

## How Factions Influence Policy and Constitutional Freedoms

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### Introduction

Self-government, private property, a representative government, and limited government are considered the four pillars of liberty, as found in the U.S. Constitution. The Founders spent considerable time reflecting on these pillars, and debating the most amicable means of protecting these freedoms.

Although some define property as an object or thing, James Madison considered “conscience” as the most sacred of any or all property. The dictionary contains two definitions of property. First, it defines property as “something that is owned,” but this does not help us understand property in the legal sense. Second, the dictionary defines property as “ownership.” This definition is also not helpful unless there is an understanding of what “ownership” means. With this in mind, the legal definition of property is “the legal right to exclude others from resources that are originally possessed or are acquired without force, theft, or fraud.”

First, one must understand the interpretation of “exclude”. By exclude, it means that the police or courts keep someone from interfering with what is independently owned. A person can exclude those who would interfere with that person’s property rights. Property, then, is a legal fence that surrounds and protects resources that the law recognizes as belonging to its owner.

As such, “resources” encompass anything that someone may need or want. It includes, land, widgets, and other tangible things. However, resources also include the *use* of those things.

For example, a business is a “thing” used. It is also the private property belonging to its owner(s). As such, its owner(s) control its uses.

### **Historical Perspective**

Madison believed that because of the nature of man (i.e. man’s greed and desire to take and control that what which others may have or possess, or alternatively keep and or take unto oneself, that which man believes he is justified in doing so), there was “no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice.”<sup>[1]</sup> By a predominant party, Madison was referencing factions. Madison defined factions as “ a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse to passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.” Factions, by any other definition, therefore, include special interest groups, lobbying groups, specialized associations or any other organization that passionately seeks to advocate for their own group’s doctrine, seeking to narrow or restrict the rights of others outside of their group.

As such, doctrine, being a broader extension of philosophy, creates beliefs, strategies, platforms, and manifestos, which yield policies within the legislator. Policies contain restrictions to private tangible and intangible property on both property ownership and the uses of things owned. Policy creates strategies and tactics, objectives to be achieved, and a legislative agenda. Therefore, it is doctrine that establishes the principles of political parties and interests, and motivates its voters and supporters. Once any faction finds itself ahead of others, it will seek to bend governmental programs and create new programs to reflect its doctrinal beliefs, thus creating its platform. Factions often give themselves a name that summarizes its ideologies,

platform, and intention(s). Undoubtedly, governmental regulations of business and industry have become part of the fabric of U.S. life. However, considering the four pillars of liberty found within the U.S. Constitution, policy and regulations often compromise self-government (the ability for a person to govern themselves using their own conscience), private property, (both tangible and intangible), and arbitrarily provide the government with additional power to regulate and restrain life, liberty, and the pursuit of happiness, under to purview of the greater good of the whole. As such, factions are utilized as a mechanism to sacrifice individual freedoms guaranteed by the U.S. Constitution.

### *Analysis*

Despite the property protections offered by the government, it can also overstep constitutional boundaries. For example, after the terrorist attacks of September 11, 2001, various law enforcement agencies across multiple governmental levels, seized citizens' computers because they thought there might be evidence of conspiring with terrorist organizations. In addition, policies and regulations were developed at airport terminals that invade one's body, personal space, personal privacy, and permit the destruction of private property under the purview of protecting the public at large, while violating the constitutional rights of the individual (for the good of the whole). In this sense, freedom is not free, but a doctrine of discourse, only to be given to those that the government deems worthy.

In creating policy, one must remember that policy is absolute rule. Only theories represent perspectives and notions of philosophies. Therefore, there are no grey areas in policy development and regulatory authority. This creates the ambiguous red-tape despised by many citizens.

As such, the result of policy is often the creation of regulations and procedures that clarify and specify particulars. Consequently, when some particulars are overlooked, additional regulations and policies are developed. The most foreseeable problem is that the governing agency responsible for policy implementation often creates procedures that tend to uncontrollably grow in complexity, often to the demise of the industry for which it governs. The question then becomes, who governs the governed? Factions do not govern the governing body. Factions disappear once their goal is met, leaving the regulation and disembodiment to those affected.

### **Conclusion**

It has become more apparent within our society that in protecting property rights of one, it is highly likely to hinder the property rights of another. Over the decades, the boundaries of property rights have narrowed, and as such, the four pillars of liberty become compromised. Freedom then exists, so long as it is maintained within an ever narrowing scope to meet the status quo. Ownership and property rights, therefore, become a limited thing, which leads one to legal plunder. Since “property law does not function well when it is not adequately enforced,”<sup>[2]</sup> the scope of the four pillars of liberty have narrowed. The checks and balance system is the only opportunity to maintain individual freedoms and property rights against the majorities interpretation of the status quo.

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<sup>[1]</sup> Madison, The Federalist, No. 10 (1787)

<sup>[2]</sup> Reed, O. Lee, Marisa Anne Pagnattaro, Daniel R. Cahoy, Peter J. Shedd, and Jere W. Morehead. *The Legal and Regulatory Environment of Business*. 16th. New York, NY: McGraw-Hill Irwin, 2013.

