

# In Case You Missed...

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## ‘Hostiles’ and Hollywood’s Untold Story

Hollywood’s recent attempt to depict Frontier life captures the reality of “hostiles” shooting various weapons at one another, but the real history is more interesting, Jada Thacker explains in this essay.

By Jada Thacker

A theatrical poster for the recent American Western movie “Hostiles” depicts its principal characters – a Frontier widow, a hardboiled Indian fighter, and an Indian chief – with a helpful blurb stating the story’s theme with the subtlety of a striking rattlesnake: “We are all hostiles.”

Some critics think the movie somehow ought to have been a different one – that it should have included a bit more of this, or a bit less of that...whatever. Maybe they have a point. Though it hardly seems fair to ding “Hostiles” for being an imperfect example of the ideal Frontier fantasy.

But it is fair to criticize a movie for being a perfect example of a movie genre

that consistently ignores the most essential themes of the American Frontier. "Hostiles" succeeds brilliantly as the latest addition to a very long list of movies that focus laser-like attention on hostile Frontier characters, rather than on the consequences of Frontier hostility.

The American Frontier was not, as Hollywood formerly portrayed it, merely a canvas background prop for a violent soap box drama starring Cowboys & Indians – or, as more recently re-imagined, an ethnic melodrama featuring white Bad Guys versus Noble Indian resistance.

Nor can the American Frontier be considered a particularly hostile place without expunging from history the slaughter-grounds of Cannae, Verdun, Stalingrad, or even America's own Gettysburg – each of which produced more bloated corpses than any number of Wild Wests. In an encyclopedia of human violence, the massacres at the Little Bighorn and Wounded Knee would be relegated to a footnote.

Yet, the significance of the American Frontier endures. William Faulkner was not referring to the Frontier experience when he said, "The past is never dead. It's not even past," but he was right.

Unacknowledged by the silver screen, contemporary America remains as hostile as it ever was to the Frontier dwellers of tee-pees, log cabins, wigwams, or army outposts. Every American today who rages at corrupt and incompetent government, who counts out their pennies for rent or mortgage, or who despairs of the growth-driven, mechanized rape of the American landscape can thank the American Frontier experience for their trouble.

### **Frontier Anarchy**

No government existed in North America at the time of European contact. The societies that pre-existed there lived in a condition of anarchy.

Although the term "anarchy" is used casually to denote a condition of chaos, it literally refers only to a society without government (from the Greek: *a* [without] + *archy* [rulers]). Anarchy is the *voluntary* self-organization of people without the use of authoritative force. Thus, anarchy does not denote an absence of social order, but only the absence of a *forcible* social order.

Anarchy is not an exception to human organization, but the rule – if we can forgive the pun. All non-governmental organizations are anarchic, voluntary associations: sports teams, business entities, civic groups, church congregations, trade unions, symphony orchestras, and marriages included. American Indian societies had thrived just so without authoritative force for some 20,000 years before Europeans appeared to set things straight.

Immediately upon European arrival, the Frontier materialized as a lethal No Man's Land where the alien hierarchical order of government clashed catastrophically with indigenous anarchy. At issue was not just the survival of hostile individuals, but the survival of fundamentally hostile political cultures.

Unlike anarchy, government has nothing to do with the voluntary self-organization of society. Nobody ever volunteers to be arrested, pay fines, go to jail, or be executed – or pay the taxes necessary for doing so to others. And no such elements of coercion existed in North America prior to the importation of European authoritarianism. (When so-called “democratic government” later purported to banish British tyranny, it made certain to keep prisons and capital punishment intact.)

Moviegoers, no less than movie-makers and history textbooks, blithely assume that Indian leaders wielded the same authority as did government officials in white society. Not so. Indians had no officials because they had no offices. Indian chiefs led by example and inspiration only; they possessed no more coercive ability than a scoutmaster or a captain of a football team.

In any event, Indians had no written laws that begged enforcement. Anarchic political culture does not depend on the enforcement of rules and regulations, but upon free consent to them. A Wikipedia article summarizes the Abenaki people's consensual customs:

“Group decision-making was done by a consensus method. The idea is that every group (family, band, tribe, etc.) must have equal say, so each group would elect a spokesperson. Each smaller group would send the decision of the group to an impartial facilitator.

“If there was a disagreement, the facilitator would tell the groups to discuss again. In addition to the debates, there was a goal of total understanding for all members. If there was not total understanding, the debate would stop until there was understanding.

“When the tribal members debate issues, they consider the Three Truths: Peace: Is this preserved? Righteousness: Is it moral? Power: Does it preserve the integrity of the group?

“These truths guide all group deliberations, and the goal is to reach a consensus. If there is no consensus for change, they agree to keep the status quo.”

Not all Indian self-organization was this formal, but it all was intensely democratic. The hierarchical European political culture which ruled by indelible

law, dictated by police and military forces and financed by forcible taxation, decidedly was not.

The collision of anarchy and government in America was not a melodramatic struggle between “good” and “evil.” But it did involve a spiritual choice – between a circle and a pyramid.

The Indian way was represented by a circle or hoop, symbolized physically by the Puebloan people’s *kiva*, a circular, ceremonial meeting place. The Lakota and other tribes conceived of universal order as a hoop. The symbolic meaning is one of balance and equality, with each member of society located equidistant from a common core. Indian leaders did not occupy the position of “top dog” or “king of the hill” but as central mediators among equals.

In contrast, all civilizations – including the white civilization that hovered in the wings of the Frontier stage – are pyramidal structures. In pyramidal culture, authority resides at the apex and flows only downward, forcibly if necessary. While pyramidal culture was not unique to the colonizing European culture of the day – Ancient Egyptians and Aztecs expressed their pyramidal culture in stone, just as current organization charts express our pyramids on paper – it was utterly foreign to the Indian consciousness.

So-called “Indian Nations” were conceptual fallacies that did not in fact exist. Even the famous Iroquois League, or Haudenosaunee, was not an example of “Indian government” and certainly not of pyramidal structure. It was a decentralized, voluntary confederacy – a hooplike “League of Peace” (ca.1140 – 1784) of its six constituent tribes – not a hierarchical command-and-control structure that dominated Indian society.

### **Frontier Economics**

Lest the Right-Libertarians among us applaud too loudly the absence of Big Government (or any government) in Indian society, the central conflict between white and red men (a term Indians used to describe themselves) was a contest between individualistic vs. collective property rights.

To be clear, Indians had a keen sense of territorial sovereignty. But this did not include personal property ownership, which was both unknown and an anathema to the Indian way. T.R Fehrenbach, a notable commentator on Frontier culture and author of the encyclopedic *Comanches: The History of a People*, put it simply:

“Hypocrisy was perhaps inevitable in a people [whites] who convinced themselves that they were creating something new in the New World, while actually carrying out the most primordial form of conquest.”

But then he adds:

“Amerindians resisted all sincere imitation of their conquerors. Broken warriors refused to become economic men, to accept the concept of private property or the discipline of incessant labor.”

Quite frankly, the Comanche people (the *Nermernuh*) of whom Fehrenbach spoke were without doubt the most rapacious Indians that whites ever encountered. (Other Indians were intimidated by them, too, and for good reason, a point “Hostiles” duly observes.) Alongside hunting buffalo, raiding and stealing constituted the *raison d’etre* of their predatory society.

In fact, hostility and theft generally characterized Indian between-group behavior both before and after European arrival; they did not need the presence of whites to justify their elevation of lethal larceny to an art form. By the same token, European pioneers needed no particular excuse to exterminate Indians, or each another, while committing Grand Theft Continent.

Ironically, armed robbery was the primary economic activity whites and Indians shared in common. “Making a killing” by “hostile takeovers” of others’ property is not a new pony trick invented by corporate raiders.

But the ruthless exploitation of one’s own kinsmen and their resources is something else. This was as unthinkable to tribal peoples as it was premeditated by the bringers of civilization. The privatization of shared resources proved to be the profound and irreconcilable issue that separated the two peoples’ concepts of economic justice.

Even in abject defeat, Indians never shared the whites’ notion that the land’s resources could, or should, be monopolized as private property. Since Indians perceived themselves essentially as children of the Earth, private ownership of land made no more sense to them than a child claiming to own its parents.

Unlike whites, the Indian concept of territory was communal. What they possessed in common they defended in common. Their view of communal property rights flowed naturally from their egalitarian culture, which did not tolerate landlords or economic class distinctions.

Within any Indian band, no privileged economic class could exist simply because there was no hierarchical power structure to sustain one. Since no Indian had the power to control the food supply of another, they were liberated at birth from the private monopolization of the “means of production.” Possession of property was not justified by individual privilege but was their common birthright.

Thus, Indian society was devoid of both private property and the State. This is inconvenient news for today's Marxists and Right-Libertarians, alike.

Indian society repudiated the Right-Libertarian (anarcho-capitalist) notion that individual liberty requires the sanctity of private property ownership. No humans have exercised more individual liberty, nor owned less private property, than American Indians. Ownership of private property – which cannot and does not exist in the absence of government-sanctioned privilege – would not have conferred any liberty to Indians they did not already possess.

At the other end of the economic spectrum, Indian society also belied the Marxian notion that economics is determined to evolve from capitalism, through socialism, to the ideal of communism. In reality, American Indians had beat Marx to the punchline 20,000 years before he set pen to paper.

In modern parlance, Indians were communists long before communism was cool. Contemporary Indians may disavow Marx as an industrial materialist with no respect for their spiritual way; that doesn't mean their people were not original communists, but only that they are not Marxists.

Marx was the latecomer – and then he got it all backwards. The American Frontier experience graphically demonstrated that humanity was not advancing toward a stateless, economic Utopia but was rooting out and laying waste to prehistoric communism wherever it still persisted.

All "isms" aside, reality reveals that whoever exercises effective ownership of a place rules it for their benefit. First and foremost, the Frontier was a place of a hostile and involuntary transfer of economic property from communal Indian ownership into the itchy palms of the private white owners who usually stood at the apex of an authoritarian pyramid.

### **Frontier Ecology**

Pre-contact Indians lived in Stone Age societies. They possessed no metal implements, and the highest level of tool technology available to them employed only stone, bone, and clay.

In *Stone Age Economics*, Marshall Sahlins famously referred to Stone Age people as the "original affluent society" – not because they possessed much material wealth, but rather because they required so little and because their modest needs were so readily fulfilled when compared to the far greater requirements of us Moderns.

On the other hand, we would be mistaken to believe Indians were conscious "environmentalists." Like any society, theirs took from nature what was needed

for survival. Stone Age people had no reason to conserve that which was beyond their power to despoil.

As Sahlins "original affluence" implies, the trick to achieving environmental sustainability does not lie in *not taking* what is needed, but in *not needing to take* more than the environment can afford. "What the environment can afford" is known in ecology-speak as *carrying capacity*.

More formally stated, carrying capacity is the ability of the environment to sustain a given population of organisms indefinitely. "Sustain" usually means "to feed" and "indefinitely" simply means "with no end in sight." Thus, a given number of organisms that continues to live (and reproduce) within the means of its food-energy supply is "ecologically sustainable."

In any event, "living sustainably" should not be conceptualized as "living in harmony with nature." Nature is not a Barbershop Quartet. Nature is nothing if not a relentless, biological gang fight encompassing every organism on the planet. Each organism will lose the fight eventually, only to decompose into the itinerant molecules from which it was temporarily pasted together.

In fact, the natural *danse macabre* preserves ecological balance at the expense of harmony. Any cosmic harmony on the American Frontier, existed only under the influence of mezcal and peyote.

Moreover, just because an organism manages to survive individually does not imply that it lives in a sustainable society. Sustainability requires that a given *number* of organisms must be able to survive *indefinitely*. No environmental carrying capacity can sustain too many needy organisms, or even a few organisms that consume more food-energy than the environment can replace.

By any measure, however, American Indians had been living sustainably for millennia before Europeans waded ashore with their metallurgy, animal husbandry, intensive agriculture, literacy – and their marked tendency toward epidemic plagues, famine, industrialized warfare, and commercial-grade slavery. Upon arrival, the benighted invaders found practically nothing to remind them of their ecologically stressed homelands, which they had abandoned.

Nowhere in America did the colonizers find the privation, starvation, social depravity, and ecological wastage that characterized their soil-ravaged and forest-denuded homeland. Having accidentally stumbled upon a Stone Age population that lived sustainably, civilized Europeans set about at once to destroy it, as they had done at home. Indeed, had Europeans possessed a sustainable culture, they would not have needed to ditch their depleted continent in search of lootable resources elsewhere.



The supreme irony of the Old-World invasion was that Europeans never realized the “savages” inhabiting the Americas were practically identical to their own ancestors, though a couple of hundred generations removed. Ecologically, the European invasion did not represent the wave of the future, but a retrogression to their own Edenic past.

The environmental devastation that had taken several thousand years to accomplish in Europe was replicated in three centuries in the Americas. Such was the price and the speed of the “progress” achieved on the American Frontier.

### **Frontier Armageddon**

The Frontier did not disappear just because the westward movement had run out of geographical space, its few Indian survivors having been herded into open-air prisons. Rather, the Frontier itself was destroyed by the westward migration of the Industrial Revolution – a truly monstrous creation of unrelenting factory toil, rolling on steel rails, powered by steam, and financed by perpetual human servitude to debt.

The terminal theme of the Frontier was not to be man’s conquest of nature, or even of man’s conquest of other men, but instead the industrial conquest of humanity. Metastasizing far beyond the “primordial form of conquest” of Indians by hypocritical whites, this final act of destruction was so complete that not even whites survived it.

A Stone Age world bound by blood kinship, loyalty, courage, intuition and revenge was within a single lifetime displaced by the depersonalized tyranny of contract law, freight schedules, time zones, taxes, universal debt and ‘no trespassing’ signs. Proud Indian warriors, brave Texas Rangers, indomitable pioneer sod-busters – all alike swept away only to be reincarnated by industrialized karma as sweatshop wage-slaves, coal mining troglodytes, and corporate lackeys.

After this cataclysm, we can rely on Hollywood to remind us now and again that the Frontier was where some hostile hombres ran amok shooting various weapons at one another – as if that is not the daily fare of modern-day America. The theatrical poster blurb “We are all hostiles” could be a permanent contemporary subtitle to American civilization.

But the American Frontier was not a blurb or a subtitle. It was a war that raged westward for 300 years before its place was lost to history. Yet, the ultimate loss of the Frontier was not *by* those fortunate few who once lived within the warzone; the greater loss was *to* those unfortunate multitudes who were fated to live thereafter without it. And that would be us.

Possibly lost to us forever has been our egalitarian self-determination, our common possession of the means of survival, our ecological sustainability, and our sense of the primacy of personal human worth. These hallmarks of human society have been eradicated so thoroughly that even celluloid fables of our own history betray hardly a trace of their multi-millennial existence. Unwilling to recall such a way of life, we retell only tales of hostility that surrounded its death.

But lest old acquaintance be forgot and never brought to mind, Americans everywhere now commemorate the first day of each calendar month with a nagging sense of loss – as befits the date on which the rent is due in this erstwhile Land of the Free.

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## The Right's Made-up Constitution

**From the Archive:** On the U.S. Constitution's 230<sup>th</sup> birthday, many Americans don't realize that the document actually gives the federal government broad powers to provide for the nation's welfare, as Jada Thacker noted in 2013.

By Jada Thacker (Originally published on July 6, 2013)

The Cato Institute's *Handbook for Policy Makers* says, "The American system was established to provide limited government." The American Enterprise Institute states its purpose to "defend the principles" of "limited government." The Heritage Foundation claims its mission is to promote "principles of limited government." A multitude of Tea Party associations follow suit.

At first glance the concept of "limited government" seems like a no-brainer. Everybody believes the power of government should be limited somehow. All those who think totalitarianism is a good idea raise your hand. But there is one problem with the ultra-conservatives' "limited government" program: it is wrong. It is not just a little bit wrong, but demonstrably false.

The Constitution was never intended to "provide limited government," and furthermore it did not do so. The U.S. government possessed the same constitutional power at the moment of its inception as it did yesterday afternoon. This is not a matter of opinion, but of literacy. If we want to discover the truth about the scope of power granted to federal government by the Constitution, all we have to do is read what it says.

The Constitution's grant of essentially unlimited power springs forth in its opening phrases: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

As might be expected in a preamble to a founding document, especially one written under supervision of arch-aristocrat Gouverneur Morris, the terms are sweeping and rather grandiose. But the point is crystal clear: "to form a more perfect Union." If the object of the Constitution were to establish "limited government," its own Preamble must be considered a misstatement.

### **Enumerated Powers**

Article I establishes Congress, and Section 8 enumerates its powers. The first clause of Article I, Section 8 repeats the sweeping rhetoric of the Preamble verbatim. While it provides for a measure of uniformity, it does not so much as hint at a limit on the federal government's power to legislate as it sees fit:

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"

No attempt is made here, or at any other place in the Constitution, to define "general Welfare." This oversight (if that is what it was) is crucial. The ambiguous nature of the phrase "provide for the general Welfare" leaves it open to widely divergent interpretations.

Making matters worse for federal government power-deniers is the wording of the last clause of Article I, the so-called "Elastic Clause": Congress shall have power "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Thus the type, breadth and scope of federal legislation became unchained. When viewed in light of the ambiguous authorization of the Article's first clause, the importance of the "necessary and proper" clause truly is astonishing. Taken together, these clauses restated in the vernacular flatly announce that "Congress can make any law it feels is necessary to provide for whatever it considers the general welfare of the country."

Lately there has been an embarrassingly naive call from the Tea Party to require

Congress to specify in each of its bills the Constitutional authority upon which the bill is grounded. Nothing could be easier: the first and last clauses of Article I, Section 8 gives Congress black-and-white authority to make any law it so desires. Nor was this authority lost on the Founders.

“Limited government” advocates are fond of cherry-picking quotes from *The Federalist Papers* to lend their argument credibility, but an adverse collection of essays called the *Anti-federalist Papers* unsurprisingly never gets a glance. Here is a sample from New Yorker Robert Yates, a would-be founder who walked out of the Philadelphia convention in protest, written a month after the Constitution had been completed:

“This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends. The government then, so far as it extends, is a complete one. It has the authority to make laws which will affect the lives, the liberty, and the property of every man in the United States; nor can the constitution or the laws of any state, in any way prevent or impede the full and complete execution of every power given.”

Yates, it must be emphasized, took pains to identify the “necessary and proper” clause as the root of the “absolute power” inherent in the Constitution well over a year before ratification.

### **The Tenth Amendment**

A particular darling of secession-prone, far-Right Texas Gov. Rick Perry, the Tenth Amendment is often claimed as the silver-bullet antidote for the powers unleashed by the “general welfare” and “elastic clauses.” Here is the text of the Amendment in its entirety: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Superficially, the Tenth seems to mean “since certain powers are not delegated to the federal government, then those powers are reserved to the states or the people.” This would seem to be good news for champions of limited government. But this is not the case.

The Tenth does *not* say that important powers remain to be delegated to the United States. It merely says that powers “not [yet] delegated” are “reserved” to the states or the people. This sounds like a terrific idea until we realize, of course, that all the important powers had *already* been delegated in 1787, four years before the Tenth Amendment was ratified.

As we have seen, the first and last clauses of Article I, Section 8 made the Tenth Amendment a lame-duck measure even as James Madison composed its words in

1791 and so it remains today. The sweeping powers “to make all laws necessary and proper” in order to “provide for the general welfare,” had already been bestowed upon Congress. The Johnny-come-lately Tenth Amendment closed the constitutional pasture gate after the horses had been let out.

This apparently has never occurred to the likes of Gov. Rick Perry and his far-Right cohorts who believe a state may reclaim power by withdrawing its consent, in effect repossessing their previously delegated power through state legislation. Superficially, the logic of this position seems sound: if the states had the legal authority to delegate power, then they may use the same authority to “un-delegate” it by law.

But a close re-reading of the Tenth’s wording nixes such reasoning. Oddly, the Tenth Amendment does not say the *states* delegated their powers to the federal government although it may be argued that it probably ought to have said so. It says “The powers not delegated to the United States *by the Constitution* are reserved to the States. ”

Thus, according to the Tenth Amendment, the Constitution *itself* delegated the power to the federal government. States, in other words, now have no standing to “reserve-back” what they had never “delegated-away” in the first place.

Had it been possible to “un-delegate” the powers of the United States by invoking the Tenth, the Old South would have simply done so and spared itself the bother of secession not to mention the bother of being annihilated by a series of subsequent Northern invasions. The fact that the South did not even attempt such a strategy attests to the toothlessness of the Tenth Amendment.

No other instance in law would be a better example that we should choose our votes carefully. For in ratifying the Bill of Rights, which included the Tenth Amendment, the American people endorsed the legal fiction that the Constitution not the original 13 states, or “We the People” authorized the power of the United States *because the Constitution itself said so*. If the Constitution has an Orwellian twist, this is it no matter which side of the aisle you’re on.

The states and the people may amend the Constitution. But they may not do so by nullification (according to the logic inherent in the wording of the Tenth Amendment), or by the judgment of state courts (according to the “supremacy clause” of Article VI), nor may any Amendment be made without the participation of the federal government, itself (according to Article V.) If the Founders had meant to ensure “limited government,” there is no trace of such intent here.

### **Paucity of Rights**

If the Constitution were intended to provide “limited government,” we might

expect it to be chock full of guarantees of individual rights. This is what Tea Partiers may fantasize but this is not really true. In fact, the Constitution is amazingly stingy in reference to “rights.”



The word “right” is mentioned *only once* in the Constitution as ratified. (Art. I, Sec. 8 allows Congress to award copyrights/patents to ensure their holders “Right to their respective Writings and Discoveries.”)

The word “right” somewhat counter-intuitively appears only six times in the ten Amendments called the “Bill of Rights.”

Almost a century later, the first of seven other rights were added under pressure from Progressive activists almost all of which were intended to create and extend democratic participation in self-government.

Amendment XIV (sanctions against states denying suffrage); XV (universal male suffrage); XIX (women’s suffrage); XXIV (denial of poll tax); and XXVI (18 year-old suffrage); and twice in Amendment XX, which gives Congress the “right of choice” in presidential succession.

In grand total, the word “right” appears only 14 times in the entire Constitution, as it exists today (including the two rights conferred to *government*).

Did we all notice that the “Constitution of the Founders” did not include the “right” for anybody at all to vote? Notable, too, is the absence of language implying that any “rights” are “unalienable” or “natural” or “endowed by their Creator.” All such phraseology belongs to the Declaration of Independence, which apparently unbeknownst to Tea Partiers everywhere bears no force of law.

The word “power,” by the way, occurs 43 times in the Constitution, each time referring exclusively to the prerogative of government, not right-wingers. Since “individual” rights are mentioned only 12 times, this yields a ratio of about 4:1 in favor of government power over individual rights. Without the efforts of those pesky, democracy-mongering Progressives, who fought for universal voting rights, the ratio would be more than 6:1 today or 50 percent higher.

This statistical factoid is not as trivial as it may appear. Expressed in practical terms, Michele Bachmann, Sarah Palin or Clarence Thomas would almost certainly never have achieved public office had they lived under the “limited government” designed by the Founders they so revere.



## The Bill of Rights

So what exactly are our non-patent/copyright “rights,” under so-called “limited government?”

Amendment I the right of people “peaceably to assemble, and to petition the government for redress of grievances”

Amendment II the right “to keep and bear arms, shall not be infringed”

Amendment IV the right “to be secure against unreasonable searches or seizures”

Amendment VI the right “to a speedy and public trial”

Amendment VII the right “of a trial by jury”

Amendment IX enumeration “of certain rights” shall not deny “others retained by the people”

That’s it. What happened to the famous rights of free speech, religion or press? The way the First Amendment is worded does not enumerate these as positive rights that people possess, but rather as activities the government may not infringe upon. If Bill of Rights author James Madison had meant to stipulate them as positive “rights” all he had to do was write it that way, but he did not.

Bear in mind Madison (then a federalist) wrote the Bill of Rights under political duress. Since anti-federalists (recall the skepticism of Robert Yates) flatly refused to ratify the Constitution unless it guaranteed *something*, Madison had to write *something*. In effect, the amendments were the pig the anti-federalists had bought in the poke, three years after ratification had paid for it.

Madison, at the time of writing, had little incentive to take pains with what he wrote because federalists did not believe a Bill of Rights was necessary, or even good idea (with Alexander Hamilton arguing a Bill of Rights would be “dangerous.”) This may account for the fact that some of what Madison wrote seems vague, or even ambiguous, as in the case of Amendment II.

Amendment IX, for example, actually makes little sense, which may account for the fact nobody ever seems to mention it: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

This sounds “righteous” enough, until we recall the Constitution to which this Amendment pertains had “enumerated” only a single right in the first place! Even

if Amendment IX applies to the Bill of Rights (to include itself), then all it says is “the people may have more rights than the half dozen mentioned so far, but we’re not going to tell you what they are.” (So if Amendment X is Orwellian, Amendment IX verges on Catch-22.)

Of course the idea was to calm suspicions that people would possess only the half-dozen rights enumerated in the Bill of Rights (plus patents!) and no others. Even so, Amendment IX did not guarantee any un-enumerated rights; it just did not peremptorily “deny or disparage” any.

And what sense should we make of the crucial Amendment V one of the four Bills of Rights not actually containing the word “right” at all?

**“No person shall be** held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be **deprived of life, liberty, or property**, *without due process of law*; nor shall private property be taken for public use, without just compensation.” [Emphasis supplied]

Thus, life, liberty and property are *not* expressly granted status as fundamental “rights,” but only as personal possessions that may be deprived or taken according to “due process.” The crucial implication is that Amendment V exists *in order to stipulate how the government may deny* an individual claim to life, liberty or property. *With* due process, you life, liberty and property may be toast. That is what it plainly says.

It is interesting, too, that the Bill of Rights does not speak to the origin of rights, but only to their existence. Moreover, the Constitution never speaks of granting rights, but only protecting them. There is a good reason for this: excepting the Progressive suffrage Amendments, none of the guaranteed rights were American inventions, but had for centuries been considered the rights of the English nobility.

For those who want to believe in “American Exceptionalism” as the basis of “limited government,” this is not encouraging news. Moreover, the Constitution, including the Bill of Rights, hardly includes any “right” that had not already been recognized at one time or another by medieval English monarchs or in ancient Rome and Greece.

### **Property Rights and ‘Republic’**

The strict libertarians among us claim the sole legitimate power of government

is that which is necessary to protect private property rights. On this score, however, the “limited government” of the Founders is practically mute. Except for the aforementioned Article I, Section 8 provision for patents and copyrights, private “property” is only mentioned twice in the Constitution, both times in a single sentence of the “right”-less Amendment V quoted above:

“No person shall be deprived of life, liberty or **property** *without due process of law*; nor shall private **property** be taken for public use, *without just compensation*.” [Emphasis supplied]

Once again, Amendment V fails to guarantee personal immunity from the power of the state, but rather details the way state power may be used to dispossess individuals of their property. And we must bear in mind these words were not penned by Marxists, socialists, or Progressives.

Whether by design or happenstance, the original “Constitution of the Founders,” or the Bill of Rights, or even the Constitution with all its Amendments does not grant any irrevocable “right of possession” to property. Even the Second Amendment’s “right to keep” arms, is subject to the terms by which property may be taken under terms of Amendment V, and it always has been.

Tellingly, the word “democracy” does not appear in the Constitution. This intentional oversight is often smugly celebrated by anti-democrats among us, who insist that the United States of America was founded as a “republic.” No doubt this is true, given that the Constitution was written by an exclusive, hand-picked cadre of oligarchs, whose number did not include a single woman, person of color, or wage-earner.

Unfortunately for the pro-republic “limited government” crowd, the Constitution does not contain the word “republic” either. The word does appear as an adjective, but only once, (Article IV, Section 4): “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them from Invasion”

Typically for the Constitution, which defines few of its terms, the word “Republican” also remains unexplained. The ambiguity of the term turned out to be handy, however, as Radical Republicans continuously and egregiously violated Article IV, Sec. 4 from 1865-1877 as they enforced blatantly unconstitutional military occupation of former Confederate states during the gross misnomer of “Reconstruction.”

It should be obvious that the “Constitution of our Founders,” including the Bill of Rights, may not protect as many rights as many wish to believe. Moreover, we have already noted the Constitution dropped all revolutionary talk of

“unalienable” rights and “Creator endowed” liberty. This was not an oversight.

The revolutionary bit about “consent of the governed” posed an especially delicate problem for the Founders. Almost all owned slaves or were masters of property-less tenants or domestic servants, including their wives none of whom could offer their legal consent even if they wished to do so. Thus the Founders shrewdly considered it unnecessary to include any voting rights in the new republic they planned to rule, uncontested by the disenfranchised lower castes.

Did this result in the land of the free, with liberty and justice for all? Let’s see.

Under the U.S. Constitution, Americans were sentenced to death for protesting unfair taxes; journalists and citizens imprisoned for criticizing government officials; citizens’ property seized illegally; workers murdered by government agents; thousands jailed without the “privilege” of *habeas corpus*; entire states deprived of civilian courts; untold numbers of American Indians defrauded of liberty and property; debt-peonage and debtors’ prisons flourished, as did slavery and child labor; and the majority of the public was denied the vote.

All this was considered constitutional by the Founders. None of these outrages, please note, was the result of “progressivism,” which had yet to be articulated, and all were common prior to the New Deal and the advent of so-called Big Government. Was this the face of “limited government?”

No, it was not. The concept of a democratically “limited government” was not for a moment entertained by our Founders, nor is it by those who idolize them today. With few exceptions, the Founders were Eighteenth Century patricians who took a revolutionary gamble meant chiefly to perpetuate their privileges, free from English colonial overlord-ship. It should come as no surprise these elitists drafted a Constitution that posed no threat to aristocracy.

### **‘Limited Government’ as Act of Faith**

The original Constitution of the United States of America was just so much ink on paper. The Constitution, as it stands today, is just a lot more ink on paper.

But the Constitution’s ink is important and deserves respect because it represents nothing less than the collective civic conscience of the American people. A great many Americans have dedicated their lives in trust to that conscience on battlefields, in classrooms, in everyday civic life, and even a few in the halls of power.

It is evident that most of the Amendments to the original Constitution as well as the Supreme Court’s decisions interpreting its scope and purpose were made

because the document had over the course of time been found wanting by the American people, whose common interests it was not originally intended to serve. As the collective civic conscience of the people changed, so too did their interpretation of self-government.

But the entire concept of social evolution (much less biological evolution) is something the ultra-Conservative rank-and-file likely does not comprehend and it is not something their leaders encourage them to consider. The reason for this may have less to do with politics than with fundamentalist faith.

An anecdote in point: the editor-in-chief at Random House once asked the extremist libertarian Ayn Rand if she would consider revising a passage in one of her manuscripts. She reportedly replied, "Would you consider revising the Bible?"

Ergo, that which is sacrosanct neither requires nor will tolerate change to include the fantasized "limited government" of the immortalized "Founding Fathers." The fact that Rand was a noted atheist only underscores the point that fundamentalist faith is not restricted to any particular brand of fanaticism.

Yet the Constitution's conception was anything but immaculate. It was not carted down from the Mount in tablets of stone, nor is it the product of some mysterious Natural Law interpretable only by libertarian gurus. And whether its meaning is best exemplified by the Tea Party flag depicting a talking snake ("Don't Tread on Me"), perhaps only Eve could judge with authority.

The Constitution is not a holy book, and there is no good reason for anybody to treat it like one. The men who wrote it were not prophets, nor were they particularly virtuous, though some could turn a pretty phrase. In fact, the Constitution's most unholy-book characteristic is its most welcomed attribute: its readers are not required to believe in its infallibility in order for it to make sense to them.

But we are required to read the Constitution if we want to know what it says. The ultra-conservatives' obsession with a constitutionally "limited government," which has never actually existed, suggests they do not understand the Constitution as much as they merely idolize it.

These constitutional "fundamentalists" along with the American public in general would do better to pick the document up and read it sometime, not fall on bended knee before it and expect the rest of us to follow their example.

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## In Case You Missed...

Some of our special stories in June dealt with the seemingly endless Russia-gate frenzy, President Trump's stumbling debut on the global stage and Oliver Stone's insightful interviews with Vladimir Putin.

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["Hillary Clinton's Deceptive Blame-Shifting"](#) by Robert Parry, Jun. 1, 2017

["Hiding the Ugly Business of Torture"](#) by Ray McGovern, Jun. 2, 2017

["Trump Tumbles into Saudi-Israeli Trap"](#) by Alastair Crooke, Jun. 3, 2017

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["Parry Awarded Gellhorn Journalism Prize"](#), Jun. 29, 2017

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## Deep History of America’s Deep State

**Exclusive:** The idea of an elitist Deep State – erasing a “mistake” by the people – pervades current efforts to remove buffoonish President Trump, but the concept has deep historical roots dating from the Founding, writes Jada Thacker.

By Jada Thacker

Everybody seems to be talking about the Deep State these days. Although the term appears to have entered the lexicon in the late 1990s, for years it referred only to shady foreign governments, certainly not to our own “indispensable nation.”

Does the sudden presence of an American Deep State – loosely defined as an unelected elite that manipulates the elected government to serve its own interests – pose a novel, even existential, threat to democracy?

Not exactly. The threat seems real enough, but it’s nothing new. Consider these facts: 230 years ago, an unelected group of elite Americans held a secretive meeting with an undisclosed agenda. Their purpose was not merely to manipulate lawful government in their own interests, but to abolish it altogether. In its place, they would install a radically undemocratic government – a “more perfect” government, they said – better suited to their investment portfolios.

History does not identify these conspirators as the Deep State. It calls them the Founders. The Founders did not consider themselves conspirators, but “republicans” – not in reference to any political party, but rather to their economic station in society. But their devotion to “republicanism” was transparently self-serving. A current college text, *The American Journey: A History of the United States*, explains though does not explicate “republican ideology”:

“Their main bulwark against tyranny was civil liberty, or maintaining the right of the people to participate in government. The people who did so, however, had to demonstrate virtue. To eighteenth century republicans, virtuous citizens were those who were focused not on their private interests but rather on what was good for the public as a whole.

*“They were necessarily property holders, since only those individuals could*



*exercise an independence of judgment impossible for those dependent upon employers, landlords, masters, or (in the case of women and children) husbands and fathers.” [Emphasis supplied]*

Republicanism was a handy idea if you happened to be a master or a landlord, who were the only persons this ideology considered “virtuous” enough to vote or hold political office. Thus, “republicanism” – virtually indistinguishable from today’s “neoliberalism” – created the original Deep State in the image of the economic system it was designed to perpetuate.

How this was accomplished is not a comforting tale. But it cannot be related nor understood without an appreciation of the historical context in which it occurred.

### **Masters and Servants**

Post-colonial America was predominantly agrarian, and about 90 percent of the population was farmers. (The largest city in 1790 was New York, with a whopping population of 33,000 residents.) There was a small middle class of artisans, shopkeepers, and even a handful of industrial workers, but the politically and economically powerful people were the relatively few big-time merchants and landowners – who also fulfilled the function of bankers.

America was not quite a feudal society, but it resembled one. Commoners did not call at the front doors of the rich, but were received around back. Most states had official religions, some with compulsory church attendance backed by fines. Commodity-barter was the currency of the day for the vast majority. Debtors were imprisoned. Parents sold their children into bondage. It wasn’t what most people think of when they hear “Yankee Doodle Dandy.”

All states restricted voting only to men who owned a requisite amount of property, while the majority: un-widowed women, servants, and tenants owned no property. Moreover, most states had property requirements for eligibility to elective office, some with the higher offices reserved for those with the most property. Such restrictions had discriminated against the urban underclass and farmers since the beginning of American colonization.

Nobody at the time characterized this land of masters and servants as a “democracy.” Indeed, the master class considered “democracy” synonymous with “mob rule.” But not everybody was happy with “republican virtue” in post-war America, least of all the slaves of the “virtuous.”

The Revolutionary War had stirred passions among the servant class for social and economic liberty, but when the war ended nothing much had changed. In fact, the war proved not to have been a revolution at all, but represented only a

change from British overlords to American overlords. Edmund Morgan, considered the dean of American history in the colonial era, characterized the “non-Revolutionary War” this way:

“The fact the lower ranks were involved in the contest should not obscure the fact that the contest itself was generally a struggle for office and power between members of an upper class: the new against the established.”

About 1 percent of the American population had died in a war fought, they had been told, for “liberty.” (Compare: if the U.S. lost the same proportion of its population in a war today, the result would be over *three million* dead Americans.) Yet after the war, economic liberty was nowhere in sight.

Moreover, the very concept of “liberty” meant one thing to a farmer and quite another to his rich landlord or merchant. Liberty for a common farmer – who was generally a subsistence farmer who did not farm to make money, but rather only to provide the necessities of life for his family – meant staying out of debt. Liberty for merchants and property owners – whose business it was to make monetary profits – meant retaining the ability to lend or rent to others and access to the power of government to enforce monetary repayment from debtors and tenants.

Much like the American Indians who had first communally owned the property now occupied by American subsistence farmers, agrarian debtors faced the unthinkable prospect of losing their ability to provide for their families (and their vote) if their land were confiscated for overdue taxes or debt. [See Consortiumnews.com’s [“How Debt Conquered America.”](#)]

Loss of their land would doom a freeholder to a life of tenancy. And the servitude of tenants and slaves differed mainly as a function of iron and paper: slaves were shackled by iron, tenants were shackled by debt contracts. But iron and paper were both backed by law.

By the end of the Revolutionary War, as few as a third of American farmers owned their own land. When the urban elites began to foreclose on the debts and raise the taxes of subsistence farmers – many of whom had fought a long and excruciating war to secure their “liberty” – it amounted to a direct assault on the last bastion of Americans’ economic independence.

### **The Original Great Recession**

After the war, British merchants and banks no longer extended credit to Americans. Moreover, Britain refused to allow Americans to trade with its West Indies possessions. And, to make matters worse, the British Navy no longer protected American ships from North African pirates, effectively closing off

Mediterranean commerce. Meanwhile, the American navy could not protect American shipping, in the Mediterranean or elsewhere, because America did not happen to possess a navy.

In the past, American merchants had obtained trade goods from British suppliers by “putting it on a tab” and paying for the goods later, after they had been sold. Too many Americans had reneged on those tabs after the Revolution, and the British now demanded “cash on the barrelhead” in the form of gold and silver coin before they would ship their goods to America.

As always, Americans had limited coin with which to make purchases. As the credit crunch cascaded downwards, wholesalers demanded cash payment from retailers, retailers demanded cash from customers. Merchants “called in” loans they had made to farmers, payable in coin. Farmers without coin were forced to sell off their hard-earned possessions, livestock, or land to raise the money, or risk court-enforced debt collection, which included not only the seizure and sale of their property but also imprisonment for debt.

The most prominent result of Americans’ war for “liberty” turned out to be a full-blown economic recession that lasted a decade. Even so, the recession would not have posed a life-threatening problem for land-owning subsistence farmers, who lived in materially self-sufficient, rural, communal societies. But when state governments began to raise taxes on farmers, payable only in unavailable gold and silver coin, even “self-sufficient” farmers found themselves at risk of losing their ability to feed their families.

### **Debt, Speculation, and the Deep State**

The Continental Congress had attempted to pay for its war with Britain by printing paper money. The British undermined these so-called “Continental” dollars, not only by enticing American merchants with gold and silver, but by counterfeiting untold millions of Continental dollars and spending them into circulation. The aggregate result was the catastrophic devaluation of the Continental dollar, which by war’s end was worthless.

In the meantime, both Congress and state governments had borrowed to pay for “liberty.” By war’s end, war debt stood at \$73 million, \$60 million of which was owed to domestic creditors. It was a staggering sum of money. In his now studiously ignored masterpiece, *An Economic Interpretation of the Constitution of the United States*, historian Charles A. Beard showed that domestically-held war debt was equivalent to 10 percent of the value of all the surveyed land holdings (including houses) in the entire United States at the time.

The war debt carried interest, of course – which is a problem with debt if you

owe it, but is a feature of debt if it is owed to you. Not only was “freedom not free” – it came with dividends attached for Deep State investors. This should sound at least vaguely familiar today.

As Continental paper money lost its value, Congress and state governments continued to pay for “liberty” with coin borrowed at interest. When that ran short, government paid only with *promises to pay* at a later date – merely pieces of paper that promised to pay coin (or land) at some indeterminate time after the war was won.

This was how the government supplied the troops (whenever it managed to do so) and also how it paid its troops. In actual practice, however, Congress often did not pay the troops anything, not even with paper promises, offering only verbal promises to pay them at the end of the war.

But war is never a money-making enterprise for government, and when it ended, the government was as broke as ever. So, it wrote its verbal promises on pieces of paper, and handed them to its discharged troops with a hearty *Good Luck with That!* Even so, Congress paid the soldiers in bonds worth only a fraction of the amount of time most had served, promising (again!) to pay the balance later – which it never did.

Thousands of steadfast, longsuffering troops were abandoned this way. Most had not been paid any money in years (if ever), and many were hundreds of miles from their homes – ill, injured, and starving – as they had been for months and years. Others literally were dressed only in rags or pieces of rags. Some carried paper promises of money; some carried paper promises of geographically distant land – none of which would be available until years in the future, if at all.

Seven-year Revolutionary War veteran Philip Mead described his plight in a bitter memoir entitled *A Narrative of Some of the Adventures, Dangers and Sufferings of a Revolutionary Soldier*: “We were absolutely, literally starved. I do solemnly declare that I did not put a single morsel of victuals in my mouth for four days and as many nights, except a little black birch bark which I gnawed off a stick of wood, if that can be called victuals. I saw several of the men roast their old shoes and eat them....”

“When the country had drained the last drop of service it could screw out of the poor soldiers, they were turned adrift like old worn-out horses, and nothing said about land to pasture them on.”

Was this *liberty*? To impoverished veterans, “liberty” looked bleak, indeed. To speculators in government bonds, liberty looked like a golden opportunity, quite

literally so.

Vultures possessed of coin swooped in and bought a dollar's worth of government promises for a dime, and sometimes for just a nickel. Speculators wheedled promises not only from desperate veterans (many of whom sold their promises merely to obtain food and clothes on their long trudge home), but from a host of people whose goods or services had been paid with IOUs.

Optimistic speculators cadged bonds from pessimistic speculators. The more desperate people became during the recession, the more cheaply they sold their promises to those who were not.

Speculators expected their investments, even those made with now-worthless paper money, to be paid in gold or silver coin. What's more, "insiders" expected all those various government promises would eventually be converted – quietly, if possible – into interest-bearing bonds backed by a single, powerful taxing authority. All the Deep State needed now was a national government to secure the investment scheme. A man named Daniel Shays unwittingly helped to fulfil that need.

## **Rebellion and Backlash**

Thomas Jefferson penned the famous sentence: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants." He was not referring to heroic American Patriots charging up Bunker Hill against British bayonets. He was referring instead to American farmers – many of whom had been the starving soldiers in a war for forsaken liberty – taking their lives into their hands to oppose the tax policies of the government of Massachusetts in 1787. The principal leader of this revolt was a farmer and war veteran Daniel Shays.

In a sense, the most interesting thing about Shays's Rebellion is that it was not a unique event.

The first notable example of agrarian revolt had been Bacon's Rebellion in 1676 Virginia, when frontier farmers marched on the rich plantation owners of Jamestown, burned it to the ground, published their democratic "Declaration of the People," and threatened to hang every elite "tyrant" on their list – which included some of the forefathers of America's patriot Founders.

Historian Gary Nash reminds us Bacon's Rebellion had echoes across early American history: "Outbreaks of disorder punctuated the last quarter of the 17<sup>th</sup> century, toppling established governments in Massachusetts, New York, Maryland, Virginia, and North Carolina." Jimmy Carter, in *The Hornet's Nest*, the only novel ever published by an American president, tells a similar story of the

agony of dispossessed farmers in Georgia a century later.

Other farmers had rebelled in New Jersey in the 1740s; in the New York Hudson Valley rent wars in the 1750s and 1760s and concurrently in Vermont by Ethan Allen's Green Mountain Boys; for a decade in North Carolina in the 1760s, where vigilantes called Regulators battled the government of the urban elite; and in Virginia in the 1770s. Likewise, American cities had been scenes of labor unrest, riots, and strikes for a century. American class rebellion, apparently unbeknownst to most history teachers in America, was closer to the rule than the exception.

Victory in the war against England only intensified the conflict between those who considered "liberty" as a necessary condition to live without debt, against those who considered "liberty" to be their class privilege to grow rich from the debts others owed them. Howard Zinn, in his *A People's History of the United States* describes the economic realities of Eighteenth Century America:

"The colonies, it seems, were societies of contending classes – a fact obscured by the emphasis, in traditional histories, on the external struggle against England, the unity of colonists in the Revolution. The country therefore was not 'born free' but born slave and free, servant and master, tenant and landlord, poor and rich."

Although Shays's Rebellion was not unique, it was a huge event, coming at a time when the rich were owed a great deal of money by impoverished governments. Pressured by rich bondholders and speculators, the government of Massachusetts duly raised taxes on farmers. To make matters far worse, the taxes were to be paid only in gold or silver – which was completely out of the question for most western farmers, who had no way to obtain coined money.

When the farmers complained, their complaints were ignored. When farmers petitioned the government to issue paper money and accept it as payment of debts and taxes, the government refused their petitions. When the farmers pleaded for the passage of "legal tender laws" that would allow them to settle their debts or taxes with their labor, they were rebuffed.

But when farmers could not pay what they did not have, the Massachusetts's courts ordered their land seized and auctioned. At last, the farmers understood the practical effect, if not the specific intent, of the tax: confiscation of their property and its transfer to the rich, to whom the government owed its interest-bearing debt. Government had become an armed collection agency.

To the utter dismay of the erstwhile proudly tax-rebellious Patriots, the farmers too rebelled. Shaysites forcibly shut down the tax courts that were

condemning them to servitude. The rich responded by loaning the destitute government more money (at interest!) to pay a militia force to oppose Shays's rebels.

At this point, tax rebels abandoned reform for radical revolution and – in a resounding echo of Nathaniel Bacon's century-old Declaration of the People – pledged to march on Boston and burn it to the ground. This was no Tea Party vandalism, stage-managed by well-to-do Bostonians like Samuel Adams. It was a full-blown, grassroots agrarian revolution a century in the making.

The urban bond-holding merchant-class in Boston and elsewhere panicked. And none panicked more than bond speculators, who intimately understood the rebels threatened their "virtuous" republican "liberty" to extract profit from others. Historian Woody Holton exposes the astonishing callousness of one of America's major bond speculators in his nationally acclaimed *Unruly Americans and the Origin of the Constitution*:

"As a bondholder, Abigail Adams would benefit immensely if her fellow Massachusetts citizens [paid the tax] levied by the legislature in March 1786, but she also saw compliance as a sacred duty. If Massachusetts taxpayers were 'harder-pressed by public burdens than formerly,' she wrote, 'they should consider it as the price of their freedom'."

Future First Lady Abigail Adams was not alone in thinking freedom came with dividends payable to her account. Historian David Szatmary reminds us in his *Shays Rebellion; The Makings of an Agrarian Insurrection* that the former Patriot leadership, especially those in the merchant class, were among the first to advocate violence against democratic rebellion.

Said a published opinion piece at the time: "When we had other *rulers*, committees and conventions of the people were lawful – they were then necessary; but since I *myself* became a ruler, they cease to be lawful – the people have no right to examine my conduct."

Showboat Patriot and bond speculator Samuel Adams –former mastermind of the Boston Tea Party and erstwhile propagandist against unfair British taxes (as well as cousin to Abigail's husband John Adams) – sponsored a Massachusetts law that allowed sheriffs to kill tax protesters outright.

Another rich bondholder and speculator, ex-Revolutionary War General Henry Knox (the fitting namesake of Fort Knox, the famous repository of gold bullion) wrote an alarming letter to his former commander George Washington, accusing the Shays's rebels of being "levelers" (which was the closest term to "communists" then in existence). He informed Washington that the country needed a much

stronger government (and military) to prevent any riffraff challenge to the elite. His message was not wasted on General Washington, America's richest slave owner.

In the end, the Congress, under the Articles of Confederation, could raise no money from the states to provide an army, but the privately-financed, for-profit Massachusetts militia successfully defeated Shays's rebels. Still, the nearly hysterical fear of democratic economic revolution had been planted in the minds of the masters. Shays's Rebellion proved to be the last straw for bond speculators whose profits were jeopardized by democracy.

Worse even, the governments of many other states were beginning to cave under intense democratic pressure from rebellious debtors. Some states were entertaining laws that prevented the seizure of property for debt; others were creating paper money in order to break the gold and silver monopoly. Rhode Island not only voted in a paper money system, but threatened to socialize all commercial business enterprises in the state.

In response to the threat of populism, the "virtuous" elite reacted decisively – not to remedy the plight of debtors, of course – but to secure their own profits from them. Accordingly, in 1786, five states sent delegates to meet at Annapolis, Maryland, just as Shays's Rebellion veered into revolution. This unelected minority called for Congress to authorize a convention to be held in Philadelphia the next year "for the sole and express purpose of revising the Articles of Confederation." The Articles were never to be "revised." They were to be scrapped altogether by the Deep State.

### **The Deep State Conspires**

Thanks to Charles A. Beard's *An Economic Interpretation of the Constitution of the United States*, we know quite a lot about the status of the 55 men who conspired to draft the Constitution. But the very first thing we need to know is that they were not authorized by "We the People" simply because nobody had voted for them; all were political appointees.

Nor were they even a representative *sample* of the people. Not a single person in the Convention hall "worked for a living," nor was female, nor was a person of color. Only one claimed to be a "farmer," the current occupation of about 90 percent of the population. Most were lawyers. Go figure.

If the delegates represented anybody at all, it was the economic elite: 80 percent were bondholders; 44 percent were money-lenders; 27 percent were slave owners; and 25 percent were real estate speculators. Demographically, the 39 who finally signed the final draft of the Constitution constituted .001 percent of



the American population reported in the 1790 census. George Washington, who presided, was arguably the wealthiest man in the country. Deep State gamblers all.

And the stakes were high. Recall that the face value of outstanding domestic government bonds in 1787 was \$60 million, equivalent to 10 percent of the total improved land value of the country. But these bonds, for the most part, had been obtained by speculators at a fraction of face value. Beard very conservatively estimated the profit of speculators – if the bond were redeemed at face value – would have been some \$40 million. Expressed as the same proportion of total improved land value at the time of the Founding, the expected profit from government bonds held then would equal at least \$3 trillion today. Tax free.

We still do not know everything that transpired at the convention. No one was assigned to keep a record of what was discussed. Reportedly, even the windows to the meeting hall were nailed shut to prevent eavesdropping – though there would be “leaks.” Because of its secrecy and its unauthorized nature, some historians have called the convention “the second American Revolution.” But revolutions are public, hugely participatory events. This was a *coup d'état* behind locked doors.

Most delegates presumably understood their undisclosed purpose was to dump the whole system of confederated government (which had cost 25,000 American lives to secure) into a dustbin. They evidently did not intend to obey their instructions “solely to revise” the Articles because a number of them showed up at the convention with drafts for a new constitution in hand.

The conspirators’ ultimate goal was to replace the Confederation with what they later euphemized as “a more perfect Union” – designed from the outset to protect their class interests and to ensure the new government possessed all the power necessary to perpetuate the existing oligarchy.

At the Convention, Alexander Hamilton captured the prevailing sentiment: “All communities divide themselves into the few and the many. The first are the rich and well-born; the other the mass of the people ... turbulent and changing, they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the Government. ... Nothing but a permanent body can check the imprudence of democracy.”

Hamilton further proposed that both the President and the Senate be appointed (not elected) *for life*. His vision was but half a step removed from monarchy. Though not a Convention delegate, John Jay, Hamilton’s political ally, slaveowner, and the first Chief Justice of the Supreme Court, stated the purpose of “republicanism” with brutal brevity: “The people who own the country ought to govern it.”

The Founders never once envisioned any such a thing as “limited government” – unless perhaps in the sense that the power of government was to be *limited to* their own economic class. [See Consortiumnews.com’s [“The Right’s Made-up Constitution.”](#)]

In *Towards an American Revolution: Exposing the Constitution & Other Illusions*, historian Jerry Fresia sums the Founders’ views succinctly: “The vision of the Framers, even for Franklin and Jefferson who were less fearful of the politics of the common people than most, was that of a strong centralized state, a nation whose commerce and trade stretched around the world. In a word, the vision was one of empire *where property owners would govern themselves.*” [Emphasis supplied]

Self-government *by the people* was to remain permanently out of the question. The Deep State was to govern itself. “We the People,” a phrase hypocritically coined by the ultra-aristocrat Gouverneur Morris, would stand forever after as an Orwellian hoax.

The tricky task of the hand-picked delegates was to hammer out a radical new system of government that would superficially resemble a democratic republic, but function as an oligarchy.

William Hogeland’s excellent *Founding Finance*, recounts the anti-democratic vehemence expressed at the Convention: “On the first day of the meeting that would become known as the United States Constitutional Convention, Edmund Randolph of Virginia kicked off the proceedings [...] ‘Our chief danger,’ Randolph announced, ‘arises from the democratic parts of our constitutions. ... None of the constitutions’ – he meant those of the states’ governments – ‘have provided sufficient checks against the democracy.’”

No wonder they nailed the windows shut. It should be no surprise that the word “democracy” does not appear once in the entire U.S. Constitution, or any of its Amendments, including the Bill of Rights. Accordingly, the Constitution does not once refer to the popular vote, and it did not guarantee a single person or group suffrage until the adoption of the 15<sup>th</sup> Amendment in 1870, over 80 years after ratification. The Preamble aside, the Founders used the phrase “the People” only a single time (Art. I, Sec. 2).

It has been suggested the word “democracy” had a different meaning then than it has now. It did not. “Democracy” to the Convention delegates meant the same thing as it does today: “rule by the people.” That’s why they detested it. The delegates considered themselves the patriarchs of “republicanism,” the ideology that rejected participation in government by people like their wives, servants, tenants, slaves, and other non-propertied inferiors. No doubt, the delegates

passionately disagreed on many things, but the “fear and loathing” of democracy was not one of them. Then or now.

### **The Deep State’s Specific Goals**

Embedded within the Founders’ broadly anti-democratic agenda were four specific goals. These were not a list of items jotted down in advance, but were derived by group consensus as the minimum requirements necessary to achieve the Deep State’s ultimate agenda.

To camouflage the stark oligarchic nationalism the measures intended, the Founders disingenuously styled themselves “Federalists.” But nothing about these measures concerned a “federation” of sovereign states; taken together, they were intended to demolish the existing “perpetual” confederation, not to re-create it more effectively.

***National government with limited citizen participation.*** Of all the measures required to achieve a national oligarchy, this was the most daunting. It was achieved by a wide array of provisions.

***The Electoral College.*** The President and Vice President are not elected by popular vote, but by electors – then and now. For example, when George Washington was first elected President, the American population was 3.9 million. How many of those folks voted for George? Exactly 69 persons – which was the total number of electors voting at the time. (Art. I, Sec. 3)

***Bi-Cameral Congress.*** Congress is bi-cameral, composed of two “houses” – the House of Representatives and the Senate. Under the original Constitution, the House members represented the people who vote for them, while the Senate represented states, not persons, and was therefore not a democratic body, at all. It was generally expected that the Senate would “check” the democratic House. Indeed, this was the entire purpose of bi-cameralism wherever it has existed. (Art. I, Secs. 1 and 2)

***State Appointment of Senators.*** Senators were originally appointed by state legislatures (until the 17<sup>th</sup> Amendment in 1913). It was expected that the Senate would function in Congress as the House of Lords functioned in Parliament: the voice of the aristocracy. Even though Senators are now popularly elected, it is far more difficult to challenge an incumbent because of the prohibitive expense of running a state-wide campaign. (Art. I, Sec. 3)

***Appointment of the Judiciary.*** All federal judges are appointed for life terms by the President and confirmed by the (originally undemocratic) Senate. (Art. III, Sec. 1)

***Paucity of Representation.*** Most undemocratic of all was the extreme paucity of the total number of House members. The House originally was composed of only 65 members, or one member per 60,000 persons. Today, there are 435 members, each representing about 700,000 persons. Thus, current House representation of the public is 12 times less democratic than when the Constitution was written – and it was poor (at best) then.

Compare: The day before the Constitution was ratified, the people of the 13 United States were represented by about 2,000 democratically elected representatives in their various state legislatures (1:1950 ratio); the day after ratification, the same number of people were to be represented by only 65 representatives in the national government (1:60000). In quantitative terms, this represents more than a 3,000 percent *reduction* of democratic representation for the American people. (Art. I, Sec. 2)

***Absence of Congressional Districts.*** Although House members now run for election in equal-populated districts, the districts were created by Congress, not the Constitution. Until the 1960s, some House members were elected at-large (like Senators). This disadvantaged all but the richest and best-known candidates from winning. (Not referenced in Constitution)

***Absence of Recall, Initiative and Referendum.*** The Constitution does not allow the people to vote to recall (un-elect) a Congress member, demand a Congressional vote on any issue (propose an initiative) or vote directly in a referendum on any issue (direct democracy). (Not referenced in Constitution)

***Absence of Independent Amendment Process.*** One of the reasons Americans now have professional politicians is that the Constitution does not provide a way for “the people” to amend it without the required cooperation of a sitting Congress. At the Constitutional convention, Edmund Randolph of Virginia (surprisingly) proposed that the people be afforded a way to amend the Constitution without the participation of Congress. This excellent idea, however, was not adopted. (Art. V)

***National authority to tax citizens directly.*** (Art. I, Sec. 8; 16<sup>th</sup> Amendment)

***National monopolization of military power.*** (Art. I, Sec.8, clauses 12, 13, 14, 15, 16)

***Denial of states’ power to issue paper money or provide debtor relief.*** (Art. I, Sec.10; Art. I Sec.8, clause 4)

All of these provisions were completely new in the American experience. For 150 years or more, citizen participation in government, independent militias, and the issuance of paper money had been the prerogative of the several, independent

colonies/states – while direct external taxation had been universally and strenuously resisted. When the British Crown had threatened to curtail colonial prerogatives, the very men who now conspired for national power had risen in armed rebellion. The hypocrisy was stunning. And people took note of the fact.

### **Consent of the Minority**

One of the note-takers was Robert Yates, a New York delegate to the Convention, who had walked out in protest. Not long afterwards, Yates (who owned no government bonds) stated his objection to the new Constitution: “This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends. ...

“The government then, so far as it extends, is a complete one. ... It has the authority to make laws which will affect the lives, the liberty, and the property of every man in the United States; nor can the constitution or the laws of any state, in any way prevent or impede the full and complete execution of every power given.”

At least half of the American population (collectively called “Anti-federalists”) thought the Constitution was a terrible idea. To be sure, well-to-do Anti-federalists like Yates were not overtaxed farmers, and their objections were often based upon the defense of states’ rights, not peoples’ economic rights. Most Anti-federalists, however, seemed alarmed that the Constitution contained no guarantee of the basic political rights they had enjoyed under the British Empire, such as freedom of speech or trial by jury.

The debate between supporters and critics of the Constitution raged for a year, while partisan newspapers published articles both pro and con. A collection of 85 “pro” articles is known now as *The Federalist Papers*, which were written by Alexander Hamilton, James Madison and John Jay. Although these articles have been studied almost as religious relicts by historians, they do not tell us “what the Constitution really means.”

The Constitution means what it says. *The Federalist Papers* are sales brochures, written by lawyers trying to get others to “buy” the Constitution. The same can be said about a similar collection of “Anti-federalist Papers,” from which Yates’s quote above was taken. In any event, it is up to the courts to interpret the Constitution, not lawyers with vested interests.

In due course, the Anti-federalists put their collective foot down. There would be no hope of ratification without amendments guaranteeing fundamental political – *but not economic* – rights. Although Hamilton argued a guarantee of rights would be “dangerous,” James Madison convinced the Federalists that agreeing to

guarantee a *future* Bill of Rights would be much safer than meddling with the text of the current document, which might entail unraveling its core nationalist, anti-democratic agenda. And so, a deal was struck.

Even so, the battle over the ratification of the Constitution was not ultimately decided by the people of the nation. Although the people of the several states had not voted to authorize the Convention, or the document it had produced, the Founders had been incredibly arrogant, not to mention sly. Not only had they presented the unauthorized document to the states as a take-it-or-leave-it proposition (no changes allowed), but the document itself demanded that only special state “conventions” could ratify it – not the majority popular vote of the people.

Specifying ratification by conventions meant the people would be voting for convention delegates, who would in turn vote for ratification. This was tantamount to turning ratification into a popularity contest between convention delegates, rather than a democratically direct vote on the document, itself. Moreover, ratification by convention would present the possibility that a minority of the people in a state (those in favor of the Constitution) might “pack” a convention with delegates, who would then approve of a document establishing a government for all.

Electoral shenanigans were not just hypothetical possibilities. In Philadelphia, for example, a mob kidnapped elected legislators who were boycotting a convention vote, physically dragged them into the state house, and tied them to their chairs in order to force a convention vote. Other, more subtle methods of manipulation occurred elsewhere, notably the disenfranchisement of voters through property qualifications.

Over a hundred years ago, Charles A. Beard completed his exhaustive study of the Constitution and confirmed that it most likely was ratified by a majority – *of a minority of the people*.

Among Beard’s final conclusions were these: “The Constitution was ratified by a vote of probably not more than one-sixth of the adult males....The leaders who supported the Constitution in the ratifying conventions represented the same economic groups as the members of the Philadelphia Convention....The Constitution was not created by ‘the whole people’ as the jurists [judges] have said; neither was it created by ‘the states’ as Southern nullifiers long contended; but it was the work of a consolidated group whose interests knew no state boundaries and were truly national in their scope.”

The Deep State, in other words. It was darkly appropriate that a document whose primary purpose was to defeat democratic rule was, itself, brought into force

without a majoritarian vote.

In 1788, nine of the 13 states' conventions ratified the Constitution (as specified in the Constitution's own Article VII) and the document became the supreme law of the land for those nine states. By 1789, even the democratic holdout Rhode Island had followed suit. And America's schoolchildren have been led to believe ever since that the Constitution is a sacred document, inspired and ordained by the public-spirited benevolence of Founding Fathers.



But this had been predicted. It had seemed painfully obvious to Eighteenth Century Genevan political philosopher Jean-Jacques Rousseau that constitutional government was the invention of the Deep State, its designated beneficiary.

Dripping with sarcasm, his virtuoso *Discourse on Inequality* explained the process: "[T]he rich man ... at last conceived the deepest project that ever entered the human mind: this was to employ in his favour the very forces that attacked him, to make allies of his enemies...

"In a word, instead of turning our forces against ourselves, let us collect them into a sovereign power, which may govern us by wise laws, may protect and defend all the members of the association, repel common enemies, and maintain a perpetual concord and harmony among us."

Rousseau penned these words in 1754, 33 years before Gouverneur Morris oversaw the drafting of the identical sales pitch that constitutes the Preamble to the United States Constitution: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Rousseau concludes: “All offered their necks to the yoke in hopes of securing their liberty; for though they had sense enough to perceive the advantages of a political constitution, they had not experience enough to see beforehand the dangers of it; *those among them, who were best qualified to foresee abuses, were precisely those who expected to benefit by them...*” [Emphasis added]

Does the Deep State pose an existential threat to American democracy today? Move along, folks – nothing new to see here.

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## The Right’s Made-up ‘Constitution’

**From the Archive:** America’s right-wingers talk fervently about protecting the Constitution but seem to have little understanding of what the Federalist framers were doing in creating a powerful central government, as Jada Thacker noted in 2013.

By Jada Thacker (Originally published on July 6, 2013)

The Cato Institute’s *Handbook for Policy Makers* says, “The American system was established to provide limited government.” The American Enterprise Institute states its purpose to “defend the principles” of “limited government.” The Heritage Foundation claims its mission is to promote “principles of limited government.” A multitude of Tea Party associations follow suit.

At first glance the concept of “limited government” seems like a no-brainer. Everybody believes the power of government should be limited somehow. All those who think totalitarianism is a good idea raise your hand. But there is one problem with the ultra-conservatives’ “limited government” program: it is wrong. It is not just a little bit wrong, but demonstrably false.

The Constitution was never intended to “provide limited government,” and furthermore it did not do so. The U.S. government possessed the same constitutional power at the moment of its inception as it did yesterday afternoon. This is not a matter of opinion, but of literacy. If we want to discover the truth about the scope of power granted to federal government by the Constitution, all we have to do is read what it says.

The Constitution’s grant of essentially unlimited power springs forth in its



opening phrases: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

As might be expected in a preamble to a founding document, especially one written under supervision of arch-aristocrat Gouverneur Morris, the terms are sweeping and rather grandiose. But the point is crystal clear: "to form a more perfect Union." If the object of the Constitution were to establish "limited government," its own Preamble must be considered a misstatement.

### **Enumerated Powers**

Article I establishes Congress, and Section 8 enumerates its powers. The first clause of Article I, Section 8 repeats the sweeping rhetoric of the Preamble verbatim. While it provides for a measure of uniformity, it does not so much as hint at a limit on the federal government's power to legislate as it sees fit:

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"

No attempt is made here, or at any other place in the Constitution, to define "general Welfare." This oversight (if that is what it was) is crucial. The ambiguous nature of the phrase "provide for the general Welfare" leaves it open to widely divergent interpretations.

Making matters worse for federal government power-deniers is the wording of the last clause of Article I, the so-called "Elastic Clause": Congress shall have power "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Thus the type, breadth and scope of federal legislation became unchained. When viewed in light of the ambiguous authorization of the Article's first clause, the importance of the "necessary and proper" clause truly is astonishing. Taken together, these clauses restated in the vernacular flatly announce that "Congress can make any law it feels is necessary to provide for whatever it considers the general welfare of the country."

Lately there has been an embarrassingly naive call from the Tea Party to require Congress to specify in each of its bills the Constitutional authority upon which

the bill is grounded. Nothing could be easier: the first and last clauses of Article I, Section 8 gives Congress black-and-white authority to make any law it so desires. Nor was this authority lost on the Founders.

“Limited government” advocates are fond of cherry-picking quotes from *The Federalist Papers* to lend their argument credibility, but an adverse collection of essays called the *Anti-federalist Papers* unsurprisingly never gets a glance. Here is a sample from New Yorker Robert Yates, a would-be founder who walked out of the Philadelphia convention in protest, written a month after the Constitution had been completed:

“This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends. The government then, so far as it extends, is a complete one. It has the authority to make laws which will affect the lives, the liberty, and the property of every man in the United States; nor can the constitution or the laws of any state, in any way prevent or impede the full and complete execution of every power given.”

Yates, it must be emphasized, took pains to identify the “necessary and proper” clause as the root of the “absolute power” inherent in the Constitution well over a year before ratification.

### **The Tenth Amendment**

A particular darling of secession-prone, far-Right Texas Gov. Rick Perry, the Tenth Amendment is often claimed as the silver-bullet antidote for the powers unleashed by the “general welfare” and “elastic clauses.” Here is the text of the Amendment in its entirety: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Superficially, the Tenth seems to mean “since certain powers are not delegated to the federal government, then those powers are reserved to the states or the people.” This would seem to be good news for champions of limited government. But this is not the case.

The Tenth does *not* say that important powers remain to be delegated to the United States. It merely says that powers “not [yet] delegated” are “reserved” to the states or the people. This sounds like a terrific idea until we realize, of course, that all the important powers had *already* been delegated in 1787, four years before the Tenth Amendment was ratified.

As we have seen, the first and last clauses of Article I, Section 8 made the Tenth Amendment a lame-duck measure even as James Madison composed its words in 1791 and so it remains today. The sweeping powers “to make all laws necessary

and proper” in order to “provide for the general welfare,” had already been bestowed upon Congress. The Johnny-come-lately Tenth Amendment closed the constitutional pasture gate after the horses had been let out.

This apparently has never occurred to the likes of Gov. Rick Perry and his far-Right cohorts who believe a state may reclaim power by withdrawing its consent, in effect repossessing their previously delegated power through state legislation. Superficially, the logic of this position seems sound: if the states had the legal authority to delegate power, then they may use the same authority to “un-delegate” it by law.

But a close re-reading of the Tenth’s wording nixes such reasoning. Oddly, the Tenth Amendment does not say the *states* delegated their powers to the federal government although it may be argued that it probably ought to have said so. It says “The powers not delegated to the United States *by the Constitution* are reserved to the States. ”

Thus, according to the Tenth Amendment, the Constitution *itself* delegated the power to the federal government. States, in other words, now have no standing to “reserve-back” what they had never “delegated-away” in the first place.

Had it been possible to “un-delegate” the powers of the United States by invoking the Tenth, the Old South would have simply done so and spared itself the bother of secession not to mention the bother of being annihilated by a series of subsequent Northern invasions. The fact that the South did not even attempt such a strategy attests to the toothlessness of the Tenth Amendment.

No other instance in law would be a better example that we should choose our votes carefully. For in ratifying the Bill of Rights, which included the Tenth Amendment, the American people endorsed the legal fiction that the Constitution not the original 13 states, or “We the People” authorized the power of the United States *because the Constitution itself said so*. If the Constitution has an Orwellian twist, this is it no matter which side of the aisle you’re on.

The states and the people may amend the Constitution. But they may not do so by nullification (according to the logic inherent in the wording of the Tenth Amendment), or by the judgment of state courts (according to the “supremacy clause” of Article VI), nor may any Amendment be made without the participation of the federal government, itself (according to Article V.) If the Founders had meant to ensure “limited government,” there is no trace of such intent here.

### **Paucity of Rights**

If the Constitution were intended to provide “limited government,” we might expect it to be chock full of guarantees of individual rights. This is what Tea

Partiers may fantasize but this is not really true. In fact, the Constitution is amazingly stingy in reference to “rights.”

The word “right” is mentioned *only once* in the Constitution as ratified. (Art. I, Sec. 8 allows Congress to award copyrights/patents to ensure their holders “Right to their respective Writings and Discoveries.”)

The word “right” somewhat counter-intuitively appears only six times in the ten Amendments called the “Bill of Rights.”

Almost a century later, the first of seven other rights were added under pressure from Progressive activists almost all of which were intended to create and extend democratic participation in self-government.

Amendment XIV (sanctions against states denying suffrage); XV (universal male suffrage); XIX (women’s suffrage); XXIV (denial of poll tax); and XXVI (18 year-old suffrage); and twice in Amendment XX, which gives Congress the “right of choice” in presidential succession.

In grand total, the word “right” appears only 14 times in the entire Constitution, as it exists today (including the two rights conferred to *government*).

Did we all notice that the “Constitution of the Founders” did not include the “right” for anybody at all to vote? Notable, too, is the absence of language implying that any “rights” are “unalienable” or “natural” or “endowed by their Creator.” All such phraseology belongs to the Declaration of Independence, which apparently unbeknownst to Tea Partiers everywhere bears no force of law.

The word “power,” by the way, occurs 43 times in the Constitution, each time referring exclusively to the prerogative of government, not right-wingers. Since “individual” rights are mentioned only 12 times, this yields a ratio of about 4:1 in favor of government power over individual rights. Without the efforts of those pesky, democracy-mongering Progressives, who fought for universal voting rights, the ratio would be more than 6:1 today or 50 percent higher.

This statistical factoid is not as trivial as it may appear. Expressed in practical terms, Michele Bachmann, Sarah Palin or Clarence Thomas would almost certainly never have achieved public office had they lived under the “limited government” designed by the Founders they so revere.

### **The Bill of Rights**

So what exactly are our non-patent/copyright “rights,” under so-called “limited government?”

Amendment I the right of people “peaceably to assemble, and to petition the government for redress of grievances”

Amendment II the right “to keep and bear arms, shall not be infringed”

Amendment IV the right “to be secure against unreasonable searches or seizures”

Amendment VI the right “to a speedy and public trial”

Amendment VII the right “of a trial by jury”

Amendment IX enumeration “of certain rights” shall not deny “others retained by the people”

That’s it. What happened to the famous rights of free speech, religion or press? The way the First Amendment is worded does not enumerate these as positive rights that people possess, but rather as activities the government may not infringe upon. If Bill of Rights author James Madison had meant to stipulate them as positive “rights” all he had to do was write it that way, but he did not.

Bear in mind Madison (then a federalist) wrote the Bill of Rights under political duress. Since anti-federalists (recall the skepticism of Robert Yates) flatly refused to ratify the Constitution unless it guaranteed *something*, Madison had to write *something*. In effect, the amendments were the pig the anti-federalists had bought in the poke, three years after ratification had paid for it.

Madison, at the time of writing, had little incentive to take pains with what he wrote because federalists did not believe a Bill of Rights was necessary, or even good idea (with Alexander Hamilton arguing a Bill of Rights would be “dangerous.”) This may account for the fact that some of what Madison wrote seems vague, or even ambiguous, as in the case of Amendment II.

Amendment IX, for example, actually makes little sense, which may account for the fact nobody ever seems to mention it: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

This sounds “righteous” enough, until we recall the Constitution to which this Amendment pertains had “enumerated” only a single right in the first place! Even if Amendment IX applies to the Bill of Rights (to include itself), then all it says is “the people may have more rights than the half dozen mentioned so far, but we’re not going to tell you what they are.” (So if Amendment X is Orwellian, Amendment IX verges on Catch-22.)

Of course the idea was to calm suspicions that people would possess only the half-dozen rights enumerated in the Bill of Rights (plus patents!) and no others. Even so, Amendment IX did not guarantee any un-enumerated rights; it just did not peremptorily “deny or disparage” any.

And what sense should we make of the crucial Amendment V one of the four Bills of Rights not actually containing the word “right” at all?

**“No person shall be** held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be **deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.” [Emphasis supplied]

Thus, life, liberty and property are *not* expressly granted status as fundamental “rights,” but only as personal possessions that may be deprived or taken according to “due process.” The crucial implication is that Amendment V exists *in order to stipulate how the government may deny* an individual claim to life, liberty or property. *With* due process, you life, liberty and property may be toast. That is what it plainly says.

It is interesting, too, that the Bill of Rights does not speak to the origin of rights, but only to their existence. Moreover, the Constitution never speaks of granting rights, but only protecting them. There is a good reason for this: excepting the Progressive suffrage Amendments, none of the guaranteed rights were American inventions, but had for centuries been considered the rights of the English nobility.

For those who want to believe in “American Exceptionalism” as the basis of “limited government,” this is not encouraging news. Moreover, the Constitution, including the Bill of Rights, hardly includes any “right” that had not already been recognized at one time or another by medieval English monarchs or in ancient Rome and Greece.

### **Property Rights and ‘Republic’**

The strict libertarians among us claim the sole legitimate power of government is that which is necessary to protect private property rights. On this score, however, the “limited government” of the Founders is practically mute. Except for the aforementioned Article I, Section 8 provision for patents and copyrights, private “property” is only mentioned twice in the Constitution, both

times in a single sentence of the “right”-less Amendment V quoted above:

“No person shall be deprived of life, liberty or **property** *without due process of law*; nor shall private **property** be taken for public use, *without just compensation.*” [Emphasis supplied]

Once again, Amendment V fails to guarantee personal immunity from the power of the state, but rather details the way state power may be used to dispossess individuals of their property. And we must bear in mind these words were not penned by Marxists, socialists, or Progressives.

Whether by design or happenstance, the original “Constitution of the Founders,” or the Bill of Rights, or even the Constitution with all its Amendments does not grant any irrevocable “right of possession” to property. Even the Second Amendment’s “right to keep” arms, is subject to the terms by which property may be taken under terms of Amendment V, and it always has been.

Tellingly, the word “democracy” does not appear in the Constitution. This intentional oversight is often smugly celebrated by anti-democrats among us, who insist that the United States of America was founded as a “republic.” No doubt this is true, given that the Constitution was written by an exclusive, hand-picked cadre of oligarchs, whose number did not include a single woman, person of color, or wage-earner.

Unfortunately for the pro-republic “limited government” crowd, the Constitution does not contain the word “republic” either. The word does appear as an adjective, but only once, (Article IV, Section 4): “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them from Invasion”

Typically for the Constitution, which defines few of its terms, the word “Republican” also remains unexplained. The ambiguity of the term turned out to be handy, however, as Radical Republicans continuously and egregiously violated Article IV, Sec. 4 from 1865-1877 as they enforced blatantly unconstitutional military occupation of former Confederate states during the gross misnomer of “Reconstruction.”

It should be obvious that the “Constitution of our Founders,” including the Bill of Rights, may not protect as many rights as many wish to believe. Moreover, we have already noted the Constitution dropped all revolutionary talk of “unalienable” rights and “Creator endowed” liberty. This was not an oversight.

The revolutionary bit about “consent of the governed” posed an especially delicate problem for the Founders. Almost all owned slaves or were masters of property-less tenants or domestic servants, including their wives none of whom

could offer their legal consent even if they wished to do so. Thus the Founders shrewdly considered it unnecessary to include any voting rights in the new republic they planned to rule, uncontested by the disenfranchised lower castes.

Did this result in the land of the free, with liberty and justice for all? Let's see.

Under the U.S. Constitution, Americans were sentenced to death for protesting unfair taxes; journalists and citizens imprisoned for criticizing government officials; citizens' property seized illegally; workers murdered by government agents; thousands jailed without the "privilege" of *habeas corpus*; entire states deprived of civilian courts; untold numbers of American Indians defrauded of liberty and property; debt-peonage and debtors' prisons flourished, as did slavery and child labor; and the majority of the public was denied the vote.

All this was considered constitutional by the Founders. None of these outrages, please note, was the result of "progressivism," which had yet to be articulated, and all were common prior to the New Deal and the advent of so-called Big Government. Was this the face of "limited government?"

No, it was not. The concept of a democratically "limited government" was not for a moment entertained by our Founders, nor is it by those who idolize them today. With few exceptions, the Founders were Eighteenth Century patricians who took a revolutionary gamble meant chiefly to perpetuate their privileges, free from English colonial overlordship. It should come as no surprise these elitists drafted a Constitution that posed no threat to aristocracy.

### **'Limited Government' as Act of Faith**

The original Constitution of the United States of America was just so much ink on paper. The Constitution, as it stands today, is just a lot more ink on paper.

But the Constitution's ink is important and deserves respect because it represents nothing less than the collective civic conscience of the American people. A great many Americans have dedicated their lives in trust to that conscience on battlefields, in classrooms, in everyday civic life, and even a few in the halls of power.

It is evident that most of the Amendments to the original Constitution as well as the Supreme Court's decisions interpreting its scope and purpose were made because the document had over the course of time been found wanting by the American people, whose common interests it was not originally intended to serve. As the collective civic conscience of the people changed, so too did their interpretation of self-government.



But the entire concept of social evolution (much less biological evolution) is something the ultra-Conservative rank-and-file likely does not comprehend and it is not something their leaders encourage them to consider. The reason for this may have less to do with politics than with fundamentalist faith.

An anecdote in point: the editor-in-chief at Random House once asked the extremist libertarian Ayn Rand if she would consider revising a passage in one of her manuscripts. She reportedly replied, "Would you consider revising the Bible?"

Ergo, that which is sacrosanct neither requires nor will tolerate change to include the fantasized "limited government" of the immortalized "Founding Fathers." The fact that Rand was a noted atheist only underscores the point that fundamentalist faith is not restricted to any particular brand of fanaticism.

Yet the Constitution's conception was anything but immaculate. It was not carted down from the Mount in tablets of stone, nor is it the product of some mysterious Natural Law interpretable only by libertarian gurus. And whether its meaning is best exemplified by the Tea Party flag depicting a talking snake ("Don't Tread on Me"), perhaps only Eve could judge with authority.

The Constitution is not a holy book, and there is no good reason for anybody to treat it like one. The men who wrote it were not prophets, nor were they particularly virtuous, though some could turn a pretty phrase. In fact, the Constitution's most unholy-book characteristic is its most welcomed attribute: its readers are not required to believe in its infallibility in order for it to make sense to them.

But we are required to read the Constitution if we want to know what it says. The ultra-conservatives' obsession with a constitutionally "limited government," which has never actually existed, suggests they do not understand the Constitution as much as they merely idolize it.

These constitutional "fundamentalists" along with the American public in general would do better to pick the document up and read it sometime, not fall on bended knee before it and expect the rest of us to follow their example.

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## How Debt Conquered America

**Special Report:** America presents itself to the world as "the land of the free" but for the vast majority it is a place of enslaving indebtedness, a reality for much of "the 99%" that has deep historical roots hidden or "lost" from our history, as Jada Thacker explains.

By Jada Thacker

Since its center-stage debut during the Occupy Wall Street movement, "the 99%" a term emblematic of extreme economic inequality confronting the vast majority has become common place. The term was coined by sociology professor David

Graeber, an Occupy leader and author of the encyclopedic *Debt: The First 5,000 Years*, published just as the Occupy movement captured headlines.

What Graeber's monumental work did not emphasize specifically, and what most Americans still do not appreciate, is how debt was wielded as the weapon of choice to subjugate the 99% in the centuries before the Occupy protesters popularized the term. Like so many aspects of our Lost History, the legacy of debt has been airbrushed from our history texts, but not from our lives.

The original 99% in America did not occupy Wall Street in protest. They occupied the entire Western Hemisphere as original inhabitants of North and South America. After 20,000 years of Occupy Hemisphere, an Italian entrepreneur appeared, having pitched an investment opportunity to his financial backers in Spain.

Soon after Columbus launched his business enterprise on the pristine beaches of the New World, each native discovered there above the age of puberty was required to remit a "hawk's bell's worth" of gold dust to the Spaniards every two weeks. The hands of all those failing to do so were cut off and strung about their necks so that they bled to death, thus motivating the compliance of others.

Bartolome de las Casas, a contemporary slave-owning priest-turned-reformer, reported three million natives were exterminated by Spanish entrepreneurship in only 15 years. His population figures were guesstimates, but modern researchers confirm that 80 to 90% of the Taino people in the Hispaniola-Cuba region died within 30 years of Spanish contact, the majority from disease.

In the century following Hernan Cortés's extreme "hostile takeover" of the admittedly brutal Aztec regime (1519-21) the native population of the entire region also declined by 90%. The same story generally followed the Spanish march across Central and South America.

Spanish conquistadors rationalized that their colonial business model, however brutal, was morally necessary: without religious conversion to the Church, pagan natives would have been condemned to an everlasting Christian hell. Ostensibly to save pagan souls, Spaniards destroyed pagan persons with the draconian *encomienda* system, in essence a debt-based protection racket.

The *encomienda* dated from the Roman occupation of Iberia (Spain), but had more recently metastasized from the practice of Christians exacting tribute from Muslims during the so-called Spanish *Reconquista*, which ended the year Columbus sailed. Under this medieval debt obligation, the native 99% were deemed to owe their labor and resources (not their land, which was expropriated by the Crown)

to Spaniards in exchange for “protection” and religious education.

The system’s legitimacy in the New World depended upon the useful fiction that the native labor force was not composed of sentient human beings. Thus, it was not lawful to impose *encomienda* upon persons of mixed-race (mestizo) presumably because they had enough European blood to be considered human.

In practice, this debt-labor system devolved into slavery and butchery of the most brutal sort imaginable, as witnessed by de las Casas. Though the *encomienda* was eventually abolished, it was replaced only by the *hacienda* system.

*Haciendas* were Spanish plantations on which natives worked as landless peasants, who owed a share of their produce to the landowner for the privilege of living lives similar only to those of Southern plantation slaves in the U.S. a century or two hence.

Spanish mines were the scene of even worse atrocities. In *The Open Veins of Latin America*, Eduardo Galeano details the horrors: native mothers in the notorious Bolivian Potosi silver mine murdered their own children to save them from lives spent as slave troglodytes.

Although some Potosi miners were nominally “free” laborers, they worked under a debt-peonage system that forbade them to leave the mine while still indebted to employers who loaned them the tools of their trade. Not even death extinguished their debt: upon the death of the indebted miner, his family was required to repay the debt with their own perpetually-indebted labor.

The tragedy of the Spaniards’ devastation of untold millions of native lives was compounded by seven million African slaves who died during the process of their enslavement. Another 11 million died as New World slaves thereafter.

The Spanish exploitation of land and labor continued for over three centuries until the Bolivarian revolutions of the Nineteenth Century. But even afterward, the looting continued for another century to benefit domestic oligarchs and foreign businesses interests, including those of U.S. entrepreneurs.

Possibly the only other manmade disasters as irredeemable as the Spanish Conquest in terms of loss of life, destruction and theft of property, and impoverishment of culture were the Mongol invasions of the Thirteenth and Fourteenth centuries. The Mongols and the Spaniards each inflicted a human catastrophe fully comparable to that of a modern, region-wide thermonuclear war.

### **The North American Business Model**

Unlike Spaniards, Anglo-American colonists brought their own working-class labor

from Europe. While ethnic Spaniards remained at the apex of the Latin American economic pyramid, that pyramid in North America would be built largely from European ethnic stock. Conquered natives were to be wholly excluded from the structure.

While contemporary North Americans look back at the Spanish Conquest with self-righteous horror, most do not know the majority of the first English settlers were not even free persons, much less democrats. They were in fact expiration-dated slaves, known as indentured servants.

They commonly served 7 to 14 years of bondage to their masters before becoming free to pursue independent livelihoods. This was a cold comfort, indeed, for the 50% of them who died in bondage within five years of arriving in Virginia this according to *American Slavery, American Freedom: The Ordeal of Colonial Virginia* by the dean of American colonial history, Edmund S. Morgan.

Also disremembered is that the Jamestown colony was founded by a corporation, not by the Crown. The colony was owned by shareholders in the Virginia Company of London and was intended to be a profit-making venture for absentee investors. It never made a profit.

After 15 years of steady losses, Virginia's corporate investors bailed out, abandoning the colonists to a cruel fate in a pestilential swamp amidst increasingly hostile natives. Jamestown's masters and servants alike survived only because they were rescued by the Crown, which was less motivated by Christian mercy than by the tax it was collecting on each pound of the tobacco the colonists exported to England.

Thus a failed corporate start-up survived only as a successful government-sponsored oligarchy, which was economically dependent upon the export of addictive substances produced by indentured and slave labor. This was the debt-genesis of American-Anglo colonization, not smarmy fairy tales featuring Squanto or Pocahontas, or actor Ronald Reagan's fantasized (and plagiarized) "shining city upon a hill."

While the Spaniard's ultimate goal was to command native labor from the economic apex, the Anglo-American empire would replace native labor with its own disadvantaged 99%. The ultimate goal of Anglo colonization was not intended so much to put the natives under the lash as to have rid of them altogether.

Trade deficits and slavery would answer their purpose quite nicely. By the 1670s New England Puritans were already rigging the *wampum* market at their trading posts in order to pressure the Wampanoag into ceding land thus in part precipitating the Narragansett War, King Philip's War, the ensuing genocide of

some natives, and the mass enslavement of others to be sold abroad.

As chronicled by Alan Galloway in *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717*, Carolina colonists concurrently sold Indian slaves to the God-fearing Puritans and trading others for African slaves at a 2:1 exchange rate while wielding trading-post debt against local Indians, precipitating the Yamasee War which proved to be a major disaster for natives and whites alike.

For half a century, the Carolina colonists' export of tens of thousands of Indian slaves exceeded imports of black slaves. This was the origin of Southern plantation agriculture.

The institution of North American Indian slavery was necessarily based upon debt. English law forbade colonists from enslaving free persons, but it conceded that prisoners of war could be considered slaves. Because captives owed their lives to their captors, the latter could dispose of the debt as they saw fit, to include transferring the debt to a third party for goods and services.

The captive-to-slave pipeline was sanctioned by none other than John Locke, the renowned philosopher who directly inspired Jefferson's composition of the Declaration of Independence, and who is often championed today by libertarians and no wonder! as an oracle of private property rights.

All along the westward frontier, American colonists continued to foreclose on natives' land with debt machinations perhaps less overtly brutal, but far more devious than the Spanish *encomienda*: to remove the self-reliant 99% from their land, it was necessary first to remove their self-reliance.

Here is how President Thomas Jefferson explained the process to future president William Henry Harrison in 1803: "To promote this disposition to exchange lands [] we shall push our trading uses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands.

"As to their fear, we presume that our strength and their weakness is now so visible that they must see we have only to shut our hand to crush them, and that all our liberalities to them proceed from motives of pure humanity only. Should any tribe be foolhardy enough to take up the hatchet at any time, the seizing the whole country of that tribe, and driving them across the Mississippi, as the only condition of peace, would be an example to others, and a furtherance of our final consolidation."

Debt more so than firepower, firewater, or even disease provided the economic weapon by which Anglo-Americans designed to privatize the Indians' means of self-reliance. "How the West Was Won" in the "Land of the Free" was a saga of debt moving inexorably westward in what Jefferson called "our final consolidation." He might well have said "final solution," but he did not.

As debt expanded westward, desperate Anglo settlers believed the frontier land was "free for the taking" for those with the stamina to seize it. This belief ultimately proved illusory, as land "squatters" and homesteaders were evicted or forced into paid tenancy through debt or the legal maneuvering of wealthy land speculators.

George Washington secured the eviction of pioneer families from western Pennsylvania land he claimed to own in absentia, although those he forced from the land possessed a deed that pre-dated his own, as related in Joel Achenbach's *The Grand Idea: George Washington's Potomac & the Race to the West*.

On the other hand, Daniel Boone, famed for leading pioneers westward through the Cumberland Gap, died landless, all his land claims having been picked off by legal sharpshooters. Also landless, Davy Crockett died at the Alamo in an attempt to secure Texas acreage he never survived to claim.

The final illusion of free soil vaporized when in 1890 the United States census declared the American Frontier closed. Much of what was left had at any rate been monopolized by railroad, ranching, mining, and forestry corporations after the Dawes Act had privatized most of the natives' "protected" reservation lands in 1887. For most white and black Americans, meanwhile, free tenancy homesteads had never materialized in the first place.

### **Debt vs. Self Reliance**

Jefferson's "final consolidation" was accomplished by a system he admitted offered debt with one hand but held a sword in the other. The estimated 3,000,000 families who lost their homes during the Great Recession that began in 2007 understand this principle intimately.

The debt system is in fact more powerful in the Twenty-first Century than ever before because the 99% are far less self-reliant now than ever before. To understand why this is so, we must first think seriously about the term "self-reliance."

Although we may casually refer to someone as being self-reliant, such people do not actually exist. Human beings simply are not equipped to survive, much less prosper, strictly as self-reliant individuals. As infants and children we cannot survive without familial care, and as adults we cannot prosper without the



cooperation and support of peers.

There has never been, and never will be, such a thing as a “self-made man.”



On the other hand, the 99% was self-reliant the day before Columbus arrived. They possessed the means of production of the energy and food resources needed for their group’s long-term survival and biological propagation, all without significant contact with others. Had the culture of Columbus been equally self-reliant, he would never have needed to set sail.

Judged by modern standards, American native groups were intensely cooperative, extremely egalitarian, and inherently (if informally) democratic. Government as a coercive force did not exist in these groups as we know it today, though leadership and traditional mores were vital to group survival.

Similarly, the concepts of money and monetary debt were unknown, as was the concept of an economic “class” that reserved economic privileges or property to itself at the expense of all. Interpersonal behavior within native groups, by eyewitness accounts, was respectful and peaceful.

Behavior *between* native groups usually was not peaceful. Persistent low-level warfare was the norm. It could be brutal indeed, but rarely if ever rose to the scale of civilized “total war.”

Indeed, since a “warrior class” did not exist and could not be conscripted, native combatants were necessarily volunteers who otherwise were needed at home to help provide for their families. Consequently, the severity and duration of native warfare were limited as it is for all human groups everywhere to what society at large can economically afford.

Among the original 99%, all men mostly performed the same sort of occupational tasks. All women did the same. Both sexes had a common goal: food production and the reproduction and rearing of children. While all human groups must achieve

these basic goals, civilized peoples do so within a complex hierarchical labor system, wherein some occupational tasks are considered more worthy than others and are compensated accordingly.

Civilized division of labor inevitably has metamorphosed into a hierarchy of economic classes, ultimately resulting in the private ownership of the means of production by the "haves" and the lack of private ownership by the "have-nots." This was unknown in uncivilized native society.

Native land, for example, was not actually "owned" in the contemporary sense at all. Natives were acutely aware that they, themselves, were products of the land; for them, claiming ownership of the land would have made as much sense as children claiming ownership of parents.

This is not to say that natives were not territorial, for they were highly territorial. But their territoriality was not based upon legalistic titles of private property. Access to communally-held food resources not ownership of real estate was their *sine qua non* for sustainable survival.

What natives shared in common they defended in common. Having no economic hierarchy, no one in their society could control the food supply of others, simply because no individual could claim exclusive ownership of the collective means of food production. Abundant resources were therefore abundant for all; if scarce, they were scarce for all.

True enough, when the Europeans arrived, they found native societies everywhere in conflict with their neighbors, but nowhere did they find endemic poverty, famine, disease or social degeneracy. Indeed, it was the self-reliant natives who helped feed the first generation of starvation-prone English colonists both at Jamestown and at Plymouth.

Once private ownership clamped down upon the landscape, virtually nobody would control their own food supply without some form of indebtedness to another. But since the resource stock of self-reliant food production the land itself would remain in place, private monopolist-owners required an economic mechanism to *keep* what remained within their grasp forever out of reach of others.

### **The Hand That Gives**

As self-reliant native societies were decimated by debt, disease, and sword, ownership of the previously un-owned land was usurped by the conquerors. But it was not to be usurped equally by all of them.

Economic-class domination was problematical in British North America, because the economic pyramid that supplanted the communal native system was composed

largely by people in the same Anglo ethnic group. It is one thing to justify violent economic domination of those with a “foreign” language, culture, religious sensibility and physical appearance; it is quite another to justify overlord-ship of those virtually indistinguishable from oneself.

Nevertheless, class domination was a stark fact of life in Colonial America where the economic division between masters and servants was sharp and where all land titles originally flowed down from the Crown to a short list of royal favorites, sycophants and lackeys. After the Revolution, however, maintaining economic class domination proved especially tricky, eventually requiring the drafting of an “all-American” document for that specific purpose.

Yet the solution to the problem to elite domination of a supposed “republic” had been imported, disease-like, from the Old World. In the centuries preceding Columbus’s arrival, two critical economic developments had transpired in Europe: the rise of an economy based upon metallic currency and the de facto repeal of the Biblical prohibition on loaning currency at interest.

The upshot of these quiet revolutions was the replacement of the sovereign currency owned by kings and emperors by that of private currency owned by the new economic elite known as bankers. In Antiquity, currency was owed by subjects to the monarch as tax. This was the reason for Joseph and Mary’s celebrated journey to Bethlehem.

But by the time of Columbus (and continuing to the present day) currency was to be owed to private persons *by* the monarch, who borrowed from them at interest to finance wars to protect and defend monarchical control over the means of food production.

To be sure, government still levied taxes as in the days of Jesus, but the tax revenue was not exchanged directly to conduct war, but to repay principal and interest to bankers only too obliging to finance wars for personal gain.

Indeed, war and bank-indebted sovereigns are inseparable. The very first European bank to loan at interest was established during The Crusades by the Knights Templar; Spanish king Charles I squandered the vast majority of his conquistadors’ New World gold on paying crushing interest charges incurred during his long war in the Netherlands; King William’s War against France was made possible by the establishment in 1694 of the Bank of England, the world’s first central bank.

Wherever modern war exists, governments are indebted to bankers. This is what prompted a cash-strapped Napoleon to observe: “When a government is dependent upon bankers for money, they and not the leaders of the government control the

situation, since the hand that gives is above the hand that takes. Money has no motherland; financiers are without patriotism and without decency; their sole object is gain.”

It is hardly coincidental that the first bank in North America was chartered to supply arms for the American Revolution, and the first central bank of the United States was chartered specifically to fund Revolutionary War debt. Although no banks had existed in British North America during the 174 years preceding the Declaration of Independence, America’s first commercial bank sprang forth in 1781, literally before the smoke had cleared from the American Revolution nearly a decade ahead of Constitutional government.

This fact alone suggests where real economic power had been vested, long before the words “We the People” ever went to press.

Unlike the days of Antiquity, wealth taken by force was not to be held by those who wielded the sword, but by those who financed the supply of swords. The means of North American food production, first expropriated under the banner of European imperial power, would be owned thereafter in Republican America as in monarchical Europe alike by new conquistadors called creditors.

### **Scarcity, Debt, and “Necessitous Men”**

Monopoly of the food supply of the 99% was accomplished by replacing self-reliance with debt bondage. The second step was to reserve private land ownership to *particular* individuals within the dominant class. This would be accomplished by imposing upon the land a wholly arbitrary number called a “price.”

The prime function of a monetary price was to render land unaffordable for all except a few creditor-entrepreneurs. Under the precious-metal-based system then in place, currency had been endemically scarce in North America, making this an easy task.

If American land so recently filched from its native inhabitants, then re-filched from its imperial British overlords were to be had by freedom-loving American common folk, it would be had on credit, and on the creditor’s terms. The fate of the Ohio land of the Old Northwest Territory provides a case in point.

In 1749, King George II granted Ohio land to a private corporation, the Ohio Land Company, whose shareholders included George Washington’s paternal uncles. Tellingly, the grant was bestowed 15 years before Britain actually established sovereignty over that land by winning the French and Indian War.

That war which became the first World War in all of human history was ignited, not incidentally, by George Washington himself when he ordered the murder of Indians and a French nobleman upon Ohio land Washington likely considered private property, possibly his own.

It would yet require the American Revolution, three more Indian Wars all under Washington's presidential authority plus a good deal of diplomatic treachery, finally to "open" the land for Anglo settlement.

But its first owners were not to be hardy frontiersmen and their growing families. In the meantime, select government committees, again not incidentally, had priced the land out of reach of those most in need, so ownership fell into the hands of well-heeled real estate speculators, to include of course Washington, himself.

With the Ohio land grab as background, let us consider the principle of scarcity as it relates to trade. All trade is predicated upon exchanging something one possesses for something one would prefer to possess instead. If there were no such thing as scarcity that is, if all persons already possessed sufficient quantities of the stuff they need nobody would have the inclination to trade anything at all.

What, then, about debt? No self-regarding person would voluntarily borrow currency at interest if they already possessed enough currency to exchange for the stuff they need to live. If this is so, then for creditors to profit by lending at interest, a single condition is always necessary: persons should *not* be allowed a sufficient quantity of currency to complete the desired exchange. When currency is scarcer than the goods for which it is to be exchanged, prospective buyers have only two legal options: do without, or borrow.

If the consequences of doing without (starvation or homelessness, for example) are sufficiently unacceptable, and if a creditor is available, then a debtor is certain to emerge. This emphatically does not imply that the debtor is always a willing party to a debt obligation.

Indeed, the entire logic of indebtedness implies the opposite. *No rational entities businesses, governments, or individual persons put themselves into interest-bearing debt if they need not do so.* Put simply: debtors are the needy who can no longer afford self-reliance.

Franklin Delano Roosevelt expressed this reality eloquently in 1944 when he declared to the nation, "Necessitous men are not free men." He was mostly preaching to the choir. The American 99% had known this truth since indentured-servant pioneers had waded ashore at Jamestown in 1607 only to find upon their

emancipation that all the valuable land had already been monopolized by the planter elite.

Having failed to learn the history debt played in the exploitation of the New World, modern Americans fail to perceive they have inherited the same debt-system foisted upon the natives by colonizing Europeans and later by American elites upon their own people. Consequently, we think of debt only as a contract made voluntarily between two consenting adults.

But in America today every newborn child is a predestined debtor, no matter what he or she will consent to in the future. Once the free land tenure of communal native societies was destroyed, it was never to return, not even for the progeny of the destroyers.

Debt-bondage today takes a more subtle form. If Americans are no longer debt-peons, forced to slave away on the landlord's estate or starve, it is only because the landlords no longer care where we slave away. Landlords extract their monthly payments regardless. Today about 25% or more of the earnings of workers flows as rent to landlords or as debt payments to mortgagees.

Indeed, fully half of the debts held by commercial banks alone are tied to real estate. Nor do Americans conceive the staggering price tag affixed to land: for example, economist Michael Hudson reports the dollar valuation of real estate in New York City alone is higher than that of the industrial plant of the entire nation.

As 2016 arrived, American households owed about \$13.8 trillion in home mortgage debt, which effectively is a rent payment to the mortgagee who holds the title to the property. All persons without a mortgage must pay rent to a landlord. All persons without mortgages or landlords must still pay property taxes until death, at which time any unpaid taxes in an echo of the Potosi miners' debt-peonage system must be paid by their indebted heirs.

Thus, the entire landmass of the Western Hemisphere, which for over 20,000 years had been the source of self-reliance for all its human inhabitants, remains hostage to the same debt system that seized it and which now extracts ransom from the 99% who would claim the least corner of it as home.

### **Debt vs. Dollars**

In Early America, the scarcity of precious-metal coinage (specie) was a perennial problem. So scarce was gold that the first coinage act passed by Congress in 1792 defined the U.S. dollar as "each to be the value of a Spanish milled dollar as the same is now current, and to contain four hundred and sixteen grains of standard silver."

Thus the United States dollar was literally established on a “silver standard,” and it was Spanish silver at that! The now oft fetishized American “gold standard” for currency would not officially materialize until the Twentieth Century with the passage of the Gold Standard Act in 1900. It did not last long.

After only 33 years, the Gold Standard was abandoned by the Emergency Banking Act of 1933, which was passed to remedy what else? the scarcity of currency during the Great Depression. (All the world’s major currencies dropped the gold standard during this crisis.)

Subsequently, the gold standard never was reemployed domestically in the U.S. And even the dollar’s international convertibility to gold finally was declared extinct, courtesy of President Richard Nixon, in 1971.

It was appropriate for gold to tread the path of the dinosaur, for it had come to resemble one. Though it is evident that currency must be scarce to some degree in order to maintain its exchange-value purchasing power, all precious-metal-backed currencies suffer from their dinosaur-like tendency of becoming *increasingly* scarce.

As the volume of trade increases in a growing economy, any medium of exchange based upon a finite quantity of metal cannot keep pace. The result is a constant increase in the purchasing power of the metal-backed currency, which becomes ever-more scarce in proportion to the number of persons needing to possess it.

This, in turn, leads to “necessitous men” becoming debtors to those in possession of the metal sometimes to governments, sometimes to businessmen, but always to bankers.

Historically, American currency has usually consisted of a mish-mash of specie, paper money, and debt, often accompanied by copious reserves of flimflammy. Thus, purchasing power has always been based partially upon some form of debt obligation, not just gold or silver coin.

During the Colonial Era, “bills of exchange” essentially IOUs of transferrable debt served as currency for the wealthy and the merchant class. Later, “bills of credit,” un-backed fiat currency issued by the Continental Congress as paper money, financed the Revolution, along with some \$60 million of private domestic lending.

Finally, under the National Banking Act of 1862, paper currency issued by national banks was backed by the amount of federal debt IOUs owned by the bank. This officially made the most popular medium of exchange broadly based upon national (war) debt. In addition, the government spent into existence Greenback fiat money, which was backed by nothing at all.

When in 1913 the Federal Reserve Bank (the Fed) began issuing Federal Reserve Notes, they were at first redeemable either in gold or “lawful money,” but their redemption was soon cancelled by the Emergency Banking Act noted above. Since then, all “backed” currency has been withdrawn from circulation, leaving Federal Reserve Notes (dollar bills), exchangeable only for debt owned by the privately-owned Fed as the sole legal tender of the United States.

Although the gold standard is long gone, “necessitous men” remain. This is not happenstance.

This is the result of applying the mentality of gold-standard scarcity to the modern creation of financial debt, which is but the latest scheme by which the means of production of food that is, the vast landscape of North America is owned by the few and rented out to the rest at interest.

“Gold Bug” libertarians decry the absence of a federal statute defining the value of a U.S. dollar but they miss the point. No doubt the “value” of a dollar matters a great deal to those who hoard them by the billions; but dollar “value” is less a concern for the 99%, who are allowed to earn so few dollars they are forced to borrow them at interest from the hoarders.

As it applies to the 99%, our wages are the source of the currency we all must possess in order to live. But none of us actually controls how much currency we earn (or quite often how much of it we must spend); as a result, we do not control how much we may be forced to borrow.

Finally, we certainly do not control the conditions that will be imposed upon us if we must borrow (or whether we will be allowed to borrow at all). Put bluntly, the economic lives of wage earners are not in their own hands, but rest in the “hand that gives.”

We have only to be thankful we live in a “free country,” whatever in the world that is supposed to mean.

### **How the West Was Owed: Redux**

In the years following the Revolution, some 90% of the American population subsisted as farmers. American women in the coming century would, on average, give birth to eight children who lived into adulthood. Accordingly, not only did population double every 30 years, the demand for additional farms more than trebled every generation.

Moreover, uninformed agricultural practices rapidly destroyed topsoil, sending “dirt poor” farmers streaming westward in search of land more fertile than their wives. As the frontier chased the setting sun, speculators and corporate agents



raced ahead like locusts, devouring the landscape on the cheap, renting or re-selling at the price dictated by the demographics of desperation.



When American school kids are taught about Conestoga wagon “prairie schooners” creaking along the Oregon Trail or the Oklahoma “Sooners” land grab or the California Gold Rush, they are encouraged to view these events as technicolor visions of a unique American Opportunity unavailable to lesser mortals.

In truth, the 99% headed west simply because there was no place left for them to go. These economic refugees no doubt saw opportunity before them, but a great many of them must have perceived it the same way the many Third Class passengers on the Titanic viewed the opportunity offered by a lifeboat with an empty seat.

In 1893, historian Frederick Jackson Turner enunciated his famous “Frontier Thesis.” He claimed that the American Frontier experience had produced a unique form of democratic culture, increasingly more hostile to social and economic hierarchy as it spread from the Atlantic to the Pacific. The Frontier Thesis is a powerful idea, especially in its view of the frontier as an evolutionary process, which it was.

But Turner’s thesis perhaps unintentionally reinforced both the preexisting theocratic Puritanical creed of American Exceptionalism and the ordained racism of Manifest Destiny both of which were based upon a belief in the sanctity of Anglo-American economic domination of the New World.

For 40 years, Turner continued to proselytize his prototype of Hollywood Americanism as the rapidly industrializing United States rose to world-power status, and he became a celebrity doing so. Had Turner spent an hour or two of that time pondering the deeper implications of his own home mortgage, he might have discovered a more profound reality.

While the American frontier had indeed fundamentally and irrevocably revolutionized the economic relationship between human beings and their control

of the North American landscape, the revolution was not achieved by *abandoning* European principles of social and economic hierarchy, but by *transplanting* them to the Western Hemisphere.

To view the conquest of North America as the triumphant flowering of democratic liberty and affluence over bestial savagery and abject poverty is so factually vacant, so morally and economically perverse, as to be considered hallucinatory.

Native people literally had no words to describe the cataclysm that had destroyed them. It was left to follow-on generations of “necessitous men” to learn the vocabulary of servitude needed to describe their economic lives.

Here is only a part of the terminology “necessitous men” needed to learn: poverty level, payday loans, food stamps, interest rate, surcharges, eviction, unemployment rates, lock-outs, foreclosure, bankruptcy, credit scores, down payment, damage deposits, credit limit, collection agency, mortgages, user fees, closing costs, title loans, bail outs, insolvency, title insurance, origination fee, installment plans, tax levy, deed restrictions, market crashes, illiquidity, non-sufficient funds, minimum payment due, late fees, lay-offs, property lien, pawn tickets, collateral, tax withholding, service fees, forfeiture, inflation, deflation, stagflation

Is this the vocabulary of free people?

As of January, 2016, Americans (government, business and individuals) owed an estimated \$65,000,000,000,000 (\$65 trillion) in total debt, with the average citizen’s share about \$200,000. Of course, these are aggregate figures: many individuals and businesses owe more, many owe less, but *everybody* owes.

Now consider: the annual median income (mid-point, not the average) of American citizens is \$29,000; that median family savings is below \$9,000; and that the median price of a new home is over \$294,000. Personal debt (not including national and business debt) per citizen is \$54,000, or about twice the median income.

It does not require Napoleonic genius to grasp the fact that the “hand that gives” can load more debt onto the 99% than they can ever possibly repay. This is not a mistake or a “conspiracy”; it is simply a business plan. For every citizen’s \$200,000 share of debt, some other entity or citizen expects to collect \$200,000 plus interest. Will such a business plan succeed? Ask a Taino or a Wampanoag if you can find one handy.

There is an historical anecdote of a question posed long ago by a Cherokee. “White Brother,” he said, “when you first came to this land, there were no debts. There were no taxes. And our women did all the work. Do you expect me to

believe you can make this situation better?"

The 99% should know the answer. And women still do most of the work.

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## The Right's Made-up 'Constitution'

**From the Archive:** Many Americans, especially Tea Partiers and Neo-Confederates, either haven't read the U.S. Constitution or insist on distorting its plain language which established federal supremacy over the states and empowered the central government to "provide for the general Welfare," as Jada Thacker noted in 2013.

By Jada Thacker (Originally published on July 6, 2013)

The Cato Institute's *Handbook for Policy Makers* says, "The American system was established to provide limited government." The American Enterprise Institute states its purpose to "defend the principles" of "limited government." The Heritage Foundation claims its mission is to promote "principles of limited government." A multitude of Tea Party associations follow suit.

At first glance the concept of "limited government" seems like a no-brainer. Everybody believes the power of government should be limited somehow. All those who think totalitarianism is a good idea raise your hand. But there is one problem with the ultra-conservatives' "limited government" program: it is wrong. It is not just a little bit wrong, but demonstrably false.

The Constitution was never intended to "provide limited government," and furthermore it did not do so. The U.S. government possessed the same constitutional power at the moment of its inception as it did yesterday afternoon. This is not a matter of opinion, but of literacy. If we want to discover the truth about the scope of power granted to federal government by the Constitution, all we have to do is read what it says.

The Constitution's grant of essentially unlimited power springs forth in its opening phrases: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for

the United States of America.”

As might be expected in a preamble to a founding document, especially one written under supervision of arch-aristocrat Gouverneur Morris, the terms are sweeping and rather grandiose. But the point is crystal clear: “to form a more perfect Union.” If the object of the Constitution were to establish “limited government,” its own Preamble must be considered a misstatement.

### **Enumerated Powers**

Article I establishes Congress, and Section 8 enumerates its powers. The first clause of Article I, Section 8 repeats the sweeping rhetoric of the Preamble verbatim. While it provides for a measure of uniformity, it does not so much as hint at a limit on the federal government’s power to legislate as it sees fit:

“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States”

No attempt is made here, or at any other place in the Constitution, to define “general Welfare.” This oversight (if that is what it was) is crucial. The ambiguous nature of the phrase “provide for the general Welfare” leaves it open to widely divergent interpretations.

Making matters worse for federal government power-deniers is the wording of the last clause of Article I, the so-called “Elastic Clause”: Congress shall have power “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

Thus the type, breadth and scope of federal legislation became unchained. When viewed in light of the ambiguous authorization of the Article’s first clause, the importance of the “necessary and proper” clause truly is astonishing. Taken together, these clauses restated in the vernacular flatly announce that “Congress can make any law it feels is necessary to provide for whatever it considers the general welfare of the country.”

Lately there has been an embarrassingly naive call from the Tea Party to require Congress to specify in each of its bills the Constitutional authority upon which the bill is grounded. Nothing could be easier: the first and last clauses of Article I, Section 8 gives Congress black-and-white authority to make any law it so desires. Nor was this authority lost on the Founders.

“Limited government” advocates are fond of cherry-picking quotes from *The Federalist Papers* to lend their argument credibility, but an adverse collection of essays called the *Anti-federalist Papers* unsurprisingly never gets a glance. Here is a sample from New Yorker Robert Yates, a would-be founder who walked out of the Philadelphia convention in protest, written a month after the Constitution had been completed:

“This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends. The government then, so far as it extends, is a complete one. It has the authority to make laws which will affect the lives, the liberty, and the property of every man in the United States; nor can the constitution or the laws of any state, in any way prevent or impede the full and complete execution of every power given.”

Yates, it must be emphasized, took pains to identify the “necessary and proper” clause as the root of the “absolute power” inherent in the Constitution well over a year before ratification.

### **The Tenth Amendment**

A particular darling of secession-prone, far-Right Texas Gov. Rick Perry, the Tenth Amendment is often claimed as the silver-bullet antidote for the powers unleashed by the “general welfare” and “elastic clauses.” Here is the text of the Amendment in its entirety: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Superficially, the Tenth seems to mean “since certain powers are not delegated to the federal government, then those powers are reserved to the states or the people.” This would seem to be good news for champions of limited government. But this is not the case.

The Tenth does *not* say that important powers remain to be delegated to the United States. It merely says that powers “not [yet] delegated” are “reserved” to the states or the people. This sounds like a terrific idea until we realize, of course, that all the important powers had *already* been delegated in 1787, four years before the Tenth Amendment was ratified.

As we have seen, the first and last clauses of Article I, Section 8 made the Tenth Amendment a lame-duck measure even as James Madison composed its words in 1791 and so it remains today. The sweeping powers “to make all laws necessary and proper” in order to “provide for the general welfare,” had already been bestowed upon Congress. The Johnny-come-lately Tenth Amendment closed the constitutional pasture gate after the horses had been let out.

This apparently has never occurred to the likes of Gov. Rick Perry and his far-Right cohorts who believe a state may reclaim power by withdrawing its consent, in effect repossessing their previously delegated power through state legislation. Superficially, the logic of this position seems sound: if the states had the legal authority to delegate power, then they may use the same authority to “un-delegate” it by law.

But a close re-reading of the Tenth’s wording nixes such reasoning. Oddly, the Tenth Amendment does not say the *states* delegated their powers to the federal government although it may be argued that it probably ought to have said so. It says “The powers not delegated to the United States *by the Constitution* are reserved to the States. ”

Thus, according to the Tenth Amendment, the Constitution *itself* delegated the power to the federal government. States, in other words, now have no standing to “reserve-back” what they had never “delegated-away” in the first place.

Had it been possible to “un-delegate” the powers of the United States by invoking the Tenth, the Old South would have simply done so and spared itself the bother of secession not to mention the bother of being annihilated by a series of subsequent Northern invasions. The fact that the South did not even attempt such a strategy attests to the toothlessness of the Tenth Amendment.

No other instance in law would be a better example that we should choose our votes carefully. For in ratifying the Bill of Rights, which included the Tenth Amendment, the American people endorsed the legal fiction that the Constitution not the original 13 states, or “We the People” authorized the power of the United States *because the Constitution itself said so*. If the Constitution has an Orwellian twist, this is it no matter which side of the aisle you’re on.

The states and the people may amend the Constitution. But they may not do so by nullification (according to the logic inherent in the wording of the Tenth Amendment), or by the judgment of state courts (according to the “supremacy clause” of Article VI), nor may any Amendment be made without the participation of the federal government, itself (according to Article V.) If the Founders had meant to ensure “limited government,” there is no trace of such intent here.

### **Paucity of Rights**

If the Constitution were intended to provide “limited government,” we might expect it to be chock full of guarantees of individual rights. This is what Tea Partiers may fantasize but this is not really true. In fact, the Constitution is amazingly stingy in reference to “rights.”

The word “right” is mentioned *only once* in the Constitution as ratified. (Art.

I, Sec. 8 allows Congress to award copyrights/patents to ensure their holders “Right to their respective Writings and Discoveries.”)

The word “right” somewhat counter-intuitively appears only six times in the ten Amendments called the “Bill of Rights.”

Almost a century later, the first of seven other rights were added under pressure from Progressive activists almost all of which were intended to create and extend democratic participation in self-government.

Amendment XIV (sanctions against states denying suffrage); XV (universal male suffrage); XIX (women’s suffrage); XXIV (denial of poll tax); and XXVI (18 year-old suffrage); and twice in Amendment XX, which gives Congress the “right of choice” in presidential succession.

In grand total, the word “right” appears only 14 times in the entire Constitution, as it exists today (including the two rights conferred to *government*).

Did we all notice that the “Constitution of the Founders” did not include the “right” for anybody at all to vote? Notable, too, is the absence of language implying that any “rights” are “unalienable” or “natural” or “endowed by their Creator.” All such phraseology belongs to the Declaration of Independence, which apparently unbeknownst to Tea Partiers everywhere bears no force of law.

The word “power,” by the way, occurs 43 times in the Constitution, each time referring exclusively to the prerogative of government, not right-wingers. Since “individual” rights are mentioned only 12 times, this yields a ratio of about 4:1 in favor of government power over individual rights. Without the efforts of those pesky, democracy-mongering Progressives, who fought for universal voting rights, the ratio would be more than 6:1 today or 50 percent higher.

This statistical factoid is not as trivial as it may appear. Expressed in practical terms, Michele Bachmann, Sarah Palin or Clarence Thomas would almost certainly never have achieved public office had they lived under the “limited government” designed by the Founders they so revere.

### **The Bill of Rights**

So what exactly are our non-patent/copyright “rights,” under so-called “limited government?”

Amendment I the right of people “peaceably to assemble, and to petition the government for redress of grievances”

Amendment II the right “to keep and bear arms, shall not be infringed”

Amendment IV the right “to be secure against unreasonable searches or seizures”

Amendment VI the right “to a speedy and public trial”

Amendment VII the right “of a trial by jury”

Amendment IX enumeration “of certain rights” shall not deny “others retained by the people”

That’s it. What happened to the famous rights of free speech, religion or press? The way the First Amendment is worded does not enumerate these as positive rights that people possess, but rather as activities the government may not infringe upon. If Bill of Rights author James Madison had meant to stipulate them as positive “rights” all he had to do was write it that way, but he did not.

Bear in mind Madison (then a federalist) wrote the Bill of Rights under political duress. Since anti-federalists (recall the skepticism of Robert Yates) flatly refused to ratify the Constitution unless it guaranteed *something*, Madison had to write *something*. In effect, the amendments were the pig the anti-federalists had bought in the poke, three years after ratification had paid for it.

Madison, at the time of writing, had little incentive to take pains with what he wrote because federalists did not believe a Bill of Rights was necessary, or even good idea (with Alexander Hamilton arguing a Bill of Rights would be “dangerous.”) This may account for the fact that some of what Madison wrote seems vague, or even ambiguous, as in the case of Amendment II.

Amendment IX, for example, actually makes little sense, which may account for the fact nobody ever seems to mention it: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

This sounds “righteous” enough, until we recall the Constitution to which this Amendment pertains had “enumerated” only a single right in the first place! Even if Amendment IX applies to the Bill of Rights (to include itself), then all it says is “the people may have more rights than the half dozen mentioned so far, but we’re not going to tell you what they are.” (So if Amendment X is Orwellian, Amendment IX verges on Catch-22.)

Of course the idea was to calm suspicions that people would possess only the half-dozen rights enumerated in the Bill of Rights (plus patents!) and no others. Even so, Amendment IX did not guarantee any un-enumerated rights; it just did not peremptorily “deny or disparage” any.



And what sense should we make of the crucial Amendment V one of the four Bills of Rights not actually containing the word “right” at all?

**“No person shall be** held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be **deprived of life, liberty, or property**, *without due process of law*; nor shall private property be taken for public use, without just compensation.” [Emphasis supplied]

Thus, life, liberty and property are *not* expressly granted status as fundamental “rights,” but only as personal possessions that may be deprived or taken according to “due process.” The crucial implication is that Amendment V exists *in order to stipulate how the government may deny* an individual claim to life, liberty or property. *With* due process, you life, liberty and property may be toast. That is what it plainly says.

It is interesting, too, that the Bill of Rights does not speak to the origin of rights, but only to their existence. Moreover, the Constitution never speaks of granting rights, but only protecting them. There is a good reason for this: excepting the Progressive suffrage Amendments, none of the guaranteed rights were American inventions, but had for centuries been considered the rights of the English nobility.

For those who want to believe in “American Exceptionalism” as the basis of “limited government,” this is not encouraging news. Moreover, the Constitution, including the Bill of Rights, hardly includes any “right” that had not already been recognized at one time or another by medieval English monarchs or in ancient Rome and Greece.

### **Property Rights and ‘Republic’**

The strict libertarians among us claim the sole legitimate power of government is that which is necessary to protect private property rights. On this score, however, the “limited government” of the Founders is practically mute. Except for the aforementioned Article I, Section 8 provision for patents and copyrights, private “property” is only mentioned twice in the Constitution, both times in a single sentence of the “right”-less Amendment V quoted above:

“No person shall be deprived of life, liberty or **property** *without due process of law*; nor shall private **property** be taken for public use, *without just compensation*.” [Emphasis supplied]

Once again, Amendment V fails to guarantee personal immunity from the power of the state, but rather details the way state power may be used to dispossess individuals of their property. And we must bear in mind these words were not penned by Marxists, socialists, or Progressives.

Whether by design or happenstance, the original "Constitution of the Founders," or the Bill of Rights, or even the Constitution with all its Amendments does not grant any irrevocable "right of possession" to property. Even the Second Amendment's "right to keep" arms, is subject to the terms by which property may be taken under terms of Amendment V, and it always has been.

Tellingly, the word "democracy" does not appear in the Constitution. This intentional oversight is often smugly celebrated by anti-democrats among us, who insist that the United States of America was founded as a "republic." No doubt this is true, given that the Constitution was written by an exclusive, hand-picked cadre of oligarchs, whose number did not include a single woman, person of color, or wage-earner.

Unfortunately for the pro-republic "limited government" crowd, the Constitution does not contain the word "republic" either. The word does appear as an adjective, but only once, (Article IV, Section 4): "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them from Invasion"

Typically for the Constitution, which defines few of its terms, the word "Republican" also remains unexplained. The ambiguity of the term turned out to be handy, however, as Radical Republicans continuously and egregiously violated Article IV, Sec. 4 from 1865-1877 as they enforced blatantly unconstitutional military occupation of former Confederate states during the gross misnomer of "Reconstruction."

It should be obvious that the "Constitution of our Founders," including the Bill of Rights, may not protect as many rights as many wish to believe. Moreover, we have already noted the Constitution dropped all revolutionary talk of "unalienable" rights and "Creator endowed" liberty. This was not an oversight.

The revolutionary bit about "consent of the governed" posed an especially delicate problem for the Founders. Almost all owned slaves or were masters of property-less tenants or domestic servants, including their wives none of whom could offer their legal consent even if they wished to do so. Thus the Founders shrewdly considered it unnecessary to include any voting rights in the new republic they planned to rule, uncontested by the disenfranchised lower castes.

Did this result in the land of the free, with liberty and justice for all? Let's

see.

Under the U.S. Constitution, Americans were sentenced to death for protesting unfair taxes; journalists and citizens imprisoned for criticizing government officials; citizens' property seized illegally; workers murdered by government agents; thousands jailed without the "privilege" of *habeas corpus*; entire states deprived of civilian courts; untold numbers of American Indians defrauded of liberty and property; debt-peonage and debtors' prisons flourished, as did slavery and child labor; and the majority of the public was denied the vote.

All this was considered constitutional by the Founders. None of these outrages, please note, was the result of "progressivism," which had yet to be articulated, and all were common prior to the New Deal and the advent of so-called Big Government. Was this the face of "limited government?"

No, it was not. The concept of a democratically "limited government" was not for a moment entertained by our Founders, nor is it by those who idolize them today. With few exceptions, the Founders were Eighteenth Century patricians who took a revolutionary gamble meant chiefly to perpetuate their privileges, free from English colonial overlordship. It should come as no surprise these elitists drafted a Constitution that posed no threat to aristocracy.

### **'Limited Government' as Act of Faith**

The original Constitution of the United States of America was just so much ink on paper. The Constitution, as it stands today, is just a lot more ink on paper.

But the Constitution's ink is important and deserves respect because it represents nothing less than the collective civic conscience of the American people. A great many Americans have dedicated their lives in trust to that conscience on battlefields, in classrooms, in everyday civic life, and even a few in the halls of power.

It is evident that most of the Amendments to the original Constitution as well as the Supreme Court's decisions interpreting its scope and purpose were made because the document had over the course of time been found wanting by the American people, whose common interests it was not originally intended to serve. As the collective civic conscience of the people changed, so too did their interpretation of self-government.

But the entire concept of social evolution (much less biological evolution) is something the ultra-Conservative rank-and-file likely does not comprehend and it is not something their leaders encourage them to consider. The reason for this may have less to do with politics than with fundamentalist faith.

An anecdote in point: the editor-in-chief at Random House once asked the extremist libertarian Ayn Rand if she would consider revising a passage in one of her manuscripts. She reportedly replied, "Would you consider revising the Bible?"

Ergo, that which is sacrosanct neither requires nor will tolerate change to include the fantasized "limited government" of the immortalized "Founding Fathers." The fact that Rand was a noted atheist only underscores the point that fundamentalist faith is not restricted to any particular brand of fanaticism.

Yet the Constitution's conception was anything but immaculate. It was not carted down from the Mount in tablets of stone, nor is it the product of some mysterious Natural Law interpretable only by libertarian gurus. And whether its meaning is best exemplified by the Tea Party flag depicting a talking snake ("Don't Tread on Me"), perhaps only Eve could judge with authority.

The Constitution is not a holy book, and there is no good reason for anybody to treat it like one. The men who wrote it were not prophets, nor were they particularly virtuous, though some could turn a pretty phrase. In fact, the Constitution's most unholy-book characteristic is its most welcomed attribute: its readers are not required to believe in its infallibility in order for it to make sense to them.

But we are required to read the Constitution if we want to know what it says. The ultra-conservatives' obsession with a constitutionally "limited government," which has never actually existed, suggests they do not understand the Constitution as much as they merely idolize it.

These constitutional "fundamentalists" along with the American public in general would do better to pick the document up and read it sometime, not fall on bended knee before it and expect the rest of us to follow their example.

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