

3. Constitutional Foundations

Breakout Sessions

POLS 1101

8:40am-9:35am Baldwin 322

& 9:55am-10:50am Journalism 509

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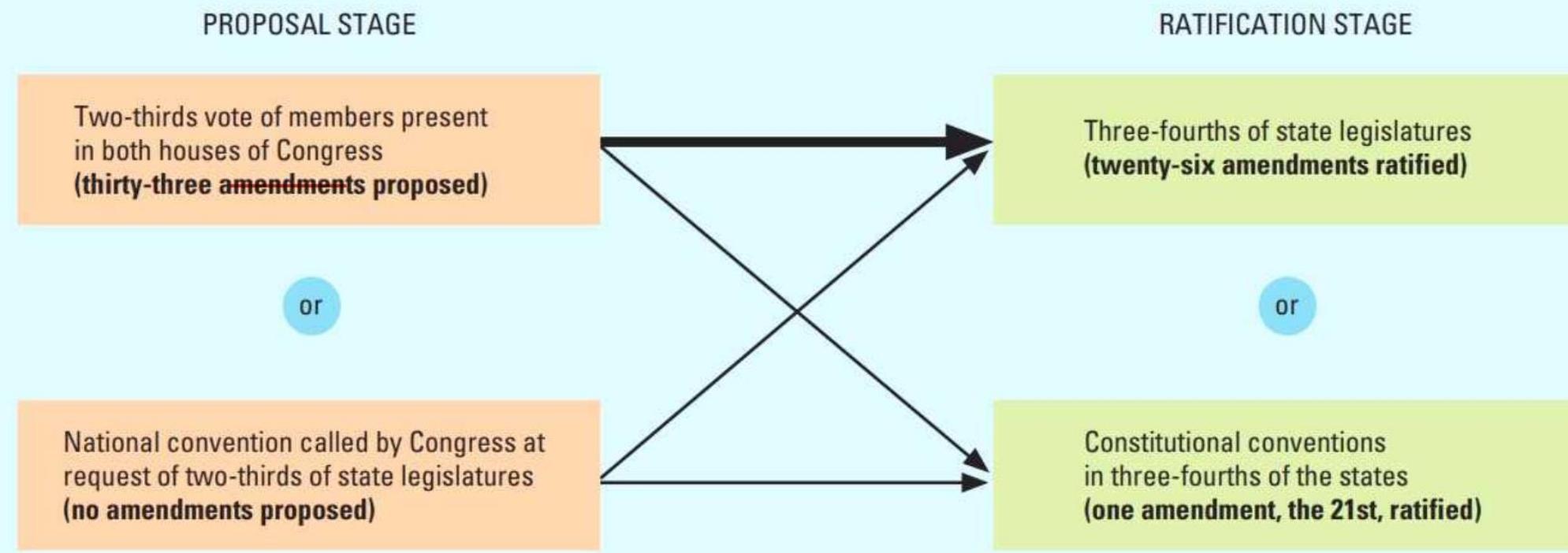
<https://siyuanzhao-pa.github.io/>

Review

- The History of the Constitution
 - Declaration of Independence (1776), Articles of Confederation (1777)
 - From Confederation to Constitution: Why? How?
- Fundamentals of the Constitution
 - **Four basic principles:** republicanism, federalism, separation of powers, checks and balances
 - **Content:** Specific **articles** (legislative, executive, judicial, ...)
 - Development: Federalist papers, the Bill of Rights, ...
 - **Change:** Amendment process (2/3 + $\frac{3}{4}$), judicial power, political practice
 - Evaluation: Perspectives from freedom, order, and equality; Perspectives from democracy

Figure 3.3 Amending the Constitution

Amending the Constitution requires two stages: proposal and ratification. Both Congress and the states can play a role in the proposal stage, but ratification is a process that must be fought in the states themselves. Once a state has ratified an amendment, it cannot retract its action. However, a state may reject an amendment and then reconsider its decision.



Declaration of Independence

- We hold these truths to be self-evident, that **all men are created equal**, that they are endowed by their Creator with **certain unalienable Rights**, that among these are **Life, Liberty and the pursuit of Happiness**.
 - No prerequisites for freedom! **-Why?**
 - **ENLIGHTENMENT Philosophy**

John Locke, *Treatise of Government* (1690): human beings possess **natural rights** to life, liberty, and property, which exist prior to and independent of government.

- **History: English Constitutional Tradition**

Magna Carta (1215) and the **English Bill of Rights** (1689), both of which limited the powers of rulers and affirmed certain rights of subjects – Consider: Britain's reaction to America's independence

- **History: Beliefs deeply rooted in Colonial Americans**

American colonists had long practiced forms of **self-government** in local assemblies (after all, they came here for opportunities!). – So “natural rights” are really “natural”!

- **Reality: Call for a revolution!**

What Jefferson and his colleagues did was to **universalize** ideas in traditions as **self-evident truths**, which gave the American Revolution a moral foundation.

Declaration of Independence (cont'd)

- --That to secure these rights, Governments are instituted among Men, **deriving their just powers from the consent of the governed**, --That whenever any Form of Government becomes destructive of these ends, it is **the Right of the People** to alter or to abolish it, and to institute new Government,....

- **Jean-Jacques Rousseau, *The Social Contract***

- **The Social Contract**: Legitimate political authority comes not from monarchs or tradition, but from an agreement among the people.
- **Popular Sovereignty**: Sovereignty rests with the people as a whole, and governments are merely executors of the people's will.
- **The General Will**: The collective will of the community should reflect the common good, not individual or factional interests.
- **Freedom and Law**: **True freedom** is not the absence of rules, but obedience to laws that citizens have prescribed for themselves collectively.
 - Implied prerequisites of freedom? (obedience to "the general will")

Declaration of Independence (cont'd)

- Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that **mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed** (**high coordination cost**).
- But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, **it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.**
 - **Legitimacy:** the acceptance and recognition of a political authority or government as rightful and justified by the people. When we say a government has “legitimacy”, it means that citizens believe the government has the moral and political right to rule.
 - **Freedom of + Freedom to do**
 - Does an individual have the freedom to give up his/her freedom?
 - Right -> duty: Individual freedom -> Collective freedom (“republican”)

Articles of Confederation

- Article 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.
 - Treating each state as a fully sovereign entity, like an individual
 - Reserved State Powers, Delegated Federal Authority
 - States keep everything unless they explicitly give it up.
 - When this principle is applied to **political units**, like states, everything breaks down.
 - e.g. **Shay's rebellion**: high taxed -> revolt -> Massachusetts appealed to the confederation for help -> Virginia rejected the request for money (**the failure of the confederation in maintaining order; urgent need for a centralized government**)
 - Under the Articles,
 - A weak government, which deviates from its original purpose (order)
 - An unsuccessful distribution of representation

The Constitution Inverts the Logic!

- Instead of “states keep everything unless they give it up,” now the federal government is given **enumerated powers** — powers necessary for the nation to function — while states retain the rest.
 - the distribution of authorities “under one framework”; “across frameworks”
 - **Supremacy clause:** The Constitution, federal laws made pursuant to it, and treaties are the supreme law of the land. Whenever state and federal laws conflict, **federal law always prevails.**
- **NOTE: Principles that work at the individual level do not automatically work at the macro level.**
 - “Autonomy, liberty, and empowerment” – these words have totally different implications between persons and political entities.
 - That mismatch — ***the incommensurable levels of analysis*** — is exactly why the Articles failed.

Activity: Group Reading – Federalist 10

- **Goal**
 - Understand what Madison means by *faction*.
 - See how he uses **institutional design** to manage factions.
- **As you read, underline:**
 - Madison's **definition** of faction
 - What makes factions **dangerous**
 - One sentence that you find **interesting or confusing**
- **Questions / Discussion Tasks**
 - In your own words, how would you define “faction” based on this passage?
 - What exactly worries Madison about factions? Is he against disagreement itself?
 - According to Federalist 10, why does he think a **large republic** helps control factions better than a small one? How does his explanation contribute to your understanding of federalism?

The Constitution cannot cover everything!

- **Implied Powers**

- Those powers that Congress needs to execute its enumerated powers.
- A kind of discretion under the Constitutional framework?

- **Expansion of Presidency (Political Practice)**

- Why?

- Personal
- Institutional

- Is it good?

- **Judicial Review / Interpretation**

- The power of the courts to declare congressional (and presidential) acts invalid because they violate the Constitution.
- Transforming law interpreters into lawmakers **vs.** Essential discretionary power when we are faced with the complex modern society?

Next week...

- Read materials on **Federalism & Civil Liberties** before class, and that will be helpful to participate in peer discussions.
- We'll have a group study – review for mid-term 1.
- Feel free to email me if you have any questions!
- ENJOY YOUR WEEKEND!