

# **3. Constitutional Foundations**

**Breakout Sessions**

**POLS 1101**

**12:40pm-1:30pm Park Hall 145**

**& 1:50pm-2:40pm Leconte Hall 135**

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# 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!