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The golden glow of the Constitution's bicentennial celebration—already well launched—threatens to blind us all at a time when Americans most need to see clearly. We do not refer to the harmless factual errors and the merely misleading exaggerations that accompany this latest patriotic spectacular. Our national myopia is far more serious. In the midst of institutional paralysis, an urgent but unaddressed policy agenda, and the protracted withdrawal of the American public from "public" affairs, we continue to celebrate the Constitution as an unrivaled political achievement. When we most need critically examine our fundamental structures, we embark on a laudatory extravaganza—and do so with full scholarly support.

But, from its inception, there has been a dark side to the United States Constitution that accounts in part for many of the acknowledged ills of contemporary American politics. Low voter turnout, lack of confidence in government, the decline of the political parties, institutional deadlock and indecisiveness, the pervasiveness of protest, frustration, and resentment—all these can be traced to the deliberate anti-democratic design of our founding document and the way it was completed by Alexander Hamilton's nation-building program.

In effect, the Framers, and Alexander Hamilton in particular, wrought too well. Their chief ambition—a strong and stable political economy insulated from popular control—is now threatened by the consequences of the very methods chosen to achieve that goal 200 years ago.

There is no news in the point that the men of 1787 sought to protect property and contain democracy. They have more than amply testified to this themselves. It is only later celebrants who have sought to make the Framers into "realistic" architects of a neutral political system; the Framers, and their opponents, knew better. But the celebrants have written history, and held office, in a country where democracy became a vital symbol. It became increasingly necessary to change the definition of democracy, in order to fit the reality of the limitations on popular impact that the Framers so artfully designed. Just as the proponents of the Constitution preempted the label "Federalist," turning it into its opposite, the celebrants of the Constitution worked similar magic with the word "democracy."

Alexander Hamilton's vital contributions to the development of a strong central government have been noted often, although by a minority of commentators. The crucial contract clause, several key Federalist essays, ratification in New York, and the various programs on credit, funding, the bank, and manufacturing are all recognized as major contributions to the development of the new nation. However, these are usually seen episodically, as independent events or specific isolated achievements in a context evolving in response to many other initiatives. Few have adequately appreciated Hamilton's grand design in its entirety, understood it as an agenda partially completed by the convention and partially by Hamilton later, or recognized its full realization in our twentieth-century history and contemporary situation. Instead, the utterly unrealized Jeffersonian image, more consistent with our attachment to "democracy," has dominated our national self-conception and our national rhetoric.

Inherent in Hamilton's grand design is a set of political implications with profound importance. He created an intricate central government machine that encouraged and rewarded behavior appropriate to his vision of a national commercial-financial-industrial economy—the entrepreneurial, productive, growth-oriented behavior that was to define our economic, political, and cultural life and identity for centuries. It was our first "industrial policy," incubating capitalism as a crucial by-product.

Hamilton also insulated the machine against the possibility that popular majorities or political chicanery might alter the outcomes he deemed essential to the creation of a great nation. In the process, by building upon the dark side of the Constitution, the Framers' property-protecting provisions and fear of democracy, Hamilton succeeded in almost completely removing the *substance* of public policy from popular hands. We live amidst the consequences today.

In this paper, we first review briefly the Framers' intentions and actions regarding the protection of property, both absolutely and from the interference of popular majorities. We shall see, as have many historians and political scientists before us, that the Framers were both class conscious and thorough in their efforts.

Then we explore Hamilton's grand design, its political implications, and the protection he added to assure that his system would be insulated in multiple ways against popular impact. Hamilton wove a web that deliberately deflected popular preferences away from the most sensitive and crucial areas of public policy—financial affairs, and the nature and distribution of wealth in the country. More specifically, he developed major expansive constitutional doctrines and set up the power of judicial review. One of the most important and intended results was the ensuing heavy reliance upon the law and the courts as decision makers, and a governing role for the legal profession. This erected an ostensibly neutral and objective shield that first obscured what was happening and then made it seem natural and inevitable.

Finally, we show how this system, in its twentieth-century maturity, has come to threaten the very political stability and productive national economy that were the Framers' and Hamilton's goals. What the more knowingly purposeful defenders of this system did when faced with the inescapable prospect of popular participation was *first* to build a maze of multiple limits on the effects of that participation, and *second*, to remove the substance of key policies into another, more remote, decision-making system. What its subsequent defenders have done is to triumphantly label the result "democracy."

Ironically, the great republican experiment has been converted into something like what the Framers feared almost as much as democracy— an absolutist monarchy complete with ongoing baronial struggles for court power and privilege, subject only to the occasional disturbance of crowds running in the streets. In the discouraging character and prospects of our contemporary politics, therefore, we have not experienced the *perversion* of the Framers' intent so much as we have seen the *fulfillment* of the dark side of the Constitution.

I. The Framers' Constitution

The Framers' Attitudes

As is well known, only a few of the delegates to the convention of 1787 were distinguished by concern for the rights and goals of popular majorities. Most of these dropped out or ended up among the Antifederalists in opposition to ratification. The general attitude of the main body of Framers can be summarized in the phrase "too much democracy." As James Madison put it in *Federalist No. 10*:

Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice 'and the rights of the minor party, but by the superior force of an interested and overbearing majority.

Or, as Hamilton wrote in *Federalist No. 15*: "There are material imperfections in our national system and ... something is necessary to be done to rescue us from impending anarchy."

Concerns focused on "a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project." All these improper projects and unjust legislation, of course, sprang from the state legislatures, where "men of more humble, more rural

origins, less educated, and with more parochial interests" held sway. Even Jefferson could not support such an excess: "173 despots would surely be as oppressive as one," he wrote. "An *elective despotism* was not the government we fought for." Shays's Rebellion was much on the delegates' minds, and for many, provided the final straw. As Gordon Wood points out:

Finally, when even Massachusetts with its supposedly model constitution [one of the less democratic of the states] experienced popular excesses, including Shays' Rebellion and the subsequent legislative "tyranny" of Shaysite sympathizers, many leaders were ready to shift the arena of constitutional change from the states to the nation.

The Framers' contemporaries were well aware of the backgrounds and biases of those who drafted our founding document. The Antifederalist writings of the period are full of accusations on this count. According to Jackson Turner Main, "the criticism that the Constitution favored the few at the expense of the many was almost universal." In the words of one prominent Antifederalist: "It changes, totally changes, the form of your present government. From a well-digested, well-formed democratic, you are at once rushing into an aristocratic government." The late Herbert Storing, who collected and edited the Antifederalist writings, called this "the underlying theme of a vast quantity of the specific criticism by the Anti-Federalists of the proposed Constitution."

"The Federal Farmer," a prominent opponent of the Constitution, argued that the state conventions should revise and amend the proposed Constitution as needed, before ratification. Otherwise, the liberty of free men will be lost to those who "avariciously grasp at all power and property." An aristocratic group had

taken the political field, and with its fashionable dependents, and the tongue and the pen, is endeavouring to establish in great haste, a politer kind of government.... The fact is, these aristocrats support and hasten the adoption of the proposed constitution, merely because they think it is a stepping stone to their favorite object. I think I am well founded in this idea; I think the general politics of these men support it, as well as the common observation among them.

In addition, the Federal Farmer asserted,

This system promises a large field of employment to military gentlemen, and gentlemen of the law; and ... it will afford security to creditors, to the clergy, salary-men and others depending on money payments.

[Once] power is transferred from the many to the few, all changes become extremely difficult; the government, in this case, being beneficial to the few, they will be exceedingly artful and adroit in preventing any measures which may lead to a change.

"Centinel," in his letters in opposition, was even more forceful, terming the effort to foist the Constitution on unsuspecting citizens "a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed." He added:

From this investigation into the organization of this government, it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a *permanent ARISTOCRACY*.

The Lure of the New Economy

As early as 1785, Hamilton and others had more in mind than merely the containment of democracy. They began to envision a new kind of commercial economy that would replace production for one's own use with production for sale elsewhere. Trade, transportation, and accompanying financial opportunities would be vastly expanded on a national scale. Eventually, such a national market and exchange system would penetrate parochial communities and replace

the almost subsistence-level agricultural economies characteristic of all but the seacoast towns and cosmopolitan centers of the time.

But there would be no national commercial economy unless the Articles of Confederation could be replaced by some more powerful central government. That central government would not only put the brakes on the pernicious projects of the local majorities, but would protect the "property"—the contracts, bonds, paper, credit, etc.—essential to a commercial economy. Such a government would defend the hard money that made for a sound economy, promote the national market through uniform laws and otherwise overcome state protectionism, use import regulations both for taxes and to protect American goods against British competition, and establish sound credit in the international commercial community.

There were two prospective opponents whose interests would be directly damaged by such a new government. One was the mass of heavily indebted back-country farmers still stirred by the Revolutionary dream of equality and individual rights. The other was the state legislatures whose support the farmers sought in their struggle against their creditors and others of the "better people," and which would have had ample institutional reasons to be opposed to any strengthening of the center. An adequate new government would have to control both these threats.

The public campaign for the new government began with the call to the Annapolis Convention in 1786, though its origins are visible much earlier in the correspondence and speeches of advocates. A rather full reform proposal came from Hamilton as early as September 3, 1780, in his letter to James Duane, in which he stated that "The first step must be to give Congress powers competent to the public exigencies." In its call for the Annapolis Convention, the Virginia Legislature was more specific:

To take into consideration the *trade* and *commerce* of the United States; to consider how far an uniform system, in their commercial intercourse and regulations, might be necessary to their common interest and permanent harmony, and to report to the several States such an act relative to this great object, as when unanimously ratified by them, would enable the United States, in Congress assembled, effectually to provide for the same.

As is well known, the Annapolis Convention was attended by only twelve delegates from five states. Among them was Alexander Hamilton, who seized the opportunity to issue the call for the constitutional convention, as follows:

Your Commissioners cannot forbear to indulge an expression of their earnest and unanimous wish, that speedy measures may be taken, to effect a general meeting of the States, in a future Convention, for the same and such other purposes, as the situation of public affairs, may be found to require....

In this persuasion your Commissioners submit an opinion, that the Idea of extending the powers of their Deputies, to other objects, than those of Commerce ... will deserve to be incorporated into that of a future Convention....

That there are important defects in the system of the Federal Government is acknowledged by the Acts of all those States, which have concurred in the present Meeting; That the defects, upon a closer examination, may be found greater and more numerous, than even these acts imply, is at least so far probable ... as may reasonably be supposed to merit a deliberate and candid discussion....

Your Commissioners ... beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the union, if the States, by whom they have been respectively delegated, would themselves concur, and use their endeavours to procure the concurrence of the other States, in the appointment of Commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union....

Shays's Rebellion, that heroic and desperate act by a handful of farmers, is surely the dominant symbol of the period and in many ways the real source of the Constitution. It was the frightening, triggering event that caused a particular selection of delegates to be appointed by their legislatures, induced them to spend a hot summer at an uncertain task in Philadelphia, and provided the context for their work and its later reception. For Hamilton and his cause, it was a godsend. For the convention, it was the ever present threat that led to acceptance of several of the preventive provisions of the Constitution.

For us, Shays's Rebellion may serve to synthesize and express the two streams of thinking that led to the Constitution. The need to protect property and contain democracy could hardly be made more compelling. The need for a powerful central government that could protect commercial interests against citizens, if necessary, is indelibly clear. The basic principles that would have to be enforced in order to prevent such incidents were precisely those that would help to build the new national commercial economy.

The Framers' Constitution responds to both of these concerns, but leaves a substantial part of the second less explicit, and thus subject to Hamilton's later completion in the first administration. While there was little or no disagreement about the need to protect property and contain democracy, some delegates (particularly from the South) certainly would have had reservations about the new national economy and its implications for central government power if they had fully realized what was happening. The convention avoided potential conflict by leaving some provisions incomplete or undefined, in effect passing the responsibility to the first Congress.

In effect, several Framers (Hamilton central among them) were calling for the country—or at least its decisive elites—to make a crucial choice. The choice they advocated was to move from the current mostly agricultural economy (large plantations in the South, and small farms throughout the country) to a national commercial economy in which trade and finance would be dominant. They did not make this call openly, of course, and perhaps some of them did not grasp its totality or significance. Small wonder that their opponents did not see and oppose their design in explicit ways.

The Constitution as Synthesis

The Constitution's many provisions limiting the potential impact of popular majorities are too well known to require extensive comment. They range broadly from the design of basic structures, to methods of constituting the government, to limits on its powers. Examples in each category are separation of powers and checks and balances, the various forms of insulating elections, and prohibitions against specific acts that might impinge upon property rights.

More interesting and perhaps less familiar—at least in their totality as a means of instituting a new economy—are the several provisions that create and defend the new national commercial economy through central government power. Many of these provisions were unselfconsciously promoted under the rubric of "protection of property." They were meant to insure that "the rules of justice and the rights of the minor party," as Madison said, would be maintained, even in the face of the "superior force of an interested and overbearing majority." Many do double duty as limits on popular majorities, *but that is exactly the point*. The new economy *necessitated* a national political system in which commercial and financial interests were assured that new and potentially unpopular rules and practices would nevertheless be enforced reliably and consistently—and, it was hoped, be accepted under the more widespread acceptance of the necessity of protection for property rights.

The powers granted to the Congress in Article I, Section 8 and denied to the states in Section 10 amount to the framework for a new fiscal and commercial public policy. Congress gains the power to declare what shall constitute money and to control its value, while the states are forbidden to coin money, emit bills of credit, or allow anything but gold and silver coin in payment of debts. As a result, the states (and their "too democratic" legislatures) were prevented from issuing paper money or defining what might serve as legal tender for the payment of debts, and the gold and silver preferred by bankers and creditors would continue as the basis of the economy.

The Congress also acquired effective taxing powers, and with them the potential to become a creditworthy engine of economic development. Paying existing debts would make it possible to borrow more, to stabilize the currency, and to encourage investment and expansion in various ways. Vital among these tax powers was the power to impose duties and imposts. These are not only the easiest way to collect taxes, but also a means to manage access to the American market—whether to protect infant American industries or to open up other nations' markets. By contrast with the new powers of Congress and the past practice of the states alike, the states were firmly and completely excluded from all such powers (except for the strictly limited purposes of inspections).

The centrality of the famous "commerce clause" to the creation of the new national economy can hardly be debated, even if the question of exclusivity remains at issue today. Hamilton and some of the Framers would undoubtedly have preferred that the mere presence of this provision be understood to preclude the states from acting in the field of interstate commerce at all. But it is not a serious obstacle to their ends that the states be allowed to employ their police or regulatory powers in this area when the Congress has not fully occupied the field or acted in ways that conflict with such state legislation. More important to the creation of the new economy were the requirements for uniformity on the part of national laws pertaining to commerce.

Finally, the contract clause must be appreciated as something more than a prohibition that would assure creditors against any future Shays-type rebellions. Article I, Section 10 includes the prohibition against state laws impairing the obligations of contract as one of a long series of limitations starting with "No states shall...." Clearly, this would render unconstitutional and void any state law that changed the terms of repayment of any existing private contract. By making such contracts into fixed "givens" of economic life, it also tended to discourage popular majorities from seeking redress of economic grievances from their state legislatures.

In Hamilton's hands, the clause applied equally to *public* contracts, so that state legislatures would lose the long-standing sovereign privilege of changing or withdrawing prior grants or franchises. Stability and predictability would be assured, but at the cost of legislative responsiveness to shifting popular preferences.

As Forrest McDonald has shown, this clause may also be distinguished as having been inserted in the Constitution through something like a Hamiltonian coup. At least we know that the convention had twice rejected the principle, and that it was re-inserted by the five-member Committee of Style at the last moment and (apparently) accepted without argument by a weary convention. McDonald makes the case that Hamilton was the only one of the five to grasp the potential in such a clause and therefore must have brought about its last-minute inclusion almost single-handedly.

These primarily economic provisions only sketch the outline of the Framers' intent. They do not by any means constitute the Constitution's entire commitment to the support of the new commercial economy. There are many other provisions that, when taken together, add up to some extensive buttressing of that economy. These include the privileges and immunities of state citizens (to do business in other states), full faith and credit requirements (so that contracts could be enforced and debtors pursued), authorization for a federal court system (for some of the same purposes), and the guarantee and supremacy clauses.

In the United States of the 1780s, it would have been politically difficult, if not impossible, to devise a government that was not, at the least, republican. The Framers had to devise a document with at least the appearance of some democracy, and which could be defended as "republican." Thus, the Constitution does have "democratical" features. However, between the fear of the majority and the desire to protect the newly developing property of the commercial classes, the Framers found it necessary to create a document with a darker side, as we have outlined.

The spare and often ambiguous language of the Constitution was ideally suited to Hamilton's interpretation and expansion. It is Hamilton's interpretations, such as that involving the necessary and proper clause and the creation of the bank, and his expansions, such as in the development of the power of judicial review, that really brought the new national commercial economy into life in the Constitution.

The Framers sketched an outline, but Hamilton made it real. Commercial property and its developing economic relations were protected, and, by the completion of Hamilton's program, removed from the public policy agenda. The ability to change the economy, to deal with substantive public policy issues such as the distribution of wealth and fiscal and monetary measures, was effectively removed from popular control. The "majority" was now contained.

II. Hamilton's Grand Design and Legislative Programs

As a constitutional architect of vision and purpose, no American compares with Alexander Hamilton. From his earliest critiques of the Articles to the legal cases he argued after leaving the Cabinet, Hamilton pursued a single comprehensive image of a future economy and a government that would promote and defend it. If one person can be singled out, surely Hamilton—not Madison—was the primary driving force behind the origin, character, and ultimate meaning of the American Constitution.

Hamilton's Federalist essays are widely known for their emphasis on the weakness of the Articles and the contrasting need for energy in government, taxing powers to maintain that government's creditworthiness, a strong executive, direct application of national laws to individuals, and the like. All of these reflect characteristic Hamiltonian principles, and together they indicate a direction for the new system.

But the Hamiltonian design comes into its clearest focus from two other major sources which represent the main thrust of his efforts to complete the work of the convention. The first of these is the set of Reports and accompanying legislation and opinions that Hamilton authored as Secretary of the Treasury. The other is *Federalist No. 78* and its argument for the power of judicial review, a bold and in many respects original expansion of central government power which helped to raise the courts, the law, and the legal profession to a governing role unprecedented then and unequalled elsewhere today.

What Hamilton demonstrated in these Reports was a clear conception of the national government's capacity to serve as the manipulator of an array of carrots and sticks that would move the economy in desirable directions. Hamilton was also clear about who should determine what those desirable directions might be, and who should benefit from such purposeful action. Men of commercial foresight and experience, and probably of property, should hold such powers, and use them for mutual—and hence national—benefit. Most of all, no such system could tolerate significant popular involvement or impact.

Hamilton's design, let us acknowledge, was intended to build national strength and grandeur, on the model of the British Empire he so much admired. In practical terms, it added up to a new set of legal concepts, new financial principles and methods at the national level, and a new overall developmental role for the national government. His incipient commercial-financial economy (soon to emerge, with industrialization, as capitalism) required changing a number of key legal principles long established in the pre-commercial common law. It required creative use of the national debt, deliberate management of the currency, purposeful industrial policy, and conscious inducements in the form of grants of rights to the vast lands inexpensively acquired by the national government through treaties and conquest.

Most of all, Hamilton's design required insulation against reactions from all sides, and particularly against popular efforts to change the patterns of wealth distribution that this design would accomplish. Hamilton's answer to this compelling need was twofold.

First, as we have just seen, he placed the reins of power as far from the people as he could—in a centrally guided financial and development system that would be as hard to identify as it would be to reach and change. Hamilton's system had an early demonstration while he was Secretary of the Treasury, and was legitimated by Jefferson's failure to demolish it while in office. But it was visible only in isolated pieces—growing, merging, self-validating pieces like the restoration and refinement of the Bank, the development of the tariff and internal improvements and the income

tax, the vigorous use of judicial review, the triumph of the legal profession—until its full flowering in the Progressive-New Deal Era.

Hamilton stood for an economy that would be dynamic, responsive to opportunities, and oriented to long-term growth. That economy required far-sighted elites to assure that the government would offer incentives for development, stabilize its context, and control its excesses. Government could also serve by providing a means of deflecting or absorbing popular complaints. For all of these goals, the government had to be big, powerful, highly centralized, and removed from the people—but apparently highly responsive to them. Herbert Croly aptly named the twentieth-century version of Hamilton's design "a Hamiltonian government for Jeffersonian ends." Thus the two ever-contending strands of American political thought—our two major images of the desirable American political economy—came to an ultimate merger. Together, they gave credence to labeling Hamilton's national government with the venerable Jeffersonian symbol of "democracy."

The *second* means by which Hamilton sought insulation from popular impact was through transferring as much policymaking as possible into the far less visible and apparently neutral and mechanical hands of courts and lawyers. This strategy encompassed not only the usual and often discretionary law-enforcing role of courts, but more significantly a deliberate law-changing function and—most important of all—a major policymaking role for the Supreme Court at least equal to that of the other branches.

The effect of Hamilton's various efforts in this area was to raise courts, the law, and the legal profession into a covert policy-making system representing his best hope of protecting the national economy from popular interference. He was apparently willing to pay the price of the law's rigidities and tendency toward backward-looking in order to insulate the economy and its distribution patterns in this way. But the price paid by the people—and ultimately by the constitutional system itself—has yet to be calculated.

III. The Consequences of the Dark Side

Any list of the basic problems of current American politics would surely include institutional deadlock, the decline of the political parties, domination by special interests, the multiplicity and complexity of issues, television's role in diverting attention away from public policy, and the deplorable levels of knowledge and interest on the part of most citizens. For each problem, there are one or more standard explanations.

Most of the explanations (and prescriptions for improvement when the situation is not deemed totally hopeless) take one of two forms. The first involves a focus on specific causal factors, i.e., the effects of incumbency, patterns of campaign contributions, the candidate focus of the media, and so forth. The second is more or less an inventory of the incurable failures of the American people: low and declining turnout at elections, ignorance and self-interestedness, an enduring spectator orientation, apparent manipulability by money and media, and an inability to grasp and act on issues.

These standard explanations amount to a massive exercise in blaming the victim. More important, the situation is actually *worse*, and much more fundamental, than generally suggested. We have no quarrel with the list of problems. If anything, we would lengthen and deepen any such list, and would predict that many others will soon be doing so. The United States is already beginning to emerge from the self-congratulatory stupor of the early 1980s. Realism will be in vogue again by the next recession.

Many of the problems of our politics have their origins in the deliberate design of the Constitution, particularly as it was developed by Hamilton. The problems are *real*. The people's response to them is *rational*. What is missing is recognition that the roots of the problem lie in Hamilton's very success.

Today's national government is highly centralized, a huge and distant bureaucracy related in a merely episodic manner to gridlocked and unresponsive policy-making institutions. The web of

special interests is a pragmatic answer, albeit one that represents only the most powerful few. Media and money call the tune for parties and candidates. People may quite rationally decide not to study issues or to participate in such a system.

What has brought about this set of problems and popular response? One absolutely fundamental cause is Hamilton's successful removal of the substance of policy from popular reach. The major pieces of Hamilton's design—the financial system and the legal system—were put in place in the late 1700s and early 1800s by Hamilton and his followers. They became fully integrated and coherently employed in the Progressive Era, from which the rise of the truly centralized Hamiltonian state can be dated.

These two major pieces of Hamilton's design, however, had more than proved their value in the nineteenth century. Each served effectively to obscure unpopular basic national policies from visibility, displace and eventually absorb popular complaints within apparently neutral and objective machines, and frustrate even quite determined popular movements. As Morton Horwitz has shown, the legal system took on its economic role as covert redistributor and allocator of financial burdens as early as the 1820s and 1830s. As opponents of the Bank alleged from the start, and as Goodwyn, Sharkey and others have shown with respect to the financing of the Civil War, the financial system effectively enriched the wealthy while putting the burden on the working and later the middle classes.

When the high point of judicial review was reached in the early 1890s and successfully defended in the election of 1896, the full Hamiltonian legal system was in place. The Supreme Court's power was confirmed; the multitude of state courts were encouraged; and the governing role of an increasingly elite and corporate-oriented Bar was further legitimated. Passage of the Federal Reserve Act offered a final financial link and means of leverage for the same corporate banking-legal community.

Once this system was consolidated in the First World War, participation could actually be encouraged because there was little chance that popular majorities could do much damage. If the basic defenses erected by the Framers did not work, then surely Hamilton's system would divert and absorb popular efforts until they were harmless. Nevertheless, the "better people" were still fearful, not just because of the near-success of labor and the Populists in the 1890s, but also because of the growing ranks of immigrants. Thus, deliberate repression sought to discourage lower class opposition and electoral participation for a decade or more, just as Hamilton's system was crystallizing. A newly refurbished ("democratic") rationalizing ideology was soon bolstered by powerful new means of communication and indoctrination.

The net result of all these efforts was dramatic decline in electoral turnout in the twentieth century.

Women were added to the eligible electorate in 1920, and blacks and many immigrants had been effectively subtracted in the previous decades, so that turnout percentages are not strictly comparable. However, it is still a shock to realize that elections in the 1880s and 1890s generally had turnout levels over 70 percent and often exceeding 80 percent. Today, when women have had 60 years of experience with the franchise and a whole new generation of black voters has entered the active electorate, we count ourselves lucky to attract more than half of the eligible electorate to the polls.

Where have all the voters gone? They have caught on that the system is rigged. Popular majorities' efforts to change either the distribution of wealth and power or the basic policies that seem necessary to maintain that structure of wealth and power simply don't seem possible. To be sure, decades of accomplishment by the ideological defenders and celebrants of this system have encouraged Americans to accept it as "democracy." Americans learn to want or, more likely, consider inevitable whatever is produced, to settle for various diversionary satisfactions, and/or to fear change and even suspect that those who do seek change must have self-interested and unpatriotic motives. These are ideological rationalizations for the central fact that the Hamiltonian Constitution excludes people from directly affecting important public policy outcomes.

This is not to say that there is no history of popular impact on government, or that the Supreme Court is merely a tool of the corporations. Either such caricature of our argument would be silly.

What is important is that popular impact, such as it is, can be made effective only in very limited ways through the electoral process. For the most part, it must come through disruption—riots, massive strikes, demonstrations involving the threat of violence, and other attacks on the social order itself. What does it mean for a popular government that its people are politically effective only when they threaten to destroy it?

The Supreme Court has made many decisions, particularly in the middle years of this century, that advanced basic democratic rights. But that was a result of judicial appointments, not an attribute of the institution. The Supreme Court has, and can, and may well again, make precisely the opposite kinds of decisions. What does it mean for a popular government that its basic policies can be set by a transitory majority drawn from a body of nine life-appointed lawyers?

What we are saying is that the Framers' two major goals are threatened today by the success with which Hamilton and his followers implemented those goals. We do not have a stable political economic system, and we do not have the capacity to make the choices necessary to assure a strong and successful American political economy.

Our political system works by fits and starts. It is neither responsive nor accountable and it lacks solid grounding in the body of its people. It sits and waits for the next crisis. Unfortunately, to solve that crisis, it may have to transform itself into something that will be *very difficult* to rationalize as "democracy."

We have not addressed the great issues of nuclear war, planetary survival, or even American economic viability in a drastically changing world economy—not because the people don't care, but because there is no linkage between the people's felt needs and their policymakers. No such basic policies can be implemented, even if policymakers were to concur, without the sustained support of some major portion of the people.

To solve our problems, or merely to fulfill the Framers' goals in the wholly different conditions of our times, we will have to come to terms with Hamilton's Constitution in a realistic manner. Perhaps the best way to honor the Framers' work is not to join in obfuscating celebrations, but to act as they did under like circumstances.

We might start by critically exploring the ways in which today's analogue of the Articles of Confederation is defective in achieving goals that are necessary and desirable for the *future*. Obviously, like the Framers, we would have to address basic principles of social order and purpose—if we have not completely forgotten how to do so. (That we *have* forgotten is strongly suggested by the nature of the proposals currently offered for constitutional "reform.")

Curing the defects of Hamilton's Constitution may not be possible, for many reasons. It may be that patterns of material advantage, or the depth of the problems we face, or the sheer size of the country, make it practically impossible. Or our situation may be even worse: perhaps generations of structural deflection—of elites as well as of the general public—from considering the Constitution in a realistic manner has made it impossible for us to do so now. Decades of cultural lowering of the criteria, of democracy may have made it impossible for us to recapture its fuller definition and potential.

If there is a route out of our crisis, it lies in deliberately reversing Hamilton's strategy. That is, we must seek to re-engage the people in their government, and particularly in ways that enable them to have direct impact on the substance of important public policies. Without regard to what might be "realistic" or "practical" in light of today's power distribution, or to questions of strategy, the kinds of measures to which consideration might be given are of the following order:

- a. Radical decentralization, perhaps to some regional system, reserving only a few global functions for the national government, to put government within reach of the people;
- b. Removing the incumbent character of the national government by putting limits on the number of terms that Representatives and Senators can serve;
- c. Reducing the role of money by requiring free television time for public affairs issues, party deliberations and arguments, and candidates' presentations;
- d. Sharply contracting the policy-making role of courts and lawyers by transferring jurisdiction of constitutional and major policy issues to openly political forums;

e. Instituting mechanisms for direct action— the old initiative and referendum in modern form, with encouragement and provision of educational opportunities and some screen for levels of information;

f. Making registration immediate and eligibility for voting open to all, if necessary by decentralized computer access;

g. Reviving the parties by starting at the local and state levels and providing a series of thresholds through which, by showing increasing levels of popular participation, parties might increasingly acquire control over campaign funding and nominations; h. Overhauling the public education system to make public affairs a vital and exciting part of the curriculum, welcome controversy, and set future-oriented public service once again at the center of the aspirations of all citizens.

These suggestions are only a start, intended to illustrate the combined fundamental-and-electoral level at which rethinking must begin. They are easily caricatured, and of course they are not "realistic." The point is that institutional tinkering will not suffice.

When problems such as we have described are real, remedies must be radical; that is the lesson the Framers taught in 1787. Only when the people are re-engaged in a government within their reach will Hamilton's damage be undone. At that point, we can proceed to build upon his successes, and seek to truly achieve the stable political system and productive economy that were his vision for the new nation. Only the bright hope of a new twenty-first-century vision can finally transcend the dark side of our much-celebrated eighteenth-century Constitution.