

Example of essay on
though that these
were transmitted
through secondary
sources,....

[Law](#), [Constitution](#)



The United States Constitution, the most conspicuous of all the founding documents, the US Constitution, although it was a founding document, was also the product of pre-existing schools of thoughts and philosophies stemming from a change in framework for understanding the rights of individual citizens and the role of government within a society. This essay explores the founding principles and traces the origin these ideas traveled in becoming pillars of the US democracy.

The Constitution can be broken into three constitutions. (Franklin, 405).

Mitchel Franklin, traces back, influence or Roman law within the US constitution by way of the French Enlightenment. Franklin's tracing of ideas is by no means as clear as the link between the US constitution and philosophies that resulted from the French enlightenment. Franklin considers the contemplation valuable in how history is to be viewed:

If it can be established that certain constitutional formulations have a Romanist meaning or significance, the American constitution in the future may be more clearly and more firmly understood as consecrating the advanced legal thought of eighteenth-century bourgeois history. (Franklin, 2003).

A dominant theory is that American constitutional takes are begotten from English legal history. This theory comes with a set of consequences. One being that the American revolt which became The American revolution, was founded on preserving a system and inheriting it than it is about doing away with a system and creating a better one (Franklin, 2003).

The US Constitution as it exists today is the result of three distinct stages of development. The first prepared at Philadelphia in 1787, the second 1789,

and the Bill of Rights.

There are seven guiding principles that the constitution can be broken into checks and balances, separation of powers, republicanism, federalism, limited government, individual rights, and popular sovereignty.

Understanding that aspects of Roman law exist within the ideas that sprang from the French Enlightenment, these principles all can be associated with similar thinking in the French Enlightenment thoughts that the writers of the constitution would have been familiar with.

Popular sovereignty has the clearest parallels to the lines of thought developed during the French Enlightenment. Popular sovereignty places power of the state on the people. It allows individual citizens to life liberty and the pursuit of happiness. Part of this can be traced to the thinking of John Locke, the English philosopher who first coined the term “ natural rights” of life, Liberty and Property. (Powel, 1996). In his “ Second Treatise of Civil Government: AN essay concerning The True Original, Extent and End of Civil Government, Locke writes:

Lock makes his argument by appealing to logic. That men, while they can be oppressed, cannot have their autonomy completely suppressed. This founding principle is found at the heart of the US constitution in it’s allow people to have “ Life, liberty and the pursuit of happiness.”

Baron de Montesquieu was a French writer and philosopher who supported a separation of powers, and it was another French writer and philosopher, Jean Jacque Roseau who argued for a “ general will of the people.”

The origins of Federalism, is more likely a natural result of the current set of rule that England had set up in the colonies, it being the most practice one

do to the distance involved in ruling. Colonies essentially governed themselves. It was England's violation of this autonomy that was one of the factors leading up to the Revolution. In order to control the colonies, control necessarily had to be relinquished within the constitution.

Edmund Burke was the historian who suggest that ideas of the French Enlightenment led to the French Revolution and that " The philosophes undoubtedly provided the ideas" that fueled it. (Cranston, 1989). At the time, these were in fact revolutionary ideas that made the fight for freedom on also about triumphing philosophies.

Individual rights, another principle of the constitution, finds it's modern origins in the French enlightenment. James Madison wrote, " James " As a man is said to have a right to his property, he may be equally said to have a property in his rights" (Cranston, 1989).

Lock's as an English philosopher, must be credited with influence the French thought in the enlightenment. French political philosopher Montesquieu saw himself as Locke's successor and adapted Locke's general principles to the particular conditions of France. Just as some of Lock's thought was translated into American terms. (Cranstron, 1989).

Another principle of the constitution, limited government, was a precept purchased by James Madison who presented the First United States Congress ten amendments that would eventually go on to become the bill of rights.

Once again, the origins can be traced back to John Locke, whose philosophy takes as moral imperative certain " inalienable" rights that he says are justified by God and nature. (Lock, 1690).

The principles within the Bill of Rights represent a number of sub-points that

can all be classed under the banner of Locke's rights for individuals within a society. We will not explore all then, but I will provide two as an example for illustrative purposes.

The first amendment deals in a moral nature that allows one to think, speak and act according to his/her own directive. While slavery was legal at the time of the documents creation, this principle was part of the argument against slavery during the drive up to it being outlawed. Lock concluded that a person could not force his will over another without the " consent" and that " nobody can desire to have me in his absolute power unless it be to compel me by force to that which is against the right of my freedom- i. e. make me a slave." (Locke, 1690).

The third amendment deals with property and affirms a person's right to retaining their property and not having it taken by government or other entity. This, like much of the Bill of Rights, is from Locke's train of philosophical thought. " Men," he says, " Once being born, have a right to their preservation," and uses this to further extend this right of a man to his self to that of his property: " Though the earth and all inferior creatures be common to all men, yet every man has a ' property' in his own ' person.'" (Locke, 1690).

The final principle, that of republicanism embedded in the Constitution is where Franklin's argument makes a compelling case for the origins of some of the principles in the US Constitution if followed back far enough can find their roots in Roman law. Modern republics draw their influence on Roman, which based, if we go back far enough, its roots in Greek democracy.

Franklin sees three ways in which Roman law " touched" the content of the

US Constitution, and his premises point to the principle of Republicanism. He lists:

(1) Roman law touched the content of certain texts; (2) Roman law influenced the form or legal method by which the content or texts were interpreted or developed; (3) certain texts are a dialogue or conversation with aspects of Roman legal history. (Franklin 203)

Even Franklin contends also that the Fifth Amendment in the Bill of Rights can only be understood fully when viewed in light of influence from Roman law.

The amendment, which begins with ““ No person shall be held to answer for a capital, or otherwise infamous crime,” apparently is a derivative of Roman legal institution. According to Franklin, The phrase ‘ infamous crime’ means ‘ infaming crime,’ and is a reference to the institution of infamy, as it had developed largely in Roman law and later in feudal Europe, but not as such in England.” (Franklin, 408).

Franklin concludes that that Constitution reflects the anti-feudal ideas of the French Enlightenment. An Italian Jurist, Beccaria, was responsible for framing the terms in the struggle against feudal criminal law throughout Europe.

Franklin cites that Thomas Jefferson studied Beccaria’s discussion of infamy.

Franklin explores deeper than the scope of this essay allows for a full consideration of his reasoning and connects between Roman law to French Enlightenment thought and then to the principles of the US constitution. His approach though, is a meticulous one that yields convincing argument.

As shown, the principles in the US constitution contain a diversity of thought that was transmitted through a variety of people. Of the seven principles of

the constitution explored in this essay, we see that their sources were not just selected on their own merits, but on the merits to create a system that would function under the conditions the newly formed republic of The United States found after it won its independence. They were introduced initially by our founding fathers, which acquired them from various sources that were part of their liberal education.

Without these thoughts that had been already worked out under philosophical frameworks, it is unlikely the ideas that fueled the principle of the constitution would have developed in the way that they did. Before anything can become carried out as an action, it must exist in the mind, as was the case with the US constitution and the philosophical roots imbibing its principles.

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