

PULLING PUNCHES: CHARLES BEARD, THE PROPERTYLESS, AND THE FOUNDING OF THE UNITED STATES

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The economic historian Charles A. Beard has been an immensely controversial figure. Generations of scholars have argued over his writings, debated their meanings, and, ultimately, contested their legacy. Most notably, he has been excoriated for his thesis in *An Economic Interpretation of the Constitution of the United States*, in which he argues that in the process of drafting and ratifying the Constitution of the United States, the federalists, composed of “merchants, money lenders, security holders, manufacturers, shippers, capitalists, and financiers” (i.e., those Beard identifies as the significant holders of “personalty”), triumphed over the interests of the “debtors and farmers,” smaller landholders, and persons of moderate wealth.¹ Criticisms of Beard’s evidence and argument have cumulatively weakened but not fundamentally upended the claim in *An Economic Interpretation of the Constitution of the United States* (“*Economic*

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1. See CHARLES A. BEARD, *AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES*, at xli-liv (1986) [hereinafter BEARD: ECONOMIC INTERPRETATION]; ROBERT E. BROWN, *CHARLES BEARD AND THE CONSTITUTION* (1956); JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATION OF CONSTITUTIONAL DEMOCRACY* 25–27 (1962); RICHARD HOFSTADTER, *THE PROGRESSIVE HISTORIANS* 207–10, 213–15 (1968); WILLIAM H. RIKER, *FEDERALISM: ORIGIN, OPERATION, MAINTENANCE* 17–19 (1964); Pope McCorkle, *The Historian as Intellectual: Charles Beard and the Constitution Reconsidered*, 28 AM. J. LEGAL HIST. 314, 315–18, 321 (1984) (detailing the decline of Beard’s reputation); FORREST McDONALD, *WE THE PEOPLE: THE ECONOMIC ORIGINS OF THE CONSTITUTION* 3–18 (1958); Robert A. McGuire, *Constitution Making: A Rational Choice Model of the Federal Convention of 1787*, 32 AM. J. POL. SCI. 483, 485 (1988); Robert A. McGuire & Robert L. Ohsfeldt, *Economic Interests and the American Constitution: A Quantitative Rehabilitation of Charles A. Beard*, 44 J. ECON. HIST. 509 (1984). For a contextualization of these criticisms and an overview of Beard’s scholarship, see CLYDE W. BARROW, *MORE THAN A HISTORIAN: THE POLITICAL AND ECONOMIC THOUGHT OF CHARLES A. BEARD* (2000).

Interpretation” hereafter) that the establishment of the United States Constitution of 1787—and therefore of the United States—was effected so as to secure the assets of wealthier Americans, especially persons in finance and commerce and those with extensive land holdings.²

The argument here is that the defect in Beard’s thesis may be the opposite from that voiced by his critics: it is not that Beard overplays his hand, but that he understates his case. Namely, that he neglects the implications that follow from his insufficient attention to the propertyless. Early in *Economic Interpretation*, Beard brings up and then essentially sidetrails further discussion of an entire class of Americans who had clear and pressing economic interests of their own in a new national government: the Euro-Americans who had no property (to be distinguished from African American slaves and free blacks or the “civilized” American Indians who paid taxes).

On the second page of *Economic Interpretation*, Beard writes of the “transported felons and indented [sic] servants” who came to America, and refers to the scholarship of the historian James Davie Butler on the British convicts exiled to America.³ He also cites the scholarship of A.M. Simons, who writes of the large numbers of Irish who emigrated to America, and of the “three classes of ‘white slaves’” brought over in colonial times to be “sold to the colonists for a term of years”: (1) indentured servants; (2) transported convicts; and (3) kidnapped men, women, and children.⁴ Beard further draws on the research of John R. Commons⁵—a personal friend—who reports that the population of indentured servants and transported felons constituted *half* of the Europeans who emigrated to colonial America, that German indentures constituted a large share of the class of indentured servants, and that many of the Scots in Ulster forced off their land went to America.⁶

It is not that Beard wholly omits this class. Early on in *Economic Interpretation* he identifies four distinct economic

2. For criticisms of Beard, see BROWN, *supra* note 1; BUCHANAN & TULLOCK, *supra* note 1; McDONALD, *supra* note 1, at 349–57, 400; RIKER, *supra* note 1. No critics have voiced the argument made here.

3. BEARD: *ECONOMIC INTERPRETATION*, *supra* note 1, at 2 (citing James Davie Butler, *British Convicts Shipped to America*, 2 AM. HIST. REV., 12, 12–13 (1896)).

4. BEARD: *ECONOMIC INTERPRETATION*, *supra* note 1, at 6 n.1 (citing A.M. SIMONS, *SOCIAL FORCES IN AMERICAN HISTORY* 18–20 (1911)).

5. BARROW, *supra* note 1, at 44.

6. JOHN R. COMMONS, *RACES AND IMMIGRANTS IN AMERICA* 30–31, 35–36 (new ed., 1907).

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groups at the Founding, the second and third of the groups constituting the class of impoverished Euro-Americans. However, he restricts his study to persons who were legally indistinguishable. He explains these several groups of persons at the Founding

whose economic status had a definite legal expression: [1] the slaves, [2] the indented [sic] servants, [3] the mass of men who could not qualify for voting under the property tests imposed by the state constitutions and laws, and [4] women, disenfranchised and subjected to the discriminations of the common law. These groups were, therefore, not represented in the Convention which drafted the Constitution, except under the theory that representation has no relation to voting.⁷

Beard concedes that he cannot determine the extent of this disenfranchisement and legal discrimination and he observes that there was no working-class “consciousness” of any kind. He acknowledges, too, that Hamilton and the other Founders “dismissed” what he identifies as “the coming industrial masses.” But rather than discussing this class, Beard spends the remainder of *Economic Interpretation* focusing almost entirely on the differences and divisions among “the social groupings within the politically enfranchised mass,” without “legal distinctions.”⁸

This omission was calculated. Beard wrote *Economic Interpretation* primarily for his contemporaries, as Richard Hofstadter observed in *Progressive Historians*. Hofstadter frames the Progressive Era by examining the works of Turner, Beard, and Parrington as part of an intra-generational discussion.⁹ Beard’s intended audience would have known the scholarship of the day and were familiar with his references. Historians of the period would thus have recognized the Butler source as the only existing attribution of a comment on convicts by George Bancroft. Butler recounts a conversation he had with Bancroft about transported felons, one where Bancroft admits, “he had been very economical in dispensing the truths he had discovered. Having a handful, he had opened only his little finger.”¹⁰

The implications of such admissions should not be dismissed, since Bancroft’s multi-volume *History of the United States from the Discovery of the American Continent* was a landmark work of

7. BEARD: ECONOMIC INTERPRETATION, *supra* note 1, at 24.

8. *Id.* at 25–26.

9. HOFSTADTER, *supra* note 1.

10. Butler, *supra* note 3, at 12–13.

scholarship and made him one of the most important historians of the nineteenth century. Thus when Beard specifically references Butler's quotation of Bancroft, Beard is thereby acknowledging the existence of this class of poor Americans, as well as recognizing their minimized legacy.

Yet Beard does not then investigate the existence or implications of this population of bound laborers, of former indentured workers and exiled convicts who had finished their terms of service, and of their descendants. Instead, he effectively sets aside this class of "indented servants," "white slaves," and formerly bound workers since this population was not represented at the convention in Philadelphia or at the ratification conventions in the states. Later in *Economic Interpretation*, Beard mentions the disenfranchisement of those with minimal or no property when he discusses the property qualifications for voting within the states. In virtually all of the rest of the book, however, he focuses on how the delegates at the Constitutional Convention were foremost concerned with and divided among those of little property, those with different kinds of property, or those who were either debtors or creditors. His analysis is of how the two broad classes of economic interests that *were* represented politically and *were not* discriminated against legally shaped the political economy of the new United States.

The first part of this article reviews the origins and circumstances of this class, where more recent research has confirmed Butler's, Simon's, and Common's findings that this class did constitute an important, if marginalized category of colonial Americans, persons rejected by both the British authorities and by American colonial elites. Persons of this class would comprise the unruly mobs occupying colonial towns and cities, would serve in the Continental Army, and, often, would flee into the Appalachians and beyond—into what from 1763 to 1783 remained British North America; only later, under President Andrew Jackson, would most of this class become enfranchised.

The second part of this article considers the role of this class in the Founding and how the presence of this class influenced the text of the Constitution and other Founding documents—even as this population is ignored by most studies of the origins and development of the Founding. The third part shows that Beard's limited treatment of this lowest class of Euro-Americans was consistent with his background, his view of history, and his other writings.

1. THE COLONIAL AMERICAN SUBCLASS

For many Europeans who came to the New World, America was *not* a land of opportunity or the occasion for a new beginning—*contra* the American myth. Many of them came as bound labor, filling the demand for farm workers, craftsmen, tutors, domestic help, and other occupations. These persons constituted the majority of unfree labor in the 17th century and first decades of the 18th century. Not until the latter half of the 18th century did African slavery become the principal component of forced labor. All told, approximately half of all Europeans emigrating to British North America came over as bound labor in some form, whether as indentured servants, political exiles, or transported felons.¹¹

The dominant category of bound labor consisted of persons who lacked the ability to pay for their trans-Atlantic passage, thus they arrived as indentured workers.¹² They signed contracts in England (or elsewhere in the British Isles or on the Continent) that would then bind them to several years' service—four to seven years, typically—in exchange for their transport to America. Ship captains held most of these contracts, and they would sell the indentured servants upon arriving in American ports.¹³

The other chief category of bound labor was that of exiled convicts. Convicts were the first to be used as forced labor at the for-profit Jamestown Colony. With too many “gentlemen” and too few servants, the Jamestown Colony “appealed to the mayor

11. A. ROGER EKIRCH, *BOUND FOR AMERICA: THE TRANSPORTATION OF BRITISH CONVICTS TO THE COLONIES, 1718-1775*, at 58–59 (1987); see 2 PHILIP ALEXANDER BRUCE, *ECONOMIC HISTORY OF VIRGINIA IN THE SEVENTEENTH CENTURY*, 70–73, 569–73 (1896).

12. The term “indentured” comes from the 17th-century practice of writing contracts between servants (often apprentices) and their masters on the same piece of parchment and then cutting the contracts in two with an irregular (indented) line so that the halves could be uniquely matched.

13. There was also a large category of “redemptioners,” who were indentured servants from Germany, mostly the Palatinate or *Pfalz* region. See ADOLPH B. BENSON, *PETER KALM'S TRAVELS IN NORTH AMERICA 204–06* (Dover Publ'ns, Inc., rev. ed., 1964) (1937); CHEESMAN A. HERRICK, *WHITE SERVITUDE IN PENNSYLVANIA* 10, 144, 169, 195–216 (Libr. Press, 1970) (1926); GOTTLIEB MITTELBERGER, *GOTTLIEB MITTELBERGER'S JOURNEY TO PENNSYLVANIA IN THE YEAR 1750 AND RETURN TO GERMANY IN THE YEAR 1754*, at 25–30 (Carl Theo. Eben trans., 1898); I.D. RUPP, *HISTORY AND TOPOGRAPHY OF NORTHUMBERLAND, HUNTINGDON, MIFFLIN, CENTRE, UNION, COLUMBIA, JUNIATA, AND CLINTON COUNTIES, PA* 54–57 (1847); AUGUST SARTORIUS VON WALTERHAUSEN, *DIE ARBEITS-VERFASSUNG DER ENGLISCHEN KOLONIEN IN NORDAMERIKA* (Strassburg: Verlag von Karl J. Trubner, 1894); E.G.B., *Book Review*, 10 *Yale Rev.* 231, 337 (1901) (reviewing KARL FREDERICK GEISER, *REDEMPTIONERS AND SERVANTS IN THE COLONY AND COMMONWEALTH OF PENNSYLVANIA* (1901)).

of London” in 1609 “to rid the city of its ‘swarme of unnecessary inmates’ by sending to Virginia any who were destitute and lying in the streets.”¹⁴ The mayor obliged, shipping the criminals (and some of the indigent) to America.¹⁵

Despite the different origins of these two groups, colonial Americans treated the indentured servants and exiled convicts as a single class, in effect, and considered them a separate caste.¹⁶ Over time, the proportion of bound labor composed of indentured servants and exiled felons fell, as African slavery supplanted Euro-Americans as the principal form of forced labor. Masters had every incentive to overwork their servants, to feed them insufficiently, and to ignore their health—especially towards the end of their terms of service—and one scholar estimates that possibly as many as a third of transported felons died either in transport or before their terms expired because of overwork and the hot and humid climate of the mid-Atlantic states.¹⁷ Meanwhile, African Americans displaced indentured servants and convicts as the chief source of forced labor since they were enslaved for life and were better suited to the harsh work in the tobacco fields because of their familiarity with the hot and humid climate of mid-Atlantic summers. In addition, the severe imbalance between men and women convicts and indentured servants caused the birthrate for this population to be significantly lower than those of other colonial Americans and the African slave population, both of which had better male-to-female ratios.

Nonetheless, by the time of the Founding a significantly large proportion of the colonial population of Euro-Americans—perhaps a third—remained in this class of impoverished persons, whether still as bound labor, formerly indentured servants or transported felons who had served their time in bondage, or as direct descendants of this class. These persons as a rule had no

14. EDMUND S. MORGAN, *AMERICAN SLAVERY AMERICAN FREEDOM: THE ORDEAL OF COLONIAL VIRGINIA* 86 (1975).

15. 1 ALEXANDER BROWN, *THE GENESIS OF THE UNITED STATES* 252–53 (Russell & Russell, Inc., 1964) (1890); MORGAN, *supra* note 14, at 84–87.

16. See BERNARD BAILYN, *THE PEOPLING OF BRITISH NORTH AMERICA* 61 (1986); EKIRCH, *supra* note 11, at 156; DON JORDAN & MICHAEL WALSH, *WHITE CARGO: THE FORGOTTEN HISTORY OF BRITAIN’S WHITE SLAVES IN AMERICA* 269–70 (2008); Bruce Kercher, *Perish or Prosper: The Law and Convict Transportation in the British Empire, 1700-1850*, 21 *LAW & HIST. REV.* 527, 534–41 (2003); Kenneth Morgan, *Convict Runaways in Maryland, 1745-1775*, 23 *J. AM. STUD.* 253, 254, 257 (1989); RICHARD B. MORRIS, *GOVERNMENT AND LABOR IN EARLY AMERICA* 6, 336 (1946); CHRISTOPHER TOMLINS, *FREEDOM BOUND: LAW, LABOR, AND CIVIC IDENTITY IN COLONIZING ENGLISH AMERICA, 1580-1865*, at 290–91 (2010).

17. EKIRCH, *supra* note 11, at 3–4, 103.

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marketable skills upon finishing their terms of service, had no property or land—that owed to them by law once their periods of servitude expired was rarely delivered—and almost all were illiterate.¹⁸

Yet American colonial society required either property or land, or both, to participate politically. Not surprisingly, many fled their harsh conditions. Some escaped into the cities—e.g., Philadelphia, New York, and Boston—and others melted away into the wooded frontiers of western Maryland, western Virginia, and the Appalachians.¹⁹ “The ensuing crops of released convicts, like weeds, scattered their seed,” wrote one colonial historian.²⁰ “Some of that seed settled down near the Potomac plantations but some was blown far afield by the winds of fate and germinated on the new frontier beyond the Blue Ridge.”²¹ Still others returned to Britain, paying for their passage by working as sailors.²²

2. THE AMERICAN SUBCLASS AND THE FOUNDING

The existence of this subclass of convicts and indentured servants was well recognized in the 17th and 18th centuries. For the Scottish political theorist Andrew Fletcher and other late 17th-century thinkers, legalized enslavement would engage the undeserving poor (“idle vagabonds”) in productive work, enabling them to meet their basic food and clothing needs and allowing them to learn to read, and teach them religion. Could the undeserving poor be “sold as beasts,” Fletcher asked rhetorically?²³ He agreed they could be.²⁴ Benjamin Franklin, too, recognized that a subordinate class of European descent—and not only African heritage—“A slave,” Benjamin Franklin wrote in 1770, “is a human creature stolen, taken by Force, or bought of another or of himself with Money He may be sold again or let for Hire, by his Master” and “must wear such Cloaths [sic] as

18. RONALD SEAVOY, *AN ECONOMIC HISTORY OF THE UNITED STATES: FROM 1607 TO THE PRESENT* 10 (2013); MARGARET SANDS ORCHOWSKI, *IMMIGRATION AND THE AMERICAN DREAM: BATTLING THE POLITICAL HYPE AND HYSTERIA* 25 (2008).

19. See DAVID HACKETT FISCHER & JAMES C. KELLY, *BOUND AWAY: VIRGINIA AND THE WESTWARD MOVEMENT* 46–47, 54, 75, (2000).

20. Fairfax Harrison, *When the Convicts Came*, 30 VA. MAG. HIST. & BIOGRAPHY 250, 260 (1922).

21. *Id.*

22. EKIRCH, *supra* note 11, at 207–22.

23. Samuel Fletcher, *The Second Discourse Concerning the Affairs of Scotland: Written in the Year 1698*, cited in Michael J. Rozbicki, *To Save Them from Themselves: Proposals to Enslave the British Poor, 1698-1755*, *SLAVERY & ABOLITION*, Aug. 2001, at 29, 31.

24. *Id.* at 29, 31–32.

his Master thinks fit . . . and be content with such Food . . . as his Master thinks fit.” He “must never absent himself from his Master’s Service without Leave” and is “subject to severe Punishments for small Offenses.”²⁵ Franklin’s definition clearly encompassed convicts and indentured servants as well as African American slaves.²⁶

Franklin disapproved of these “slaves” being shipped to America. In 1751, he famously wrote that the colonies should send rattlesnakes to Britain in return for the felons being dumped on American soil.²⁷ Years later, in 1767, he authored an article for the *London Chronicle* identifying the transportation of convicts as “the most cruel insult offered by one people to another.”²⁸ Such trafficking, he added, was “an unexpected barbarity in your Government to empty your gaols into our settlements and we resent it as the highest of insults.”²⁹ George Washington’s childhood tutor was a former convict, and Washington himself submitted many advertisements over the years for help locating runaway convicts from his Mount Vernon plantation.³⁰ Colonial newspapers were full of announcements of runaway convicts and indentured servants, in fact, soliciting readers for their (remunerated) assistance.³¹

The Framers left little record of these transported felons and indentured servants. On the contrary, Thomas Jefferson wrote

25. Benjamin Franklin, Letter to the Editor, *Conversation on Slavery*, PUB. ADVERTISER, (London) Jan. 30, 1770, cited in DAVID R. ROEDIGER, *THE WAGES OF WHITENESS* 29 (1991).

26. ROEDIGER, *supra* note 25, at 29.

27. “I would only add, That this Exporting of Felons to the Colonies, may be consider’d as a *Trade*, as well as in the Light of a *Favour*. Now all Commerce implies *Returns*: Justice requires them: There can be no Trade without them. And *RattleSnakes* seem the most *suitable Returns* for the *Human Serpents* sent us by our *Mother Country*. In this, however, as in every other Branch of Trade, she will have the Advantage of us. She will reap *equal Benefits* without equal *Risque* of the *Inconveniencies* and *Dangers*. For the *RattleSnake* gives Warning before he attempts his *Mischief*; which the *Convict* does not. I am Yours, &c.” Benjamin Franklin, *Felons and Rattlesnakes*, PENNSYLVANIA GAZETTE, May 9, 1751.

28. JORDAN & WALSH, *supra* note 16, at 269.

29. *Id.*

30. George Washington, *Advertisement for Runaway Servants*, VA. GAZETTE, Apr. 23, 1775, in 10 GEORGE WASHINGTON, *THE PAPERS OF GEORGE WASHINGTON*, 21 MARCH 1774–15 JUNE 1775 at 341–42 (W.W. Abbot & Dorothy Twohig eds., Univ. Press Va., 1995), available at Founders Online, National Archives, <http://founders.archives.gov/documents/Washington/02-10-02-0266>.

31. Issues of the Virginia Gazette, from 1736–80, are digitally archived through Colonial Williamsburg’s John D. Rockefeller Library. Issues can be accessed at <http://research.history.org/DigitalLibrary/BrowseVG.cfm>.

The Malefactors sent to America were not in sufficient number to merit enumeration as one class out of three which peopled America. It was at a late period of their history that this practice began. I have no book by me which enables me to point out the date of its commencement. But I do not think the whole number sent would amount to 2000, and being principally men, eaten up with disease, they married seldom and propagated little. I do not suppose that themselves [sic] and their descendants are at present 4000, which is little more than one thousandth part of the whole inhabitants.³²

The total number of convicts “sent” to British North America from 1607 to 1775 totaled 54,500 persons, or 11.3 percent of those who “peopled America” from Europe, excluding Indians and slaves (total non-slave immigration came to 482,600, or 784,000 if slaves are included).³³

Max Farrand’s notes from the Constitutional Convention do not refer to any discussion of these persons, however, and British and American policymakers and political writers did not discuss these persons in their pamphlets and correspondence.³⁴ They essentially ignored what had been the Crown’s policy over the 17th and 18th centuries and glossed over the hierarchy among Euro-Americans. John Jay’s comment in *Federalist 2* is exemplary of this neglect. Jay writes that he often noted that, “Providence has been pleased to give us this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs.”³⁵ As a description of the American colonies in the late 18th century, however, Jay’s statement represents wishful thinking in view of the distinct nationalities and languages represented in the colonies, as well as the different religions (such as Lutherans, Anglicans/Episcopalians, Baptists, Methodists, Quakers, and Catholics), class divisions, and

32. Thomas Jefferson, Jefferson’s Observations on Demeunier’s Manuscript: Observations on the Article États-Unis Prepared for the Encyclopédia (June 22, 1786) in 10 THE PAPERS OF THOMAS JEFFERSON 30 (Julian P. Boyd ed., Princeton Univ. Press, 1954).

33. Aaron S. Fogleman, *From Slaves, Convicts, and Servants to Free Passengers: The Transformation of Immigration in the Era of the American Revolution*, 85 THE JOURNAL OF AMERICAN HISTORY, 43, 44. See also EKIRCH, *supra* note 11, at 1.

34. See 1–8 BRITISH PAMPHLETS ON THE AMERICAN REVOLUTION, 1763–1785 (Harry T. Dickinson ed., 2007).

35. THE FEDERALIST NO. 2, at 12 (John Jay) (Ian Shapiro ed., Yale Univ. Press, 2009).

variation of wealth in colonial America—as noted by Madison, Beard, and others.

Contrary to the implications of *Economic Interpretation*, however, the Founding documents *do* reflect the presence of this class. The American revolutionaries' first grievance against the British government in the Declaration of Independence (“He has refused his Assent to Laws, the most wholesome and necessary for the public good”) refers to the dozens of laws nullified by the Crown. Chief among the rejected laws were those passed by Pennsylvania, Maryland, and Virginia to prohibit the transport of felons to their shores. Yet the Crown repeatedly overruled these laws, to the frustration of the colonial assemblies.³⁶ Prominent among the “laws of Virginia and other Southern colonies” nullified by the Crown, the historian Herbert Friedenwald finds, were those “designed to prohibit the slave-trade and the introduction of convicts,” including one passed by the Confederation Congress in 1774 prohibiting the importation of slaves, “and those of nearly all the colonies for issuing bills of credit and for naturalizing aliens.”³⁷

Friedenwald continues:

The [colonies'] attempts to prevent the entrance of convicts, regarded, if possible, with even less favor than slaves [by Britain], met with no greater success. Many of this class, under the English law which allowed those convicted of crime the option, in some cases, between imprisonment, death, or transportation to America, preferred to leave England. Their arrival met with opposition, particularly in Virginia, Maryland and Pennsylvania, which colonies endeavored by laws passed early in their history, to restrict the entrance of this undesirable class. But every such act was disallowed. Franklin spoke of this in 1768 as having “long been a great grievance to the plantations in general,” and John Dickinson wrote in the same year, “the emptying their jails upon us and making the Colonies a Receptacle for the Rogues and Villains: an Insult and Indignity not to be thought of, much less borne without Indignation and Resentment.”³⁸

36. Basil Sollers, *Transported Convict Laborers in Maryland during the Colonial Period*, 2 MD. HIST. MAG., 17, 28–34 (1907).

37. HERBERT FRIEDENWALD, *THE DECLARATION OF INDEPENDENCE: AN INTERPRETATION AND AN ANALYSIS* 215–16 (1904).

38. FRIEDENWALD, *supra* note 37, at 216–17. EDWARD DUMBAULD, *THE DECLARATION OF INDEPENDENCE AND WHAT IT MEANS TODAY* 87–91 (1950) also points out the prominence of the Crown's rejection of the anti-convict and anti-slave laws for Jefferson and other drafters of the Declaration. The reason for the anti-slavery laws

Pauline Maier mentions the anti-slavery laws passed in the colonies that were then overturned by the Crown, but she does not refer to the laws restricting the importation of convicts. Yet the research of other historians, such as Friedenwald and Edward Dumbauld—both of whom Maier cites—indicate that such laws were central to Jefferson’s and the Founders’ complaints against Britain under George III.³⁹

Five years later, the text of the Articles of Confederation deliberately excluded this class from political membership. Article IV stated its intention to “secure and perpetuate mutual friendship and intercourse among the different States in this Union, the free inhabitants of each of these States, *paupers, vagabonds, and fugitives from justice* excepted . . .” (emphasis added). Not only did “paupers and vagabonds” clearly refer to this population, the phrase “fugitives from justice” just as clearly encompassed indentured servants and exiled convicts attempting to escape their masters, as well as African slaves. Such language was consistent with the restrictions the colonies and the new states imposed on political citizenship.

The 1787 Northwest Ordinance, which was drafted that same summer in Philadelphia, before the Constitution itself, on July 9, 1787, qualified office-holding and citizenship to property ownership. The governor of the (Ohio) district had to own “a freehold estate therein in 1,000 acres of land” (Sec. 3). The secretary and (three) judges for the district had to have 500 acres (Sec. 4). Representatives of the territorial legislature—assuming the district had 5,000 “free male inhabitants of full age” and therefore qualified to become a territory—needed to have 200 acres in fee simple, and the electors themselves had to own freeholds of 50 acres or more (Sec. 9). As with the U.S. Constitution, the Northwest Ordinance provided that any person escaping from service was to be “lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.” While the Northwest Ordinance banned “slavery” and “involuntary servitude” (Art. 6), implied was that indentured servants and other forms voluntary servitude (e.g., tenant farming) *were* permitted.

was that Maryland and Virginia were “already overstocked with slaves.” See also BEARD: ECONOMIC INTERPRETATION, *supra* note 1, at 177.

39. PAULINE MAIER, AMERICAN SCRIPTURE 111–16 (1997); DUMBAULD, *supra* note 38; FRIEDENWALD, *supra* note 36, at 215, 216–217.

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The U.S. Constitution itself twice refers to this subclass of Euro-Americans. First, the Apportionment Clause (Art. I, §2, cl. 3), established that political representation would be apportioned “by adding to the whole Number of free Persons, *including those bound to Service for a Term of Years* and excluding Indians not taxed, three-fifths of all other Persons” (emphasis added). For the purpose of apportioning members of the House of Representatives and Electoral College votes, transported felons and indentured servants counted in full.

Second, the Fugitive Slave Clause established that

No Person *held to Service or Labour* in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from *such Service or Labour*, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due. (Article IV, §2, cl. 3; emphasis added).

That the (misnamed) Fugitive Slave Clause applied to indentured servants and felons is self-evident.

Yet for all of the disdain the Founders felt towards this class, they did not include in the Constitution a nation-wide system of property qualifications for persons voting in federal elections and holding office in the federal government—just as Beard and, more recently, Akhil Reed Amar and David Brian Robertson point out.⁴⁰ What Beard also points out, however, and what Amar and Robertson neglect to mention, is that the Founders recognized that the states, through their own constitutions, legislatures, governors, and courts, themselves controlled the qualifications for residency, jury duty, suffrage, and office holding. Rather than overturn the federalism that left the determination of citizenship to the states, the Founders accepted it, and in the *Federalist Papers* John Jay, Alexander Hamilton, and James Madison celebrated the federal principles upon which the United States was formed. The barriers erected by the states on political participation would thereby persist for the purposes of the government of United States.

Not only were the propertyless excluded from politics and political society in colonial America and the original states, but the new national government of the United States provided no relief either. Nor would new states annexed into the Union do

40. BEARD: ECONOMIC INTERPRETATION, *supra* note 1, at 164–68; AKHIL REED AMAR, AMERICA’S CONSTITUTION 65–69 (2005); DAVID BRIAN ROBERTSON, THE CONSTITUTION AND AMERICA’S DESTINY 150 (2005).

much to help their circumstances. Only much later—for some states, not until well into the 19th century—were the propertyless enfranchised as a class in the constitutions of newly annexed states and in the revised or amended constitutions in the existing states, the result of western expansion and the growing racialization of American society.

Beard famously brings attention to *The Federalist* as a collection of essays largely about the political economy of the United States⁴¹ and spotlights *Federalist* 10 as the philosophic cornerstone of the Constitution. Yet absent this class of bound whites—of formerly indentured servants and exiled felons, together with their descendants—James Madison’s disquisition on the danger of majority factions in *Federalist* 10 makes little sense, since African American slaves, almost all American Indians, and women were ineligible to vote.

Beard’s own analysis is not fully consistent with Madison’s text.

Madison writes of the “most common and durable source of factions” being “the various and unequal distribution of property”⁴² (a sentence consistent with Beard’s thesis). But Madison continues, “Those who hold and those who are *without* property have ever formed distinct interests in society.”⁴³ Madison describes the different interests dividing society: debtors versus creditors; landed interests versus mercantile interests; and so on. Beard, though, chooses to focus on the latter two categories of “distinct interests”—the debtors versus the creditors, and the conflicts between those owning different kinds of property (landed property versus financial wealth)—rather than on the primacy Madison places on the opposition between the haves and the have-nots in a consideration of constitutional design.⁴⁴

Madison’s emphasis on the fundamental distinction between the propertied and propertyless remained an abiding concern. Decades later, at the 1829 Virginia constitutional convention in Richmond, Madison repeated his questioning about the influence of the propertyless in a democratic society:

41. BEARD: ECONOMIC INTERPRETATION, *supra* note 1, at 153; see BARROW, *supra* note 1, at 33–34, 44–48, 50 n.19, 54 nn.73 & 81.

42. THE FEDERALIST NO. 10 (James Madison), *supra* note 35, at 49

43. *Id.* (emphasis added).

44. Barrow suggests that Beard was proposing “three possible axes of class struggle: (1) the propertyless vs. the propertied; (2) debtors vs. creditors; and (3) conflicts between those owning different kinds of property (e.g., land vs. capital).” See BARROW, *supra* note 1, at 45, 48.

The proportion being without property, or the hope of acquiring it, cannot be expected to sympathize sufficiently with its rights to be safe depositories of power over them.

What is to be done with this unfavoured class of the community? If it be, on one hand, unsafe to admit them to a full share of political power, it must be recollected, on the other, that it cannot be expedient to rest a republican government on a portion of the society having a numerical and physical force excluded from, and liable to be turned against it, and which would lead to a standing military force, dangerous to all parties and to liberty itself.⁴⁵

Clearly, the “unfavoured class” of those “without property, or the hope of acquiring it” is not the same as Beard’s class of small farmers and debtors—those with relatively little property he analyses in *Economic Interpretation*. Beard, however, decided to emphasize the point that factions rise out of the “unequal distribution of property” and did not discuss the equal emphasis Madison gives to the point that society may be divided between those who have and those who do not have property.

The evidence from the Founding documents, from Madison himself, and from the statements of other political leaders in Philadelphia and in the states, is that they *were* particularly concerned about those without property: i.e., the population of the landless, poorly educated, and impoverished adult males—the “vagabonds and paupers” of the Articles of Confederation and those who were perhaps motivated to escape and thus had to be reined in by the “Fugitive Slave Clause.” Madison would not wholly disagree with Beard’s analysis, but his own words point to the crucial role of the Constitution in establishing the differences between the propertyless and propertied at the Founding.

3. CHARLES BEARD AND HIS INFLUENCES

Why did Beard in *Economic Interpretation* choose to focus on the relative property differences among persons engaged in the debates during the Philadelphia convention and then its ratification as the chief indicators of the U.S. Constitution being

45. James Madison, Notes on Suffrage (written during the session of the Virginia Convention of 1829-30), in 4 *LETTERS AND OTHER WRITINGS OF JAMES MADISON* 28 (Cong. ed. 1865).

an economic document?⁴⁶ Why did he not give equal attention to the more basic division between those with and without property?

Beard acknowledges the presence of this subclass of white Americans in *Economic Interpretation* and recognizes their importance with respect to the choice of delegates to the Convention (see Chapter IV) and the ratification conventions within the states (see Chapter IX). Furthermore, in the conclusion of *Economic Interpretation* he writes, “it is highly probable that not more than one-fourth or one-fifth of the adult white males took part in the election of delegates to the state conventions.” He adds, “[i]f anything, this estimate is high.”⁴⁷ He then quotes Supreme Court Chief Justice John C. Marshall, who writes that the Constitution was accepted with “reluctance” in all the states and that “in some of the adopting states a majority of the people were in opposition.”⁴⁸ Beard proposes that what Marshall describes as “the dread of dismemberment” of the Union, rather than an acceptance of the Constitution, is what drove a majority in the state delegations to acquiesce to their new government.⁴⁹

In the fourth of his thirteen “Conclusions” in *An Economic Interpretation*, Beard writes that “A large propertyless mass was, under the prevailing suffrage qualifications, excluded at the outset from participation (through representatives) in the work of framing the Constitution.”⁵⁰ He then repeats the point that the “Constitution was essentially an economic document,” based on the premise that “the fundamental private rights of property are anterior to government and morally beyond the reach of popular majorities.”⁵¹ Most adult males did not participate in the ratification of the Constitution, he reiterates, many because of “their disenfranchisement.” The Constitution was not the product of “the whole people” or of “the states,” Beard points out, but that of “a consolidated group . . . truly national in their scope.”⁵² This “consolidated group”—an overstatement given what we know about the drafting process⁵³—was principally motivated by

46. Much has been written discussing these choices along with a body of literature that critiques their works. See BROWN, *supra* note 1; McDONALD, *supra* note 1, at 401–15; Calvin C. Jillson & Cecil L. Eubanks, *The Political Structure of Constitution Making: The Federal Convention of 1787*, 28 AM. J. POL. SCI. 435, 435–56 (1984); McGuire, *supra* note 1.

47. BEARD: ECONOMIC INTERPRETATION, *supra* note 1, at 250.

48. *Id.* at 299.

49. *Id.*

50. *Id.* at 324–25.

51. *Id.*

52. *Id.*

53. See ROBERTSON, *supra* note 40, at 106–09, 116–30, 240–44.

self-interest and self-preservation, he argues, in how they composed the new Constitution and achieved its ratification. The Constitution was a non-egalitarian document, in short, based on the class interests of the federalists.

In consideration of both the introduction and conclusion to *Economic Interpretation*, it is apparent Beard is cognizant of the presence of the propertyless in an explanation of the writing and ratification of the Constitution. Only he leaves it at that. Yet as an examination of the late 18th-century political and social history of this subclass suggests, the Founders did not simply ignore this group, rather this population was very much on the minds of the propertied colonial elites. The array of interests represented in Beard's "consolidated group" regarded this population as irredeemably and ineluctably separate. Given the strong Calvinistic beliefs permeating all faiths and social classes during the 18th century,⁵⁴ wealthy Americans saw themselves as social and political superiors, persons whose elevated status was granted them by an authority higher than worldly governments and immune from interference ("anterior to government and morally beyond the reach of popular majorities"—or any others).

An answer to why Charles Beard in *Economic Interpretation* interprets Madison and the Founding moment solely in terms of the relative possession of property among legally indistinguishable Americans and chooses not to integrate in his analysis a focus on the simple possession of property—"Those who hold, and those who are without property,"⁵⁵ in Madison's phrasing—may derive from Beard's philosophy of history and the era in which he was writing. In his books Beard continually revisited the themes of class, the effects of industrialization on modern society, and the plight of the poor and the underprivileged. Neither was Beard behaving only as a historian when he revisited those themes, Clyde Barrow shows. He was very much an activist, forming Ruskin House (later, Ruskin College), working with the poor, getting involved with the Settlement House, supporting feminism, condemning racism, and concerning himself with the welfare of workers (as with the study of workers' movements and motions, following the work of Lillian Gilbreth on what is now termed "ergonomics"). He is a committed idealist: someone who embraced and embodied

54. See WINTHROP S. HUDSON, *THE GREAT TRADITIONS OF THE AMERICAN CHURCHES* 47 (Harper Torchbook, 1963) (1953). He states that over 91 percent of all churches were Puritan-Calvinist-Reformed in 1776.

55. THE FEDERALIST NO. 10 (James Madison), *supra* note 35, at 49.

Progressive ideals and who was consumed by the issues of class brought on by a rapidly industrializing and technologically advancing society—issues that affected almost every facet of contemporary American life.

He is also an optimist. He believed in the ability of humankind to solve its most serious problems, including class differences: “[S]cience and engineering have solved the problem of production, have brought the abolition of undeserved poverty and misery within the range of the practicable for the first time in human history.”⁵⁶ In his analysis, societies similarly shifted through distinct stages. He divides civilizations into three primary types: Agricultural, Pre-machine Urban, and Mechanical & Scientific.⁵⁷ But each new stage does not exist *de novo*. Rather, “Traces of previous orders no doubt survive or thrust themselves upward into new orders, but they thrive only in so far as they carry with them the soil that originally nourished them.”⁵⁸ Beard is not an economic determinist, then, but believes in the importance of culture and of politics itself; there are many kinds of capital, after all, and many kinds of economic interests. While he does not indulge in an idealized vision of the past,⁵⁹ he is deeply concerned about the impersonal objectification within his contemporary society elicited by the Industrial Revolution.

He is an optimist in another sense: he believes in his own agency. Beard therefore takes issue with authors who assert that industrialization created monotonous slaves without the artistic outlets of personalized work. He argues, instead, that craftsmanship has expanded into other realms: the “[loss] in the merits of individual objects of beauty may be more than offset by city and community planning, realizing new types of aesthetic ideals on a vast, democratic basis.”⁶⁰ Said differently, the “Mechanical & Scientific” age was a revolutionary period, one that could enable mankind to solve its enduring and pressing problems of social class. Dedicated professionals in science, engineering, and other fields could effect the necessary solution

56. Charles A. Beard, *Summary—The Planning of Civilization*, in *TOWARD CIVILIZATION*, 297, 304 (Charles A. Beard, ed., 1930).

57. Charles A. Beard, *Introduction* to *WITHER MANKIND: A PANORAMA OF MODERN CIVILIZATION* 13 (Charles A. Beard ed., 1928) [hereinafter *WITHER MANKIND*].

58. *Id.*

59. “Beard’s economic interpretation of the Constitution continues to resonate with scholars, students, and citizens because class-based political privilege and economic inequality are facts that stand in sharp contrast to constitutional mythology.” BARROW, *supra* note 1, at 247.

60. *WITHER MANKIND*, *supra* note 57, at 21–22.

and thereby usher in a bright new era that would allow all persons to thrive from their accomplishments. Men in power had to be willing—as he was—to use their wherewithal to help others in society improve and develop.⁶¹

For all his optimism, though, Beard is a realist. He sought to bring the Constitution off its “pedestal of destiny.” Richard Hofstadter suggests Beard was influenced to write *Economic Interpretation* by progressive muckraking.⁶² John Diggins proposes that Beard “refused to accept the Constitution until he questioned the presumption of its historical inevitability.”⁶³ Robert Thomas argues that *Economic Interpretation* “must have been intended as an attack upon the Fathers and the instrument of government which they devised.”⁶⁴ Beard nonetheless takes a nuanced view of the Founders, by no means viewing them as exclusively or solely “working for their personal benefit.”⁶⁵ In *Jefferson Democracy*, Beard restates his argument in *Economic Interpretation* that the framers and architects of the Constitution and its ratification had a duty to lead, since they “constituted the dominant group of the new government formed under it, and their material measures were all directed to the benefit of the capitalistic interests.”⁶⁶

Finally, Beard is philosophical. Not just an optimist, an activist, and—the point of *Economic Interpretation*—a realist, he wanted to find “new ground that was neither empiricist nor subjectivist,” Barrow comments, “by proposing a philosophical critique of history and social science anchored in a simple or common sense realism.”⁶⁷ Beard seeks to create a unified theory of history, a “Universal History,” that could tie Eastern and

61. See John Braeman, *Charles A. Beard: The English Experience*, 15 J. AM. STUD. 165, 165–66, 169–72, 182, 185–89 (1981); John Braeman, *Charles A. Beard: The Formative Years in Indiana*, 78 IND. MAG. HIST. 93, 100–01, 106, 126–27 (1982); Clifton J. Phillips, *The Indiana Education of Charles A. Beard*, IND. MAG. HIST. 1, 1–2, 6–8 (1959) (discussing *inter alia* the Indiana roots of Beard’s social and political beliefs); Peter A. Soderbergh, *Charles A. Beard in Chicago, 1896*, 63 J. ILL. STATE HIST. SOC’Y 117, 122, 128–31 (1970).

62. HOFSTADTER, *supra* note 1, at 216.

63. John Patrick Diggins, *Power and Authority in American History: The Case of Charles A. Beard and His Critics*, 86 AM. HIST. REV. 701, 726 (1981).

64. See Robert E. Thomas, *A Reappraisal of Charles A. Beard’s An Economic Interpretation of the Constitution of the United States*, 57 AM. HIST. REV. 370, 375 (1952).

65. HOFSTADTER, *supra* note 1, at 215.

66. Charles A. Beard, *ECONOMIC ORIGINS OF JEFFERSONIAN DEMOCRACY* 465 (1965) [hereinafter BEARD: JEFFERSONIAN DEMOCRACY].

67. BARROW, *supra* note 1, at 65.

Western traditions together into a comprehensive philosophical and historical continuum.⁶⁸

For all of this historical ambition, realism, optimism, and activism, it is impossible to escape the strain of paternalism that runs throughout Beard's writing and the Progressive Era in general. Henry Ford gave the wives of his workers cooking lessons⁶⁹ so they could learn how to prepare "American meals," for instance, just as Settlement Houses gave people lessons on how to clean homes, sweep, cook, and the like. Most well-bred Americans of the Progressive Era regarded the immigrant population of the late nineteenth and early twentieth centuries as children, more or less: untutored, misguided, and thus susceptible to machine politics. These immigrants, like the other disadvantaged in American society—including the propertyless of colonial America as well as nineteenth-century America—needed able, well-intentioned people with wholesome goals to show them the way. The "middle- and upper-class adherents of the late nineteenth- and early twentieth-century progressive movement," Daniel Eli Burnstein writes, "were influenced, in part, by a paternalistic noblesse oblige tradition of community responsibility for the downtrodden."⁷⁰

For Beard, the poor are incapable of acting on their own behalf, thus they depend on professionals and experts to lead them. The same holds for the disenfranchised and impoverished during the Founding era: they were minor players within colonial society whose prospects would presumably be advanced by the new Constitution, whatever its biases; Beard does not expect them to play a part in the drafting and ratification of the Constitution, thus they can be disregarded for the purposes of analyzing how the Constitution was drafted and ratified. As Beard pointed out in a subsequent book, "Jeffersonian Democracy simply meant the possession of the federal government by the agrarian masses led by an aristocracy of slave-owning planters."⁷¹

68. *Cf. Id.* at 65–68 (noting Beard's belief that all written history must take some things for granted and some common principles as a given otherwise discussion cannot proceed at all.)

69. See Stephen Meyer, *Adapting the Immigrant to the Line: Americanization in the Ford Factory, 1914-1921*, 14 J. SOC. HIST. 67 (1980); *Cf.* FORD MOTOR CO., FORD FACTORY FACTS, 41–51 (1915) (showing *inter alia* the results of Ford's Inspectors suggesting domestic improvements to employees and their families).

70. DANIEL ELI BURNSTEIN, *NEXT TO GODLINESS: CONFRONTING DIRT AND DESPAIR IN PROGRESSIVE ERA* NEW YORK CITY 123 (2006).

71. BEARD: *JEFFERSONIAN DEMOCRACY*, *supra* note 66, at 467.

The impoverished did not really matter, since their fate would be determined by others.

Considering that Beard was a socially responsible and well-bred Progressive, it should thus not be surprising that he acknowledges the existence of a class of illiterate poor in *Economic Interpretation*. Nor should it be surprising that he does not focus on the fact that the propertyless existed as an independent class that the Founders had to consider seriously, and that the propertyless therefore very much inform an understanding of the Founding of the United States and the course of American history.

CONCLUSION

The class of impoverished Euro-Americans—they were “white,” except that “white” did not become a social identity in America until the early-mid nineteenth century—*did* need to be reckoned with and *did* need to be taken seriously. Beard’s near-omission of this class in *Economic Interpretation* carries significant costs.

One is that by not following up on the research of Simons, Commons, and others, Beard neglects the fact that this class acquired a shared consciousness. Not one of a working class identity—at least not as of 1913—but one of racial supremacy. Those fleeing into the Appalachians and beyond, into the upper South and lower Midwest, in a broad band out to Texas and Oklahoma, may have been poor and ill-read, but they were not African Americans—and could tell themselves so. Beard hints at the fact of this shared consciousness when he writes of Madison’s wariness, Madison’s fear even, of these “freeholders” who would soon outnumber the propertied: “In future times a great majority of the people will not only be without landed, but any other sort of property.” Madison therefore worried that “the rights of property and the public liberty will not be secure in their hands,” or “they will become the tools of opulence and ambition; in which case there will be [an] equal danger on another side.”⁷² Throughout the decades, whites with minimal amounts of land or “any other sort” of property had race; race and “American-ness,” long-standing American roots, distinguished them. Yet Beard ignores race in *Economic Interpretation*, notwithstanding the Civil

72. BEARD: ECONOMIC INTERPRETATION, *supra* note 1, at 25 (quoting James Madison) (citing 2 MAX FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 203 (1911)).

War, the salience of race in the Progressive Era, and the racism prevalent in American society and especially among poor whites.

Another cost of Beard's neglect of this class of exiled convicts and indentured servants—Benjamin Franklin's "slaves"—is that Beard's focus on the Constitution half misses the point. The study of the political and economic discrimination against poor Americans was the joint product of the U.S. Constitution and the constitutions of the several states, just as Beard implies. That the political economy of the United States was established at once by the national constitution and the aggregate of the state constitutions is at once an obvious point and consistent with the logic of federalism. Beard confines his analysis of the political economy of the Founding to the U.S. Constitution, though, as do virtually all students of the Founding—whether political historians, constitutional scholars, or political scientists.

He does not take the next logical step of treating the thirteen separate state constitutions, especially those of the mid-Atlantic states, as integral to an analysis of the political economy and class relations at the time of the Founding. For it was the state constitutions, much more so than the U.S. Constitution, that disenfranchised and discriminated against poor whites—an analysis fully consistent with what Madison in *Federalist* 51 refers to as the "double security" provided to the new United States by the Constitution of 1787: the separation of powers constitutes one "security," federalism and the governments of the states constitute the other.⁷³

A third cost of omitting an analysis of the impact of this class of impoverished and disenfranchised Euro-Americans on the Founding is Beard's neglect of how state constitutions were amended and how the constitutions of the new states, annexed after the Founding, were drafted. American democracy did change and mass democracy did come to include millions of additional immigrants from Europe and Asia, American Indians, African Americans, Hispanics, and others. As the United States expanded geographically, as it became more prosperous, and as political norms evolved, the criteria for political citizenship specified in the state constitutions and, eventually, the U.S. Constitution itself, eased.

73. This class of impoverished and usually illiterate whites shared another distinctive quality: they were typically devout members low-church Protestant faiths—Baptist, Methodist, and various other congregational denominations that often take the Bible literally and characterize much of American culture.

Yet Beard never reveals exactly what “he means by democracy,” Hofstadter observes, “either in a twentieth- or eighteenth- century context; nor are we told what we can expect in the way of democratic ideas and procedures at the end of the eighteenth century. . . .”⁷⁴ But whether or not poor and poorly educated Americans can vote and hold office relates directly to the kind of leadership the “men in power” exert. And the timing and conditions under which other Americans become enfranchised very much depends on how the aristocracy of professionals and experts act.

The history of these Americans on the margins of society is integral to the history of the Founding and of democracy in the United States. Not only did the presence of this class influence the events and documents of the Founding, many of the Founding Fathers interacted extensively with persons of this subclass and personally benefited from the work of the population. The same held for other colonial elites and subsequent elites in the territories and new states who amended, rewrote, and drafted the state constitutions of the late eighteenth and nineteenth centuries. Yet in his seminal work Charles Beard indicates his awareness of the propertyless whites, but never explores the impact that those bound in labor had on the establishment of the national and state constitutions that politically discriminated in favor of the propertied and against the far less fortunate. Later generations of constitutional scholars, political scientists, and historians have likewise neglected these forgotten Americans—many of them their ancestors and fellow citizens—in forging a collective memory. Instead of embracing the complexities and contradictions of early American society, they have embraced an over-simple history that champions a Founding rooted in the political equality of Euro-American males.

74. HOFSTADTER, *supra* note 1, at 227.