actually wrought from such secrecy and disarray has been called "a miracle," and, given the tone of the proceedings, that description may not be far off.⁴ The delegates disagreed on almost everything. Should the legislature be one house or two? Should the president be elected by the people, by the congress, or by the state legislatures? Should new states be admitted as equals or subordinates? Should there be a standing army? What were to be the powers of the court system? Were the states to be subordinate to the federal government or the other way around? Should the new government assume the massive debt from the Revolution? How should commerce be regulated? What constituted treason? Each of these questions had different advocates proposing different resolutions, all with equal ardor.

But of all the issues that would arise in Philadelphia, the one that evoked the most passion, the one that left the least possibility of compromise, the one that would most pit morality against pragmatism, was the question of slavery. To a significant and disquieting degree, America's most sacred document was molded and shaped by the most notorious institution in its history.

For the longest time, however, almost nobody thought so. Throughout the nineteenth and most of the twentieth centuries, one prominent historian after another examined the record and insisted that the economics of slavery was a minor factor in Philadelphia. The battle was fought between big states and small states, insisted some, while others saw the principal conflict as between

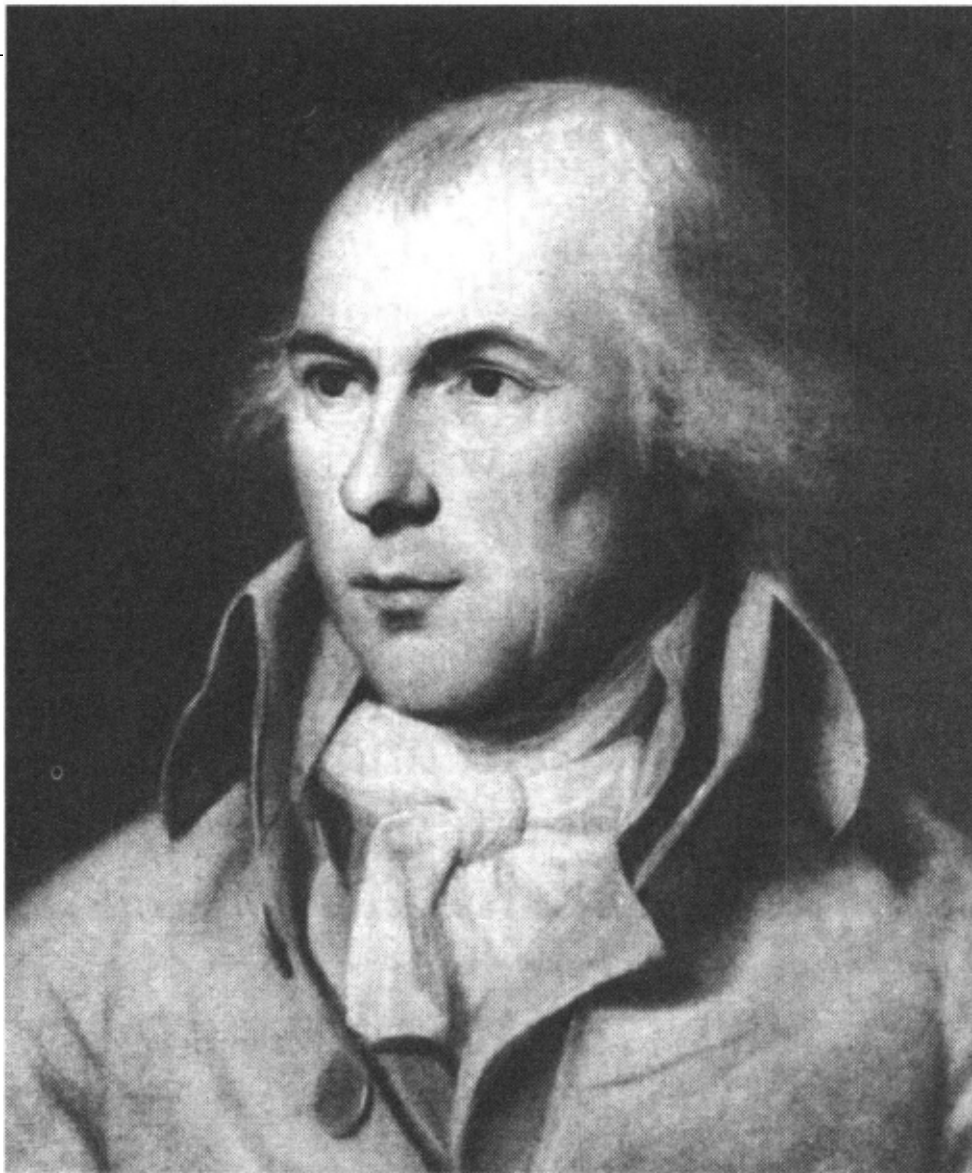
those who owned real property and those whose wealth was largely on paper. For many, the debates were simply one of history's great intellectual exercises, a four-month colloquium on government and political philosophy conducted by a group of latter-day Athenians.

The United States Constitution is arguably the most analyzed document in the history of government, but it is not difficult to understand why slavery has so regularly been consigned to the shadows. "The peculiar institution"—an equally peculiar phrase—was an unpleasant and repugnant topic, a stain on America's honor, and, therefore, the less of a role it played in defining the nation's identity the better. Even in the debates, so repellent was slavery to northerners—and so embarrassing to southerners—that when the subject came up, the delegates often danced around it, employing euphemisms, such as "this unique species of property" or "the unhappy class," as stand-ins for the more disagreeable "slaves." Thus, the words "slave" and "slavery" never appeared in the original Constitution, nor would they until ninety-one years later, when the thirteenth amendment abolished the practice forever.⁵

With all that, any fair reading of the record makes it difficult to deny that the sectional division, with slavery as its pivot, was the most crucial. Many of the delegates certainly saw things precisely that way. James Madison, for example, at one point observed that he "always conceived that the difference of interest in the U. States lay not between the large & small, but the N. & Southn States," and added that "it was pretty well understood that the institution of slavery & its consequences formed the line of discrimination."⁶

Almost from the day the convention adjourned on September 17, 1787, theorizing began as to what the delegates intended to say and the underlying meanings of the document they had produced. Theorizing was necessary since there were only fifty-five men in the entire nation who knew what had transpired inside the State House. Even among these fifty-five, only a handful could offer firsthand commentary on the full course of the proceedings.

In the months following the convention, the debate as to intent was particularly furious, since the outcome—as in South Carolina—would determine whether or not the necessary nine states would ratify. During the winter of 1787 and through 1788, analysis sprang from everywhere. Meetings and rallies abounded. Printers lined their pocketbooks as newspapers took sides, and pamphlets and broadsides were issued in every state and major city. That no one could know for sure in those early days what the delegates really had in mind—or even had said—did nothing to stop those in favor and those opposed from issuing definitive judgments as to the intent of the framers and its effect on the nation.



James Madison

Some of the tracts supporting the new Constitution, like the *Federalist*, penned by two men who were present at the convention (Madison and Alexander Hamilton, although the latter was absent for almost two months) and one who was not (John Jay), have become an integral part of our national heritage.

Others, equally profound, pointing up the flaws and dangers of the plan, such as Luther Martin's *Genuine Information* and a series of sixteen incisive, elegantly rendered essays published in the *New York Journal* by "Brutus" (identity still unknown, although it is suspected to have been Robert Yates), are now only touched on in graduate school seminars.⁷

In the more than two centuries since the Philadelphia convention, interpretations of the Constitution have changed, sometimes radically, and the manner in which Americans have viewed the document is to a great extent a parallel of the manner in which the nation has viewed both itself and the role of slavery in its history.

The Constitution exists as both a legal and a political document. Its legal role was largely defined by two landmark rulings of John Marshall's Supreme Court. The first, *Marbury v. Madison* in 1803, established the right of the Court to rule on the constitutionality of acts of

Congress; the second, *McCulloch vs. Maryland*, sixteen years later—with Luther Martin representing Maryland—established once and for all the preeminence of the federal government over the states. (Martin and Maryland lost.) Each of these rulings was justified as an expression of separation of powers and each represented a principle that many of those fifty-five delegates in Philadelphia would have found abhorrent. Ever since the Marshall Court, justices have been interpreting and reinterpreting the Constitution, one Court often taking a view diametrically opposed to that of the previous one.

As a political treatise, the Constitution has been no more clear or straightforward in its interpretation. For the first fifty years after its ratification, the debate became oddly quiescent, America more or less accepting the Constitution on what seemed to be face value. The first real clause-by-clause critical appraisal of the Constitution emanated from an unlikely corner of American society and was ignited by an equally unlikely spark.

Madison died in 1836. Four years later, a three-volume edition of his papers was published, the contents of which he had selected and edited personally. Included were his notes from the Philadelphia convention. As a result, in 1840, Americans finally got a detailed peek into the proceedings. The published version contained omissions and corrections—Madison had revised the notes as an old man—but, by and large, was accepted as an accurate transcript.

Poring over the newly released material, abolitionists were vitriolic in their denunciations. In 1843, William Lloyd Garrison called the Constitution a "covenant with death and an agreement with hell," and proposed that the Northern states secede from the Union. While abolitionism was never more than a fringe movement in America, one abolitionist, George Bancroft, was to provide a bridge from the fiery rhetoric of the Garnsomens to mainstream history.

Born in 1800, Bancroft lived through virtually the entire nineteenth century, and he worked until almost the day of his death in 1891. His father was the first president of the American Unitarian Association, and throughout his life Bancroft remained devoted to the Unitarian principles of individual liberty, personal responsibility, progressive education, and social reform. Also, like most Unitarians, Bancroft saw slavery not only as a moral blight, but as a practical one, sapping the vigor and spirit of innovation from a democratic society.

A remarkably prolific writer, Bancroft produced thousands upon thousands of pages over the course of his long life.⁸ In the late 1820s, he began his most famous work and for five decades toiled on what was ultimately to become a ten-volume history of the United States. Then, in 1882, he completed the two-volume *History of the Formation of the Constitution of the United States of America*.

Bancroft was cognizant of slavery, certainly—he spent more time on the question than many modern historians—but his Unitarian optimism got the better of him. Repudiating Garrison, he saw the institution "in a transient form" in 1787. "In the division between northern and southern states," he added, "the criterion was, whether a state retained the power and the will by its inward energy to extricate itself from slavery."⁹ The seven northernmost states, in Bancroft's rather rosy view—including his beloved New England—were in the final stages of doing so. Even the four states just to the south, Delaware, Virginia, Maryland, and North Carolina, he felt were ruled by closet abolitionists, men who hated slavery but were tragically embroiled in the practice by necessity. Only South Carolina and Georgia actually made a continuation of slavery quid pro quo of union.

That slavery had been an evil forced on the South matched the public statements of a number of Southern delegates to the convention—George Mason had put forth this argument regularly

and forcefully—and helped nineteenth- and early-twentieth-century readers square slavery with their otherwise exalted image of the framers. "As long as patriotism remained the principal ingredient of American historical writing, the constitutional convention was regarded as an assemblage of the gods," wrote Gordon Wood.¹⁰ Then, in the early twentieth century, two men produced groundbreaking works: The first marked the end of the romanticized Bancroft era and the second signaled the beginning of quite another.

Max Farrand, a professor of history at Yale, was considered one of the most influential historians of his day. He had majored in biology at Princeton, but switched to history after taking a course with Woodrow Wilson. Among his best friends at the school was Booth Tarkington, whose sentimental novels would eventually make him the most popular writer in America. In 1913, Farrand produced perhaps the most sentimental treatment of the convention all, a short work called *The Framing of the Constitution*.

As might be expected in a celebration of virtue, Farrand did not give slavery much of a role. "In 1787," he wrote, "slavery was not the important question, it might be said that it was not the moral question that it later became. The proceedings of the federal Convention did not become known until the slavery question had grown into the paramount issue of the day. Men generally were eager to know what the framers of the Constitution had said and done upon this all-absorbing topic. This led to an over-emphasis of the slavery question at the Convention that has persisted until the present day."¹¹

Farrand's contribution, however, lay not in original scholarship, but in what has since been called the "model of historical editing."¹² Combining notes of the delegates with subsequent letters, diaries, pamphlets, memoirs, and speeches in the ratifying conventions, Farrand in 1911 published a remarkably complete and scrupulously annotated three-volume work, *Records of the Federal Convention*. (A fourth volume was added in 1937.)¹³

Records made the same basic materials readily available to all. There would be no subsequent discovery that would suddenly change everything—no lost notes of one of the delegates, no forgotten archive, no shoebox full of records found in someone's attic. After Farrand, constitutional interpretation became almost entirely subjective, depending only on which of the available sources historians chose to give the most weight, where they decided to shine the light.¹⁴

Another book published in 1913 shone its light where none had before, and constitutional interpretation has not been the same since. That year, an Indiana-born, Oxford-trained, radical-socialist history professor at Columbia University named Charles Beard published *An Economic Interpretation of the Constitution of the United States*. In contrast to the optimism of Bancroft and the romanticism of Farrand, Beard advanced the thesis that the Constitution was forged entirely by men concerned not with philosophy or ideology, but only with self-serving economic motives. Beard divided the delegates into those who owned real property—largely debtors—and those whose wealth was in paper or securities, a category he called "personalty"—largely creditors. Working from admittedly incomplete and sketchy data, Beard concluded that those who supported the Constitution did so because the new government would guarantee their wealth and the payment of debts owed to them, while those opposed wanted to stay with the more impotent and forgiving Articles of Confederation. Although Beard was a Quaker, a group that had always ferociously (although nonviolently) opposed slavery, he had little to say on the subject. In fact, Beard seemed confused as to whether to classify slaves as property or personalty.

Portraying America's Founding Fathers as grasping profiteers made Beard a reviled figure in mainstream academia. After he resigned from Columbia in 1917 to protest the university's refusal to reappoint several professors who opposed American involvement in World War I, he never received another university appointment.¹⁵

Although Beard readily admitted that the work was "fragmentary" and "designed to suggest new lines of historical research rather than to treat the subject in an exhaustive fashion," his analysis stood relatively unchallenged for more than forty years, and stuck in the craws of conventional historians for every minute of that time. Finally, in 1956, Beard was seriously challenged when professor at Michigan State University, Robert E. Brown, published a rigorous critical analysis titled *Charles Beard and the Constitution*. Two years later, a young researcher in Wisconsin named Forrest McDonald published *We the People: The Economic Origins of the Constitution*, and Beard's edifice collapsed.

McDonald, as conservative as Beard was radical—he was a state chairman for Barry Goldwater in 1964 and has been a prominent contributor to both *The National Review* and the Heritage Foundation—confronted Beard on his own ground and demolished his arguments. Where Beard was superficial, McDonald was meticulous; where Beard generalized, McDonald was specific; where Beard droned, McDonald wrote with wit and panache. He exposed Beard's simple division into real property and paper assets as simplistic, misleading, and often just plain wrong. After *We the People*, only the most radical New Leftists ever took Beard seriously again.

McDonald's treatment of slavery was also more nuanced, dividing slave holders into three categories: those to whom slaves were an auxiliary labor supply; those whose livelihoods were based on slavery, but to whom slaves' economic value was questionable; and those to whom slavery was both practical and necessary.¹⁶ Still, McDonald was unwilling to ascribe root cause to the needs of slaveholders, allowing slavery to be one of those facets of early American life that existed but did not seem to matter all that much.

In recent years, constitutional analysis has evolved beyond both Beard and McDonald. Practical realities are often substantially ignored, and the delegates in Philadelphia are now often portrayed as little more than repositories for political philosophy. Constitutional scholarship has become, therefore, predominantly a study of ideas and, with the document itself a product of theory, the great compromises become simply the willingness of the nation's leading citizens to moderate differing abstract points of view to achieve a higher end.

In most contemporary chronicles, a small number of cerebral delegates—Madison, Hamilton, Franklin, or even the recently resurrected Gouverneur Morris—are portrayed as having produced virtually the entire document among themselves. Men such as Charles Cotesworth Pinckney have evaporated into little more than footnotes to the proceedings. Slavery has no real place in such construction and, as a result, has once again been relegated to a minor determinant or none at all.¹⁷

The major question in constitutional scholarship, still unresolved, is whether the convention was a meeting guided by philosophy and political theory, with a nod to practical exigencies, or one of hardheaded practicality where self-interest was justified by lofty argument.

Edmund Wilson, in his transcendent *To the Finland Station*, devoted his first chapters to the extraordinary nineteenth-century French historian Jules Michelet. Before Michelet, history had been "a series of biographies of great men," and Michelet saw a need to "clear the gods and

heroes away." Michelet, according to Wilson, was one of the first in his field to "grasp fully . . . the *organic* character of human society and the importance of reintegrating through history the various forces and factors which actually compose human life."¹⁸

Nothing could be more true of constitutional history. The story of the forging of the Constitution is as much a study of the forces and factors that comprised American life as it is a stringing together of the political theories of Madison, Hamilton, and Franklin. Many of those forces are no different than those we experience today—a desire for security, economic self-interest, opportunity for personal enrichment, and protection of a way of life. Two of the most dominant forces in the America of 1787, however, are no longer present. The first was a relentless drive to expand the nation's borders; the second was the institution of human slavery. Each bore heavily on the other.

It is crucial to an understanding of the events in Philadelphia that those who participated in the debates not be deified, demonized, or seen merely as extensions of ideas. These were fully formed human beings with virtues, frailties, aspirations, jealousies, and aims both petty and grandiose. They could be alternately sophisticated or naive, manipulative or gullible. The degree to which Americans can know these men, appreciate how they saw themselves in their surroundings, walk in the door with them in May 1787, is the degree to which they can understand how and why their Constitution was created as it was.

"Michelet," Wilson added, "always shows [remarkable men] in relation to the social group that has molded them and whose feelings they are finding expression for, whose needs they are attempting to satisfy."¹⁹ The men who came to Philadelphia that summer of 1787 operated overwhelmingly not as disinterested philosophers but as pragmatic advocates for the interests of their states, their regions, and their distinctly disparate social systems. That they did so, that they were interested in practicalities and not theory, enabled them to draft a Constitution that worked in the very real world in which they lived.

The convention itself is generally depicted as, if not a monolithic event, at least as one in which the same members were dominant throughout, none more so than Madison. But the tone of the debates changed drastically during the four months. They may have begun with discussions of theories of government, but theory was abandoned as negotiations became increasingly serious and specific. As the weeks wore on and the proceedings tended more and more to practical politics, slavery came progressively to the fore, until, at the end of August, it drove a wedge into the convention that almost wrecked the entire affair. With the shift in mood came a shift in the men who wielded real power.

This narrative will focus primarily on four of those men. Two owned slaves; two did not. Two were wealthy; two were not. Three signed the finished Constitution; one refused. The three who signed—Oliver Ellsworth and Roger Sherman of Connecticut, and John Rutledge of South Carolina—had arrived in Philadelphia in May as dubious nationalists, fully expecting to oppose any plan that placed too much power in the central government. The one who refused—George Mason of Virginia—had arrived as an enthusiast for a more dominant central government. When the meeting adjourned on September 17, each of these four had reversed his position and slavery was in large part responsible. The reasons for the change in attitudes underscore the essential dynamic of the Philadelphia convention.

*This is why General Pinckney had felt free to misrepresent the proceedings. The general was not alone in employing this tactic. It was widely used by former delegates during the ratification

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