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Paper Money and the Constitution **by Rick Lynch**

Why do we have a Constitution? How and why did it come into existence? Just what, exactly, prompted the calling of the Constitutional Convention, which gave birth to it? Most Americans believe, logically enough, that with the passing of the British from the scene it was simply time to create a new government to take the place of the old. That notion, however, ignores the facts that Americans already had a functioning government at the time of the Convention and that that government had been in effect for *six years* following the final British defeat at Yorktown.

No, the overthrow of the old government and the establishment of the new were prompted by an internal tumult, by domestic corruption, oppression, and chaos, all but forgotten today, that had nothing to do with the departure of the British. That crisis revolved around the printing of paper money by some of the newly freed states. As the Federal Farmer, one of the Anti-Federalists, stated in opposition to the Constitution,

Our governments have been new and unsettled; and several legislatures, by making tender, suspension, and paper money laws, have given just cause of uneasiness to creditors. By these and other causes, several orders of men in the community have been prepared, by degrees, for a change of government; and this very abuse of power in the legislatures, which, in some cases, has been charged upon the democratic part of the community, has furnished aristocratical men with those very weapons, and those very means, with which, in great measure, they are rapidly effecting their favourite object.... The conduct of several legislatures, touching paper money, and tender laws, has prepared many honest men for changes in government, *which otherwise they would not have thought of*.... [Emphasis added.]

It is vital, first, to see the printing of paper money for what it was — a welfare scheme and an erosion of property rights enacted by impoverished majorities with the sole intent of taking money (property) from the creditor class. It is no exaggeration, no stretch of the imagination, no revisionist or wild-eyed conspiracy theory to state that the Constitution of the United States of America came into being, more than any other reason, to crush a welfare program, to stop the poor from ganging up on the rich and, endowed with the power of democracy, stealing their money.

In their book *Decision in Philadelphia: The Constitutional Convention of 1787*, Christopher Collier and James Lincoln Collier state,

What concerned Madison *most* in “Vices” was not only that the states were flouting national regulations, but that they were treating unjustly certain minorities within their own borders.... Madison was *especially troubled* by the stay laws and tender laws and the paper money that so many of the plain people of the country were clamoring for. These laws, Madison believed, were “oppressing” the creditor minority. [Emphasis added.]

Edward J. Larson and Michael P. Winship stated in *The Constitutional Convention*,

In several state legislatures, a new breed of politicians, often from lower social backgrounds, was passing debt-relief measures, most notoriously by issuing inflationary paper money. Such legislative action, Madison believed, was an attack on the rights of creditors and amounted to the few being plundered by the many.

The story of paper money is a simple one of greed and corruption fueled by the power of unchecked democracy degenerating into oppression and turmoil. For the Framers, the paper-money crisis was the manifestation of all their fears of mob rule followed by chaos, and it was paper money, far more than anything else, that prompted them to convene the assembly that gave birth to the Constitution. Yes, there were other issues and concerns, chiefly the tendency of the states to strangle interstate trade, and the fear that 13 separate states would constantly war with each other, much like the European powers, or be weak in the face of foreign attack; but, other than the trade issue, those things were merely theoretical in nature, while

paper money was all too real.

As you read of paper money, you might wonder just exactly what all the fuss was about. After all, in 21st-century America, when debt-relief measures to the detriment of creditors are this very hour in front of Congress; when battling over which legislator gets the biggest share of your paycheck for distribution to his constituents is *all* government seems to do; and when there's a welfare program for virtually every ill that can be imagined by even the most creative among us, — I recently read of the California legislator who has secured funds to pay for tattoo removal because tattoos might hurt a job applicant's chance of getting hired — just exactly what physical form state-issued money takes might not seem to be the kind of thing over which to change governments. But if the paper-money shenanigans outlined below seem rather tame to the modern American reader, that just goes to show how very far we've fallen from the days when the Framers had “an almost religious respect” for property rights.

Paper money and the Articles of Confederation

Paper-money schemes could not stand on their own and necessarily spawned a whole series of additional laws, each one more odious than its predecessor, to prop up the whole corrupt edifice. Property rights aside, the Framers believed that the baneful effects of all the legislative chaos, the internal turmoil, and the international ridicule and disrepute generated threatened the very existence of the nation.

So frightening was the specter of paper money that one Convention delegate said that granting the federal government the power to issue it “would be as alarming as the mark of the Beast in Revelation.” Another delegate said he would “rather reject the whole” Constitution than see the federal government granted that power.

The paper-money crisis began when debtors, usually farmers struggling to make loan payments, would turn to their state legislatures and push for the creation of paper money. That was welfare pure and simple, as the paper money had nowhere near the worth of the gold, silver, or other medium of payment specified in original loan documents, and that, of course, was exactly the idea behind the legislation. Debtors also forced the creation of such extraordinary measures as “stay laws,” which postponed or even *cancelled* debt collection. Then there were the awful “tender laws,” and “ex post facto laws,” which actually compelled unwilling creditors to accept the newly printed paper money regardless of what the preexisting contract specified. Printing paper money was one thing, but to actually nullify preexisting contracts and force creditors to accept it in payment was simply more

than the Framers could tolerate.

But it was the example of Rhode Island that most horrified the Framers. The legislature, dominated by indebted farmers, circulated paper money that creditors naturally refused to accept. The legislature then made acceptance mandatory. Many creditors at this point actually fled the state to avoid the dreaded paper. The government's answer was simply to pass more corrupt legislation, this time allowing debtors to legally discharge the debt by depositing money with courts and posting an advertisement attesting to such in newspapers. Things got nastier still. When Rhode Island's supreme court declared the paper-money law unconstitutional, the legislature threw the court out of office and replaced the justices.

Paper money and the Constitution

Study of Madison's *Notes of Debates in the Federal Convention of 1787* reveals a fascinating obsession on the part of the Framers with paper money. Amazingly, proposed legislative schemes, philosophies of representation, and existing political arrangements were all judged good or bad almost solely on whether they were likely to lead to or had already led to the creation of paper money. On page after page of the *Notes* we find that paper money is the overriding, all-important litmus test for analyzing the compositions and powers of state legislatures, the courts, and internal police; determining the rules of a quorum; and debating the proposed federal veto on state law.

Virtually every time the Framers sought to find an example of something "wicked" to be avoided, something they wished the Constitution to repress, some terrible failing of the state government or the Articles of Confederation, they turned to paper money. Mention of the rights with which we are today so obsessed, and those most commonly associated with the Framers, are conspicuous only in their absence.

1. Why is a large republic, spread over a great area, encompassing a multitude of various political interests a good thing? Because, as Madison notes in Federalist No. 10, "[A] rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union, than a particular member of it...."

2. Who should select U.S. senators and congressmen, the people or their state legislatures? Charles Pinkney, South Carolina delegate to the Convention, favored the legislatures because "the people in South Carolina were notoriously for paper money" while the legislature had rejected the idea.

3. Elbridge Gerry, Massachusetts delegate to the Convention, likewise favored the legislatures, because “the people are for paper money when the Legislatures are against it.”

4. Should the federal government have the power to veto state laws that offend the Constitution? Here again, paper money is the litmus test. Elbridge Gerry was generally against it, but, “He had no objection to authorize a negative to paper money and similar measures.” Madison also was for the veto power, pointing to the fate of the Rhode Island judges who had refused to uphold the constitutionality of paper money laws and noting that the newly selected judges would be “willing instruments of the wicked and arbitrary plans of their masters.”

5. Every American knows of the need for “checks and balances,” though few could name paper money as one of the evils to be checked. According to Alexander Hamilton, a lack of such checks in the state governments had led to “our paper money, installment laws, et cetera.”

6. Should the federal government have the power to “interfere” with the state governments in matters of “internal police”? According to Gouverneur Morris, Pennsylvania delegate to the Convention, the internal police “ought to be infringed in many cases, as in the case of paper money and other tricks by which Citizens of other states may be affected.”

7. Setting a quorum in the House and Senate at less than a majority of members might be a good thing. George Mason, after all, “had known a paper emission prevented by that cause in Virginia.”

8. “Proper elections” were better left to the people, if divided into large districts, than by state legislatures, thought George Mason. After all, “Paper money had been issued by the latter when the former were against it.”

Restricting the states

So what did the Framers do to rectify this situation? Where is the constitutional salvation from the evil of paper money? Relief lies in Article I, Section X. It is in Section X that we find the relatively few things that *state* governments may not do. Many Americans do not realize that at the time the Bill of Rights was ratified, it applied *only* to the federal government. In other words, until after the Constitution was amended following the Civil War, the states had absolute power to engage in censorship, regulate the press, suppress free speech, or even establish a state-supported church, which, in fact, many of the states actually did. At the time of the Revolution, for example, most of the colonies had tax-supported churches; all except

Rhode Island imposed legal restrictions on various sects and “penalties for dissenters, apostates, blasphemers and idolators were numerous and severe.” (*Novus Ordo Seclorum, The Intellectual Origins of the Constitution*, by Forrest McDonald.)

In short, for the states, the entirety of the Bill of Rights was a nonentity. While the Framers certainly *could* have attempted to impose bill-of-rights-type restrictions on the states, they did not. It is instructive, then, to see just what state restrictions the Framers actually *did* write into the Constitution.

The Constitution expressly prohibited the states from such things as continuing to act as separate nations with treaty-making powers, engaging in war, floating a navy, and establishing tariffs. But the most significant checks on state authority, and the *only* checks that involved the rights and liberties of citizens, were those that would no longer allow the states to “emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts....” In other words, no more paper money and no more voiding of contracts with stay laws or tender laws.

The prohibition of ex post facto laws was instituted for the same reason, for, as previously noted, most of the legislation passed to support paper money was made to retroactively affect existing contracts, a perfect example of an ex post facto law. Bills of attainder were *legislative* findings of guilt (no judge, jury, or trial) for various crimes, which usually resulted in forfeiture of landed estates. These bills had been unjustly employed to seize Tory properties during the Revolution; but with infringements of property rights becoming more and more common with every passing day, the Framers feared that they could be used against the creditor class at any time.

It is very likely impossible to understand the Constitution without first understanding the importance of Article I, Section X: of all the dozens upon dozens of rights that the Framers could have attempted to prohibit states from infringing, the property rights of the minority were the *only* ones to make the list. Remember, the federal government could not prohibit free speech, establish or handicap a religion, or regulate the press. The states, however, (again, because the Bill of Rights did not apply to them) could do *all* of those things. *Property rights, then, were the only rights to be protected from both federal and state action.*

For those who read of the Framers and their obsession with property rights and paper money and who are tempted to look with scorn on those men for having such a monomaniacal focus on something not so high, not so enlightened or elevated, a harder look at history, a more down-to-earth approach might be

necessary.

The Framers saw the entire history of government for what it was: one long, sad saga in which those in power — be they the king, aristocrat, or oligarch, the many, the few, or the one — trampled the rights of those without power. Human beings being what we are, the oppression would take a multitude of forms, but the oppression of property is almost always the first and favorite of oppressions. Anti-majoritarian measures aside, the common man, the people, the majority wielded the power under the new Constitution. History, political theory, and the contemporaneous paper-money crisis all demonstrated that a government of the people would be no different from governments throughout history. It would live down to expectations, and those in power, the numerous poor, would oppress the property rights of others. The Framers wrote the Constitution, then, to safeguard against the chief defect of democratic representative government — the oppression of the wealthy minority by the poor majority.

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