



1999

The Origins of American Democracy, or How the People Became Judges in Their Own Causes, The Sixty-Ninth Cleveland-Marshall Fund Lecture

Gordon S. Wood
Brown University

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstrev>

 Part of the [Law and Politics Commons](#), and the [Legislation Commons](#)

How does access to this work benefit you? Let us know!

Recommended Citation

Gordon S. Wood, *The Origins of American Democracy, or How the People Became Judges in Their Own Causes, The Sixty-Ninth Cleveland-Marshall Fund Lecture*, 47 Clev. St. L. Rev. 309 (1999)
available at <https://engagedscholarship.csuohio.edu/clevstrev/vol47/iss3/3>

This Article is brought to you for free and open access by the Law Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

THE SIXTY-NINTH CLEVELAND-MARSHALL FUND LECTURE

THE ORIGINS OF AMERICAN DEMOCRACY, OR HOW THE
PEOPLE BECAME JUDGES IN THEIR OWN CAUSES

GORDON S. WOOD¹

Tracing the origins of American democracy is no easy task. Where should we begin? With the English Civil War? Or with the English Glorious Revolution of 1688-89? Or perhaps we should go back to the Magna Carta and the beginnings of Parliament? Or maybe the ancient Greeks? If we are not careful we are apt to end up like the eighteenth-century Puritan historian Thomas Prince, who in 1736 set out to write *A Chronological History of New-England* by beginning with the creation of Adam and Eve. Prince then went through the histories of ancient Israel, Babylonia, Persia, Greece, Rome, and so on, and by his second volume was able to get only to 1633 in New England before he died literally in mid-sentence.²

I am going to begin with the American Revolution because that is where I believe American democracy, as we understand it today, really began. I realize it is unfashionable, if not outlandish, to claim that anything substantial or at least substantially progressive came out of the American Revolution. These days we are more apt to emphasize that the American Revolution was a failure. As one young historian recently put it, the Revolution “failed to free the slaves, failed to offer full political equality to women, . . . failed to grant citizenship to Indians, [and] failed to create an economic world in which all could compete on equal terms.”³ Such statements suggest a threshold of success that no eighteenth-century revolution could possibly have attained, and perhaps tell us more about the present politics of historians than they do about the Revolution. It is true that the Revolution did not free all the slaves in the country, although it did free all the slaves in the northern states. And it’s true that it did not grant full political equality to women or grant citizenship to Indians. Whether the Revolution failed to create an economic world in which all could compete on equal terms seems to be more problematical. Certainly for white men at least, it created an economic world that offered at that time more opportunities for getting ahead and making money than any other place in the western world. What the Revolution did succeed in doing, however, was to create democracy as Americans came to know it.

Democracy, of course, is a historically determined concept, and there is no one abstract and timeless meaning of the term. For some people it may mean only the existence of a government in which most adults can vote. Or for others it may mean

¹Gordon S. Wood is the Alva O. Way University Professor and Professor of History at Brown University. He is the author of *The Creation of the American Republic, 1776-1787* and *The Radicalism of the American Revolution*.

²THOMAS PRINCE, *A CHRONOLOGICAL HISTORY OF NEW ENGLAND IN THE FORM OF ANNALS* (1736).

³PETER C. MANCALL, *VALLEY OF OPPORTUNITY: ECONOMIC CULTURE ALONG THE UPPER SUSQUEHANNA, 1700-1800* 232 (1991).

simply majority rule. For others it may mean a system of government in which minorities of all sorts are allowed to participate—the assumption being that majorities can take care of themselves. For still others democracy has come to mean merely the protection of individual liberties and rights—that without these protections voting and participation in government are essentially meaningless. And finally for others democracy may be identified with equality, with feelings of sameness between people.

All of these meanings may have relevance today, but all of them are essentially the products of the American Revolution. Within the three or four decades surrounding the War for Independence, America experienced the birth of democracy, broadly speaking, in all of its manifestations. What I would like to do in this lecture is explain, very briefly, surely too briefly, what I think happened.

It is important to note at the outset, however, that creating democracy, meaning self-government, was never the goal of the Revolution. Protecting liberty was. The Revolutionaries, like all Englishmen from time immemorial, thought of democracy, or representative self-government, as subordinate to their rights and liberties. Self-government was never an end in itself but a means to an end. That is to say, in Isaiah Berlin's terms, Englishmen valued positive liberty, or representative self-government, only so far as it protected negative liberty, or their various individual rights and privileges. The end for Englishmen was always the preservation of their rights and liberties. Self-government, or their representation in Parliament, was valued because it had become the essential bulwark safeguarding their rights and liberties against the power of the crown. The colonists likewise valued their several provincial assemblies largely because they were the guardians of their rights and liberties. Englishmen on both sides of the Atlantic entertained no classical illusions that representative self-government, that participation in politics by itself, could be the source of human flourishing.

So democracy was not what most eighteenth century Englishmen were trying to achieve. Of course, by the standards of the age the American colonists, or at least the white colonists, already possessed the most democratic societies and governments in the world. So democratic were they that some historians nearly a half century ago argued that colonial America was already a middle-class democracy. Prosperity was widespread, and most adult white males in the eighteenth century were eligible to vote for their representatives in their assemblies, even if they often chose not to exercise this eligibility. Certainly the right to vote was a prerequisite to the development of democracy in America, but what went on in colonial America was not democratic politics as the nineteenth century understood it or we today would understand it, or at least should understand it. We ought to know by now that democracy is far more than a mere matter of people having the right to vote.

Before the 1730s or so, politics in the American colonies remained focused on the metropolitan center of the empire. In the early decades of the eighteenth century elite factions opposed to the royal governors usually sought political leverage within the imperial arena, resorting to imperial interests and connections in order to win political battles. They used extra-legal channels in the home country like merchant groups in London in order to undermine the governors' political position from the rear. Or they formed alliances with other imperial agents like those representing the Church of England in order to by-pass the governors. Opposition leaders even made personal journeys to the metropolitan center of power to lobby for the reversal of gubernatorial decisions or even the removal of a governor. This kind of Anglo-

American politics was open-ended. No decision in the colonies was final. There were many trans-Atlantic avenues of influence and connection and many appeals over the heads of local officials to Whitehall.⁴

But after 1730 or so this open-ended character of American politics changed, and the colonists' ability to influence English politics sharply declined. Communications to the mother country became more formal, and personal appeals declined. The colonial lobbying agents who earlier had been initiators of colonial policy were now hard put to head off colonial measures begun by others. As the earlier trans-Atlantic channels and avenues of influence clogged up or closed off, the royal governors were left as the only major link between the colonies and Great Britain.⁵

Under these changed circumstances dissident factions in the colonies were forced to turn inward, toward the only source of authority other than the king recognized by eighteenth century political theory—the people. Opposition groups now sought to use the popular assemblies as their main instrument of opposition against the governors. The number of contested elections for the colonial assemblies grew rapidly. In Boston, for example, in the decade of the 1720s only thirty percent of elections were contested; by the 1750s sixty percent were. With the growth of contested elections came greater voter participation and more vitriolic political rhetoric and propaganda. Groups began forming tickets, caucuses, and political clubs, and hiring professional pamphleteers to attack their opponents for being overstuffed men of wealth and learning. In these mid-eighteenth century developments we can see the beginnings of what would eventually become typically American egalitarian electoral propaganda and modern political campaigning.⁶

But of course nobody had the future in mind. These elite families and groups were not trying to create the democratic world of the nineteenth century; they were simply using whatever weapons they had at their disposal—together with inflammatory popular Whig rhetoric—to get at their opponents. All of their appeals to the people were merely tactical devices for gaining office. But of course once invoked these devices took on a power of their own. The people once mobilized could not easily be put down. The colonial assemblies, which earlier had been virtual closed clubs, now became more sensitive to the public out-of-doors. They began publishing compilations of their laws and revealing how their members voted on particular issues. They built galleries in the legislative halls for the people to witness debates. Some even began calling for a widening of the suffrage. Those who opposed these measures were labeled “enemies of the people.”⁷

⁴On the politics of the imperial relationship see the works by ALISON GILBERT OLSON, *ANGLO-AMERICAN POLITICS, 1660-1775: THE RELATIONSHIP BETWEEN PARTIES IN ENGLAND AND COLONIAL AMERICA* (1973), and ALISON GILBERT OLSON, *MAKING THE EMPIRE WORK: LONDON AND AMERICAN INTEREST GROUPS, 1690-1790* (1992).

⁵On the increasing difficulties of colonial communication in the empire on the eve of the Revolution, see MICHAEL KAMMEN, *A ROPE OF SAND: THE COLONIAL AGENTS, BRITISH POLITICS, AND THE AMERICAN REVOLUTION* (1968).

⁶Gary B. Nash, *The Transformation of Urban Politics, 1700-1764*, 60 *J. OF AM. HIST.* 605-32 (1973).

⁷J.R. POLE, *THE GIFT OF GOVERNMENT: POLITICAL RESPONSIBILITY FROM THE ENGLISH RESTORATION TO AMERICAN INDEPENDENCE* (1983).

Despite these continual Whig appeals to the people, however, politics in the colonies still remained pre-modern—essentially a contest among prominent families for the control of state offices. The society was anything but democratic; it remained aristocratic and hierarchical, tied together by numerous vertical lines of personal influence converging on particular people of wealth and power. There were no organizations resembling modern political parties, which itself is a sign that this ancien régime politics was very different from what would later emerge. Of course, political factions of one sort or another existed, but these were not similar to modern political parties; they were in fact little more than congeries of the leading gentry's personal and family "interests." Some have explained the absence of organized political parties in the eighteenth century by emphasizing the age's abhorrence of division. But the personal structure of politics was more important than this intellectual aversion to parties, for when that personal structure of the society changed, then parties emerged even in the teeth of their continued cultural rejection. It was this personal structure of politics—not any elaborate legal restrictions on the suffrage—that kept most ordinary people from participating in politics.

Personal patronage dominated colonial society, and this alone made it something other than a democratic society. A generation ago historians used the conception of "deference" to explain why the common people who could legally vote seldom did so.⁸ Or why when they did vote, they voted only for the same prominent families. But this acquiescence that people gave to those who by their wealth, influence, and independence were considered best qualified to rule was based not simply on traditional habits of deference but, more important, on the substantial dependency that patronage created. In 1773 in the Mohawk district of Tryon County, New York, at least four hundred men had the franchise. Yet in an election for five constables only fourteen electors turned out to vote; all fourteen were closely tied by interest or patronage to Sir William Johnson, the local grandee of the area, and all fourteen naturally voted for the same five candidates.⁹

Translating the personal, social, and economic authority of the gentry into political patronage and power was essentially what eighteenth-century politics was about. The process was self-intensifying: social authority created political power, which in turn created more social influence. Some members of the gentry, such as the Tidewater planters of Virginia or the wealthy landholders of the Connecticut River valley, had enough patronage and influence to overawe entire communities. Connecticut River valley gentry like Israel Williams and John Worthington, so imposing as to be called "river gods," used their power to become at one time or another selectmen of their towns, representatives to the Massachusetts General Court, members of the Council, provincial court judges, justices of the peace, and colonels of their county regiments. It became impossible to tell where the circle of their authority began: the political authority to grant licenses for taverns or mills, to determine the location of roads and bridges, or to enlist men for military service was of a piece with their wealth and social influence.

It was likewise substantial paternalistic and patronage power, and not merely the treating of the freeholders with toddy at election time, that enabled the great Virginia

⁸J.G.A. Pocock, *The Classical Theory of Deference*, in *AM. HIST. REV.*, 81 (1976).

⁹EDWARD COUNTRYMAN, *A PEOPLE IN REVOLUTION: THE AMERICAN REVOLUTION AND POLITICAL SOCIETY IN NEW YORK, 1760-1790* 33 (1981).

planters to mobilize their "interests" and to maintain law and order over their local communities without the aid of police forces. The leading Virginia gentry were the vestrymen of their parishes and the lay leaders of the Anglican church, so that the sacredness of religion and the patronage of poor relief further enhanced the hierarchy of authority. All this was the stuff of which aristocracies were made.

What I have been describing is not what we usually understand to be a democratic society. It was a pre-modern patronage society. Those who had the property and power to exert influence in any way—whether by lending money, doing favors, or supplying employment—created obligations and dependencies that could be turned into political authority.

Social authority and political authority were supposed to coincide. Which meant that in this traditional society there was as yet no sharp distinction between the private and public spheres. The king's inherited rights to govern the realm—his prerogatives—were as much private as they were public, just as the people's ancient rights or liberties were as much public as they were private. So-called public institutions had private rights and private persons had public obligations. The king's prerogatives, or his premier rights to govern the realm, grew out of his private position as the wealthiest of the wealthy and the largest landowner in the society; his government had really begun as an extension of his royal household. But in a like manner all private households or families—"those small subdivisions of Government," one colonist called them—had public responsibilities to help the king govern.¹⁰

Indeed, all government was regarded essentially as the enlisting and mobilizing of the power of private persons to carry out public ends. If the eighteenth-century city of New York wanted its streets cleaned or paved, for example, it did not hire contractors or create a "public works" department; instead it issued ordinances obliging each person in the city to clean or repair the street abutting his house or shop.¹¹ In the same way if the colony of Connecticut wanted a college, it did not build and run the college itself, but instead gave legal rights to private persons to build and run it, in short, creating what were called corporations. Most public action—from the building of wharves and ferries to the maintaining of roads and inns—depended upon private energy and private funds. Governments tended to lack much revenue and instead tended to rely mostly on the legal authority they possessed. They issued sanctions against private persons for failure to perform their public duties, and they enticed private persons into fulfilling public goals by offering corporate charters, licenses, and various other legal immunities together with fee-collecting offices. Since the government was only one property-holder in a world of property-holders, it could not take "private" property for "public" purposes without the consent of the owner of that property; in other words, it had no modern power of eminent domain.

Only in the context of these traditional assumptions about the nature and limitations of pre-modern government can we appreciate the role of patronage in that monarchical society. Like the Revolutionaries, we today can see only what both the Revolutionaries and we call "corruption"—the exploitation of "public" office for

¹⁰PROVIDENCE GAZETTE, Feb. 26, 1767.

¹¹HENDRICK HARTOG, PUBLIC PROPERTY AND PRIVATE POWER: THE CORPORATION OF THE CITY OF NEW YORK IN AMERICAN LAW, 1730-1870 (1983).

“private” gain. But, of course, traditionally and ideally it was supposed to be the other way round: the “public” exploitation of “private” authority. Since everyone in the society had an obligation to help govern the realm commensurate with his social rank—the king’s being the greatest because he stood at the top of the social hierarchy—important offices were supposed to be held only by those who were already worthy and had already achieved economic and social superiority. Just as gentlemen were expected to staff the officers’ corps of the army, so were independent gentlemen of leisure and education expected to supply leadership for government. Since such well-to-do gentry were “exempted from the lower and less honourable employments,” wrote the British philosopher Francis Hutcheson, they were “rather more than others obliged to an active life in some service to mankind. The publick has this claim upon them.”¹²

Governmental service, in other words, was supposed to be a personal sacrifice required of certain gentlemen because of their talents, independence, and social preeminence. Office-holding was supposed to be a burden, attended, as leaders like George Washington said, with expense and trouble without the least prospect of gain. Of course, many offices offered the holders incentives in the form of fees, rewards, or benefits, sometimes quite lucrative ones. But always it was assumed that granting such offices together with their perquisites was the best way for these pre-modern governments to get things done without incurring any direct public costs.

Since the society and state were assumed to be identical, government office seemed to belong to men of property and high social rank in the same way that the throne belonged to the king. And because office was an extension into government of the private person, the greater the private person, the greater the office. Access to government therefore often came quickly and easily to those who had the necessary social credentials. Thus wealthy John Dickinson could be elected to the Delaware assembly in 1760 at the age of twenty-eight and promptly be made its speaker. So too could Jonathan Trumbull, a poor, obscure country merchant, be catapulted into speakership of the Connecticut assembly at twenty-eight and into the council at the age of twenty-nine simply by the fact that his marriage into the ancient and prestigious Robinson family had given him, as his contemporary Samuel Peters put it, “the prospect of preferment in civil life.”¹³

Since these colonial governments lacked most of the coercive powers of a modern state—a few constables and sheriffs scarcely constituted a police force—officeholders relied on their own social respectability and private influence to compel the obedience of ordinary people. Ordinary people could become hog reeves or occupy other lowly offices, but they had no business exercising high political office, since, in addition to being caught up in their petty workaday interests, they had no power, no connections, no social capacity for commanding public allegiance and deference. Thus when in 1759 the governor of Massachusetts appointed as a justice of the peace in Hampshire County someone whose company the other local justices declared they were “never inclined to keep,” eleven of the justices resigned

¹²FRANCIS HUTCHESON, *A SYSTEM OF MORAL PHILOSOPHY IN THREE BOOKS* II, 113 (1755).

¹³Clifford K. Shipton, *Jonathan Trumbull*, in *SIBLEY’S HARVARD GRADUATES: BIOGRAPHICAL SKETCHES OF THOSE WHO ATTENDED HARVARD COLLEGE* VII, 269 (1951).

in protest, saying that such an appointment would make the office contemptible in the eyes of the people and diminish their ability to enforce the law.¹⁴

This then was the old society that the Revolution was designed to change. By the eve of the Revolution many colonists had come to believe that their politics were poisoned by corruption. The colonists thought that most crown officials were not the natural leaders of their society and that too many of them using their offices and their powers of patronage for private gain.

The Revolutionary goal was to create republican politics where these sorts of abuses would no longer exist. The Revolutionaries sought to destroy the patronage that had permeated ancien régime politics and to create citizens who were equal, independent, and free from dependency on grantees and patrons. But the republican revolution aimed to do more: it sought to assert the primacy of the public good over all private interests, indeed, to separate the public from the private and to prevent the intrusion of private interests into the public realm. These goals compelled revolutionary Americans to conceive of state power in radically new ways.

No longer could government be seen as the exercise of the king's personal authority or as a bundle of prerogative rights. Rulers suddenly lost their traditional personal rights to rule, and personal allegiance as a civic bond became meaningless. The revolutionary state constitutions eliminated the crown's prerogatives outright or re-granted them to the state legislatures. These constitutional grants of authority together with the expanded notion of consent underlying all government gave the state legislatures a degree of public power that the colonial assemblies had never claimed or even imagined.

The colonial legislatures had rarely legislated in any modern sense. They had done little more than respond to numerous private petitions and local grievances of individuals and groups. But the Revolution, with its need for revenue, men, and material to wage war, changed all that. Overnight the state assemblies became sovereign embodiments of the people with responsibility for exercising an autonomous public authority. In republican America, government would no longer be merely private property and private interests writ large as it had been in the colonial period. Public and private spheres that earlier had been mingled were now to be separated. *Res publica* became everything. The new republican states saw themselves promoting a unitary public interest that was to be clearly distinguishable from the many private interests of their societies.

From the outset the new republican states thus tended to view with suspicion the traditional monarchical practice of enlisting private wealth and energy for public purposes by issuing corporate privileges and licenses to private persons. In a republic no person should be allowed to exploit the public's authority for private gain. Indeed, several of the states wrote into their revolutionary constitutions declarations, like that of New Hampshire, which stated that "government is instituted for the common benefit, protection, and security of the whole community, and not for the private interest or emolument of any one man, family, or class of men."¹⁵

The republican state governments sought to assert their newly enhanced public power in direct and unprecedented ways—doing for themselves what they had earlier commissioned private persons to do. They carved out exclusively public spheres of

¹⁴ROBERT J. TAYLOR, *WESTERN MASSACHUSETTS IN THE REVOLUTION* 24 (1954).

¹⁵N.H. CONST. *in* FRANCIS N. THORPE, *THE FEDERAL AND STATE CONSTITUTIONS* (1909).

action and responsibility where none had existed before. They now drew up plans for improving everything from trade and commerce to roads and waterworks and helped to create a science of political economy for Americans. And they formed their own public organizations with paid professional staffs supported by tax money, not private labor. This was what the Revolutionaries now meant by republican self-government. The city of New York, for example, working under the authority of the state legislature, now set up its own public work force to clean its streets and wharves instead of relying, as in the past, on the private residents to do these tasks. By the early nineteenth century the city of New York had become a public institution financed primarily by public taxation and concerned with particularly public concerns. Like other post-revolutionary governments, New York City acquired what it had not had before—the modern power of eminent domain—the authority to take private property for the sake of the public good without the consent of the particular property-owner.¹⁶

This republicanism was at the same time both radical and traditional in its goals. Its politics had two principal characteristics. First, it sought to keep all private interests out of government, out of the public realm. Yet, secondly, at the same time it continued to cling to the traditional notion that social and political authority would be identical, that is, that the social leaders would be the political leaders. Only now in the new republican societies it was expected that the social and political leaders would be not only those who were independent and capable of transcending market interests but also those who possessed the most merit, talent, virtue—the characteristics of Jefferson's natural aristocracy.

Republicanism thus put a premium on having not only a virtuous population, but, more important, a special kind of virtuous or disinterested leadership, that is, leaders whose independence, education, and capacity to rise above their private interests would enable them to act impartially for the good of the public. This is the reason that good republicans like James Madison continued to believe that ordinary, middling sorts—artisans, traders, commercial farmers, businessmen—could not make good political leaders. The interests and occupations of such ordinary men were thought too strong for them to set aside or transcend. They could never act as disinterested umpires among the contending private interests in the society.

If it turned out that America's political leaders were to be largely drawn from the ranks of these middling sorts of interested men, who were incapable of disinterested leadership and who were not able to keep their private interests out of the public arena, then, of course, the grand republican experiment would fail.

It was the realization that this kind of disinterested leadership was not emerging in the new state legislatures that lay behind the crisis of the 1780s. Leaders like Madison came to believe that the state legislatures were too much dominated by illiberal, narrow-minded, localist politicians who had private and factional interests to promote at the expense of the public interest. New petty middling entrepreneurs like Abraham Yates, a part-time lawyer and shoemaker of Albany and William Findley, a Scotch-Irish ex-weaver of western Pennsylvania, had taken advantage of the newly enlarged legislatures and the expanded suffrage and had become spokesmen for a variety of popular special interests, including the printing of paper

¹⁶HARTOG, *supra* note 11, at 155; Harry N. Scheiber, *The Road to Munn: Eminent Domain and the Concept of Public Purpose in the State Courts*, in *PERSP. IN AM. HIST.* V, 363 (1971).

money. By the 1780s it was obvious to many, as James Madison put it, that "a spirit of locality" was destroying "the aggregate interests of the Community."¹⁷ Everywhere the gentry complained of democratic legislative practices that we today have come to take for granted—logrolling, horse-trading, and pork barreling that benefited special and local interest-groups. Each representative, grumbled Ezra Stiles, president of Yale College, was concerned only with the particular interests of his electors. Whenever a bill was read in the legislature, said Stiles, "every one instantly thinks how it will affect his constituents."¹⁸

Parochial politics was not new to America; after all, the colonial assemblies had spent much of their time fixing the height of fence posts and adjudicating all sort of petty local grievances. But what was happening now was new. Constituents were now pressuring their representatives to legislate in a modern instrumental fashion on behalf of their interests, which were usually commercial interests. Farmers in debt urged low taxes, the suspension of court actions to recover debts, and the continued printing of paper money. Merchants and creditors called for high taxes on land, the protection of private contracts, and the encouragement of foreign trade. Artisans lobbied for the regulation of the prices of agricultural products, the abolition of mercantile monopolies, and tariff protection against imported manufactured goods. Entrepreneurs everywhere petitioned for legal privileges and corporate grants. And in the state legislatures representatives of these interests were passing laws on their behalf, legislating in a modern programmatic manner.

To us today there is nothing remarkable about what these popular legislative representatives were doing; they were simply promoting modern democracy. Like republicanism, the politics of this democracy had two principal characteristics, but these characteristics were actually the reverse of those of republicanism. First, in stark contrast to republicanism, the emerging democracy sought to incorporate private interests into the affairs of government. Indeed, by creating private corporations of banks, canals, and other businesses, it reverted to the older monarchical notion of using private power to carry out public ends. Secondly and at the same time, however, this democracy broke the traditional identity between social and political authority. In a democracy political leaders did not have to be independently wealthy or liberally educated disinterested gentlemen. They could be ordinary people with interests to promote.

The spread of these characteristics alarmed many of the Revolutionary gentry in the 1780s, and created their fears of what they called an excess of democracy. In the eyes of many liberally educated gentry these popular middling upstarts like William Findley, who were spokesmen for democracy, not only were ignorant of coherent law-making processes, but they seemed incapable of the kind of disinterestedness that republican political leaders were supposed to display.

By the 1780s, Madison and other gentry had come to realize that this kind of democratic interest-based politics was not going to go away. They knew too that the regulation of these private factional interests was becoming the principal task of modern legislation, which meant that the spirit of party and faction was likely in the

¹⁷Madison's *Observations on Jefferson's Draft of a Constitution for Virginia*, in JULIAN P. BOYD ET AL., *THE PAPERS OF THOMAS JEFFERSON*, VI, 308 (Princeton, 12952).

¹⁸Ezra Stiles, *The United States Elevated to Glory and Honor*, in JOHN W. THORNTON, *THE PULPIT OF THE AMERICAN REVOLUTION* 420 (1876).

future to be involved in the ordinary operations of government. Yet they also knew, as Madison put it, that no government could be just if parties, that is, people with private interests to promote, became judges in their own causes.

No man is allowed to be a judge in his own cause [wrote Madison in *Federalist* No. 10], because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or in other words, the most powerful faction must be expected to prevail.¹⁹

Since the popular colonial assemblies had often begun as courts (the "General Court of Massachusetts") and much of their legislation had resembled adjudication, Madison's use of judicial imagery to describe the factional and interest-group politics in the state legislatures was not entirely misplaced. But this judicial imagery did prevent Madison from thinking freshly in solving the problem of modern democratic legislative politics that he had so brilliantly diagnosed. He still hoped in a traditional fashion that the government might become, as he put it, a "disinterested & dispassionate umpire in disputes between different passions & interests in the State."²⁰

He and the other founders in 1787, in other words, continued to believe that there were some disinterested gentlemen left in America to act as neutral judges or umpires and that the best government was one that allowed such men to dominate. Experience in the 1780s had shown that enlightened statesmen would not often be in charge in the small spheres of the states. Instead, Madison hoped that the extended republic created by the proposed federal Constitution might make for more enlightened leadership. The extension of the political domain over the whole nation would increase the number of interests and factions in the society to the point where it was less likely that a majority could combine in government to oppress the rights of minorities and individuals. Madison understood that this process had worked in religion. The multiplicity of religious sects in America prevented any one of them from dominating and permitted the enlightened reason of liberal gentlemen like Jefferson and himself to shape public policy and church-state relations and to protect the rights of minorities. "In a free government," wrote Madison in *Federalist* No. 51, "the security for civil rights must be the same as that for religious rights. It

¹⁹THE FEDERALIST NO. 10, at 59-60 (James Madison) (Jacob E. Cooke ed., 1961).

²⁰Letter from James Madison to George Washington (Apr. 16, 1787) in JAMES MADISON: WRITINGS 81 (Jack N. Rakove ed., 1999).

consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects."²¹

At the same time the extended federal republic's enlarged electoral districts would tend to screen out the kinds of interested men who had dominated the state legislatures in the 1780s and result in elections more likely being carried by men, in Madison's words, "whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustice," in other words, the kinds of men who could best act as impartial umpires among the clashing interests.²²

Finding gentlemen in America who were capable of transcending the marketplace and making disinterested judgments was not easy. Many thought that only in the South was the ideal image of the disinterested independent gentleman even partially realized, and there, of course, gentleman farmers like Jefferson had hundreds of slaves to keep them in leisure and wine. Alexander Hamilton tried to argue that members of the learned professions, by which he mainly meant lawyers, could best play the role of impartial umpires among the conflicting interests of the society. It may have been true, he wrote in *Federalist* No. 35, that mechanics, merchants, and farmers were deeply involved in the marketplace, and because they had interests to promote, they could never be trusted in politics to make disinterested judgments. This was not the case, however, said Hamilton, with members of the learned professions. They made the best kind of political leaders. They "will feel a neutrality to the rivalships between the different branches of industry," said Hamilton, and therefore will be most likely to be "an impartial arbiter" among the diverse interests and occupations of the society.²³ Thus Hamilton reinforced a notion that has carried into our own time—that lawyers and other professionals are somehow free of the marketplace, are less selfish and interested and therefore better equipped for disinterested political leadership than merchants and businessmen.

So the new Constitution was designed to control or mitigate the democratic politics that had emerged as a consequence of the Revolution. We know what happened. Private interests were not kept out of even the elevated nature of the new federal government. Lots of scrambling middling sorts like William Findley made it into the Congress.

Because the supporters of the Constitution, the Federalists, seemed to be perpetuating the classical republican tradition of virtuous patrician leadership in government, the opponents of the Constitution, or the Anti-Federalists, felt compelled to challenge that tradition. There was, the Anti-Federalists said repeatedly, no disinterested gentlemanly elite that could feel "sympathetically the wants of the people" and speak for their "feelings, circumstances, and interests."²⁴ That elite had its own particular interests to promote. However liberally educated and elevated such independent gentry might be, they were no more free of the lures and interests of the marketplace than anyone else.

²¹THE FEDERALIST NO. 51, at 351-52 (James Madison) (Jacob E. Cooke ed., 1961).

²²THE FEDERALIST NO. 10, at 64 (James Madison) (Jacob E. Cooke ed., 1961).

²³THE FEDERALIST NO. 35, at 221 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

²⁴DEBATES IN THE SEVERAL STATE CONVENTIONS, ON THE ADOPTION OF THE FEDERAL CONSTITUTION II, 260,13 (Jonathan Elliot ed., 1854)

The consequences of such Anti-Federalist thinking were immense and indeed devastating for republican government. If enlightened and liberal gentlemen, that is, those who had gone to Harvard and Princeton, were involved in the marketplace and had interests to promote just like everyone else, they were really no different from all those common people—artisans, shopkeepers, traders, and others—who had traditionally been denied a role in political leadership because of their overriding absorption in their private occupational interests. In short, the Anti-Federalists were saying that liberally educated gentlemen were no more capable than ordinary people of classical republican disinterestedness and that consequently there was no one in the society equipped to promote an exclusive public interest that was distinguishable from the private interests of people.

One of the crucial moments in the history of American politics—maybe the crucial moment—occurred in 1786 during several days of debate in the Pennsylvania assembly over the re-chartering of the Bank of North America. The debate—the only important one we have recorded of state legislative proceedings in the 1780s—centered on the role of interest in public affairs.

The principals in this debate were William Findley, the Scotch-Irish ex-weaver from western Pennsylvania and a defender of the debtor-paper money interests in the state, and Robert Morris, the wealthiest merchant in the state with aristocratic aspirations and a major supporter of the re-chartering of the bank. Findley had been a schoolmaster and farmer and a militia captain before ending up as a political officeholder. He was the very prototype of a later professional politician and was as much a product of the Revolution as the more illustrious patriots like John Adams or James Madison. He had no lineage to speak of, he did not go to college, and he possessed no great wealth. He was completely self-taught and self-made, but not in the manner of a Benjamin Franklin who acquired the cosmopolitan attributes of a gentleman. Findley's origins showed, and conspicuously so. In his middling aspirations, middling achievements, and middling resentments he accurately represented the kind of democracy that was emerging in America, especially in the northern half of America.

Indeed, Findley was precisely the sort of backcountry legislator whom gentry like Madison in the 1780s were accusing of being narrow, illiberal, and interested in their promotion of paper money and debtor-relief legislation. Now, with the issue of the re-chartering of the bank, Findley had an opportunity to get back at his aristocratic accusers and he made the most of it. Morris and his genteel Philadelphia ilk had continually tried to pose as disinterested gentlemen in the classical mold, who were above crass marketplace interests and concerned only with the public good. But Findley and his western colleagues refused to let Morris and the aristocratic supporters of the bank get away with this pose. These supporters of the bank's re-chartering, Findley charged, were themselves interested men; they were directors or stockholders of the bank and thus had no right to claim that they were neutral disinterested umpires only deciding what was good for the state. The advocates of the bank "feel interested in it personally, and therefore by promoting it they were acting as judges in their own cause." This of course is the very phrase that Madison used in the *Federalist* when he attacked politicians like Findley.

There was nothing new in these charges. To accuse one's opponent of being self-interested was conventional rhetorical strategy in eighteenth-century debates. But Findley went on to pursue another line of argument that was new—startlingly new. He accepted Morris's and the other bank supporters' interestedness in the bank.

There was nothing unusual or improper in their supporting re-chartering of the bank, he said. They were, after all, directors and stockholders in the bank, and their promotion of the bank was only to be expected. "Any others in their situation . . .," said Findley, "would do as they did." Morris and the other investors in the bank had every "right to advocate their own cause, on the floor of this house." But, said Findley, they had no right to protest when others realize "that it is their own cause they are advocating; and to give credit to their opinions, and to think of their votes accordingly." They had no right, in other words, to try to pass off their support of their personal cause as an act of disinterested virtue. The promotion of interests in politics, suggested Findley, was quite legitimate, as long as it was open and above board and not disguised by specious claims of genteel disinterestedness. The promotion of private interests was in fact what American politics ought to be about.

Findley was not content merely to expose and justify the reality of interest-group politics in representative legislatures. He glimpsed some of the important implications of such interest-group politics, and in just a few remarks he challenged the entire classical tradition of disinterested public leadership and set forth a rationale for competitive democratic politics that has never been bettered. If representatives were elected to promote the particular interests and private causes of their constituents, then the idea that such representatives were simply disinterested gentlemen, squire worthies called by duty to shoulder the burdens of public service, became archaic. It may have been meaningful in the past when such virtuous men did exist, for such a disinterested representative to make no effort on his own behalf and simply stand for election. But now, said Findley, in the democratic America of many interests where the candidate for the legislature "has a cause of his own to advocate, interest will dictate the propriety of canvassing for a seat." Such interest-group politics meant that politically ambitious men, even those with interests and causes to advocate, now could legitimately run and compete for electoral office. It was OK now for parties to be judges in their own causes.²⁵

Despite all the sarcasm and mingled emotion with which Findley in 1786 put forward this radical suggestion, he was anticipating in this one statement all of the modern democratic political developments of the succeeding generation, what we came to know as democracy: the increased electioneering and competitive politics, the open promotion of interests in legislation, including the chartering of banks and other private corporations, the emergence of political parties, the extension of the actual and direct representation in government of particular groups, including ethnic and religious groups, and the eventual weakening, if not the repudiation, of the classical republican ideal that legislators were supposed to be disinterested umpires standing above the play of interests.

Findley and the other spokesmen for popular interests who emerged in these years made no pretense to having any special personal or social qualifications to rule. They were not wealthy men, they had not gone to Harvard or Princeton, and they were often proud of their parochial and localist outlook. Their claim to office was

²⁵MATHEW CAREY, DEBATES AND PROCEEDINGS OF THE GENERAL ASSEMBLY OF PENNSYLVANIA ON THE MEMORIALS PRAYING A REPEAL OF SUSPENSION OF THE LAW ANNULING THE CHARTER OF THE BANK 15, 19, 21, 38, 64, 66, 72-73, 87, 128, 130 (1786). For a fuller discussion of this debate see Gordon S. Wood, *Interests and Disinterestedness in the Making of the Constitution*, in RICHARD BEEMAN ET AL., *BEYOND CONFEDERATION: ORIGINS OF THE CONSTITUTION AND AMERICAN NATIONAL IDENTITY* 69-109 (1987).

based solely on their ability to garner votes and satisfy the private interests of their constituents.

The awesome power of this democratic polity, with people becoming judges in their own causes, was such that our political leaders over the past two centuries have struggled to constrain and mitigate its effects. In fact, that is what our current concern with campaign financing is all about. From the very beginning of our national history we Americans have used a variety of devices and institutions to immunize ourselves from the harmful consequences of too much democracy, too much factious promotion of private interests in the name of the people. No doubt the most important of these devices has been the judiciary, the institution most removed from the people and most resistant to the pressure of private interests. Indeed, by playing the role that Madison had wanted the legislatures to play—impartially adjudicating among contending parties and interests—the judiciary suddenly emerged out of its colonial insignificance to become the principal means of protecting minority rights and individual liberties against interest-mongering popular legislatures. By the early nineteenth century some Americans were arguing that popularly elected legislatures could no longer solve many of the problems of their lives. “For the varying exigencies of social life, for the complicated interests of an enterprising nation, the positive acts of the legislature,” said Alexander Dallas in 1805, “can provide little.”²⁶ Only judges interpreting the common law could sort out the competing interests. Many, including Madison in his later years, eventually concluded that the judiciary was the only governmental institution in America that came close to resembling the disinterested and impartial umpires that the revolutionaries had earlier yearned for.²⁷

Today we have come to accept democracy, that is, popular legislative politics where the people are judges in their own causes, only because we have a presumably disinterested judiciary, among other institutions like the Federal Reserve Board, that limits and constrains that democracy. In time we Americans have come to emphasize the judicial constraints on popular government and the judicial protection of individual rights and liberties to the point where such constraints and such protections often seem more important to the meaning of our democracy than does the expression of popular majorities. Limiting popular government and protecting individual and minority rights without at the same time denying the sovereign public power of the people was the great dilemma of political leaders at the founding of the nation. And, indeed, it remains today still the great dilemma of all liberal democracies.

²⁶Alexander Dallas *quoted in* RICHARD E. ELLIS, *THE JEFFERSONIAN CRISIS: COURTS AND POLITICS IN THE YOUNG REPUBLIC* 179 (1971).

²⁷Letter from James Madison to Thomas Jefferson (June 27, 1823), *in* *THE REPUBLIC OF LETTERS: THE CORRESPONDENCE BETWEEN THOMAS JEFFERSON AND JAMES MADISON 1776-1826 III, 1868-75* (James Morton Smith ed., 1995); Letters from James Madison to Spencer Roane (May 6, 1821 and June 29, 1821), *in* *THE REPUBLIC OF LETTERS: THE CORRESPONDENCE BETWEEN THOMAS JEFFERSON AND JAMES MADISON 1776-1826 III, 1868-75* (James Morton Smith ed., 1995).