

A Covenant with Death, & An Agreement with Hell? A Review of the United States Constitution

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“Some men look at constitutions with sanctimonious reverence, and deem them like the arc of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment.”

– [Thomas Jefferson](#)



Last year, the four part [United States Constitution](#) podcast series was released. The idea was to examine the whole document, line by line, from start to finish, as well as to understand [the history of its ratification](#), the significance of the Bill of Rights, and the implications of the Great Experiment in limited government. I'm rather pleased that the final result did not take last longer than eight hours of listening time, and I would suggest that you all listen to the entire series before continuing, because this article will presume that you did.

Since then, I've grown increasingly skeptical about the efficacy of the 1787 Constitution as a blueprint for securing American liberty. From what I can tell, the federal Constitution is only useful insofar as it is a legal instrument by which to gauge the constitutionality of any particular grievance. The U.S. Constitution is not a philosophical treatise chock-full of morals and ethics, and it is certainly not a document upon which to build a political ideology around.

Having said that, I think it is imperative to define the term itself. A "constitution" is defined [etymologically](#) and [legally](#) as:

“mid-14c. ‘law, regulation, edit,’ from Old French *constitucion* (12c.) ‘constitution,

establishment,' and directly from Latin constitutionem (nominative constitutio 'act of settling, settled condition, anything arranged or settled upon, regulation, order, ordinance,' from constitut-, past participle stem of constitutere (see [constitute](#)). Meaning 'action of establishing' is from 1580s; that of 'way in which a thing is constituted,' is from c. 1600; that of 'physical health, strength and vigor of the body' is from 1550s; of the mind, 'temperament, character' from 1580s. Sense of 'mode of organization of a state' is from c.1600; that of 'system of principles by which a community is governed' dates from 1730s; especially of a document of written laws since the U.S. and French constitutions, late 18c."

"The fundamental law of the state, containing principles upon which the government is founded, and regulating the divisions of the sovereign powers, directing to what persons each of these powers is to be confided, and the manner it is to be exercised...the written instrument agreed upon by the people of the Union or of a particular state, as the absolute rule of action and decision for all departments and officers of the government...a constitution usually states general principles and builds the substantial foundation and general framework of the law and government."

To put it mildly, I'm a little uncomfortable with any ideologue who promotes adherence to the fundamental law of [the State](#) (this is probably why I've been a former constitutionalist for some years now). If [Fred Rodell](#) is correct in saying that [the law is a racket](#), then what that would mean is that *any* constitution is part of that very racket; however, the strategic question that must first be answered, is, **does the Constitution facilitate the enjoyment of liberty, or does it enable the horrors of tyranny?**

First, I think it is essential to distinguish between unconstitutional tyranny and constitutional tyranny. Unconstitutional tyranny would be those grievances that unquestionably violate the Constitution – [dragnet wiretapping](#), [civil asset forfeiture](#), [unjust profiling](#), and all the others listed on the [Under One Banner petition](#). Constitutional tyranny, on the other hand, would be those grievances that libertarians receive no sympathy from the constitutionalists over – [compulsory registration for the draft](#), [FICA taxes for Social Security](#), and the [national decennial census](#). American patriots care only about unconstitutional tyranny, whereas [voluntaryists](#) care about **both** forms of tyranny; for the sake of brevity, I will only address constitutional tyranny for the remainder of this article.

Perhaps the best starting point is to understand the ratification period of the late 1780s. As a result of the Philadelphia Convention's effort to [socialize the war debt](#), the U.S. Constitution has [approximately 60 distinct clauses](#). Since that time, there have arisen [over half a dozen interpretative schemes](#) by which to comprehend what all those clauses even mean, hence [the Three Constitutions problem](#). Needless to say, the sheer variability of constitutional clauses, and the judicial interpretation of them, would explain why, for example, both the Commerce Clause ([Art. I § 8 cl. 3](#)) and the Necessary & Proper Clause ([Art. I § 8 cl. 18](#)) have frequently been construed to endlessly increase the powers of the national government far beyond the [original intent](#) of the [Framers](#).

Although [originalists](#) are familiar with [The Federalist Papers](#), not even they broach the criticisms against the Constitution, which are located in [The Anti-Federalist Papers](#). During Virginia's ratifying convention, [Patrick Henry](#) said the following [on June 5th of 1788](#):

"This Constitution is said to have beautiful features; but when I come to examine these

features, sir, they appear to me horribly frightful. Among other deformities, it has an awful squinting; it squints toward monarchy; and does this not raise indignation in the breast of every true American?"

Mr. Henry was not frivolous in his concern about this, for there was [an undercurrent of monarchism](#) by some of the American colonists. More specifically, Patrick Henry illustrated why the Anti-Federalists fervently opposed *both* taxation and a standing army in his speech before the Virginia convention [on June 9th of 1788](#):

"Congress, by the power of taxation, by that of raising an army, and by their control over the militia, have the sword in one hand, and the purse in the other. Shall we be safe without either? Congress have an unlimited power over both: they are entirely given up by us. Let him candidly tell me, where and when did freedom exist, when the sword and the purse were given up from the people? Can you prove, by any argumentative deduction, that is possible to be safe without retaining one of these? If you give them up, you are gone."

I think that if the modern American patriot tried to answer Mr. Henry's challenge, they'd be hard pressed to do so. Interestingly enough, Patrick Henry said in his earlier speech on June 5th, which nicely summarizes my apprehension towards the Constitution itself, that:

"This, sir, is my great objection to the Constitution, that there is no true responsibility – and that the preservation of our liberty depends on the single chance of men being virtuous enough to make laws to punish themselves."

Such is not very likely to happen, particularly considering what eventually **did** happen was the legal situation whereby any American citizen is likely to be committing [three felonies a day](#), all without realizing it. Now, how exactly is the Constitution supposed to help us with that, or with any other systematic grievance, for that matter?

Perhaps it would be best to next examine two legal doctrines that are key to understanding why the Constitution has been less than stellar in facilitating the enjoyment of our liberty. [Judicial review](#) is a [check and balance](#), which an exercise of the [separation of powers](#), by which the courts rule on the constitutionality of a matter brought before them for adjudication. [Constitutional avoidance](#), on the other hand, is the practice of the federal judiciary to make every conceivable excuse possible to *not* exercise judicial review. Both these legal doctrines are regularly used to either preserve or increase the power of the federal government, but seldom to limit or reduce it; if you want one case study of a grievance where both judicial review and constitutional avoidance were used to expand government power, then be sure to brush

up on [the history of Social Security](#).

Being aware of unconstitutional tyranny is no vice, yet being blind to constitutional tyranny is no virtue. Constitutionals, such as [Michael Badnarick](#) and [Andrew Napolitano](#), will typically say things like, “Just read the Constitution, and you’ll understand,” yet, there is quite a bit of vagueness in many of the constitutional clauses, not to say anything of the dissimilarities inherent to the variety of constitutional interpretations. It is almost as if American patriots are acting willfully ignorant of how their beloved Constitution is a form of [central planning](#), especially when you consider how the Article V amendment process is nothing more than a set of instructions on how to endlessly “tweak” the central plan, as evidenced by all the constitutional amendments “tweaking” both suffrage and elections over the course of the past two centuries.

When it comes to answering my original question about the efficacy of the Constitution in terms of securing our common liberties, I cannot ignore the panging of my conscience, for [I must speak out](#). As Dr. Ron Paul said in his [farewell address to Congress](#) back in 2012:

*“In many ways, according to conventional wisdom, my off-and-on career in Congress, from 1976 to 2012, accomplished very little. No named legislation, no named federal buildings or highways – thank goodness. In spite of my efforts, **the government has grown exponentially, taxes remain excessive, and the prolific increase of incomprehensible regulations continues. Wars are constant and pursued without Congressional declaration, deficits rise to the sky, poverty is rampant, and dependency on the federal government is now worse than any time in our history...**I have come to one firm conviction after these many years of trying to figure out ‘the plain truth of things.’ The best chance for achieving peace and prosperity, for the maximum number of people world-wide, is to pursue the cause of LIBERTY.” [emphasis added]*

If a congresscritter, over a 36 year period, could not get the rest of Congress to limit its own power, as Patrick Henry warned was *impossible* back in 1788, then why should American patriots think any differently? While I still disagree with Lysander Spooner’s *reasoning* in his [1870 treatise about the Constitution](#), I must reluctantly confess that what I slowly realized is that, unfortunately, Spooner’s *conclusion* about the Constitution is undeniably correct, which is simply this:

“But whether the Constitution really be one thing, or another, this much is certain – that is has either authorized such a government as we have had, or has been powerless to prevent it. In either case, it is unfit to exist.”

Put another way, whether the Constitution has directly enabled this tyranny you and I suffer under, or its limits were merely hypothetical and therefore not practical, I think that it is more than fair to say, considering all the lives lost and property stolen or damaged *because* of it, that the Great Experiment has

become a notorious failure. The brazen contradictions between the [Declaration of Independence](#) and the Constitution are laid barren for all to see, not the least of which is the right and *duty* of the people to [forcibly throw off tyrannical government](#) as juxtaposed against the Militia/Insurrection Clause ([Art. I § 8 cl. 15](#)), for how can you mount a successful [armed resistance](#) if all the President has to do is call out the National Guard in order to mow down the [Three Percenters](#)? *Constitutional* tyranny, much?

The [Philadelphia Convention's United States Constitution](#) was, I believe, an intriguing attempt at limiting the very power of government itself. There has **got** to be a way to have a cohesive political philosophy without having to slog through something like the Government Printing Office's ridiculously long 2,840 pages of the [Constitution Annotated](#) just to learn what the document's clauses even mean. Now, just because this American effort at limiting government was an abject failure does not therefore mean that [kritarchies](#) and other republics, as just two forms of the [night-watchman State](#), are therefore automatically impractical, but that should be addressed separately. For now, I can finally appreciate [William Lloyd Garrison's burning of the Constitution](#):

"Then holding up the U.S. Constitution, he branded it as the source and parent of all the other atrocities, – 'a covenant with death, and an agreement with hell,' – and consumed it to ashes on the spot, exclaiming, 'So perish all compromises with tyranny! And let all the people say, Amen!' A tremendous shout of 'Amen!' went up to heaven in ratification of the deed, mingled with a few hisses and wrathful exclamations from some who were evidently in a rowdyish state of mind, but who were at once cowed by the popular feeling."