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CHARLES BEARD VERSUS THE FOUNDING  
FATHERS: PROPERTY CONCEPTS IN  
THE EIGHTEENTH CENTURY

THESIS

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This thesis deals with the role of property in the formation of the American Constitution and government. Charles Beard's views on property are compared with writings from the eighteenth century.

Beard's writings on property and his critics are examined in the first two chapters. Then, the thesis's two historical contexts are evaluated. Concentrating on the Enclosure Acts, the fourth chapter looks at the importance of land to the former Englishmen. The eighteenth century view of property is the focus of the fifth section. The last chapter contrasts the two different views of property.

Beard believed that the Constitution was a conservative document that protected the property of the few over the many. The Founding Fathers actually included liberal protections for property in the eighteenth century.

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## CHAPTER I

### CHARLES BEARD'S VIEWS ON PROPERTY:

#### REALTY VERSUS PERSONALTY

Over the years, Charles Beard's An Economic Interpretation of the Constitution of the United States [1913, 1935] has been both praised and criticized. Beard's views created yet another way in which the Constitution could be analyzed. He believed economics was directly related to the formation of the American government. Most previous scholars and held that the writers of the Constitution based their ideas and concepts on political and ideological ideals; however, Beard argued that economic self-interests motivated the Founding Fathers to create a national government for their benefit. In his writings, Beard set out to prove his economic theory of government. Whether or not Beard was successful is still being debated today. Most of Beard's economic theories have been refuted, but An Economic Interpretation brought up many questions to resolve.

One of Beard's main theses was that the unequal distribution of property and wealth that existed in society created opposing parties, each trying to get control of the government. In ancient and modern societies, existing classes or factions were based on political, social, and

economic factors. Beard believed that in early American society two economic groups -- realty and personalty -- existed, and these two groups were involved in the battle over the adoption of the Constitution. Realty (or real estate) included farmers and debtors; personalty (or personal property) involved merchants, manufacturers, and bankers. These two groups were in conflict over the wording of the Constitution and the policies of the new national government. As a historian, Beard wanted to study and analyze critically the problems and issues concerning the Constitution.<sup>1</sup> The Founding Fathers put forth many ideas in the Constitution including the protection of property. However, Beard saw these ideas as conservative in the 1900's -- the few benefiting over the many. Did Beard see the Founding Fathers's protection of property with a conservative bias?

The purpose of this thesis is to determine whether Beard's views of property groups had the same meaning and significance for the authors of the Constitution as they did for Beard. How did the Founding Fathers define property and what function did it have in their society and on the formation of the new government? Did Beard substitute a twentieth century definition of property protection for an eighteenth century concept? Does the government protect both the property rights of the few from the masses and vice-versa? If Beard's views are contrary to those of the

men at the Constitutional Convention, how does this influence both present-day and future analyses of Beard's works?

This first chapter will focus on Beard's specific views on property. According to Beard, what role did property play in the creation of the Constitution? Also, what should be the role of government in protecting property rights? This study will focus on Beard's background and writings including An Economic Interpretation of the Constitution of the United States [1913, 1935] and other works concerning property. As an introduction to Charles Beard, this thesis will examine his background, education, and career. Also, some of Beard's well-known critics will be reviewed and analyzed. These other scholars give a different explication to this period of Constitutional history.

Charles Austin Beard [1874-1948] earned his bachelor's degree from DePauw University and his master's and doctoral degrees from Columbia University in 1903 and 1904. Beard was a multi-faceted individual whose interests included being a scholar, teacher, political and social activist, traveler, and, most famously, a writer.<sup>2</sup> His books and articles covered a broad range of subjects in political science and history. Activism was another very important area of Beard's life. John Braeman, in an article on Charles Beard, wrote, "... he [Beard] was torn - as he would remain throughout his life - between political activism and

scholarship."<sup>3</sup> For example, in 1906, Beard became a consultant for the New York Bureau of Municipal Research, "... the nation's first and leading research organization devoted to improving the efficiency of city government."<sup>4</sup> In 1911, he helped organize its Training School for Public Service.<sup>5</sup> Beard felt that government should be more responsible to the people's will, and public servants should be trained to do their jobs.

Beard's political activism influenced his writing and therefore his views on property. This is seen in the conclusion of An Economic Interpretation in which Beard argued that the Constitution was not formed by the general will of the people, but "... it was the work of a consolidated group whose interests knew no state boundaries and were truly national in their scope."<sup>6</sup> In his early writings, Beard asserted that it was the national government's job to influence the economy and to provide services for the nation. The Constitution was the crucial document that set up this government, and the subject of Beard's most controversial book.

Beard set forth the majority of his views on property in An Economic Interpretation. When the second edition of the book came out in 1935, Beard added a introduction defending his views on the Constitution. His later writings also expressed his views on different property groups and the role of government in protecting property. Three books

in particular are pertinent to this thesis -- Economic Origins of Jeffersonian Democracy [1915, 1945], The Economic Basis of Politics [1922, 1935], and New Basic History of the United States [1944, 1960].<sup>7</sup> In their books on Beard, both Bernard Borning and Richard Hofstadter noted that over the years Beard's views on economic determinism weakened. The older he became, the less he believed that economics was the major factor affecting the Constitution.<sup>8</sup>

An examination of Beard's books reflect his views on property. Economic Origins of Jeffersonian Democracy dealt with the antagonism between the Federalists and the Jeffersonian-Republicans. This thesis focuses on that section of the Economic Origins which concentrates on the battles between the two opposing economic groups, realty and personalty, over the adoption of the Constitution. The rest of the book concerns the development of early American political parties and is not involved in this study.

Beard examined the importance of both property and economics in The Economic Basis of Politics. The specific philosophers and scholars that Beard studied are carefully investigated later in this chapter. In this book, the author demonstrated that the roots of government were economic in nature.

In New Basic History of the United States, Beard, along with his wife, Mary, wrote a United States history book that became popular as a textbook at many universities. (Beard's



son, William, completed the 1960 edition after his father's death.) The book is general in nature, but the chapter on the Constitution gives better insight into Beard's definition of property and its significance in the creation of the new government.

Beard's economic views on property and the Constitution are not new, but he did take a unique approach. He used a collective biography approach to buttress his economic theories. Hofstadter described the collective biography as,

the idea of taking the entire personnel associated with an event or grouped in [sic] a parliamentary body at a given moment and of examining their relevant characteristics as a way of shedding lights on the social situation they refract.<sup>9</sup>

Beard examined each of the Convention participants in detail to find out their views on property. John Braeman in Directory of Literary Biography mentioned that Beard also studied the economic historians, Richard Hildreth and J. Allen Smith. Beard's An Economic Interpretation led to a direct focus on the economic view of history and Beard later became the leader of the economic historians. Beard is considered one of the Progressive Historians, and he led the group of New Historians that believed that history should not only retell past facts, but it could also be used to control economic events and policies.<sup>10</sup>

Hofstadter wrote that Beard's ideas came from four general sources. First, the Turner school of historical thought helped develop the economic interpretation of the Constitution. Besides Turner, O. G. Libby wrote a dissertation on the ratification controversy and the debate between debtors and creditors. The second source consisted of the Progressive critics of the Constitution including J. Allen Smith who developed the "dualistic interpretation of the Constitution" involving democracy versus aristocracy.<sup>11</sup> These scholars did not support an economic interpretation, but believed that devices placed in the constitution were intended to frustrate democracy, for example, the complex and difficult process for amending the Constitution. Third, certain socialist writers consisting of A. M. Simons, Gustavus Myers, and most importantly, E. R. A. Seligman contributed to Beard's views on economics. Seligman took his economic theory from Marxist ideas which appealed to liberal historians like Beard, who believed in realism in economics along with a view of progressive history. The final group to influence Beard was the new school of sociological jurisprudence which saw judges and the Constitution as active, and responsive to changes in society. Courts had a vital role to play in interpreting the Constitution. Authors included F. J. Goodnow, W. L. Ransom, and Brooks Adams.<sup>12</sup> All the authors from this school contributed to Beard's view of property. Despite all the various sources

Beard used, An Economic Interpretation created a great controversy because he set forth ideas that many scholars of constitutional history had a hard time accepting into Constitutional and economic history.

In The Economic Basis of Politics, Beard studied different countries throughout history, and the role economics had in those societies. Countries included Greece, England, and America. Aristotle is called the "father of political science."<sup>13</sup> Since he combined the political man with the economic man, these two must be seen together because the state, or government which "... defines, upholds, taxes, and regulates property, the very basis of economic operations."<sup>14</sup> Beard wrote that according to Aristotle,

the safest and most enduring form of democracy is ... that based on agriculture ... [t]he worst and most dangerous democracy of all is that founded on commerce, for there is no moral excellence in the employments of traders, mechanics, and laborers.<sup>15</sup>

As shown later, Beard believed commerce was the dynamic element in society that sought to control the government.

In a footnote, Beard mentioned an English writer, James Harrington. In his book, Oceana, Harrington asserted that the,

forms and distribution of property in society determine the nature of the state. ... In short,

political power follows property and it is the function of the statesman to see that property is not too narrowly concentrated, that a substantial landed class be maintained as the basis or stabilizer of the state.<sup>16</sup>

In studying the American politics, John Locke was seen as "the forerunner of the American and French revolutions as well as the supreme apologist for the English revolution of 1688." Beard wrote, "Both the origin and the end of the state Locke finds in the roots of property."<sup>17</sup> The reason that men created governments was to protect their property.<sup>18</sup>

Beard maintained that the political and economic theories of Aristotle, Harrington, and Locke were important, but his main focus was on James Madison, "the father of the Constitution."<sup>19</sup> Beard concentrated on the Federalist Number Ten written by Madison in defense of the Constitution. Beard noted that Madison said that,

the prime function of government ... is the protection of the different and equal faculties of man for acquiring property.<sup>20</sup>

Madison also wrote that the "most common and durable source of factions has been the various and unequal distribution of property."<sup>21</sup> The role of government was to protect the property of its citizens in the society, because as the different classes change and develop they demand more control of the government and more influence in society.

Madison was also afraid that those classes without property would try to threaten the propertied classes.<sup>22</sup>

Hofstadter, in his book on Beard, described Beard as one of the first authors to realize the importance of Madison's Federalist Number Ten, and noted that after Beard's book was published, other scholars began to pay more attention to the Federalist writing.<sup>23</sup> Charles Beard asserted that there are two views of man's role toward property. One view was that fate controlled distribution and men were only able to observe what happens. The second theory was that man can affect the distribution of property and therefore create "an ideal form of society and prevent the eternal struggle of classes that has shaken so many nations to their foundations."<sup>24</sup>

Beard, then in The Economic Basis of Politics, discussed England and Europe during the Middle Ages. English society was based on specific hierarchical classes, and the top and middle classes owned property. People were born into the class structure of their parents and they did not change their class position in society easily. Those who owned property and paid taxes were the people who had part in the government.<sup>25</sup> America lacked this formal class structure. In the new nation, classes were mainly based on property, and as a citizen gained and lost property, he could better or worsen his position and influence in society.

From English society, Beard moved to the American concepts that originated in England. The author described the state constitutions in America where "... governments rest on property."<sup>26</sup> Property determined a man's status, his ability to vote, and the amount of taxes he paid. Beard thus argued that the Founding Fathers wanted to protect property from debtor farmers and the proletariat who might take the upper classes's property and status away. The debate was over how to include this protection in the Constitution.

A unique aspect of the American government is the separation of powers into three branches of authority - executive, legislative, and judicial. The three branches kept the minority, those with property, protected from the masses without property. Beard saw this as the way the Founding Fathers protected themselves from the democratic element. Since the three branches of government were elected by different bodies and their terms in office were various lengths, the majority had less chance to dominate the entire government,

[A]nd the crowning counterweight to 'an interested and overbearing majority,' as Madison phrased it, was secured in the judiciary, and the use of sanctity and mystery of the law was a foil to democratic attacks.<sup>27</sup>

Beard also wrote, "the ultimate source of power ... was the people - the enfranchised voters in the states."<sup>28</sup> To the

Founding Fathers, the voters in the states were the White males who held property. Beard concluded that the men who wrote the Constitution were a conservative group looking after their own personal interests, including the protection of property, and not the well-being of society as a whole.<sup>29</sup>

Beard believed that property held an important place in the creation of the American government and society, and the Constitution of the United States was an economic document. In Economic Origins of Jeffersonian Democracy, Beard stated,

To speak more precisely, the contest over the Constitution was not primarily a war over abstract political ideals, such as states's rights and centralization, but over concrete economic issues and the political division which accompanied it was substantially along the interests affected.<sup>30</sup>

According to Beard, the battle over the adoption of the Constitution existed between two opposing property groups which existed at the time of the Constitutional Convention. Although he did not discuss them, a separate group first needs to be mentioned. The propertyless masses did exist in the 1780's, but they were not directly represented in the eighteenth century government. This group included non-Whites, females and those White males that did not possess property (real or personal).<sup>31</sup> In Beard's works, he endorsed a group theory which stated that groups of

individuals combined together to achieve common interests.<sup>32</sup> In The Process of Government, A.F. Bentley wrote about pluralist group theory to explain government. Although Beard used the group theory, he used a dualist variation of the concept.<sup>33</sup> Beard advocated in his writings that the debate over the adoption of the Constitution was between two distinct property groups - realty and personalty. In An Economic Interpretation, Beard wrote,

there was a deep-seated conflict between a popular party based on paper money and agrarian interests and a conservative party centered in towns and resting on financial, mercantile, and personal property interests generally.<sup>34</sup>

Beard based this conclusion on letters, newspapers, and pamphlets from the years 1787 to 1789. At the state level, he argued, an economic conflict can be clearly seen between the agrarian and capitalist groups over the issue of state ratification.<sup>35</sup>

Both Beard's realty and personalty groups need to be looked at in detail. Realty included real estate, or agrarian interests and the debtor class of small farmers.<sup>36</sup> Beard admitted there were many southern planters who were involved in writing the Constitution, but he argued these men had other personal property besides slaves, and therefore, they could not be included with planters whose income was based entirely on land.<sup>37</sup> According to Beard,



the realty group as a whole opposed the Constitution and a strong federal government. Most farmers felt that the state legislature was the best place to protect their property and interests. The state legislatures printed large amounts of paper money thus allowing debtors an easier means to fulfill their financial obligations. State governments also controlled commerce and the prices of farm goods, and since agrarian interests dominated the legislatures, they were able to raise the prices on their products.<sup>38</sup> To the realty group, state legislatures were the best way for them to keep control over their property. Many people in the agrarian communities believed in the autonomy of state and town governments.<sup>39</sup> Some members of the Constitutional Convention who supported the realty group refused to sign the Constitution when the debates were over. One well-known example was Luther Martin who became a strong opponent of the Constitution in his home state of Maryland.<sup>40</sup> Beard pointed out that none of the Convention members's immediate personal interests represented or concerned the small farming or debtor class.<sup>41</sup>

Why were the realty group and the Anti-Federalists unsuccessful in stopping the ratification of the Constitution? Because of the nature of agriculture, the farmers lived in rural areas and small towns far from each other making it harder for them to organize and effectively oppose ratification. Transportation in rural areas between

farmers and to polling places was difficult because of bad roads and the modes of transportation. The small farmer and debtor classes also lacked the monetary resources necessary to persuade the delegates involved in the ratification debate to follow their views.<sup>42</sup>

The personal property, or personalty group possessed the resources and abilities needed to successfully get the Constitution adopted. According to Beard, most of the men who wrote the Constitution were members of this group and were personally concerned with protecting their property rights from "perceived" threatening elements in society. Beard concluded after a detailed description of each member,

It can not be said, therefore, that the members of the Convention were "disinterested." On the contrary, we are forced to accept the profoundly significant conclusion that they knew through their personal experiences in economic affairs the precise result which the new government that they were setting up was designed to attain.<sup>43</sup>

These personalty groups also dominated the state delegations that ratified the Constitution.

To Beard, personalty,

embraced, particularly, money loaned, state and continental securities, stocks of goods, manufacturing plants, soldier's scripts, and shipping.<sup>44</sup>

Hofstadter remarked, in a footnote, that the terms "personalty" and "realty" were from the "old legal language," and he wrote that "by personalty it was clear that he [Beard] meant liquid capital used in investment."<sup>45</sup>

Each of these interested groups had been affected in some manner by the weak government set up by the Articles of Confederation. Money that was being loaned or invested was being hurt by

the absence of protection for manufactures, the lack of security in investments in Western lands, and the discriminations against American shipping by foreign countries.

Personal property in money also suffered from the abundance of paper money and other devices used by the states to delay the payments of debts.<sup>46</sup> Those who held public securities were hindered because the government set up by the Articles of Confederation was not paying the interest owed on the national debt, and because the government paper "had depreciated until it was selling from one-sixth to one-twentieth of its par value."<sup>47</sup> Manufacturing and shipping industries wanted national tariffs to use against foreign competition, and western land speculators and promoters asked for better military protection in the West for settlers and land purchasers. All of these various personal property interest groups advocated a strong Constitution to replace the feeble government set up by the Articles of

Confederation. To add all to these problems, low morale kept many statesmen from attending legislative sessions to tackle problems in the government.<sup>48</sup> Many legislators felt that under the Articles of Confederation they could not affect any real changes in society.

Beard argued that the personalty group possessed a "dynamic element" that energized them,

[I]t [personalty] is centralized in the towns and can be drawn together for defense or aggression with greater facility. The expectation of profits from its manipulation was much larger in 1787 than from real property. It had a considerable portion from the professional classes attached to it; its influence over the press was tremendous, not only through ownership, but also through advertising and other patronage.<sup>49</sup>

The personal property cluster also possessed "talent, wealth, and professional abilities ..." <sup>50</sup> They were concentrated in urban areas, organized and well-informed on the issues involving the Constitution.

As stated earlier in the chapter, John Locke wrote that men put themselves under the authority of a government in order to protect their property. Did Beard believe that the government was created to protect both types of property owners? There is another group that should be mentioned again. The propertyless members of society were not taken into account in Beard's book. Those without property did exist, but Beard did not include them in his research.

Beard's arguments indicated he clearly believed that personal property owners needed the most protection, and they would have benefitted the most from a strong national government. In contrast, the realty group believed that they and their interests would be best served by the state governments. In actuality, the national government created by the Constitution greatly limited the state legislatures. By creating a federal system, the powers and the jobs of the government were divided with supremacy given to the federal government. Beard wrote, "... they [federal government] overrode the sovereignty of the states." State governments were forbidden from printing money and no longer could regulate interstate and foreign commerce.<sup>51</sup> The personalty groups wanted these laws to protect their interests not only from the state governments, but from the "democratic element" present in society. These conservative men feared such outbursts as Shay's Rebellion, when a group of debtors led by Captain Daniel Shays, in 1786, staged an uprising in Massachusetts. Beard in the New Basis History wrote,

[W]hatever the merits of this popular revolt, it increased the fears of property owners and conservatives in general, inciting them to work harder than ever for a powerful national government.<sup>52</sup>

The stronger the federal Constitution, the more secure the personal property owners were; however, the small farming and debtor classes supported strong state legislatures. In

the eighteenth century, Beard believed that property was defined by two economic classifications -- realty and personalty. These categories are important because they defined for him the conflict that existed over the adoption of the Constitution.

This thesis is focusing on the implications of securing property as seen in the eighteenth century terms. Were both large and small property owners protected, and if so, were they protected equally? In eighteenth century society, property security was needed as much as in our twentieth century world. Since property is the basis of status and strength in our civilization, property of all kinds must be safeguarded.

Were Beard's definitions and conclusions correct? Did Beard present the same view of property that the Founding Fathers supported? The next chapter will deal with Beard's critics - Robert E. Brown, Forrest McDonald, and Richard Hofstadter.

#### Endnotes

1. Richard Hofstadter, The Progressive Historians: Turner, Beard, and Parrington (New York: Alfred A. Knopf, 1968), 208. [hereafter cited as Progressive Historians]

2. Ibid., 292.

3. Clyde N. Wilson, Directory of Literary Biography, volume 17: Twentieth Century Historians (Detroit, Michigan: Gale Research Company, 1983), s.v. "Charles A. Beard," by John Braeman, 42.

4. Ibid., 43.

5. Bernard C. Borning, The Political and Social Thought of Charles A. Beard (Seattle: University of Washington Press, 1962), xx. [hereafter cited as Political Thought]

6. Charles A. Beard, An Economic Interpretation of the Constitution of the United States (New York: The Macmillan Company, 1935 [1913]), 325. [hereafter cited as An Economic Interpretation]

7. Charles A. Beard, Economic Origins of Jeffersonian Democracy (New York: The Macmillan Company, 1943 [1915]). [hereafter cited as Economic Origins] Charles A. Beard, The Economic Basis of Politics (New York: Alfred A. Knopf, 1945). [hereafter cited as Economic Basis] Charles A. Beard and Mary Beard, New Basic History of the United States (Garden City, New York: Doubleday and Company, Inc., 1968 [1960, 1944]). [hereafter cited as New Basic History]

8. Borning, Political Thought, 104-5; Hofstadter, Progressive Historians, 220-1.

9. Hofstadter, Progressive Historians, 211.

10. Ibid., 185.

11. Ibid., 192.

12. Ibid., 190-206.

13. Beard, Economic Basis, 3.

14. Ibid., 5.

15. Ibid., 10-1.

16. Ibid., 13, n3.

17. Ibid.

18. Ibid., 15.

19. Ibid., 16.

20. Ibid.

21. Ibid., 17.
22. Ibid., 18-9.
23. Hofstadter, Progressive Historians, 208, n1.
24. Beard, Economic Basis, 28.
25. Ibid., 33.
26. Ibid., 14.
27. Beard, Economic Interpretation, 161.
28. Beard, New Basis History, 133.
29. Beard, Economic Interpretation, 133.
30. Beard, Economic Origins, 3.
31. Beard, Economic Interpretation, 24-6.
32. Borning, Political Thought, 14.
33. Hofstadter, Progressive Historians , 186-8.
34. Beard, Economic Interpretation, 292.
35. Ibid., 294.
36. Ibid., 28.
37. Ibid., 30.
38. Beard, New Basis History, 125.
39. Ibid., 128.
40. Beard, Economic Interpretation, 205-6.
41. Ibid., 149.
42. Ibid., 252.
43. Ibid., 51.
44. Ibid., 31.
45. Hofstadter, Progressive Historians, 210, n3.
46. Ibid.



47. Ibid., 32.
48. Hofstadter, Progressive Historians, 233.
49. Ibid., 50-1.
50. Ibid., 251.
51. Beard, New Basic History, 135-6.
52. Ibid., 124-5.

## CHAPTER II

### CRITICS OF CHARLES BEARD: ROBERT E. BROWN, FORREST MCDONALD, AND RICHARD HOFSTADTER

Robert E. Brown, Forrest McDonald, and Richard Hofstadter are three of Beard's leading critics. All of the authors make perceptive observations about Beard's works.

Robert E. Brown's Charles Beard and the Constitution, published in 1956, analyzed An Economic Interpretation page by page, sentence by sentence, and found much to criticize in Beard's assertions about property. Richard Hofstadter called Brown's book "telling and important."<sup>1</sup> One of Brown's most significant criticisms was that strong class conflicts did not exist in the eighteenth century. Brown wrote about Massachusetts society in which "property ownership was widespread." Massachusetts was a middle class society without strong class divisions.<sup>2</sup> Brown wanted to analyze Beard's method because "... this historical method is in reality the very foundation upon which the Beard interpretation of the Constitution must rest."<sup>3</sup>

Beard omitted part of Federalist Number Ten that was very significant. Beard altered the paper to make the economic factors appear most important. Brown stated that Madison set forth that both persons and property should be protected.<sup>4</sup>

Brown also did not agree with Beard's grouping of the economic classes. Brown asserted,

He [Beard] did not contend, as many think he did, that the division in the country was between the owners of property, who favored the Constitution, and the propertyless, who opposed. The split was more subtle: it was between personalty or personal property ... and realty or real estate owned by small farmers combined with debtors, on the other.<sup>5</sup>

Brown asserted that most male freeholders were allowed to vote. Ninety-seven percent of the country lived in rural areas and owned land or property. Brown questioned where the disfranchised "mass of men" were what Beard wrote about.<sup>6</sup>

Brown wrote,

To say that the Constitution was designed in part to protect property is true; to say that it was designed only to protect property is false, and to say that it was designed only to protect personalty is preposterous.<sup>7</sup>

In Brown's last chapter, he concluded that the Constitution was adopted in a fundamentally democratic society in which middle-class property owners possessed primarily realty with a smaller amount of personalty.<sup>8</sup>

In We the People [1958], Forrest McDonald used Beard's system of interpretation, and he filled in the details where Beard laid out only outlines.<sup>9</sup> We the People depended on

three assumptions: 1) economic groups exist in society and they struggle to support their interests and to bring about progress in society; 2) the existing economic groups were accurately depicted in the existing literature of the late eighteenth century; and 3) Beard, according to McDonald, assumed that it was valid to formulate economic groups before he did his economic survey.<sup>10</sup>

McDonald analyzed Beard's "presentist frame of reference." McDonald wrote,

As a basic feature of his entire work Beard uses what might be called a presentist frame of reference. That is to say, he assumes, consciously or unconsciously, that various questions, terms, and concepts which were current and had had [sic] the same meaning in the eighteenth century - such terms, for example, as "masses," "radicals," and "conservatives," and the concepts of urban working classes and modern political parties. To some extent he uses the same frame of reference in analyzing his source materials; for example, he assumes that account books depicting the operations in securities under Hamilton's funding plan can be interpreted in terms of twentieth-century accounting practices.<sup>11</sup>

According to McDonald, Beard used twentieth century definitions for eighteenth century words. In this thesis, property is the concept studied as a historical concept. This paper will show whether Beard's views on property matched those of the eighteenth century.

McDonald questioned whether Beard's assumptions and methods were relevant. McDonald wanted to determine the validity of the economic interpretation. He looked in detail at political factions, geographical areas, and economic interests of the delegates, and how these factions affected Beard's interpretation of the Constitution.

Using Max Farrand's Records of the Federal Convention, McDonald also examined individual votes to see if they were connected to personalty or realty interests. McDonald could not see a clear division between the two property interests.<sup>12</sup> Some of the delegates wanted to include property safeguards in the Constitution. However, McDonald, on analyzing the material, learned that at least thirty-three of the delegates voted against these property protections designed to help them.<sup>13</sup>

As McDonald looked at Beard's thesis, he determined that there were not two separate groups in conflict with each other. In three states (Delaware, New Jersey, Georgia), unanimous decisions were decided in ratifying conventions. In Virginia and North Carolina, wealthy farmers favored the Constitution, and many small farmers were divided over the Constitution. These facts go against Beard's thesis. In Connecticut, Maryland, South Carolina, and New Hampshire, a majority of both realty and personalty interests favored the Constitution. No real conflict existed between the two groups. In the last four states

(Massachusetts, Pennsylvania, New York, and Rhode Island, personalty interests dominated the conventions. McDonald asserted that Beard had tried to make generalizations that applied to all the states.<sup>14</sup>

McDonald did not believe there was a true line separating personalty interests and realty interests in the battle over the adoption of the Constitution.<sup>15</sup> Also, McDonald advocated that Beard incorrectly discerned the class structure of the eighteenth century. Hofstadter wrote that McDonald believed, as Beard, that economics were important in understanding the Constitution; however, Beard set up his group analysis incorrectly. Instead of a dualist approach, a pluralist method would be more accurate.<sup>16</sup> Lastly, McDonald believed that historians should analyze the writers of the Constitution by their occupations and professions rather than seeing them as "forms of property."<sup>17</sup> To McDonald, there were four classes of property -- 1) subsistence farmers, 2) the mercantile class, 3) non-agrarian occupational classes, such as, service and producing industries, and 4) professionals. Using McDonald's classifications, thirty per-cent were in favor of the Constitution; fifteen per-cent were affected unfavorably; and fifty-five percent were "... not directly affected at all or were affected in indefinite, indecisive, or unpredictable ways."<sup>18</sup> The way in which groups were classified has an effect on the analysis of the information.

McDonald concluded that the Constitution was not an "economic document," but rather "it created a new system of political economy." The states believed they would control their own economic matters and other state issues.<sup>19</sup>

Richard Hofstadter, in The Progressive Historians: Turner, Beard, Parrington [1968], made many of the same criticisms as Brown and McDonald and, then, had some critical observations of his own. Hofstadter stated that Beard's idea of group politics was partly based on A. F. Bentley's The Process of Government [1908] who developed the group basis of politics. Instead of using a multiple approach, Beard used a dualist approach of opposing interest groups.

Hofstadter noted the lack of strong conflicts existing in the eighteenth century. Brown mentioned this fact, but Hofstadter described how Brown did not put enough emphasis on the consequences of this criticism.<sup>20</sup> Class conflicts between realty and personalty did not exist in many states because

... such conflicts [over the Constitution] were not deeply or seriously mobilized by the Constitutional issue, because men on all sides found so much common gain in a stronger union.<sup>21</sup>

Connecticut, Georgia, and Delaware were some of the states that lacked strong class conflicts. The wealthy and the small farmers alike supported the Constitution, and

Hofstadter stated that "... these deviants from the Beardian picture were fairly well distributed throughout the country."<sup>22</sup> As a reason for the perceived conflicts, he pointed to the political rhetoric that existed in pamphlets and newspapers of the times.<sup>23</sup> Another misconception of Beard dealt with the paper money debate. In the 1780's, paper money was an issue for the commercial class elites, not for small, rural farmers. Beard also had the wrong definition of debt. As Hofstadter observed, "Debt was characteristically a sign not of poverty but of enterprise, sometimes of daring speculation. There were plenty of rich debtors and solvent farmers."<sup>24</sup>

Hofstadter pointed out that Beard placed too much stress on the Founding Fathers's motives instead of what actually happened and the consequences of those events.<sup>25</sup> Beard put his focus in the wrong place. Hofstadter also believed that Beard was looking at the eighteenth century with twentieth century biases. Beard saw institutions and checks and balances in the 1780's as undemocratic and aristocratic.<sup>26</sup> However, Hofstadter pointed out that American institutions were made more democratic and closer to the people than ever before. The legislature had two houses, and the House of Representatives was based on popular elections. Even though the executive was made stronger, there were many checks and balances that kept his power in check. For example, the control of the money was



in the "popular" House.<sup>27</sup> Seen in an eighteenth century context, even property qualifications were based on "philosophical premises." Men were required to own property in order to be seen as independent and able to speak their own opinions. Hofstadter wrote, "The lack of property was associated with servility, if not with servitude."<sup>28</sup> More importantly, Hofstadter believed that Beard had completely overlooked the central political issue of 1787. It was not a question of the protection of property, but instead "... was whether the American union [of states] should become a national state." The second question was could the new government now protect the freedom and possessions that the American Revolution had achieved.<sup>29</sup> Beard had missed these crucial elements in his interpretation. All three of these authors presented important and valid points and criticisms about Beard's works.

All these analyses were needed, but they are not the specific issue in this thesis. This thesis focuses on the implications of securing property as seen in eighteenth century terms. Were both large and small property owners protected, and if so, were they protected equally? In eighteenth century society, property security was needed as much as in our twentieth century world. Since property is the basis of status and strength in our civilization, property of all kinds must be safeguarded.

Were Beard's definitions and conclusions correct? Did Beard present the same view of property that the Founding Fathers advocated? The next chapter concerns the two historical contexts that this thesis deals with.

### Endnotes

1. Richard Hofstadter, The Progressive Historians: Turner, Beard, and Parrington (New York: Alfred A. Knopf, 1968), 208. [hereafter cited as Progressive Historians]

2. Robert E. Brown, Charles Beard and the Constitution (Westport, Connecticut: Greenwood Press, Publishers, 1979 [1956]), 20.

3. Ibid., 22.

4. Ibid., 37.

5. Ibid., 31.

6. Ibid., 39.

7. Ibid., 111.

8. Ibid., 200.

9. Forrest McDonald, We the People (Chicago: The University of Chicago Press, 1958), vii.

10. Ibid., 8-9.

11. Ibid., 15-6.

12. Ibid., 101.

13. Ibid., 108.

14. Ibid., 357.

15. Ibid., 355.

16. Hofstadter, Progressive Historians, 223-4.
17. McDonald, We the People, 398.
18. Ibid.
19. Ibid., 410-1.
20. Hofstadter, Progressive Historians, 276.
21. Ibid., 234.
22. Ibid., 243.
23. Ibid., 277.
24. Ibid., 239.
25. Ibid., 239-30.
26. Ibid., 265.
28. Ibid., 273-5.
28. Ibid., 256.
29. Ibid., 231.

## CHAPTER III

### THE TWO HISTORICAL CONTEXTS

Central to this thesis is the concept of two separate historical contexts: the eighteenth century in which the Constitution was written, and the early twentieth century when Charles Beard wrote An Economic Interpretation of the Constitution [1913]. When Charles Beard read property protections included in the Constitution, he believed the document was of a conservative nature and the protections therein were intended to protect the few from the many. In 1913 when Beard wrote his book, he argued the Constitution allowed only a few powerful people and corporations to control the masses that possessed little. Trust and monopolies were prominent in the late nineteenth century and early twentieth century. However, to the Founding Fathers in the eighteenth century, they felt they needed property protections added to the Constitution. They saw how the English government took away land and property from the many small individual farmers. Governments in eighteenth century were to protect the property, particularly land, of the citizens who owned it. Individual liberties were largely protected by the state governments. In the twentieth century, the role of national government had changed as public officials were required to protect the public

interest as a whole. In the eighteenth century, the American Constitution was a progressive document, but the national government's expanding role in the twentieth century gave the original text a traditional appearance.

The United States Constitution was written in the late eighteenth century. At this time, the nation was young and going through many transitions as the leaders attempted to set up a democratic government. After the former colonists gained their independence from the oppressive British crown, the leaders set up a weak decentralized government under the Articles of Confederation. The largest problem with the government was that Congress could not tax, or regulate commerce. The Confederation had to depend on the states to carry out governmental functions, such as, raising revenues. The state governments controlled the revenue and enforced the laws of the national government. The Articles of Confederation did not set forth supremacy of national law over state statutes, which led to conflicts between the states and the confederation government. The the lack of a central executive make legislation difficult to pass in the Congress. The Articles of Confederation required unanimous votes on most matters making decisions even more difficult to obtain. There was no institutional structure to unite the states.

From 1776 - 1786, the confederation government was unable to function because it lacked financial resources. There were also difficulties with foreign and interstate commerce.

Within most of the states, a continuous struggle went on between a paper-money faction, composed of small farmers, debtors, and artisans, and a hard-money faction composed of creditors, merchants, and large planters. Very often the paper-money faction won control, and several states passed acts fixing prices in paper and making it a misdemeanor to refuse paper currency at its face value. Other states passed stay-laws suspending the collection of debts and forbidding courts to grant judgements for debt.<sup>1</sup>

All of these various problems led to a desire for national constitutional reform.

In November 1787, the delegates in Philadelphia met to amend the Articles of Confederation, but the men finally decided to create a new document with a different structure of government. Kelly and Harbison wrote,

The new government was to be truly national in character, in that it would operate directly upon individuals, rather than upon the states, and would possess its own agents - courts, attorneys, marshals, revenue officers, and the like - to carry out its functions and impose its will.<sup>2</sup>

The delegates from the large and small states compromised on representation in the national legislature. The delegates agreed to create a federal system in which a strong national government would have supremacy.

At the Philadelphia Convention, no more than eleven of the thirteen states were represented at one time. Of the seventy-four men selected, only fifty-five were present and no more than a dozen men including J. Madison, G. Washington, J. Wilson, G. Morris, A. Hamilton, O. Ellsworth, R. King, E. Gerry, C.C. Pinckney, L. Martin, B. Franklin did the actual work. The majority of the delegates present were lawyers, but mercantile and landed interests were also represented.

Once the Constitution was written, the debate over the method of ratification began. Three of the delegates refused to sign the Constitution. Debate over approval of the Constitution, then, began between the Federalists [supporters] and Antifederalists [opponents].

The supporters of the Constitution included "... the merchants, the large planters, the land speculators, [and] the men of wealth who held the bonds of the Confederation."<sup>3</sup> These men wanted the protection for commerce and Western lands, and stable national credit; they opposed paper money and interstate tariffs. The small farmers and frontiersmen who opposed the Constitution desired cheap paper money and weak Western land policy. Many of the frontiersmen were squatters who disliked land speculators. However, the Far West areas and frontier Georgia favored the Constitution for new markets for their agricultural products and protection from Indians.<sup>4</sup> One of

the biggest criticisms of the Constitution was the lack of a Bill of Rights. Many opponents agreed to support the Constitution if a Bill of Rights was added once it was adopted. The Federalist Papers, written by Hamilton, Madison and Jay, addressed each area of the Constitution. "The Federalist was not an objective treatment of the Constitution, but a restrained work of partisanship."<sup>5</sup> These pamphlets became a guidebook for Federalist and nationalist works.

The small states adopted the Constitution first along with the states without a backcountry. The Constitution was the best remedy that the best minds in the country at this time could agree on, and some Anti-Federalists were even more concerned of what the defeat of the new government would do to the young nation. The convention system benefitted the Federalists as suffrage requirements for the convention delegates kept some opponents from voting. Many other people who would be opposed to the new government did not take the time to vote as problems with apathy and indifference existed. This allowed time for the Federalists to succeed in the ratification of the Constitution.

Once the Constitution was adopted, it became one of the symbols for the nation.

The Constitution was in fact a sufficiently progressive frame of government so that, although penned in a day when the democratic ideal was as yet little known, it was able to provide the



framework for a democratic national government of the twentieth century.<sup>6</sup>

The Constitution, however, was still a product of eighteenth-century political ideas. The document was the product of the Age of Enlightenment which stressed "the supremacy of reason."<sup>7</sup> The Constitution was also based on colonial and revolutionary ideas of compact theories, written constitutions, constitutional supremacy, natural rights, and separation of powers.<sup>8</sup>

In order to understand the significance of the events that took place in the early twentieth century when Beard wrote An Economic Interpretation, the years preceding his book must be examined. Beard's book was written during the Progressive Era of the early 1900's, but earlier came the Granger movement, the Greenback Party, the Farmer's Alliance, and most importantly, the Populist political party. John Hicks covered the Alliance and the People's Party in his book, The Populist Revolt: A History of the Farmer's Alliance and the People's Party [1913] and provided the then prevailing Progressive interpretation to these movements -- an interpretation that Professor Beard accepted. In the beginning of the his book, Hicks wrote,

The various agrarian movements, particularly the Alliance and the Populist revolts, were but the inevitable attempts of a bewildered people to find relief from a state of economic distress made certain by the unprecedented size and suddenness

of their assault upon the West and by the finality by which they had conquered it.<sup>9</sup>

As Hicks noted, the West was a release valve for people looking for a new start in America. When the national government gave the railroad companies free Western land and support, Americans saw the end to the frontier, and beginning of agrarian movements.

The railroads brought people west leading to the rapid decline of the frontier. The increase in population created an economic boom. Towns had boomed as farmers claimed lands in the West, but a serious drought caused an economic bust in 1887. As people moved back east, towns became depopulated and crop prices dropped dramatically. The farmers who stayed in the West developed radical political and economic ideas.

To Hicks, difficult times were also faced by poor White farmers in the South. With slave labor and many of the large plantations gone, poor Whites became tenant farmers instead of land owners. Merchants took the place of banks, and many poor White farmers got into serious debt. Politically, the Democratic party was in control since the Republican party lost influence in the South. A strong union developed between Western and Southern farmers.

Both western and southern farmers faced problems of low crop prices, demanding railroad companies, protective tariffs, high taxes, and high prices on goods that they

bought. In order to deal more effectively with these problems, the farmers organized the Farmer's Alliance. The Northern Alliance was called the National Farmers' Alliance, and the southern group, the National Farmers' Alliance and Industrial Union. They started first on local levels growing out of the Granger movement. Hard times brought the groups together on a national level. Both Alliances dealt with three main issues: land, transportation, and finance. The Alliance tried to get other agricultural and labor organizations to join them. The Northern and Southern Alliances were never able to consolidate into one powerful organization because they could not get past their differences. The Alliances also had political goals that included the regulation of the railroads, breaking up trusts and monopolies, and getting more money - paper and silver - into the market flow. The Alliance, although non-partisan at first, had members getting involved in political offices. However, the leaders of the railway companies were still in control of the state legislatures. Hicks wrote, "It was inevitable under these circumstances that there should be a strong demand for the transformation of the Alliance into an independent political party."<sup>10</sup>

The political aims of the two Alliances did differ as to the means to achieve their goals.

In the South, it was generally agreed that the Alliance must take every effort to capture the

existing state machinery of the Democratic party; in the Northwest this was deemed inadequate, and instead separate third-action [party] was demanded.<sup>11</sup>

The Southern Alliance leaders feared that if a new third party was created it would divide the White vote and allow Black voters to gain control of southern state governments; however, Southern rank-and-file members were still supportive of third party action.

The People's Party created in the West had some success in the elections of 1890, and both Alliances looked toward forming a national political party. The Populist's party largest political successes were in the West where the party were largely concerned with the single issue of free silver. Western Populists wanted to introduce the unlimited silver dollar into the money market. The Populists who won support in 1892 did not have much success in office. The Populist party as a whole decided to concentrate on one popular issue - free silver. A Financial Panic occurred in 1893 forcing strikes including the famous Pullman Strike in which Cleveland used federal troops to break it up. In 1894, President Grover Cleveland tried to preserve the gold standard upsetting silver supporters. Both farmers and laborers were upset at the executive department.

In the elections of 1894, Populists did not have the success that they were hoping for so they planned early for the presidential election of 1896. Even though many

Populists feared having only one issue would kill the party, free silver remained the main Populist issue. The Populists decided the only successful course was to fuse with other major parties. Support for the president went to Democrat William Jennings Bryan who was ultimately defeated in 1896. The third-party was unsuccessful with either going alone, or fusing with other parties. With Bryan's defeat came the end of the third-party Populists. They tried to reorganize, but prosperity was returning and national attention was now focused on foreign affairs.

Even though the Populist Party did not last, the ideas of Populism lived on.

In formulating their principles the Populists reasoned that the ordinary, honest, willing American worker, be he farmer or be he laborer, might expect in this land of opportunity not only the chance to work but also, as the rightful reward of his labor, a fair degree of prosperity.<sup>12</sup>

To Hicks, Populists believed the people should run the government, not professional politicians. Populists began advocating ideas of Australian secret ballot, direct primaries, referendum, and recall. The party also brought up accurate criticisms of the currency system and agricultural problems in the country that must be dealt with by the national government.

Two specific governmental reforms did occur in the 1880-90's and should be mentioned here by name. The Interstate Commerce Act of 1887 set up the Interstate Commerce Commission which dealt with the regulation of the railroads. In 1886 in the case of Walbash, St. Louis, and Pacific Railroad Company v. Illinois, 118 U.S. 557, the Supreme Court stated that since railroads dealt with interstate commerce -- a national issue -- they should be regulated by the national government. Legislative acts would come later to strengthen the Interstate Commerce Commission and make it more effective. The Sherman Anti-Trust Act was approved by Congress in 1890 under the Commerce clause to deal with industrial and commercial businesses. The main purpose of the Act was to prevent and terminate monopolies and trusts in industries. First only areas directly involved in transportation were dealt with, but then more areas were included under the Sherman Act during Theodore Roosevelt's administration.

With Roosevelt in office, a rise of liberal nationalism grew within the country. Roosevelt was the first strong activist president in the twentieth century model. A new nationalistic reform movement began with the Roosevelt administration.

Within the next ten years, the new reform movement was to bring about the development of a new federal 'police power' as an instrument of national social reform, a substantial revival of

the Sherman law and of federal trust prosecutions, and the passage of a new and more effective Interstate Commerce Commission.<sup>13</sup>

In the early 1900's, interest turned back toward national regulation as weak national legislation was ineffective in regulating industries. Federal trust legislation and the Sherman Act were now being ignored as the Interstate Commerce Commission lost its effectiveness. Journalists and muckrakers brought various industrial abuses to the attention of political leaders and the public. Political leaders believed the most effective way to bring about federal reforms was the reinterpretation of the Constitution by the Supreme Court.

It [reinterpretation] proposed to make the Constitution a living, growing instrument of national authority rather than a static charter of government. This would mean that the powers of the national government were not to be regarded as absolutely fixed but as subject to constant reinterpretation and reconstruction to keep abreast of the growth of American economic life.<sup>14</sup>

Roosevelt believed the president should have an active role in government and that the national government was responsible for the welfare of its citizens. An example of this was his use of the Sherman Act in 1902 to control the coal strike and in 1907 to control a financial panic. In a series cases from 1903-1915 the Supreme Court recognized a new federal police power. Champion v. Ames (1903)

recognized the police power of the federal government when the majority of the Supreme Court agreed that the federal government could regulate the shipment of lottery tickets over interstate lines. McCray v. United States (1904) involved using excise taxes as a social control. Congress passed a large excise tax on Oleomargarine artificially colored and sold like butter. Oleo without coloring was taxed at a lower level. According to the Supreme Court, the larger tax was not in violation of the due process clause of the Fifth Amendment. Taxation could be used as a form of legislative social control.

Liberal, regulatory statutes were passed by Congress between 1906 and 1916 including: the Pure Food and Drug Act (1906), Meat Inspection Act (1906), and White Slave Traffic Act (1910). These legislative acts led to liberal Supreme Court decisions supporting the majority of the Acts, such as, Hipolite Egg Company v. United States (1911) sustaining the Pure Food and Drug Act.

The Supreme Court also dealt with the regulation of railway labor. In this area, the Court's views changed and varied. In Adair v. United States (1903), the Supreme Court struck down Section 10 of the Erdman Act that made employees promise not to join a union as a condition of their employment. In First Employers' Liability Cases (1908), the Court held that the Employers Liability Act of 1906 unconstitutional. Common carriers were not liable for the



death or injury of any of their employees. In the Second Employers' Liability Cases (1912), the Court ruled only the employees directly involved in commerce were protected by employers. Decisions like these may have reinforced Professor Beard's view that the Constitution was a conservative document.

Liberal nationalism was reflected in the beginnings of a revival of federal trust prosecutions during Roosevelt's administration. Since the president could not get a tough anti-trust bill passed through the conservative Congress, he brought the corporations to court. Northern Securities Company v. United States (1904) dealt with two former opposing railroad interests who created a corporation with a potential to restrain trade. The Court by a five-to-four majority declared the company unconstitutional under the Sherman Anti-Trust Act. Some of the justices tried to compare the case to the United States v. E.C. Knight Company (1895), or the Sugar Trust Case. The Knight case dealt with manufacturing and was not seen as a trust in 1895. The Northern Securities case dealt with railroads and therefore clearly was interstate commerce. The Justices also applied the case to production in Swift and Company v. United States (1905), and used this case to revitalize the Sherman Act. By the early 1900's, production was now seen as part of commerce. However, "Eventually, much of the significance of the foregoing trust prosecutions was destroyed by the

application of the so-called 'rule of reason' to the Sherman Law."<sup>15</sup> The "rule of reason" was applied to interstate commerce cases in which corporations were only prohibited if they were unreasonable and against public interest. The "rule of reason" was formally used in Standard Oil v. United States (1911). Here the Supreme Court refused to hear an appeal from a lower Court because the oil monopoly was found to be reasonable. The "rule of reason" was also used in - United States v. American Tobacco Company (1911), United States v. Winslow (1913).

The Roosevelt administration also sought to initiate a revival of the Interstate Commerce Commission. The Hepburn Act of 1906 revitalized the Interstate Commerce Commission by giving it rate-setting powers. It was also the railroad companies's responsibility to appeal their cases instead of the Commission. The Supreme Court, then, backed up the Hepburn Act with several cases. Illinois Central Railroad Company v. Interstate Commerce Commission (1907) stated that the Commission was a tribunal that could accurately interpret the facts in a case. Interstate Commerce Commission v. Illinois Central Railroad Company (1910) endorsed the principles defeated in the Long Amendment which stated the Commission could set industrial rates. These cases reinforced the Commission's powers and policy-making functions. In Interstate Commerce Commission v. Chicago, Rockbland, and Pacific Railway Company (1910), the Court

upheld the Commission's ruling and rate schedule. The Supreme Court further confirmed the rate-fixing ability of the Commission, and the Supreme Court stated that when interstate and intrastate commerce were closely related, the federal government had the right to regulate both.

Important political developments occurred in 1906 leading to the development of stronger third political group. In 1908, the Republicans elected William Howard Taft to the presidency. Taft, Roosevelt's chosen successor, was expected to follow Roosevelt's policies. This did not occur as the Congressional Republican Party split into two wings by 1912. The conservative wing led by Taft, and the liberal wing was led by Roosevelt who moved to organize the Progressive Party.

The Progressive revolt was in part the result of Taft's political ineptitude and Roosevelt's impatience with his successor's submission to the conservative senatorial oligarchy under Senator Aldrich. More fundamentally, however, Republican insurgency reflected the continuance of a deepseated underlying sentiment of agrarian discontent and liberal unrest which had survived since the days of the Populist revolt.<sup>16</sup>

Many of the main ideas of the Progressive Party came from the Populist movement of the 1890's. The Progressive party began like the Populist party movement of earlier decades. By 1906, the liberal Republicans came together in Congress, but they did not yet break party lines. The Progressives created a platform of political and social reform through

national legislation. The Progressives believed in direct democracy including the direct primary, and use of initiative, referendum, and recall. The liberal Republicans threatened to break with the party and join the Democratic party. Conservative Republicans were forced to make concessions to liberal members including a national income tax that would more equally distribute the country's income. The Supreme Court refused to let the income tax stand. A smaller excise tax on corporations was set forth by conservative groups in Congress. It was not as strong as the Progressives wanted, but an Income Tax Amendment was ratified on February 25, 1913.

Roosevelt and Taft also brought an attack on the judiciary by confronting the concept of judicial review. Many people did not believe that judges should be able to overturn legislative acts. This debate led to the popularity of the recall of judicial decisions and recall of judges. When the Progressive supporters organized the "Bull Moose" party with Roosevelt, many people were still opposed the recall of judicial decisions. The Progressive Party in the 1912 decided to limit recall of judicial decisions to the state level.

Another reform dealt with the Judiciary Act of 1789, section 25 which allowed state decisions to be appealed in the federal court system. Many constitutional reforms also took place on the state level.

Between 1900 and 1920 more than 1500 constitutional amendments were adopted in the various states of the Union, and in the period between 1900 and 1913 seven states adopted entirely new constitutions. ... The driving force behind this movement was primarily the first article of the Progressives's faith: 'let the people rule.'<sup>17</sup>

The reformers desired to bring the government closer to the people. Many state governments were controlled by state bosses. People became distrustful and suspicious of state legislatures. States attempted to put Constitutional controls on state governments. State constitutions filled with statutes and amendments became very lengthy and detailed, and many states introduced initiative, referendum, and recall to their governments. Since nominating conventions were subject to abuse, many states switched to the primary system. "Absolutely no decisive change for good or evil followed upon these democratic reforms."<sup>18</sup> The Progressives concentrated the majority on their effect of reforming the governmental institutions rather than the fundamentals of the system itself. They tried to change the structure of Congress instead of going straight to the Constitution to bring about reformation.

The Progressive movement expressed a wide-spread desire for certain controls upon great wealth and special interest, but there was almost no wish to overturn the foundation of private property and constitutional government.<sup>19</sup>

In the presidential election of 1912, Democrat Woodrow Wilson was elected when Taft and Roosevelt split the Republican vote.

Two developments of especial [sic] significance for constitutional history occurred in Wilson's first administration. First, Wilson developed a new technique of executive leadership in initiating and effecting the passage of legislation. Second, Wilson brought about the enactment of an extensive reform program which was at once the culmination and a partial refutation of the ideals of liberal nationalism.<sup>20</sup>

Wilson believed in cooperation between the executive and legislative branches like the British system of government. He believed the President should recommend measures to the Congress that he wanted passed. Wilson kept in touch with Congressmen on how his bills were doing; and he used patronage and party loyalty to influence legislators. The Congress tried to bring about reforms, but Wilson realized that Congress was held back by partisan politics based on sectional, rather than national interests.

After 1890, the legislature allowed the president and the executive department to carry out many complex Congressional policies. Field v. Clark (1892) formally recognized the idea that Congress could give administrative authority to the president. Buttfield v. Stanahan (1904) allowed Congress to set forth broad outlines, and let the executive branch fill in the details. In the later case of

United States v. Grimand (1911), the Supreme Court declared the administrative rulings had the force of law and violations could be punished.

When Charles Beard published An Economic Interpretation in 1913 the nation was going through many changes and reforms. The Supreme Court was frequently reinterpreting the Constitution. To Beard, the Constitution written in 1787 by the Founding Fathers was a very conservative document that protected the few with possessions from the many without little or no property. However, the Founding Fathers never realized that the Constitution and the national government would one day take over regulation of the few powerful corporations and give national civil rights to the individual citizens of the country. When interpreting the Constitution, one must see the document from the correct political context to get a proper analysis and evaluation.

#### Endnotes

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9. John Hicks, The Populist Revolt: A History of the Farmer's Alliance and the People's Party (Minneapolis: The University of Minnesota Press, 1931), 2. [hereafter cited as The Populist Revolt]

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## CHAPTER IV

### THE IMPORTANCE OF LAND: AN ANALYSIS OF THE ENGLISH ENCLOSURE ACTS

The men who wrote the Constitution and founded the American government were influenced by their backgrounds and upbringing. What the leaders believed about property and its place in society had its origins in English society and history. To the English, land and agriculture were a meaningful part of their lives. Indeed, one author argued that even though England had great leaders, the country's greatness came from the common people that lived on the land. In the seventeenth century, three-fourths of the population of England lived in rural areas.<sup>1</sup> The English Enclosures played a role in the development of opinions held by American leaders. The Enclosure Movement is an example of what government did to property, particularly land, if property was not protected by law. First, wealthy manor lords enclosed land. Then, the government began enclosing large amounts of land. The American colonists knew about the Enclosure Acts, and the middle class was afraid of what an unrestrained government could do to private property.

The enclosures had different meanings depending on the time period and the area to be enclosed. However a general definition given by Eric J. Hobshawn is valid:

Enclosures meant the rearrangement of formerly common or open fields into self-contained private land units, or the division of formerly common but uncultivated land (woodlands, rough grazing, "waste," etc.) into private property.<sup>2</sup>

Communal rights and privileges ceased to exist. The people who farmed and grazed animals on the common lands lost many of the privileges they once possessed. The small estates that were created became autonomous.<sup>3</sup> The land was no longer common; it was owned by one person or a few prominent people.

When discussing the types of enclosures, two factors must be considered -- the type of land being enclosed, and the methods of enclosure used. During the fifteenth through the early eighteenth centuries (until 1750), open, arable fields were fenced in to create pastures for sheep raising.<sup>4</sup> The second major phase of enclosures, which occurred between 1780 and 1830, involved the converting of common and waste lands into tillage, land suitable for agriculture.<sup>5</sup> Both phases are dealt with in this chapter.

Enclosures took two basic forms - piecemeal and general. The general enclosures were, then, further classified into three types -- 1) unity of control, 2) agreement, and 3) Parliamentary Acts. Each of these categories are defined and analyzed in detail. According to most sources, piecemeal enclosures were used,

to describe only the manner in which the decision to enclose was arrived at - namely by any method that did not involve the whole of common field proprietors in a township acting together.<sup>6</sup>

Piecemeal enclosures involved enclosing only part of the land, not the entire section. Some piecemeal enclosures were carried out by the peasants themselves in order to improve their land. These enclosures took place during the fourteenth and fifteenth centuries.<sup>7</sup> In general enclosures, a single decision on how to surround the land was arrived at by all the people who retained common-field rights. Compared to piecemeals, general enclosures were more organized and a reliable process of consolidating, or separating land.

As noted above, there were various categories of enclosures. Agreements for enclosures could be simple, or very detailed depending on those involved and the size of the land. Unity of control, defined, as "the whole of a former common-field township having fallen into the hands of one proprietor."<sup>8</sup> This was the simplest type of enclosure since it dealt with one individual, or only a few men. If more than a few people were included, some type of official agreement was required. Enclosures before 1760 usually fell into this enclosure agreement category.<sup>9</sup> Turner wrote,

Enclosure by agreement was common in the seventeenth century and in many ways it resembled the later enclosures by act of Parliament, though without the expenses of obtaining an act.<sup>10</sup>

Enclosures by agreement were legal, but less formal and rigid. Even though these enclosures were popular, they were not always easy to obtain since all the groups involved must come to a consensus. Not all enclosure agreements were arrived at easily; many required pressure and bargaining. Yelling asserted that,

[E]nclosures by agreement thus included examples where enclosure was achieved by hard pressure, or even enforced on some of the small proprietors against their will.<sup>11</sup>

Enclosures requiring hard pressure delivered an important point. Yelling wrote that the owners wanted to guarantee that their agreements would be enforced and followed, and they would endure over time; the owners did not want to face future challenges to the arrangement. One method dating from the early seventeenth century was called a Chancery Degree where an agreement was brought before a chancery court that ruled on the enclosures's validity. Sometimes these proceedings were simple; other times complicated.<sup>12</sup> In English history, many people believed that the most basic enclosures were carried out by powerful, selfish men. R. H. Tawney wrote the following about enclosures, "[C]ontemporary writers represent it as almost always being carried out by lords and large farmers against the interests of the smaller tenantry."<sup>13</sup> Many people saw

enclosures as detrimental to the lower classes of English society.

The last class of enclosures involved Parliamentary Acts. This type grew out of and evolved from the agreements as the enclosures became more closely connected to the government. As shown later, these enclosures required a Parliamentary act which the government began to strongly support. Some authors stated that these acts were dominant after 1700, but they were very common in the 1600's. To some historical authorities, Parliamentary Acts are considered the most important type of enclosure in English history.<sup>14</sup> The Parliamentary Acts show a change in the attitude of the government toward enclosures. This aspect is discussed in detail later in this chapter. Each Parliamentary Act,

was considered separately, and required a local Act, even after the General Enclosure Act of 1801, which made the passage of individual bills easier by the provision of model clauses.<sup>15</sup>

Later, Yelling wrote,

Parliamentary enclosures had the advantage that it set aside all doubt at [sic] the validity of enclosure, and enabled the whole business of making claims and allotting land to be carried out in a more authoritative manner through the commissioners established under the Act.<sup>16</sup>

Some statistics on Parliamentary Enclosures illustrate their prevalence and acceptance in English society. It should be

noted that statistical facts before 1750 are hard to find and often unreliable, but they are still important to this research. The figures given dealt with a broad period of years, and the source used in this paper did not break down the specific years. From 1750 to 1817, 3,828 temporal acts (general enclosures) were passed. This statistic amounted to 6.8 million acres of land, or 20.9 percent of the surface of England.<sup>17</sup> 5,265 total private and public acts, and enclosures under several General Acts occurred between 1604 and 1914. Enclosures did have an influence on English agricultural history, but did it affect the men who became leaders in America?

As the types of enclosures evolved, the attitudes of the government and the people also changed. The transformation of attitudes that occurred between the fifteenth through the early eighteenth centuries is the focus of the next section of this chapter. The Enclosure Movement is examined chronologically with an emphasis on the significant events, the British government's changing attitude, and the transformations in the landowners's status in English society. Last in the chapter, the social consequences of the enclosures and the method in which the enclosures affected the future leaders's views on property are examined.

Enclosures existed in England as far back as the fourteenth century, but they did not become prevalent until

the middle of the fifteenth and sixteenth centuries. In his survey of English economic history, Michael Thomas reported a great period of enclosures between 1450 and 1520 and, then, the early seventeenth century.<sup>18</sup> Statistics on the enclosures before 1750 were unreliable and difficult to locate because there was not accurate record-keeping until after Parliamentary Acts began to be used. Piecemeal and agreement enclosures did not require national governmental papers, and the few legal papers on enclosures that did exist were uncommon and many times incorrect.<sup>19</sup> In the fourteenth and fifteenth centuries, English enclosures increased in numbers as the government became more involved in enclosing agricultural land. R. H. Tawney, in the Agrarian Problem in the Sixteenth Century, wrote that some writers have exaggerated the number of enclosures and the amount of affected area in England. However, Tawney questioned why enclosures created such attention by both the government and the peasants themselves.<sup>20</sup>

By the sixteenth century, land owners were raising livestock on formerly cultivated lands because the price of wool was rising, and diets were beginning to change from grains and vegetables to meat and dairy products.<sup>21</sup> One author suggested that enclosures were more due to the low price of grain than the high price of wool.<sup>22</sup> Land became much more valuable. Large land owners who wanted to increase profits built larger estates and converted their

farms into livestock pastures.<sup>23</sup> Many small farmers were left without enough land to earn a fair income. The status of small tenant farmers deteriorated as they became agricultural laborers in an increasingly complex society.<sup>24</sup> Farmers were no longer able to make independent decisions. Christopher Hill wrote,

The transformation [of the worker's status] was beginning by 1530, when the moralists were denouncing depopulating enclosures, the eating up of men by sheep.<sup>25</sup>

Later Hill asserted,

For in the sixteenth century, whilst the living standards of men and women of labor fell catastrophically, the living standards of sheep improved equally remarkably.<sup>26</sup>

As a result of the Enclosure Movement, agricultural products decreased in prices.<sup>27</sup> These foods became less important to the country's economy. Some farmers became unemployed and homeless as they were forced off their land. The old agrarian society was having a difficult time trying to adjust to the new capitalistic economy. England faced years of depression from 1590 to 1603, from 1619 to 1624, from 1629 to 1631, and from 1637 to 1640.<sup>28</sup> Morton, in A People's History of England, wrote that,

the quantitative transfer of land from open fields to enclosure [and] from arable to pasture,



proceeding continually up to this time, assumes the widespread dispossession of the peasantry.<sup>29</sup>

From 1600 - 1620's, laborers and farmers faced housing shortages caused by shifts in land from grain crops to sheep grazing.<sup>30</sup> Farmers protested their losses and demanded government help. As the country faced a large unemployment rate, the government tried to help the landless citizens, but this process took time. English had one of the first Poor Law systems in Europe. The government believed that help should only be for the able-bodied -- those who could work, but could not find employment.<sup>31</sup>

Morton explained that the government, then, tried to stop or slow down the rapid rate of enclosures. Parliament was not aggressive in its effort to stop the enclosures. The government tried different methods to stop the enclosing such as, legislation to check the enclosures.<sup>32</sup> An example of the legislation was a law that limited the amount of livestock that farmers could keep.<sup>33</sup> Thomas mentioned another act used to discourage enclosures called the Act for the Maintenance of Husbandry and Tillage [1597] which "was one of many [acts] which aimed at securing an adequate corn supply and fostering the small farming class."<sup>34</sup> Yelling wrote that the government tried to curtail the effects of enclosures, but the officials did not make enclosures

illegal.<sup>35</sup> Since the government did not try very hard, these measures did not work. Morton concluded that,

All [legislative measures] were ignored or evaded for the excellent reason that the men who were charged with enforcing them, the Justices of the Peace, were the actual landlords who benefitted by the enclosures.<sup>36</sup>

The people who were supposed to stop the enclosures were the same men encouraged them in the government. Despite the laws against them, the enclosures continued as they "... increased the dependence of villagers on their landlords, who were often their employers as well." Also, villagers were no longer able to gather timber, or hunt animals on common lands.<sup>37</sup> Theoretically the employers provided for all the laborers's needs and were thus able to restrict their status and control their future.

Measures used by the government were not successful because the agricultural system in England had changed dramatically in the seventeenth century. In some places, enclosures and consolidation took place at an early date which created a large number of landless peasants. Land rents were also greatly increased. Revolts occurred in 1600's in Gloucester, Wiltshire, and Dorset. Bridenbaugh wrote,

Wiltshire easily divided into two regions: the generally enclosed grasslands with small farms that produced large quantities of cheese and wool, and the chalk, where capitalistic landowners grew

large crops of wheat and fodder, such as peas, beans, and tares; and where, too, arbitrary enclosing of open fields undoubtedly contributed to widespread discontent that culminated in a series of agrarian revolts between 1625 and 1640.<sup>38</sup>

Another author wrote, "It was over the absorption of commons and the eviction of tenants that agrarian warfare - the expression is not too modern or too strong - is waged in the sixteenth century."<sup>39</sup> The peasants united and refused to work, or pay taxes.

According to Morton, changes could be seen at the end of the century. As more of the unemployed farmers found other jobs, wheat and other agricultural products came back into demand. More food was needed to feed the growing population of laborers. The enclosures dealt more with converting common and waste lands into arable farms ready for cultivating. Sheep-raising became less popular. However, Morton made an important distinction about the changes that occurred in agriculture because of enclosures,

it [changes] was from peasant, small-scale, arable farming to large-scale sheep farming and then back to arable on a large scale, to capitalist arable farming.<sup>40</sup>

As the focus move back toward agricultural produce, the farms became much larger and more complex.

Attitudes also changed within the English government. Large landowners began to promote enclosures by Private Acts of Parliament.<sup>41</sup> Mantoux wrote that the government's

attitudes changed with the Privy Council's inquiries into enclosures in 1620 and 1633. During the investigation, arguments were made in favor of enclosures as many people found them more profitable.<sup>42</sup> The statistics show that governmental officials began to support the Parliamentary enclosures. In Hill's book, he stated that the first, limited pro-enclosure bill occurred in 1608; 1621 was the first general enclosure bill; and in 1624, statutes against enclosures were repealed. Hill concluded, "No government after 1640 seriously tried either to prevent enclosures, or even to make money by fining enclosurers."<sup>43</sup> Thomas asserted that "... by 1654 all of the government agreed with [the] policy of enclosure in order to increase production."<sup>44</sup> Enclosures were now encouraged by the English Parliament.

The government favored enclosures for numerous reasons. The most important reason was the need for increased food production to feed the rising English population.<sup>45</sup> Enclosures made the laborers more dependent on their employers benefiting large landowners, and a larger work force was created for the growing industrial society and expanding factories.<sup>46</sup> Many of the former farmers had moved to the cities in order to find new jobs.

In the eighteenth century, enclosures became a regular part of the English government. Common and waste lands were fenced in taking away the few common rights the small

farmers still possessed. Tenant farmers were forced to pay an extremely high level of rent, and "many of the small freeholders were also forced to sell out by the impossibility [sic] of competing with the up-to-date methods of their richer neighbors."<sup>47</sup> Financial resources were necessary to upgrade farms with more modern equipment.

The number of Enclosure Acts that came through the Parliament in the 1700's communicated the prevalence of enclosures in English society. Morton stated that "... from 1717 to 1727 there were 15 such Acts, from 1728 to 1760, 266, [and] from 1761 to 1796, 1,482."<sup>48</sup> Hill wrote that from 1730 to 1760, improvements in agriculture brought lower prices, and from 1720 to 1750, an agricultural depression occurred creating difficult times for small freeholders and tenant farmers.<sup>49</sup> Small land owners had a difficult time becoming involved in the enclosure process. Only wealthy landowners could pay for the expensive legal proceedings that were required.<sup>50</sup> According to some sources, Parliamentary enclosures were more difficult to accomplish because of the complex procedures, but in fact, these enclosures required less checks because of government encouragement.<sup>51</sup> In order to achieve a Parliamentary Enclosure, one needed strength in property ownership. Turner declared,

It was land ownership strength measured in property rather than number which influenced

Parliament, through the custom to pass an act for enclosure it was usually necessary to gain the consent of those who own two-thirds or more of the acres proposed for enclosure, rather than the consent of the two-thirds or more of the total number of landowners.<sup>52</sup>

Another result of the Enclosure Movement was the redistribution of income,

... away from the small owners and farmers, whose inefficiency was measured by their of [sic] lack of capital to finance agricultural improvement, to the large landowners.<sup>53</sup>

Other social effects and consequences of the acts and agreements are still being debated. Turner sees some of the consequences as beneficial, but others as harmful.<sup>54</sup> An overview of the results reveal that the group most hurt by the enclosures were the small property owners, whereas the large landowners and new industrial class profited from the acts. Specifically, small farmers were forced to sell their lands in order to facilitate enclosures, or because of the enclosures.<sup>55</sup> The very existence of the farmers was affected as their status in society "... from upright members of a community with a distinct set of rights, into inferiors dependent on the rich."<sup>56</sup> Mantoux called this change "the demoralization of the lower classes."<sup>57</sup>

As the industrial revolution emerged as more of a part of life, "the small farmers/yeomanry disappeared in England."<sup>58</sup> Internal migration occurred as individuals

and families moved from rural farms to larger towns and cities looking for work. The population increased in larger cities creating problems, such as unsanitary living conditions and disease. Eventually some of the people came to America looking for employment -- a "spillover" of emigrants from England.<sup>59</sup> Former farmers were now employed in the growing number of factories. The English financial structure was becoming more commercialized requiring further economic changes in society. Yelling questioned whether the enclosures were a stage to change in society, or a reflection of the change that was already occurring. The answer to this question still has not been determined, but a definite connection existed between land ownership and the enclosure movement.<sup>60</sup>

One final result of the enclosures is vital to this thesis. The Enclosure Movement had an affect on the former Englishmen who became Americans. People immigrated to America because of the rough economic times occurring in England. As the population of English cities increased, problems also increased which included a high infant mortality rate, small pox and bubonic plague, poverty, malnutrition, and alcoholism.<sup>61</sup> Bridenbaugh wrote, "The records of local courts and other agrarian difficulties resulted in the dispossession of many rural families and augmented the shifting of population."<sup>62</sup> Some of these people became America's future leaders in business,

industry, and the government; the rest of the immigrants were the citizens who elected the legislators into the government. Hill wrote that many people braved the trip to America and the rough life there,

... in hope of ultimately winning free land and a regular source of livelihood. Nearly 8,000 men, women, and children left England between 1620 and 1642.<sup>63</sup>

Many others would later follow. In The Peopling of British North America, Bernard Bailyn asserted that two distinct groups came from the British Isles. One group included individuals who were underemployed, but enterprising, and looking for a new start in a new place. The other group consisted of,

... often sizable families of some small substance, hit by rent increases that threatened their future security, resentful of personal services they were still required to perform, and eager for a fresh start as landowners or at least tenants capable of expressing their energies in expansive ways.<sup>64</sup>

Many of these families were farmers hit by the high level of rent on land, at least in part, due to English enclosures. Bailyn, in Voyagers to the West, described a tenant who faced a 150 per-cent rent increase because the land near him was being converted to make room for more tenants.<sup>65</sup> These high rent prices eventually forced the English peasants off



their land. Many came to America looking for land to call their own.

David Hackett Fischer, in Albion's Seed: Four British Folkways in America, discusses four distinct groups that came from Great Britain, but who each in their own way valued land (realty). The economy of the New England Puritans was an "old fashioned system of agricultural production, domestic industry, and commercial exchange."<sup>66</sup> They possessed a strong work ethic that was similar to citizens in England before the Industrial Revolution. This group valued high morals, hard work, and supporting themselves independently. The second group was the Cavaliers of Virginia who usually owned plantations with large amounts of land. Because of their profession, they also dealt with trade; however, Fischer pointed out they did not trust commerce; it was seen only as a "necessary evil."<sup>67</sup> The Quakers of Delaware Valley, the third category, were very much like the Puritans as they also believed in a strong work ethic and the "sanctity of property."<sup>68</sup> Both religious groups, the Quakers and the Puritans, encouraged an ethical life of hard work. The last group consisted of migratory backcountry people. The majority of this group moved west looking for better land to farm. In the backcountry, a class system existed with an elite group at the top. However, status was based on property and wealth, not on family heritage as in England.

Status changed -- upward or downward. The yeomanry farmers made up the middle class and owned their farmland. The tenant farmers and the squatters at the bottom were like the people in England who lived off the common lands.<sup>69</sup> Each class wanted to improve itself with better land and status. Private property and land were important to the American immigrants. In Faces of Revolution: Personalities and Themes in the Struggle for American Independence, Bailyn declared that the American Revolution "... was fought in part to protect the individual's right to private property."<sup>70</sup> In the eighteenth century, a large number of emigrants were from the northern agricultural areas of England and the Highlands of Scotland, and the majority of these people went to colonies in New York and North Carolina.<sup>71</sup>

The Enclosure Movement was not specifically mentioned by name in the records of the Constitutional Convention. Did the enclosures have an effect on the men who wrote and adopted the Constitution? Protection of land and private property was significant in the creation of the new government. The Enclosure Movement is an example of the importance of land to Englishmen and to the future Americans. Many Englishmen came to America seeking land to own and farm. The movement also pointed out the consequences of allowing unrestrained power to take advantage of personal property. Did the British government

have an influence on how the writers of the Constitution viewed private property and land? The kinds of property the Founding Fathers considered and included in the Constitution is the focus of the next chapter along with the relationship between property and government.

#### Endnotes

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## CHAPTER V

### EIGHTEENTH CENTURY VIEWS OF PROPERTY

The purpose of this chapter is to examine the eighteenth century concept of property. What types of property existed, and how important was the concept of property in the foundation of the American government? Better protection of private property was one important reason for the writing of the Constitution. Under the Articles of Confederation, the United States government was unstable and could not guard "any manner of affecting the value of the different species of property."<sup>1</sup> Large and small property owners alike in America wanted reassurance that their property would be safe.

Using Constitutional Convention debates, the Federalist and Anti-Federalist papers, and pamphlets from the eighteenth century, this chapter is devoted to the examination of the importance of and the origins of private property; the abuses to private property by the British government; and property's role in the foundation of a new Constitution and government. An unequal distribution of property created distinct interest groups in society; the two major types were agricultural real estate and urban commercial property. These two interests are examined in an overview, and then specifically in regard to property

property views affected the eighteenth century economy.

How important is the right to possess property in American society? In 1791, Robert Coram wrote in a pamphlet, "The right to exclusive property is a question of great importance and, of all others, perhaps, deserves the most candid and equitable solution."<sup>2</sup> Coram argued that scholars and governments wanted to keep the right to property detailed and confusing so that ordinary people -- without some education -- would not know how to assert their rights. Great Britain did not have a written constitution, and many laws passed by the government were very complex. Only very educated men (for example, lawyers or professional politicians) could comprehend the meaning of the laws. However in America, laws about as well as abuses on property by the state and national governments were widely discussed and debated. Many scholars, preachers, and political leaders also discussed and wrote pamphlets on citizen's rights, including the right to own private property. According to Noah Webster, property was the basis for real power because in civilized societies those who owned property -- primarily real estate, but also commercial and industrial property -- possessed the influence and control. Webster wrote,

Whenever we cast our eyes we see this truth, that property is the basis of power and this being established as a cardinal point, directs us to means of preserving property.<sup>3</sup>



In many ways, people associated their happiness and security with their property.<sup>4</sup> With personal property, citizens had a means by which to earn a living and provide for themselves and their families.

In the eighteenth century, many writers believed that property was a natural right from God to be used by all; property was considered common to all. Property in this sense usually meant the physical earth - "land, spontaneous produce, game, and the elements," which were to be taken and used only when needed.<sup>5</sup> No one was allowed to abuse the common property. However, the use of property and the possession of it were two different ideas. In the anonymous pamphlet just cited, the author makes a distinction between common property, and private property. "Artificial Property acquired by honest interest such as product of the earth by tillage, or as manufacture, ought to be particular [contrasted to common property]."<sup>6</sup> Property is possessed by an individual, or a group of people; it specifically belongs to only them. Several of the debates of the Constitutional Convention concerned the right to possess private property -- either agricultural real estate or urban commercial property. A pamphlet on the Constitution of South Carolina asserted that individual rights including the right to use property came from the laws of nature. All men in nature had a fundamental right to be free and to use the things in nature that were around him. The property was

there for mankind's benefit. A man could use the trees in the forest for shade and shelter, and other people could use them after him, but once a piece of wood was used for a fire or an apple from a tree was eaten or consumed it became the man's possession (to only be used by him). This was the concept of use by all versus possession by one. The only way a man possessed items in early societies was by force and power. Once man had evolved from a primitive way of life, he learned to form societies to jointly protect possessions.<sup>7</sup> As another pamphlet noted,

... the right of property, as well as those of life and liberty are gifts of nature. The end of civil society is to guard them by stronger sanctions, the moral sense being too weak or too unequal amongst men for that purpose.<sup>8</sup>

Governing bodies were set up to protect property and liberty, and many colonists argued that since they were under the rule of Great Britain, they retained their rights as Englishmen under the Magna Carta, including the protection of their property.<sup>9</sup> Once the United States was a separate nation, many citizens felt a specific protection of property should be included in the Constitution. When it was left out, Anti-Federalists asserted that an amendment should be added that protected the natural rights of men including,

the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.<sup>10</sup>

Having one of the first written constitutions is a unique aspect of the American government. Protection of property was one feature that American colonists wanted included in the new government. The former colonists saw how they and their possessions had been mistreated by the British government. The abuses by the mother country were discussed in numerous pamphlets. The writer of one pamphlet complained that Great Britain's common lands did not belong to the people. Rather, they were used by the king and his government as they saw fit.<sup>11</sup> The colonists saw their property rights diminish as they lost control over commerce, trade, and taxation. More than one pamphlet described their situation as being closely related to slavery. Silas Downer [A Son of Liberty] wrote,

The common people of Great Britain very liberally give and grant away the property of the Americans without their consent, which if yielded to by us must fix us in the lowest bottom of slavery: For if they can take away one penny from us against our wills, they can take all.<sup>12</sup>

In another pamphlet, the Continental Congress appealed to the Canadian colonists to join them and create a united front against Great Britain; the Congress made some strong arguments, but ultimately, they were unsuccessful. The paper mentioned the excise tax,

the horror of all free states, thus wrestling your property from you the most odious of taxes and laying open to insolent tax-gathers, houses, the scenes of domestic peace and comfort and called the castles of English subjects in the books of their law.<sup>13</sup>

The same pamphlet also mentioned the lack of true authority for colonial governments since the ultimate power came from the British crown.<sup>14</sup> Another tract was written by a former American Tory-Loyalist, Daniel Leonard, who wanted specific property guarantees included in the new constitutional government.<sup>15</sup> Most Americans saw the need for written protections.

In order to protect citizen's possessions from these potential abuses, many writers of the Constitution supported a strong, united national government. As noted earlier, many believed that the reason for having a government included the safeguarding of people's rights and possessions,<sup>16</sup> but the government had to be strong enough to accomplish this goal. The government under the Articles of Confederation was unable to protect the land, the commerce, the credit system, or control foreign affairs. Each of these affected the stability of property and the economy. One example of the poor leadership by the Articles of Confederation government was the drop in land prices which hurt property of all kinds.<sup>17</sup> State governments abused the property rights of individuals. Manufacturers could not get fair prices for their products, and there were

conflicts over trade with other states and foreign governments. A strong national government provided a check against unfair practices by the states.<sup>18</sup> Another fear of property owners was unfair taxation.<sup>19</sup> Revenue was needed by the government, but everyone disliked the direct method of taxing. A national system was needed to regulate taxation and commerce.<sup>20</sup>

Not all writers and leaders believed that a strong government was needed to protect property. Patrick Henry, one of the strongest Anti-Federalists, believed that persons and property were safe under the old Articles of Confederation government, thus there was no need for changes. He did complain about the lack of a Bill of Rights in the proposed constitution.<sup>21</sup> Henry as well as many other Anti-federalists had a fear of a strong national government's "tendency to aristocracy."<sup>22</sup> They were concerned the American government could become abusive like the British government. The Anti-federalists wanted the real power of the government in the state legislatures.

Another Anti-federalist took a judicial view, arguing that if the courts were given authority to protect property, the judges would hurt the people who owned substantial property. Legislators who made laws that benefitted debtors over creditors would be reinforced by the federal courts. The writer argued the prohibition against the states injuring citizens would be sufficient to provide

security.<sup>23</sup> Example of prohibitions on the states included impairing contracts and coining money. Alexander Hamilton wrote that the opposition to the Constitution put a fear of the "wealthy and well-born" into common citizens that did not exist before or was being exaggerated. The common people were unnecessarily anxious about those with substantial property or wealth. The wealthy would not be able to abuse the civil rights of other groups in society. Hamilton assured the public that the regulations of electors and those who can serve in the government would be written in the Constitution and could not be altered by the state or national legislatures.<sup>24</sup> Therefore, the wealthy who were in the government could not take advantage of the less affluent groups.

Many leaders and authors believed that the best way to have equal rights for all citizens was to have an equal distribution of property; however, this would not be possible to maintain since people have different talents and resources for acquiring private property and therefore would create anew an inequality of property and wealth in society.<sup>25</sup> In the Constitutional Convention debates, Hamilton argued that having liberty and freedom of choice resulted in an unequal distribution of economic resources.<sup>26</sup> Individuals will choose different ways to gain economic stability for themselves, such as, in the

choice of their profession. As James Madison wrote to Thomas Jefferson,

In all civilized Societies, distinctions are various and unavoidable. A distinction of property results from that very protection which a free Government gives in acquiring it. There will be rich and poor; creditors and debtors; a landed interest, a monied interest, a mercantile interest, a manufacturing interest.<sup>27</sup>

Thus, the government's first job is to protect people's abilities, or "faculties" for acquiring and keeping property.<sup>28</sup> The allotment of property resulted in the creation of groups of interest in the government and the society. Madison wrote that the creation of groups is necessary because one individual can not have an effect in government, whereas a group can have great influence.<sup>29</sup> For example, one merchant would have little influence on legislators who write laws; however, a group of merchants could persuade their legislators to write bills that favor them. A pamphlet from 1794 argued that the Constitution should protect the interests of specific groups because they were the people who elected legislators to office.

The merchants, the farmers, the planters, and the manufacturers, each have common interests. Each of these interests have their respective rights annexed to them, independently of the great natural rights common to all.<sup>30</sup>

In The Record of the Federal Convention, Madison recorded a speech by Charles C. Pinkney [sic] at the

Convention. Pinkney described three general economic classes in society and the role of each in government. Professional men, such as lawyers and judges, would always have importance in government since they had the expertise to write and interpret legislation. Commercial men were involved in business, trade, and manufacturing. According to Pinckney, this interest would not and should not have a large role in the government. Even though the commercial property groups was a minority, they were not trusted by many of the delegates, such as Pinckney. Commercial leaders were regarded as suspicious and dangerous to the other interests. The last group was the landed interest "who are and ought ever to be the governing spring of the system."<sup>31</sup> The real estate group was considered the most permanent and stable. Hamilton in "Federalist Number 35" wrote that the representative body in government will include "landowners, merchants, and members of learned professions." He asserted that nothing is wrong with the landed interest uniting together to protect their interests, and the united merchants could guard the concerns of the mechanics and manufacturers. The professional men would, then, be the balance between the two other groups.<sup>32</sup> Professional men, such as lawyers, judges, and doctors, were not primarily involved in commerce or agriculture so that when they made laws and regulations concerning these industries, they could be unbiased and provide a balance of



power to the other two interests. In another Federalist Paper, Hamilton defended the representation of interest groups in the government. Opponents of the system were concerned that one group could gain influence over another. Hamilton described the fears this way,

Or, to speak in the fashionable language of the adversaries to the Constitution, will it [distribution of interests] court the elevation of the 'wealthy and well-born' to the exclusion and debasement of the rest of society?<sup>33</sup>

Hamilton asserted that it is less likely that one class or the other will dominate in the "national council" [legislature] than one will dominate in the "state council," and the domination of the national government would be much more dangerous.<sup>34</sup> An unequal distribution of property guaranteed that property groups would be created in the government. Real estate and commercial property were the two major property groups that existed in the 1700's. How did the eighteenth century leaders view the two groups?

Describing real estate, or land in the eighteenth century can be difficult because the concept of "land" had different meanings to different individuals and groups. The circumstances involving land could also change the meaning. An example of this situation was Alexander Hamilton writing on the taxation of land. According to him, those who held land should be seen as one group from the "wealthiest landholder to the poorest tenant" because all landholders

had the same interest - keeping land taxes low.<sup>35</sup> In America in the eighteenth century, land owners were the majority of society, and many political leaders owned land. In general, most of the real estate interest group was involved in agriculture - large southern planters, average farmers who owned land, and the tenant farmers who usually worked land, but did not own it. In his history of the Revolutionary period, David Ramsey wrote,

The great bulk of the British colonists were farmers, or planters, who were also proprietors of the soil. The merchants, mechanics, manufacturers, taken collectively, did not amount to one fifteenth of the whole number of inhabitants.<sup>36</sup>

America was founded as an agricultural nation, and many people saw the pursuit of farming as the way to keep high morals in society and secure the rights of property. Coram, in his pamphlet, asked and answered this question,

What is the civilized man's ambition? To produce property in soil. ... To possess property in land is the ambition of civilized lands.<sup>37</sup>

Anti-federalist Malancton Smith [sic] described the farming, or yeomanry class as being "more temperate, of better morals and less ambitious" than the other economic groups. He also considered them to be less influenced by other groups in society, such as the poor. Those in agricultural profession also were less likely to be persuaded by wealthy politicians. To Smith, only the farmers owned the means of

making their living.<sup>38</sup> One pamphlet mentioned that the large amount of farm land had kept America "from the vices of an old and corrupt world [Great Britain]." Agriculture did not allow people to be greedy, or idle.<sup>39</sup> Farmers had to work hard to make a profit. The majority of ordinary citizens were farmers, but only in five of the thirteen states was the majority of state income earned by agriculture - those states in the South. Many land owners feared that commerce and navigation laws would hurt their profession.<sup>40</sup> As will be shown later, the interest groups were dependent on each other although they preferred not to be.

One of the difficult problems faced by both groups was the regulation of taxes and sources of revenue. In "Federalist Number 12," Hamilton asserted that the farmers could not handle the bulk of the revenue needed by the government; direct taxes were too strict on farmers.<sup>41</sup> Taxation was a difficult problem for farmers as the former colonists remembered the strict taxes put on their land in the past. They felt that property taxes, if they must be taken, must be assessed fairly and properly, and the national government should assume this role.<sup>42</sup> The Founding Fathers believed that the national government could do the best jobs assessing property taxes fairly. The delegates felt the state government would be biased in performing the task.

Large southern planters possessed a unique type of property - slaves which created a perplexing problem for eighteenth century American leaders. To southerners, slavery was an institution, and their bondservants were as much property to them as was their land; however, to northerners, slavery was a contradiction in terms of American liberty. In his essay on slavery, David Rice wrote that all men are created free and equal by God, and if one man had the right to liberty and the possession of property, then, all men should have the right.<sup>43</sup> Theodore Dwight declared slavery contradicted the three natural rights of men. The most important right is personal liberty, then, personal security, and last, personal property; however, slavery reversed this order putting the property rights of slave owners over the slaves's rights of personal liberty.<sup>44</sup> Madison in "Federalist Number 54" did not personally address the issue, but he used the words of a southern speaker to set forth pro-slavery views.<sup>45</sup> At the Constitutional Convention, northern and southern delegates were forced to compromise on this complicated and divisive issue.

The urban commercial property interests made up the other major group in society. Commercial property interests included those involved with money (for example, bankers); manufacturers who made products to be sold; and merchants and mechanics who sold and repaired items. The stores and

factories and equipment were considered property as well as that which they produced. As with the landed interests, writers sometimes spoke generally about commercial property, whereas at other times, they would mention one specific commercial property group. In the majority of political writings, commercial property interests were treated as a broad group that included many different professions. All those who were supporting commercial ideas agreed that trade was absolutely necessary to agriculture and landed interests. Without a way to market their agricultural goods, the farmers would not survive financially.<sup>46</sup>

Hamilton, in "Federalist Number 12," reminded the public that trade and money were becoming more important in their society. Every profession - farming, manufacturing, and mechanic - used trade to receive profit for its labor. The farmers needed trade to get their products to markets. Manufacturers sold their goods to other states and countries, and mechanics required commerce to receive goods to repair and, also, to get the items back to their customers.<sup>47</sup> Commercial property interests were still vital even though they were a minority in the society at this time. Hamilton wrote,

Money is, with propriety, considered as the vital principle of the body politic; as which sustains its life and motion and enables it to perform its most essential function.<sup>48</sup>

Money provided the necessary revenue required for government to function. Trade might be necessary, but it was not always seen favorably. Hamilton demonstrated the necessity and importance of trade and money, but he also pointed out the problems that it brought. He asserted that the pursuit of commerce had brought wars and conflicts to many countries.<sup>49</sup> Trade problems had brought great strife to many nations, including the early Roman republic, Holland, and Great Britain.<sup>50</sup>

Commercial property also faced abuses by other interests. Some felt that commercial interests were unfairly taxed by the landed interests, and thus a minority of the people paid a majority of the taxes.<sup>51</sup> To protect the monied and commercial property interests, a strong united nation was required. Under a strong national government, commercial property would become more active without penalty.<sup>52</sup> In "Federalist Number 34," Hamilton wrote, "... if we [the American nation] mean to be a commercial people, it [taxation] must form part of our policy to defend that commerce."<sup>53</sup> He asserted that protection for commercial policies should be included in the Constitution considering its increasing importance to the country. Taxes must be taken to pay for commercial property protection. Hamilton also believed that the federal government should regulate the commercial property interests and trade in the nation; this was necessary not only to

protect them, but to prevent abuses by the monied interests.<sup>54</sup> As the American society matured, the definition of property would become more diverse and intertwined. This fact was clearly demonstrated in the complex question of property requirements for voting.

In the 1700's, property requirements for voting and the issue of representation in the government created heated discussions during the Federal Constitutional Convention. The debate involved required land ownership, or required owning commercial property as qualifications for voting. The debates became very heated as the two interest groups defended their point of view. This issue raised questions not only of who could be elected and who could vote, but how the states would be represented in the national legislature (how many congressmen each state would receive). One side argued for representation based on population; the other side favored wealth in the form of property. Another aspect dealt with the type of property to use - real estate or commercial property. Many feared if government was based on wealth and property, the wealthy minority would take advantage of the majority without substantial property as had occurred in Great Britain.<sup>55</sup> The question of representation became a battle of interests; each group wanted security for its possessions.<sup>56</sup>

Property qualifications for suffrage were being supported for many reasons. The most simple reason set forth by Gouvenour Morris urged,

if property then was the main object of government certainly it ought to be one measure of the influence due to those who were affected by the Government.<sup>57</sup>

A man who owned property had a great stake in the society, and therefore, he should be a representative in the government that makes rules concerning property for the country.<sup>58</sup> Men with property were more permanent in society, and therefore, concerned with how the government would affect their lives. These men wanted to be a part of the governmental process to help guard their possessions. In a footnote to his essay, Webster wrote that,

... in most free governments, some property has been thought requisite, to prevent competition and secure government from the influence of an unprincipled multitude.<sup>59</sup>

Many eighteenth century leaders felt property was necessary as a qualification for voting and office holding, but another question dealt with what type of property to use.

Many saw land as the true qualifier for representation in government. This idea was carried over from the British Parliament where those who owned landed estates controlled the political process.<sup>60</sup> Some convention delegates



believed that if debtors, particularly those in agriculture, were allowed to participate in government, they would influence legislators, or write bills that hurt creditors and bankers, such as bills that made repayment of debt easier for the farmers.<sup>61</sup> John Rutlidge [sic] asserted that "[P]roperty was certainly the principle [sic] object of society," and he wanted a governmental system set up that required future states's representation to be based on land. Rutledge wanted property based on real estate because he, personally, believed those with land were the most stable in society. The proposal failed, as other delegates did not want to discriminate against future states.<sup>62</sup> Many delegates believed that the newer states would not have many residents who owned substantial real estate.

Morris feared that if those without land were allowed to vote, they would be influenced by those with wealth. He stated, "nine-tenths of the people are at present freeholders [of land]," and most merchants and manufacturers have the ability to own land if they wanted to vote, and if they did not have the ability, they should not vote.<sup>63</sup> Land ownership was an indication of reliability that many preferred. Another delegate argued,

freeholders are the 'best guardians of liberty;' and the restriction of the right to them is a necessary defense against the dangerous influence of those multitudes without property and without principle, with which our country, like all others, will abound.<sup>64</sup>

A fear of the masses urged many delegates to argue for property qualifications, and for many of them, land was the most secure and stable requirement.

For other delegates, particularly those from the northern states, land was an unfair qualification. Delegate Elseworth [sic] declared,

Shall the wealthy merchants and manufacturers, who will bear a full share of the public burden not be allowed a voice in the imposition of them - <taxation and representation ought to go together>. <sup>65</sup>

The commercial property interests paid their part of the taxes to the government, and they believed this entitled them to be a part of the governmental process. Colonel George Mason questioned,

Does no other kind of property but land evidence a common interest in the proprietor? Does nothing besides property mark a permanent attachment? <sup>66</sup>

To these men, commercial property was as secure as land and as important and necessary to the functioning of the nation. Madison also made the point that many people who possessed land were debtors. <sup>67</sup> Land was not always a true representation of wealth. Pinkney [sic] argued that property is an impractical rule since it is difficult to set up a fair requirement basis especially for import and export

revenues, and therefore, representation in the legislature should be based on population, not property.<sup>68</sup>

In the end, the delegates were forced to compromise. Representation in the senate was based on the states, whereas the house was based on population. Another compromise dealt with method of elections. The Congress and president were chosen by different methods - the president chosen by the Electoral College; the senate by state legislatures; and the House of Representatives by the public. Since the senate was to be picked by state legislatures, many felt this governmental body would represent property interests since most state legislators themselves possessed property. The senate was seen as more a aristocratic assembly compared to the "democratic" House. Property qualifications for electors were ultimately struck down because a fair basis could not determined, but the basis of the argument was an important issue and illustrated the competition between property groups.

As stated before, in the eighteenth century, the United States although an agricultural nation, faced the Industrial Revolution and many changes. Madison realized that the government's system of taxation would have to be able to change along with the rest of society. America might face the day when the majority of income would come from commerce and trade.<sup>69</sup> Hamilton reasoned that the different

property interests, although at odds at times, were closely related and would continue to be. He wrote,

The often-agitated question between agriculture and commerce had from indubitable experience received a decision which had silenced the rivalry that once substituted between them, and has proved, to the entire satisfaction of their friends, that their interests are immediately blended and interwoven. It has found that in proportion as commerce has flourished land has risen in value.<sup>70</sup>

The more the different interests learned to work together, the more they would both profit. Farmers and merchants would work together to sell their products and benefit the nation as a whole.

In America in the 1700's, protection of property was as important to the citizens as the protection of life and liberty. As colonists, Americans had seen their property jeopardized by the British government; a privilege that many saw as a natural right from God. So that the nation would be economically beneficial to all, most of the delegates believed that a written protection of property was crucial to the new constitution and the new government. However, an inequality of property existed which produced factions and economic groups within the government -- real estate and commercial property were the two major types. Each division had goals to achieve as they sought to protect their various interests. The landed majority debated the commercial property group on various issues, including property

qualifications for suffrage. In the end as society changed, the two interests grew closer together as a united government was created.

The next chapter will analyze the property protections found in the Constitution. How did the Founding Fathers intend to safeguard their possessions? How are these protections to be interpreted in the twentieth century?

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## CHAPTER VI

### PROPERTY PROTECTIONS AND THE CONSTITUTION

The Founding Fathers believed that property protections should be included in the Constitution. Seven different clauses or phrases that deal with the protection of property are found in the document.

The first clause deals with taxation, and it is found in Article I, Section 8, Clause 1 of the Constitution which states "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all the Duties, Imposts and Excises shall be uniform throughout the United States." Taxation regulated the use of and prevented abuses to private property. The national government was able to provide a fair method of taxation for raising revenues. There is one exception and two qualifications contained in the taxation clause of the Constitution. "Articles exported from any State may not be taxed at all. Direct taxes must be levied by the rule of apportionment and indirect taxes by the rule of uniformity."<sup>1</sup> Over the years, the Supreme Court, in a series of cases had curtailed the subjects that Congress can tax, the manner in which they can be taxed, and what results can be brought about by the taxes.

There are three main purposes for federal taxation. First, taxation is used to regulate some industries. The national government regulates businesses in the states so that they can be taxed in a productive and equitable way. The Supreme Court has also upheld taxes on drugs and firearms which protect the general public, and that punish those who use them in an inappropriate manner. This second purpose occurs when taxes, either used alone or with regulations, to suppress an activity, but there is no pretense that this is taxation for revenue. If the Congress previously possessed the authority to regulate that activity, the Supreme Court usually upheld the tax as valid.

Lastly, taxes in the form of tariffs have been used to protect and promote American businesses. Businesses include private property, both real estate and commercial property. "The earliest examples of taxes levied with a view to promoting desired economic objectives in addition to raising revenue were, of course, import duties."<sup>2</sup> The case of Hampton and Company v. United States, 276 U.S. 394 (1928), upheld the constitutionality of the protective tariff of 1789. In the Hampton case, Chief Justice Taft wrote

[I]n this first Congress [who wrote 1789 tariff] sat many members of the Constitutional Convention of 1787. This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of our Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs, long acquiesced in, fixes the construction to be

given in its provisions. ... The enactment and enforcement of a number of customs revenue laws drawn with a motive of maintaining a system of protection, since the revenue law of 1789, are matters of history.<sup>3</sup>

Therefore, the Supreme Court held that protective tariffs were constitutional.

Taxes were passed to raise revenue for the government, but also to promote business and protect property. The Federal Government was forbidden from overburdening the citizens with taxes, but this subject will be discussed with the due process clause of the Fifth Amendment.

The second property protection concerns the ability of the national government to regulate commerce. Article I, Section 8, Clause 3 of the Constitution states "The Congress shall have power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." This property protection will focus on Interstate Commerce - commerce between the states. Without being able to regulate commerce, businesses could not control the use of their property. Since the Articles of Confederation failed to regulate commerce, specific provisions were added to the new Constitution.

This clause serves a two-fold purpose: it is a direct source of the most important powers which the National Government exercises in time of peace; and except for the due process of law clause of Amendment XIV, it is the most important limitation by the Constitution on the exercise of state power.<sup>4</sup>

In Gibbons v. Ogden, 9 Wheat. (22 U.S.) 1 (1824), Chief Justice John Marshall set forth a definition of commerce. He believed commerce included traffic involved in trade and navigation. Congress regulated commerce between states; however, special preference could not be given to one state over another. Marshall believed that all transactions must be commercial or monetary.

But, today, 'commerce' in the constitutional sense, and hence 'interstate commerce,' covers every species of movement of persons and things, whether for profit or not, across state lines, every species of communication, every species of transmission of intelligence, whether for commercial purposes or otherwise, every species of commercial negotiation which will involve sooner or later an act of transportation of persons or things, or the flow of services or power, across state lines.<sup>5</sup>

The case of United States v. South-Eastern Underwriters Association, 322 U.S. 533, 549-550 (1944), dealt with insurance companies where the Court stated that transactions could be of a non-commercial nature, but still considered commerce and under federal regulation.

At first, the Supreme Court looked at interstate commerce very narrowly.

Of course, the power to regulate commerce is the power to prescribe conditions and rules for the carrying-on of commercial transactions, the keeping free of channels of commerce, the regulating of prices and terms of sale. Even if

the clause granted only this power, the scope would be wide, but it extends to include many more purposes than these.<sup>6</sup>

The interstate commerce power had been extended over the years so that "[T]he power to regulate interstate commerce is, therefore, rightly regarded as the most potent grant of authority in Section 8."<sup>7</sup> However, Congress is prohibited from interfering with any "purely" intrastate matters.

Foreign commerce and interstate commerce are different in nature. Foreign commerce is related to the unlimited foreign relations powers given to the national government. However, interstate commerce powers are a limited authority given to the national government to prohibit state interference. This authority has grown over the years as the national government has increased in size and strength.

Interstate commerce, first, dealt with waterways, then the highway system, and then in the late 1800's, the railroad system. In the twentieth century, oil, gas, and electric companies were regulated under the interstate commerce clause.

Unquestionably, one of the great advantages anticipated from the grant to Congress of power over commerce was that state interferences with trade, which became a source of sharp discontent under the Articles of Confederation, would be thereby brought to an end.<sup>8</sup>

The next protection dealt with national currency found in Article I, Section 8, Clauses 5 and 6 of the Constitution

state "The Congress shall have Power ... To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. ... To provide for the Punishment of counterfeiting the securities and current Coin of the United States." Both commercial property and real estate dealt with currency in the selling and buying of goods. The national government has the authority to regulate all aspects regarding currency. Congress can charter national banks and coin money and authorize paper bank notes. [McCulloch v. Maryland, 4 Wheat. 316 (1819).] The national government can also prohibit circulation of notes from State banks and corporations. "It may require the surrender of gold coin and of gold certificates in exchange for other currency not redeemable in gold."<sup>9</sup> The Supreme Court upheld the power of Congress to make Treasury notes legal tender. [Legal Tender Cases, 12 Wall. 457 (1871).] The Congress also has the power to punish all crimes concerning counterfeiting. Federal statutes to punish counterfeiting was upheld in United States v. Marigold, 9 How. 560 (1850).

There were also currency powers listed in the Constitution that were denied to the states. Article I, Section 10, Clause 1 of the Constitution states "No State shall ... coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payments of Debts."

Within the sense of the Constitution, bills of credit signify a paper medium of exchange, intended to circulate between individuals; and between the Government and individuals, for the ordinary purpose of society.<sup>10</sup>

Only the national government was given the power to coin money, or make paper bills legal tender. States can not make paper currency legal tender for payment of debts. Before the Constitution, state governments attempted to make cheap paper money so that farmers and others in debt could pay their obligations. Merchants and businessmen were hurt economically by these methods.

The fifth property protection dealt with the commerce clause found in Article I, Section 10, Clause 1 of the Constitution which states "No State Shall pass ... Law impairing the obligation of contract." Contracts are necessary in order to conduct business of every type. Both the agricultural and commercial enterprises require secure private contract for transactions. The contract clause applies to "... statutes, constitutional provisions, municipal ordinances, and administrative regulations having the force and operation of statutes."<sup>11</sup> In most cases, the contract clause does not apply to judicial decisions because of the doctrine of separation of powers. "A contract is analyzable into two elements: the agreement which comes from the parties, and the obligation, which comes from the law and makes the agreement binding on the parties."<sup>12</sup> The contract clause includes public grants [Fletcher v. Peck, 6



Cr. (10 U.S.) 87 (1910)] and corporate charters [Dartmouth College v. Maryland, 4 (17 U.S.) 518 (1819)]. Private corporations are still subject to state legislative statutes [Providence Bank v. Billings, 4 Pet. (29 U.S.) 514 (1830)] and the state's police powers [Thorpe v. Rutland and Burlington R. Company, 27 Vt. 140 (1854)]. The contract clause includes many spheres, but the focus here is on private contracts since this is the subject individual citizens's were concerned with.

"The term 'private contract' is, naturally, not all-inclusive."<sup>13</sup> The Supreme Court ultimately is the one who decides what constitutes a private contract. Many cases were decided by the Supreme Court dealing with the contract clause including Sturges v. Crowningshield, 4 Wheat. (17 U.S.) 122 (1819), and Ogden v. Saunders, 12 Wheat. (25 U.S.) 213 (1827). In Ogden v. Saunders, the Court stated that contracts were subject to municipal law which included state statutes and judicial decisions. "In short, any law which at the time of the making of a contract goes to measure the rights and duties of the parties to it in relation to each other enters into its obligation."<sup>14</sup>

In the case of Bronson v. Kinzie, 1 How. (42 U.S.) 311 (1843), the concept of remedy was upheld by the Supreme Court. Remedy was held to be part of a private contract's obligation. States can still change their judicial system and laws despite conceptual obligations. States are allowed

to use their police powers to regulate private contracts for the public welfare.

The prevailing doctrine was stated by the Supreme Court of the United States in the following words: 'It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not present the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. ... In other words, that parties by entering into contracts may not estop the legislature from enacting laws intended for the public good.'<sup>15</sup>

This idea was upheld by the case of Manigault v. Springs, 199 U.S. 473, 480 (1905).

One of the most important property protections is found in Amendment V of the Constitution which states "No person shall ... be deprived of life, liberty, or property, without due process of law." The due process clause is a restraint on the legislative branch as well as the executive and judicial branches. The due process law evolved from a theory of natural rights which limited the power of the government, particularly in regard to personal property rights. The Founding Fathers feared that an unrestrained government could deprive people of their private property. The written constitution is the supreme law of the land, but the government is able to use its "police powers" to regulate property, subject to the Constitution. The Fifth Amendment due process clause is bound to the other

provisions in the Fifth Amendment, but the Fourteenth Amendment binds not only the Fifth Amendment, but also other provisions found in the Bill of Rights.

Dealing with subject of taxation, the federal government is less restricted by the Fifth Amendment than the States by the Fourteenth.

It may tax property belonging to its citizens, even if such property is never situated within the jurisdiction of the United States, or the income of a citizen resident abroad, which is deprived from property located at his residence. The difference is explained by the fact that protection of the Federal Government follows the citizen wherever he goes, whereas the benefits of state government accrue only to persons and property within the State's borders.<sup>16</sup>

Most taxes of the Federal Government are retroactive, or they can be applied to an earlier date. These taxes do not violate the due process clause. "Federal regulation of future action, based upon rights previously acquired by the person regulated is not prohibited by the Constitution."<sup>17</sup> [1987, 1303.] The due process clause allowed for the regulation of property while still protecting the individual and corporate owners.

The sixth property protection deals with the power of National Eminent Domain. Amendment V of the Constitution states "... nor shall private property be taken for public use, without just compensation." The Founding Fathers wanted to be certain that if the national government took

private property for their use, the citizens injured would be compensated. This was not a new allowance of power.

All separate interests of individuals in property are held of the government under this tacit agreement or implied reservation. Notwithstanding the grant to individuals, the eminent domain, the highest and most exact idea of property, remains in the government, or in the aggregate body of the people in their sovereign capacity; and they have a right to resume the possession of the property ... whenever the public interests require it.<sup>18</sup>

The case of Kohl v. United States, 91 U.S. 367 (1876), affirmed the national government's power of eminent domain. The National Government is only limited by the Constitution as the Supreme Court interprets it. Congress is also able to use State lands if needed for national public use. Not until the Fourteenth Amendment did a limit on state governments exist. The Congress may delegate this power to other governing bodies as well as private corporations and other associations "... when they are promoting a valid public interest, or furnishing a public service."<sup>19</sup> This concept was approved first in Curtiss v. Georgetown & Alexandria Turnpike Co., 6 Cr. (10 U.S.) 233 (1810).

Questions concerning this issue deal with property damaged by the government, or an activity dealing with property which is impaired by governmental action. Is compensation required, or necessary? At first, the Supreme Court stated compensation was only necessary if the property

was physically taken; accidental damage was not considered. However in later cases, the Court did award compensation for injury to property and related activities.

It was thus held that the government had imposed a servitude for which it must compensate the owner on land adjoining the fort when it repeatedly fired the guns at the fort across the land and had established a fire control service there.<sup>20</sup>

This concept was upheld in case of Portsmouth Harbor Land and Hotel Company v. United States, 260 U.S. 327 (1922).

The government was to compensate property owners not only if property was taken, but also if it was damaged, or an activity dealing with property was impaired.

The next chapter will analyze the information found in the preceding chapters comparing and contrasting the Founding Fathers's and Charles Beard's views of property. Do they match? What was the actual role of property in the foundation of the American government?

#### Endnotes

1. Johnny H. Killian and Leland E. Beck, editors, The Constitution of the United States: Analysis and Interpretation, Prepared by the Legislative Reference Service, Library of Congress Washington, D.C.: Government Printing Office, 1953.), 139. [hereafter cited as Constitution, 1987]

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3. Edward S. Corwin, editor, The Constitution of the United States of America: Analysis and Interpretation, Prepared by the Legislative Reference Service, Library of Congress (Washington, D.C.: Government Printing Office, 1953), 112. [hereafter cited as Constitution, 1953]

4. Ibid., 118.

5. Killian and Beck, Constitution, 1987, 154-5.

6. Ibid., 158.

7. Ibid., 159.

8. Ibid., 200.

9. Corwin, Constitution, 1953, 265.

10. Ibid., 326.

11. Killian and Beck, Constitution, 1987, 396-7.

12. Ibid., 399-400.

13. Ibid., 419.

14. Ibid., 420.

15. Ibid., 424.

16. Ibid., 1300.

17. Ibid., 1303.

18. Ibid., 1308. [quote take from West River Bridge v. Dix, 6 How. (47 U.S.) 507, 535 (1848)].

19. Ibid., 1309-10.

20. Ibid., 1319.

CHAPTER VII  
THE ACTUAL ROLE OF PROPERTY IN  
THE AMERICAN GOVERNMENT

What was the actual role of property in the foundation of the American government and Constitution? How do eighteenth century views compare and contrast with the ideas advocated in Beard's books? The purposes of government, the organization of property groups, and the representation of citizens in the early years of the nation are the focus of this chapter.

Both the Founding Fathers and Beard accepted the proposition that the protection of property was one of the purposes for the organization of governments, including the American government. The Founding Fathers believed that property -- the elements in nature -- originated from God to be used by all. By force, man took communal property for his exclusive use, he possessed it, he consumed it, or he used the property in order to create other useful objects. Men created governments and formalized societies in order to safeguard their possessions and property. Collectively, the people were stronger and could provide better protection. In the eighteenth century, philosophers and writers advocated that man was entitled to certain rights, that included life, liberty, and the possession of property. The

government had the responsibility of safeguarding the rights of its citizens.

In The Economic Basis of Politics, Beard demonstrated that Aristotle, James Harrington, John Locke, and James Madison all believed in the necessity of government to safeguard property. Regulation by the government was necessary for some aspects of the economy including commerce, trade, and taxation which involved all kinds of property. The leaders in government attempted to provide a balance of power and authority in the society. An inequality in the possession of property created factions and classes in the society which government supervised. Beard mentioned the American system of separation of powers used to distribute the power and influence that existed in government. The three branches of government balanced out the authority in the state. One person or a group of people was unable to abuse the rights of the citizens. Civilized societies required strong governing bodies to protect the possession of private property by its citizens.

Because of the important need to guarantee property, the eighteenth century leaders believed that a written protection of property should be included in the Constitution. The eighteenth century leaders saw how property rights were abused in Great Britain, and they wanted to safeguard against it. Many pamphlets written in eighteenth century discussed the abuses by the former



"mother country." Some saw themselves in the same environment as the slaves. The colonists believed they were entitled to the same rights in America that British citizens possessed in their former home. The Americans demanded better protection of land and commerce, first from Great Britain and then from their new national government.

In his writings, Beard stated that the writers of the Constitution believed in a written protection of property as well as a government that could protect the rights of the minority from the masses (those without private property). Checks and balances were created for this purpose, as well as the separation of national power into three branches each having a separate role in the administration of the society. The system was created so that one branch could not gain dominance over the others.

The main difference between Beard and the Founding Fathers was over the interpretation of who created and controlled the American government. Beard asserted that the creators of the government were a conservative group looking out for their own self-interests. The Convention delegates were concerned only with the types of property that they possessed, and how they could best maximize and protect their profits. According to Beard, the Constitution was not written for ideological or philosophical reasons, but in order to protect the economic interests of the men who created it.

The Federalist and Anti-Federalist papers, eighteenth century pamphlets, and Constitutional Convention debates set forth the Founding Fathers's ideas on protection of property. In contrast to Beard, the records of the convention make it clear that the delegates believed that all property owners (land and commercial) should be protected by the national government.<sup>1</sup> Property should be guaranteed, but life and liberty were also extremely important in society. The eighteenth century men saw the weakness of the Articles of Confederation. Industry and trade were victimized by the states and foreign governments. Since trade was necessary for all industries, including agriculture, guarantees of protection were imperative. They concluded that a strong national government was required to protect all types of property and possessions.

However, not all the people believed in strong national government. Beard mentioned the Anti-Federalists who distrusted strong national governments. Many Anti-Federalists used fear of the wealthy to frighten supporters of the Constitution. Hamilton attempted to reassure them in his Federalist Papers. He explained that the power in the government was separated into three branches, thereby keeping any single group -- such as, the wealthy -- from controlling the government. Beard declared that the majority of the small farmers and debtors agreed with the Anti-Federalists in opposition to the Constitution. Many

agriculturalists put their faith in the state governments because they were better able to meet their needs. Beard wrote that all farmers, except the southern planters, agreed with the Anti-Federalists; however, many Convention delegates advocated security for land and commercial property owners - large and small alike.<sup>2</sup> Many delegates owned real estate (agricultural and commercial) and believed that it was important and provided stability to the nation. Commercial property became more necessary each day as the nation moved from agriculture to industry. The Constitution was eventually ratified in the states as the farmers who were state delegates decided in the end to support the national government. Many of the men who opposed the Constitution wanted a Bill of Rights included, and once they received this guarantee, most agreed to support the new government. The added Bill of Rights allowed the Federalists to gain the needed support to adopt the Constitution. The Anti-Federalist received extra protection guarantees for property, such as the due process clause of the Fifth Amendment.

According to both Beard and the eighteenth century leaders, property was the basis of real power in the government and society. Protection of life and liberty was important, but property enabled citizens to be able to succeed and contribute to the society. Those who did not own property were put at a disadvantage in the society, such

as the masses who lacked influence with the political leaders.

Property was the basis of power, but the real debate in this thesis dealt with what type(s) of property was important to leaders and influential members of eighteenth century society. Also, what types of property should be represented in the government. Was real estate or commercial property the basis of representation in the American government?

Beard and the Convention delegates held different opinions as to how property should be defined and classified. In Beard's writings, he described two classes - realty (real estate), and personalty (personal property). The unequal distribution in society created these two property groups. Each group had distinct interests and attitudes toward government. The conservative group of delegates represented the commercial men at the Convention. Land was not seen as significant. According to Beard, the convention delegates were not spokesmen for the realty group, and as a whole, they were not concerned about land interests.

Although Beard saw two classes of property, the political leaders of the 1700's observed three property groups in society. The landed interests formed the backbone of society and was a stabilizer to the government. The new growing business class was represented by commercial

interests that included manufacturing, banking and the mercantile. The last group that was concerned about property comprised the professionals, such as lawyers, judges, doctors, and politicians. Each of these classes was involved in the governmental process and crucial to the study of property.

Beard did not see the professional men as an economic class, but as McDonald mentioned,<sup>3</sup> they were important to the representative government. Ketham listed the names and professions of the principal speakers at the Constitutional Convention. According to Ketham, eighteen of the thirty speakers at the convention were professionals. Seven were engaged in commerce, and five were farmers or planters.<sup>4</sup> Many of the professional delegates did own land or commercial property which created an overlap of interests. However, Ketham's calculations are based on delegates's major interest, or career. Since the professionals made up a majority of the principal delegates at the Convention, these men would have a active role making governmental policies for the new nation. This group needs to be examined in order to provide a complete picture and correct analysis of a representative government. These were the men who represented the property owners in the government. Even if they did not possess land or commercial property, they would be part of the government making policies for the owners who demanded property protection. The lawyers and

politicians also had the required expertise for the writing of protections into the Constitution.

To Beard, the real estate owners, or realty, included only the small farmers and debtors. Since large southern planters owned slaves, Beard did not see them as part of the realty class. Planters were also involved in commerce, so land was not their primary interest. Beard saw agriculture as static, and land owners were unable to organize any significant representation in the national government. According to Beard's research, land and agriculture was not significant in eighteenth century economics. Landed interests, although dominant in the state legislatures, would not have a large role in the national government.

To the Founding Fathers in the 1700's, people with real estate were secure citizens, and they were important to the promotion of morals in the society. They believed in a strong work ethic, and usually stayed in one place. The nation was built on agriculture and farms, and they were necessary to a strong government. Industrialization was occurring, and real estate owners were needed as a stabilizing element.

The chapter on English enclosures demonstrated how land was valued in England, and as the small farming class disappeared in England, many came to the New World seeking a chance to own land and farms. The strong work ethic of the American immigrants was based on land and agriculture. A

strong national government was needed to protect land - for both small and large land owners. The immigrants wanted written protections for their land and possessions that they had not found in Great Britain. Land was used as a measuring tool for wealth, status, and influence to many Americans.

To both Beard and the Founding Fathers, commercial property was important -- the dynamic element that kept the American economy functional. Trade and industry supported the other interests, and eventually, commercial interests provided the majority of income in the country. Strong governments were necessary to protect businesses and trade. The Articles of Confederation had been unable to guard commercial property from the states and foreign governments. To Beard, industry and trade brought for the majority advantages to the nation; he did not point the detrimental effects industry could have. The delegates, according to Beard, saw personalty as the main interest they wanted to protect. Commercial interests provided the majority of the power and influence in the government.

Commercial property was not always seen favorably by eighteenth century leaders. Commerce had brought strife and conflict to many other countries. Many nations became involved in wars over trade disputes. Many of the emigrants from Great Britain saw the abusive way commercial property had changed agriculture. In order to increase production,

small farmers were forced off their land and farms. Both land and labor was needed for the new factories and stores. Large complex farms were established to handle the new food demands. The small family farms disappeared. The delegates believed that a strong government was necessary not only to prevent abuses to commerce (for example, high taxes), but abuses by commerce on other interests. The Founding Fathers believed that if both land and commercial property interests were represented in government, both groups would be safeguarded against abuses. One group would not be able to gain dominance over the other.

Representation was a complex issue that the delegates faced at the Philadelphia convention. The Founding Fathers believed that only those with property should have direct representation in government. Those with property were seen as stable, dependable citizens. They agreed that those who serve in government and those who elect the representatives should own some type of property - real estate or commercial property. A fear of the masses existed in eighteenth century America. Beard argued that the Founding Fathers were also alarmed by the small farmers and debtors. Therefore, one pamphlet asserted that since property owners were the most likely to benefit or be injured by the government, they should have the dominant voice in the national legislature.<sup>5</sup> In this position, they would be able to protect their possessions. The Founding Fathers



maintained that property should be required for representation in the government. There was a heated debate over how property qualifications should be determined. Some delegates advocated land, whereas others asserted commercial property needed to have a place in the government as it was becoming more important in society. In the end, property qualifications for suffrage were placed in the states's demain because an equitable way was not found to use property as a requirement. However, the battle between property groups created interest groups within the government and the society. Compromise occurred on each side as the delegates attempted to balance the authority in the nation.

Did the masses hold the same protections as the property owners? This crucial issue is still being debated. Guarantees of life and liberty were important to the eighteenth century American leaders, so the masses must have possessed these protections, but they lacked direct representation in and access to the government. The delegates remembered the abuses to their inherent rights by Great Britain. The delegates did not see slaves or women having direct representation in the governing bodies, but white males who did not own property were becoming important to the function of that society, and they would demand a voice in the process. The citizens deserved the right to gain the ability eventually to possess property. It was up

to the individual to succeed or fail, but the government had to give him the chance as everyone else. Hamilton had stated that one of the government's roles was the protection of men's "faculties" which was required for holding property. Many American leaders came to the country without many possessions or social standing; they, or their ancestors had worked for and achieved their status in the new nation. Many of the immigrants felt that property and other vital rights could only be protected as a whole by a strong national government. They as individuals could not safeguard their lives, freedom, or possessions. This was the main reason the opposition to the Constitution advocated a written Bill of Rights in the Constitution to guarantee these individual protections.

At the time of the formation of the American government, the country was growing and changing. In the late 1700's, America was evolving from an agricultural nation to one of industry; however, agriculture was still very important to the American economy. Those with property were protected by the creation of a new strong nation, but checks and balances were present in the representative government to allow those without property to acquire it if they were able. Economic class status changed quickly in this developing society. The checks and balances also kept governmental authority in check. Protection was for both the few and the masses in society.

Beard believed that personalty was more vital to the economy than realty. Since to Beard the majority of the delegates possessed commercial property, he asserted that this was the type the national government wanted to protect. The masses without property were not included in the process. Beard believed the Founders felt that if the masses possessed suffrage they would be swayed by stronger interests, such as wealthy people who could bribe the masses to gain their votes. The commercial property interests could be put in jeopardy. The commercial property group was also fearful of the debtor class that possessed smaller amounts of property. To Beard, the Founding Fathers could not allow the masses to gain power in the government.

Were the Founding Fathers a conservative group who only wanted to protect their own self interests, and was this property primarily commercial property? According to the research presented in this thesis, the leaders and writers in creating the new government wanted to protect property of all kinds. They also wanted to keep one property group from taking advantage of another. Beard did not have a correct interpretation of the information involving property. This knowledge is necessary to future research of the Constitutional period. Beard's research is clouded by his twentieth century interpretations and definitions of eighteenth century concepts. As Forrest McDonald noted in his book, Beard possessed a "presentist frame of reference"

which has weakened his arguments.<sup>6</sup> The meaning of property evolved from the eighteenth century to Beard's day. In the twentieth century, the nation was primarily industrial with only a small percent in agriculture. In his writings, Beard did not take into consideration the importance that land, particularly farms, had on the country in the early national period. Many people at this time went west in order to find a better life in labor with the soil. As in England, more farms were becoming modernized and commercialized, but at this period the American nation was built on land and agriculture.

Future research topics are identified in this thesis. Research into the indirect representation of the masses is important to American government and history. How much were the masses actually protected by the national and state governments? How did the eighteenth century leaders see the protection of life and freedom? The adoption of the Bill of Rights should be included in this research. Since these amendments gave Americans more protections of their freedoms. The Bill of Rights was also the issue that concerned the Anti-Federalists.

With better primary sources from England, the connection between the English Enclosure Movement and the land in America should be further studied. A study of emigration records, and enclosure bills would be helpful to this research.

Another research topic concerns the relationship between agriculture and trade in the development of industrial property interests. How did commerce, including manufacturing, banking, and the mercantile industries evolve? Were these professions more national in nature than agriculture? How did the governments view the change over time, both Great Britain and the colonial governments?

Other studies involving Beard's ideas could be continued from this study showing how Beard's views of property affected other concepts that are included in his works. How did Beard's definition of private property affect other time periods in American history? Were there other eighteenth century ideas, such as checks and balances, that Beard saw with a twentieth century bias? These topics are important to research on Charles Beard's works.

Before the American constitution, written protections of property were not included in governments. Many of the ideas were considered very liberal for the times. However, Beard saw the protections of property as benefiting the few over the many -- a conservative idea in the 1900's. Beard saw the Constitution with a twentieth century conservative bias even though the document contained very liberal ideas.

The property views of the Founding Fathers play an important role in the foundation of the American system of government. Government was needed to safeguard property and personal rights. The views of property also have

significance outside the United States since other countries have used the American government as a model. In studying the American constitution, property had an important role to play in its interpretation.

#### Endnotes

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2. James Madison, "Federalist Number 10," in The Federalist Papers, ed. Clinton Rossiter (New York: NAL Penguin Press, Inc., 1961), 78-9.

3. Forrest McDonald, We the People (Chicago: The University of Chicago Press, 1958), 398.

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5. [Timothy Ford] Americus, "The Constitutionalist: Or An Inquiry How Far It IS Expedient and Proper to Alter the Constitution of South Carolina, CHARLESTON, 1774," American Political Writings during the Founding Era, 1760-1805, volume II, ed. Charles S. Hyneman and Donald S. Lutz (Indianapolis: LibertyPress, 1983), 933.

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