The Constitutional Choices of 1787 And Their Consequences

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Introduction

The choices made in the creation of a constitution have immediate political results and, often enough, lasting economic consequences. That, at least, is the overall thesis of this book, which examines the economic significance of the Federal Constitution drafted at Philadelphia in the late spring and summer of 1787. The Constitution occupies so large a place in our collective understanding of American history and politics, is so vital a symbol of national identity, that it is difficult to recall that the American federal republic might easily have evolved along alternative paths. Of course, it is well known that some matters *were* hotly contested in 1787, such as the disputes over representation that preoccupied the Convention for the first seven weeks of debate, and that others, notably the absence of a declaration of fundamental rights, became objects of public controversy as soon as the Constitution was submitted to a sovereign people for ratification. But to emphasize the big dramatic issues – the purported "great compromise" over representation, the assuaging of Anti-Federalist doubts with the

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proposal of a “bill of rights” – is still only to confirm what a heroic episode it all was. The other contingent choices that set the Convention on its course, or that gave the Constitution its essential character, remain obscure.

In this paper, we treat three interrelated issues involving the Constitutional choices of 1787. First, we examine the various failures of the Articles of Confederation, including institutional failures and policy consequences. The unanimity rule necessary to revise the Articles made adaptation difficult. A host of problems emerged under this political system, many associated with various common pool problems. The lack of reliable and independent sources of revenue made the national government financially dependent on the states. The states faced common pool problem incentives to shirk their duties. Similar if smaller problems emerged in other policy domains: foreign relations, internal trade barriers, and paper money. Congress under the Articles also failed to solve other problems, such as enforcing the Treaty of Paris, the British closure of its Caribbean ports to American ships, and asserting control over the western frontier. Paying off the public debt and establishing public credit remained major difficulties. Even as these problems became clear, the Article’s institutional constraints prevented their resolution. Try as they might, nationalists seeking greater powers for the national government could not convince every state to go along.

Second, we emphasize that the dramatic paradigm shift inherent in the Constitution was not inevitable. Instead, it was one choice among many. The Founders could easily have followed a more prudent and less risky strategy by proposing more limited though still significant adjustments within the framework of the Articles. For our purposes, two of the most important institutional innovations include the new conception of the national Congress acting as a bicameral legislature rather than a single-chamber consultative assembly; and the shift toward a centralized federalism to replace the decentralized system of the Confederation. Equally important, the framers success was not inevitable. Although it is easy for us to believe that more than two centuries of relative political stability means that success was inevitable, the history of previous confederations and republics suggests otherwise. A stable republican constitution for a society as large as the United States, for example, had never existed.

Finally, we examine how the Constitution's features allowed Americans both to solve the wide range of policy problems and to adapt policy and institutions as circumstances required. The new republic implemented policies on two levels: the national government's addressing various problems; and the states, within the context of centralized federalism and market-preserving federalism, solving another set. In contrast to the Articles, the new Constitutional system proved remarkably adaptable, allowing the nation to confront new challenges. As an illustration of both the successes and limitations of this system, we discuss the persistent problem of slavery in the antebellum years.

This paper proceeds as follows. In part I, we reconstruct the larger realm of constitutional choice that shaped the deliberations of 1787, and then reflect on the lasting significance for American economic development of key decisions that were taken. In part II, we turn to the consequences of the Constitution, both direct and indirect. This discussion begins with the new policies chosen to address the various policy dilemmas of the Articles, turns to the consequences of the new centralized federalism, and then ends with the long-term consequences of the ability to adapt, including a special look at the on-going difficult problem of slavery within the republic.

Part I: The Road to Philadelphia

Once past the opening words of the preamble, the Constitution is a prosaic text. Most of its clauses are devoted to allocating different powers and duties among the great departments of government, sketching the relationship and boundaries between national and state governments, describing the modes of appointment of particular officers, and detailing their terms of service. Yet the larger enterprise of constitution-*making* cannot be wholly reduced to the sum of these provisions. Or rather, these provisions, properly construed, illuminate the multiple dimensions of the American constitutional project of the late 1780s. Four dimensions deserve particular notice.

First, the immediate occasion for the calling of the Convention was the perceived need to establish a new framework within which key public policy and public goods problems of the 1780s could be adequately addressed and satisfactorily resolved. Those problems were primarily consequences of the war for independence and the immediate aftermath of the treaty of peace.

A short list of these specific policy concerns include at least the following:

- providing the national government with independent and reliable sources of revenue to meet its basic expenses;

- funding or retiring the public debt accrued during the war, thereby enabling the United States to have future access to credit markets both at home but especially abroad;

- developing effective strategies for responding to the twin economic threats to postwar prosperity: the flooding of American markets with European goods, and the closure of British harbors, particularly in the West Indies, to American merchantmen;

- enforcing key provisions of the Treaty of Paris relating to the rights of British creditors seeking payment of prewar debts and loyalists seeking recovery of confiscated estates; and

- securing effective control of the new national domain above the Ohio River and maintaining the political loyalty of trans-Appalachian settlers more generally, especially after Spain closed the Mississippi River to American navigation in 1784.

Many of these problems stemmed from the common pool problem incentives of states to shirk their duties rather than cooperate. States, for example, faced incentives to limit their tax collection for the national government. The national government had no means to ensure cooperation or to sanction states that shirked. Similar problems arose in other areas, such as honoring treating obligations, internal trade barriers, and paper money

Together, these five clusters of issues defined the issue space within which questions of public goods and public policy began to converge with issues of constitutional authority and institutional design. Absent these specific concerns, there would have been no occasion for anything like the Federal Convention to be held. But even with them, the putative reformers of the Articles of Confederation had to ask whether their optimal strategy was one of piecemeal amendment or wholesale revision. Until early 1786, political prudence favored the idea of gradual change; by the close of the year, political desperation tipped the calculation toward comprehensive change. Yet had the delegates who straggled into Philadelphia in May 1787 acted more cautiously, many contemporaries would have applauded their good judgment.

A second major dimension of the constitution-making project of the late 1780s is that it involved a fundamental rethinking of the republican assumptions that informed the drafting, a decade earlier, of both the initial state constitutions that replaced the *ancien regime* of colonial government and the Articles of Confederation. This rethinking is what gives the constitutional debates of 1787-1788–that is, both the deliberations at Philadelphia, and the broader public discussion that followed–their dramatic character and intellectual significance. To draft the Constitution and to secure its ratification, both the framers and their Federalist supporters had to be willing to challenge basic premises under which the revolutionaries had acted a decade earlier. Part of that challenge was directed, of course, to such classic questions as the optimal size of republics or the degree of virtue necessary to their preservation. But a substantial part focused on the basic questions of institutional competence and constitutional design–to the real stuff, that is, of the practical constitution-making enterprise.

Third, that enterprise was also a negotiated compact among a pre-existing set of established polities. Whether the original states are better described as fully sovereign entities or, more narrowly, as autonomous jurisdictions for purposes of internal governance, their delegates at Philadelphia and the subsequent ratification conventions did not operate behind any veil of political ignorance when it came to assessing how adoption of the Constitution might affect vital interests. The Convention's compromises over the composition and election of the political branches were only the most obvious examples of the bargaining process that went into constitution-making. The Constitution also operated as a mutual security pact among the existing states, sharply limiting their capacity to threaten each other militarily. Equally important, the Constitution also collectively assured the territorial integrity of the states against separatist movements within their claimed boundaries (Onuf 1983, Hendrickson, 2003).

But, in the fourth place, those states–or rather, their governments–were no longer the sole or even primary parties to the federal compact being re-negotiated. Nor was the Constitution simply an agreement to be promulgated by a group of dignitaries once they had resolved all the questions their deliberations had raised. For the Constitution to become fully constitutional, it also had to be ratified by the people themselves, acting through popularly elected conventions in each of the states. The relative ease with which this new rule of ratification was adopted and applied, and the Federalist success in restricting the true decisions of these conventions to up-or-down votes on the Constitution in its entirety, guaranteed that the new system of government would begin its operation with a remarkable measure of legitimacy. As passionately as Americans would soon begin disputing the meaning of particular clauses, their disagreements never denied the legitimacy of the constitutional revolution of 1787-1788. That was not an outcome that could have been taken completely for granted when the movement for constitutional reform risked the calling of a general convention, or even after the luminaries at Philadelphia finished their work.

To survey these multiple facets of constitution-making is to identify one final aspect of the great enterprise of 1787. No obvious, transparent agenda was destined or pre-determined for the Convention to pursue; but instead a range of possible outcomes existed among which choices had to be made. The otherwise rich documentary record of the debates of 1787-1789 is strikingly thin when it comes to knowing what either the delegates themselves or the American public initially expected the Convention to accomplish. The one great exception to this is the evidence we have for James Madison's preparations for Philadelphia; and given his key role in setting its agenda, that evidence goes some way toward explaining why the Convention took the course it did.[1]

Even so, it is important to stress that multiple paths of constitutional reform were available in 1787. The Convention could have easily pursued a more prudent path. Nor should one forget that the logic of radical reform in 1787 also rested on the perceived "imbecility" of the Articles of Confederation, especially as manifested in the absurd rule requiring the unanimous approval of the state legislatures for its amendment. Had any of the amendments to the Confederation previously proposed surmounted that obstacle, the case for an extraordinary plenary convention might never have been made, much less prevailed. The American Union could have evolved along any number of counterfactual paths. But the fact remains, the contingencies of historical action broke one way, not another, and fundamental choices were made. Not least among them was the decision to abandon the framework of the Confederation and to proceed with radically different notions of the institutional structure and legal authority of the Union.

THE INITIAL AGENDA OF CONSTITUTIONAL REFORM

[1] See Rakove (1996 chapter 3); but for a characteristically provocative and perverse dissent on just this point, *counterfactual.* McDonald (1985, 205).

Drafted in 1776-77, the Articles of Confederation reflected the dominant republican assumptions that also shaped the first state constitutions. Overall coordination of the struggle for independence belonged to Congress; the states would implement its decisions, acting not as sovereign judges of the propriety of its resolutions, but as administrative auxiliaries with superior knowledge of local conditions and the representative political authority to rule by law. This understanding accorded well with American experience. Governance in colonial America had always been highly decentralized; the authority of the empire never penetrated into the countryside; and there was no national administrative apparatus to speak of. Congress itself was a badly undermanned institution. Its members typically served some months during a yearly term or two before insisting that others bear the burden of long absences from home and family. It made completely good sense to expect the states to do the real work of mobilizing the country's resources for war.[2]

This expectation that the states would strive to do their duty also rested, Madison rightly recalled, "on a mistaken confidence that the justice, the good faith, the honor, the sound policy, of the several legislative assemblies would render superfluous any appeal to the ordinary motives by which the laws secure the obedience of individuals" (*PJM*, IX, 351). The first American federalism was thus grounded on the public-spirited values of republicanism, and those values were sorely tested by the duration of a bitterly fought

[2] Which is not to say that all states were equally competent in mobilizing those resources. See the provocative comparison of the capacities of northern and southern states in Einhorn (2006).

war and the enormous strain it placed on both the capacity of the states and the virtue of their citizens.

By 1780 the discouraging results of this test were apparent. Such efforts as the states made to levy taxes were clearly inadequate to meet the open-ended demands of the war. One response to this continuing shortfall was to rely on the customary methods of currency finance, printing money and trying to withdraw it from circulation before it depreciated too badly. But depreciation occurred regardless, and in 1779, with the specie value of the continental dollar falling to 200:1. In that year, Congress took the painful decision, first to stop printing money, and then to adopt a new requisitioning system of "specific supplies" to be demanded from particular states. The fits and starts of that conversion, compounded by the worst snowfalls in decades, made the winter of 1780 the absolute nadir of the war effort.

It was also the moment from which we can date the emergence of the reformist impulses that ultimately led to the Federal Convention of 1787. Perhaps it is only a symbolic coincidence that Madison entered Congress in March 1780, or that a few months later Alexander Hamilton drafted the mini-treatise on political economy (as a letter to New York delegate James Duane) that first exhibited his keen financial intelligence. More noteworthy is the fact that members of the national political elite already recognized that the still unratified Articles of Confederation were inadequate to the real problems of governance the war had exposed. Thus even as Congress worked to bring Maryland, the last holdout, to end its dissent, delegates like Madison were already contemplating the amendments needed to give Congress adequate authority.

After Maryland ratified the Confederation early in 1781, Congress quickly sent its first amendment to the states, requesting permission to levy a 5% impost on foreign imports, meant not as a source of operating revenue but as security against which Congress might attract foreign loans. Congress also appointed Robert Morris as its first (and only) superintendent of finance. Amid his heroic labors in keeping the Continental Army in the field in advance of the decisive victory at Yorktown, Morris found time to begin drafting a comprehensive program to secure adequate revenues and establish public credit. When Rhode Island effectively killed the impost in 1781, the Morris program to vest Congress with authority to levy land, poll, and excise taxes became the basis for months of sharp debate and political maneuvers. To pressure Congress to adopt his program, Morris attempted to mobilize public creditors throughout the states while exploiting unrest in the army. Morris overplayed his hand, however, and eventually lost the support of a key bloc of delegates who followed Madison in promoting a compromise measure. The states would be asked to assign permanent revenues of their own choosing to Congress; a new impost would be proposed; and the unwieldy formula of the Confederation for apportioning the common expenses of the Union on the basis of the assessed value of improved land would be replaced by a simple population rule (with slaves counting as three fifths of free persons). This was the basis for the package of resolutions that Congress sent to the states on April 18, 1783, and it marked the first major component of the agenda of federal constitutional reform.

Over the course of the next year, two other sets of issues emerged to enlarge the potential agenda for constitutional reform. One was concerned with the dual crises that afflicted American commerce in the first year of peace, when scores of British ships entered American harbors, bringing imported goods war-deprived consumers were all too happy to purchase, to the detriment of local artisans, while London simultaneously barred American merchantmen from imperial harbors, most importantly in the West Indies, the traditional market for American agricultural surpluses. A second set of issues had to do with the effective governance and political control of the trans-Appalachian interior. Above the Ohio River, Congress gained title to a national domain established through the voluntary cessions of states claiming interior lands. Its ability to develop this land, however, was threatened by several factors: the free flow of squatter-settlers into southern Ohio, opposition from indigenous peoples who were surprised to learn that they had just been defeated in the Revolutionary war, and the retention by the British of frontier forts from which they could encourage resident tribes to resist American expansion. Below the Ohio, the future states of Kentucky and Tennessee were still part of Virginia and North Carolina, respectively; but settlers there were deeply troubled by the Spanish decision to prohibit the trans-shipment of American produce through New Orleans into the Gulf of Mexico. If Congress could not find a way to relax the Spanish choke-hold, the loyalty of these settlers would be up for grabs, and the United States might forfeit the generous territorial settlement it had gained in the peace negotiations of 1782 and 1783.

In April 1784 Congress responded to the first set of issues by asking the states to approve two additional amendments to the Confederation. Stopping well short of recommending a plenary power to regulate foreign trade, these proposals would have empowered Congress to retaliate against nations that discriminated against American merchants. In dealing with the new national domain, Congress adopted a land ordinance (forerunner to the Northwest Ordinance of 1787) that envisioned the eventual admission to the Union of a number of new states, on essential conditions of equality with its original members. That was a visionary statement of a core constitutional principle of state equality, and one which promised that the interior of the continent would not be developed as internal colonies of the older societies on the seaboard. But the greater challenge Congress faced in the west stemmed from its inability to project national power beyond the Appalachians. Without the resources to maintain armed force in the Ohio Valley, there was little chance that Congress could overawe either squatter-settlers or the Indians they were antagonizing, much less induce Spain to open the Mississippi to American navigation.

In the end, then, it all (or mostly) came down to revenue, and from 1783 to 1786, that prospect in turn depended on unanimous state acceptance of the package of amendments Congress had proposed in April 1783. The basic obstacle to reform remained the unanimity rule of the Confederation, a rule predicated in part on the belief that the states were quasi-sovereign jurisdictions, but also fortified by the perception that republican convictions of the public good should make consensus attainable. Whether decisions about essential public goods should depend on attaining that high a degree of agreement was the great question that the mid-decade constitutional stalemate left unresolved. Insofar as the failure to attain unanimity worked to impeach core republican assumptions, the stringent rule of amendment worked to make calculations of interest rather than appeals to virtue the denominator of American politics. The unanimity rule of the Articles greatly limited the ability of Americans to adapt to new circumstances and to adjust their institutions as practice diverged from expectations.

Madison's Agenda

Taken individually or collectively, none of these measures portended a radical shift in the character or structure of the Confederation. Well into 1785, the agenda of constitutional reform remained gradualist, not radical. All of the powers being considered could be vested in the same unicameral body that had governed national affairs since 1774. Nationally-minded politicians hoped or imagined that the specter of an "imbecile" Congress (as it was often disparaged) and commercial depression would somehow enable Americans to recognize that an assembly appointed by their own state did not pose the same dangers as a distant Parliament once had.

For this strategy to succeed, however, success had to begin somewhere, and in practice the unanimity rule of the Confederation made its amendment impossible. As the nation seemed to sink into commercial depression by 1785, a committee of Congress, led by James Monroe, drafted yet another amendment giving Congress the sole power "of regulating the trade of the States, as well with foreign Nations, as with each other," including authority to levy "such imposts and duties upon imports and exports, as may be necessary for the purpose," with the resulting revenues accruing to the states in which they were collected. But with the previous amendments still in limbo, it seemed pointless to add a fresh one to the queue.

These issues of revenue and public credit, foreign commerce, and control of the interior remained the great national public goods questions. But within the states, other developments were taking place that would ultimately lead to a significant expansion in the agenda of constitutional reform. The most important of these concerned efforts by individual states to retire their own public debts and to remove the financial detritus of the war. That involved imposing higher levels of taxation than an exhausted population was inclined to favor, and amid the depressed economic conditions of the mid-1780s, calls for tax and debtor relief and the issuance of paper money were hardly surprising. land. As these demands mounted, and as the politics of individual states–notably Rhode Island–came under the sway of pro-paper money factions, stalwart defenders of basic property rights persuaded themselves that the republic was endangered by what we might call economic populism *avant le fait.* If the advocates of paper money prevailed now, they worried, who could guarantee that the American people might not come to favor a confiscatory redistribution of other forms of wealth as well, even an Agrarian law modeled on the precedent of Roman antiquity and a radical strain in modern republican thinking that ran from More and Machiavelli to Harrington and Locke and even, perhaps, to Jefferson.[3]

No one was more alarmed over these developments than Madison, and in our view, his key role in shaping the ultimate agenda of constitutional reform makes close attention to his developing views a key element in any account of what happened in 1787. There is no question that a brooding concern over the security of the rights of creditors and landowners helped inspire Madison's efforts to rethink the basic premises of republican government. Scholars who equate his originality as a constitutional thinker

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[3] On this subject, see Nelson (2004, 195-233).

solely with the “extended republic” and “ambition counteracting ambition” hypotheses of *Federalist* 10 and 51 overlook the extent to which the real source of his creative insights lay in his acute analysis of the institutional workings and defective outputs of state legislatures. Two years of service in the Virginia assembly, after he had been term-limited out of Congress in 1783, turned Madison into a keen student of the science of legislation, especially as that applied science was practiced, not by the all-wise “lawgiver” of Enlightenment philosophy, but by rustic provincials who were all too responsive to the parochial concerns of their constituents. By August 1785 he was convinced that the crying need of republican government within the states was to find ways to “give *wisdom* and steadiness to legislation.” This need was closely tied to his emerging recognition, as he would state it in *Federalist* 10, that “The regulation of these various and interfering [economic] interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.” From this concern evolved the critical conviction that no solution to the problems of federalism would be complete that did not reach the matter of legislative misrule within the states.

Whether that concern would ever become the basis for action, however, depended on the still uncertain fate of the amendments of 1783 and 1784. In late January 1786 the Virginia legislature invited other states to join it in sending delegates to a special convention to consider the nation’s commercial woes. Though initially a reluctant supporter of this scheme, Madison soon concluded that this meeting offered a more promising path to constitutional reform than adherence to the rules of the Confederation. From his correspondent James Monroe, he knew that Congress was considering yet another set of amendments to the Articles. But believing that Congress itself was too politically discredited to be an agent of its own transformation, Madison agreed that other steps were necessary.

Had the eventual Annapolis convention of September 1786 been better attended, it might have framed a new and more expansive amendment vesting broad commercial powers in Congress, akin, perhaps, to the recommendation Monroe's committee had prepared in 1785, or to similar proposals that were presented to Congress in the summer of 1786. But the dozen commissioners from five states who quaffed a few tankards at Mann's Tavern in mid-September 1786 were too small a gathering to propose anything of their own authority. Rather than adjourn empty-handed, however, they seized upon a clause in the credentials for the New Jersey deputies and proposed instead that a new meeting be held at Philadelphia the following May. That call was eventually heeded by every state except Rhode Island and endorsed by Congress as well.

In the winter and early spring of 1787, Madison set about preparing a working agenda for the Philadelphia meeting. Much has been written about the extent to which this course of reading and reflection led him to hypothesize that a large diverse republic might better resist the "mischiefs of faction" than the small, homogeneous nurseries of disinterested civic virtue beloved of traditional republican theorists. But for purposes of framing an agenda for action, other aspects of Madison's reflections and preparations appear more consequential.

First, and arguably most important, Madison concluded that any system of federalism grounded on the voluntary compliance of the state governments with national measures was doomed to failure. As independent jurisdictions, the interests of the states were too disparate, and their politics too prone to manipulation by "courtiers of popularity," to be expected to comply regularly and enthusiastically with the recommendations of a toothless Congress. Even when their interests should coincide, doubts about their mutual good faith in fulfilling federal obligations would discourage active compliance. It followed that the national government had to be empowered to operate as all true governments do, with constitutional authority to enact, administer, and adjudicate its own laws, which would apply directly to citizens and involve the state governments as little as possible. That in turn meant replacing the unicameral Continental Congress with a bicameral legislature while also creating a constitutionally independent executive and judiciary. (Here is where the lessons to be drawn from the experience of republican government in the states would prove most salient.)

Second, Madison's rich critique of the "Vices of the Political System of the U. States" (1787) indicted the shortcomings of state-based politics on additional grounds. States were defaulting on their federal duties in other ways: by arrogating congressional authority; violating international treaty obligations (especially by obstructing British creditors seeking recovery of pre-war debts); trespassing on each other's rights (his leading example being the designation of paper money as legal tender); and by showing a "want of concert in matters where common interest requires it," a "defect [that] is strongly illustrated in the state of our commercial affairs" (*Madison: Writings*, 69-71). Implicit in this list of criticisms was the idea that constitutional reform had to extend beyond the principal purpose of making the Union independent of the states. It required as well an effort to curtail the authority of the states themselves, especially as their residual sovereignty constrained the pursuit of national objects or the harmony of interstate relations.

Third, Madison's analysis extended to the internal vicissitudes of state policy, or what he called the "multiplicity," "mutability," "injustice," and "impotence" of state lawmaking. It would not be enough, he concluded, to restrict the states from jeopardizing the pursuit and attainment of common interests. It was also essential to check their legislative excesses, to provide a federal remedy, through a congressional negative on state laws, that could check the factious forces swirling through state politics. That negative could be deployed defensively, to block the states from adopting measures that threatened federal policies and national interests. But it could also be used for interventionist purposes, to protect individuals and minorities against the unjust or ill-considered laws that dominant majorities were likely to adopt. And there is no question that the class of legislation that most worried, indeed obsessed Madison was the quasi-populist, anti-creditor, pro-relief measures that various states had either adopted or were still discussing.

Fourth, all of Madison's concerns at this critical moment rested on a perception that the future politics of the republic would pivot around efforts by interests–whether defined in terms of communities, classes, or occupations–to exploit the positive lawmaking authority of both state and national governments for their own purposes. Today this seems like a truism, and wholly unsurprising. But in the eighteenth century, the reigning political ideology viewed representative assemblies first and foremost as checking institutions, not as the preference-aggregating forums they were in the process of becoming. Madison, by contrast, had developed an acutely modern notion of legislation. Drawing in part on the experience of wartime governance, but accurately foreseeing the more active use of legislative power in an age of economic development and improvement, he was deeply concerned with promoting the proper use of legislative power. In the states, where the bulk of economic regulation would still take place, it was important to guard against the dominance of factious, self-interested majorities. At the national level, however, it might be possible, through the refining mechanisms of election and deliberation, to promote a more considered, less impulsive understanding of the "public good." His notion of what the public goods comprising the public good might consist of was probably less expansive or complex than that of his northern counterparts, particularly his current ally and future rival, Alexander Hamilton. But the idea of improving the quality of legislative deliberation through the election of a superior class of representatives was premised on the belief that republican governments would be active governments.

At Philadelphia

In the eight months between the Annapolis and Philadelphia conventions, there must have been many private conversations about the potential agenda for constitutional reform. It was "not uncommon," treasury commissioner Samuel Osgood wrote John Adams, to hear the principles of Government stated in common Conversation. Emperors, Kings, Stadtholders, Governors General, with a Senate, or House of lords, & House of Commons, are frequently the Topics of Conversation." Some favor "abolishing all the state Governments" and "establishing some Kind of general Government," Osgood added, "but I believe very few agree in the general

Principles; much less in the Details of such a Government" (Rakove 1979,387). Absent a pre-Convention planning conference in which proto-Federalist notables could have mapped strategy, and given the lack of published speculation as to what the Convention might do, the extent to which Madison's own preparations ultimately mattered in shaping the agenda of discussion becomes more evident. Short of abolishing the states outright, or impracticably trying to equalize their net influence by a creative redrawing of state boundaries, it is difficult to conceive how anyone could have fashioned a more expansive agenda than Madison worked out in the roughly two months preceding the appointed meeting day of May 14.

Having issued the original invitation to Philadelphia, the Virginians were punctual about attending. The same could not be said for the other delegations. While waiting for their arrival, the Virginians crafted the fifteen articles that Governor Edmund Randolph introduced as the Virginia Plan on May 29. In contrast to all prior discussions of constitutional reform, which had focused on the specific additional powers the Union was deemed to need, the Virginia Plan was far more concerned with structure than authority. Article 6 would empower the new bicameral legislature "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" (Farrand 1966 I, 21). Although it is possible that the Virginians really did intend to vest a future congress with this kind of plenary power, it seems more likely that this formula was meant to serve as a placeholder whose contents would be specified later, once the great disputes over representation that consumed the first seven weeks of debate were resolved. Madison's political strategy was to insist that the Convention must first agree that representation in *both* houses of the legislature had to be proportioned to population, and that the quantum of power the large states would be willing to vest in the new government depended on the satisfactory resolution of this issue.

That strategy held even after William Paterson proposed the New Jersey Plan in mid-June. Although this plan's provisions were more reminiscent of the kinds of reforms that had been discussed over the past few years, this alternative scheme proved a brief distraction from the debates over representation. Once the New Jersey Plan was dispatched, the convention spent another four weeks trying to solve the representation conundrum. The basic story is familiar to every schoolchild: A good compromise was finally struck allowing the fearful small states to preserve an equal vote in the Senate, while an evil but perhaps necessary bargain enabled the slaveholding states of the South to count their human chattel for purposes of representation. Often overlooked in this moral calculus is the reality that slavery was the real, material, palpable interest that had to be accommodated if a lasting inter-sectional Union was to be created, and with it the benefits of economic integration the Constitution was intended to promote. The ostensible conflict between small and large states, by contrast, was ephemeral and false, since the size of the state in which one works and votes has never identified an actual interest deserving or requiring promotion (Rakove 1996, 57-93).

Once the twin issues of representation were resolved in mid-July, the delegates finally free to turn their attention to what they actually wanted the government to *do*. That task was entrusted to the committee of detail that met during the ten-day adjournment from July 26 to August 6. Its report marked the point at which the open-ended grant of legislative power in the Virginia Plan began its transformation into the enumerated Article I, Section 8 powers of the final draft.[4]

Once the Convention took up the committee's proposals, the ensuing disagreements on matters of substance were few. That Congress would otherwise have the power to levy and collect taxes and regulate foreign and interstate commerce were foregone conclusions. On economic matters, the two main sticking points were the prohibition of taxes on exports and the proposal that navigation acts–laws regulating foreign commerce–require two-thirds majorities in both houses. There were some sharp exchanges on both points, but the convention found little difficulty in treating the retention of the prohibition as a concession to the commodity-exporting states of the South and eliminating the two-thirds requirement as a fair bargain with the commercial North.

One other matter would prove a source of significant controversy after the Constitution was ratified. On August 18 Madison included among a list of further legislative powers to be considered the power "To grant charters of incorporation in cases where the Public good may require them, and the authority of a single State may be incompetent." That same day, Charles Pinckney proposed a simpler version of the same power, dropping Madison's qualifying phrases (Farrand 1966, II, 325). When the

[4]Some commentators treat this fundamental shift in the underlying conception of legislative power as a virtual coup on the part of the committee, one that significantly altered the direction of the Convention. But if that was the case, it seems puzzling that none of the delegates was troubled to ask the committee to explain why it had acted as it did. It seems far more likely that the committee's initial effort to enumerate the substantive powers of the new Congress was in accord with the Convention's general expectations–as it also was with Madison's strategy of deferring discussion of specific powers until the representation questions were settled. [cites]

committee of detail and the committee on postponed parts failed to report a suitable clause, Madison renewed his motion on September 14, three days before the Convention adjourned. After brief debate, the motion failed, eight states to three. Madison could reasonably infer that the Convention had thereby denied Congress the power in question. A few years later he learned he was wrong, and that the Necessary and Proper Clause was capacious enough to fill the textual gap–or so Secretary of the Treasury Hamilton said, and President Washington finally agreed.

Compared to the lengthy debates over representation in June and July, many a scholar has wished that the delegates could have spent more time in August and September hashing out their ideas of what they expected the new national government, if ratified, to do. There are notable differences between the extended speeches of the first weeks of deliberation, and the more concise and clipped exchanges of August and early September. Perhaps Madison's exhaustion as the consensus note-taker explains part of the discrepancy, but it is just as plausible to think that the later debates took the form they did because the delegates were already deeply united in their notions of the powers the Union should exercise.

Part II: The Constitution's Effects

As part I suggested, perhaps of the most striking contribution of the Constitution – and one too often taken for granted – was the creation of a successful, stable, republican government: a national government at once responsive to the interests of citizens, yet limited in scope and capable of respecting a wide range of rights. Without this accomplishment, the United States is unlikely to have achieved its long-term history of economic growth over the next two centuries. Moreover, this form of government was a major new invention: a stable republican government over an extended territory as large as the United States had never before existed, and many thought it impossible.

The Constitution, however, did not create a competitive polity and a competitive market economy. Long-term economic growth did not automatically follow. Only in the most general sense did the Constitution create “a machine that would go of itself” (Kammen 1986). To survive and thrive in an uncertain and ever-changing world, Americans had to solve a host of important economic and political problems. This required that they devise a variety of new institutions, frameworks, and policies, including: national defense; financial markets; policies with respect to trade, intellectual property rights land, labor, money and bankruptcy; the promotion of economic growth through public goods and infrastructure; education; political, economic, and geographic expansion; and the one problem that would prove the most difficult to manage, sectional conflict.

In a real sense, therefore, the Constitution’s most important accomplishment was to create a framework within which Americans could cooperate to devise the institutions and policies necessary to support economic and political development, including working out various problems as they arose (Mittal 2009, 2007. Also see Landau 1973, 1969).

The Constitution’s most general direct economic effect was to create a common market and the basis for specialization and exchange that emerged over the next two generations. As North (1961) argued, over America's first generation, economic producers in different regions came to specialize in different economic activities. The South produced export crops (rice, indigo, tobacco, sugar, and especially cotton). The Northeast concentrated on transportation and financial services for southern exports (financing of exports, insurance, marketing, and the transportation of exports). The Northwest, largely independent at first, increasingly specialized in the production of food, shipped south along the waterways and, once the transportation infrastructure grew, shipped east along the canals and, later, the railroads (Callendar 1902 and Goodrich 1960).

This system of specialization and exchange and the subsequent national prosperity did not occur on its own. Because economic and political actors are reluctant to undertake specialized investments that are vulnerable to political change, a stable republican governmental structure underpinned these investments. A host of national and especially state policies also supported this accomplishment. As discussed in the next section, the investments resulting in regional specialization also required complementary action by state governments. The purpose of this essay is to explain the institutions that promoted this outcome.

We divide the Constitution's effects into three categories. First, the direct effects: making new national policies. Second, the indirect effects: the creation of market-preserving federalism, fostering competition among the states and allowing them to solve a wide range of important political and economic and political problems. And third, the forward-looking effects of problem solving and bargaining. We discuss these in turn.

Direct Effects: Promotion of New National Policies

Our discussion of the Constitution's direct effects on national policymaking will be brief, in large part because the other contributions to this volume represent extended investigations into these effects.

We now take American national defense and security for granted, but this is in part because the Founders successfully promoted security. As emphasized in part I, providing security proved difficult under the Articles. The national government lacked independent and reliable sources of revenue; it could not retire existing debt or fund new debt if the need arose; failure of the British to honor some provisions of the Treaty of Paris; securing the trans-Appalachian domain; and it had no means to devise strategies for dealing with various problems with foreign governments, such as the closure of British harbors to American merchantmen.

The Constitution helped the new national government solve these problems by granting the national government adequate revenue sources; and by creating a new legislature with sufficient powers to devise new policies and adapt these as circumstances changed.

Working under the new government, political officials solved a range of other important common pool problems that plagued the United States under the Articles. The national government now became the sole locus of authority and decisionmaking with respect to foreign affairs, replacing the more haphazard situation in which states as well as the national government made agreements with foreign nations. Another common pool problem under the Articles was internal trade barriers hindering commerce among the states. Several clauses of the Constitution, notably the commerce clause and privileges and immunities clause, prohibited various types of internal trade barriers by states against the goods and services of other states, fostering a common market central to the growth of specialization and exchange over the next generation. The national government also became the locus of authority of monetary affairs, eliminating another sources of common pool problem (recall, Rhode Island's inflationary policies whose costs spilled over into other states).

The national government also made new policies in a series of areas dealing with national public goods. Beginning with his *Report on Public Credit* (1790), Alexander Hamilton helped provide several national public policies necessary to underpin financial markets, including the establishment of public credit (including the assumption of state revolutionary war debts), the national Mint, and the Bank of the United States (Sylla, this volume). The government also establish a national post office to improve communications among the states (John 1995). Congress also passed a bankruptcy law, an important institution that lowered both the transactions cost of removing failed enterprises and the incentives for failed enterprises to seek political bailouts.

INDIRECT EFFECTS: A STABLE, CENTRALIZED FEDERAL SYSTEM AND ITS IMPLICATIONS

As Wallis (2007) reminds us, the Constitution did not create the states, but the other way around. All states had on-going constitutions in 1787. Adoption of the Constitution did not make the states impotent or secondary players with respect to policy. Indeed, states remained the nexus of economic regulation and the promotion of economic growth. Nor did the Constitution provide a rode map for economic and political development.

The Constitution did, however, change the environment in which states operated, inventing a new form of “centralized federalism” that had never existed (Riker 1987). Two important new features of the post-Constitutional environment are relevant for our discussion. First, the most important change was creating a stronger national government capable of policing the common market while not acting opportunistically (Farrand 1967). Recall that the national government had no such powers to prevent common pool problems under the Articles. The Constitution’s commerce clause prevented states from regulating interstate commerce and restricted the federal government to truly national public goods, endowing the United States under the new Constitution with one of the largest common markets in the world.

Second, the Constitution created the conditions of market-preserving federalism (Weingast 1995), matching the economists' prescriptions for fiscal federalism, including competition among subnational jurisdictions (Oates 1972, Tiebout 1956). The importance of market-preserving federalism is that it unleashed the creative engines of state government through competition, all within a common market protected by the federal government.

Federal systems differ across many dimensions, and only some promote fiscal federalism, competition among subnational jurisdictions, and economic development. In addition to a hierarchy of governments, market-preserving federalism requires four conditions:

- states have power over policies within their jurisdictions, including taxation and the ability to regulate their local economies;
- states participate in a common market;

- states face a hard budget constraint;
- there exist a set of national institutions that provide incentives for national political officials to honor the rules so that federalism is self-enforcing.

Satisfying these conditions seems natural in the American context, but few modern federal systems meet them (Weingast 1995).[5] Each of these conditions is necessary to create effective interjurisdictional competition among the states. States without policymaking authority lack the power to tailor policies to their local environments, so that they cannot engineer new policies and programs that out-compete their rivals. The absence of a common market policed by the national government diminishes the competitive pressures of interjurisdictional competition and allows states to insulate their economy from competitive pressures through internal trade barriers. A soft, as opposed to hard, budget constraint allows states to live beyond their financial means, often ignoring the effects of interjurisdictional competition through the ability to support or bailout non-competitive local enterprises. Finally, federal systems that are at the discretion of the national government or that fail to prevent that government from manipulating the policies and innovations of subnational governments inhibit competition, for example when the national government removes governors or governments for policies at variance with those of the national government (as has occurred at times over the last 25 years in India, Mexico, and Russia).

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[5]For example, modern Germany, Mexico, and Russia fail the policy independence condition. Argentina and Brazil fail the hard budget constraint. From 1950 through the early 1990s, India failed the policy independence and self-enforcing conditions (with respect to the latter, the national government used its authority to take over successful opposition state governments).

For the early United States, the institutions of market-preserving federalism launched the "laboratory of the states." Federalism fostered state experimentation that became critical not only as the competition among the states, but central to the economic growth of the early United States.

We tend to take the new political stability of the national government for granted. But this stability, including the stability of the federal system itself, is necessary for the inter-regional specialization and exchange necessary to promote prosperity. When states and economic actors feel threatened or believe the system at risk, they are less likely to promote and undertake specialized investments that are vulnerable to political opportunism from other states or the national government.

The main consequence of the Constitution's system of market-preserving federalism is that states accomplished much of the important policies promoting economic and political development. American states were the frontier of new rights and public goods, including franchise (Sokoloff and Engerman 2000), education (Mariscal and Sokoloff 2000), party organization (Hofstadter 1969, Holt 1999, North, Wallis, and Weingast 2009).

States were also the dominant providers of market-enhancing public goods, especially infrastructure investment and banks to help finance the flow of goods and crops to markets, a topic we discuss below (Callendar 1902, Goodrich 1960, Wallis and Weingast 2005). They were also the primary locus of economic and social regulation (as Callendar 1902, Handlin and Handlin 1947, Hartz 1948, Hughes 1977 emphasize in different ways). States also controlled the definition and enforcement of most economic property rights, including those pertaining to land and slavery. They were also the principal creators of open access for corporations, with general incorporation acts emerging in the 1840s. Until the Voting Rights Act of 1965, states were also the primary locus of the regulation and administration of elections (subject to the qualification of the federal experiments during reconstruction). Finally, states collected most direct taxes imposed on citizens (such as the property tax), with the dominant form of national revenue being raised through tariffs.

With respect to the economy, the national government eclipsed the importance of the states only in the mid-twentieth century. Until then, state governments remained the dominant force in taxation, economic regulation, the provision of public goods, and the management of the economy more broadly.

Some Illustrations of State Promotion of Economic Development

States in the early republic were remarkably active in the design of markets and the promotion of economic activity. Competition within the framework of market-preserving federalism fostered both state innovation and imitation of successful innovations by others. We illustrate this point with two examples, the evolution of state rules regulating banking and with government promotion of economic development through infrastructure provision.

Banking in the early United States. Developing countries often create privileges and rents in the design of new markets (North, Wallis, and Weingast 2009). This is easily seen in banking, where most developing countries restrict the number of banks to limit entry and sell bank charters as a means of creating economic rents that can be shared among the banks, the government, and specific citizens and firms who receive scarce loans (Haber 2005). Because the government has significant interests in banking, exchange of privileged rights often explicitly or implicitly grants the government privileged access to loans. Moreover, as Haber (2005) argues, organizing the banking sector in this way limits its ability to provide the basic banking functions of an economy, notably, mobilizing capital to highest valued users who create new enterprises or seek to expand profitable ones. Instead, most loans go to the government, insiders, high government officials, and their relatives. An inevitable consequence of this structure, therefore, is limited competitiveness of the financial sector and hence limits on the degree to which banks help foster long-term economic growth.

The United States was no exception to the rule about restricting entry to create rents shared among bankers and the government.[6] In 1800, most states used this system, including Pennsylvania whose commercial center of Philadelphia was the country's banking center.

At this time, states competed in an environment of strong market-preserving federal structure throughout the late eighteenth and nineteenth centuries. Consistent with the above conditions of market-preserving federalism states had nearly exclusive regulatory control over markets within their borders; they participated in a common market with product and factor mobility; and, they faced a hard budget constraint. Moreover, states raised virtually all of their own revenue. This structure allowed states to design and redesign the rules governing various markets.

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[6]Our discussion of banking in the early United States draws on Wallis, Sylla, and Legler (1994).

In the decade following 1800, Massachusetts slowly switched systems. Beginning with the monopoly approach, it created one large bank, in which it invested heavily, and several smaller banks. The state also imposed a tax on bank capital, which worked against the smaller banks: as the majority owner of the large bank, the state effectively paid part of its own tax. Over time, the state found it raised more taxes from the smaller banks than it did in dividends from the large bank.

The state's fiscal incentives led it to make two changes. It sold its interest in the larger bank; and it stopped limiting entry and selling charters. Under the new system, Massachusetts combined relatively low taxes on bank capital with more open entry into banking. This type of market gave Massachusetts banks a competitive advantage over all other U.S. banks. Merchants, enterprises, and transactions funded in Boston – such as financing, insuring, marketing, and transporting U.S. export crops to Europe – had an economic edge over their competitors from other states.

Under the new system, Massachusetts's fiscal incentives differ from those in all other states, including Pennsylvania. Because a competitive banking center maximizes the size of its tax base, Massachusetts now promoted the growth of a competitive banking sector. This system was so successful, that by the early 1830s, Massachusetts had more banks and more bank capital than any state in the country. It also received over 50 percent of its revenues from the tax on bank capital allowing it to make great reductions in the principal tax falling on its citizens, the property tax. This was a win-win policy for that state.

Based on its competitive banking sector, Massachusetts to eclipsed Philadelphia as the nation's banking center. A number of years later, New York also switched fiscal systems, emulating Massachusetts, and New York City eclipsed both Boston and Philadelphia as the nation's banking center. Many other states subsequently switched to the system that worked. Had the United States been a centralized federalism, as modern Mexico, the national government would have had little incentive to alter the original system of limited entry once it was in place.

Market-enhancing public goods in the early Republic. Early American governments devoted substantial resources to promoting economic development.[7] Remarkably, state governments, not the national government, played the central role as promoters of development. State financial efforts were nearly an order of magnitude larger than the federal government's. Between 1790 and 1860, state and local governments spent over $450 million on transportation improvements; in contrast, the federal government spent $60 million (Goodrich 1960).

Possessing millions of acres of virgin land, the early United States was an agrarian economy. Economic growth necessitated investment in both transportation infrastructure (roads, canals, and railroads) to open the frontier to markets and in banks to finance shipment of goods to markets. State governments financed both large-scale internal improvements and financial institutions (Callendar 1903, Goodrich 1960, Larson 2001). Many of the early projects, such as the Erie Canal, proved immensely profitable for the state.

Importantly, the state and national governments financed development projects in different ways. Congressional politics allowed the national government to finance

[7] This discussion draws on Wallis and Weingast (2006).

large collections of small projects (such as lighthouses), but not large projects concentrated in one state or a small number of states (Wallis and Weingast 2006). Congressional majorities would not finance large projects benefitting one or a few states while drawing taxes from the rest. In principle, the national government could have used benefit taxation to solve this problem – raising taxes for the project from the states in proportion to their benefits from the projects – but the Constitutional provisions for national taxation prohibited this. To the extent that the national government financed transportation investment, it did so through something for everyone programs. In contrast, states financed large projects using benefit taxes, assessing property owners in proportion to their expected economic gains from the new project. This fiscal mechanism allowed them to solve the political problems that plagued the national government.

This pattern of infrastructure finance bears on the question about the incentives for how limits on the power of the national government operated in early America. The Constitution created a series of political constraints that made it politically impossible for the federal government to finance large infrastructure projects. Federal efforts came either in form of financing large collections of small projects or formal allocation formulas to distribute funds to every state. In short, the national government was politically impotent with respect to the provision of the highest valued infrastructure projects. States filled this gap.

Other illustrations. In the same way, states carried out a host of policies, from the form and security of property rights to economic regulation. Moreover, states did not limit creation of rights and promotional policies to commerce. As Sokoloff and

Engerman (2000) demonstrate, suffrage represents an interesting case. Virtually all states at the time of independence had property restrictions on the vote. Universal (white) male suffrage tended to emerge on the frontier, as new territories and states sought to be attractive to scarce labor. The innovations of these states, in turn, forced established states to liberalize and remove their suffrage restrictions. Mariscal and Sokoloff (2000) make a similar argument for public education.

Problem Solving and Adaptive Efficiency

Political stability requires that countries adapt to changing circumstances, to solve problems as they arise, and to avoid disorder in the face of crises. Adaptation, in turn, requires that the different interests in society have a means of finding and implementing bargains that solve problems as they emerge. If the constitutional system lacks the ability to make the necessary agreements credible, then the bargaining parties will fail to solve their problems, not because a solution fails to exist but because they lack the means to find and implement this bargain credibly.

Following Hayek (1960), North (2005) calls a society's ability to solve problems and react to crises "adaptive efficiency." Mittal (2009) argues that adaptive efficiency reflects the epistemic features of a political system that allow or hinder it to learn and adapt as circumstances require (see also Ober 2008). Some countries are more likely to weather crises, even if severe. Other countries, such as those in Latin America and Africa, are prone to lapse into disorder and failure in the face of crises.[8]

[8] Using North, Wallis, and Weingast's terminology, these differences in performance reflect differences in limited access vs open access societies.

Adaptive efficiency is the central feature of the American Constitutional system, which has proved relative adept at allowing Americans to address problems and crises (Mittal 2009).[9] This adaptability was not inevitable, however. The unanimity requirement under the Articles prevented virtually all adaptation, even in the face of a wide range of debilitating cooperation failures and common pool problems. Had the Founders proposed a major revision of the Articles rather than proposing a bold, new plan to replace the Articles, it is unlikely that much of the adaptation under the Constitution would have occurred.

A central feature of the adaptive system was the invention of a new role for the legislature – the Congress. Many previous republics conceived of representative bodies more narrowly, for example granting them veto power to check the power of others who had the power to devise new proposals (such as a nobility in the Italian city-state republics). The Constitution instead granted Congress granted powers sufficient to create new legislation on an on-going basis. This modern legislative form is typical of legislative powers in the developed world today, but it was novel in 1787.

Turning to the specifics of adaptation, we have already discussed several ways in which the American system proved adaptive. With respect to financial institutions, the national government promoted aspects of national capital markets, particularly sound public credit and a national bank. Federalism, especially competition among jurisdictions, prompted states to address a range of problems as a means of promoting a healthy economy and out-competing rivals for scarce capital and labor and for the

[9] The essays in this volume show how, in a wide range of areas, the American Constitutional structure allowed Americans to devise solutions to a range of policy problems.

means of economic prosperity. Notable examples include the banking system and infrastructure to promote economic development. This system was not automatic, however, and often Americans faced seemingly intractable problems.

The most enduring and difficult problem that would episodically trouble Americans over their first century concerned sectional conflict, particularly over slavery. In the nineteenth century, the United States faced five sectional crises, conflicts between Northerners and Southerners over the nature of the Constitution and the future of the republic. In each crisis, the future of the country was at risk, and one – the fourth – resulted in a devastating Civil War when each of the proposed Compromises of 1861 failed. With considerable difficulty, Americans solved the other four crises. Those in 1820, 1833, 1850, and 1877, resulted in adaptation of the constitutional bargain through an official Compromise, congressional acts that typically resolved the immediate issue of the crisis but also set rules governing future policies.

None of these compromises officially amended the Constitution. And yet, each of the four compromises changed the rules of the political game, resulting in what Eskridge and Ferejohn (2001) call “super-statutes.” These statutes represent more than ordinary legislation and can therefore be thought of as small “c” constitutional changes, changes in the structure of the bargain underlying the political system.

From the beginning, of the republic, Americans had to confront the issue of whether one section, North or South, would gain the ability to dominate the national government. This issue underlay each of the five nineteenth century crises. Americans constructed the Constitution to balance the interests of the sections so that neither would dominate (Ellis 2000, Finkleman 1996, Rakove 1996). In particular, it provided a range of credible commitments to protect slavery, including federalism's decentralization of property rights to states, and the three-fifths clause granting Southerners additional representation in Congress based on their slaves (along with the clause prohibiting any law restricting the importation of slaves before 1808, allowing southern states to accumulate greater numbers of slaves).

Perhaps the most important credible commitment to protect slavery was the *balance rule*, the idea that the country would maintain an equal number of free and slave states (Weingast 1998, 2002). Sectional balance provided each section with a veto over national policymaking through equal representation in the Senate; in particular, it granted Southerners the ability to veto any national legislation over slavery. Sectional balance first emerged in 1796 with the admission of Kentucky (1792) and Tennessee (1796), bringing each section's delegation up to eight states. Americans maintained this balance through 1850 with the lone admission of California. Attempts to restore balance over the next decade (for example, the Kansas-Nebraska Act in 1854 and the 1858 attempt to admit Kansas as a slave state under so-called Lecompton constitution mired in allegations of voter fraud) added to the crisis.

A critical feature of sectional balance as a major institutional protection for slavery is that it required the two sections to grow in parallel, in turn requiring that each section have sufficient territory within which to expand. Three of the four antebellum crises emerged in moments when one section potentially had an edge, as in 1819-20, 1846-50, and 1854-61.

As an example, consider the Compromise of 1820. The immediate concern in the 1819 controversy over Missouri was whether to admit Missouri as a slave state.

With no obvious free territory looming in the wings, this admission would have tipped the balance in favor of the South, and Northerners reacted in the House of Representatives where they had a majority by admitting Missouri subject to conditions of gradual emancipation of all slaves. Southerners used their equal representation in the Senate to prevent this provision from becoming law, and a crisis ensued.

The Compromise of 1820 resolved the crisis on three different levels. First, it admitted Maine (broken off from Massachusetts) as a free state to balance the admission of Missouri, maintaining sectional balance. Second, it divided the remaining territories between free and slave, removing ambiguity as to their status and the uncertainty over the future disposition of those territories and the resulting states. Third, the Compromise made explicit the balance rule for the future admission in states. For the next three decades, states were admitted in pairs (Arkansas and Michigan in the mid-1830s; and Florida, Texas, Iowa, and Wisconsin in the mid-1840s). In similar ways, Congress passed compromises in 1833 and 1850 to resolve crises over sectional issues.

In all four antebellum crises, secession and the potential failure of American Constitution and democracy were live issues, as demonstrated by the secession winter of 1860-61 and following Civil War. American constitutional stability, therefore, rested on the ability of Americans to resolve their differences and to provide solutions to new problems as they arose.

Thinking broadly to include federalism and the engine of competition among the states, the Constitution created a framework within which Americans could resolve most of their problems, including the most vexing one of slavery and the balance between the two sections within the Union. Although this framework failed to create a solution in 1861, the constitutional system did allow Americans to resolve their conflicts for three generations prior to the Civil War. This framework provided the basis for on-going cooperation between the section and to foster specialization and exchange of a growing economy. In addition, twenty-five years after the start of the Civil War, Southern states had been readmitted on roughly the same terms as they had left, with the major change being the abolition of slavery.

Conclusions

The most striking contribution of the Constitution – and one too often taken for granted – was the creation of a successful, stable, republican government: a government capable of adapting to the wide variety of changes that future generations would bring. Without this accomplishment, the United States is unlikely to have achieved its long-term history economic growth. In contrast to the Articles, which provided incentives for states to defect, the Constitution created a system in which Americans could cooperate to solve a range of problems.

In the Constitution's first decade, new policies addressed a range of problems, most notably the policy failures under the Articles: problems of public finance, including raising sufficient revenue, retiring existing debt, and creating the basis for new debt when needed; asserting control over the frontier; trade policies aimed at the flooding of foreign goods on the American markets and the closing of foreign ports to American shipping; enforcing provisions of the Treaty of Paris; and limiting a range of common pool problems among the states, such as internal trade barriers.

The Constitution also provided the means and incentives for Americans to solve new problems as they arose. Many solutions occurred directly through congressional policymaking. We illustrated this point with the various compromises aimed at solving the episodic problems that arose around slavery and the territories. The Constitution also created indirect incentives for Americans to solve their problems through the market-preserving federalism. States not only had incentives to create strong systems of property and other rights as a means of competing against neighboring states, but to adapt their policies and institutions as circumstances changed. With respect to banks, for example, states originally created a system of local monopolies; but gradually, following the innovations in Massachusetts, states moved to a system of competitive banking. By the Civil War the United States had more banks than any other economy. Competition among the frontier territories and states for scarce capital and especially labor led them to expand political rights and education, resulting in universal enfranchisement, at least for white males.

The result was one of the biggest common markets in the world, largely free of government regulation. In combination, the national and state governments provided a secure environment for investment with an relative absence of political opportunism or threat of expropriation. Significant specialization and exchange resulted, producing long-term economic growth.

References

Callendar, Guy Stevens. "The Early Transportation and Banking Enterprises of the States." *Quarterly Journal of Economics* , vol. XVII, no. 1, 1902.

Einhorn, Robin. 2006. *American Taxation, American Slavery.* Chicago.

Ellis, Joseph J. 2000. *Founding Brothers: the Revolutionary Generation.* New York : Alfred A. Knopf.

Engerman, Stanley L., and Kenneth L. Sokoloff. 1997. “Factor Endowments, Institutions, and Differential Paths of Growth among New World Economies: A View from Economic Historians of the United States,” in Stephen H. Haber, ed., *How Latin America Fell Behind.* Stanford: Stanford University Press.

Eskridge, William N., and John Ferejohn. 2001. "Super-Statutes," *Duke Law Journal* 50: 1215.

Farrand, Max. 1966. *The records of the Federal Convention of 1787.* New Haven: Yale University Press.

Finkelman, Paul. 1996. *Slavery and the Founders: Race and Liberty in the Age of Jefferson.* Armonk, NY: M.E. Sharpe.

Goodrich, Carter. 1960. *Government Promotion of Canals and Railroads, 1800-1890.* Columbia University Press.

Handlin, Oscar, and Mary Handlin. 1947. *Commonwealth: A study of the Role of Government in the American Economy, Massachusetts, 1774-1861.* New York: New York University Press.

Hartz, Louis. 1948. *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860*. Cambridge, Mass.: Harvard University Press.

Hayek, Friederich A. 1960. *The Constitution of Liberty*. Chicago: University of Chicago Press.

Hendrickson, David C. 2003. *Peace Pact: The Lost World of the American Founding*. Lawrence, Kansas.

Hofstadter, Richard. *The Idea of a Party System*. Berkeley: University of California Press, 1969.

Holt, Michael F. *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War*. New York: Oxford University Press, 1999.

Hughes, Jonathan. 1977. *The Governmental Habit*. New York: Basic.

John, Richard R., 1995. *Spreading the News: The American Postal System from Franklin to Morse*. Cambridge and London: Harvard University Press.

Kammen, Michael G. 1986. *A Machine That Would Go of Itself : the Constitution in American Culture.* New York : Knopf.

Landau, Martin. 1973. "Federalism, Redundancy, and System Reliability," Publius. 3(2): 173-196.

Landau, Martin. 1969. "Redundancy, Rationality, and the Problem of Duplication and Overlap," Public Administration Review. 29(4): 346-358.

Larson, John Lauritz. 2001. *Internal Improvement: National Public Works and the Promise of Popular Government in the Early United States.* Chapel Hill: University of North Carolina Press.

Madison, James. 1787. "Vices of the Political system of the United States." http://press-pubs.uchicago.edu/founders/documents/v1ch5s16.html (Accessed, January 8, 2009).

Mariscal, Elisa, and Kenneth L. Sokoloff. 2000. "Schooling, Suffrage, and the Persistence of Inequality in the Americas, 1800-1945," in Stephen Haber, ed., *Political Institutions and Economic Growth in Latin America: Essays in Policy, History, and Political Economy.* Stanford: Hoover Institution Press.

McDonald, Forrest. 1985. *Novus Ordo Seclorum: The Intellectual Origins of the Constitution.* Lawrence, Kan.: University Press of Kansas.

Mittal, Sonia. 2008. "A Necessary Precaution: The Separation of Powers and Political Stability" Paper presented at the annual meeting of the MPSA Annual National Conference, Chicago, Ill, April.

Mittal, Sonia. 2009. "Democratic Stability in America" Working Paper, Department of Political Science, Stanford University.

Nelson, Eric. 2004. *The Greek Tradition in Republican Thought*.

North, Douglass C. 1961. *The Economic Growth of the United States: 1790-1860.* New York: W.W. Norton.

North, Douglass C. 2005. *Understanding the Process of Economic Change*. Princeton: Princeton University Press.

North, Douglass C., John Joseph Wallis, and Barry R. Weingast. 2009. *Violence and Social Orders: A Conceptual Framework to Interpret Recorded Human History.* Cambridge: Cambridge University Press.

Oates, Wallace. 1972. *Fiscal Federalism*. New York: Harcourt Brace Jovanovich.

Ober, Josiah. 2008. *Democracy and Knowledge: Innovation and Learning in Classical Athens*. Princeton: Princeton University Press.

Onuf, Peter S. 1983. *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787.* Philadelphia.

PJM: Papers of James Madison.

Rakove, Jack N. 1979. *The Beginnings of National Politics: An Interpretive History of the Continental Congress*. New York: Knopf.

Rakove, Jack N. 1996. *Original Meanings: Politics and Ideas in the Making of the Constitution*. New York: Knopf.

Riker, William H. 1987. "The Invention of Centralized Federalism," in his, *The Development of American Federalism.* Boston: Kluwer Academic Publishers.

Sokoloff, Kenneth L., and Stanley L. Engerman. 2000. "Institutions, Factor Endowments, and Paths of Development in the New World," *Journal of Economic Perspectives*. 14(3): 217–232.

Tiebout, Charles. 1956. "A Pure Theory of Local Expenditures," 64 *Journal of Political Economy* 416-24.

Wallis, John Joseph. 2007. "American Government and the Promotion of Economic Development In the National Era, 1790 to 1860" in Price Fishback, et.al. (eds). *Government and the American Economy*. Chicago: University of Chicago Press.

Wallis, John Joseph and Barry Weingast. "Equilibrium Federal Impotence: Why the States and Not the American National Government Financed Infrastructure Investment in the Antebellum Era." NBER Working Paper #11397, June 2005.

Weingast, Barry R. "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development." *Journal of Law, Economics, and Organization* (Spring 1995) 11: 1-31. 1995.

Weingast, Barry R. 1998. "Political Stability and Civil War: Institutions, Commitment, and American Democracy," in *Analytic Narratives*, Robert Bates, Avner Greif, Margaret Levi, Jean-Laurent Rosenthal, and Barry R. Weingast, Princeton: Princeton University Press.

Weingast, Barry R. 2002. *Institutions and Political Commitment: A New Political Economy of the American Civil War Era*. Unpublished Book Manuscript, Hoover Institution, Stanford University.