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Rethinking the Intellectual and Political origins of the American
Constitution

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Dedication

DRIDI Fatima Zohra

I would like to dedicate this humble work

to the soul of my parent. Thank you for your magnificent love. I wished you would share with me this happiness but Allah chose you both next to him, God's mercy on you ...

To my best teacher ever, the one who believed in me and gave me the endless love and support, my dear brother Lakhdar, thank you for giving me the strength to chase my dreams.

To my dearest brothers and lovely sisters, to all my family members, thank you for being by my side all the time.

THABET Ikram

To my parents, who are the source of the pure love and the endless support that kept me moving forward. To my dearest brothers and sweet sisters who have been the secret of my inspiration and success, thank you for being with me always.

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Abstract

The American Constitution is remarkable stable, brief, rigid, and exceptional. Americans have proposed and ratified only one national constitution with only twenty-seven amendments. In contrast, the American states have proposed many constitutions, held different conventions, and ratified various constitutions with a great number of amendments. Over time, constitution has changed many times by the Founding Fathers. The first chapter talks about the constitutional change that shows the government's influence to form a strong federal government. It is the history how the frameworks of American government work such as the requirement of representatives to control with the permission of the governed, and the presence of checks and balances system. Chapter one shows the relationship between the British Empire and American's colonies, and argues that the American Revolution began due to growing tensions between the Great Britain and Northern American colonies. Moreover, it demonstrates the importance of the Declaration of Independence that mentioned equality of men regardless of their gender, wealth, and race. In addition, it describes how the Article of Confederation failed to create a strong federal government, and the start of the debate between the Federalist and Anti-Federalist, besides it explains the meaning of the first ten amendments of the Constitution which known as the Bill of Rights. In chapter two, the practical part of the dissertation, shows the analysis of selected samples, its intellectual and political origins that taken from the US Constitution.

Keywords: federal government, Federalist, Anti-Federalist, Bill of Rights

List of Abbreviations and Acronyms

U.S.A	The united states of America.
BOR	The bill of rights
CON	Constitution
UDHR	Universal Declaration of Human Rights

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General Introduction

1. Research Background

The study of the American constitution holds in high esteem its own intellectual and political origins. This reflects a high curiosity about the essential importance of the history and the origins of the United States' constitution. The founding fathers had a vision for a country ruled by the people that lived and worked in America. As a result, they systematized the Constitution according to this view.

Like any official document with authority, the constitution was the product of much deliberation and multiple conventions. The US constitution is the supreme law of the land in the United States of America. It is the oldest written notational constitution in the world. However, the American constitution was not a perfect document. As Benjamin Franklin said on the closing day of the convention in 1787, "I agree to this Constitution with all its faults, if they are such, because I think a central government is necessary for us... I doubt too whether any other Convention we can obtain may be able to make a better Constitution."

2. Statement of the Problem

The US constitution is one of the aspects that lead American superiority. It has profound roots on ancient philosophies and political events. However, academic studies on the US constitution lack researches on the intellectual and political origins of the US constitution.

3. Research Questions

Based on the background of the study described above, this dissertation intends to answer the following questions:

- 1-What are the bases upon which a constitution is built?
- 2- What are the intellectual origins of the American Constitution?
- 3-What are the political origins of the American Constitution?

4. Aim of the Study

The study aims to discover the intellectual and political origins of the American Constitution through a thorough analysis of a sample of selected articles from the US constitution.

5. Research Methodology

This study is mainly a qualitative research. It is carried out using a combination of the historical, descriptive, and analytical methods. The historical descriptive method is applied in chapter one to describe the US constitution and to go through the history of America, starting from the history of the thirteen colonies and Great Britain rule until the formation of the US Constitution. In the second chapter, the analytical method is applied to analyze different articles from the US constitution and finds out their intellectual and political origins.

6. Significance of the Study

This study is important as it highlights the background of establishing a constitution. It focuses on the intellectual as well as the political origins behind the foundation of the different articles of the American constitution. This enables us to understand that the American constitution was a product of the ideas and opinions of thinkers as well as political circumstances. Moreover, it directs attention to the other countries' experiences in contributing to the formation of the United States constitution.

7. Structure of the Study

The present study is divided into two chapters. The first chapter is theoretical and the second one constitutes the practical part. The first chapter describes the American Constitution as it is, goes through its history that began with the Framers of the constitution and the different conventions. The second chapter analyses selected articles from the constitution in terms of origins of foundation; intellectual as well as political.

CHAPTER ONE

The History of The United States Constitution

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Introduction

The Constitution is the highest law in the land, which we are supposed to follow and respect. Generally, we can define the constitution as a special written document with important details about how the government will be run. In other words, it is the supreme legal document that outlines the fundamental political principles and creates the institutions of the government. Also, it is the basic principles and laws of a country, state, or social group that identify the powers and duties of the government on the one hand, and guarantee the fundamental rights to individuals or citizens of that state on the other hand. The Constitution Committee defines the constitution as :

...the set of laws, rules and practices that create the basic institutions of the state, and its component and related parts, and stipulate the powers of those institutions and the relationship between the different institutions and between those institutions and the individual. (As cited in *Terms of Reference and Method of Working*, (HL 2001-02, 11) Ch 2.)

This chapter focuses on the US Constitution and the history of its foundation and development. It provides a thorough narrative about the compromises and conventions that made up the US constitution and a detailed description of its constituents. The Bill of Rights, being an essential part of the democratic nature and success of the US constitution, takes a deserved space in the chapter.

The US constitution is one of the first constitutions in the world that guarantees the rights of the people, and this is very clear in its opening, "We the people." It is made up of seven articles and 27 amendments. The seven articles mainly focus on how the US government works in which the three branches are created: the legislative branch makes the law, the executive branch carries out law, and the judicial branch evaluates law. This procedure guarantees a balance of power between the three branches, so that no branch will have too much power over the others. The 27 amendments are additions to the constitution that came after 1787. Many of the amendments are

written about the rights of individuals in the US; none of the amendments contradict any of the seven articles or contradict each other.

1.1 The History of the US Constitution

The Constitution was completed on September 17th, 1787. It was written by the founding fathers following their success in the war of independence. The founding fathers were a group of men who united the thirteen colonies. They were selected from the 13 original states to lay the foundation for the new country due to their role as leaders in the war of independence against Great Britain, and they came from different parts of America with strong backgrounds and thoughts about how things should work. The famous figures of the founding fathers are: John Adams, Benjamin Franklin, Alexander Hamilton, John Jay, Thomas Jefferson, James Madison, and George Washington.

In 1787, every state sent representatives to Philadelphia for a constitutional convention that was headed by George Washington, Benjamin Franklin, Alexander Hamilton, John Dickson, and James Madison. This convention aims to decide how the United States will be governed; to revise the Articles of Confederation (which will be explained further in the chapter); to form a new constitution; and to establish the US government.

The result was a great compromise that created two houses of Congress: the Senate, which gave each state equal representation; and the House of Representatives, which gives representatives to each state according to its population. The United States Constitution has been the supreme law of America since it was enacted in 1789. The Constitution has been amended many times since 1789. Indeed, the ten amendments of the Bill of Rights talk about individual rights and the three Reconstruction Amendments.

As for its principles and basics, the US Constitution grew out of the efforts to reform the Articles of Confederation, an earlier constitution which provided for a loose alliance of states with a frail central government. From May 1787 to September 1787, delegates from twelve of

the thirteen states assembled in Philadelphia, where they agreed on the new constitution. Brooks (2013) writes.

It has often been said that the Constitution, which we may think of as including the principles expressed in the Declaration of Independence and also the Federalist Papers, is a civic Ark of the Covenant in America ... In no other western democracy is the constitution ... as venerated. (85)

It is true that the constitution was influenced by the Declaration of Independence and the federalist papers. While the main principle of the Declaration of Independence is to protect the natural rights of the people, the Federalist Paper aims to separate the powers of the government by using the checks and balances system. Both of these documents promoted the different relationship between politics and civics.

By its outset, the US constitution consisted of seven articles. One of its main principles was to balance powers by limiting the federal government's power in order to protect state rights. The privileges of the federal government should not be extended to override the rights of the states (as cited in Truman, 2020).

The first three articles focus on the power and authority belonging to the three branches of the federal government: Article I creates the Legislative branch, which consists of the Senate and the House of Representatives that well known as Congress, Article II the Executive which creates the offices of the president, Article III the Judiciary that maintains the US Supreme Court. In addition, Article IV manages the relationship among the several states. The guidelines for amending the Constitution were established in Article V. Article VI states that the Constitution is the supreme law of the state, and Article VII describes the process of ratification. In all these areas, The Constitution, as ratified, did not provide for protection of civil liberties. In 1789, they were established through the Constitution's first 10 Amendments, well known as the Bill of Rights. These amendments restrict the federal government's capability to control the behavior of the individual. They protect the most basic freedoms of every American citizen's rights which

are the behaviors each citizen is allowed legally and morally to exercise and the views he or she has the right to express that everyone should be allowed to do (As cited in Truman, 2020).

1.2 The Declaration of Independence

With the Declaration of Independence, the 13 American colonies began to wage war against the British government. The only issue was that each of these colonies had their own ideas about how to govern themselves. The Continental Congress was formed with delegates from each colony. They had met together to draw up a declaration, but there was nothing to hold them together after the war began, only their common complaints against Great Britain. They decided to draw up a document that would give them legal authority to form a government.

The Declaration of Independence was a document that approved by the Continental Congress in 1776. It detailed the natural rights of the people. The Declaration states:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness. (as cited in Kaplan, n.d.)

The delegates of the 13 colonies in North America would pass a resolution to separate from Great Britain. In 1775, the American Revolution began. Some people were seeking self-government within the British Empire, and others did not exactly know what they were fighting for. And because of this revolution, the colonies became independent states that proclaimed the rights of the people in the Declaration of Independence to form a new government, which government existed to secure and protect the individual natural rights that include life, liberty, and property as implied in the American constitution. Later on, the rights affected the creation of

the civil rights of the US constitution. Moseley (2018) states, “The U.S. Constitution of 1787, Based on Reason and Revelation” that “the natural rights of the Declaration are the basis for the civil rights of the Constitution” (p. 146).

In addition, the Declaration established the belief of the founders in the natural rights of the people and resulted in what we call the constitution, and so, the declaration of independence is the seed of the constitution. Madison (2001) claimed "to the transcendent law of nature and of nature's God" and that the "safety and happiness of society are the objects at which all political institutions aim" (p. 229). Madison and the founders' aim was to save people's rights in order to avoid a repetition of the history of the British Empire in the new states. New states mean more freedom and liberty where individuals are able to live in a safe environment and practice their natural rights, which are the law of nature and of nature's God, entitled to the separation of power and equality.

The Declaration of Independence expressed the philosophy of John Locke, an Englishman who redefined the nature of government which must protect the life, liberty, and property. This Declaration of Independence was unanimously adopted in 1781, and it had been used by Congress as a working document. According to John Locke, the primary purpose of government is the protection of such natural rights, and if a government fails to do so, the people have the right to overthrow that government (as cited in Foundations of American Government, 2022).

More than this, it was necessary to administer the government of the USA before making its constitution. Benjamin Franklin, one of the leaders of the rebellion, humorously characterized this dilemma by saying, "We must all hang together, or assuredly we shall all hang separately." It is obvious that all of them are in the same basket, whether they succeed or fail in their task of creating a balanced government without any authoritarian power toward individuals or other institutions. (as cited in Kaplan, n.d.).

Thomas Jefferson (April 13, 1743 – July 4, 1826) was the third President of the United States (1801–1809), the principal author of the Declaration of Independence (1776), and one of

the most influential Founding Fathers for his promotion of the ideals of the United States. Therefore, Jefferson wrote,

The Representatives of the United States of America, the General Congress, Assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, that these United Colonies are, and of Right ought to be free and independent states. It is very important for citizens to solve their political problems and declare the reasons which make them separated. For that reason, the rights between them should be based on freedom and equality. (As cited in Article of independent)

The Articles of Confederation were influenced by various pre-1776 congress documents. By way of illustration, the Stamp Act of Congress, October 19, 1765, in which the colonies refused the use of the stamps without proper representation. They claimed that taxes should be directed by their legislatures on the British government. Then there were the Declaration and resolution of the first Continental Congress, on October 14, 1774. The colonies were convicted by the various acts of parliament. They argued that they had the same rights as Englishmen. These declarations were followed later on by the announcement of the Continental Congress (October 20, 1774) that the colonies would stop the consumption and importation of British goods.

John Adams was an American statesman who served as the second president of the US. He passed his primary work on May 10, 1776; the preamble was fixed two months after the Declaration of Independence, which expected the position of constitutional authority.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defense, 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" .

In this preamble, we notice that there is a special interest in a government that preserves internal peace, virtue, and good order and is interested in the happiness and safety of America in general. (as cited in Anastaplo, 1787).

It is mentioned in the Declaration of Independence that, "all man are created equal" (as cited in Sweet, 2012, p. 83). After the American War, the equality of all men was switched from all men to all people, regardless of their level of wealth, gender, or race. Although the constitution had a minor flaw in order to make the Declaration ideal, Jefferson succeeded in securing the main rights that were naturally given by Congress.

While Abraham Lincoln, in his Gettysburg Address of 1863, claimed that the Declaration of Independence agreed that a constitution should include all men without taking into account race, (as cited in Arnold, p.160).

More than that, after the civil war, the 14th Amendment states,

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” that preserved Lincoln’s argument inside the US constitution. Regardless of race, the national government guaranteed the equality and liberty for the people as quoted in the declaration of Independence “they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. (As cited in Arnold , p.122)

However, in 1877, the national government rejected the purposes of the 14th Amendment because all persons, according to the Amendment, include African citizens as well. As a result, this amendment failed to prevent racism and segregation in the future. After 1887, the national

government caused the non-whites' exclusion from "the People" of the constitution. (as cited in Arnold, p. 160)

For African Americans, equality and liberty took on the meaning of a positive national commitment to laws that helped end lynching and gang violence, including government protection, veto power, and legal equality. Americans began to achieve these goals in the 1920s and 1930s. In World War I, lynching increased with black soldiers returning after both World Wars I and II. However, despite a resurgence of white terrorism, the civil rights movement changed national preservation over who was granted full citizenship. (as cited in Arnold, p. 161)

Lincoln increasingly turned to the Declaration of Independence and emphasized that the Constitution is the source of true political values and culture in America. In his Gettysburg Address, Lincoln confirmed that America's supreme political value was in fact "the proposition that all men are created equal" (as cited in Sweet, 2012, p. 83), making the Declaration rather than the constitution the principle at the heart of the civil war.

Martin Luther King's speech at the 1963 March on Washington for Jobs and Freedom contributed to the promise of equality and liberty for all American citizens. He opened not with his famous "I have a dream" speech refrain but with a direct reference to America's founding document. Rhetorically situating the Civil Rights Movement during the religious revival effort toward the achievement of the country's founding principles:

When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men yes black men as well as white men, would be guaranteed the inalienable rights of life, liberty, and the pursuit of happiness. (as cited in Mulloy, 2004, p. 79).

This quote has a deep meaning which means the Constitution is not just a few words written by the founders, but in reality these words are promises for all the people's hopes. These promises

would deal with the inalienable rights of both African Americans and American citizens, whatever their skin color.

Lyndon Baines Johnson, the 36th President of the United States, believed that the main goals of The Great Society, a series of programs and policy initiatives, were to reduce poverty, improve society, and eliminate injustice. His advisor and speechwriter, Richard Goodwin, said the Great Society "sought to ensure our people the environment, the capacities, and the social structures which will give them a meaningful chance to pursue their individual happiness" (as cited in Campbell, 1981, p. 4).

According to the Declaration of Independence, "the pursuit of happiness" is one of the rights that the government is instituted to ensure. Robert Johnson notes that the Declaration of Independence, Bill of Rights, and Constitutional things are wrapped up in one paragraph.

1.3 The Revolutionary War

From the ancient world to our days, there has been near universal agreement on two famous features of war: that of all wars, they are the most worthwhile; and they are so terrible, such as the Russian-Ukraine war today. Wars appear to be the most difficult to end. As the French president, Charles de Gaulle, said, "All wars are bad, because they symbolize the breakdown of politics itself. But civil wars, in which there are brothers in both trenches, are unforgivable, because peace is not born when the war concludes," because the American war was between the colonial British government, which was supported by the loyalists, and the American colonies. (as cited in David 2015, p. 2)

America's history began in 1620 when a ship called the Mayflower brought about 100 Englishmen who were seeking freedom in the new world; they called themselves the Pilgrims. They traveled across the ocean and settled in Massachusetts because there were beneficial relations between England and the colonies. While England provided them with military protection, they showed loyalty to England. In 1760, when the new king of England, George 3, began forcing them to pay taxes and oppressive laws, the colonies refused. "No Taxation Without

Representation" was a slogan that reflected their reaction to the new system, which they believed was unfair. The new king would impose on them without any representation in the British Parliament. (as cited in Kaplan, Diane S:17)

The British parliament passed a list of acts and laws: the Sugar Act in 1764; the Stamp Act in 1765; the Boston Massacre in 1770; the Boston Tea Party in 1773 when the American patriots dressed as Indians threw tea into the sea; and the Intolerable Acts of 1774 that increased tensions and sparked the Civil War. Furthermore, the Revolutionary War, also known as the American Revolution, began in 1775 between the colonial British government and the Northern American colonies. Tensions between them arose for many reasons. The French and Indian War was considered a fundamental reason for the American Civil War, which is famous as the seven-year war. But as the British put a standing army in northern America, they imposed taxes to pay for the army's costs. These taxation events clearly increased their fear of future British control. (British Acts that Angered the American Colonists)

At the end of the Revolution, several circumstances undermined the ability of the government to function. Washington understood the need for a strong central government. Reagan (1990) states, "In this present crisis, the government is not the solution to our problem; government is the problem ... All of us need to be reminded that the Federal Government did not create the States; the States created the Federal Government" (213). At the Philadelphia Convention, the Federalists advocated their proposals: firstly, the separation of powers; secondly, a strong chief executive, and thirdly, a bicameral legislature.

1.4 The Articles of Confederation

There was originally the first constitution, but it was a disaster for the newly developing country. It was weak and lacked valuable principles. Some of its weaknesses were that there was no power to control federal law, no checks, and balances for government, and the most significant issue was that there was no power to levy taxes. (Challenges of the Articles of Confederation) . The Articles of Confederation were laid down in 1777. They were ratified by each state in 1781.

The Americans began to understand that if they won, their new country would be a nation without a government. In 1776, the states sent delegates (representatives) to Philadelphia, Pennsylvania, to create a plan for a federal (national) government. According to this plan, a balance of power was created between the national and the state government, each having its own tasks and privileges. For illustration, Article IV states,

The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states, and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the Owner is an inhabitant, provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them. (The Articles of Confederation: privileges and Immunities Clause, Article 5, clause 1).

The plan they created is called the Articles of Confederation. However, the Articles of Confederation could not guarantee solutions to some issues, that caused rebellions. The rebellion in Massachusetts broke out because of the unpaid debts when the framers from all over western Massachusetts took up arms in order to demand financial relief. This is known as the Shays Rebellion. As the name would suggest, this rebellion showed us the flaws and weaknesses of the Articles of Confederation. After a few years, the founders were prevented from the total collapse of their new country by the Constitutional Convention, which took place in Philadelphia in May 1787.

In 1787, each state sent representatives to Philadelphia to a Constitutional Convention to revise the Articles of Confederation; making it a more powerful document and setting up the US government. The ultimate decision on representation came about from two competing plans.

They include the Virginia plan, which would benefit the largest states by greater representation; and the New Jersey plan, which would benefit the small states by giving every state equal representation regardless of population, so every state would have an equal voice. As a final solution, the third plan came from the Connecticut delegation, which is known as the Great Compromise. It was a combination of the two plans: the Virginia Plan and the New Jersey Plan. The result was the Great Compromise, which created the two houses of Congress: the House of Representatives, which gave representation to each state according to its population; and the Senate, which gave each state equal representation. (Creating the United States Convention and Ratification). As apparently appears in the plans, the issue was which of the two governments, the federal or state governments, should have absolute power, it is often a debate about the role of the federal government in American life. The tension between the power of the federal government and the powers of state governments is a very old issue. The dispute between the founders and the strong central government resulted in the increase of the number of branches from one branch in the government to three branches, which have checks and balances of power between each other. For example in *James Madison's Celebrated Report of 1800* "One of the major contributions to the science of government that was made by the Constitution of the United States was its division of powers between the states and the Federal Government. The compromise between state rights and those of a central government was fully considered in securing the ratification of the Constitution in 1787 and 1788". (As cited in Madison,2006)

The legislative branch is divided (by congress) into two chambers that include the separation of powers between the three branches (checks and balances system). These different concepts and ideas have been put into place in the US Constitution today through the Constitutional Convention.

1.5 The Constitutional Convention

A movement to reform the Articles of Confederation began during the hot summer of 1787. Delegates from the 13 states met again in Philadelphia, Pennsylvania to develop a plan for

another federal government, which meant to create a government with enough power to act on a national level. The 55 delegates decided to adopt a completely new instrument of government.

The goal of the Constitutional Convention was to create a national government that was powerful enough to unite the 13 states into one nation and to separate the powers of the government into three branches. Although the delegates agreed with this basic idea, they had many disagreements about how to balance the competing powers and the limitations on the powers of the new government. Delegates from largely populated states wanted the number of representatives to be based on each state's population, whereas delegates from less populated states wanted all states to have the same number of representatives. Following further debates, the dispute was settled by a compromise that divided the federal legislature, i.e., Congress, into two chambers, the Senate and the House of Representatives.

1.6 Ratifying the Constitution

The people noticed that the thirty-third state legislatures had failed, and Congress proposed an amendment to a new constitution. The US was governed by the Articles of Confederation until the new constitution was ratified. It became clear to America's leaders that there was a need for a strong and more centralized government in the future. Alexander Hamilton led the meeting of the Constitutional Convention to add things and modify others. He had been a delegate to the federal convention from New York. According to the New York Times, a convention would be "fraught with the danger of runaway revision."

The Anti-Federalists have opposed the ratification of the first amendment. They argued that Congress gave more power to the federal government and less power to the individuals and people mentioned in Article I, Section 1. "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." (ArtI. S2). This opposition was an essential element that constituted, later on, the Bill of Rights. Therefore, the Anti-Federalists' Papers concept appeared, which refers to the

independent writings and speeches that opposed the articles written to support the new constitution, known as the Federalist Papers.

The government was formed under the framers; the Federalists agreed with the Constitution because it defended the rights of the people and united the federal government into one nation. As a result, the dispute between the Federalists and the Anti-federalists was settled by amending the Constitution by Congress to add a Bill of Rights.

The Constitution was ratified in 1788. In 1789, a few months later, the first president, George Washington, was elected by the nation and moderated the debate of the Constitutional Convention, which resulted in a strong federal government.

In the process of ratifying the document, a bitter contest was ensured between those who favored a strong central government and those who saw such a document as equivalent to a return to rule by Britain. Chubb (1992) writes:

At the Constitutional Convention in 1787 the framers struggled mightily with an issue that was to occupy American politics for two centuries: the proper balance between national and state power. The compromise written into the Constitution only temporarily resolved the issue of balance. (285)

The Convention of 1787 transformed the issue of the proper role of the federal government for future generations into an enduring tension in American politics. This has done little to stop those who seek to promote the idea of limited or small government constituting the American way from arguing that they inherited these political traditions from the constitutions. Much is often made of the words of Madison (2003), “The powers delegated by the proposed Constitution to the Federal Government are few and defined” (227). It is a direct expression that determines the power of the federal government under the proposed Constitution. “Those which are to

remain in the State Government are numerous and indefinite. "As the quote says, there are many parties (federalists) that support the limited national government proposed by the new law.

As Bookman (2008) puts it, "does one summon all fifty-five framers who, however briefly, attended the convention?" Just the thirty-nine who signed? ... the delegates to the state ratifying conventions? "The electorate that chose the delegates to the state ratifying conventions?" There were significant divisions between and within New York when Hamilton's fellow deputies began banding the process early on with a number of state representatives. When it came to the ratification of Virginia and Massachusetts, there was further disagreement. (29). Considering the Framers' meeting in the convention, only 39 of them signed to ratify the constitution. As a result, the Federalists won the great debate.

1.7 The Bill of Rights

By the end of the constitutional convention, the Bill of Rights had been written. It is a set of statements that express the citizens' natural rights. Both of the main strengths and weaknesses are discussed in the debate. The Bill of Rights ignored what the Anti-Federalists had hoped to do. Its main goal was to reduce government power. James Madison, the federalist, wrote a draught that was well known by the 10 Amendments (a list of rights and foredooms) in order to save citizens' liberties due to the constitution's power.

The first amendment states:

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (The US constitution, Amendment 1)

It contains the most basic things that are included in this Bill of Rights: Freedom of religion meant that, whatever your own religion was, you paid taxes to support the established

religion of the state, freedom of speech, freedom of the press, and the right of people to assemble and to petition the government. Consequently, natural law should protect the rights of individuals against the oppressive laws of the government. Locke believed that human rights, not the government, came first in the natural order of things. Locke wrote:

IF man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to no body, why will he part with his freedom? why will he give up this empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others: for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties and estates, which I call by the general name, property. (Locke Sec.123)

John Locke, the English philosopher, wrote his essay “The Second Treatise Of the Government” as a reaction to Thomas Hobbes's essay, “The Leviathan”, to argue that there is a need for a government with limits in order to guide and protect individuals' natural rights. People are born free and, since every person is free, individual freedoms may conflict and hence cause disorders. Therefore, the exercise of power is a necessity to control and organize liberties. According to him, humans are very dangerous and out of control. If they were to control their lives, they would not succeed. In addition, he describes the desires of humans, such as freedom and property, that should be preserved by a systematic government. It is similar to what is stated in Amendment 1 of the Bill of Rights.

The second amendment, "A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." (The US constitution, Amendment 2). It provides the right to bear and maintain a well-regulated militia. This amendment contains a controversy. On the one hand, those who point to the right to bear arms argue that taking away any weapons is against the law; on the other hand, those who argue that the context of the amendment is about military and basic safety of the people, for which assault weapons are not required.

Amendment three: "No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law (The US Constitution, Amendment 3). In this amendment, soldiers cannot take homeowners' accordance even if at peace or war.

The Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (The US Constitution, Amendment 4)

It is the key phrase that no warrants can be issued for the rest of your houses and papers. It protects citizens from being searched or having their property taken illegally and is also the reason cops on crime shows always complain about needing probable cause to get a warrant.

The famous fifth amendment:

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 offense 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. (The US Constitution, Amendment 5)

No person, nor shall any person be subject; it limits the federal government from individuals' prosecution. Here Amendment 5 has a great deal with the five rights that the federal court and the US supreme court must protect: the right to the grand jury that determines if there is enough proof to bring a criminal charge against the person is suspected, prohibits double jeopardy that a person is forbidden to start the criminal proceeding twice, self –incrimination that refers to someone who charged himself under the use of force, his confess is not accepted, due process of law refers to the respect of government the rights of life, liberty, or property that united in the Bill of Rights t, and takes private property for public use.

The sixth one says:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed; which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense. (cited in US Constitution, Amendment 6)

It gives people the right to accelerate their public trial when there is no reasonable cause for the delay, the public trial means more fineness for the defendant, and the defendant also has the right to obtain a lawyer for his defense in case he was disabled in his defense.

The seventh amendment:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of common law. (The US Constitution, Amendment 7)

It extends all those rights to civil or common cases when the defendant has the right to choose whether a jury attends or not in the trial. The judge cannot refuse what the jury decides in case of an appeal trial.

The eighth amendment says, "Excessive bail shall not be required, nor excessive fines imposed, or cruel and unusual punishments inflicted" (Cited in US Constitution, Amendment8). It protects against excessive fines as well as cruel and unusual punishments.

The ninth amendment says, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This amendment describes that the list of rights of citizens that the Bill of Rights or the US constitution protected is not complete.

Last but not least, the tenth amendment states, "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." It explains that the restrictions of Congress are still not listed in the Bill.

According to Justice Burton: James Madison's Celebrated Report of 1800: the Transformation of the Tenth Amendment is,

One of the major contributions to the science of government that was made by the Constitution of the United States was its division of powers between the states and the Federal Government. The compromise between state rights and those of a central government was fully considered in securing the ratification of the Constitution in 1787 and 1788. It was emphasized in the "Bill of Rights," ratified in 1791. In the ten Amendments constituting such Bill, additional restrictions were placed upon the Federal Government and particularly upon procedure in the federal courts. None were placed upon the states. On the contrary, the reserved powers of the states and of the people were emphasized in the Ninth and Tenth Amendments. This point of view is material in the instant cases in interpreting the limitation which the Fourteenth Amendment places upon the processes of law that may be practiced by the several states, including Illinois. In our opinion this limitation is descriptive of a broad regulatory power over

each state and not of a major transfer by the states to the United States of the primary and pre-existing power of the states over court procedures in state criminal cases. (as cited in Lash & Madison ,2006)

It is clear that both of the nine and ten amendments are represented the restrictions of federal government power in order to involve with states.

Conclusion

The history of the American Constitution focuses on creating a powerful federal government with checks and balances as an organizing system for the three branches of the government. Almost all American constitutions are amended 27 times at the level of the state where the debate takes place.

We cannot understand the development of the constitution without studying the states' history with Great Britain. The Revolutionary era shows how Americans took their independence regardless of the difficulty of organizing themselves. Besides, how the delegates of the federal government made the constitution propose and ratify conventions to create the Bill of Rights

CHAPTER TWO

The Intellectual and Political Origins of the American Constitution

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Introduction

The American Constitution's Framers were heavily affected by ancient history and classical political theory, as evidenced by their education, access to classical texts, and instillation of classical republican ideas. The origins of the American Constitution have been recently a significant focus of recent research that spans more than two centuries.

The Framing generation saw the classical legacy as providing essential information and historical precedent on what John Adams referred to as "the divine science of politics." Classical antiquity also supplied a critical collection of political models (as well as its dystopian opponents) for the Framers to draw inspiration for their new government. As Adams noted in 1765, "knowledge of the ideas and building of free governments... had remained at a full stand for two or three thousand years," thus he focused on "the ancient seats of liberty, the Republics of Greece and Rome." (Bederman, 2008, p. 50)

In this chapter, selected, in random, articles, sections, and clauses from the US constitution are analyzed in terms of both their intellectual and political origins of formation and development. In addition, the impact of the European and Greek philosophers on the American Fathers clearly appeared in the history of the formation of the US constitution. Thus, it is covered in the chapter. The famous figures that we may encounter in our study include John Locke, Edward Cooke, Montesquieu, Plato, Aristotle, and others.

2.1 Preamble of the US 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 defense, 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. (constitution.congress.gov)

2.1.1 The Historical Background of the US Preamble

American constitutionalism defines 'the people' as the sovereign whose written constitution confers and governs lawful government authority. The fact that the people, rather than a king,

reigned in America justified the Revolution and the governments that followed. When New Yorkers demolished George III's monument in Battery Park immediately after Congress proclaimed independence, they did more than just oppose British rule over America. Their conduct signified the collective body of the people replacing the person of the monarch as America's new ruler. (Fritz, 2008, p. 1)

The Revolution stimulated Americans' interest in their new governments and the people's connection with them. Revolutionary leaders emphasized the importance of the people in ensuring America's freedom. Patriots honored the sovereignty of the people in creating America's early constitutions. Even after the Revolution, these principles remained shouldering, and this fervent revolutionary discourse rapidly infiltrated all areas and ranks of society. People no longer had to deal with the government. In America, it was now something that the people created with their agreement and desire. Through their actions, the people expressed their assent, and their active involvement reinforced the message that the people were America's new sovereign. (Fritz, 2008, p. 1)

2.2 Separation of Powers and Checks and Balances

The articles, sections and clauses below indicate separation of powers and checks and balances in the US constitution.

2.2.1 Article I, Section 1:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. (U.S constitution, Article1, section1.C1)

2.2.2 Article II, Section 1:

The executive Power shall be vested in a President of the United States of America. (U.S constitution, Article2, section1.C1)

2.2.3 Article III, Section. 1:

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. (U.S constitution, Article3, section1.C1)

2.2.4 Article I, Section. 7:

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. (U.S constitution, Article1, section7.C1)

The first three articles of the Constitution established the three branches of government, each with its own set of powers: Executive (headed by the President), Legislative (Congress), and Judicial (the courts) (Supreme Court). Power is divided and distributed between these three branches. The word “separation of powers” was not mentioned as it is in the US constitution, but the clauses mentioned above from the US constitution is considered as provision of the separation of powers.

The last article above is an example of checks and balances strategy. According to the article, every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law....If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law. (U.S constitution, Article1, section7.C2)

In his book “federalist” James Madison claimed.

If men were angels, no government would be necessary. In framing a government which is to be administered by men over men, the great difficulty is this: You must first enable the government to control the governed; and in the next place, oblige it to control itself. (Madison, 1788).

The framers of the United States Constitution divided the powers and responsibilities of the new federal government among three branches, based on the ideas of Polybius, Montesquieu, William Blackstone, John Locke, and other philosophers and political scientists over the centuries. Furthermore, to this separation of powers, the framers established a system of checks and balances to prevent tyranny by ensuring that no branch seized too much power. So, checks and balances refers to a system of power that is divided into parts or branches. Each branch can stop or limit the powers of the others

2.2.5 The Intellectual and Political Origins of Separation of Powers and Checks and Balances

The separation of powers concept was first originated in ancient Greece and became widespread in the Roman Republic as a part of the initial Constitution of the Roman Republic.

Charles-Louis de Secondat, baron de La Brède et de Montesquieu, an 18th century French social and political philosopher, coined the term "trias politica" or "separation of powers." His book, *Spirit of the Laws*, is regarded as one of the great works in the history of political theory and jurisprudence, and it influenced the Declaration of the Human Rights and the United States Constitution. According to his model, the state's political authority is divided into legislative, executive, and judicial powers. He claimed that in order to most effectively promote liberty, these three powers must be distinct and act independently. (National Conference of State Legislatures ,2021).

Thus, separation of powers refers to the division of government responsibilities into distinct branches in order to prevent one branch from performing the core functions of another. The goal is to prevent power concentration and to provide checks and balances. The “father” of the American constitution, James Madison, stated in *Federalist Paper No. 40* that the

Constitutional Convention of 1787 created a mixed constitution, that means that the United States has ruled by the one (the President; monarchy), the few (the Senate; aristocracy), and the many (House of Representatives; democracy). (Donald E. Glover,1999).

In fact, there is no clear injunction in the Constitution to preserve the bounds of the three broad powers it confers, nor does it expressly mandate the maintenance of a system of checks and balances. Nonetheless, it gives three distinct branches the authority to legislate, execute, and adjudicate, and it provides throughout the document the tools for each of the branches to resist the blandishments and invasions of the others. The Framers drafted our fundamental charter against a backdrop rich in theorizing by intellectuals and politicians about the right ordering in a system of government of bestowing sufficient authority to rule while reserving the capacity to abridge the liberties of the governed.

The separation of powers and checks and balances described above had its origins to the British colonization. When the colonies seceded from Great Britain after the Revolution, the designers of their constitutions were inspired with the profound heritage of separation of powers, which they freely and explicitly reflected in their charters. The principle of checks and balances, on the other hand, was not popular since it was derived from Great Britain, and as a result, breaches of the separation-of-powers concept by state legislatures were prevalent prior to the convening of the Convention. Theory as much as experience guided the Framers in the summer of 1787. (Congressional Research Service Library of Congress, 2017, pp. 65-66)

The doctrine of separation of powers, as implemented in the drafting of the Constitution, was based on several widely held principles: the division of government into three branches, legislative, executive, and judicial; the belief that each branch performs distinct and identifiable functions that are appropriate to each; and the limitation of each branch's personnel to that branch, so that no one person or group should be able to serve in more than one branch. To a large degree, the Constitution effected these ideas, although detractors complained to what they seen as a strange intermixture of tasks, such as the President's veto authority over legislation and the

Senate's participation in executive nomination. (Congressional Research Service Library of Congress, 2017, p. 66)

Checks and balances were seen as essential by the framers of the United States Constitution, who were influenced by Montesquieu and William Blackstone, among others, for the security of liberty under the Constitution.

The Greek historian Polybius classified the ancient Roman mixed constitution into three categories: monarchy (represented by the consul), aristocracy (represented by the Senate), and democracy (the people). He had a significant impact on later ideas about the separation of authority.

The origin of checks and balances, like separation of powers itself, is specifically credited to Montesquieu in the Enlightenment in (The Spirit of the Laws, 1748), Under this influence it was implemented in 1787 in the Constitution of the United States.

2.3 Article I: Legislative Branch

Article I describes the design of the Legislative branch of the government (the Congress). It identifies the separation of powers between branches of government (checks and balances), the election of Senators and Representatives, the process by which laws are made, and the powers that Congress has. The latter is stated in Section 5 that declares, Congress is granted the power to govern itself.

2.3.1 Section 1: Origin of a Bicameral Congress

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. (U.S constitution, Article1, section1.C1)

When the framers of the Constitution met in Philadelphia in the summer of 1787, they spent months debating how the new national legislature would be constituted and operate. How would its members be chosen, and what requirements would they be required to meet? What would be the size of the legislature, and how would it be represented? What abilities might it wield?

While these issues remained unresolved for several weeks, delegates in Philadelphia did reach a wide agreement on one component of the new Congress: it would be divided into two different entities, a house and a senate.

Therefore, the US Congress is bicameral with two houses: the House of Representatives and the Senate. The two houses of Congress exist as a result of a compromise reached by the Founding Fathers during the Constitutional Convention. Delegates from larger, more populous states argued for the Virginia Plan, which called for congressional representation to be based on a state's population. Delegates from smaller states, fearful of dominance, were equally adamant for equal representation and supported the New Jersey Plan, which proposed that each state have one vote regardless of population. Roger Sherman, a Connecticut delegate, proposed the bicameral legislature structure. The Great Compromise, along with other provisions, resulted in the establishment of two houses, with representation based on population in each house. Roger Sherman, a Connecticut delegate, proposed the bicameral legislature structure. The Great Compromise, along with other provisions, resulted in the establishment of two houses, one with population-based representation (the House of Representatives) and the other with equal representation (the Senate).

2.3.1.1 The Origins of Bicameralism

The founders were significantly influenced by the concept of dual governance, which had its roots in ancient Greece and Rome, when forming a senate. Plato defined three alternative types of administration in the fourth century BCE: monarchy (ruling by one), aristocracy (rule by a few), and democracy (rule by the many). Plato believed that each system might result in unfair authority being exerted. Monarchy may devolve into tyranny, aristocracy can devolve into oligarchy, and democracy can devolve into mob rule and anarchy. Although each order had its own strengths—the monarchy's vigour, the aristocracy's intelligence, and the people's honesty—Plato believed that the greatest government was a mixed one that balanced the three social orders, with each having equal authority in the legislative process. (Senate.gov, 2021)

The concept of mixed government was essentially classical republicanism, the creation of government institutions to rule a society that were neither monarchical (at one extreme) nor purely democratic (at the other). The Framing generation was aware of how the Roman republic was structured in theory and how it operated in practice. They understood as well the workings of some of the Greek city-states and other polities of the ancient Mediterranean.

The concepts of mixed governance were held dear by American political philosophers of the revolutionary era, who regularly referred to classical history and philosophy. The most important proponent of this theory, John Adams, declared in 1772, "The finest Governments of the World have been mixed." The Greek, Roman, and Carthaginian republics were all hybrid administrations." However, Adams and others did not have to travel back to antiquity to establish a model of hybrid governance. With a king, an aristocratic House of Lords, and a democratic House of Commons, Britain presented the perfect system for many. Americans saw their colonial administrations in a similar light, with authority divided among a royal governor, a small advisory council, and an assembly chosen by the people. (Senate.gov, 2021)

Bicameralism is found also in the division of the English Parliament into the Lords and the Commons. The British Parliament is often referred to as the "Mother of Parliaments" because the British Parliament has been the model for most other parliamentary systems.

The effect of British bicameralism is stated clearly in the analysis and interpretation of the US constitution. According to this interpretation, although Congress's bicameral form was a change from the Articles of Confederation's unicameral legislative of state delegations,¹ the Framers had substantial experience with bicameral legislatures. Colonists were subject to British legislation created by the bicameral Parliament of Great Britain, where the hereditary nobility was represented in the House of Lords and freeholders of the land were represented in the House of Commons. Furthermore, several of the Constitution's Framers were ruled by bicameral state governments. (constitution.congress.gov)

A bicameral legislature was also favored by the United States' Founding Fathers. The plan was for the Senate to become wealthier and wiser. However, Benjamin Rush observed that "this type of dominion is almost always associated with opulence." The Senate was established to serve as a stabilizing force, not by popular vote, but by state legislators. Senators would be more knowledgeable and deliberate—a sort of republican nobility—and a counter to what James Madison saw as the House's "fickleness and passion." (The Constitutional Background, 2015).

2.3.2 Section 6: State Nature: Natural Theory and Social Contract Theory

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office. (As cited in U.S constitution, Article1, section 6)

2.3.2.1 The Intellectual and Political Origins of the Section:

John Locke, Thomas Hobbes are English philosophers who influence on the shaping of European and western government systems and society by introducing their different theories. Both of them lived in totally different environments and under various circumstances. However their political theories towards government formation and state appear to initiate all on a similar basis which is the state of nature. Despite the base looks the same, their individual progressions are directed towards several, and even if in certain context against the governmental systems. In contrast, Thomas Hobbes' *Leviathan* (1995) introduces the absolute authoritarian monarch; Locke combines the common *plebes* into his liberalist theory of a parliamentary democracy and constitutional monarchy.

2.3.2.1.1 Natural Theory

The Second Treatise of Government ,Locke's project, which finds the role of legitimate government and *introduces Locke's positive theory of government in which he claims "lest men fall into the dangerous belief that all government in the world is merely the product of force and*

violence” (Treatises II,1,4). Locke’s book (1952) involves many devices which were common in political philosophy since seventeenth and eighteenth century: the natural rights theory and the social contract.

Natural rights are those rights which we are assumed to have as human beings before ever government comes into existence because we need our natural right to struggle for our survival as well as the animals. We here at the John Locke Foundation still uphold Locke’s notions of natural rights. When individuals surrendered their natural rights to judge conflicts and impose the law of nature, and in thus giving up their individual rights they, generate the original powers of government: the legislative and executive, a discrimination that Locke uses to explain a fundamental separation of powers. (126).

2.3.2.1.2 Social Contract Theory

Locke uses the idea that people agree with their requirement in the state of nature is inadequate, and so agrees to pass some of their rights to a central government in order to explain how government comes into being. This is the theory of the social contract. There are several versions of natural rights theory and the social contract of European political philosophy; some are conservative and others radical. Locke’s version belongs on the radical side which the natural right theories influenced the ideologies of the American and French revolutions.

2.3.2.1.3 Human Nature and God’s Purposes

According to Locke (*Treatises II,2,6*) God created people and sent them to the world:

...by his order and about his business, they are his property whose workmanship they are, made to last during his, not one another’s pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any subordination among us, that may authorize us to destroy one another, as if we were made for one another’s uses, as the inferior ranks of creatures are for our’s. Humans are God’s creations as a result are God’s property. Because to this view they have not the right to hurt themselves but should follow their highest duty and this is what is called Human Nature and God’s Purposes.

Locke discusses his idea of the state of nature in the *Second Treatise of Government* (1690). According to him there are only two stable conditions for a political organization: the state of nature and the civil society. The state of nature in Locke's theory represents the beginning of a process in which a state for a liberal, constitutional government is formed. Locke regards the state of nature as a state of total freedom and equality, bound by the law of nature. In order to be able to understand the further discussion on the state of nature, it is essential to understand Locke's idea of the law of nature.

2.4 Article II

2.4.1 Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. (the US Constitution, Article II, Section 2)

2.4.1.1 Political and Intellectual Origins:

Of all article II powers relate to pardon authority in executive branch which discussed the president with the majority of administrative and procedural liberties. The procedural and administrative properties are inherent to the pardon power such as reward application, statue interposition...these terms are used interchangeably which speak to the president's exclusive operation of all pardoning levels and its procedural benefits.

Scholarly articles focus on results of a pardon rather than the procedural benefits that can be occur. The president pardon authority goes beyond the check and balance convention. The subject of federal pardon introduced in few books includes the name like William Duker, Jeffery Crouch D.H. Humbert.

2.5 Article VI

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. (the US Constitution, Article 6)

The United States Constitution of 1787 obviously allow Congress to discover, in different circumstances, the appropriate oath to be required of National and State officials. If we are supposed to understand the constitutional thought of the Framers of 1787, it is important to be clear about what this clause does not mean. Without doubt, it does not mean what it is often taken to mean, that the Founding Fathers expressed their rejection of religious tests, that means teaching us that religion and politics or church and states should be rigorously separated.

Their greatest respect to religious emotions is reflected in their permission of an assertion in place of an oath, a replacement ordinary allowed as well by various State constitutions of the day.

2.6 Amendment 1 :Natural Rights: right to liberty, right to practice religion

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.(the US Constitution, Amendment 1)

2.6.1 Intellectual and Political Origins:

2.6.1.1 Human Rights Origin:

We can see the human rights historical context from many perspectives. We will mention two of these trace of human right. To begin with, the origins of the ancient religions in particular Islam and Christianity in term of charity, justice, compassion...Also it found in the codes: the Charter of Cyrus The Great in Persia (about 535 BCE), edicts of Ashoka in India (about 250

BCE), and in the traditions and rules of Columbian America and even in the pre-colonial African tradition.

Moreover, it appears in the natural law theories of the Ancient Greece and Rome, the rebellions in the seventeenth and eighteenth century in Europe, and the philosophers and thinkers of French and American revolutions.

We should consider the state of nature before the government; it is a state of political equality in which there is no natural superior or inferior. From this equality: absent any natural hierarchy, each and every human being is born with equal rights to “life, liberty, and estate,” all of which qualify as “property,” the most essential natural right (1952) As what the Declaration states that all men are created equal(48)

Human rights idea is the center of contemporary politics. This idea is firstly appeared as moral concept that influenced the modern theories of natural rights. Historical scholars claims that human rights impacted the American and French Revolutions and what comes after the Second World War and the Universal Declaration of Human Rights(UDHR) as what Lynn Hunt wrote on his essay “the Revolutionary Origins of Human Rights”:

“Most debates about rights originated in the eighteenth century where discussions of them more explicit, more divisive, or more influential than in revolutionary France in 1790s. The answer given the most fundamental questions about rights remained relevant throughout the nineteenth and twentieth centuries. The Framers of UN declaration of 1948 closely followed the model established by the French Declaration of the Rights of Man and Citizen of 1789, while substituting “human for the more ambiguous “Man” throughout.”

(Cited in Stephen P.Marks.2016)

2.6.1.2 Religion Toleration

John Locke’s arguments for religious toleration related carefully to his account of civil government. Locke determines clearly the conception of liberty, life, health and property as our civil interests. These are the proper interest of a judicial officer or civil government. In order to

preserve civil interests, we can use force and violence where this is necessary. This is a very important role of the state. One's religious interests to become saved, however, are not within the domain of civil concerns, and so lie outside of the accordance with law concern of the magistrate or the civil government. In effect, Locke makes an additional right to the natural rights of life, liberty, health and property which is the right of freedom to choose one's own road to salvation. (See the section on [Toleration](#) in the entry on Locke's Political Philosophy.)

We can see Locke's influence in the Declaration's references to "inalienable rights" and "life, liberty, and the pursuit of happiness." However, Locke's influence can be seen throughout the Declaration of Independence. Locke's influence appears in the Declaration and Resolves of the First Continental Congress which was written two years before the Declaration of Independence by John Adams and George Washington and others. His most famous writings, *A Letter Concerning Toleration* and *Second Treatise of Government*, both influenced in labored manner Thomas Jefferson who was the author of the Declaration of Independence at that time commented that "All its authority rests then upon the harmonizing sentiments of the day (cited in Aristotle, Cicero, Locke, [Sidney](#), &c.,1999, p. 148)

We can see that religious tests was often believed to be in accordance with religious toleration in which this State constitution reliant upon it , and even with a prohibition of the establishment of a religion which prohibition can be determined now and before in the earliest State constitutions. It is conveying knowledge to revise seven of the eleven State constitutions prepared in a short time before the Federal Convention met.

2.7 Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.(the US Constitution, Amendment 4)

2.7.1 The Intellectual Origin of Amendment IV:

It is taken from the man's house in his castle story, William Pitt's declaration in Parliament, 1763 states: "The poorest man may in his cottage, bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter; all his force dares not cross the threshold of the ruined tenement." (Cited in Arnold, Andrew Bernard, 2018 ,102) From this quote, we can recognize the important of man's house regardless dangerous that may occur even if the King of England himself cannot cross this right.

2.8 Amendment XV:

2.8.1 Section 1:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. (the US Constitution, Amendment 15)

2.8.1.1 The Intellectual Origins:

It is well known that the concept of race has been used to show injustice, slavery, discrimination and segregation. Political philosophers study the main ideas and values that play an essential role in the political sphere.

2.9 Amendment V

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. (the US Constitution, Amendment 5)

2.9.1 Its Intellectual and political Origins

Owners are free to use their property as they like, but they have not the right to use it to destroy other's person property. John Stuart Mill mentioned his vision in his essay (1859) *On Liberty*, when he claimed that the state has nothing to do with self-regarding act. The state has only legitimate role was to find solution among individuals in case of conflicts. John

Conservatives debate for an expansive explanation of owners' rights with the narrowly limits on the powers of government. They have deeply insight on which acts of the property are self-regarding in nature. On the other hand, liberals argue for a more expansive realm for government regulation by taking a narrow range of acts of the ownership that are legitimately self-regarding in nature.(*cited in Carol M.Rose,2000*)

Furthermore, America's framers understood the idea that the private property is the foundation of freedom .Thus, from the constitution, the state law and common law, the rights was protected in which people's rights used freely simultaneously with the developing government.

2.10 Amendments XIII, 14, and 15:

The Civil War called forth a new constitutional order. At the heart of this postbellum legal order lay the Reconstruction Amendments—the Thirteenth, Fourteenth, and Fifteenth Amendments, ratified in the years 1865 to 1870. The concepts of this new legal framework are so unlike to our original Constitution, created in 1787, that they merit recognition as a second American constitution. In reality, the new constitution formed a second American Republic. The first Constitution was founded on the concepts of voluntary association as peoplehood, individual liberty, and republican elitism. The fundamental principles of the second constitution, on the other hand, were organic nationhood, equality of all people, and popular democracy. These are diametrically opposite principles. (Fletcher, 2001, p. 2)

That we may appreciate the sharp contrast between these two visions of America, let us rehearse the points of difference below:

Choice versus Self-Realization. The preamble to the 1787 national charter begins with the words "We the People." The people come together, at least as imagined by their self-appointed representatives in Philadelphia, to form "a more perfect Union." On the other hand, The Civil War constitution builds on a recognition of organic nationhood as the legacy of the American experience. (Fletcher, 2001, p. 2)

Freedom versus Equality. Unlike the Constitution of 1787 that stands for a maximum expression of individual freedom, at least against the federal government, the second constitution is dedicated to the proposition that all men are created equal. It emphasized not freedom from government but equality under law. (Fletcher, 2001, p. 3)

2.10.1 Amendment 14 section 1: Citizenship, property

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (As cited in the US Constitution, Amendment 14, Section 1)

Before to the start dealing with the concept of citizenship, we should define the term of citizen. It is a member of people in community who have rights to enjoy with and duties to do. This definition is observable in the works of contemporary authors as well as in the entry "*citoyen*" in Diderot's and d'Alembert's *Encyclopédie* (1753) with some differences. Today, this concept turned into an uncontroversial issue. Furthermore, citizenship is constituted from three main elements (Cohen 1999; Kymlicka and Norman 2000; Carens 2000). The first dimension of citizenship is defined as legal status in which the citizen is a legal person free who obeys to the law and has the right to demand the law's protection. The second dimension is referred to citizens as political agents who participated in society. The last dimension is considered citizenship as membership in a political community.

Citizenship has referred to one of two models: the republican or the liberal. Authors like Aristotle, Tacitus, Cicero, Machiavelli, Harrington and Rousseau are the main source of the republican model, and it found in the historical experiences of Athenian democracy and Republican Rome. The republican model is emphasized in civic self-rule which embodied in the classical institutions and practices. Citizens according to Aristotle that those who share in the holding of office (Aristotle *Politics*). The republican model emphasizes of political agency which is the second dimension of citizenship.

In contrast, Walzer (1989) claim that the liberal model origins are followed the history of the Roman Empire and the reflecting early-modern of Roman law (211). Because of the expansion of the Roman Empire, citizenship rights increased. Walzer (1989) states “important but occasional identity, a legal status rather than a fact of everyday life” (215). It is clear that the focus is in the first dimension of citizenship which understood as a legal status rather than as a political office.

The term of property is another concept in the 14th Amendment which is discussed in several writings of philosophers like Plato, Aristotle, Kant, Hegel, Hobbes, Locke, Hume, and Marx. Moreover, property is a general term that rules governing access to and control of the state and other different resources of materials. Due to the disagreement of these rules are failed, both in regarding to their general form and to their particular operation, there are important philosophical issues about the reasons of property. Modern philosophical studies concentrate mostly on the issue of the reason of *private* property rights which opposed to common property. A Private property means a kind of system that specifies precise objects such as pieces of land to specific individuals to use and to manage as they want.

Otherwise, Locke’s theory is viewed as the most interesting of the canonical debates of property. It is a result of how he started his report; as is known he began that God gave the world to men in common, he had to proclaim from his beginning that entitling private constituting a

moral problem. Locke's in the most famous passage of his chapter on property, he gave a moral defense of the legitimacy of unilateral appropriation.

According to Hume, we should ask the question what it is include in general for society to establish and impose rules of this kind, before we can make any decisions about the normal significance of the connection between any particular person and thing. He says (1978):

Our property is nothing but those goods, whose constant possession is established by the laws of society; that is, by the laws of justice. Those, therefore, who make use of the words property, or right, or obligation, before they have explained the origin of justice, or even make use of them in that explication, are guilty of a very gross fallacy, and can never reason upon any solid foundation. A man's property is some object related to him. This relation is not natural, but moral, and founded on justice. Tis very preposterous, therefore, to imagine, that we can have any idea of property, without fully comprehending the nature of justice, and shewing its origin in the artifice and contrivance of man. The origin of justice explains that of property. The same artifice gives rise to both. (491)

His view of property as a fundamental for resist the point of view, that the rights of property can pose any moral complication to programs the money that paid to the government and change or other forms of redistributing and social control.

In the middle ages, Thomas Aquinas carried on debate of the Aristotelian view that virtue might be implied in one's property. He argued that the poor have rights against the rich. To Start with the premise that 'according to the natural order established by Divine Providence, inferior things are ordained for the purpose of succoring man's needs...' (Aquinas *ST*, p. 72), Aquinas argued that no dividing of the resources that focused on human law which can prevail over the necessities that related to destitution. This is a most observable issue in Locke's *First Treatise on Government*, (Locke 1988 [1689], I, para. 42)

Moreover, citizenship is "hard on the outside and soft on the inside" (Bosniak 2006, 4), starting from this definition, we note in one side that citizenship is very hard from those who are

not natural born in the state, on the other side, for those are not naturally born in the state is very soft. As a result, foreigners who lived inside the specific community, they should follow law of that state; it may disallow them from many of rights which full citizens enjoyed with.

Furthermore, equality is another issue in the 14th Amendment that clearly mentioned every person is able to serve in Congress so the states are prohibited abridging. Personal security, liberty, and property are the privileges that the government should protect them for all citizens.

To understand the concept of quality, it needs to understand that the American citizens are the highest power under the US Constitution. the House of Representatives members elected directly by the people; the Senate is directly selected by the State Legislatures, which are in other side elected by the people; and the President ,the head of both the state and government , is selected by electors . We have noticed that the people are provided in term of countable citizens in the House of Representatives and in term of communities in the Senate.

2.10.2 Amendment XIII, Section 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. (the US Constitution, Amendment 13, Section 1)

Race and Slavery

Modern thought was influenced by the ancient philosopher and thinkers of western philosophers. Considering Greek philosophical thought with the issue of race, Plato is well known by his supporting of the idea that society should be organized to agree with inequalities in natural abilities. Almost, he shares his ideology with contemporary thinkers that race or ethnicity is not related to each other. Plato view that virtue is not based in hereditary that makes him racist.

While Aristotle view about natural slaves was clear in the racist discourse of apologist for New World slavery. However, he fails to identify that barbarian as slaves by nature. In

contrast to Plato view, Aristotle's claims in his book Politics that some barbarians easily enslaved because of their tendency to servility.

Later on, Aristotle remarks that innate tendency can be changed by the rational control of the individual. So, he asks questions in his book Politics:

those who are as different [from other men] as the soul from the body or man from beast—and they are in this state if their work is the use of the body, and if this is the best that can come from them—are slaves by nature. For them it is better to be ruled in accordance with this sort of rule, if such is the case for the other things mentioned.

His questions mention that slavery could be natural or it is in contrast to nature or whether it is better for some of people to live in slavery. Currently, his view of natural slavery becomes a controversial issue which discussed by other thinkers.

During the middle ages, Islam was spread in Africa which caused the Arab slave trade. Paul Hardy, Islamic scholar, realizes in his famous essay "Medieval Muslim Philosophy on Race", the concept of slavery exists in Muslims world and traditions where the context of Muslim thought is about race.

In addition, Islamic world culture supported slavery that slavers used in the commercial exchanges, slavery according to him should prohibited everywhere. Furthermore, Islamic legal scholar disagreed slavery, as in illustration Ibn Sina, the Arab famous Islamic philosopher, influenced by Aristotle view about slavery ,he claims that specific humans differences was the soul rationality which means humans' cognition is the responsible for using the rational methods. Consequently, human is free in his thinking.

Conclusion

The members of the Framing generation were as much influenced by the political values and experiences of classical antiquity, as they were by Enlightenment liberal philosophy and by the exigencies of the struggle against Great Britain. This study focuses on the analysis of selected samples, its intellectual and political origins that are taken from the US Constitution. The

influence of European and Greek philosophers on American fathers is evident in the origins of the American Constitution. Famous people we may encounter in our research include John Locke, Edward Cook, Montesquieu, Plato, Aristotle, etc.

General Conclusion

In this research project intellectual and political origins of congress. The founders tried their best to establish a very strong government, starting with the constitution " the basic of the government" till the system of the three branches and the separation of powers. According to their experiences from different events as The Revolutionary War, and their intellectual background from different ancient nations.

The first chapter talks about the constitutional change that shows the government's influence to form a strong federal government. The history of the united states constitution, how it works, how it developed and how the frameworks of American government work such as the requirement of representatives to control with the permission of the governed, and the presence of the checks and balances system.

However, In chapter two, the practical part of the dissertation, shows the analysis of selected samples, its intellectual and political origins that are taken from the US Constitution. As we can understand from the background of the establishing of the American constitution that members of the Framing generation were influenced by classical antiquity's political values and experiences just as much as they were by Enlightenment liberal philosophy and the exigencies of the war against Britain.

The framers were also influenced by the political theories of some philosophers from Greek and roman, as they were well read, they were reading the philosophy and books of the ancient history. the Framers use of ancient history (perhaps even more than their reading of classical philosophy) informed their decisions in drafting the Constitution of the United States. So, the ancient history guided in many material respects the fashioning of the most basic features of the united states government.

Furthermore, these people's knowledge was not limited to what they read in books. They drew on their previous experiences when forming the new nation.

Many of the Framers of the Constitution had fought in the American Revolution and served in colonial government before America gained independence. They had also previously

governed newly independent states. They used this knowledge and experience when they wrote the Constitution.

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ملخص

الدستور الأمريكي مستقر ومختصر وصلب واستثنائي بشكل ملحوظ. إنه الميثاق الذي ينظم كل ما يتعلق بالحكومة الفيدرالية والولايات الخمسين. بالإضافة إلى الدستور الاتحادي الوحيد المكون من سبع مواد وأربعة عشر تعديلاً، لكل ولاية دستورها المكتوب الذي يوجه الشؤون الداخلية للولايات؛ ألا يتعارض مع الدستور الاتحادي. مع مرور الوقت، تغير الدستور الفيدرالي وتم تعديله عدة مرات من قبل الآباء المؤسسين. تهدف هذه الدراسة إلى التعرف على الأسباب الكامنة وراء الإضافات والتغييرات في دستور الولايات المتحدة وتحليل الأصول التي تأسس عليها، الفكرية والسياسية، للوصول إلى أهداف الدراسة. يستخدم هذا البحث النوعي مجموعة من الأساليب التاريخية والوصفية والتحليلية. يتم تطبيق التحليل على عدد من المقالات والبنود المختارة من الدستور الأمريكي والتي تؤدي إلى تحديد أصولها الفكرية و / أو السياسية. تظهر النتائج أن دستور الولايات المتحدة قد تأسس بتأثير كبير من اليونان القديمة وروما. كما أثرت الجمهورية الرومانية ودول المدن اليونانية والأنظمة السياسية في البحر الأبيض المتوسط القديم، مثل قرطاج، على الآباء المؤسسين عندما أسسوا وثيقتهم الجديدة. كان للاستعمار البريطاني تأثير كبير على آراء الآباء المؤسسين.

الكلمات المفتاحية: الحكومة الفيدرالية، الدستور الأمريكي، الفيدرالية، الآباء المؤسسين.