

The Evolution of Meaning: The Foundation of the American State Papers

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08th May 2022

Abstract

The American State Papers should not be read in isolation. The original Articles of Confederation contained flaws that needed to be rectified and fixed within the Constitution of the United States. However, without taking the original documents that the Constitutional involved into account, radically different meanings can be derived from those meanings intended by the founders. In addition, the surrounding documents, such as the Federalist Papers, incorporate a wider description and help define terms and limits. The British Constitution is constructed from a wide range of documents and not merely that which is named as a Constitution. The American Supreme Court and political system should base the definitions and understandings arrived from the Constitution not only on the primary document but on the letters and correspondence of those who wrote it.

Keywords: constitutional law, political history, American state papers, articles of Confederation

I. The American State Papers

The Constitution of the United States forms the foundations of law in that country¹.

Yet, this document did not derive from a single act but rather came about through an evolutionary process. The *Articles of Confederation*² formed the foundation upon which the Constitution was built. However, few have read and compared these documents within the United States citizenry. While it may seem pointless to understand a document no longer in force, the *Articles of Confederation* form the basis upon which the American Republic was created³.

The provisions added to the Constitution and the amendments associated with these documents remedy problems determined to exist in the *Articles of Confederation*. The Articles enabled the fledgling United States to continue as a collection of sovereign states⁴. However, the Constitution changed this to create a sovereign nation. The Constitution has been amended with the addition of a Bill of Rights and has been remarkably successful considering that only twenty-seven amendments have been added and over 200 years⁵.

II. Articles of Confederation

The *Articles of Confederation*⁶ were effected in 1781, while the Revolutionary War continued. Article 3 introduced a provision that the thirteen states “hereby severally enter into a firm legal friendship with each other”. However, it was another six years before the Constitutional Convention in Philadelphia convened to ratify the Constitution, and it was not until 1789 that this document came into force and was ratified. This document gave little

¹ Madison, ‘Federalist Paper Number Ten’.

² Franklin, *The Articles of Confederation*.

³ Washington, ‘Circular Letter to the States’.

⁴ Madison, ‘Federalist Paper Number Ten’.

⁵ Chemerinsky, ‘Amending the Constitution’.

⁶ Franklin, *The Articles of Confederation*.

power to the government and formed a league of Nations. In some ways, the formation of the European Union may be seen as a similar construct.

III. The Constitution of the United States

The preamble to the Constitution incorporates and lists the establishment of justice. While this document does not explicitly include the terms natural law or natural rights, these are referenced in related documents such as the *Declaration of Independence*⁷, which expressly states “the laws of nature and of nature’s God”. Jefferson continued in this document to note that “life, liberty, and the pursuit of happiness” would be a key function of the newly created nation and would be upheld by a government for the people.

The purpose of governments is “to secure these rights”, referencing the inalienable rights of the citizens of the United States. The government is thus formed and obtains “[its] just powers from the consent of the governed”. These preceding documents are important to the American State Papers⁸. While natural rights and justice are not explicitly defined within the Articles or the Constitution⁹, such rights exist and are not limited by these documents¹⁰.

From this and the wording of the Constitution and its amendments, it is simple to determine that the purpose of government is to ensure that the rights of the people are maintained. Further, natural justice must be derived from the consent of the people. While the Constitution itself does not incorporate many of these rights, the amendments, including the Bill of Rights and other aspects of the first ten amendments, provide freedom of speech, press, and religion. In addition, the First Amendment continues to allow peaceable assembly and petition¹¹.

⁷ Jefferson, *The Declaration of Independence*.

⁸ Madison, Wmington, and Franklin, ‘The Constitution of the United States of America’.

⁹ Madison, ‘Federalist Paper Number Ten’.

¹⁰ Hamburger, ‘Natural Rights, Natural Law, and American Constitutions’.

¹¹ Chemerinsky, ‘Amending the Constitution’.

The Fourth Amendment ensures that people are protected from unauthorized and excessive powers of search or seizure. This protects both the person and their property. The Fifth Amendment introduces the principle of double jeopardy and ensures that no person can be brought up and charged with the same crime twice. The Eighth Amendment prohibits cruel and unusual punishment, and the fifth Amendment determines that no citizen will “be deprived of life, liberty, or property without due process of law”. However, the limits to the rights to life and the protection of happiness within the Constitution remain limited and, at times, obscure.

Happiness is mentioned once. The Constitution includes “general welfare”, domestic tranquillity, defence, justice and even the blessings of liberty. However, the meaning of happiness and general welfare may be construed differently¹². In some ways, the combination of the right to raise taxes to provide for the happiness of the people could be argued to give the Federal government unbounded power. Consequently, it is necessary also to read documents that describe the Constitution, such as the Federalist Paper Number 41,¹³ in which Madison denies that this clause extends the Power of the government beyond those explicitly enumerated in Section 8.

Madison (in Fed. 41) argues that “the power to ‘lay and collect taxes, duties, imposts, and exercises, to pay the debts, and provide for the common defence and general welfare of the United States,’ amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defence or general welfare” is limited and an interpretation that this gives unrestricted power to the government is wrong. Madison noted that:

¹² Madison, Wmington, and Franklin, ‘The Constitution of the United States of America’.

¹³ Madison and Jay, *The Federalist*.

What colour can the objection have when a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon?... For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power?

Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify by a recital of particulars.¹⁴

From this, it can be plainly seen that Madison denied that the Constitution provides Congress with the right to legislate the ability for the government to provide for the happiness of the people. Rather, the document was designed to allow people to pursue happiness. Many reinterpretations of the Constitution have followed from activist justices in the Supreme Court interpreting these documents distinctly differently¹⁵. The creation of a welfare state and the growing powers of government and thus antithetical to the ideas of the American founding fathers¹⁶.

The Constitution protects the will of the people, but as a republic, it also implements methodologies to ensure that frequent changes in the mood do not need to frequent changes in the system of government. These checks and balances act to stop some of the perceived problems of democracies. In works by Plato, the demagogue is seen as one of the worst threats to a nation.¹⁷ The demagogue is presented as the shadow bent on undermining and subverting democratic systems.¹⁸

While the American system is based on forming a government of the people by the people, it can also be seen that the American founding fathers maintained a strong distrust of

¹⁴ Madison and Jay.

¹⁵ Keck, *The Most Activist Supreme Court in History*.

¹⁶ Whitehouse, ‘Conservative Judicial Activism’.

¹⁷ Finley, ‘Athenian Demagogues’.

¹⁸ Signer, *Demagogue*.

the popular will and its ability to be bent to other means and into the tyranny of the majority or even despotism¹⁹. It was a system designed for Plato's Statesman leader over the role of the demagogue²⁰.

IV. Importance Through Its Absence

Benjamin Franklin and the other drafters of the *Articles of Confederation* had strong views about government and the powers that it should hold²¹. The colonists from the various states had acted to complain that British rule was not representative²². Further, the colonists saw that the government continued to encroach into the realm of concerns that should not be under the influence of the government²³. Accordingly, the people sought to create a separate system that would not lead to them being burdened by a similar form of government to that they had just cast off²⁴.

The first article began with the name of the Confederacy. Following this, the document immediately extended into definitions of the powers, rights and privileges that would be excluded explicitly from the government of the United States. Article 2 notes:

*Each state retains its sovereignty, freedom and independence, and every power, jurisdiction, and right, which is not by this Confederation explicitly delegated to the United States in Congress assembled.*²⁵

From this statement, any powers not explicitly granted to the United States government were to remain with the individual state. However, the body of the *Constitution*

¹⁹ Wills, *A Necessary Evil*.

²⁰ Ceaser, 'DEMAGOGUERY, STATESMANSHIP, AND THE AMERICAN PRESIDENCY'.

²¹ Freedman, 'Why Constitutional Lawyers and Historians Should Take a Fresh Look at the Emergence of the Constitution from the Confederation Period'.

²² Jensen, *The Articles of Confederation*.

²³ Lutz, 'The Articles of Confederation as the Background to the Federal Republic'.

²⁴ Maggs, 'A Concise Guide to the Articles of Confederation as a Source for Determining the Original Meaning of the Constitution'.

²⁵ Franklin, *The Articles of Confederation*, Art 2.

of the United States does not have such a provision protecting the states against the Federal government. As a result, this needed to be included within the tenth Amendment:

*The powers not delegated to the states by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.*²⁶

The *Articles of Confederation* and the Constitution differ in that while the articles protect states, the Constitution reserves power to either states or the people. The *Articles of Confederation* form the basis for creating a legal thirteen sovereign states. Such a system derives its power from the states, which differs from the constitutional construction of the Federal government, which established a new sovereign power over the others. The Federal government derives its power directly from the people²⁷.

These differences can be seen in comparing the preamble of the Constitution, which declares, “We, the People of the United States, in order to form a more perfect Union, establish Justice, … do ordain and establish this Constitution for the United States of America”²⁸. Such an approach differs from the articles that include a “Confederation and perpetual union between the states”²⁹.

The development of these documents is visible when analyzed alongside one another. For example, Article 5 describes the Congress of the United States and its members. This document provided that delegates to Congress would be appointed annually by the legislatures of the various states. Further, these members could be recalled and replaced at will. The Constitution changed this structure, providing “the house of representatives shall be composed of Members chosen every second year by the people of the several States”³⁰.

²⁶ Madison, Wmington, and Franklin, ‘The Constitution of the United States of America’.

²⁷ Berkin, *A Brilliant Solution*.

²⁸ Madison, Wmington, and Franklin, ‘The Constitution of the United States of America’.

²⁹ Franklin, *The Articles of Confederation*.

³⁰ Madison, Wmington, and Franklin, ‘The Constitution of the United States of America’.

Additionally, Senators would be selected by the legislature of each state. The Constitution altered this process in the seventeenth Amendment, which provided a methodology for the election of senators through a democratic process.

Article 8 discusses methods to raise taxes to cover the expenses of the United States. In this initial document, each state would need to provide a proportional amount based on the value of land and the improvements in the state. Rather than having a Federal tax, each state would raise and collect taxation independently. As such, the Federal government of the United States did not have the power to raise taxation³¹. However, section 8 of article 1 of the Constitution states:

The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defence and general welfare of the United States.³²

The Constitution provided the United States with the power to tax and raise money with the people and not through the states. The Articles also provided each state with one vote. The Constitution changed this procedure, providing each of the states with two votes in the Senate but implementing proportional voting in the House of Representatives based on the size of the population. From this, it can be ascertained that the Constitution places a greater level of importance on the people over the states³³.

The role of the President changed significantly between these two documents. Article 9 empowered the President to reside as the head of a “Committee of the states”. The Constitution increased this power such that “The Executive power shall be vested in a

³¹ Wills, *A Necessary Evil*.

³² Madison, Wmington, and Franklin, ‘The Constitution of the United States of America’.

³³ Freedman, ‘Why Constitutional Lawyers and Historians Should Take a Fresh Look at the Emergence of the Constitution from the Confederation Period’.

president of the United States of America". This difference increased the role of the president from a Committee Chairman to a federal executive. Again, the people would elect the president even though this was an indirect process.

The *Articles of Confederation* provided for a league of sovereign states. However, these states provide only limited power to the United States, and each of these rights could be withdrawn³⁴. Therefore, the Constitution changed the league into a federal government that derives its power directly from the people of the United States. Once given by the people of the United States, these rights cannot be taken back by any individual state. The source of sovereignty and authority within the United States changed from the states to the people, moving from the Articles to the Constitution³⁵.

V. Conclusion

The evolution of the American State Papers aids in understanding the content of the drafters. When coupled with the explanatory material contained in the Federalist Papers, the meanings of many terms within these documents become easier to understand. For example, when taken in isolation, it can be seen that terms such as the "pursuit of happiness" provide the government with a nearly unlimited set of powers to control society in seeking to make people happy. Yet, when taken against the explanations of drafters, including Madison, it becomes clear that the evolution of these documents was not to provide the people with a government that protects them but rather to allow people a path to succeed or fail on their own.

The extensions of powers that have been introduced into the American Federal government over the last century through a combination of a growing bureaucracy and an

³⁴ Freedman.

³⁵ Lutz, 'The Articles of Confederation as the Background to the Federal Republic'.

activist Supreme Court have slowly started to erode the controls designed by the American founding fathers. In reading the works of Franklin, Jefferson and Madison and others, it is easily determined that the Constitution defined the system so that it did not allow the government to implement welfare controls but rather provide a fair playing field. Unfortunately, the government has moved from a referee to an active player over the last century, steering the game to its own ends³⁶.

³⁶ Whitehouse, ‘Conservative Judicial Activism’.

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