

## CONSTITUTIONAL ORIGINS plus economic Growth Implications

US Constitution Origins

Richard L. Peterson, PhD

Background: The US colonies were regulated by Britain and its King under colonial charters for many years and then were independently governed as 13 states cooperating under The Articles of Confederation.

Many independent states and local governments in the US had operated under colonial Charters for years before the Articles of Confederation organized the 13 states  
Problems with the Articles of Confederation occurred  
Financing Government debts and  
Coordinating state policies  
That led to the Constitutional Convention  
To improve the Articles  
With the result that an entirely new Constitution Emerged

The Constitution was necessary because, as Madison said:  
"If all men were angels we wouldn't need a government."

However, men are flawed, and some wish to obtain power  
Tyrannical power seekers were a problem throughout history  
Our Constitution was designed to try to prevent tyranny  
It was based on the presumption that  
All men were endowed by their creator with certain  
unalienable rights, including the rights to  
life, liberty, and the pursuit of happiness  
And that governments were instituted among men to protect those rights  
This was in contrast to all previous governments who believed  
the right to rule was either a divine right or an hereditary right  
Instead, in the US the power of government was derived from  
the consent of the governed, who had been given rights by their creator

The founding fathers of our nation had many learned men  
--including James Madison who wrote much of the Constitution.  
The rationale for many of the Constitution's provisions are explained in  
The Federalist Papers--about half of which were written by Madison  
and half by Alexander Hamilton, with one by John Jay.

The Constitution organized the US as a "Constitutional Republic."  
The right to rule was seen to come from the rights of the public,  
who in turn would select representatives to exercise governmental  
power on their behalf. Thus, we have elected representatives in  
the House to Represent the will of the people in their districts.  
We also have an electoral college where people send their states'  
electors to select the President and Vice President.  
In addition, initially, each state selected 2 Senators to represent  
the interests of their state in the US Senate.  
To some extent, this paralleled the ancient Roman Republic.

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The Roman Republic had both an Executive and a Senate that often represented vested interests in the form of a legislative body.

The founding fathers tended to be leery of enacting a pure "Democracy" where all issues were settled by majority vote. They had learned from study of ancient Greek Democracy that Democratic votes were often swayed by emotion and short-run interests. (Federalist Paper #10)

For instance, one must remember that the exemplary scholar Socrates, who had taught young people to question their elders, was sentenced to death by a Democratic vote.

The founding fathers of the US were also concerned with protecting the rights of minorities against the possible "tyranny of the majority"

--such as when 2 wolves and a sheep vote on what to have for dinner.

The requirement for super-majority votes on important topics is one way to limit the risk of a tyranny of the majority.

So is the separation of powers.

The founders tried to avoid tyranny by dividing government functions and powers between the legislative, judicial, and executive branches. They separated these powers because they did not want one person or branch of government to be able to function as "judge, jury, and executioner" over the people --as had too often occurred throughout history.

Furthermore, they tried to strictly limit the Federal Governments' powers to those that were essential to performing as a country --such as national defense, international relations, a standardized currency (coinage), a postal service, and rules that enabled states to conduct commerce among themselves on an equal basis.

As was later stated explicitly in the Bill of Rights (Amendment 10), "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."

Initially the Constitution was written without the first ten amendments, called the "Bill of Rights." Many argued that the Bill of Rights was not necessary since the Constitution explicitly limited Federal Government authority. However, many states wished to have individual and states rights spelled out explicitly before they would agree to the new constitution. Thus, the Bill of Rights was proposed and was passed shortly after the initial Constitution was ratified by the required number of states. The U.S. Bill of Rights was modelled after the Virginia State Bill of Rights. In Virginia, the Right to Property was assumed to be necessary for "the pursuit of happiness."

The Bill of Rights is extremely important because it spells out the protections that individual citizens are to have under the new government.

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Since I have retired I have travelled extensively and have seen and learned of past governmental abuses that have occurred in many countries over time. Those abuses seem ancient now but many were fresh in the minds of our nation's founders, so they wrote protections against such abuses into our Constitution and the Bill of Rights.

For instance, in Oxford, England, there is a statue to clerics being burned at the stake because they preached the "wrong" religion during England's religious wars. Thus, our first amendment guarantees freedom of religion and our Constitution (Article VI) states that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

At Warrick Castle in England I observed that the dungeon was deep below ground but that the "torture chamber" not only was higher but also had windows that looked out over the town below--so townspeople would be intimidated by the sounds of suffering prisoners. Thus, our Constitution (Amendment VIII) prohibits inflicting "cruel and unusual punishment" and people being forced to testify against themselves (Amend. V)  
--in part to prevent people from being tortured into confessions.

In both Columbia and Peru, I saw torture chambers and devices formerly used in local "inquisitions" until the early 1820's--long after our Constitution was passed. Those devices were used by priests to make people confess their sins before death. Obviously, our nation's founders were aware of these practices when the Constitution required freedom of religion and banned cruel and unusual practices.

In Venice I toured the Doge's Palace where the "Council of Ten" had operated. In the late 1500's Venice was a leading power in the Western World and the Doge was its chief executive. The Council of Ten enforced laws, including religious laws against heresy. Its Chambers had a hidden orifice where unseen people could deposit secret accusations against the accused. If one were found guilty in the Council of Ten's deliberations regarding accusations made against an individual, that individual would be escorted across the "bridge of tears" to the prison across the canal where he or she would be incarcerated, tortured, and/ or executed. Thus, our Constitution requires that no accused be "deprived of life, liberty, or property, without due process of law," (Amendment V) and that the accused have "the right to a speedy and public trial, by an impartial jury of the state ..and be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." (Amendment VI).

These are but a few of the many protections that the US citizens have to protect them against the exercise of arbitrary political power against them.

Another thing that I learned during my travels and studies was that England once had "Star Chambers" that enacted the will of the government on people in disfavor by arbitrarily charging them, trying them, and finding them guilty. Some charges might have been based on "ex post facto laws" or "bills of attainder" which accused

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people of crimes based on laws that didn't exist when the person acted. Our Constitution tried to prevent such actions by banning ex post facto laws and bills of attainder both at the Federal level and at the state level.

And, the Constitution provided further protections by providing for trial by jury. Trial by jury is explicitly required for many cases in the Constitution per se, as well as in Amendments VI and VII.

What people do not often realize today is that under the "common law" which was used in most states, juries could engage in "jury nullification." Even if a person were found to be in violation of a statute, the jury could find him or her innocent or refuse to prosecute if it deemed the law to be unreasonable.

Thus trial by jury and jury nullification provisions could nullify the effect of ex post facto laws or bills of attainder or other laws deemed to be unreasonably punitive toward an individual.

Other protections written into our Constitution were the result of abuses by the British during their occupation of the colonies. Thus, the First Amendment guaranteed people the rights to "freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances" in addition to the right to freedom of religion. Furthermore, the Second Amendment gives people the right "to keep and bear arms." As explained by Madison in his Federalist Paper #46 the fact that US citizens were armed served to protect them from potential despots exercise of power over them, as occurred in Europe. In addition, the Third Amendment bans the quartering of troops in the home, and the Fourth Amendment requires that people "be secure in their persons, houses, papers, and effects against unreasonable searches and seizures..and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Finally, because the Colonies had revolted, in part, against the tyrannical actions of Britain in arbitrarily raising taxes, the Constitution requires that all appropriations and revenue bills arise in the House of Representatives, which most closely reflects the will of the people.

I hope this explains why our Constitution evolved as it did and why it contains some of its major provisions. I hope you can see that we have lost many of our initial protections against a potentially tyrannical government in recent years, which is why those of us in the Constitutionalist Society try to inform the public of why our Constitution is important and what dangers could lie ahead if it is lost.

### ADDENDUM

The U.S. Constitution and Economic Growth, by Richard L. Peterson, PhD

The US Constitution as originally written and including its Bill of Rights contained many provisions that enabled the US economy to develop and thrive and, over time, become the strongest economy in the world.

Among the most important of these provisions were:

- (1) the protection of property rights  
(including rights to intangible property via patents and copyrights,

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and limits upon taxation and property seizures by governments)**

- (2) the rule of law and a judicial system to protect property rights, as well as personal rights, and to facilitate the free exchange of assets, and the redeployment of assets following bankruptcy.
- (3) provisions providing for the freedom of religion which, in the context of most early US religions, facilitated exchange through trust, capital formation, and productive efforts.
- (4) provisions that facilitated trade among all the US states by
  - (i) honoring each others' laws
  - (ii) standardizing weights, measures, and currency values, and prohibiting counterfeiting of the national currency
  - (iii) providing for a postal system and postal roads to link the US
  - (iv) providing that external relations be handled by the Federal government and that no internal tariffs be imposed among states.

The protection of property rights and the provisions for the use of the rule of law to establish and protect private property rights and to mediate disputes and validate exchanges of property were important because they allowed people to trade and redeploy assets easily. Thus, people and assets could be deployed in their most profitable uses via free market transactions, and assets could be easily redeployed as necessary as economic conditions changed. Consequently, economic productivity was facilitated and the economy could grow rapidly as people constantly could take advantage of the most profitable economic opportunities.

The widespread religious nature of the American people coupled with the fact that many variants could coexist allowed people to develop trust among people who shared the same religion and also among those who felt that bearing false witness was a sin that could jeopardize one's potential for a happy afterlife. Greater trust allows people to trade and enter into contracts with less legal overburden that, otherwise, would impede transactions potentially beneficial to both parties by increasing their cost. Furthermore, many of the religions in the early American colonies were derived from Calvinism, which indicated that people who were predestined to go to heaven would evince that prospect by prospering on earth. That motivated capital formation and the use of capital to increase individuals' wealth and productivity. In addition, many religions emphasized the biblical injunction that "as you sow, so you shall reap," which encouraged individual effort and capital formation, and others emphasized an austere lifestyle, which prevented income and assets from being wasted on frivolities and "sinful" behaviors. Individual work effort plus the accumulation of capital furthered US economic growth.

Finally, the US Constitution took many steps that developed a common national market that allowed people in the various states to trade and communicate and travel freely. By using a common currency, common standards for weights and measures, and common external relations, without internal barriers to trade or the enforcement of contracts, the US was able to function as a common market and gain whatever economies of scale and gains from specialization that could be thereby obtained. The European Union tried to replicate these policies.

## **I. PROPERTY RIGHTS AND TAXATION**

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--A COMPONENT OF THE "PURSUIT OF HAPPINESS"-- EXPLICIT IN THE VIRGINIA "BILL OF RIGHTS" AND IMPLICIT THROUGH THE USE OF "COMMON LAW"

--EXPLICIT PROVISIONS

--NO STATE MAY PASS A "LAW IMPAIRING THE OBLIGATION OF CONTRACTS",  
(ART.I, SECT.10)

--NO TAKING OF PRIVATE PROPERTY WITHOUT DUE PROCESS AND JUST  
COMPENSATION (AMENDMENT V)

--PATENTS AND COPYRIGHTS (ARTICLE I, SECTION 8)

--LIMITED TAXATION, NO DIRECT TAXES (ARTICLE I, SECTION 9)

--NO TAXATION WITHOUT REPRESENTATION--ALL REVENUE RAISING BILLS  
ORIGINATE IN THE HOUSE(ART.I, SECT.7)

--IMPLICIT PROTECTIONS

--MOST STATES USED COMMON LAW

--IN MANY STATES VOTING WAS LIMITED TO PROPERTY OWNERS AT THE TIME

--JUDICIAL PROVISIONS IN THE CONSTITUTION AND REQUIREMENTS FOR TRIAL  
BY JURY (ART.III,SECT.2 AND AMEND.VI AND VII)

II. JUDICIAL SYSTEM AND RULE OF LAW

--Court System (Art.III, Sect.1 and Art.I., Sect.8)

--Common Law tradition

--Trial by Jury for Criminal Cases (Art.III, Sect.2 and Amend. VI)

--Grand Jury and Right to Due Process(Amendment V)

--Right to Due Process before losing life, liberty, or property  
(Amendment V and Amendment XIV, Sect.1))

--No taking of private property "for public use,  
without just compensation" (Amendment V)

--Trial by Jury at common law for Substantive Cases (Amend. VII)

--Note: Common Law Tradition allowed for "jury nullification"

--Bankruptcy Law provisions (Art. I, Sect.8)

--No bills of attainder or ex post facto laws  
(Art.I, Sect.9) and, for states (Art.I, Sect.10)

III. FREEDOM OF RELIGION

--Freedom of Religion allowed religious beliefs to flourish and  
interpersonal trust to develop which facilitated trade and development.

--Many US early religions were derivatives of Calvinism which, de facto,  
encouraged private capital formation and profitable utilization.

--Most US religions preached, "As you sow, so shall you reap."

IV. PROVISIONS THAT ENCOURAGE INTERNAL COMMERCE

--States honor laws of other states

(Art. IV, Sect. 1, and Art. I, Sects. 8 and 9 by implication)

--All external relations through the Federal Government  
(Art. I, Sections.8 and 10)

--No internal tariffs or restraints on trade (Art. I, Sec.9)

--postal system and postal roads (Art.I Sect. 8)

--standardized, weights, measures, and currency (Art. I Sect. 8)

--states cannot issue currency but can use silver and gold coins  
tendered for payment of debts Art.I, Sect.9)

--penalties for counterfeiting and limits on states' issues of  
currency or coin Art.I, Sect.8 and Art.I, Sect.10)