

Humanities 4:

Lecture 20

U.S. Decl. of Ind., Constitution,
Federalist Papers, & Bill of Rights

Outline of Lecture

- Background
- Declaration of Independence
- Constitution: Preamble and Articles
- Federalist Papers
 - X: Factions (The Tyranny of the Majority)
 - LI: Preventing Governmental Abuse of Power
- Bill of Rights
- Fundamental Issues

Series of Events

- Declaration of Independence (1776)
- Articles of Confederation (1781)
 - League of friendship among sovereign states
- Constitutional Convention (1787)
 - Revising the articles of confederation, proposing the Constitution
- The Federalist Papers (1787-88)
 - Jay, Hamilton, and Madison
- The US Constitution (ratified 1789)
- Bill of Rights (1791)

Declaration of Independence

- Basic (unalienable) Rights
 - Include life, liberty, pursuit of happiness, and revolution (under certain circumstances).
- Government
 - Based on social contract (i.e., consent)
 - To secure unalienable rights (endowed by Creator)
- Justification for dissolving England's rule
 - Injuries and usurpations tantamount to tyranny
- Colonies are “Free and Independent States”

Constitution: Preamble

- Purposes of the Union
 - Establish justice
 - Insure domestic tranquility
 - Provide for common defense
 - Promote general welfare
 - Secure blessings of liberty to ourselves and posterity

Constitution: Content of Articles

- Articles I-III discuss the powers of Govt.
 - Article I: Legislative
 - Article II: Executive
 - Article III: Judicial
- Article IV: States' powers and limits (vs. govt. and each other)
- Article V: Process of Amendment
- Article VI: Federal Power as supreme (& debt)
- Article VII: Ratification

Federalist Papers

- Written by Madison, Hamilton, and Jay.
- In support of adopting the Constitution (Federalists for, anti-federalists against.)
- Central Issue: Which political institutions under which circumstances are best suited to protecting natural rights and promoting the general welfare?
 - Confederation or union?
 - Direct or indirect democracy?
- Bill of Rights is a separate issue.
 - Initially Madison was against, but later changed his mind.

Federalist X: The Problem

- Madison's position: Natural rights are best protected from factions by indirect democracy.
- The Problem: Factions
 - Faction is a group of citizens united by common interest adverse to others' natural rights.
 - Government is supposed to protect natural rights.
 - Two remedies: remove causes or control its effects.
 - First remedy must be rejected.
 - Eliminating freedom is worse than disease.
 - Creating uniform interests is impracticable.

Federalist X: The Solution

- If faction is in the minority, it will be outvoted and hence will be no threat.
- If faction is in the majority, dangerous.
 - In direct (pure) democracy, there is no solution.
 - In indirect democracy, solution arises from two factors.
 - Smaller, but still extensive republics “refine and enlarge the public view”
 - Larger populations make it more difficult for majority factions to arise. => also arg. in favor of union over confederation

Federalist LI

- The Problem: How should one structure the government such that it does not abuse its power?
- The Solution:
 - In principle, have three completely separate bodies (legisl., exec., & jud.).
 - Even separations within these, e.g., the legislature.
 - Having both federal and state govts., provides extra security.
 - In practice, deviations should be admitted.
 - In judicial appointments, qualifications are essential, and lifelong tenure removes dependency on conferring authority.
 - Give each body the necessary constitutional means & motives to resist others' encroachment.
 - "If men were angels, no govt. would be necessary."

Bill of Rights

- Intent of the BoR is to protect individuals' rights against the federal government.
- Particular rights
 - Freedom of religion, speech, press, assembly, petition (I)
 - Right to bear arms (II)
 - Right against unreasonable searches, warrants require probable cause & specific descriptions (IV)
 - Indictment by grand jury, no double jeopardy, no self-incrimination, due process of law & private property (V)
 - Right to speedy and public trial, with counsel (VI)
 - No cruel & unusual punishment (VIII)
 - Unenumerated rights (IX)

Fundamental Issues

- Rights vs. general welfare
 - Rousseau, Locke, & Kant
- Identifying Rights
 - Which ones?
 - Unenumerated rights?
 - Does unalienable entail unchangeable?
- Power
 - Individuals
 - States
 - Union