

# History Matters: An Institutional Approach Examination of the U.S. Constitution

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**History matters. It matters not only because we can learn** from the past, but because the present and the future are connected to the past by the continuity of a society's institutions. Today and tomorrow's choices are shaped by the past. And the past can be made intelligible only as a story of institutional evolution.

This story focuses on the problem of human cooperation—specifically, the cooperation that permits economies to capture gains from trade. Economic growth depends upon the evolution of institutions that create a hospitable environment for cooperative solutions to problems associated with trade. Not all human cooperation is socially productive, of course; twentieth-century history provides many examples of cooperative efforts undertaken in the service of ill-advised or destructive goals. In analyzing human cooperation, therefore, we also need to be concerned with the evolution of institutional frameworks that induce economic stagnation and decline. The purpose in each case is to explain the structure and performance of economies over time. The U.S. Constitution is an example of an enduring institutional framework.

## How Did the Constitution Evolve?

It is now more than 200 years since the Constitutional Convention drafted the Constitution. That document, thus, is one of the most durable institutional frameworks in all of history. However, its origins and its significance have been, and continue to be, a source of controversy. In the remainder of this essay, we shall try to provide some tentative answers to the following questions: 1) How did the Constitution come to be written as it is? 2) Whose interests were served by the documents? 3) What does it say? 4) How important was it at the

time and for subsequent generations? 5) What are the lessons to be learned with regard to the economic institutions that it helped to shape?

Seldom do people get a chance to shape their own history from the ground up. Usually we think of history evolving in an incremental way, through the choices and decisions of people as they stem one from another through time. But the Constitutional Convention that followed the creation of the new nation certainly presented the opportunity for its conveners to create an entirely new set of rules. However, both the past and the issues of the time provided

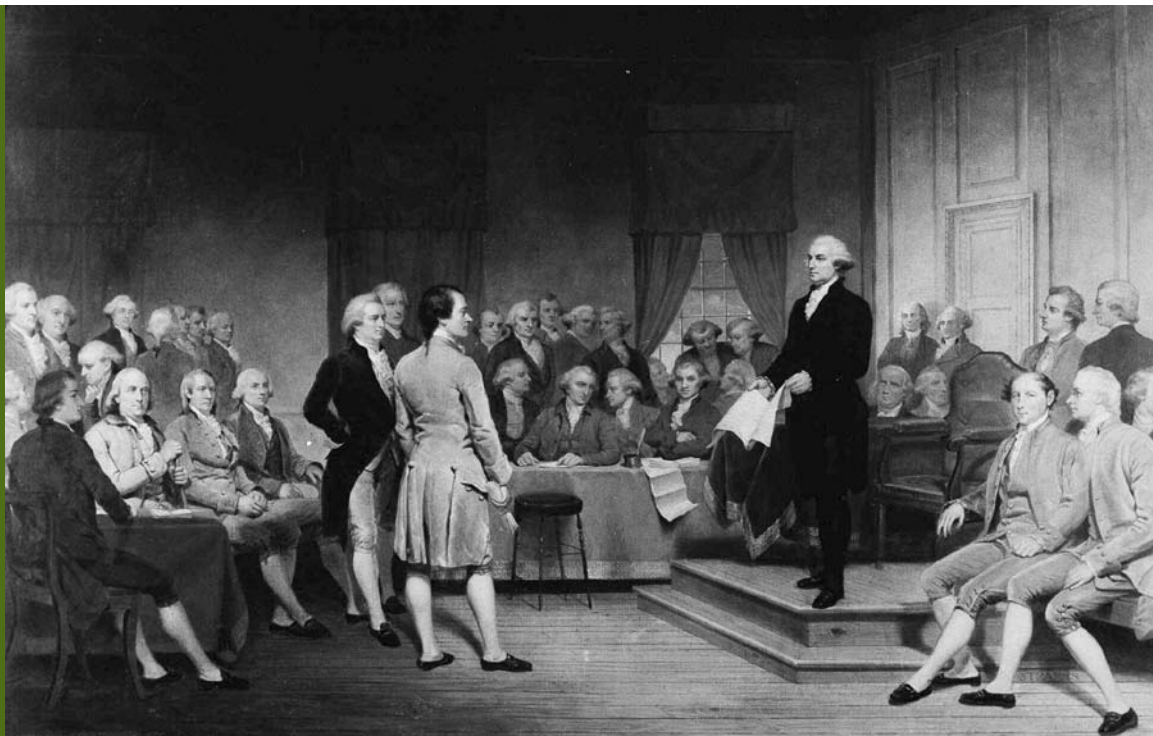
constraints. The ideas embodied in the Constitution were forged in the struggle between Parliament and the Crown in the revolutionary seventeenth century in England, by the charters of the colonies, and by the ideas that were current in eighteenth-century England.

The year 1776 produced not one but two documents of historically significant importance to the new nation. One, of course, was the Declaration of Independence. The other was Adam Smith's *Wealth of Nations*. In the course of writing what has come to be considered the foundation stone of modern economics, Smith inveighed against the failures of the system that he perceived had dominated England and Europe up to that time, a system he called *mercantilism*. Mercantilism was a system in which the government was deeply involved in the operation of the economy, providing subsidies, bounties, and monopolistic privileges to individual companies through the assignment of exclusive privileges and trading rights.

Smith felt that mercantilism was an inefficient system that granted monopoly rights to select individuals. In contrast, he argued that the main basis for economic growth and efficiency was specialization

Photo: In this 1856 painting, "George Washington Addressing the Constitutional Convention" by Junius Brutus Stearns, Washington is depicted during a climactic moment at the end of the convention.

(AP Photo)



and division of labor. Efficiency came from specialization in the production and distribution process. Smith argued that by allowing each person to concentrate on completing one task repetitively, goods could be produced more rapidly and efficiently. He believed that competition in the market would encourage improvements in technology and productive expansion. Thus, rather than artificial inducements to produce—bounty and subsidy—Smith believed that free markets, which valued the relative gains of producing different kinds of goods and services, provided the proper incentives for productive economic activity.

The conflict between Adam Smith's view and the traditional mercantilist view was certainly much in the minds of Americans in the 1780s as they struggled to resolve the many problems they faced. Separated from England, they no longer enjoyed the privileges of operating within her Navigation Acts, which had assured the colonies protected markets against foreign competition. Moreover, at home they faced huge debts accumulated in the course of the Revolutionary War (including the problem of paying the soldiers the substantial benefits they had been promised for service in the war), the

need to raise taxes to operate government, and the need to provide protection to traders against Barbary Pirates in the Mediterranean. In summary, they needed a government with centralized powers to levy taxes, regulate interstate and international trade, provide national defense, and make and enforce laws.

And it was not just the ideas and the issues of the time that turned out to be decisive for this remarkable document. An extraordinary concatenation of events also affected it. Initially the Convention was called simply to overhaul the Articles of Confederation. The conveners were heavily loaded in favor of federalists rather than anti-federalists. Many anti-federalists believed that the Convention would be a failure and that they could do very little to improve conditions; thus, they had no incentive to attend. What actually happened was quite different. The views of the conveners turned out to be near unanimity with respect to what needed to be done, and in short order they wrote a completely new Constitution. Contrary to the anti-federalists, the federalists believed the new nation was in crisis and urgently needed a new Constitution to hold it held together. To assure and speed ratifica-

tion, they suggested amendments to the Constitution that would be undertaken as soon as the new Constitution came into existence and the first Congress had been convened. Thus, the Bill of Rights was actually guaranteed in the course of the ratification controversy; in fact, it was essential for the success of ratification. As a result, the anti-federalists, who foresaw failure at the Convention and failure in the ratification process, were confronted instead with a feasible document, which, with the additional guarantee of the Bill of Rights, also became a document that was ratified and that provided the basic rules of the new nation.

### **Whose Interests Were Served by the Document?**

Was the Constitution a class document written narrowly in the interest of a small group? This controversy has existed ever since Charles Beard's celebrated book, entitled *The Economic Interpretation of the Constitution*, asked whether the Constitution reflected the disembodied wisdom of a group of disinterested individuals or a narrower set of interest of its framers. Put that way, the question is not a very interesting one. Surely the framers of the Constitution devised it in such a

way that it was consistent with their long-run interests, but surely also their view was that it must be a viable political and economic document that could enable a nation to survive and thrive. In fact, a major issue that shaped the writing of the Constitution was a concern with factions or interest groups of citizens bent on using the political process to further their own well being. The most durable source of faction was the unequal distribution of wealth and income. In one of the most celebrated essays ever written in political theory, “Federalist Paper No. 10” (written to support ratification), James Madison argued that the aim of the constitutional conveners was to prevent factions from controlling the political system and using it in their interests. The Constitution did not make everyone equal. Some states did impose property qualifications in order to vote and therefore excluded the poorest members of society. Moreover, the Constitution made it costly to redistribute wealth from the rich to the poor and vice versa. Yet, this was not the prime consideration of the makers of the Constitution. The prime consideration, if we take Madison at his word, was to make all redistributive efforts by factions (of whatever kind) costly and to provide a framework that would encourage productive pursuits instead of redistributive efforts.

### **What Does the Constitution Say?**

Overall, a major design of the Constitution, as the foregoing paragraph suggests, was to provide a set of checks and balances in the political process, so that no faction could, in short order, get control of the reins of government and redistribute wealth and income in their favor. This was done by providing for separate legislative, executive, and judicial bodies. Each body has its own system of checks on the other and each possesses its own distinct and separate powers. State and federal government powers were also separated. There is no doubt that this federal form of government was an important source of decentralization in the political process and that it certainly raised the costs of an

interest group coming to control the political process.

Now let’s turn to specific economic issues. The Constitution enabled the federal government to levy taxes (an essential function of government if it is to survive), and to coin money and regulate its value. It gave the federal government authority over foreign affairs, including the negotiation of tariffs and treaties. It gave the federal government the right to regulate interstate commerce, thus prohibiting the states from erecting barriers to the interstate movement of goods, but also permitting the federal government to impose its own rules upon interstate commerce.

Certainly the most important contribution of the Constitution was that it established a framework for the efficient conduct of economic affairs. It defined the protection of private property and specified that contracts would be enforced in even-handed fashions; it stipulated rules for bankruptcy, an important element since bankruptcy implies a failure to fulfill contracts. In short, the Constitution created a system of well-specified property rights, which reduced uncertainty and permitted the development of free markets—essential, in Adam Smith’s view for a productive economy.

### **How Important Was the Constitution at the Time and Subsequently?**

Let us quote one of the leading students of the Constitution and one of the leading political scientists of our time, William Riker, a former professor of political science at Rochester University.

The Constitution was a necessary condition for those achievements. That is, had the Articles [of Confederation] survived, the nation would not have flourished. To see this, note the Constitution was, in a formal sense, necessary for political unity and the consequent political dominance of the United States, first in North America, expanding westward,

then in the western hemisphere, restraining imperial expansion from Europe and finally in the world, helping to destroy, in two world wars, Western European monarchies and empires and countering the Soviet empire. All this depended on political unity; yet without the Constitution, North America might well have been as balkanized as South America.<sup>1</sup>

Clearly the Constitution was critical and came at a unique juncture in American history. But it would be foolish to think that rules alone are what count. Deifying the Constitution as a source of all that is good, sound, and stable in American history is surely ridiculous, for it is not just rules, but how they are enforced and the norms of behavior that go with them that count. Let us quote Professor Riker again, in another context.

...Every time I convince myself that I have found an instance in which constitutional forms do make a difference for liberty, my discovery comes apart in my hands...it may just as easily be the case that the reason we have these constitutional forms is that we are a free people.<sup>2</sup>

As Riker is suggesting in this quote, the attitudes and the norms of behavior of people are terribly important and may be more important than the rules themselves. In fact, it took the decisions of the Marshall Court of 1801 to 1835 to transform the rules into specific decisions that directly affected how the polity and the economy worked. In short, it took subsequent enforcement and, as Riker has suggested, it took the attitudes and behavior of a free people to see that it worked. After all, the U.S. Constitution has been emulated and copied in many parts of the world where it hasn’t worked at all.

## What Are the Lessons to be Learned?

There is no quick fix for the problems of a society. Nonetheless, the Constitution established a set of institutional rules that significantly shaped the future development of the U.S. market system. The extraordinary success of the original Constitution was a result of timing; it convened at a critical period in American history and was forged by a group with immense ability and common interest that had to make very few compromises with those who didn't believe in creating those rules. In the absence of all those conditions, it is doubtful that we could ever again create a document that could serve us as well.

Perhaps we cannot expect high school students to fully appreciate how choices made by their ancestors have fundamentally shaped institutions as the U.S. Constitution with which we live today. They can, however, learn to see events large and small as outcomes produced by the choices people make every day,

and they can begin to understand how those choices are shaped by evolving institutions and the ideas on which the institutions are based. Today, the Constitution provides the people of the United States with an equal opportunity to pursue those productive activities that not only generate wealth for the individual but society at large.

Social studies teachers who have an interest in integrating economics in lessons on the Constitution might consider instructional resources available electronically. For example, the Library of Congress provides access to numerous electronic resources that provide in-depth information on the Constitution. Search the Library of Congress Historical Collections and other sources for images of authentic artifacts, scanned photographs, manuscripts, web casts and audio and video files that feature experts addressing various constitutional issues. 🌐

See pp. 82–86 of this issue for a lesson plan, “The U.S. Constitution: Rules of the Game.”

## Notes

1. William H. Riker “The Lessons of 1787,” *Public Choice* 55, no. 1-2 (September 1987) pp. 5–34.
2. Douglass C. North, “Comment on the Riker Paper,” *Public Choice* 55 no. 1-2 (September 1987) pp. 35–39.

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*Note: This article was written with the guidance of Douglass C. North, the Hoover Institution's Bartlett Burnap Senior Fellow at Stanford University. North received the Nobel Prize in economics in 1993. He was elected a fellow of the British Academy in July 1996 and was installed as the Spencer T. Olin Professor in Arts and Sciences at Washington University in Saint Louis in October 1996. This article is heavily influenced by his past writing and ideas.*



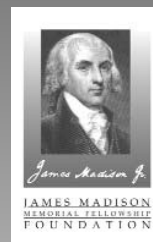
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