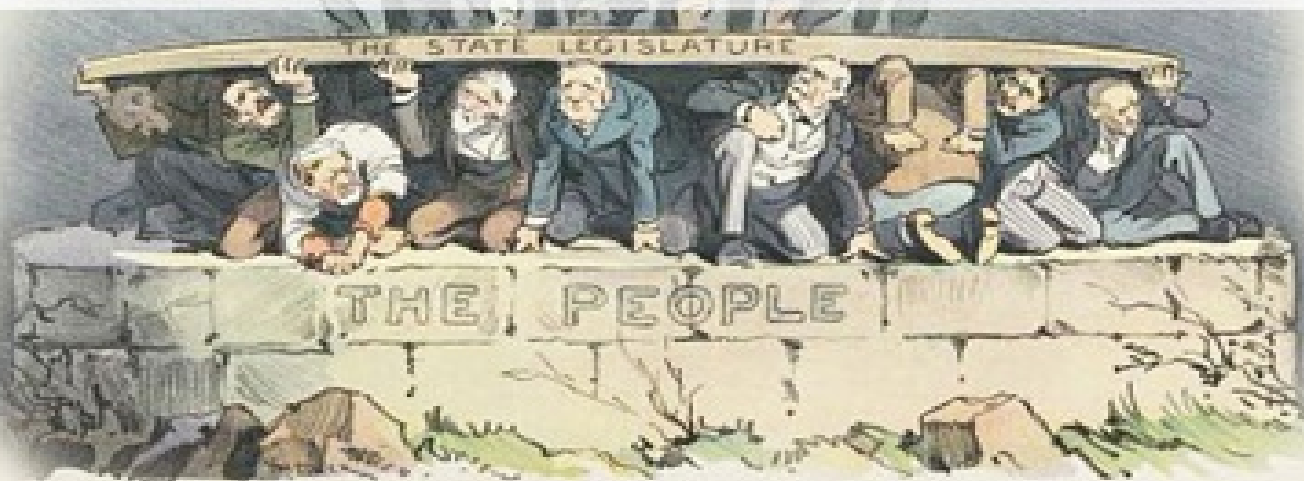




A REPUBLIC NO MORE

**BIG GOVERNMENT AND
THE RISE OF
AMERICAN POLITICAL CORRUPTION**



JAY COST

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Big Government and the Rise
of American Political Corruption

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This book is dedicated to the memory of Daniel R. McKenzie

“The stock-jobbers will become the pretorian band of the Government, at once its tool & its tyrant;
bribed by its largesses, & overawing it by clamours & combinations.”

—JAMES MADISON, LETTER TO THOMAS JEFFERSON, AUGUST 8, 1791

“I decided to get far enough along to be able to control legislation that meant something to men with
real money and let them foot the bills. Never commit yourself but always be in a position where you
can if you choose. The men with money will look you up then and you don’t have to worry about
campaign expenses.”

—SENATOR BOIES PENROSE (REPUBLICAN, PENNSYLVANIA)

“We manage our political risk with the same intensity that we manage our credit and interest rate
risks.”

—FRANKLIN REINES, FORMER CEO OF FANNIE MAE, IN A 1999 MEETING WITH INVESTORS

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Preface

TO BEGIN, a warning to the reader: this book is about political corruption, but it is not about Watergate. It is not about Abscam. It has little to say about Teapot Domes, and you will not find a word between these covers about Monica Lewinsky or Paula Jones. There are books out there that chronicle, in lurid detail, these events. This book is not one of them.

All of those stories have a few items in common. Somebody breaks the law and (more or less) gets punished for it. There is a perp walk of some sort to reassure us that—in the end—good triumphs because indecency was exposed for what it was. Even if the bad guys go to the grave escaping the long arm of the law, the arm of the historian reaches farther still, and the audience can rejoice in the culprits' reputations duly suffering for their civic transgressions.

This book, rather, has much more to do with the guys who got away with it, in particular the guys who flaunted it while getting away with it. In the 1890s, as Congress was writing tariff laws governing sugar, Pennsylvania's political boss, Senator Matthew Quay, admitted that, yes indeed, he was speculating in the sugar markets, that he would go right on doing so even as he voted on the sugar tariff, and there wasn't a damned thing anybody could do about it, thank you very much. He was right. A decade later, William Randolph Hearst exposed his successor, Boies Penrose, as being on the take from Standard Oil. Nothing came of it, and Penrose was reelected several times thereafter. He died in office.

Why did nothing happen to those men? Simple: *they were not breaking the laws of their day.* That is the fascinating feature about corruption—often, it has absolutely nothing to do with illegal activities. There are plenty of ways, as we shall see, to be corrupt without being criminal. More often than not the criminals merely lack self-control or self-awareness. That makes them easy targets for rebuke, and thus reasons to feel good about ourselves and our government.

But as Quay and Penrose prove, the law often has trouble keeping up with corruption, in no small part because the people who write the laws like it that way. Perhaps George Washington Plunkitt, sachem (or boss) of New York City's Tammany Hall about a century ago, puts it best:

Everybody is talkin' these days about Tammany men growin' rich on graft, but nobody thinks of drawin' the distinction between honest graft and dishonest graft. There's all the difference in the world between the two. . . . I've not gone in for dishonest graft—blackmailin' gamblers, saloonkeepers, disorderly people, etc.—and neither has any of the men who have made big fortunes in politics.

There's an honest graft, and I'm an example of how it works. I might sum up the whole thing by sayin': "I seen my opportunities and I took 'em."

Just let me explain by examples. My party's in power in the city, and it's goin' to undertake a lot of public improvements. Well, I'm tipped off, say, that they're going to lay out a new park at a certain place.

I see my opportunity and I take it. I go to that place and I buy up all the land I can in the neighborhood. Then the board of this or that makes its plan public, and there is a rush to get my land, which nobody cared particular for before.

There was nothing honest about Plunkitt's fraud, but he was onto something in drawing the distinction he did. "Dishonest" graft is criminal activity that harms people directly, whereas "honest" graft is technically legal, and the victim is the common good, not a particular individual. What Plunkitt was doing in his day would be outlawed today, but honest graft nevertheless survives, in different forms always changing to stay one step ahead of the law.

Why is this the case? The answer to that question is the subject of this book.

So, what follows is not a tale of heroes and villains. Herein, you will not find clear-cut victories or glorious moments of truth being spoken to power, or exhilarating climaxes when the hard-charging civic hero triumphs and the citizen's faith in government is restored. If you're looking for that, go and read *All the President's Men*. Similarly, the story here does not have the satisfaction that Calvinistic supplies: government in this account is not a hopeless, immoral cesspool where everybody is out for themselves and nobody does what is right, and the only thing to do is await the cleansing hellfire unleashed by the Almighty. If you're looking for something like that, *House of Cards* is for you.

Instead, this book is about corruption as a permanent, institutionalized feature of our government. Less sexy, perhaps, but it makes for an interesting puzzle. After all, our Founding Fathers were frankly concerned about corruption, so much so they designed a system to prevent it from occurring. Yet it has occurred anyway. Understanding this irony is the purpose of the book in your hands. While this may not offer much by way of emotional gratification, it is—on closer inspection—much more fascinating. And it can teach us some very important lessons about how our government actually works.

INTRODUCTION

“The Violence of Faction”

Understanding Political Corruption

POLITICAL CORRUPTION is incompatible with a republican form of government. A republic strives above all else to govern for the public interest; corruption, on the other hand, occurs when government agents sacrifice the interests of everybody for the sake of a few. Corruption can take many forms, as we shall see. It can be patronage. It can be intentionally lax regulatory oversight. It can be tax laws written to favor special interests. Corruption can benefit just one person, a small group, a large minority, or maybe even a majority, just as long as those interests are incompatible with those of the public at large. Sometimes it is illegal; more often it is not. The particulars may vary, but the result is always the same: the government puts private interests before public interests.

In this book, we shall look at corruption primarily as *the maldistribution of federal resources*. There are other ways to look at corruption (e.g., in the administration of justice or corruption at the state level), but that shall not be our focus here. Instead, we shall examine how agents of the government—in particular the president and the Congress—distribute scarce resources in ways that run contrary to the public interest. In focusing on this, we shall be getting to the heart of the republican political philosophy articulated by James Madison.

We Americans take our government to be a republic, but in point of fact we have never been able to check corruption effectively. On the contrary, it has spread over time. Why has our republican rhetoric not matched civic reality? Answering this question is our purpose in the pages that follow. We shall show that political corruption is a consequence of the growth of that government—specifically growth beyond the original boundaries established by the Framers of the Constitution. As the government expanded beyond its initial purpose, the system of checks and balances meant to keep corruption in line began to break down, in some cases even making a bad situation worse.

Here, we shall examine corruption from an institutional perspective, rather than an ethical one. In other words, we will not explain corruption as a consequence of too many bad guys and not enough good guys, but rather of structural defects in the constitutional regime itself.

While making our argument, we embrace a Madisonian treatment of the subject. To be clear, this is not to imply that Madison’s take on the Constitution was the only one, or that it was the correct one. Almost as soon as the Constitution was ratified, there grew a wide divide among those who were crucial in its construction and ratification. Madison, for instance, squared off against George Washington and Alexander Hamilton on questions regarding public finance; and this was just a few short years after he had been closely allied with them. All three men were integral in the design of the new government, and for them to disagree as they did suggests that legalistic assertions about the Constitution’s “correct” meaning are often facile. It meant different things to different people—then and now. Therefore, we are not privileging Madison’s view as an empirical matter; we are not saying that Madison understood what the Constitution *really* said while Hamilton and Washington did not. We are rather asserting that his larger theory about republican government, and how he applied it to the Constitution, was insightful, and that we would be wise to heed his counsel.

Heavily influenced by Calvinist theology, Madison broke with classical political theorists to argue that civic virtue could not explain why republican governments flourish or perish. Indeed, his lack of faith in public morality is one reason he dedicated so much time to developing sturdy government structures; he believed that they were the only sure guards against corruption that a true republic could ever enjoy.

According to Madison, corruption is intimately connected to *factionalism*. He begins his famous *Federalist #10* by worrying about the “violence of faction,” a very evocative phrase, and claiming that the principal job of a “well constructed union” is to “break and control” this danger. He explains:

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

This gives us a very useful definition of corruption: it occurs when the government does *violence* to the public interest or individual rights by allowing factions to dominate public policy for their own ends. It is incompatible with a republican form of government, and so its suppression is at the very heart of the Madisonian project.

Importantly, in the Madisonian schema, corruption is not limited to venality, although it certainly includes it. This might come as a bit of a surprise. After all, Madison opens *Federalist #10* by talking about violence, so it is easy to figure that corruption is caused by bad people who hurt others for their own ends. Yet later on Madison implicates the whole human race in factionalism, arguing that the potential for corruption is, in fact, “sown into the very nature of man.” He goes on:

A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts.

So, everybody is capable of factionalism. Indeed, people are wont to war against one another even when there are no real issues to divide them. In those cases, they will just make something up!

Factionalism is unavoidable, particularly in a form of government that relies upon what Madison calls the “republican principle,” or the idea that rulers should be chosen by the citizenry. If people can be riven by factionalism, then so too can their representatives in government. In that case, Madison, “the most numerous party, or, in other words, the most powerful faction must be expected to prevail.” This helps explain why so many republics had failed up to that point in the world’s history: the very idea upon which they were premised sowed the seeds of their own destruction. A few years prior to the *Federalist* essays, Madison wrote a short treatise called *Vices of the Political System of the United States*, where he poses this paradox:

In republican Government the majority however composed, ultimately give the law. Whenever

therefore an apparent interest or common passion unites a majority what is to restrain them from unjust violations of the rights and interests of the minority, or of individuals?

Typically, Americans today take majority rule as a normative standard, as if it necessarily signals the true public interest. Yet Madison clearly rejects this principle, though he admits that majority rule remains essential to republican government.

Worse, Madison sees another path by which corruption in a republic can occur: legislators are too often subject to forces other than the interests of their own constituents. In the *Vices*, Madison claims

Representative appointments are sought from 3 motives. 1. ambition 2. personal interest. 3. public good. Unhappily the two first are proved by experience to be most prevalent. Hence the candidates who feel them, particularly, the second, are most industrious, and most successful in pursuing their object: and forming often a majority in the legislative Councils, with interested views, contrary to the interest, and views, of their Constituents, join in a perfidious sacrifice of the latter to the former.

This is a prototypical explanation of what rational choice theorists have since labeled the “principal agent problem.” In other words, how can voters get their representatives to do their bidding in government? That is easier said than done; as Madison notes, concern for the public interest is often a weak factor in the considerations of legislators. And the people as a whole are not always a reliable guardian against legislative malfeasance:

A succeeding election it might be supposed, would displace the offenders, and repair the mischief. But how easily are base and selfish measures, masked by pretexts of public good and apparent expediency? How frequently will a repetition of the same arts and industry which succeeded in the first instance, again prevail on the unwary to misplace their confidence?

So, republican government is prone to factionalism and corruption. First, we have the potential for the majority to demand policy deleterious to the public good. Second, we have legislators who are prone to put their own interests ahead of the common interest. Little wonder that, up to that point in world history, a true republic was more a myth than reality.

Yet Madison was committed to turning the theoretical into the actual. He believed that majority rule was indeed essential to a true republic, but it had to be channeled through well-designed institutions that carefully distributed governing power to protect the public interest. The Framers adopted many such institutions; some they borrowed from previous thinkers, some they developed themselves. These include:

- *A written constitution ratified by the representatives of the people.* The Framers believed that the king had violated the rights they enjoyed as Englishmen under the British Constitution, which was unwritten. A formal document, explicitly endorsed by the people at large, would check the capacity of the government to abuse the public trust.
- *Separation of powers between the three branches.* The utility of separating powers was a key insight of French philosopher Montesquieu, and the Framers made it integral to their system. According to Madison, separated powers would make “ambition . . . counteract ambition.” Separate branches would give politicians competing, and often contradictory, incentives, so a corrupt initiative in one branch could be stopped by another.

- *A bicameral legislature.* The Framers were quite concerned about the legislature's capacity to encroach upon the spheres of the rival branches. A second branch, argues Madison, would require "the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient."
- *An independent judiciary.* The experience during the colonial period, when the king controlled colonial judges, convinced the Framers that the judiciary had to be separated from the rest of the government, or else it could not be a fair arbiter.
- *A government encompassing a large sphere.* This was an innovation unique to Madison. Previously, republican philosophers advocated a small polity so that the people could be reasonably homogenous. But Madison had seen too many small republics behave incorrigibly. A larger sphere, he asserts, would "make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens."
- *A Senate with equal representation for all states.* A device to win over the small states during the Constitutional Convention, this guaranteed that larger states could never form a dominant faction within the government.
- *A government of discrete powers.* Madison and the Virginia delegation to the Constitutional Convention originally wanted a government that could legislate wherever the states were deemed incompetent. Skeptics of this plan were fearful of a government acquiring too many powers to harass the citizenry, and a compromise was made to grant the government specific (and limited) powers.
- *A bill of rights.* Like the specification of powers, this was meant to restrict what the government could do. Thus, even if a faction did acquire control of the government, there would be limits to what it could do.

Woodrow Wilson once called the constitutional regime a Newtonian system, with forces carefully calibrated against one another. In other words, the rules of the constitutional game are structured so that the vast array of forces within the public sphere will combine to produce something that is in the common interest, regardless of how self-interested the initial impulses may have been. The idea is that a faction may have representatives who will do its bidding in the government, but those agents will only possess limited power and will often be stymied by agents aligned with other factions. Per Madison's theory of government, it is irrelevant if those who check these selfish ambitions are themselves driven by private motives. All that matters is the result: the only proposals that should make it through the constitutional gauntlet and be enacted into law will be those that benefit the people generally. Everything else will fall by the wayside, thus offering a decisive check on corruption and preserving the republican integrity of the government.

Considering how regularly this country has fought over morals, it is interesting that morality does not enter into the Madisonian system in any direct way. Classical republican theorists had emphasized the necessity of virtue, but our system—reflecting in part Madison's Calvinist background—eschewed that. Far from building a sturdy republican government by outlawing avarice, he seeks to do the opposite: let those who enter the Madisonian fray be as self-interested as they want; his system will pit them against one another, confident that the public good will win out in the end.

That's the theory, at any rate. What about in practice? Given the extensive efforts of the founding generation, and Madison in particular, to curtail corruption, why has it persisted? The answer: because

we have not heeded Madison's prescriptions on how to "break and control the violence of faction."

~~Different sides of the political spectrum have different attitudes toward the Constitution the days.~~ The left sees a living Constitution that is supposed to adapt and evolve beyond the historic contingencies of any era. On the other hand, the right views the Constitution more as laying down timeless principles and practices that the country would be foolhardy to ignore.

In a sense, both sides have some purchase on the truth. As suggested in the previous section, there is a timeless aspect to the Constitution. It is a document trying to build structures to supplement the principle of majority rule in ways to ensure the survival of the new republic. Similarly, the *Federalist Papers* are grappling with enduring issues that defy historical contingency.

On the other hand, the Constitution *also* represents a compromise between various factions within society in the year 1787. The nationalist faction—led by Hamilton, Washington, and, for a time, Madison—wanted a government of expansive powers wielded by nationalistic institutions. Meanwhile, a faction composed of men like George Clinton and Patrick Henry were suspicious of centralized power and wanted to retain a local preeminence in the government's institutions. The Constitution occupied a middle ground between these sides, although many Anti-Federalists opposed its ratification until the very end.

A comparison between the dueling plans at the Constitutional Convention—the Virginia Plan, largely the brainchild of Madison, and the New Jersey Plan, offered by William Paterson of New Jersey—is illustrative. The Virginia Plan would have given the government the right to legislate, "in all cases to which the separate States are incompetent: or in which the harmony of the United States may be interrupted by the exercise of individual legislation." It also would have made it much less dependent upon local interests. For instance, the Senate would have been apportioned by population with no guaranteed representation for states; further, the national legislature would have had authority over state legislatures, and a Council of Revision would have review power over national laws. Meanwhile, Paterson would have retained the same Congress as existed under the Articles of Confederation. There was to be no single president, but rather an executive council selected by Congress. Further, Congress would have the power to tax and regulate interstate commerce, but state courts would hear initial disputes over these powers.

Thus, the fight between the two sides was not simply about the power of the government, but also its design. And the final Constitution represents a compromise along both dimensions—the nature of federal power and the nature of federal institutions. Power was expanded and institutions were nationalized relative to the Articles of Confederation, yet by less on both counts than what the Virginia Plan called for. But there is more to it than this. The only way a system of checks and balances could ever possibly work is by ensuring that each institution possesses the right amount of power to guard against encroachments from the others. Thus, the Framers could not merely split the difference between the two sides of the debate; instead, they had to find an intellectually coherent middle ground. The debate over the Constitution was not like a fight over appropriations or taxes in contemporary politics, where both sides pick a number in the middle regardless of whether it makes sense. The Framers had to satisfy all sides while also building institutions that could wield the powers responsibly.

Think of it this way. It would have been grossly irresponsible of the Framers simply to have granted the parochial Congress under the Articles of Confederation all the powers in the new Constitution. The old Congress would have failed miserably because it was not designed to handle such important responsibilities. By the same token, it would have been a waste of effort to create a new, more nationalistic set of institutions without expanding the powers granted under the Articles of

Confederation. Instead, the powers the new government was to wield had to fit logically with the institutions that were to wield them. The Constitution is not just a compromise between various factions on one question about powers and another question about institutional design. Rather, it is a sensible blend of the views on *both* questions.

So how does corruption enter the picture? In this way: since virtually the start of the federal government, politicians have been intent on expanding its powers without revising the institutions that manage those powers. In this, they have dutifully followed public opinion. The country has increasingly demanded nationalistic authority for the government, but has refused to abandon the parochialism inherent to the original design. Indeed, Americans are wont to celebrate the contradiction: we unabashedly demand that our government exercise sweeping powers to solve big national problems while also remaining excessively sensitive to local concerns. This inconsistency has disrupted the carefully constructed balance set forth in the Constitution. The institutions the Framers created were competent to handle responsibly the powers they assigned them; Americans since then have added extra powers under the false assumption that the same institutions could handle the extra load responsibly. But they cannot, and so the government now behaves *irresponsibly*. This produces corruption.

Return to Wilson's metaphor of the Constitution as a Newtonian system. Each provision is like a force that has a unique vector, and the Framers carefully constructed each one so that the totality of these forces would not only promote true republican government but also satisfy the political demands of the day. Over time, political demands evolved, and politicians have responded by expanding the powers that Washington possesses. In doing so, they have altered the vectors of many of the constitutional forces. But they have never taken care to ensure that the necessary republican balance is retained, by updating the institutions supposed to implement the new powers. Thus, the sum of all the forces produced by the constitutional regime no longer generates public-spirited policy.

To be clear, the problem is not with expansive governmental powers per se. Rather, it has to do with the institutions of government that exercise those powers. Specifically, we use eighteenth century institutions, originally meant to do much less, to exercise virtually limitless power in the twenty-first century. We could, in theory, redesign the government to make it handle these powers responsibly; we could rebuild the system from the bottom-up following the general principles set forth by Madison. But of course, we have never done that. We have never even really thought seriously about the prospect. Instead, we have chosen to have our cake and eat it too—a government of vast nationalistic powers with parochial institutions. The cost of our ambivalence is corruption.

There are three major nationalistic powers the government has acquired that the Constitution, produced in Philadelphia in 1787, never really anticipated. The first is the power to forge a national economic marketplace, the battle over which produced the first great political upheaval in the 1790s. As we shall see in [Chapter One](#), the cornerstone of Hamilton's program was a nationally chartered bank, which the Constitutional Convention in Philadelphia had explicitly rejected as a federal power. Yet this was deemed an implied power through the Necessary and Proper Clause of the Constitution, and thus began a precedent of interpreting the powers within the Constitution as broadly as politically possible. Since Hamilton's day, both sides of the partisan divide have embraced the idea that the federal government should promote the national economy, and both sides seek to do it in ways that are not really reconcilable with the Constitution as understood at ratification. This is a power that expanded slowly throughout the ages. In the nineteenth century, it began with the Bank, the

proceeded to internal improvements, then tariff protections for business, then direct subsidies for the railroads. Today, there is a vast system of federal supports for businesses, from the tax code to corporate welfare to selective tariff preferences. Putting aside whether these items were constitutional in a legal sense, the fact remains that the Framers envisioned very little of this regime.

A second power is the restriction of the marketplace to secure noneconomic goals. The first major innovation of this type was the Interstate Commerce Act, which regulated the railroads. The nation has expanded on this regulatory power again and again. Often, these regulations are justified via the Commerce Clause, in Article I, Section 8 of the Constitution, yet the most prominent interstate commerce controversy of which the Framers were aware was a dispute over waterways between Virginia and Maryland. They had no idea that it would one day justify penalties against wheat farmers who grew their crop for private use, as happened in *Wickard v. Filburn*. The Commerce Clause has become the means by which the federal government can regulate virtually any aspect of American life. Again, whether this is strictly constitutional is not nearly as relevant as the fact that the Framers never saw this development coming.

The third power is the direct promotion of social welfare, akin to Franklin Delano Roosevelt's freedom from want in his Four Freedoms speech of 1941. The first major promotion of social welfare on the federal level came with Civil War veterans' pensions, but those were targeted and temporary. Since then, we have added Social Security, Medicare, food stamps, farm subsidies, and a vast array of other benefits. Again, none of this was imagined in the 1780s. For starters, the nation simply was not wealthy enough to have national support programs for the needy. On top of that, the kind of bureaucratic principles necessary to implement such programs had not been invented yet. So, once more, regardless of whether our modern welfare regime comports with the ideal of securing a more perfect union, the fact is that the men who signed the Constitution, and the states that ratified it, never anticipated such a state of affairs—and of course did not build institutions meant to handle it effectively.

Taken together, these powers represent a level of nationalism that was unanticipated in 1787. They have grown over time—sometimes slowly, sometimes in great bursts—as leaders have grappled with public problems. Importantly, the government acquired those powers without substantially altering the constitutional structure. As we shall see in [Chapter Six](#), about the only politician of any national prominence who has contemplated revisiting the institutional design to handle these powers was Woodrow Wilson, at least in his early academic work. There, he bemoaned the irresponsibility of the government, pointing the finger at Madison's separation of powers and calling for formal integration between the executive and legislative branches. But when a political career beckoned, Wilson decided that vigorous presidential leadership could substitute. As we shall see in [Chapter Six](#), however, the hope of strong presidential leadership was a false one; outside foreign relations, the chief executive's real power is too unreliable to give our governing institutions a more nationalistic bent.

How have these expansive new powers unbalanced the Madisonian system? There are four principal ways. First, and most important, Congress cannot handle the powers it has been given. The Framers never would have handed the Congress of the Articles of Confederation the powers in the Constitution, and we should never have given the Congress of the Constitution such expansive authority. As we move through our story, we shall find that congressional incompetence is usually the main driver of corruption. The reason is that Congress, as designed, is simply too parochial. It is actually a fallacy of composition to suggest that Congress is a national branch at all; it is, rather, the meeting place of the representatives from discrete regions all across the country. This was not a problem for the powers handed to the Congress by the original grant, but it became a problem

power after power was added. We shall discover there is a wide variety of ways Congress behaves irresponsibly, but it usually gets back to a single concept: members use the vast national powers they have since acquired to please the parochial factions that are so critical to their electoral efforts. This is the unifying link between problems as seemingly varied as the nineteenth century spoils system and the failure to regulate properly the financial services industry in the twenty-first century.

Second, they denude the force of the republican principle. Madison depended upon majority rule to thwart minorities that had seized control of the government, though as we saw, he had his doubts because it would be difficult for voters to identify who exactly is to blame. Growing the power of the government has exacerbated that problem to extreme proportions. From the very beginning, the complicated nature of our system made it difficult to assign blame for bad policies. The addition of power after power to the government has resulted in an enormous amount of additional complexity and no citizen can practically keep an eye on the government to ensure that it behaves. Presidents, senators, representatives, and bureaucrats too often retain plausible deniability for their role in corrupt outcomes, undermining the power of the people to advance the public good through elections.

The third way becomes apparent when we consider the two greatest institutional alterations of the original design: the democratization of the Electoral College and the rise of political parties. These concepts are not originally in the Constitution, nor were they formally amended into it, but they are nevertheless part of the landscape now. Opening up the presidency to public voting, more than anything else, facilitated the national political parties, forging cross-state political alliances to reap the benefits the top office provides. The problem with this is that parties are formal, enduring factions, but the presidency itself was supposed to be insulated from factionalism. Democratizing the presidency, and thrusting the office into the partisan battle, inevitably changed the calculus of the occupant. He must build and maintain a coalition that almost invariably amounts to a subset of the nation at large, which means it is often in his interests to affix his gaze on something quite less than the public good. This in turn means that the president is much less able to control the localism of the Congress by the veto, especially when he is bound to its members via a political party. Thus, what should have been in theory an office that tamps down on corruption is, in practice, just as often an office that facilitates it. The more power that is granted to the executive branch, the greater capacity the president has to use that power for corrupt purposes.

Fourth, we have built new institutions within government whose role in the system is difficult to reconcile with the Constitution. For instance, the First Bank of the United States was a private corporation that nevertheless derived a great deal of support from the feds. Ditto more recent institutions like Fannie Mae and Freddie Mac. How are such institutions to be understood vis-à-vis checks and balances, especially considering the Constitutional Convention's opposition to such publicly chartered corporations? The public-private nature of these institutions can be a breeding ground for corruption, as was particularly evident during the early years of the Second Bank of the United States, and with the accounting scandals that plagued Fannie and Freddie in the early 2000s.

The modern bureaucracy may be classified similarly. Of course, there was an executive bureaucracy from the very beginning of the country, but its size and scope have increased so enormously that it becomes difficult—if not impossible—for Congress to supervise it properly. Indeed, one of the most important insights of political science literature in recent decades is that Congress is more likely to monitor the bureaucracy when the transaction costs of such an inquiry are paid for by interest groups, via information or campaign contributions. This, in turn, often induces bureaucrats to yield to the interests of the most connected pressure groups.

In sum, we have a Congress that is too parochial to wield the nationalistic powers that it has been

granted. We have a public that is necessarily too ill-informed to protect the republican principle. We have a politicized presidency that often lacks the capacity to check Congress for the national interest. We have these strange extraconstitutional organizations that do not fit cleanly into the schema. What does that mean? Again, consider Wilson's metaphor for the Constitution, a Newtonian system. Various selfish interests enter the arena, are checked by and balanced with other such forces, and the final product that emerges on the other end is supposed to be in the public interest. But these new governmental powers altered the original structure in these four ways, and thus have broken the Newtonian system. Nowadays, too much of what Washington produces is not in the public interest.

To be clear, this argument does *not* lead inevitably to advocacy for a night-watchman state, nor will this book call (explicitly or implicitly) for a return to the Constitution as it was understood upon ratification. Based on the premises established here, one could just as easily argue the converse position. In such a conception, the problem was that the Federalists ceded too much ground to the Anti-Federalists, and thus accepted a structure not built to operate necessary powers. The argument here cannot be situated on today's left-right divide; it is, rather, that the powers the government now wields are poorly suited to the structures it employs to wield them, with corruption being the attendant result.

The rest of this book is dedicated to demonstrating the theory developed above. To do that, it is part history and part contemporary policy analysis.

Chapter One looks at the battle between Madison and Hamilton over the First Bank of the United States, which established a tension that has existed ever since: leaders like Hamilton have sought to expand the powers of the government beyond the original scope of the charter to solve pressing problems. Yet those expansions come with a major downside in that they undermine the balance Madison thought the Constitution created.

Chapter Two examines the behavior of the Jeffersonian Republican Party once it acquired control of the government in 1800. It shows that expansions of federal power are more or less permanent, for the Jeffersonians, who opposed Hamilton in the 1790s, came to accept almost all of his innovations and even added a few themselves. The result was rampant political corruption through much of the 1820s, culminating in the Bank War of the early 1830s, a sobering time in the nation's history when the rule of law was sacrificed for the sake of political leverage.

Chapter Three brings the political parties into the analysis. As we shall see, they are integral in our understanding of American political corruption, for they politicized the presidency, forcing the occupant to use federal resources to maintain his electoral coalition. The first way that presidents did this was through patronage, or the provision of government jobs and contracts to their supporters. That will be the focus there.

Chapter Four will be the first to demonstrate a central theme of political corruption: when it is not being actively opposed, it tends to spread. Like cancer or wood rot, it will work its way through an entire body politic, destroying every last vestige of the republican principles that once existed. Something like this happened with the patronage regime. First developed during Andrew Jackson's administration, it was expanded and "perfected" by the early 1870s, so that the entirety of federal politics was reducible, more or less, to the maintenance of massive, statewide patronage machines.

Chapter Five will continue this theme about how corruption spreads by looking at the continuing federal efforts to promote the national economy. As **Chapters One** and **Two** will have shown, this was an early breeding ground for corruption in the nineteenth century, and by the end of that century the

corruption had gone from rudimentary to exceedingly complicated and virtually insuperable. After federal patronage dried up with the Pendleton Civil Service Act of 1883, politicians—particularly the leaders of the Republican Party and its bosses in machine-dominated states—turned to big business for funds. In so doing, they perverted the bold nationalism of Hamilton’s original agenda into corrupt logroll that benefited midwestern manufacturers and northeastern financiers at the expense of poor farmers, particularly in the South and West.

[Chapter Six](#) will introduce the progressive movement to the story. The progressives successfully curtailed many of the corrupt practices of the late nineteenth century, but they failed to end them once and for all. Indeed, they made matters worse. While a handful of progressives like Wilson identified the root cause of corruption as having to do with the incapacity of the government to exercise its powers responsibly, they failed to fix this problem. Moreover, the progressives were responsible for popularizing the second nationalistic power mentioned above, that of regulating the economy for noneconomic goals. Absent structural reforms to the government, this would become another potential source for corruption.

[Chapter Seven](#) will look at the New Deal period. A massive expansion in government, this period also (and not coincidentally) produced a startling reinvigoration of corruption, along all three dimensions we will have discussed by that point. First, efforts to revive the domestic economy were captured by congressional logrolls that distributed money based on political considerations. Second, federal jobs were used to create state and even national political machines, as early progress on civil service reform was basically wiped away. Third, the new regulatory powers of the federal government were captured by the most powerful elements in society to secure their economic status, at the expense of smaller businesses, consumers, unions, poor farmers, and the public interest at large.

[Chapter Eight](#) will look at the rise of the interest group society, which accelerated after the Great Depression. It will serve as a fulcrum for the final half of this book. The New Deal/World War II period saw the government do more than ever to promote the economy, regulate the economy, and provide groups with direct subsidies. All of this provided further incentives for factions to organize. In the case of businesses, to improve their extant organizations. The result of this rapid process was the rise of what has since become known as the interest group society. Today, public policy is often the product of the push and pull of organized pressure groups. Contrary to the optimistic assessments of some pluralist theories of governance, this has had a profoundly negative effect on the body politic, ultimately producing the rampant corruption of the current period. The shady bosses of the Gilded Age may be long gone, but corruption is now as problematic as ever thanks to this new way of doing government business.

The remainder of the book will expand on the argument of [Chapter Eight](#) to evaluate various contemporary policy domains to see the ways in which factions dominate the government by manipulating legislation and regulations toward their own ends. [Chapter Nine](#) will explore farm subsidies to show how noble federal intentions to support disaffected groups devolved into naked payouts to well-connected industries. [Chapter Ten](#) will look at the modern “pork barrel,” or the way that members of Congress raid the federal treasury to reward local voters, donors, and themselves. [Chapter Eleven](#) discusses Medicare, detailing the ways that pressure groups representing senior citizens, doctors, hospitals, and others ensure that an unsustainable status quo is nevertheless retained. [Chapter Twelve](#) reviews how crony capitalism has become a durable, regrettable feature of the body politic, as politicians misuse their power to support the national economy. It will give special attention to the tax code; originally a progressive innovation designed to undermine the crooked regime of protective tariffs, the income tax is now rife with rewards for well-heeled interests. [Chapter](#)

[Thirteen](#) will look at regulations, particularly those governing Fannie Mae and Freddie Mac, to show how adept interest groups can be at capturing congressional committees and executive regulators ensure that their bottom lines are protected.

While no single chapter will be dedicated to the effect of governmental growth on the constitutional structure, those four themes (an incompetent Congress, a denuded republican principle, a partisanized presidency, and novel, ad hoc institutions) will be apparent. We will see Congress mishandle and abuse the nationalist powers it has been granted. For instance, in [Chapter Eleven](#) we will see how the legislature, at the behest of powerful interest groups, has been totally incapable of reforming the welfare state, despite clear knowledge that reforms are urgently needed. We will see the public struggle to comprehend the policies that legislators in Washington are promoting, and how the system turned that enabled them to get away with corrupt practices they otherwise never would have. For instance, in [Chapter Five](#) we will see how Nelson Aldrich, senator from Rhode Island and chief Republican defender of the tariff, used the arcana of the law to pay off scores of interest groups, most notably the sugar trust, without any public rebuke. We will see the politicization of the presidency due to electoral pressure, and the attending problems that creates. For instance, in [Chapter Seven](#) we shall document FDR's efforts to misuse federal resources to secure his reelection in 1936 against recalcitrant urban party bosses, and later to purge conservative Democrats from the Senate. We shall see how quasi-independent institutions often create corrupt practices because they fail to fit properly into the Madisonian schema. For instance, in [Chapter Two](#) the debauched story of the Second Bank of the United States will clearly illuminate the dangers of chartering an institution whose role in the financial system is ambiguous. [Chapter Thirteen](#), by looking at Fannie and Freddie, will make a similar point.

After the Constitutional Convention was finished with its work, delegate James McHenry reported that, as Benjamin Franklin left Independence Hall, a woman asked him, "Well, Doctor, what have we got? A republic or a monarchy?" Franklin replied, "A republic, if you can keep it." The argument on the pages to follow essentially boils down to: we couldn't keep it.

We couldn't keep it because we failed to remember something that Madison had so well understood, which is that the design of a government is essential to its success, and that when one goes about redesigning a government—as he and the Framers did in 1787—one must be careful to do so properly. Indeed, never in world history had a people dedicated so much of its efforts to debating the *structure* of government, rather than the policies the government would produce.

Today, we have forgotten that almost entirely, and we hardly give a second of critical thought to our government's design. Generation after generation has altered that design in subtle but important ways without considering the effect on the broader schema. That makes the Madisonian concept of checks and balances almost like a meaningless catechism nowadays. We dutifully and solemnly repeat it, but we forget about what inspired it in the first place. Implicitly, we assume that Madison solved the problems of factionalism and corruption once and for all. As this work will show, he did not. Even so, he delineated a method for us to solve it. We have to think carefully about how the various institutions within the government exercise the power they have been granted, and we have to adjust those institutions accordingly, so that they do not fall prey to corruption. We have not made a real effort to do so since 1787, which means that, even as we acclaim the singular genius of Madison, we are in actuality anything but Madisonian.

“The Great Desideratum”

Madison, Hamilton, and the First Bank of the United States

AMERICANS NOWADAYS are wont to speak about the Founders, the men who led the way against the British to forge a new nation at the end of the eighteenth century, as a unified group. In many senses of the phrase, they were. They shared disgust with the heavy-handed treatment the colonies received from the English; they believed that the colonies would be better off independent; and they pledged their lives, fortunes, and sacred honor to see that through to the end.

But there were wide disagreements between them on many matters, some peripheral but others quite vital. Nowhere was this divide more evident than in the views of James Madison of Virginia and Alexander Hamilton of New York during the early days of the new republic. While the two were in agreement on the superiority of the Constitution over the Articles of Confederation, they had deep disagreements about the nature of the new government that was to be implemented. Though not an issue during the period of ratification, their philosophical clash dominated the American political scene for the first decade under the Constitution, and remained an important dividing line for forty years thereafter.

The flashpoint for the controversy was Hamilton’s proposal to charter a Bank of the United States. Hamilton saw the Bank as a vital economic institution that could secure the prosperity of the nation in the face of foreign competition. Madison, on the other hand, made his strongest arguments against the Bank on the philosophical front. He and Thomas Jefferson saw it as an unconstitutional expansion of federal power that placed the legislature in hock to the executive branch and favored wealthy northeastern merchants over the rest of the country.

It is important to note that the Bank was actually never as bad as Madison feared it might become. This is not so much because Madison was wrong, but because of the singular genius of Hamilton, who expertly navigated the nation through a financial panic in 1792. Later on, the able stewardship of Albert Gallatin, who served as secretary of the treasury during the early 1800s, ensured that the Bank did not threaten the national interest.

Even so, the Bank *was* problematic in the ways Madison argued, and it does serve as a microcosm of the argument in this book: the Bank was an institutional innovation that altered and disrupted the power relations within the government, tended to favor some factions over others, and, were it not for Hamilton’s capable management, the speculative frenzy it generated might have had a severe negative effect on the nation’s well-being.

The Constitution, as understood by Madison, intends to “break and control the violence of faction” by carefully balancing the structures of government against its powers. But this design implies that the two must be in sync—adjusting one without toggling the other can lead to corruption. Though supported by many eminent members of the Founding generation, the Bank nevertheless was a challenge to Madison’s view of the Constitution because it disturbed this synchronicity. While his worst fears were never realized, the Bank still serves as an apt metaphor for our story.

We shall begin our story by examining the problem of republican government that Madison and

the Framers faced in the 1780s. Put simply, it did not seem to work very well. We shall then look at Madison's proposed solution to the problems he saw, and how his ideas influenced the constitution's design. Then, we shall turn our attention to Hamilton, who had other views and priorities. The dispute between them remained latent during the ratification phase, but it became active when Hamilton proposed his Bank. In the final analysis, Hamilton certainly had the better arguments about the economic necessity of the Bank, but Madison's warnings about its threat to the republic turned out to be prescient.

Prior to the Revolution, republican government had typically depended on the balancing of different estates. Government derived its authority not merely from the people at large, but rather a mixture of the common folk, a nobility, the clergy, and in the case of Great Britain a monarchy as well. The point of this arrangement was to balance the interests of the various classes of society, so that ultimately the public good would be promoted. Each must maintain its appropriate station so as to retain the proper equilibrium, as the English had attested when they responded to the excesses of James II with the Glorious Revolution of 1688. No less a republican eminence as Montesquieu endorsed England as the only country whose laws offered political liberty.¹

Revolutionary Americans were deeply familiar with republican philosophy, as well as with the discontents in the British system who denied the perfection of Albion's constitution.² The Country party ideology of Cato's *Letters* and Bolingbroke pointed backward in time, toward an idyllic (and largely fictional) period before the Norman Invasion, when the hearty Anglo-Saxon race did not have to swear fealty to an overbearing monarch. In that view, the once-virtuous English system had become corrupted by the leadership of Sir Robert Walpole, the first British prime minister who was accused of bribing members of Parliament. When Americans looked at the interference of the Crown in the affairs following the Seven Years War, they saw a similar pattern, and resolved to do something about it—something quite radical.

Their solution was to inaugurate a government heretofore unseen by modern eyes: there would be no special status for landed, moneyed, or otherwise elite interests; there would be no king; there would only be the people. This radicalism rings forth in the most famous passage of the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.³

There is no mixed estate here. Governmental authority begins and ends with the people. Today, we take this as a given—and indeed are wont to criticize the Founders for not following through on this premise by promoting, for instance, universal suffrage, abolition, or women's rights—but in the summer of 1776 the Declaration of Independence was the boldest statement on behalf of popular government yet written.

Yet the experience of the Revolution, and especially of the decade that followed, seemed to prove the Americans wrong and the advocates of a mixed estate right. America had done away with established privilege, replacing its toehold in government with democratic institutions, and had met with economic and social misery. The people seemed incapable of ruling.

For starters, the national government created to replace the king—organized under the measures of the Articles of Confederation—was chronically strapped for cash. Lacking the ability to raise taxes, it was dependent upon requisitions from the states, which they regularly did not provide. This ultimately led to the Newburgh Conspiracy in the spring of 1783, in which senior army officers as well as members of Congress plotted to force Congress to fund their pensions. It was only through the influence of George Washington—who resolved to be a true republican general in the mold of Cincinnatus—that the coup went nowhere.⁴

Unfortunately, that was not the end of governmental incompetence following the war. The impotence of the central government meant that the rights of British loyalists, as granted under the Treaty of Paris, often went ignored by state governments. Meanwhile, the British regularly violated their own commitments, particularly in the West, with little fear of reprisal from the American government. What's more, foreign governments gleefully played states off one another, utilizing the lack of central management to maximize their trading profits. The states themselves had difficulty even coordinating over shared waterways like the Potomac River.

The most dangerous want of central authority had to do with a fast-spreading dispute between debtors and creditors, which occurred in part because of the economic downturn of the decade, and threatened an outbreak of widespread civil unrest. In the state of Rhode Island, a coalition of debtors won control of the government and enacted very liberal laws on the repayment of debts, basically forcing creditors—even those from other states—to take massive haircuts. Meanwhile, in neighboring Massachusetts, eastern creditors held the balance of power and refused to offer debt relief to the farmers of the west. Their inattention to the yeomanry's grievances eventually led to the civil unrest known as Shays' Rebellion.⁵

Madison, then in his mid-thirties and serving in the Virginia House of Delegates after a stint in the Continental Congress, had, like many of his contemporaries, surmised that the core problem was the Articles of Confederation itself. According to Madison, it was a “treaty of amity and commerce and alliance, between independent and sovereign states.”⁶ But Madison took his analysis much farther than any other politician of the era. He had, thanks to books supplied from France by his good friend Jefferson, taken a careful study of previous confederations between independent states, and found similar defects to what plagued the American nation in that decade.⁷ That spring, he wrote a systematic treatise entitled the *Vices of the Political System of the United States*, detailing his complaints.

The problems, Madison argues, were many. Without a strong central authority, the state governments had failed to follow through on requisitions, regularly encroached the national government's authority, violated the laws of nations, trespassed on the rights of other states, failed to act in concert when mutual interests suggested they should, behaved illiberally to political minorities and generally failed to pass sensible and forward-looking laws. The reason for all of these troubles, Madison suggests, was that the states had been ruined by factionalism, or battles between “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”⁸

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