Taxation and the Origins of the Constitution

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Contemporary political debates often feature claims regarding the intents of "the Framers," the men who drafted the U.S. Constitution. These assertions generally rest on a very shaky intellectual foundation. There is no reason that the preferences of men proposing a government for a predominantly agrarian, pre-industrial slaveholding society would necessarily meet the needs or serve the interests of a modern, multiracial and post-industrial democracy. Nor is it historically accurate to imagine that the Framers shared a single vision of what the federal government should be; the Constitution was the much-disputed product of political compromise.

Putting aside the myth making and adopting a more historically grounded perspective on the Constitution's origins provides a vital perspective both on the Constitution itself, and, perhaps surprisingly, the relationship between taxation and American democracy. The origins of the Constitution cannot be understood outside of the fiscal context of the post-Independence American governments.

In the years following the Revolution, a decade of economic crisis and popular upheaval, the states and Congress were facing a fiscal crisis. Deeply indebted from the war, the states and Congress struggled to find the revenue to pay down the domestic debt, which had consolidated in the hands of wealthy speculators. With a serious money shortage in the countryside, small farmers found they could not pay their taxes – and many were angry that they faced foreclosure while the revenue from their taxes was paying interest to America's wealthiest citizens.

These fights over taxation and monetary policy called into question the meaning of America's experiment in self-governance. Small farmers believed that a republican government must defend a rough equality of property among the citizens, and that speculators in public debt were threatening to become an aristocracy. They wanted more egalitarian policies, including progressive taxation and paper money to ease the burden of taxpaying.

When the legislatures failed to meet their policy demands, farmers returned to the direct action politics they had used during the Revolution. Many political elites saw rural tax resistance as evidence of the dangers of democracy. They were horrified when some state legislatures responded to the farmers' demands by easing tax payments, printing paper money, and reducing payments to debt speculators.

A primary motivation of those seeking a stronger central government was to reduce the powers of the state legislatures because those bodies were understood to be too responsive to the fiscal and monetary demands of the rural majority. In other words, the impetus for the Constitution was explicitly anti-democratic; the framework was intended to reduce the power of the people over the public purse.

However, though the Constitution very effectively reduced the scope of state-level economic policymaking, it did not empower the federal government as some Federalists had hoped. Southern politicians recognized that a federal government with strong fiscal powers was an existential threat to slavery. Even with suffrage limited to propertied white men, slavery's opponents might implement taxes on slaves high enough to induce abolition, if power were in the hands of the non-slaveholding majority. To protect against abolition-by-taxation, Southern leaders sought and received special protections for slavery, in the form of heavy over-representation of the slave states and strong limits on the capacity of the federal government to tax wealth.

When it came to taxation, the people could not be trusted, the Framers believed. That belief, codified in the fundamental framework of U.S. government, continues to shape the range of economic choices available to policymakers to this day. The U.S. Constitution should be understood as a framework designed to prevent the passage of populist fiscal and monetary policies.

War's Debt, War's Profits

The origin of the Constitution rests in the debt that accrued during the Revolutionary War. Federal and state-issued "fiat money" – paper currency not backed by gold or silver – paid for about two-thirds of the War of Independence.[1] The rest resulted in public debt, partly to foreign governments and banks, and over $26 million in debt held domestically. The domestic debt included government bonds and certificates, each with their own intricate re-payment schemes; securities given to soldiers in lieu of pay;[2] and IOUs to farmers, artisans and merchants who had seen their goods requisitioned.[3]

One way to limit the debt and inflation, in principle, would have been more taxation during the war. But the Articles of Confederation, the document that loosely knit the thirteen states together after they declared independence, did not give the central government the power to tax. Instead, Congress had to ask the states to raise revenues via "requisitions," demands for money made to each state, with which the states only partially complied.[4] Raising more money would have been challenging; the states, and especially the Southern states, had regressive and ineffectual tax systems that raised comparatively little revenue.[5] And so the Revolutionary War, like most wars, was fought on credit.[6]

With a glut of government paper on the market, its value plummeted. Government debt certificates regularly traded for half or a third of face value, and sometimes much less.[7] Poorer farmers, artisans and tradesmen could rarely hold on to their debt papers. In some cases, soldiers sold their securities as soon as they were issued, just so they could afford to get home from the war. While small farmers and soldiers were selling their debt cheap, speculators were buying. Those who bought debt were hoping for spectacular gains if the government were eventually to honor the debts at face value.

And that was the key question: could the post-war government impose enough taxes to pay off its debts? In the 1780s, the market in government debt spiked and plummeted with investors' confidence in the tax system. But the risks of buying were not as high as they might seem, assuming you had the capital to invest. Elites sometimes had inside information about which forms of debt were likely to get their interest paid and when.[8] Even if a government scaled down its repayment, as sometimes occurred, there were profits to be made as long as the government paid more than buyer had staked.[9]

As domestic debt consolidated in the hands of those with the money to speculate, the very richest people in America became the primary beneficiaries of debt repayment. Less than a decade after the Revolutionary War, just two percent of Americans owned bonds.[10] In Pennsylvania, 96% of all state war debt belonged to 434 people; over 40% of the debt was owned by just 28 men.[11] More than a third of the $800,000-plus in federal bonds held in Rhode Island was owned by nine people.[12]

To pay down this debt required taxation. Government would have to "open the Purses of the People," as financier Robert Morris was blunt enough to say.[13] And the people's purses were very near empty.

A Recipe for Austerity: Regressive Taxes and a Money Shortage

The economic collapse of the 1780s was, by some accounts, comparable to the Great Depression.[14] The hard times did not affect every American equally; instead, it hit rural and frontier areas especially hard, and lingered there the longest.[15] The result was a marked rise in economic inequality.[16]

At the root of the problem was the shortage of money. The first U.S. dollar would not be minted until 1792; instead, many different currencies were used, the most reliable of which were *specie*: gold and silver coins. The specie shortage had been relieved somewhat during the war, as hard money poured into America from Britain to supply their army, and from France in support of the rebellion. But after independence, gold and silver once again became rare, especially in the countryside. The problem was worsened by British and Spanish trade exclusions that kept American products out of valuable markets. Specie that flowed out of the United States to pay for imported goods was not balanced by inflowing currency from the purchase of American exports.[17]

Without an adequate amount of money to grease the wheels of commerce, trade slowed. Farmers turned to barter, and even to using whiskey as an *ad hoc* currency. The country experienced rapid deflation; as the value of specie rose, "prices fell by roughly half, while land lost two-thirds of its value."[18] Even if you had rich and productive land and plenty of crops to sell, it was getting harder and harder to exchange those valuables for cash. Creditors took advantage of the cash shortage to raise interest rates.[19]

But the biggest problem stemming from the money shortage was the inability to pay taxes. Frontier farmers did not have much need for cash in their daily activities; they lived on a farm, after all, and could produce for their own subsistence as well as for trade, and communities of that era often had long-running accounts of debits and credits with neighbors that did not need to get settled with any regularity. But taxpayers would have to track down specie or other forms of money when they needed to pay the tax collector. State legislatures sometimes required taxes to be paid in gold and silver, which was hard to come by even in the cities, and vanishingly rare in the countryside.[20] Whenever states had a problem with tax collection, the main issue was that there was not enough gold and silver available to pay with.[21]

What was worse, these taxes weren't going to pay for public goods that might strengthen the local economy and benefit the taxpaying farmers. Instead, taxes were high because the government was desperate to pay down the war debts. In Massachusetts in 1786, farmers were paying *four or five times* the amount in taxes they had paid under British rule,[22] and that money was being redirected abroad or to the wealthy debtholders in Boston. Debt payments were, by far, the biggest state expense, absorbing two thirds or more of the direct tax revenue in nearly every state.[23] In the eyes of many yeoman farmers, the payment of war debts seemed to be building an aristocracy: a class of well-connected elites that lived in comfort on the public dime.[24]

The money shortage and regressive taxation resulted in real hardship for many small farmers,[25] and in some areas, mass property foreclosure. In the decades immediately following the Revolutionary War, there were "more Pennsylvanians who had property foreclosed by county sheriffs," historian Terry Bouton explains, "than there were Pennsylvania soldiers who fought in the Continental Army."[26] Debtors could end up in prison. While many imprisoned for debt were held in comparatively good conditions and for only a few days,[27] there are also petitions from prisoners during this period that include complaints of starvation.[28]

Legal fees and charges associated with debt collection compounded the bills facing those in arrears, making it vastly harder to get out of debt. There were taxes applied to every step of the legal process and many legal documents – an echo of the Stamp Act taxes that had so infuriated colonists only twenty years earlier. And if that weren't enough, when the sheriff came to foreclose your property, he "left behind a bill covering the fees for inventorying and auctioning" your belongings.[29] In one county in Pennsylvania, a quarter of all foreclosures were exclusively the result of unpaid court costs.[30]

Losing one's farm was, of course, a terrible economic dislocation, but it was also understood as a forfeiture of political freedom. Because there were property standards for voting, losing one's farm also often meant losing the right to vote. It also put a citizen in a new position of dependence. Becoming a tenant meant having a landlord. Becoming a wage earner meant having a boss. In these subordinated positions, Americans of this era believed, there was no guarantee that one's work would be rewarded fairly, and no protection against political domination by those who controlled your economic fate.[31]

Farmers Demand More Egalitarian Fiscal and Monetary Policy

Pushed to the breaking point, small farmers petitioned their representatives to adopt more egalitarian economic policies. But many among the new nation's elite were firmly opposed to the farmers' policy agenda. The rural majority, isolated from one another, relatively new to collective electoral action, and often underrepresented in state legislatures, struggled in most states to institute a consistent reform agenda.

Farmers sought a set of fiscal and monetary policies that they believed would preserve the relative parity of wealth that existed between white men in early America.[32] First, many wanted to reduce the interest accruing to speculators.[33] Second, farmers sought a tax code that was more closely linked to taxpayers' ability to pay. They wanted to raise taxes on (often under- or untaxed) paper wealth and undeveloped land holdings[34] and lower expenses that fell heavily on the poor, such as court fees. But above all, farmers demanded paper money so they could pay their taxes on time and save their farms from foreclosure.[35] These economic policies were popularly understood to be necessary for a republican government to survive. As one Pennsylvania farmers' petition put it, "a country cannot long preserve its liberty, where a great inequality of property takes place."[36]

American elites were rarely sympathetic to the farmers' demands. Elites, living in the more urban and coastal areas, did not fully appreciate the extent of the currency shortage on the frontier. In addition, there were good reasons to be prudent in paper money emissions, which sometimes lost value precipitously,[37] and also good reasons to want to protect the country's credit, which would allow the new nation to borrow if (for instance) threatened with another British invasion.

But what made the farmers' demands anathema to many political leaders was not their presumed impracticality; it was their egalitarian implications. Legislators were generally wealthy people, many themselves creditors and bondholders who wanted their debt papers paid in full. Of course, many rich people were also in debt, but some among the indebted elite believed additional foreign investment would straighten out their affairs, and foreign investment was not forthcoming as long as the government seemed inadequately committed to enforcing debt repayment.[38]

In addition, the demand for paper money seemed to some a dangerous step toward economic "levelling," an epithet that was then used much as conservatives might refer to "communism" today.[39] Instead of working hard, the indebted lower orders wanted to foist worthless paper on their private creditors, it was believed. Debt was seen as a sign of weak character, the result of wasting one's money on luxuries; such behavior should not be encouraged by policymakers.[40]

Moreover, some of the economic theories of the era were explicitly in favor of upward redistribution.[41] The powerful U.S. Superintendent of Finance, Robert Morris was what you might call an extremely early convert to trickle-down economics.[42] Or, as he himself put it, "distributing Property into those Hands which could render it most productive," i.e. "the monied men" of "the mercantile Part of Society."[43] New taxes on paper wealth were precisely the opposite of what Morris had in mind.

Against elite opposition, small farmers, despite their numbers, were not terribly successful in dominating state legislatures and implementing their agenda by standard electoral means. For one, legislatures tended to overrepresent older and wealthier regions. Just getting to a polling place could take days in a large rural county. Organizing poor people across counties proved enormously challenging, as was holding legislators accountable once they went to the distant state capital. Taxpayers in rural Massachusetts grew so disenchanted with the state legislature that they stopped sending legislators altogether.[44]

Where the legislative road proved impassable, there was a second route that was familiar to Americans in the backcountry. Though the war was over and independence won, the Revolutionary generation had not forgotten how to protest against a government deemed oppressive.

Shays's Rebellion and the Origins of the Constitution

To pressure elected officials to revise fiscal and monetary policy, American farmers returned to a repertoire of political protest developed under British rule. In hundreds of instances of collective direct action, farmers refused to pay taxes, blocked roads, and tarred and feathered officials. In the most organized campaigns, protestors took control of their local militias, closed courthouses, and set up alternative legal systems. These events were generally called "regulations" by their participants, in the sense of "regulating," or setting right, unjust government policies. Where electoral politics had shown only mixed success, the regulations spurred state legislatures to revise their fiscal policies and sometimes resulted in greater electoral success for rural interests, as well.

The most well-known of the 1780s regulations was "Shays's Rebellion." It is famous in part because its scale was larger than many other regulations; not only did the Massachusetts farmers close courthouses, but they raised a sizable militia army that briefly threatened to seize the federal armory at Springfield. But Shays's Rebellion is mostly famous because it led directly to the framing and ratification of the U.S. Constitution.

As usual, the story starts with taxes. In 1785, Congress had once again made a requisition to the states, demanding $3 million, mostly in hard currency.[45] Much of the money was earmarked for domestic bondholders, i.e. America's wealthiest people. Recognizing that their constituents simply did not have the gold and silver to pay, some states said outright that they would not even try to collect the money.

But not Massachusetts. If the other states were for political expediency willing to abandon their commitments to the Confederation, Massachusetts would have to lead the way to sound finance, the state's legislators believed.[46] Massachusetts decided not only to pay their part of the federal bill, but also to pay state debts with new direct taxes.[47]

The result was the heaviest direct specie tax that had ever been imposed in Massachusetts.[48] Though a great effort had been made to develop a new system of assessment of property, about a third of the revenue was still slated to come from poll taxes, which applied equally to men over sixteen, whether they were rich or poor.[49] And, while the previous governor, John Hancock, had been content to let taxes fall into arrears, his replacement, James Bowdoin, was committed to full tax collection.[50]

These choices were only the latest in a string of dubious fiscal decisions.[51] Unlike other states,[52] Massachusetts had already decided to pay back its heavily depreciated debts at face value. The legislature had also decided to start paying back the state debt three years early.[53] In short, the state's leaders "acted with about as much finesse as had Parliament when it provoked the Stamp Act riots in 1765."[54]

It was a political miscalculation, certainly, but what is more, the unnecessary severity of the repayment schedule amounted to "gross financial mismanagement."[55] By rapidly extracting large quantities of wealth from poor and middling farmers to benefit the state's richest people, "the state's fiscal policy alone was capable of inducing a recession," even if the economy were not already in tenuous condition.[56]

How could the state legislature so seriously misread both the fiscal situation and the political mood in the western part of the state? Partly because Massachusetts's political institutions favored the wealthier east. The state Constitution, devised with little input from those in the western part of the state,[57] had a strong bias toward the commercial elite of Boston. Representation in the upper house of the Massachusetts was based on taxes paid, not population. Even the lower house overrepresented the eastern towns. Moreover, the property qualifications for voting and office-holding were the highest of any state.[58] The very structure of the government prioritized the interests of wealthy Bostonians and created little incentive for legislators to appreciate the economic situation in the west.

In the spring and summer of 1786, rural Massachusetts responded with petitions to the legislature. When the legislature refused to act on their petitions, western towns set up committees of correspondence, organized meetings, and made proclamations. That fall, rural militias surrounded and closed courthouses across the state. In late January 1787, three regiments of Regulators planned to march on the federal armory at Springfield. One regiment was led by Daniel Shays, a struggling farmer and decorated Revolutionary War veteran who would come to be misrepresented as the driving force of the rebellion. But miscommunication among the Regulators weakened the initial assault, and they quickly retreated after a brief volley of artillery fire from the state government's forces. A few skirmishes occurred over the following weeks, and the rebellion soon petered out.

But Shays's Rebellion was far more successful politically than militarily. In response to the court closures, Massachusetts legislators moved to postpone property seizures, delay taxes, and even let citizens pay their taxes in farm produce. Nonetheless, and even though the participants in the rebellion were themselves temporarily disqualified from voting, the treatment of the Regulators led to an extraordinary backlash at the ballot box. In April 1787, 74% of the members of the state legislature lost their seats, and Governor Bowdoin was defeated by a three-to-one margin.[59] Whether driven by frustration at the incumbents' oafishness and ineptitude, new sympathy for the plight of rural farmers, or rejuvenated hope among the yeomanry for the possibility of political victory, the austerity party suffered a resounding defeat. The new legislators instituted even more tax relief, and in fact imposed no state taxes at all in 1787.[60] Speculators in paper debt panicked; the price of state bonds collapsed as the hoped-for windfalls evaporated.[61]

Shays's Rebellion, and its aftermath, shocked political leaders across the country.[62] Massachusetts could not impose taxes effectively and in fact could barely manage to raise an army to put down an internal rebellion. And in the wake of this lawlessness, the legislature gave in to the protestors' demands and voters ousted them anyway! For those who had long believed American needed a strong central government insulated from popular control, more proof of the failure of the current system could hardly be needed. Seeing the legislatures' response as an appeasement of the recalcitrant and spoiled masses, many elites concluded that the governments put in place during the Revolution were far too responsive to common people's demands—that is, the state legislatures were far too democratic.

Few among the elite seriously considered the protestors' circumstances; some dismissed the concerns of western farmers out of hand. Abigail Adams, who herself speculated in government debt,[63] insisted in a letter to Thomas Jefferson that the farmers' grievances had "no existance but in their immaginations."[64] Henry Knox, once a general in the Continental Army and now the Secretary of War, wrote to his former commander George Washington to keep him apprised of events in Knox's home state of Massachusetts. While high taxes were the "ostensible cause" of the insurrection, Knox said, the reality was that "the insurgents have never paid any, or but very little taxes." What the Regulators really wanted, Knox was sure, was for the wealth of the United States to be "the common property of all."[65]

Knox wrote to Washington that Shays's Rebellion was nothing less than a "national humiliation," one requiring "every tried friend to the liberties of his country… to step forward."[66] In response to this and other news about the insurrection in Massachusetts, Washington concluded that he must attend the upcoming federal convention in Philadelphia. He had not wanted to attend; he was busy on his plantation and the convention was far from guaranteed to result in anything productive. The Philadelphia convention was commissioned to (once again) attempt to revise the unworkable Articles of Confederation; previous efforts had failed miserably.

But in the aftermath of Shays's, there was vastly more willingness on the part of the Pennsylvania convention's delegates to fundamentally revise the government – and, in fact, to go far beyond their commission and to propose a new government entirely. The presence of Washington, the beloved hero of the Revolution, at the framing of the Constitution was of inestimable importance in legitimizing this bold step.

In mobilizing the country's leaders to finally address the inadequacies of the Articles of Confederation, the farmers of western Massachusetts played a critical role, ironically, in the formation of a new government designed explicitly to resist their influence.

"Checks against the Democracy": Framing the Constitution

A government that cannot tax its people or police its territory is no government at all. Despite repeated efforts to revise the Articles of Confederation to give Congress the capacity to impose tariffs, the central government continued to be reliant on state revenues that simply did not come. At the end of 1786, the U.S. Board of Treasury had a total of $663 in specie available… and needed nearly $4 million.[67] And the Articles of Confederation had other obvious failings. The new country could not effectively negotiate treaties with other nations, nor could the American government resolve the trade wars and occasionally violent border disputes between the states.[68]

But for many critics of the Articles of Confederation, the most fundamental problem was not Vermont guerillas raiding across the New York border,[69] it was the purportedly democratic, levelling instincts of the state legislatures. Though this would change in only a few years, "democracy" was in the 1780s an insult, implying something similar to "mob rule."

The economic demands of the rural majority left many political leaders questioning their republican commitments. In the words of James Madison, the "enlightened & respectable citizens" were too easily overwhelmed by the "unreflecting multitude."[70] Without checks on democratic authority, the government placated the masses by infringing on property rights, it was believed. Noah Webster looked at tax resistance and debt reform and saw "so many public invasions of private property--- so many wanton abuses of legislative powers!"[71] The system of government needed a fundamental overhaul to rein in the power of the people.

In spring of 1787, James Madison began composing a memorandum outlining what he termed the "Vices of the Political System of the United States." First among these was the failure of the federal requisition system. High on the list of "trespasses of the States," Madison puts "Paper money, instalments of debts, occlusion of Courts," and "making property a legal tender." The fiscal and monetary choices of the states were, for Madison, on par with the disastrous incapacity of the Confederation in the realm of foreign policy and trade.

Just as important as the identification of the symptoms, however, was Madison's diagnosis of the disease. The source of the "injustices of the Laws" (and here again Madison cites "paper money") was a fundamental failure of republican systems. "Whenever therefore an apparent interest or common passion unites a majority what is to restrain them from unjust violations of the rights and interests of the minority, or of individuals?" Tyranny of the majority was the base issue that republican governments needed to address.

It is ironic, of course, that while elites were convinced that the states were too beholden to the multitude, small farmers believed that their legislatures were unresponsive to their needs. In reality, there was substantial variation between the states.[72] Concessions to rural Americans often were haphazard measures in response to popular unrest, rather than a coherent egalitarian agenda.

Nonetheless, it was with an anti-democratic diagnosis in mind that the Framers gathered at Philadelphia, nominally to propose revisions to the Articles of Confederation. Instead, they designed a radical new governing structure.

The main business of the convention began when Edmund Randolph introduced a set of fifteen propositions drafted by his fellow Virginian, James Madison. The proposal, which became known as "the Virginia Plan," outlined a powerful central government and set the frame for the Convention's work. Randolph began by summarizing the limitations of the existing Articles of Confederation, and the recent events that made those defects so apparent, including the rebellion in Massachusetts, the urgent foreign debts, and the "havoc of paper money." All these incidents emphasized the need for a stronger government – but also, for Randolph, the fundamental problem that had undermined the state legislatures:

> Our chief danger arises from the democratic parts of our constitutions. It is a maxim which I hold incontrovertible, that the powers of government exercised by the people swallows up the other branches. None of the constitutions have provided sufficient checks against the democracy.[73]

For Randolph, the state legislatures had been far too responsive to popular demands. He notes, for instance, that Maryland has a "powerful senate," with strong property requirements, indirectly elected members, and five-year terms. But that this was not enough to prevent the "late distractions" in the state, Randolph complains.[74] The institutions of New York, Massachusetts, and Virginia were also "insufficient" in their "barrier against democracy." Randolph thought America needed political institutions more elitist than any of the existing state governments.

Randolph was far from alone in this view. Alexander Hamilton believed the "error" of popular political control was "now seen by everyone." "The members most tenacious of republicanism," Hamilton insisted, "were as loud as any in declaiming against the vices of democracy."[75] Elbridge Gerry of Massachusetts admitted that he had "been too republican heretofore." Though still republican, he had seen in Massachusetts "the danger of the levelling spirit." Now he echoed Randolph's diagnosis. "The evils we experience flow from the excess of democracy," he asserted.[76]

And so the Framers at Philadelphia were tightly focused on putting fiscal, monetary, and military powers firmly in the hands of a more powerful and less responsive central government. Remarkably, the Constitution produced in Philadelphia did not include a Bill of Rights; these protections for civil liberties were added later to win popular support in the states. Instead, the Framers balanced competing interests – slaveholders and merchants, small and large states – as they limited popular control over the power of the purse. The strictest limits on democracy, such as less frequent elections and the anti-majoritarian apportionment of the Senate and Electoral College, were put forward by those "keenest on limiting redistributive activities in the states."[77]

The most extreme proposals were put forth by Alexander Hamilton, who wanted Senators and the President to have lifetime appointments. He defended this frankly aristocratic proposal by noting the different interests of "debtors and creditors" and asserting that the popular will needed to be checked to protect the interests of the monied few. "To the want of this check we owe our paper money," Hamilton noted. The seven-year appointments for Senators then under consideration would not be nearly enough, considering the "amazing violence & turbulence of the democratic spirit," Hamilton insisted, and he appealed to "the gentlemen from the N. England States whether experience had not there verified" his beliefs.

In his disdain for popular government, Hamilton was not especially tactful:

> 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. The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right.

Hamilton's proposals – and particularly his praise for the British government -- were out of step with the overall sentiment of the Convention, or at least with the other representatives' sense of what could reasonably be ratified.[78] But the essence of his critique of popular government was merely an amplification of the views of Randolph, Gerry, Madison, and others. The governing elite must be sheltered from the people's preferences for "levelling" the economic playing field.

Fiscal Policy Under the Constitution

Developing anti-majoritarian institutions was only one piece of strategy to prevent the passage of popular economic policies. The states would also have to be relieved of many of their fiscal and monetary powers. Achieving this end is a primary function of the Constitution. It is striking how many of the federal government's powers enumerated in the Constitution are about money, debt, and taxes. Only the military authority of the federal government is given as much attention, and the financial powers are enumerated first and in greater detail.

The Constitution conclusively stripped the states of many of the powers they had used to respond to rural populist demands. Article I Section 10 explicitly divests the states of their ability to print money and engage in debt relief. The states are forbidden to "emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts," or pass any law "impairing the Obligation of Contracts." The Constitution also prevents the states from applying any duties to imports and exports.

The Constitution was intended to shift the locus of fiscal and monetary power to the federal government. Article I Section 8 gives Congress the power to impose taxes and pay debts, to borrow money, to coin money, to set bankruptcy laws, and to punish counterfeiting. But, because the Constitution was also intended to protect slavery, the federal government's tax powers were tightly constrained. Taxes were dangerous to slaveholders because taxes set by the non-slaveholding majority could lead to abolition.

So Southerners sought and received strong Constitutional limits on the government's fiscal capacity.[79] The Constitution includes one explicit tax limitation: a maximum on the duty applied to the importation of enslaved people. Slavers were protected in a clause that euphemized the slave trade as the "Importation of such Persons as any of the States now existing shall think proper to admit" and capped the duty at "ten dollars for each Person."

In addition, federal taxation was hampered by the infamous the "Three-Fifths" clause that allowed Southern states to count three fifths of their enslaved population, along with their free population, for the purposes of allocating seats in the House of Representatives and Electoral College. As part of the effort to convince Northerners to accept the South's inflated representation, it was agreed to apply the three-fifths formula to both representation *and direct taxation*.

Gouverneur Morris of New York, who introduced the direct tax provision into the three-fifths clause, saw it as a temporary expedient to bridge "a certain gulph" between the North and South.[80] Adding taxes to the clause got Northerners on board with the South's inflated representation, because it seemed to mean that Southerners would pay more in taxes in exchange for their additional representation.[81]

But, with or without the three-fifths bias, apportioning taxes by state population is an idea ill-conceived to the point of absurdity. A holdover from the requisition system, the policy assumes that a state's tax base is proportionate to its population – a questionable premise that becomes more untenable the more unevenly distributed a taxable item is across states. The fraction of the total federal tax owed by a state is relative to the population of the state, whether or not the state has much or any of the item being taxed. To provide a modern example, Maryland and Missouri have the same population, and therefore would owe about the same total amount of a population-apportioned tax, *no matter what the tax was on*.[82]

In 1796, when the Supreme Court confronted the direct tax problem for the first time, Justice Paterson deemed the apportionment system “oppressive and pernicious,” and Justice Iredell, after asserting that any application of the apportionment scheme was “too manifestly absurd to be supported,” concluded that any tax that “cannot be apportioned” in a reasonable manner is therefore “not a direct tax in the sense of the Constitution.” [83]

To some degree, the direct tax limitation was the result of oversight; delegates were primarily focused on the hot-button issue of representation. Even the definition of “direct tax” was not specified. As James Madison recorded the debate in his notes: “Mr [Rufus] King [of Massachusetts] asked what was the precise meaning of direct taxation? No one answd.”[84]

Nonetheless, the Constitution twice insists upon this limitation to direct taxes; clearly the delegates had something in mind.[85] What was clear to all involved was that the direct tax provision would make it harder to tax slavery. As Supreme Court Justice William Paterson noted, the provision was made “in favor of the southern states.” Without the direct tax clause, Congress “might tax slaves at discretion or arbitrarily.”[86] By requiring federal taxes to be balanced by state population, the direct tax clause did not prevent the taxing of slavery, but it prevented taxation at a level that might induce emancipation.

The coddling of slavery in 1787 continues to undermine the federal tax capacity to this day. Despite the elimination of the Three-Fifths clause, the Constitution still requires that direct taxes be apportioned by state population. In 1895, the reactionary Gilded Age Supreme Court, abandoning one hundred years of precedent, redefined “direct tax” to declare a federal income tax unconstitutional.[87] It took decades and a Constitutional amendment to implement the modern federal income tax. Today, proposals for a federal wealth tax face similar Constitutional challenges.[88] A farcical compromise intended to protect chattel slavery continues to shield the wealthy from taxation.

Conclusion

The authors of the U.S. Constitution intended to put fiscal and monetary powers in the hands of a powerful federal government heavily insulated from the preferences of the general public. They also intended to defend slavery and were willing to compromise the representative integrity and fiscal strength of the nation to do so. In imagining that they had built a system that shielded legislators from popular mobilization for egalitarian economic policies, the Framers were absolutely correct. The implications of those decisions remain with us today, in our malapportioned federal institutions and in the limits placed on the federal taxation of wealth.

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Notes

[1] All of the colonies had used fiat currency in the past, and some of those emissions had been stable stores of value. But during the war, state and national paper money often depreciated. The Continental dollar, for instance, lost two thirds of its value in 1777, and fell to nearly nothing a few years after that. Perkins 1994, 39, 96-99.
[2] Perkins 1994, 99.
[3] Brown 1993, 19; Hogeland 2006, 40-47; Holton 2008, 68-70; Perkins 1994, 101.
[4] By the end of the war, Congress was considering direct military action against non-compliant states to force them to produce the funds needed for the Continental Army. Baack 2001, 649.
[5] Einhorn 2008; Becker 1980, 6; Edling and Kaplanoff 2004, 722-725; Molovinsky 1980.
[6] Perkins 1994, 87.
[7] Edling and Kaplanoff 2004, 728-729
[8] Hogeland 2006, 38-39.
[9] Holton 2008, 79.
[10] Holton 2008, 37.
[11] Bouton 2007, 85.
[12] Ferguson 1961, 280.
[13] Robert Morris, 'Observations on the State of Affairs,' January 13, 1783. Quoted in Bouton 2007, 61.
[14] Between 1774 and 1790, GDP per capita dropped between 18 and 30 percent. Lindert and Williamson 2012, 23.
[15] Bouton 2007; Garmon 2020; Hogeland 2006, 52.
[16] Between 1780 and 1790, the percentage of Philadelphia's wealth owned by the bottom 90 percent of residents fell from 56 percent to only 18 percent. Bouton 2007, 101.
[17] Parenti 2020, 85.
[18] Holton 2008, 31.
[19] Bouton 2007, 864.
[20] Bouton 2011, 237.
[21] Schweitzer 1989, 319.
[22] Holton 2004, 275-6.
[23] Holton 2007, 31-2; Edling and Kaplanoff 2004, 734.
[24] Huston 2015, xiv.
[25] Edling and Kaplanoff 2004.
[26] Bouton 2007, 89.
[27] Chu 1993, 85.
[28] Mann 2003, 2.
[29] Bouton 2007, 93-94.
[30] Chu 1993.
[31] Huston 2015, 26.
[32] Early Americans generally compared their conditions to Europe, where levels of inequality were far higher. Lindert and Williamson 2012.
[33] Various plans were proposed to reduce the debt payments, including states buying back depreciated debt at market rates, paying interest based on the market rate, or requiring bondholders to exchange their bonds for paper money. Many proposals called for prioritizing original debt holders over those who had bought debt on the market. Holton 2004, 285-286 and Holton 2005, 360-362.
[34] Gray, Daniel. "An ADDRESS to the PEOPLE of the several Towns in the County of Hampshire, from the Body now at arms." Worcester. December 7, 1786. Available at http://shaysrebellion.stcc.edu/shaysapp/artifact_trans.do?shortName=gazette_dg27dec86&page= See also Bouton 2007, 222.

[35] Holton 2004, 286-288.
[36] Cited in Bouton 2007, 105.
[37] While money issued by New York, New Jersey and South Carolina generally held its value, money in North Carolina, Georgia and especially Rhode Island had depreciated rapidly. Holton 2008, 113.
[38] On elites seeking European investment, see Bouton 2007, 173, and Holton 2008, 230-31.
[39] The term "levelling" comes from the 17th Century English democratic movement known as the "Levellers," who called for broader suffrage and religious toleration. As with contemporary cries of communism, the "levelling" epithet was divorced from the reality of the historical referent.
[40] Wood 1998, 416.
[41] For example, see "Of Taxes," in Hume 2017.
[42] Holton 2008, 98-99; Holton 2005, 455-456. Bouton 2000, 864.
[43] Quoted in Bouton 2007, 71. To achieve this end, Morris explained to Congress in 1782, the wealthy should be encouraged to buy war debt that was then trading at next to nothing, and then the government should swoop in and repay the debt at face value. Bouton 2007, 83.
[44] Holton 2005, 131-132.
[45] Holton 2008, 65-67.
[46] Buel 1993, 54.
[47] Holton 2007, 74-75.
[48] Gross 1993, 8.
[49] Richards 2002, 83.
[50] Richards 2002, 85-87.
[51] Perkins 1994, 179.
[52] Richards 2002, 75.
[53] Buel 1993, 49.
[54] Buel 1993, 51.
[55] Perkins 1994, 8.
[56] Perkins 1994, 180.
[57] The convention was held during an exceptionally harsh Boston winter that froze the port and closed almost all the western roads. Richards 2002, 72.
[58] Fatovic 2015, 52. However, property limits for voting and office holding were often ignored in rural Massachusetts. Richards 2002, 5.
[59] Richards 2002, 38-39.
[60] Holton 2008, 76. In the following years, direct taxes were about one tenth of what they had been. Richards 2002, 119.
[61] Holton 2004, 296.
[62] Wood 1998, 404.
[63] Holton 2007.
[64] Abigail Adams to Thomas Jefferson, 29 January 1787 https://founders.archives.gov/documents/Adams/04-07-02-0181
[65] To George Washington from Henry Knox, 23 October 1786 https://founders.archives.gov/documents/Washington/04-04-02-0274
[66] To George Washington from Henry Knox, 23 October 1786 https://founders.archives.gov/documents/Washington/04-04-02-0274
[67] Brown 1993, 26.
[68] Parenti 2020, 95-105.
[69] Parenti 2020, 101.
[70] Farrand 1911, Madison's notes of June 12th.
[71] Quoted in Wood 1998, 411.
[72] Perkins 1994, 40, 145-165, 172. Holton 2008, 55-56. Hogeland 2006, 55-56.
[73] Farrand 1911, McHenry's notes of May 29th.

[74] Randolph was probably referring to the June 1786 closure of Maryland's Charles County Courthouse by a "tumultuous assemblage of the people." Coenen 2006, 485n76.
[75] Farrand 1911, Madison's notes of June 18.
[76] Farrand 1911, Madison's notes of May 31.
[77] Fatovic 2015, 61.
[78] Historian Woody Holton argues that the Framers intentionally disguised as much as possible the anti-democratic intentions of the governance structures they preferred. "In several crucial areas the delegates rejected blatantly undemocratic proposals in favor of other mechanisms that accomplished the same goals more subtly." Holton 2008, 191.
[79] Einhorn 2008, Part 2.
[80] Farrand 1913, 103-104.
[81] Jillson 2002, 98.
[82] As Einhorn notes, the contemporary debate over the direct tax clause "missed the real joker in the apportionment rule: higher rates where there were fewer of the taxed things (or people)." Einhorn 2008, 182.
[83] *Hylton v. United States* (1796).
[84] Farrand 1911, Madison's notes from August 20.
[85] Article I, Section 2, "Representatives and direct Taxes shall be apportioned…" and Article I, Section 9, "No Capitation, or other direct, Tax shall be laid, unless in Proportion…"
[86] *Hylton v. United States* 1796.
[87] Johnson and Dellinger 2018.
[88] The *Hylton* decision provides a clear precedent for property taxation at a federal level (Johnson and Dellinger 2018, 114). But what is constitutional is, practically speaking, what the Supreme Court decides is constitutional.