

Chapter 18: The United States, an Exception or Further Illustration?

A. Introduction: American Exceptions and Similarities

The last case to be analyzed is the American transition to constitutional democracy. As in the case of Japan, this case also involves another continent's culture. It also involves a somewhat different catalyst for constitutional exchange, the absence of an obvious "king," a war of independence, and differences in the timing and details of individual reforms. The emergence of liberal democracy in the United States of America is nonetheless consistent with the models of constitutional reform developed in part I.

Although the relevant British colonies did not win independence until 1783, their transition to liberal democracy began much earlier. The first more or less democratic constitution in North America was the third charter for the Virginia colony, which was drafted in London and implemented in Virginia between 1619 and 1622. It called for a bicameral legislature, with one appointed chamber (the chamber of state) and another directly elected chamber (the chamber of burgesses). Members of the second chamber were to be elected by the freemen of the colony. Initially, the second chamber was composed largely of English nobles who had made the trip to Virginia to look after their investments in the Virginia company. The second chamber is of greater interest for the purposes of this book and for constitutional history, because elections for that chamber were based on unusually broad suffrage by the standards of world history. European suffrage would not reach similar levels for more than two centuries.

This early start suggests that the path to democracy in the United States may have been quite different than in Europe, but this is less true than might have been expected. As in Europe, the normative theories and economic interests of political elites (i.e., those with the authority to adopt constitutional changes) were important determinants of constitutional developments. The power of the purse played an important role in the emergence of party governance and the accumulation of parliamentary authority. The path of reform was largely peaceful, gradual, and lawful. A series of constitutional negotiations and reforms gradually produced relatively liberal forms of state and national governance over the course of a century and a half. The fact that many new governments were formed also allows the relevance of the models of chapters 2–5 to be examined directly. It seems clear that exit options and best practices had important effects on town, county, and colonial governance.

The transition to adult suffrage, however, took two or three times longer in the United States than in the other case studies. The colonies that became the United States all had relatively broad male suffrage by 1700, but the United States did not adopt women's suffrage until 1920, about the same time as this was done in Europe's parliamentary democracies. The War of Independence had a smaller effect on the institutions of governance than often told to grammar school students, although it did affect constitutional developments, as discussed below.

B. Constitutional Innovation and Competition in the Colonial Period

Colonization of North America began nearly a century later than in South America, in large part because land, rather than gold, was the main source of profits for investors in the North American colonies. Land, unlike gold, is not portable. Land does not automatically produce income or wealth. It is not valuable, unless it is "improved" in some way. Farming requires clearing and tilling. Mining requires exploration, digging, and smelting. Forest products require lumberjacks, saws, and sawmills. To profit from land holdings requires labor and capital in addition to land. Consequently, those who received large land grants or purchased large tracts of land in North America had strong demands for labor and capital. Without those additional inputs, their large land holdings were essentially without economic value.

Formally, the English land grants were provided through charters of one kind or another from the English kings and queens, who had their own reasons for sponsoring development in the colonies. They were always interested in new tax revenues beyond the control of parliament and also interested in geopolitical power games. Wertemberger (1914: 32), for example, suggests that colonial enterprises were undertaken largely to escape from fiscal constraints.

The King [James II], who was always restive under the restraint placed upon him by the English Parliament had **no desire to see the liberal institutions** of the mother country transplanted ... **He wished, beyond doubt, to build a colonial empire which should be dependent upon himself for its government and which should add to the royal revenues.** In this way he would augment the power of the Sovereign and render **it less subject to the restraint of parliament.**

Investors in crown companies also tended to be motivated by economic interests, although a few may have had ideological or religious reasons to invest in international enterprises.

Credible Commitments and Other Contracting Problems

Property in the early commercial colonies, such as Virginia, was much like that within modern corporations, in which the firm's property is communal and those making use of the properties are

simply employees or partners with various use rights. Ownership was initially vested in the company and its shareholders, rather than the persons using corporate resources. As it became clear that selling land was more profitable than managing or leasing it, surveys and laws regarding ownership were developed.

The most common method of attracting skilled and unskilled labor to the colony were with loans made to workers to pay for their journey and land in the colonies. Shipping agents and other entrepreneurs provided transportation to the colonies in exchange for promises of several years of labor, and those promises (contracts) were sold by shipping companies to landowners needing labor. These indentured servant contracts also normally promised workers a substantial piece of farmland after their transport loan had been worked off. This gave the “servants” an interest in adhering to the contract and allowed them to become freemen after five to 10 years of hard work for their colonial masters. About half of the European emigrants to the colonies in the seventeenth and eighteenth centuries had their trips financed through such indentured servant contracts (Galenson 1986).

In some cases, however, promises were made and then new obligations required after the “servants” arrived in America, especially in the early days. In other cases, new laws were adopted that implicitly changed the terms of the contracts, by adding new obligations or constraints. Such problems can be thought of as commitment problems, although not all of them involved contracts per se. The rulemakers in the colonies had significant autonomy in the early days and could rewrite rules and contracts and enact new regulations at their pleasure, as owners of firms are often able to do within their own organizations.

The Divine, Moral and Martial Laws, as they were called, undoubtedly brought about good order in the colony, and aided in the establishment of prosperity, but they were ill suited for the government of free-born Englishmen. **They were in open violation of the rights guaranteed to the settlers in their charters, and caused bitter discontent and resentment.** (“Regarding Governance in Virginia in 1610,” Wertenbaker 1914: 23).

Even without problems of governance, indentured labor “contracts” were risky both for the indentured servant and the contract holder. Once in America, indentured servants could not afford to purchase a ticket back to Europe to sue for damages, if their master overstepped the bounds of the contract, reneged on his promise of land at the end of the contract period, or added new conditions to the terms of contract. Exit costs to other colonies were low, but not trivial in the early days, and in most places natural exit costs were reinforced by local laws. Conversely, masters might

have difficulty with “runaways” whether they overstepped the bounds of the contract or not, as transportation networks among the colonies emerged. In the early days, many servants and other immigrants also died from various diseases before paying off their debts. In the first two decades of the Virginia colony, there were many years in which new immigrants simply replaced previous arrivals who had died from disease and conflicts with Indians. Between 1619 and 1624, some 5,000 persons emigrated to Virginia, but the net gain in populations was only 200 (Wertenbaeker 1914: 12–6, 46–7).

Similar problems faced communities and plantations that attempted to attract tradesmen and the tradesmen who brought their skills or capital to the new colonies in exchange for promises of land or other support.

People would be more willing to emigrate if contract terms were reasonable and enforced, and if subsequent promises and accumulated wealth were not broken or expropriated. And, of course, more people would provide labor-backed loans, if they were likely to be repaid. To attract labor and capital to their colonies, landowners needed to assure labor, small businessmen, and other investors that they would be better off in their particular colony than at home.

In early seventeenth century America, this required establishing a reliable, credible method of enforcing land titles and contracts, and for assuring that new laws would not be adopted that would undermine those titles and contracts. In principle, such contracting and governance problems can be solved through self-enforcing contracts, a well-functioning court system, or a combination of the two. However, in the early days, court systems did not always exist, and those that did exist tended to be biased in favor of major shareholders and/or associates of the proprietors receiving major land grants. Designing self-enforcing contracts in circumstances in which time is an important element and courts are nonexistent or unreliable is clearly problematic. Indeed, the worst indentured contracts were such that they probably would not have been enforced in England, and the worst indentured contract owners (masters) might well have been punished for violating criminal law.

Large landholders had a significant economic interest in developing methods for securing property rights and enforcing contracts in the colonies. If economic and political risks could be reduced for skilled and unskilled labor and for large and small capital investors, their land would become much more valuable. As in the case of the medieval tax constitution, a system of governance that protected the landed gentry, capital owners, and labor from arbitrary treatment would advance the long-run interests of all.

Virginia's Constitutional Solution: Representative Political Institutions as a Means of Protecting Property Rights and Increasing Cooperation

The Virginia colony's first governing body was characterized by the First Charter of Virginia that was granted by James I in 1606. The first charter provided a land grant in North America. Access to that land was to be determined by a council consisting of major investors in the Virginia Company, many of whom were nobles who naturally remained in England.

And do therefore, for Us [James I], our Heirs, and Successors, GRANT and agree, that the said **Sir Thomas Gates, Sir George Somers, Richard Hackluit, and Edward-Maria Wingfield**, Adventurers of and for our City of London, and all such others, as are, or shall be, joined unto them of that Colony, shall be called **the first Colony**; And they shall and may begin their said first Plantation and Habitation, at any Place upon the said-Coast of Virginia or America, where they shall think fit and convenient, ... And that **no other of our Subjects shall be permitted, or suffered, to plant or inhabit behind, or on the Backside of them, towards the main Land, without the Express License or Consent of the Council of that Colony**, thereunto in Writing; first had and obtained.

A second charter of the Virginia company was granted in 1609, two years after the colony was founded. The second charter granted very extensive legislative authority to the company by the king for a period of 20 years, in exchange for promised payments to the sovereign. The company's ruling council, in turn, delegated much of its authority to an appointed governor who arrived in Virginia in 1610. A third charter was obtained in 1611, which gave the company additional legislative ability:

[The company] shall likewise have **full Power and Authority, to ordain and make such Laws and Ordinances, for the Good and Welfare of the said Plantation**, as to them from Time to Time, shall be thought requisite and meet: So always, as the same be not contrary to the Laws and Statutes of this our Realm of England; And shall, in like Manner, **have Power and Authority, to expel, disfranchise, and put out of and from their said Company and Society for ever**, all and every such Person and Persons.

Because the efforts of the company's appointed governor were not entirely successful, the company decided to revise its method of governing the colonies.³¹⁸

King James had granted the Virginia company the authority to create institutions of governance in their colony in the company's second and third charters, partly in exchange for a promise of additional revenues from the colony, although he evidently disapproved of the form finally chosen in 1619. In 1619–21, the Virginia company replaced its system of governance in the colonies with a

³¹⁸ See Salmon and Campbell (1994: ch. 1; Wertenbaker 1914: ch. 2) for an overview of Virginia's first authoritarian and king and council-based governments.

more representative one by adopting a system of governance based loosely on the English procedures. The new system of governance included a governor, an appointed chamber, and an elected chamber (the General Assembly).³¹⁹

THE one of which Councils, to be called THE COUNCIL OF STATE (and whose Office shall chiefly be assisting, with their Care, Advice, and Circumspection, to the said Governor) shall be chosen, nominated, placed and displaced, from time to time, by Us.

[The other shall consist] of **two Burgesses out of every Town, Hundred, or other particular Plantation, to be respectively chosen by the Inhabitants:** Which Council shall be called THE GENERAL ASSEMBLY, wherein (as also in the said Council of State) **all Matters shall be decided, determined, and ordered, by the greater Part of the Voices then present;** reserving to the Governor always a Negative Voice. And this General Assembly shall have free Power to treat, consult, and conclude, as well of all emergent Occasions concerning **the Public Weal** of the said Colony and every Part thereof, as also to make, ordain, and **enact such general Laws and Orders, for the Behoof of the said Colony, and the good Government** thereof. (*Ordinances for Virginia*, July 24, 1621).

This template for governance solved many of the existing contracting and governance problems.

The Virginia model provided the sovereign company with considerable control over the office of governor and the membership of the first chamber, which consequently represented the interest of well-connected major landholders and merchants. The second chamber was elected by town and country property holders and therefore represented the interests of the middle class. Together, the veto power of the two chambers protected the middle class and economic elites from each other and provided similar protections for the proprietors. Changes in basic contract law, property rights, and other civil liberties could be adopted only if they advanced the interests (of majorities) of all three groups. The council and subsequently the assembly served as Virginia's highest court of appeal (Wertenbaker 1914: 2, 8–10, 34–7, 40, 54–5). The Virginia model thus provided fiscal and regulatory stability that was somewhat stronger than that noted by North and Weingast (1989) regarding England's parliament 70 years later (1689).³²⁰

It was the success of this institutional template together with the mobility of labor and the interests of large landowners that induced the emergence of relatively liberal forms of representative

³¹⁹ Copies of Virginia's three charters and the company's 1621 Ordinances for Virginia are available from Yale's Avalon Project (http://avalon.law.yale.edu/subject_menus/statech.asp).

³²⁰ The ordinances for Virginia adopted in 1621 describe the new bicameral representative government for the colony itself. See Wertenbaker (1914: chs. 2–4) for a detailed overview of how lawful governance gradually emerged under that new colonial constitution.

government in the North American colonies during the next century and a half. And, it is interesting to note that Virginia's 1621 constitution was written well before Hobbes, Locke, or Montesquieu put their pens to paper, and nearly two decades before the Levellers' contract.³²¹

Gradual Liberalization of Colonial Governments

Although the Virginia template gradually became the standard one for governance in the colonies, the other colonies also began with nondemocratic forms of government: often a governor and unelected council of advisors. Initial variation in colonial governance was partly caused by cultural, economic, and religious differences. For example, Plymouth was a religious colony founded by Puritans, New York was a commercial trading post founded by Dutch merchants, and Maryland was a proprietorship (a colony initially purchased by a single person) that encouraged Catholic immigration. The Plymouth (1620), New Amsterdam (1624), and Maryland (1632) colonies all began with unelected governments. This was also the case in West New Jersey, which was founded in 1664, and in North and South Carolina (initially a single colony) founded in 1664. Charter reforms were normally formally ratified in England in legal procedures initiated by colonial governors.³²²

Within a few decades of their colonies' foundings, the various colonial formateurs and their successors found it useful to add elected chambers with veto power over taxes and laws in response to labor mobility and yardstick competition among the colonies. For example, in 1636 the Plymouth colony adopted a cabinet form of government with a governor and seven-person council of assistants elected by freemen. This was modified by adding provisions for equal protection of the law in 1641 and a bicameral legislature in 1644 (Massachusetts). Maryland adopted an elected assembly in 1638, equality before the law in 1638, and religious tolerance for all Christians in 1649. West New Jersey adopted a democratic bicameral government in 1681. Its elected chamber was called the General Free Assembly. New Amsterdam was taken from the Dutch by England and renamed New York, but its religious liberties were continued and a new, relatively weak,

³²¹ The Virginia template for governance is often attributed to Sir Edwin Sandys, who had served as a member of England's House of Commons for many years and as the treasurer of the Virginia Company of London shortly before Virginia's ordinances for the new government were issued. Sandys had previously been involved in contesting royal grants of monopoly (mentioned in chapter 12) and debates on religious tolerance. He also had relations with the Leiden Puritans, many of whom migrated to Plymouth from the Netherlands in 1620 via the Mayflower. See Rabb (1998) for a biography of Sir Edwin and his roles in parliament and the Virginia company.

³²² See Lutz (1998) for a collection of early colonial charters and codes. Many other colonial charters and ordinances are also available at Yale Law School's Avalon Project: <http://www.yale.edu/lawweb/avalon/avalon.htm>.

representative assembly was adopted in 1683. (Similar assemblies had been proposed during the Dutch period, but not adopted.) Connecticut secured a charter that provided for an elected governor and bicameral legislature in 1698. By 1700 a good deal of the architecture for democratic governance had already been worked out and broadly adopted in the colonies.

The influence of early liberal political theories is evident in most of the charters. Consider, for example, these excerpts from the West New Jersey Charter of 1681 adopted a decade before Locke finished his influential treatise on government and several years before England's Glorious Revolution. The excerpts are from Lutz (1998):

We the Governor and Proprietors, freeholders and inhabitants of West New Jersey, by mutual consent and agreement, for the prevention of invasion and oppression, either upon us or our posterity, and for the preservation of the peace and tranquility of the same; and that all may be encourage to go on cheerfully in their several places: We do make and constitute these our agreements to be as fundamentals to us and our posterity, to be held inviolable, and that no person or persons whatsoever, shall or may make void or disanul the same upon any presence whatsoever.

(i.) There **shall be a free assembly of the people** for the Province aforesaid, yearly and every year at a day certain chosen by the said free people of said province, whereupon **all of the representatives of the free people of the said Province shall be summoned to appear** . . . to make and ordain such acts as shall be requisite for good government and prosperity of the free people of said province.

(ii.) The Governor of said province **shall not suspend or delay** the signing, sealing and confirming of such laws as the General Assembly shall make.

(iii.) That **it shall not be lawful for the Governor to make or enact any law or laws for said Province without the consent, act, and concurrence of the General Free Assembly.**

(iv.) That **it shall not be lawful for the Governor and council, or any of them, to levy taxes without the consent, act, and concurrence of the General Free Assembly.**

(v.) That **no General Free Assembly shall give to the Governor, his heirs, or successors any tax or custom for any time longer than one whole year.**

The West New Jersey charter of 1676 had previously provided for freedom of religion (chapter 16), for due process and jury trials (chs. 17–20), and public trials (ch. 23).

Although the North American colonies were often founded for profit and often run by chartered companies, they turned out to be great experimental laboratories of governance. Indeed,

the freedom to conduct constitutional experiments could be counted as one of the great unexpected consequences of the discovery of the New World, perhaps the greatest in the long run.

Independence of the English Colonies

That the North American colonies remained independently organized and governed, rather than centrally administered under the tight control of England's kings was partly a matter of luck. Seventeenth-century England was a place of political turmoil, involving a major civil war, Cromwell's dictatorship, a restoration, and a Glorious Revolution as discussed in chapter 12. It was not until shortly before the Glorious Revolution that an English monarch, James II, began to centralize governance in the colonies.

James II initiated a series of lawsuits to revoke colonial charters for violations of English law. His success in court allowed him to create the Dominion of New England in 1685, which eventually placed all of New England, New York, and New Jersey under a single central, more or less authoritarian, administration. James II appointed Governor Andros to rule the dominion. Andros, as evidently ordered, restricted local assemblies and reduced judicial independence by appointing new judges and suspending the Massachusetts General Court. New taxes were imposed, and existing land claims were challenged. Enforcement of the Navigation Acts was stepped up. Writs against the charters of Maryland, the Carolinas, Pennsylvania, and the Bahamas were pending in English courts. If successful, those suits together with the dominion would have greatly reduced political autonomy throughout the English colonies in North America (Taylor 2001: 276–77; Haffenden 1958; Osgood 1902).

This policy of centralization ended for several decades in 1689, when William III and the Dutch army induced James II to flee to France. William III reinstated the colonial charters (in some cases with minor revisions) and thereby restored decentralized governance in the colonies. It was not until George III that another English monarch made a serious attempt to centralize control over the colonies, which more or less directly led to the American War of Independence.

C. The Power of the Purse, Labor Mobility, and Constitutional Liberalization in the Colonial Period

Colonial governors and their governments were not as powerful in the North American colonies as in medieval Europe or as centralized as in the South American colonies. This was partly because the North American colonies were less profitable than colonies elsewhere and so were less

directly supported by well-organized European armies, courts, and police. With little or no standing tax revenues and with little support from English taxpayers or sovereign companies, the royal colonial governors depended on taxes and fees approved by their legislatures for revenues and often for their salaries. Governors needed reliable majorities in the colonial parliaments to secure the resources for governing, which made the governors dependent on their colonial legislatures (and also provided them with good reason to look for additional revenue from the British parliament). It also made the colonial parliaments among the most powerful representative assemblies in the world at that time in terms of their control of legislation and taxation.³²³

The power of colonial government was also constrained by the desire to attract new residents (i.e., the demand for labor) and the exit options of already in the colony. Migration to and among the colonies was constantly encouraged by the efforts of landowners and other formateurs in Europe and in the colonies. In the North, religious leaders organized groups to found new settlements to promote narrow religious practices. Differences in the political and religious theories within colonies and towns, in turn, often induced subsets of the colonists to exit and form new communities. Connecticut and Rhode Island, for example, were founded by unhappy colonists from Massachusetts in the 1630s. Similar emigration and immigration occurred within and among other colonies, as new towns were founded and persons left old towns for new ones.

The motivation for exit was often poor and/or intolerant government policies and economic opportunities, rather than ideology. Insofar as more liberal governments tended to be more tolerant and less likely to impose unpopular taxes and policies, they tended to attract labor and capital, and so tended to produce more prosperous communities. This aligned the interests of land owners and land speculators with liberal political institutions in a manner that was not common in other places. Without relatively liberal political institutions, a colony's landed gentry might have a bit more political power and "their" people might exhibit greater cultural uniformity, but they would have been less wealthy, because there would be fewer persons to farm, timber, mine, manage, purchase, and protect their land holdings.

Exit from poor or overly repressive colonies and communities also became increasingly easy in the seventeenth century. Colonial transport networks developed along rivers and bays, new towns were formed along those waterways, and the natives were gradually pushed out of the territory near the Atlantic seacoast. Many of the colonies were physically close together, because they were

³²³ The governor of the Connecticut and Rhode Island colonies were (indirectly) elected by the colonists. Other governors held office through royal appointment, appointment by colonial companies, or proprietors.

relatively small—as in the North with Massachusetts, Rhode Island, and Connecticut—and/or were linked together by common waterways—as with Maryland, Virginia, and Pennsylvania or New Jersey, Connecticut, and New York. Ships ran up and down the coast of North America, and the same rivers that allowed commerce to develop inland also allowed pioneers to move from town to town.

This is not to say that colonial governance was always routine, lawful, or liberal, but it is to say that competition for residents tended to make it so. Governments were often grounded on written documents, included representative assemblies, and relied upon relatively broad suffrage to select members of those assemblies. Colonial suffrage was very broad by world standards in the late seventeenth century, although various restrictions on suffrage existed in most colonies during the seventeenth and eighteenth centuries (McKinley 1905; Brown 1955; Steinfeld 1989).³²⁴ In the Southern colonies, which depended relatively more on slaves, wealth requirements for suffrage and office, for example, remained somewhat higher than in the north.³²⁵

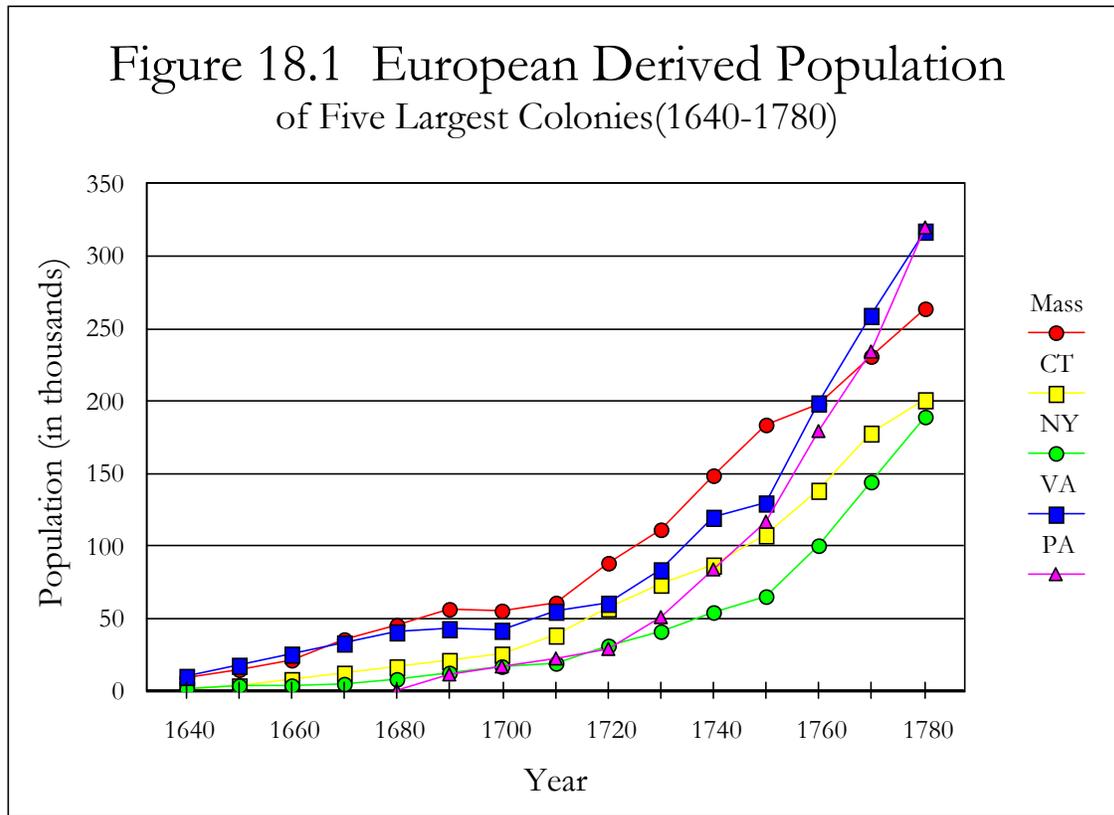
The success of the relatively liberal polities was evident in the emigration rates, land sales, use of new labor contracts, and economic growth. The south, although less liberal than the north, also had political and legal institutions that were liberal by historical standards. Population and economic development increased rapidly during the seventeenth century, and by century's end the larger colonies were comparable in size to the smaller European states and duchies in 1700. Major commercial centers emerged along the Eastern seaboard at Boston, New York, Philadelphia, and Charleston.

These colonial governments demonstrated that representative governance based on broad suffrage was a feasible arrangement for territorial governance. The policies chosen under their institutions did not yield wholesale redistribution from rich to poor or to the middle class. Instead, it

³²⁴ The possibility of exit must also have moderated the behavior of other colonial governments around the world with respect to their immigrants as well. But many were more profitable than the North American colonies and, thus, they were better policed and exit costs could be driven higher by local governments. European diseases had also greatly reduced the native “Indian” population, which simultaneously increased the demand for colonists and provided many more opportunities for resettlement (more open land) than in many other parts of the world.

³²⁵ European political institutions also evolved to increase the value of land, but in a situation in which labor was not often scarce, because of Malthusian labor supplies. There are several cases in which individual European monarchs encouraged immigration of relatively highly skilled groups that could produce services unavailable locally. Immigration was often encouraged with subsidies and by granting special civil and political liberties within specific communities or “free towns.” In general, however, competition for unskilled labor was less intense in Europe, because the supply of labor was relatively large and its marginal productivity was relatively low.

produced rule of law and relatively open trade, which contemporary research shows tends to increase economic growth. Wage rates in the colonies remained higher than those in Europe.³²⁶



Mid-Eighteenth Century Colonial Governments

The association between democratic bicameral forms of the “king and council” template and prosperity led essentially all of the North American colonies to adopt them during the late seventeenth and early eighteenth centuries. By the time of the Revolutionary War, only Pennsylvania had a unicameral legislature, although it too had briefly experimented with the Virginia model.

Eighteenth-century colonial governments typically included bicameral legislatures with one elected and one appointed chamber, each with veto power over new taxes and new laws. The upper

³²⁶ Smith (1776: I.8.22) notes that “The wages of labor, however, are much higher in North America than in any part of England. In the province of New York, common laborers earn 23 three shillings and sixpence currency, equal to two shillings sterling, a day; ship carpenters, ten shillings and sixpence currency, with a pint of rum worth sixpence sterling, equal in all to six shillings and sixpence sterling; house carpenters and bricklayers, eight shillings currency, equal to four shillings and sixpence sterling; journeymen tailors, five shillings currency, equal to about two shillings and ten pence sterling. These prices are all above the London price; and wages are said to be as high in the other colonies as in New York.”

chamber was often an elite chamber composed of senior government officials and major landholders, which was analogous to the noble chambers of European parliaments in that era, although membership was not entirely based on family bloodlines. Members of the second chamber were normally elected on the basis of much broader suffrage than in European parliaments.

The number of voters eligible to participate in elections for the lower chamber tended to increase as the number of freemen increased through time, although suffrage laws were occasionally tightened. (Racial, religious, and residency restrictions were often added during the eighteenth century.) Rather than 5 or 10 percent male suffrage, as was common in Europe until the nineteenth century, colonial suffrage was often greater than 50 percent and occasionally close to 100 percent of adult males, because so many families owned land and met minimum property requirements (Brown 1955, Brown and Brown 1964). Electoral politics, consequently, became mass marketing affairs in the North Atlantic colonies well before it did in Europe (as evidenced by local and regional newspapers and pamphlets).

The combination of parliamentary authority and broad suffrage implies that colonial governments were well on their way to becoming parliamentary democracies well before independence was declared in 1776.

This is not to say that the colonies were modern liberal states. Although more or less equal civil liberties were broadly in place, religious freedom in the northern colonies, for example, was often as limited as in Europe. In Massachusetts, for example, Catholic priests were subject to lifetime imprisonment. In the southern colonies, slavery was commonplace, and in many places it was becoming more rather than less difficult for slaves to earn their freedom. (In the northern colonies, there were already politically active groups lobbying for the abolition of slavery.) Even in relatively tolerant states, suffrage and the right to hold elective office were often limited by religion and race in addition to wealth (Fiske 1888: 76).

By the standards of world history, however, the power of the purse had allowed colonial parliaments to become relatively powerful, while liberal political ideology, mobility, and plentiful land had made suffrage broadly based. As evidence of the breadth of suffrage, consider this analysis of the effects of typical wealth rules for suffrage in Pennsylvania by Thomas Paine:

By a former law of Pennsylvania, prior to forming the Constitution, it was enjoined, that a **man is required**, should swear or affirm himself **worth fifty pounds currency** before he should be entitled to vote. The only end this answered was, that of tempting men to forswear themselves. **Every man** with a chest of tools, a few implements of husbandry, a few spare clothes, a bed and a few household utensils, a few articles for

sale in a window, or almost any thing else he could call or even think his own, **supposed himself within the pale of an oath**, and made no hesitation of taking it; and to serve the particular purposes of an **election day**. (Quoted in Brown 1963: 269)

D. 1776 and the “New” Constitutions of the Former Colonies

King George III’s efforts to centralize policymaking authority in the English colonies, the Declaration of Independence, and war to secede from the British Empire all provided new opportunities for constitutional bargaining, experimentation, and exchange in the 1770s and 1780s. There were new constitutional problems to address, and after independence was declared, important veto players disappeared from those negotiations. The resulting constitutional bargains created the first sizable polities in human history grounded entirely on broad suffrage.

The new state constitutions, however, were not invented whole cloth, as the story is sometimes told. They reflected a century and a half of experimentation, bargaining, and competition with the Virginia political template.³²⁷ The same can be said of the constitution for national governance adopted in 1789.

Independence and the Adoption of “New” State Constitutions

Negotiations with King George III and the British parliament regarding that government’s effort to centralize policymaking authority proved fruitless, and so in July of 1776, the colonial governments jointly declared their independence.

The Declaration of Independence had immediate and direct effects on the organization of the executive branch at the colony-state level. The royal and proprietary governors who had run the executive branch of government lost their offices. At this point, the colonial parliaments could have dispensed with the executive office, but organizational conservatism and the advantages of executive administration prevailed, and governors were replaced, rather than eliminated. Two alternative procedures for selecting governors attracted attention, and both were adopted by subsets of the new sovereign state governments. The choice was between what would later be termed “prime ministerial” and “presidential” systems. Governors could be selected by elected state legislatures, or governors could be directly elected by state electorates.

³²⁷ Two colonies, Connecticut (1662) and Rhode Island (1663), already had charters that provided for elected governors; so their constitutions required only minor reforms to be serviceable. Connecticut continued to be governed under its colonial charter until 1818. Rhode Island continued to use its colonial charter as its state constitution until 1843.

Parliamentary appointment is consistent with an institutionally-induced interest theory of constitutional reform, because this procedure maximizes the parliament's control over the executive, and thereby, public policy. However, institutional interests were not the only ones pursued by members of the colonial parliaments. For example, the direct election of governors could advance partisan interests and ideological interests. Colonial leaders who expected to win elections for governor had reason to favor directly elected governors, because it would provide them with a more powerful office than that of prime minister. Direct election of governors was also consistent with liberal theories of governance that were widely accepted within the colonies. It also believed to reduce problems associated with unified governance, what Thomas Paine termed the "vices of government." In the next few years, finely grained constitutional bargains were negotiated and accepted by the colonial, now state, legislatures.

Most of the new states initially chose to create a prime ministerial system of governance.³²⁸ In only three cases did a majority of the legislature initially favor direct election of governors.

This is not to say that ideological considerations affected only a few of the new state constitutions. Most state constitutions, for example, were explicitly grounded on popular sovereignty. Most of the new state constitutions also included lists of rights. Most also included provisions for broad male suffrage, subject to wealth or tax constraints, although in some cases, suffrage was also limited by race and religion. Only two states explicitly forbid voting by free blacks (Georgia and South Carolina). Complete freedom of religious conscience was assured by the state constitutions of Georgia, Massachusetts, New Jersey, New York, Pennsylvania, Virginia, and Vermont. Delaware's constitution explicitly rules out the establishment of a state church. A few constitutions protected open worship by only Protestants (North and South Carolina) and others by all Christians (Maryland). A few state constitutions also explicitly forbade clergy from holding state offices. No new state constitution mentions a state-supported church.

³²⁸ In subsequent rounds of constitutional reform, several state constitutions were modified to include independently elected governors. New Hampshire did so in 1783, Pennsylvania in 1790, and Delaware in 1792 (Fiske 1888: 67–68).

**Table 1: Characteristics of State Constitutions
Adopted Immediately after the Declaration of Independence**

	Date	Election of Governor	Legislative Form	Suffrage Qualifications ¹⁰	List of Rights	Supreme court	State church
Delaware	1776	Legislature	Bicameral	Retained	yes	yes	no
Georgia	1777	Legislature	Unicameral ³	10 pounds ⁴	yes	yes	no
Maryland	1776	Legislature	Bicameral	50 acres	yes	yes	no ¹
Massachusetts	1780	Freemen	Bicameral	60 pounds	yes	no	no
New Hampshire	1776	Legislature	Unicameral ³	Retained	no	no	no
New Jersey	1776	Legislature	Bicameral	50 pounds ²	yes	yes	no
New York	1777	Freemen	Bicameral	100 pounds ⁸	yes	yes	no
North Carolina	1776	Legislature	Bicameral	50 acres ⁵	yes	yes	no
Pennsylvania	1776	Legislature	Unicameral ³	Paid taxes	yes	yes	no
South Carolina	1778	Legislature	Bicameral	50 acres ⁶	yes	no	no ⁹
Vermont ⁷	1777	Freemen	Bicameral	All men	yes	yes	no
Virginia	1776	Legislature	Bicameral	Retained	yes	yes	no

¹ Article 33 allows the possibility of supporting Christian churches using tax revenue.

² Article 4 says that “**all inhabitants** of this Colony, of full age, who are worth fifty pounds proclamation money” may vote. This gave independent **women** the right to vote until the wording was changed two decades later (Keyssar 2000: 54).

³ An unelected second chamber (an executive council or cabinet) is chosen by the first (the assembly).

⁴ Article 9 states that “All **male, white inhabitants** ... of the age of twenty-one years and possessed in his own right of ten pounds value ... shall have a right to vote at all elections.”

⁵ Articles 7 and 8 characterize different rules for House and Senate electors; one can vote for the House if one has paid public taxes.

⁶ In addition, the right to vote is limited by race and religion: “free white man, and ...who acknowledges the being of a God, and believes in a future state of rewards and punishments.”

⁷ Vermont was created as a new state from land originally part of New York in 1786, a few years after its constitution was written. It was, however, not admitted to the union until 1791.

⁸ Rules differ for the Senate and Assembly. Article 7 allows freeholders with more than 20 pounds of assets and renters to vote for members of the Assembly if they have “rented a tenement therein of the yearly value of forty shillings.” Article 10 restricts votes for Senate to freeholders with wealth greater than 100 pounds.

⁹ Article 38 of the South Carolina constitution includes a characterization of acceptable Protestant religious beliefs.

¹⁰ When different suffrage rules apply to the chambers of government, rules for the most stringent is listed.

Source: *State Constitutional Documents*, Thorpe (1909). Also available on the web from Yale University’s Avalon Project.

National Governance and State Sovereignty

Before independence, a loose alliance of the colony-states was formed to coordinate and share the cost of lobbying the British sovereign and parliament. When these negotiations failed to yield the hoped for results, independence was declared, and new constitutional gains to exchange emerged at the national level. There were public service areas in which economies of scale could be realized through national governance, especially national defense, and other policy areas in which a central authority could reduce unproductive conflict among the states.³²⁹

The new national government had to be acceptable to all member states and consequently the result was, as in those cases, a relatively weak central government. The resulting Articles of Confederation were analogous to those of the old Dutch Republic or the contemporary European Union. The states delegated significant policymaking authority to the central government and allowed a variety of decisions to be made with less than unanimous agreement, but the new national government had no authority to impose taxes or other laws on its members. The states retained all police authority. Article I adopts the name “United States of America” for the new confederation.

Articles two and three suggest that the new confederation preserved state sovereignty, while pursuing common ends:

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

(III) The said States hereby severally enter into a **firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare**, binding themselves to assist each other, against all force offered to, or attacks made on them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

Article 13, however, suggests that at least some at the bargaining table intended to create a national organization that was more powerful and durable than the usual treaty organization:

(XIII) **Every State shall abide by the determination of the United States in Congress assembled**, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and **the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a**

³²⁹ See Congleton (2004b) and Congleton, Kyriacou, and Bacaria (2003) for rational choice–based theories of centralization produced through voluntary associations of state governments.

Congress of the United States, and be afterwards confirmed by the legislatures of every State.

The remainder of the articles define policy areas in which the national government would have jurisdiction and procedures for adopting public policy and settling interstate disputes.

It also provided the architecture for a council dominated form of the king and council template. Article 5 specified that each state delegation would consist of two or more delegates and that “each state shall have one vote.” It specifies three-year term limits for the delegates to the national congress and assures freedom of speech in the congress and immunity of delegates from arrest during sessions of congress. Article 6 delegated all international relations to the confederal government. Article 8 specifies that state tax obligations for the “common defense” and “general welfare” are determined by the relative value of land holdings in the various states and are to be levied by the state legislatures. Article 9 creates a cabinet with a “president” (prime minister) to be chosen by the Congress. The president could hold office for only one year out of every three. It also provides for a national army and gives the central government exclusive power over war and peace. The central government also has the authority to regulate the minting of coins, regulate international trade, and serve as the highest court of appeal in disputes among states.

Supermajorities (9 of 13 votes) are required for most policy decisions. Article 9 also provided for establishing national courts to hear disputes among states and for establishing a standing committee with a president (limited to one-year terms) to govern while Congress is not in session. The Congress was to meet at least once every six months. Article 4 established free mobility among the states and assured persons migrating of the same rights as other citizens of the states in which they entered. It also provided for the extradition of criminals fleeing from state to state.

This design for a national government, completed in 1778, was used for the next two decades, although it was not ratified by all the member states until 1781. The tension between articles 2 and 13 would play a role in many of the constitutional controversies that took place in the next two centuries.

Governance under the Articles of Confederation proved adequate for a time of war, and the national Congress was able to pass significant legislation, such as the Northwest Ordinance governing the admission of new states. However, it was widely regarded to be too weak to advance national interests during the time of peace after the war was won in 1783. States ignored requests for contributions to the central government, trade barriers were being erected among the states, conflicts about the location of state boundaries were left unresolved, and national defense was

poorly financed and orchestrated. Secession from the confederation was being discussed in several states.

A prominent group of state and national politicians believed that a stronger central government would be necessary if the United States was to defend itself in the long run (Fiske 1888: ch. 4). Negotiations for a stronger central government took place in assemblies of appointed state representatives in Annapolis and Philadelphia, many of whom had recently participated in drafting their state constitutions.

The architecture for a new central government was negotiated in Philadelphia, accepted by the assembled representatives and submitted to the national congress for consideration.³³⁰ The national congress accepted the proposed reforms of the Articles of Confederation without comment, and the proposal was sent to state legislatures for ratification or rejection in 1787, as required under article 13. After much public debate and some further negotiation regarding the addition of a bill of rights, the proposed constitution was approved by all of the member states in 1790.³³¹ In this manner, the national government of the United States was peacefully and formally transformed into a more centralized one through negotiation and compromise.

In most respects, the new architecture for national governance was very similar to that already used by the member states. Those drafting the constitution sought a practical structure for governance and naturally looked to the governments with which they were familiar. The new constitution, however, substantially modified the architecture of the existing national parliament of the states by adding a directly elected chamber. It also strengthened the office of president and the supreme court.

The new congress was bicameral. One chamber, the Senate, essentially preserved the original Congress of state representatives, which helped obtain the approval of the smaller states. Each

³³⁰ At the close of the Philadelphia assembly on September 17, 1787, it was agreed that everyone would destroy their notes or turn them over to the president of the assembly (George Washington). Fortunately for historians, a few of the delegates violated this rule. Madison's notes are by far the most complete, and reveal both sophisticated bargaining and analysis of constitutional consequences throughout the meetings of the assembly.

³³¹ Several of the state assemblies and state constitutional conventions approved the constitution, subject to the addition of a "bill of rights" that more clearly characterized the bounds of central government authority, as already found in most state constitutions. Twelve amendments were subsequently adopted in rapid succession by the Congress to satisfy this part of the constitutional bargain. Ten amendments (the Bill of Rights) were approved by Congress, the president, and the requisite number of state legislatures on December 15, 1791. (Two of the original 12 amendments passed by Congress did not receive sufficient state support to be adopted.) The first 10 amendments thus are essentially part of the original constitution.

member-state government was entitled to appoint representatives to the Senate. To this council of state governments, a new directly elected chamber was added, the House of Representatives. Its members were directly elected by voters in single-member districts (based on state population). The directly elected chamber had essentially the same policy authority as the Senate. It could veto and propose taxes and legislation.

The rotating presidency of the old Congress (essentially a prime minister) was replaced by a new, more powerful, indirectly elected president. The president would stand for elections every four years and could veto legislation from the Congress (although Congress could override that veto). He would be responsible for executing the laws approved by both assemblies and serve as commander-in-chief in times of war.

Majority rule was used for most decisions, including those that previously required supermajorities. Direct taxes were to be based on population, rather than land holdings (slaves were counted as two-thirds of a person). Senators and representatives were guaranteed free speech in Congress. Bills for raising revenues were to originate in the House of Representatives. Senators, representatives, and the president would receive a salary. Congress was to meet once a year and the three-year term limits were eliminated, although national elections for members of the House of Representatives would be held every two years. Section 9 forbids the granting of noble titles.

Bargaining and constitutional conservatism were evident at every step in the drafting and ratification process. For example, the list of areas of central government authority included in article 1, sections 8–10, of the new constitution consists largely of the same ones listed in the Articles of Confederation. The general architecture of the revised national constitution also followed closely the pattern of state constitutions, particularly those with elected governors, which, in turn, closely followed the architecture of the colonial governments that had evolved in the century before independence was declared.

Relevance for Constitutional Developments Elsewhere

Liberal political theory was significantly advanced by the debates and negotiations that produced the new U. S. constitutions. Although liberal ideas had previously affected governance in the Dutch Republic, the colonies, and in Great Britain, they were less clearly stated and less evident in written constitutional documents than in the United States. Significant intellectual progress is also evident when one compares Montesquieu's chapters on federalism and divided powers in his *Spirit of the Laws* with the far more sophisticated discussions included in Madison, Hamilton, and Jay's

Federalist Papers.³³² Those drafting the national constitution sought an encompassing legitimizing authority, but as had been done at the state level, drew that authority from the “self-evident” rights of man and contractarian justifications for the state, rather than biblical citations, as might have been expected from the representatives of a deeply religious society.³³³ The constitution of the United States begins with the words “We the people in order to form a more perfect Union.”

That such a conception of the state preceded the French Revolution by a few years is unsurprising; Franklin, Adams, Jefferson, and Madison had all spent time in France before the new constitution was drafted, and they were all familiar with contractarian theories of the state that had been worked out in Europe during the past century. That similar language had already been in use in colonial charters for more than a century is, however, often overlooked by modern constitutional scholars and in contemporary tales about the founding of the United States.

Although it was not a radical experiment, the new national constitution was a significant event in the history of western democracy. It created the first government of a large territory that was completely grounded in elections with broad suffrage. Although not all senior officials were elected directly, those that were not were ultimately appointed (or elected) by directly elected officials. It included a bill of rights that would be supported by an independent Supreme Court. Its federal structure was scalable and was subsequently extended to govern a far larger territory simply by creating and adding new states. During its first decades, the broadly elected governments of the United States demonstrated that rule of law could be implemented by popular government and that more or less moderate policies could be adopted by governments based on relatively broad suffrage. Wealth was not taken from the rich, huge deficits were not run, and law and order was not completely undermined by officials directly or indirectly selected by common persons.

The success of this relatively democratic national government supported nineteenth-century arguments in Europe about the feasibility of popular government. Such governments had previously been intangible speculations of political philosophers or rare forms of city government studied by political historians. If the liberal political institutions of the United States functioned reasonably well, perhaps the political ideas of the English Levelers, Locke, Montesquieu, and Rousseau were not impossible pipe dreams of idealists and scholars. Perhaps, such ideas could provide the intellectual foundations for practical alternatives to existing arrangements in Europe.

³³² Part of this difference, of course, may be the result of French censorship and treason laws at the time that Montesquieu wrote.

³³³ See Miller (1991) for a discussion of the shift from traditionalist and religious theories of democracy and community to liberal ones in eighteenth-century America.

E. Constitutional Reforms Before and After the Civil War, 1792–1870

Constitutional bargaining in the United States did not end in 1789, nor was it confined to national reforms. The reforms of the nineteenth and early twentieth centuries gradually transformed a relatively liberal representative system into a more completely democratic one. The national constitution was formally amended nine times in that period and informally amended many more times. State constitutional and quasi-constitutional reforms were more commonplace and just as important in a highly decentralized federal system.³³⁴ Consistent with the models of constitutional reform previously developed, the bargains struck reflected changing economic interests, ideological refinements, and preexisting institutions.

At the national level, the veto authority of the Supreme Court was extended to include constitutional review of national legislation and executive actions early in the nineteenth century, albeit largely through its own decisions (Rehnquist 2001: ch. 1). The balance of policymaking authority within the central government and between the central government and the states was also continually debated and adjusted at the margin. New territories were acquired, organized, and admitted as states to the Union.

Other significant constitutional and quasi-constitutional reforms were adopted by state governments. For example, governors became independently elected offices with broader powers in the late eighteenth and early nineteenth centuries (Benjamin 1985, Fiske 1888). Suffrage remained a state matter after the new national government was reformed, and was gradually expanded in the early nineteenth century as the definition of “freeholder” was liberalized and wealth requirements were reduced one state at a time. This was partly a result of interstate competition for labor, as the new states generally had more liberal rules than the original colonies. It was also partly a consequence of changing norms, expanding public education, and political competition, as in late nineteenth-century Europe.

³³⁴ It is easy to exaggerate how centralized the new national government really was. For the next century and a half, the main source of government services remained local (town and counties) rather than federal. It was not until about 1935, after the progressive amendments (see below) that federal expenditures exceeded state and local expenditures. See *Historical Statistics of the United States* Volume 5, 2006: Table Ea-A, pp. 5–6.

In some cases, however, new restrictions were adopted at more or less the same time as wealth or tax thresholds were reduced; for example black suffrage was reduced, rather than expanded in many states in the early nineteenth century.³³⁵ Even with slavery and other new restrictions taken into account, suffrage remained substantially broader than in Europe and many northern and new states approached universal male suffrage. The paper ballot was gradually introduced and reformed.³³⁶

Slavery, State Sovereignty, and the Perpetual Union

Unfortunately, in addition to the political effects of early liberal ideology, industrialization, and interstate competition for labor and capital, a problem postponed during the constitutional deliberations of 1787 led to a constitutional crisis and another war of secession in the middle of the nineteenth century. In this case, those attempting to secede lost the war, although at great cost to both sides.

Under the constitution, slavery was a state regulatory issue. Support and opposition to this ancient institution varied by region, because of variation in ideological and economic interests. In the northern states, where slavery was economically unimportant, abolitionists pressed for its elimination, and slavery was gradually abolished beginning with Delaware in 1776, Vermont in 1777, Pennsylvania in 1780, and Massachusetts in 1780. In the South, where slavery was economically important for tobacco, rice, indigo, and subsequently cotton production; slavery was retained despite the efforts of southern abolitionists.

Abolition of slavery throughout the United States became an increasingly important ideological issue in northern elections during the first half of the nineteenth century as support for civic equality increased. At the national level, this was most obvious within the House of Representatives where representation was determined by state population. After the elections of 1860, the southern “slave” states feared that the national government would adopt new more liberal laws on slavery and other

³³⁵ Black suffrage was reduced or eliminated in several states as in Delaware (1792), Maryland (1809), Connecticut (1818), New Jersey (1820), and Pennsylvania (1838) (Grimes 1987: 32).

³³⁶ Ballot design, perhaps surprisingly, continues to be controversial in the United States today. After the 2000 election for President, many significant changes in ballot design and counting were suggested, and a few were implemented. See, for example, Agresti and Presnell (2002) for a careful analysis of the effects on ballot design on the distribution of votes in Palm Beach County Florida. The “Help America Vote Act” was passed by Congress and accepted by the president in 2002.

laws (chiefly tariffs) that would substantially reduce their wealth. Neither were very likely in the short run, given the balance in the Senate.

Nonetheless, the southern states attempted to secede from the union to avoid these economic calamities in the long run and to preserve their political autonomy. The Civil War took place from 1861–1865, and ended with a victory for the North. It was by far the deadliest war in U. S. history.³³⁷

The constitutionality of secession had been much debated in the period leading up to the war (Farber 2003: chs. 4–5). Articles 2 and 3 of the Articles of Confederation had explicitly guaranteed state sovereignty on all matters not transferred to the Congress, although article 13 had committed signatory states to a “perpetual union.” The legal and philosophical tension between perpetual union and state sovereignty, however, could no longer be peacefully resolved through constitutional bargaining and compromise. Rather, the perpetual union agreed to under article 13 was preserved by force of arms in a bloody civil war (1861–65). According to President Lincoln’s interpretation of the constitution, sovereign states did not have the right to secede from a perpetual union.³³⁸

Suffrage and Citizenship after the Civil War

Amendments of the U. S. Constitution require two-thirds majorities in both chambers of the legislature and approval by the legislatures of two-thirds of the states.

The secession of the southern states changed the balance of interests represented in Congress and, thus, provided new opportunities for constitutional bargaining by reducing the number of states opposed to amendments with respect to slavery and race. As a consequence, three liberal reforms of the constitution were adopted by the northern Republicans after the war was won. The thirteenth amendment (1865) made slavery illegal; the fourteenth amendment (1868) defined citizenship in inclusive terms (all persons born or naturalized in the United States) and guaranteed equal protection of the law to all citizens; and the fifteenth amendment (1870) forbade state laws that used race or

³³⁷ The seceding states listed their reasons in secession documents adopted by the state governments. For example, South Carolina’s states that: “On the 4th day of March next, this party [President Lincoln and northern abolitionists] will take possession of the Government. It has announced that . . . a war must be waged against slavery until it shall cease throughout the United States. The guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slave-holding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy.” It bears noting that the “war” against slavery refers to the long political campaign undertaken by the northern liberals against slavery, rather than a military effort.

³³⁸ The army of the north was (and is) therefore called the union army. The army of the south was (and is) known as the confederate army, in honor of the new confederal constitution devised by the seceding states in 1861.

color as a condition of suffrage, which changed suffrage laws in the North and West, as well as in the South.

These civil liberty reforms were largely motivated by liberal ideological interests (the civic equality of all citizens), although they also advanced the short-term political interests of the Republican Party, for whom the newly enfranchised were expected to vote. (The post-war governments in the South were often Republican governments.)

After the war was won, the southern states were administered by the U. S. government and the northern army for a few years. Provisional state governors were initially appointed for each of the southern states. Elections for state constitutional conventions were held in 1866 to revamp Southern state governments. These and other state elections initially used existing state suffrage rules, although senior members of the southern army and government, and wealthy plantation owners were not permitted to vote. The new state governments extended many civil liberties to former slaves (and blacks who had not been slaves), but in no case were blacks given the right to vote in elections, to serve as witnesses in criminal cases, or to serve on juries. Violence against freedman (former slaves in this case) increased, state parliaments refused to cooperate with their provisional governors, and new discriminatory “black codes” were promulgated.

In 1867 the U. S. Congress replaced the provisional civilian governments with military governments, and new elections were held for another round of constitutional conventions, in which blacks and previously unenfranchised whites were allowed to vote. This time the result was 11 more liberal state constitutions, with broad suffrage and substantial equality before the law. In some cases, remaining wealth qualifications for high state office were also eliminated. New state elections were held, which elected a number of blacks to high state offices. To regain complete self-governance, each southern state had to ratify the Civil War amendments to the U. S. Constitution. This was easily accomplished by the governments elected under the new suffrage laws. Georgia was the last of the “reconstructed” governments to ratify the Civil War amendments (in July 15, 1870). In this somewhat irregular manner, slavery was ended in the South and freed slaves became eligible to vote in federal elections (Morison 1965: 711-17).³³⁹

After control of public policy was returned to southern state governments, however, suffrage laws gradually became more restrictive, as various literacy tests and fees (poll taxes) for voters were introduced to exclude former slaves and many other poor persons from voting (Keyssar 2000).

³³⁹ Several southern states were among the ratifiers of the thirteenth amendment in 1865, including South Carolina, Alabama, North Carolina, and Georgia. The politics of the thirteenth amendment is discussed in Grimes (1987: 31-39).

Race per se could no longer be used as a criteria for suffrage, but many other criteria were allowed that had similar effects, and many of these criteria (informally) were unequally applied among the races. There was clearly no slippery slope to universal male suffrage in the southeastern United States.³⁴⁰

F. A Digression on Parallels and Contrasts with Europe in the Nineteenth Century

There was no equivalent to the Civil War in Europe, but economic and political developments in the United States nonetheless parallel developments in Europe in many respects. For example, slavery had been eliminated in most of Europe several decades earlier, albeit peacefully, as it had been in the northern states. As in Europe, many of the political trends of nineteenth-century America were consequences of improved farming, industrialization, urbanization, and shifts in political ideology. Support for the expansion of public education, modest economic regulation, and social insurance increased during the century, as did support for women's suffrage.

Ideological changes were somewhat less obvious in the United States than in Europe, because there were very few "true" conservatives in the European sense. Although there were many who favored preserving past American traditions, there were few supporters of hereditary monarchs, privileged families, and a national church. The center of gravity of American political theories had been liberal since the middle of the seventeenth century in the sense used here, well before the term was first applied to politics.³⁴¹ Consequently, most policy and constitutional debates took place between left- and right-of-center liberals, who accepted the principles of constitutional governance,

³⁴⁰ Poll taxes were used in eight states. Literacy tests were also used to reduce the electorate among both black and working class communities, in some cases with much tougher questions for blacks than whites. The Ku Klux Klan's illegal (but tolerated) campaign of terrorism against politically active blacks and southern liberals clearly reduced open support among southern liberals for the elimination of such policies.

(As a consequence of the interests represented in government and war damage, the south industrialized far more slowly than the north and had slower income and population growth. After suffrage was expanded in the late 1860s, per capita income in the southern states began catching up with the rest of the country. Southern slave owners were not compensated for their capital losses as they were in many European countries, nor were losses reduced by phasing out slavery as it had been done in some of the Northern states. Slaves accounted for about half of southern wealth in 1860.)

³⁴¹ See Miller (1991) for a discussion of the gradual spread of liberal political theory in eighteenth- and nineteenth-century America. Miller argues that liberalism gradually replaced earlier traditional (communitarian) and Puritan (Calvinist) political theories. The American version of liberalism, however, was influenced by these early theories and local traditions of direct democracy, as was true in some parts of Europe (Lutz 1983).

broad suffrage, open markets, and civic equality, although they did not always at the margin or uniformly apply those principles to all races or to women. With respect to the latter, it seems clear that support for civic equality gradually increased during the nineteenth century, as developed below.³⁴²

Economic Development: Industrialization and Urbanization

As in Europe, day-to-day life in North America was undergoing a major transformation. Specialization in economic production increased, and with it, life and livelihood changed for a majority of families.

The relatively open internal and external markets of the United States allowed new technologies with economies of scale in production to be applied. Steam engines, for example, were rapidly applied to manufacturing, mining, and transport. New larger commercial enterprises were founded to organize the necessary teams and resources to create the new machines and networks. Other smaller organizations were created to provide new inputs and services to those industrial enterprises. Technological change, with support from state and national governments, also produced rapid improvements in transportation and communication networks, which increased the effective size of the domestic market by reducing transactions costs and allowing inputs and outputs to reach farms and factories further inland. Additional specialization and opportunities were induced by late nineteenth-century innovations in electricity and chemistry, and liability and corporate law (Taylor 1951, Nye 1990, Gordon 1999, Wallis 2000).³⁴³

Population growth continued throughout the nineteenth century, reflecting increases in arable land and improved farming technologies, and the success of the new political institutions. Family sizes continued to be large, and there was substantial (net) immigration from Europe and Asia. For the most part, these were economic emigrants, who sought the opportunities that relatively open markets and abundant undeveloped land produced, although broader civil liberties also played a role at the margin during much of the nineteenth century. Emigrant neighborhoods emerged in larger cities, and entire regions of states were often dominated by particular immigrant groups.

Newspapers were published in dozens of languages. New cities and towns emerged in the west, and

³⁴² Keyssar (2000: 168–69), argues that support for universal suffrage had waned somewhat toward the end of the century, although it seems clear that support for women’s suffrage increased.

³⁴³ Some economic historians debate the extent to which improved transport networks contributed to economic growth (Fogel 1962; Fremdling 1977). However, it seems clear that reduced transport costs, improved information, and increased specialization tend to increase economic output (Gordon 1999; Buchanan and Yoon 1994).

older ones expanded in the east. Immigration was completely open during this period, and new immigrants could often vote before they were citizens, in that the former was a matter of local and the latter national regulations (passports did not yet exist).

The territory of the United States also increased during the nineteenth century through the purchase of Louisiana (1803) and Alaska (1867).³⁴⁴ Other territories in the Southwest were won from Mexico during 1846–48.

As in Europe, the rural landscape was transformed through a combination of legal reform and subsequent economic development. Most of this land was initially held by the central government. To promote development, methods for transferring ownership of large blocks of government land to individual families were devised and implemented, as with various “homestead” acts. The homestead acts had effects that were similar to those involved in the European enclosure acts, as new deeds were devised, roads and fences were built, and lands converted from commons to private pasture and cropland.³⁴⁵ Agricultural technologies improved substantially during the nineteenth century with the introduction of better seeds and plows, mechanization of planting and harvesting, and chemical fertilizers. These techniques together with rising demand from nonfarmers allowed larger, less fertile areas to be profitably cultivated, and farmland increased throughout the century.

Nonetheless, as in Europe, an increasing fraction of economic output (value added) was nonagricultural. Urban populations thus expanded more rapidly than did rural populations. People would not, of course, choose towns over farms unless real incomes and/or other conditions were preferable to those in the countryside. Urban life was systematically improving, as new technologies were applied and wages rose. Urban sanitation and transportation improved. Central heating was introduced, followed by electricity, and telephones. Farm employment in the United States fell from 74.4 percent of total employment in 1800 to 55.8 percent of total employment in 1860, to about 30.7 percent of total employment in 1910.³⁴⁶

³⁴⁴ Several of the original 13 states had previously “privatized” land that had been in the control of the royal governors and proprietors after independence was declared (Fiske 1888: 71).

³⁴⁵ The various homestead acts, with their very favorable terms for land sales demonstrate that urbanization was voluntary in the United States, rather than the result of a shortage of farmland. In Europe, urbanization in the early nineteenth century is sometimes argued to be a consequence of privatization that evicted the landless, which induced them to move to cities as a last resort. (Involuntary urbanization can occur as medieval rights to commons disappear.) However, as noted above, research suggests that European enclosures often increased demand for rural labor to create new pasture from wastelands, drain swamps, and build new roads and fences.

³⁴⁶ See *Historical Statistics of the United States* (2006: vol. 2, tables **Ba-A**, pp. 2–18). During the same period, clerical and manufacturing employment rose from negligible levels to about 34.9 percent of employment.

The urbanization associated with the expansion of commerce and manufacturing also generated new demands for public services and regulation. Demand for public services in cities increased as median income increased, because government services tend to be normal goods. Demand also increased as some services became relatively more valuable or less expensive (public water and sanitation) and partly because new services became available (steel rails and mass transit). Public education expanded as returns to literacy and support for equal opportunity increased. A broad range of local public school and state university systems were created and enlarged during the nineteenth century.

Infrastructure and education were subsidized by all three levels of government, although state and local governments were more important sources of services in the nineteenth century. For example, the Morrill Acts of 1862 and 1890 transferred lands from the central government to the states as a method of funding new public universities for the advancement of science, engineering, agriculture, and military science. National and state government grants of rights of way and other subsidies helped private turnpike, canal, and railroad companies create a more complete, rapid, and efficient transport network.

Increases in specialization, capital accumulation, and technological advance caused per capita (average) income to rise throughout the late nineteenth and early twentieth centuries. From 1870 through 1920, real per capita income more than doubled, as population tripled.³⁴⁷ Expenditures on local public services per capita increased sevenfold (Wallis 2000).

Contrasts with Europe in the Nineteenth Century

Although much was similar in Europe and the United States, there were significant differences in the constitutional issues of the day during the nineteenth century. Relatively liberal political and economic constitutions had already been adopted in the United States gave its national politics a different cast than that in Europe. Male suffrage was already essentially universal (except for retrenchment in the south). International trade was less important for the United States, because of

³⁴⁷ Rising per capita income tends to be somewhat biased upward in this period. First, it bears noting that income has to be estimated, as the GDP surveys were not undertaken until the 1930s, which implies that the historical data series are less accurate than contemporary ones. Second, the substitution of trade for household production implies that both tax and flow of goods estimates tend to exaggerate national income, because these approaches neglect reductions in home production. The decision to use “store-bought” cloth and clothing implies that a net improvement in living standards occurred, but not that homespun cloth and homemade clothing was without value.

its larger domestic markets and because free trade across state boundaries was guaranteed by the constitution.³⁴⁸ Political speech was constitutionally protected. This contrasts with much of Europe, where increased male suffrage, equality before the law remained prominent constitutional issues for most of the nineteenth century. With smaller domestic markets, tariff reduction also remained a central policy issue for economic liberals and many industrialists for much of the nineteenth century.

Towards the end of the nineteenth century, the reform agendas began to converge as European parliamentary systems became based on relatively broad male suffrage and equality of the law could be largely taken for granted. Women's suffrage and the unelected basis of the first chamber (the Senate) became constitutional issues for liberals on both sides of the Atlantic.³⁴⁹

In Europe, the liberal constitutional reform agenda often induced left-of-center, moderates, and right-of-center liberals to cooperate in their persuasive campaigns and electoral strategies. This sort of cooperation was less common in the United States than in Europe, because liberals already dominated the major political parties.

Day-to-day policy disagreements among liberals, rather than agreements, tended to dominate American political campaigns, rather than constitutional issues. These policy differences were sufficiently systematic that political parties representing right-of-center, moderate, and left-of-center liberals emerged in the United States. For much of the nineteenth century, the Republican Party represented left-of-center liberals and the Democratic Party right-of-center liberals, although this changed in the early twentieth century. Moderates floated between the two major parties as issues, interests, party personalities, and scandals varied at the margins of local, state, and national politics.

As in Europe, it could be argued that liberals tended to become more "radical" during the nineteenth century. For example, in the late nineteenth and early twentieth centuries, a "progressive" movement emerged in the United States. The short-lived political party with that name can be thought of as the American equivalent of the Social Democratic Party in Europe. American progressives were not generally opposed to private property or markets, but were interested in improving market outcomes for middle-class and blue-collar workers through institutional and

³⁴⁸ As in Europe, tariffs fell during the first half of the century in the United States, in spite of the fact that it was a major source of the national government's revenues. Tariffs rose in the second half of the nineteenth century, in part to pay off bonds issued to finance the civil war, but also because free-trade groups around the world were losing ground in this period.

³⁴⁹ The term "liberal" was not widely used in the United States during the nineteenth century to describe political positions, although it was occasionally used. The terms civil liberty, political liberty, and economic liberty were, however, widely used. Ross (1919) provides an account of American politicians who explicitly regarded themselves to be "liberals," most of whom were Republicans.

regulatory reforms. For the most part, they sought reforms that would give those groups greater bargaining power within governments and firms. In the terminology used in this book, most Progressives were “left-of-center” or “radical” liberals, rather than “socialists,” as was also true of moderate Social Democrats in Europe.³⁵⁰

It is interesting to note that the “left-of-center” liberals (the Progressives) retained the name “liberal” in the United States in the twentieth century, whereas in Europe the “right-of-center” liberals kept that political label.

Politically Active Interest Groups of the Nineteenth Century

A wide variety of politically active interest groups in the United States were organized in the late nineteenth century. Most groups had fairly narrow policy agendas, although many such groups had overlapping memberships. Economic interest groups included regional and national business associations, trusts, labor unions, and farmer cooperatives that pressed for reforms that would improve the economic well-being of their members (profits, wage rates, and working conditions). Other interest groups had explicitly ideological and political agendas, such as the temperance and women’s suffrage movements. Still other groups had both economic and ideological agendas, as with many free-trade and labor organizations. Technological advance and urbanization had reduced organizational costs at the same time that policy problems began to span state borders and personal income and free time increased.

Labor and progressive groups often joined forces in the United States, as did industrialists and laissez-faire liberals. In late nineteenth century Europe such coalitions often led to the formation of new political parties. The former often formed new labor-Social Democratic political parties and the latter new liberal and/or conservative parties. However, this did not happen in the United States because of its political system. In a polity with competitive elections based on broad suffrage in single-member districts, interest group activities tend to affect the platforms of existing major political parties, rather than induce the formation of new parties. The campaigns of progressives

³⁵⁰ Prasch (1999) notes that: “What distinguished the economists associated with the Progressive movement from their forebears in the liberal tradition was not their concern for rules per se, rather it was their belief that a free market could be the locus of systematic economic power. They thought that the proximate cause of this power was unequal bargaining power between employers and individual laborers. It was their observation that labor was typically constrained by a lack of wealth. This simple fact, operating in conjunction with the need to feed oneself and one’s family, placed a distinct limit on the length of time that labor could ‘hold out’ for a better wage bargain.” Nonetheless, Progressives did include persons favoring broad public ownership of major industries, such as the railroads.

induced the two major parties (Democrats and Republicans) to adopt more progressive positions on many issues. The Progressive Party did poorly in national elections.³⁵¹

G. Changes in the Economic and Political Constitutions of the United States

1870–1910

Although the Civil War, like the Revolutionary War, attracts considerable attention among historians and plays an important role in American political mythology, it was by no means the only significant period of constitutional reform in the nineteenth and early twentieth centuries. Indeed, the war itself and its three associated amendments can be said to have had a smaller effect on peacetime national governance and public policy than quasi-constitutional reforms adopted between 1870 and 1910, and constitutional amendments adopted between 1910 and 1920 in what is often called the progressive era. The Civil War amendments were civil-equality amendments, rather than procedural ones.

For example, during the late nineteenth century, there were several changes in what might be called the economic constitution of the United States, many of which paralleled those of the industrializing countries of Europe. The increase in population densities and the size of firms, together with persuasive campaigns led by progressives helped increase electoral support for increased regulation of economic organizations. As a consequence, many states and cities adopted new laws to regulate firms and labor contracts, including antitrust laws and child-labor laws. By 1900 most northern states had rules governing work days and work weeks for children and women, and similar laws were being adopted in the South in the period immediately after 1900 (Hindman 2002:

³⁵¹ A national Progressive Party was founded in 1912 by former Republican president Theodore Roosevelt, partly because he had failed to secure the Republican party's nomination as their candidate for president (on a more or less progressive platform).

Many of its proposed policies were similar to those of the early Social Democratic Parties in Scandinavia, and the party did best in states where Scandinavian emigrants were large constituencies. In Minnesota, for example, the party received more votes than either of the mainstream parties. It ran second to the Democrats in the nation as a whole on a platform calling for a six-day work week, and eight-hour day in manufacturing, prohibition of child labor at ages below 16 years, and women's suffrage. See Youngman (1913) for the 1912 Roosevelt platform and Davis (1964) for an analysis of the Progressive party's base of support.

A People's Independent Party had previously been founded in 1892, which represented somewhat similar groups and interests and also drew much of its support from radical Republicans. See, for example, Webb (1993) for a discussion of relationships among populists, progressives, and progressive Republicans. The progressive movement's base of support consisted largely of progressive Republicans and independents.

58-64). A variety of adjustments were also made to the rules that determined what is owned and how what is owned may be used without legal (or political) interference. Many of these adjustments were made shortly after independence was declared (Fiske 1888: 71), but many more were made in the second half of the nineteenth century as, for example, tort law and corporate law were revised. Property rights concerning physical goods and services became individualized and alienable, at the same time that use rights were narrowed to take account of externalities and monopoly power.³⁵²

Centralization of Economic Regulation

However, not all problems of interest to progressives could be addressed by state and local governments, because they were regional or national in scope. Partly because of such interstate problems, there was a significant increase in interest group and electoral support for shifting some regulatory responsibilities from states to the national government. The persuasive campaigns undertaken by progressives, together with support from economically aligned interest groups, gradually produced a series of new national laws that attempted to regulate large firms and transactions.³⁵³ Examples include the Interstate Commerce Act, which regulated railroads (1887); the Sherman Antitrust laws, which regulated monopolies and other conspiracies to restrict open markets (1890); the Pure Food and Drug Act (1906), which created the Food and Drug Administration and provided for federal inspections of meat products and forbade poisonous patent medicines; the Federal Trade Commission Act (1914), which regulated “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices . . .”; and the Clayton Antitrust Act (1914), which strengthened the Sherman Act and exempted nonprofit institutions and organized labor from antitrust proceedings.

Arguments about the proper extent of governmental regulation of market activities and the constitutionality of such “ideal” regulations among right- and left-of-center liberals were evident in newspapers, political campaigns, scholarly books, and in the courts. Such debates occurred at every

³⁵² Changes in property law were more obvious in Europe and Japan where medieval family-based privileges for particular occupations, products, and services finally disappeared as matters of law during the nineteenth century. Debts often became individual, rather than family based, and land became freely bought and sold. However, it is clear that property and tort law changed in the United States as well. See, for example, Posner 2007.

³⁵³ Many voters were skeptical of the ethics and tactics of the new industrialists. A significant subset of the new industrialists were referred to as “robber barons,” although the new millionaires rarely resorted to obviously illegal behavior. (Many of the new industrial millionaires—Carnegie, Rockefeller, Morgan, Edison, and Ford—established large charitable foundations with large endowments partly to undermine such labels. See, for example, Johnson 1997: 536–60.)

level of society. The main lines of arguments are nicely summarized in the Supreme Court's *Lockner* decision and dissent of 1905. The majority opinion includes the "right-of-center" liberal argument favoring complete freedom of contract, although this was not directly at issue in the case:

The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power.

Liberty of contract relating to labor includes both parties to it; the one has as much right to purchase as the other to sell labor. There is no reasonable ground, on the score of health, for interfering with the liberty of the person or the right of free contract, by determining the hours of labor, in the occupation of a baker. Nor can a law limiting such hours be justified as a health law to safeguard the public health, or the health of the individuals following that occupation.

It is also urged, pursuing the same line of argument, that it is to the interest of the state that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. If this be a valid argument and a justification for this kind of legislation, it follows that the protection of the Federal Constitution from undue interference with liberty of person and freedom of contract is visionary, wherever the law is sought to be justified as a valid exercise of the police power. Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract, would come under the restrictive sway of the legislature.

The minority dissent by Oliver Wendall Holmes includes the "progressive" argument, which supported government regulation of some contracts and gradually became the dominant opinion on the Supreme Court.³⁵⁴

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract.

Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the post office, by every

³⁵⁴ See, for example, Rehnquist (2001: 107), who argues that *Lockner* was wrongly decided. The point of the quotes, however, is to demonstrate that liberal ideas and arguments were present at the highest levels of government, rather than to analyze the *Lockner* decision per se.

state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics.

Although the final Lockner decision was far narrower than the arguments applied, the opinions clearly demonstrate that the split between right- and left-of-center liberals occurred in the highest policy circles, as well as among politically active interest groups, political theorists, and editorial writers.³⁵⁵

Debates between liberals and progressives became significant factors in American policy and constitutional debates at about the same time that similar debates between moderate liberals and Social Democrats emerged in Europe, although the debate on adult male suffrage in the United State was essentially over (outside the south) by this point.

The Constitutional Agenda of America's Left-of-Center Liberals

At the same time that progressives lobbied for changes in the economic constitution, they also successfully lobbied for reforms of political constitutions at the state and national levels. As a consequence, a number of significant procedural changes occurred during the "progressive period," many of which also parallel those of Europe during this time.

For example, various forms of the secret ballot were adopted by individual states beginning with Massachusetts in 1888. Ballots were placed in official envelopes before being placed in ballot boxes, which allowed votes to be cast without fear of rebuke by their neighbors, landlords, and employers.³⁵⁶ Nineteen states also added (or included)³⁵⁷ direct referenda and recall provisions to their constitutions, which allowed voters to decide specific issues, avoiding agency problems associated with representative systems of government.³⁵⁷

³⁵⁵ Rehnquist (2001: 113–14) provides a short summary of "anti-progressive" Supreme Court decisions.

³⁵⁶ Secret ballots were also known as the "Australian ballot," because the rules and ballots were heavily influenced by Australian electoral reforms of the previous decade. The new ballots included a list of all candidates, rather than favored candidates. Standard ballots were printed by government and distributed at voting places, although several exceptions existed (Ludington 1909). Heckelman (1995) notes that voter turnout fell as the secret ballot was adopted, which suggests that vote buying was diminished by the new voting rules.

Paper ballots had previously been used in several states. New York and Vermont had used paper ballots since independence.

³⁵⁷ Provisions for referenda were mostly adopted by new states in the West that received statehood after the Civil War, but several other states amended their state constitutions to allow such referenda. Direct democracy continued to be used in some New England towns throughout this period, although it had not previously played a significant role in state governance.

Bureaucracy was reformed to reduce political influence over the bureaucracy (although in the U. S. this was done to reduce incumbent advantage and corruption, rather than to reduce royal influence). The Pendleton Act (1883) established the U. S. Civil Service Commission, which placed most federal employees on a “merit system,” greatly reducing the extent to which political parties could determine jobs within the bureaucracy. After the Pendleton Act, only holders of the senior-most jobs in the U. S. bureaucracy were appointed by the president.

Such “civil service” reforms improve efficiency by increasing continuity and institutional memory. To the extent that job-related skills are not highly correlated with partisan loyalty, merit-based hiring also tends to increase competence and productivity of the persons employed at the same time that the incumbent’s ability to use the bureaucracy in political campaigns for reelection is reduced. The latter tends to increase political competition (by reducing incumbent advantage) and reduce corruption.

The Suffrage and Temperance Movements

Prior to the Civil War there were broad American suffrage movements that attempted to expand suffrage for men and women. As in Europe, the American suffrage debates focused on qualifications for casting independent, meaningful votes. The suffrage movement initially attempted to reduce remaining property and residency qualifications for suffrage and subsequently to eliminate religion, race, and sex as qualifications for suffrage. The early male-suffrage movements were quite successful and property qualifications for men’s suffrage were largely eliminated in the early nineteenth century, although other qualifications were sometimes added. These early successes did not entirely end men’s suffrage campaigns, although they clearly became smaller and less effective. As they began to focus on suffrage expansion for smaller groups such as southern blacks and native Americans.

A women’s suffrage movement emerged in the early nineteenth century at about the same time that property restrictions for men’s suffrage disappeared in most of the U. S.. Their influence is evident in the Fourteenth Amendment (which guaranteed “due process of law” and “equal protection of the laws” to *all* citizens). And, supporters of women’s suffrage had almost been able to add the word “sex” to the Fifteenth Amendment, which ruled out legal discrimination on the basis of race (see Keyssar 2000: 178–79). The fourteenth amendment was subsequently used in legal challenges of state suffrage laws that discriminated against women. These challenges were unsuccessful, however, in part because the legislative history of the fifteenth amendment was well

known and in part because the fourteenth amendment itself included provisions based on the sex of voters.³⁵⁸

After the civil war, organized support of women's suffrage and women's equality before the law, was by far the most active and best known of the American suffrage movements.³⁵⁹ The women's suffrage movement gained support in the late nineteenth century and it began to have significant effects on public policy in the twentieth century. For example, several states adopted women's suffrage laws in the early twentieth century (Keyssar 2000: 203–12).³⁶⁰

During the roughly the same period, another long-standing movement gained in strength and began to influence public policy and induce constitutional reforms at the state and local level. The “temperance” movement opposed alcohol abuse and lobbied for new laws restricting alcohol access, production, and consumption. Temperance movements in the United States and in many parts of northern Europe gained membership and political support throughout the nineteenth century. For example, the American Temperance Society was organized in 1826. Some of these organizations were international in scope, as with the “Independent Order of Good Templars”; others simply paid attention to the efforts of other similar groups in other places, copying their best practices.³⁶¹

Support for temperance laws increased toward the end of the twentieth century partly a consequence of the new urban lifestyles based on wages, where many men were reputed to “drink up” a significant fraction of their week's wages on the way home to their families after pay days. Temperance had also long appealed to the Puritan strand of American thought, which had long opposed “demon rum.” As a consequence of lobbying campaigns by a broad cross section of

³⁵⁸ The fourteenth amendment distinguishes between equality before the law in general and political equality. Seats in the House of Representatives after 1868 were allocated to among states in proportion to the number of men qualified to vote, rather than state population. This provided states with a strong incentive to eliminate their remaining restrictions on male suffrage. The fifteenth amendment prevents the use of race as a qualification for suffrage.

³⁵⁹ Evidence of this can be easily obtained. For example, typing in the words “suffrage movement” into the search engine Google returns only woman's suffrage movement links.

³⁶⁰ Qualified women had been granted suffrage in some colonies and in the state of New Jersey from 1776 through 1807. Idaho adopted women's suffrage in 1896, Washington in 1910, California in 1911, and Kansas in 1912 (Keyssar 2000). A useful timeline of the U. S. women's suffrage movement and women's suffrage is available at <http://dpsinfo.com/women/history/timeline.html>.

³⁶¹ Temperance societies were founded in Ireland in 1829, in Sweden in 1837, in Denmark in 1840, and in Norway in 1845. Energetic temperance movements also emerged in Germany and England. The temperance and women's suffrage movements in Europe are less studied, because they operated in the political shadow of various men's suffrage movements. See Johnson (1997) and the *Catholic Encyclopedia* for overviews of European temperance movements.

anti-alcohol groups, many towns, counties, and a few states tightened their regulations for alcohol production, sale, and consumption. Pressures to do so at the national level intensified in the early twentieth century.³⁶²

Both the success of woman's suffrage and temperance movements are consistent with the suffrage reform model of chapter 7 and 8. A majority of male voters had gradually been persuaded that women were qualified to cast their own independent votes and that alcohol was undermining the quality of life and the productivity of a broad cross section of the American labor force.

In no case was the women's or temperance movement a serious revolutionary threat.

H. Progressive Reforms of the National Constitution 1910–20

A number of progressive amendments were proposed at the national level in the late nineteenth and early twentieth centuries. Only four eventually generated sufficient support to pass with the required supermajorities in the Congress and be ratified by three-quarters of the states. (In the United States, the executive branch does not have veto power over amendments, so negotiations take place within and among the chambers of the national and state legislatures.) Two of the progressive amendments were similar in spirit to those adopted in Europe at about the same time, insofar as they further democratized American governance. One of the amendments addressed tax reform issues that were normally addressed with ordinary legislation in Europe. The last addressed a public health and morality issue using constitutional amendment procedures, whereas in Europe such reforms were normally adopted through ordinary legislation.

Changing the U. S. Tax Constitution: the Income Tax and Prohibition

The federal government had relied entirely on excise taxes and tariffs for its revenues before 1913 (with a short exception during the Civil War), because the constitution forbade direct federal taxes—taxes borne directly by individuals. In this, the federal government had a standing tax constitution that proscribed a tax base analogous to that of the medieval kings of Europe, during times of peace. The use of tariffs and excise taxes limited the range of services that could be

³⁶² For a contemporary overview of the pro- and anti- “prohibition” campaigns in the U.S., see the *New York Times*, July 16, 1911, “Prohibition the Issue of 1911.” (Some states and counties had long been “dry” states, as for example Maine had been so since the mid-nineteenth century.)

centrally provided, which helped assure that governance in the United States would remain a decentralized federal system.³⁶³

As demands for central government services increased and confidence in the central government's ability to provide those services increased, it became clear that old tax rates would have to be increased or new tax rates lowered. Those most affected by existing tariffs and excise taxes, of course, generally preferred that a new tax be introduced that would shift the burden of taxation to others. There were also ideological arguments in support of income taxation. For example, proponents such as Edwin Seligman argued that the income tax was a fairer tax, because the burden of excise taxes and tariffs tended to be disproportionately borne by middle-class and poor persons.³⁶⁴ The Democratic Party proposed a national income tax in their 1896 platform, and a series of income tax proposals were introduced in Congress, but voted down during the next decade.

However, economic growth, electoral pressures, and expenditure pressures, including those associated with national security, increasingly favored the income taxation in the early twentieth century (Brownlee 2004: ch. 1). Congress passed the sixteenth amendment allowing income taxes on July 2, 1909, which was ratified by the required number of state legislatures on February 3, 1913.

The first income tax was incorporated into a tariff reduction bill in 1913. Tariffs were reduced as the income tax was implemented, which suggests that fiscal exchange had played a role in the amendment process.³⁶⁵ The income tax was subsequently expanded during World War I, because the war caused tariff revenues to fall at the same time that American participation in the war caused federal expenditures to increase. The importance of income taxes as sources of revenue was further increased when the eighteenth amendment (prohibition of alcohol sales) was adopted in 1919.

The temperance movement, as noted above, had long lobbied for laws that limited alcohol consumption. There were state and national campaigns to reduce and/or eliminate alcohol

³⁶³ Neither the colonial governments nor the state governments were similarly restricted. Colonies had used taxes similar to income taxes as early as the seventeenth century. States had used income taxes throughout the nineteenth century, beginning with Virginia in 1843 (Comstock 1921). The federal government's occasional use of an income tax had been ruled unconstitutional by the Supreme Court in 1895.

³⁶⁴ Seligman was an economist at Columbia university who had written widely on the effects of an income tax. He testified before Congress on May 20 1911 in support of the amendment (*New York Times*, May 21, 1911).

³⁶⁵ Although tariff rates were reduced, tariff revenues initially increased as a consequence of the Underwood Simmons Tariff Act of 1913. The new national income tax was somewhat progressive. It included a one percent tax on personal and corporate income with above \$3000 and a six percent rate on incomes above \$20,000. About 98 percent of U.S. taxpayers paid no income tax (Brownlee 2004: 56–57).

consumption in most states in most of the nineteenth century. As a consequence, many cities, counties, and states adopt rules prohibiting alcohol consumption, especially in the early twentieth century.

By 1913 a majority of persons in the United States lived in places in which alcohol consumption was prohibited, and the temperance movement turned its attention to a national program. Representatives from these congressional districts and states pressed for similar rules for the nation as a whole (Cherrington 1920: 323–30). However, a constitutional amendment was necessary, because at that time regulations of alcohol was an area of state, rather than national, policy. An anti-alcohol amendment was passed by Congress on December 18, 1917, and ratified by the required number of state legislatures on January 16, 1919. (The eighteenth amendment was subsequently repealed by the twenty-first amendment in 1933.) This amendment combined ideological and public health aspects, although concerns about the latter were partly ideological in nature. Prohibition, in contrast to the income tax amendment, reduced national, state, and local tax revenues from excise taxes on alcohol products.³⁶⁶

Reforming the Selection Process for Members of Congress

The two other Progressive amendments were similar in spirit to those adopted in Europe in the early twentieth century. The seventeenth amendment placed the American first chamber—the Senate—on an electoral basis. The nineteenth amendment expanded suffrage by eliminating sex as a criteria for suffrage. As in Europe, support for these reforms reflected a mixture of pragmatic, partisan, and ideological interests.

The Senate was initially designed to represent the interests of state governments, so its members were appointed by state legislatures. This gave its members somewhat different institutional interests than members of the House of Representatives. Support for reform of the Senate was based partly on a number of scandals in the late nineteenth century, including procedural ones in which state legislatures were unable to select a senator for months at a time, leaving their state unrepresented. There were stories about senators who received their seats through campaign contributions to state parties. Critics began to refer to the Senate as a “millionaire’s club.”

³⁶⁶ Equally effective temperance movements were also active in Scandinavia during this same time period, and the result was also often “prohibition.” For example: Norway, Finland, Iceland, and Russia experienced periods of prohibition at about the same time as the United States. The Swedes transferred all sales to state stores and regulated consumption through a coupon system.

Progressives and left liberals in the United States, as elsewhere, favored direct elections over indirect ones and pressed for reforms, largely because they thought that representative assemblies produced better public policies than appointed ones. A consensus for reform of the Senate became evident in 1893, when two-thirds of the House of Representatives voted to place the Senate on a directly elected basis. The Senate, however, vetoed the proposed amendment, and similar proposals for the next 18 years.

As a method of getting around the constitutional provision that Senators be appointed by state legislatures without amending the constitution, reformers encouraged states to conduct “non-binding” elections for senators and encouraged state legislators to promise to vote according to those electoral outcomes. This and other shifts in state politics gradually changed the institutional interest of the senators in the Senate.

Ten senators who voted against reform of the Senate lost their reelection campaigns in 1910 and were replaced with progressives favoring reform. Thirty-one state legislatures formally announced their support for the direct election of senators (Zelizer 2004: 356–62). Negotiations between the Senate and House of Representatives finally produced a compromise amendment early in 1912. The seventeenth amendment providing for the direct election of senators was passed by Congress on May 13, 1912, and ratified by the required number of state legislatures (many of which already used this procedure) on April 8, 1913.

Woman’s suffrage also reflected the effects of long persuasive campaigns on the men who were entitled to adopt the reforms, as suggested by the models of chapter 8. American’s left liberals (reform Republicans) and progressives supported suffrage extension, while moderates and conservatives initially opposed it. The Progressive political party supported a constitutional amendment for women’s suffrage in 1912 and the Republicans did so in 1916 (Zelizer 2004: 370–77).

Democrats opposed a constitutional amendment and argued that women’s suffrage should be adopted one state at a time. A compromise on amendment language was worked out between the House and Senate in 1919 and accepted by the required supermajorities in the two chambers on June 4, 1919. It was ratified by the three quarters of states on August 18, 1920. The nineteenth amendment, as was true of women’s suffrage laws in Europe, extended the logic of “qualified voters” to women. What is unusual about the U. S. case is the long gap between the last major male suffrage reforms (1869) and women’s suffrage (1920). Support among male voters increased very gradually in the United States.

Voting patterns within the Congress for all four of the progressive amendments reflected ideological and economic interests of the states and voters represented. Berman's (1987) empirical work based on voting patterns in western states and McDonagh and Price's (1985) analysis of voting patterns in mid-western states and California support the hypothesis that ideological considerations played a significant role in male support for women's enfranchisement (support for the amendments rose with votes for the Progressive party and fell with votes for Democrats). Support for women's suffrage among male voters was also linked to other policy agendas—in particular prohibition—which is consistent with the ideological model of suffrage reform developed in chapter 8. Holcombe and Lacombe (1998) provide statistical evidence that relatively low-income states favored the income tax, and states that had already adopted “direct” election of senators favored the new method of selecting senators.

Consequences of the Progressive Amendments

The individual progressive amendments were modest relative to the constitutional reforms adopted in Europe at this time, but they also significantly altered the procedures and resources of the national government. By changing the electoral basis of the Senate, the central government became a less “federal” system of government. No longer were state government interests in preserving state authority directly represented in the national government. The possibility of an income tax implied that national revenues were no longer limited to excise taxes and tariffs.

These were significant reforms. Indeed, some legal scholars argue that the progressive reforms were the first truly fundamental reforms of American political procedures and constraints since the ratification of the Bill of Rights amendments in 1791 (Epstein 2006).

Together, the sixteenth, seventeenth, and nineteenth amendments removed earlier constitutional constraints on the size of the central government and increased the demand for and supply of central government services.³⁶⁷ State and local governments had been the main sources of public services in the years before the progressive amendments, but after 1913, state expenditures grew more slowly than federal ones. The income tax rapidly became the most important revenue source for the federal government, and federal programs for international security and social insurance expanded steadily for several decades.

³⁶⁷ There is evidence that women's suffrage produced a new median voter with a higher demand for social insurance than the previous one (see Lott and Kenny 1999).

I. Conclusion: the Government of the United States Emerged from a Long Series of Constitutional Negotiations and Compromise

With the adoption of women's suffrage, the United States can be said to have completed a 300-year-long transition to constitutional democracy. The foundations of governance had been electoral since 1776, but the members of the America's parliament were more directly elected in 1920 than they had been in the past.³⁶⁸ Equal protection of the law was guaranteed by the fourteenth amendment. Race and sex were no longer allowed to be used as qualification for suffrage under the fifteenth and nineteenth amendment. Suffrage was essentially universal among adults, except in the South, where other qualifications for suffrage were still in place.³⁶⁹

The two of the most important periods of reform reflected changes in the participants in constitutional negotiations. This demonstrates that the standing procedures for amendment were significant constraints on the possibilities for constitutional reform throughout U. S. history, rather than simply imposed by revolutionary leaders. The historical record includes a good deal of direct evidence of negotiations and compromises that were necessary to obtain the necessary support under the amendment procedures. Commercial and interests, mobility, and ideology played central roles in the colonial deliberations of the seventeenth and eighteenth centuries. Similar interests, augmented by politically active interest groups and industrialization, helped induced additional reforms in the nineteenth and twentieth centuries.

³⁶⁸ Elections for the President are still indirect. Votes are tabulated at the level of states, and state "electors" cast their votes for the president. The number of electors in each state is equal to the sum of their senators and their representatives. With very minor exceptions, the electors have always voted in the manner recommended by the majority of their state's voters.

It bears noting that the chief executive in prime ministerial systems is also indirectly elected, which suggests that the electoral system adopted in 1787 was compromise between those favoring selection of presidents by both chambers of congress and those favoring direct elections. (Madison's notes for August 6 and September 4, 1787, regarding section 1 of article X of the draft constitution are not clear on this point, although suggestive.)

³⁶⁹ Suffrage was not extended to poor whites or most blacks in the south until the late 1960s, although both groups had briefly been free to vote in national and state elections after the Civil War.

Suffrage among adults in most European countries in most cases excluded minorities in 1925, as noted above. Citizenship for native-born "foreign workers" was often difficult to obtain until after World War II. Persons on welfare were also generally ineligible to vote even after "universal" adult suffrage was achieved, as, for example, in Denmark, Japan, Sweden, and the United Kingdom.

As predicted by the models of part I, the rise of parliament and the broadening of suffrage were largely independent of one another. The rise of parliament occurred for the most part in the colonial period well before independence and well before universal suffrage was adopted. The advantages associated with sharing policymaking authority in the colonial context that were analogous to those analyzed in chapters 5 and 6. Labor and capital were mobile and formateurs and their successors wanted to attract them to their territories. The balance of authority that emerged between colonial governors and parliaments reflected colonial institutions and circumstances that generally favored the colonial parliaments.

Suffrage in the United States began at relatively high levels during its colonial period, because it helped assure free labor that their interests would be represented in government. In spite of this early relatively broad suffrage, the transition to universal suffrage took nearly 300 years (350 if suffrage restraints in the southeastern United States are taken into account). Male suffrage was gradually extended, as property, religion, educational, and racial qualifications were eliminated, although there were periods in the eighteenth and nineteenth centuries in which suffrage contracted. In the nineteenth and twentieth centuries, constitutional amendments extend suffrage to former slaves, native Americans, and women.

The United States was affected by liberal and technological tides in the nineteenth century that were broadly similar to Europe. For example, ballot and bureaucratic reforms and women's suffrage were adopted in Europe and the United States at about the same time. With respect to the women's suffrage, it seems clear that suffrage norms had changed on both sides of the Atlantic during the nineteenth century in a manner consistent with the models of chapter 8. Woman's suffrage was clearly not the product of strikes or revolutionary threats. Although industrial strikes did occur in the United States during this period, it was largely men that conducted the strikes.

The non-revolutionary basis of the contemporary constitution of the United States of America is clearly suggested by its architecture for governance. The Virginia template of 1619 remains evident, although significant reforms were adopted during the course of three centuries of constitutional negotiation, conflict, and compromise. A revolution (war of secession) did lead to the drafting of new state and national constitutions in 1776, but the "new" state and national constitutions adopted at that time reflected a century and a half of constitutional negotiations and experimentation by colonial governments.