

3. Constitutional Foundations

Breakout Sessions

POLS 1101

**12:40pm-1:30pm Park Hall 145
& 1:50pm-2:40pm Leconte Hall 135**

SIYUAN (Siri) ZHAO

Siri.Zhao@uga.edu

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, judicial power, political practice
 - Evaluation: Perspectives from freedom, order, and equality;
Perspectives from democracy

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 organizational 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)
 - Locke -> Rousseau?

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.
 - **Default autonomy, Exceptional empowerment**
 - This principle often applies to individuals. **When it is used for regulating macro political entities, what's the problem? (Review)**
 - A weak government, which deviates from its original purpose (order)
 - An unsuccessful distribution of representation
 - The Constitution articulated the principle of **enumerated powers**, which means Congress can exercise only the power that the Constitution assigns to it – so Congress also gets limited empowerment. **What's the difference here?**
- Incommensurable level of analysis in social sciences, incommensurable values in political practice!

The Constitution – It 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**

- Why?

- Personal
- Institutional

- Is it good?

- **Judicial Review**

- 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 modern society?

Next week...

- Read materials on **Federalism & Georgia politics** before class, and that will be helpful to participate in peer discussions.
- Feel free to email me if you have any questions!
- ENJOY YOUR WEEKEND!