

THE KENTUCKY CONSTITUTIONAL CONVENTIONS  
AND THE FEDERALISM OF THE FOUNDING FATHERS

---

A Thesis

Presented to

the Faculty of the Caudill College of Arts, Humanities, and Social Sciences

Morehead State University

---

In Partial Fulfillment

of the Requirements for the Degree

Master of Public Administration

---

by

Ashley Kay Taulbee

April 19, 2017

ProQuest Number: 10276635

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



ProQuest 10276635

Published by ProQuest LLC (2017). Copyright of the Dissertation is held by the Author.

All rights reserved.

This work is protected against unauthorized copying under Title 17, United States Code  
Microform Edition © ProQuest LLC.

ProQuest LLC.  
789 East Eisenhower Parkway  
P.O. Box 1346  
Ann Arbor, MI 48106 – 1346

Accepted by the faculty of the Caudill College of Arts, Humanities and Social Sciences,  
Morehead State University, in partial fulfillment of the requirements for the Master of Public  
Administration degree.

---

Michael Hail, Ph.D.  
Director of Thesis

Master's Committee: \_\_\_\_\_, Chair  
Michael Hail, Ph.D.

---

Jonathan Pidluzny, Ph.D.

---

Gregory McBrayer, Ph.D.

---

Date

THE KENTUCKY CONSTITUTIONAL CONVENTIONS  
AND THE FEDERALISM OF THE FOUNDING FATHERS

Ashley Kay Taulbee  
Morehead State University, 2017

Director of Thesis: \_\_\_\_\_  
Michael Hail, Ph.D.

This thesis regards the Kentucky constitutional conventions and the Kentucky constitutions and their relationship to the federalism of the Founding Fathers. My research addressed the question of the relationship of state constitutionalism to national constitutionalism in the context of American federalism, with a focus on the state of Kentucky as the case study for answering this question. My findings confirmed my main hypothesis that similar influences of political theory and experience affected the national and state constitutions in positive ways and these are demonstrated in the case study of Kentucky's constitutional founding.

I asked "What political theory influenced the development of the U.S. and Kentucky Constitutions?" and I found the major political philosophers influenced the constitutional development at both levels. John Locke and Montesquieu were the most significant influences

and their conceptualization of central aspects of constitutional construction such as natural rights and the separation of powers demonstrated that influence.

I asked “How did the political thought of the Kentucky Founders relate to that of the American Founders?” In answering this question, I found a strong relationship between the Kentucky founders and the American founders. The Kentucky founders were most influenced by Thomas Jefferson, while the influence of Virginia and Virginians was also prominent. Retention of Virginia local government structures is evidence of the influence on Kentucky; but influences from Pennsylvania’s constitution were also clearly present. Clearly the same political theory and institutional design of the American founders influenced that of the Kentucky founders.

Related, I asked “How does American politics at the time of statehood and constitutional founding affect federalism?” and “What can these constitutional relationships to federalism inform future constitutional development in the states?” The pre-constitutional conventions were not only reflecting the same influences on the thought of the Kentucky founders, but the politics of federalism in the balance of power is reflected in the long process to statehood for Kentucky. Jefferson was very influential on the Kentucky founders. The grueling pre-constitutional conventions and ultimately the final Kentucky convention reflect a process that might affect statehood even today, depending on the balance of power under federalism.

There are several aspects of influence and interconnectedness between national constitutionalism and state constitutionalism reflected in the Kentucky case. The political theory influences, as well as the structure of the institutions in the U.S. Constitution of 1787, and certainly the political thought expressed at the convention in Philadelphia, all are major influences on how state constitutional conventions are modeled. Core constitutional provisions such as separation of powers, checks and balances, and bicameral legislative bodies are among

the constitutional features of the U.S. constitution that are consistently incorporated in state constitutions. The politics in Congress as well as in the territory itself play a significant role in framing the terms under which statehood and state constitutional conventions can operate.

Additionally, interest groups, factions, individual designs on power, personalities, partisanship, and even foreign governments make this a fractured, complex, and uncertain process. The information age of the 21<sup>st</sup> century extends the reach of all these factors, making the process of the conventions and statehood evermore complex. My findings confirmed my main hypothesis that similar influences of political theory and experience affected the national and state constitutions in positive ways and these are demonstrated in the case study of Kentucky's constitutional founding. These findings inform the future state constitutional conventions as well as future constitutional development in our system of federalism.

Accepted by: \_\_\_\_\_, Chair

Michael Hail, Ph.D.

\_\_\_\_\_  
Jonathan Pidluzny, Ph.D.

\_\_\_\_\_  
Gregory McBrayer, Ph.D.

## **ACKNOWLEDGEMENTS**

First and foremost, I would like to thank my wonderful family, especially my parents, for all their love and support throughout this extensive project. I love you all. To Dr. Michael Hail, I owe so many of my academic accomplishments to you. Thank you for being a mentor and a good friend; I will forever be indebted to you for my love of Kentucky politics and federalism. To my committee members, Dr. Gregory McBrayer and Dr. Jonathan Pidluzny, you have both taught me so much about the science I am passionate about. Thank you for encouraging every path I have wondered down. To Dr. Stephen Lange and Dr. Christine Lange, you both have encouraged and supported me always, and also taught me so much about the true value of friendship and Socrates; and to that I ask, where I would I be without Plato?

# TABLE OF CONTENTS

Introduction .....	1
Methodology and Research Questions .....	3
The State of Virginia and Her Territory Kentucky .....	4
Kentucky's Pre-Constitutional Conventions, 1784-1790 .....	6
Kentucky Becomes a State, 1792 .....	15
Comparison of Kentucky's and the United States' Constitutions .....	18
The United States Founding Documents and the Influences .....	22
Federalism and Thoughts of Our Founding Fathers .....	29
Kentucky's Constitutionalism .....	33
Conclusion .....	40
Bibliography .....	44

## LIST OF TABLES

Table 1: U.S. and KY Constitution Comparisons .....	19
Table 2: Comparison of Kentucky's First and Second Constitutions .....	34
Table 3: Comparison of Kentucky's Third and Fourth Constitutions .....	38

## **Introduction**

Constitutional Conventions are known for having the potential to be very long and complex processes, which are arguably why they do not occur very often. One can look at the United States Constitutional Convention that took place in Philadelphia from May 25<sup>th</sup> to September 17<sup>th</sup>, 1787 to see how tense a Convention can be. It can be difficult to accomplish anything when there is an assortment of ideas flowing back and forth throughout the room, and every man there wants the best for his country. That is distinct with regards to the U.S. Constitutional Convention, where men such as James Madison introduced his Virginia Plan (which was to be the blue print for America's Constitution), William Paterson introduced the New Jersey Plan on June 15<sup>th</sup>, 1787, and Alexander Hamilton introduced his plan, the Hamilton or British Plan, on June 18<sup>th</sup>, 1787. Everyone is familiar with the struggles that America had to face, especially when she was trying to become a free nation and break away from England. Sometime before the United States called for a Constitutional Convention, some people living in the state of Virginia began to institute their own plan for a separation and a new call for statehood.

Kentucky became the 15<sup>th</sup> state to join the Union, in 1792 – not long after the United States delegates developed and ratified the U.S. Constitution in 1787. In order for Kentucky to become her own state, a handful of men had to work together to petition to not only the officials of Virginia, but to the United States Congress as well. Men such as Benjamin Logan, John Breckinridge, Isaac Shelby, Thomas Jefferson, and many others all fought a hard battle and had to petition vigorously for Kentucky's freedom. The undertaking of a new state meant that Kentucky's founding fathers would have to prove that Kentucky would be a stable state that was

capable of functioning on her own. Not only that though, but they would have to demonstrate all the reasons why the territory called the District of Kentucky should be separated from Virginia in the first place. This demonstration would last for eight years, in the form of nine Pre-Constitutional Conventions before the opportunity for an actual Constitutional Convention would be granted. Some of the major questions that will be asked and in turn answered throughout this paper, are questions that hold significance for understanding why these nine Pre-Conventions laid the foundation for what is now the state of Kentucky. It is important to understand and to be able to identify the schools of Constitutional thought at the conventions, as well as identify all the leading founding fathers of Kentucky and examine the original intent of their speeches, notes, and other writings. These notes, speeches, and writings influenced what happened at the Pre-Conventions, as well as influenced what was included in the final product of Kentucky's first Constitution in 1792. The Commonwealth form that was adopted, as only a few states have ever chosen, and there are important aspects of the Constitutional founding in Kentucky that can tell us about future Constitutional Conventions.

In order for one to fully comprehend the hardship of trying to become a free, independent state during a time when the Federalists and Anti-Federalists were at their peak, one has to go back in time to 1784 and examine the work of politics, unfairness, betrayal, desperation, and ultimately the relief of freedom in 1792. People from all over the original thirteen colonies were pitching in to help Kentucky gain her statehood and to jumpstart the expansion of this brand new nation. Kentucky is the product of hard work and the determination to not let the Federalist Party overrun America – The Commonwealth of Kentucky has quite an eventful beginning, one that should inspire us all to keep pushing forward until we reach our full potential.

## Methodology and Research Questions

The major research question regards the *relationship of state constitutionalism to national constitutionalism in the context of American federalism*. I focus on the state of Kentucky as the case study for answering this question. The related questions addressed in my analysis are:

- What political theory influenced the development of the U.S. and Kentucky Constitutions?
- How did the political thought of the Kentucky Founders relate to that of the American Founders?
- How does American politics at the time of statehood and constitutional founding affect federalism?
- What can these constitutional relationships to federalism inform future constitutional development in the states?

These questions contribute to the analysis of my hypothesis that similar influences of political theory and experience affected the national and state constitutions in positive ways and these are demonstrated in the case study of Kentucky's constitutional founding.

The methodology in this study will be primarily historical, legal, and institutional.

Government documents, histories and biographies are examined. Archival and historical records provide primary source material for establishing the policies and conditions affecting the development of American federalism and the structures of government. The case study method is the primary research method in examining federalism and the relationship of the U.S. and Kentucky constitutions. My research approach is based upon the methodology articulated by Bob Rodgers and Jason Jensen in their defense of case study research.<sup>1</sup>

---

<sup>1</sup> Jensen, Jason L. and Robert Rodgers. "Cumulating the Intellectual Gold of Case Study Research." *Public Administration Review*. Vol. 61, No. 2 (March/April 2001), pp.235-246.

## Literature Review

The major literatures to which my research contributes are in American federalism and in state and local politics, and particularly, to Kentucky politics. My research better informs the political thought and influences on the Kentucky constitution and the relationship of Kentucky's constitutional development to the U.S. constitution. My research further examines these constitutional relationships and offers policy relevant findings for future constitutional reform and development.

The federalism literature holds important views of how intergovernmental relations are defined in the structural foundations of federalism. Daniel Elazar has done work on political culture and federalism and is the most prominent scholar of federalism. Elazar holds that there was always a cooperative “partnership” between levels of government in American federalism.<sup>2</sup> This cooperation was an important part of the founding of the United States as well as throughout the development of the states. Another important federalism scholar is Laurence O'Toole and he holds that bargaining is as important as cooperation. O'Toole holds that intergovernmental relations has conflict at times but it is limited and resolved through “bargaining” between governments.<sup>3</sup> The bargaining has foundations in constitutionalism that my work explores in the process of Kentucky statehood. The federalism literature also classifies the period of the founding of the U.S. and Kentucky constitutions as one of “dual federalism,”

---

<sup>2</sup> Elazar, Daniel J. “Federal-State Collaboration in the Nineteenth-Century United States.” *Political Science Quarterly*. Vol. 19, Issue 2 (June 1964), pp.248-281.

<sup>3</sup> O'Toole, Laurence J., Jr. “Intergovernmental Relations (IGR): The Concept of IGR as Interdependence, Complexity, and Bargaining”. In Richard Stillman II, *Public Administration: Concepts and Cases*. Boston: Houghton Mifflin Company. 2000. p 128.

where sovereignty is more balanced between state and federal levels. This period was largely defined in the work of Edward Corwin who argued that there was a period of dual federalism that ended with the New Deal cooperative federalism.<sup>4</sup> The period of “dual federalism” and the importance for constitutional development is noted by both scholars of the history of federalism, David Walker and David Robertson.<sup>56</sup> The understanding of federalism and constitutional development is most significant in the period of “dual federalism,” but the enduring significance of the founding era frames the subsequent constitutional reform and development. Thus, the significance of the founding era is just limited to this period of “dual federalism,” but extends to the constitutional reforms through all the major periods of federalism right to today. As Joseph Marbach, Ellis Katz, and Troy Smith noted in their watershed work, Federalism In America, “at essence, federalism is the debate over the proper role of government in society. ... Thus, nearly every major policy area has been affected by federalism.”<sup>7</sup> They also underscore the importance of constitutional foundations and the role of major institutions in the developing process of government change. The literature holds constitutional founding and the conventions and politics surrounding constitutional development as one of the most significant areas for research. John Dinan’s work makes clear the constitutions of the states are as important for understanding federalism as are national constitutionalism and institutions. Dinan notes the importance of understanding state constitutions in a comparative context with the federal constitution, “State

---

<sup>4</sup> Corwin, Edward S. "The Passing of Dual Federalism," *Virginia Law Review*. (1950) 36: 1-24.

<sup>5</sup> Walker, David B. *The Rebirth of American Federalism*. Chatham, NJ: Chatham House, 1995.

<sup>6</sup> David Robertson. *Federalism and the Making of America*.

<sup>7</sup> Marbach, Joseph, Ellis Katz, and Troy Smith, editors. *Federalism In America*. Westport, CT: Greenwood Press, 2006, p.xvii.

conventions have been a forum for reconsidering, and ultimately revising or rejecting, a number of governing principles and institutions that were adopted by the federal convention of 1787 and that have remained relatively unchanged at the national level.”<sup>8</sup> There has been far too little attention given to “the evolving constitutional thought of delegates to state constitutional conventions.”<sup>9</sup>

The political thought of the founders is important, but also important is the influence of political theory. Political theory not only informed the constitutionalism of the founders’ political thought, but it conceptualized the relationship of government to citizens and framed the public administration through which it governed. As David Rosenbloom has noted, “As heretical as it will sound to some, public administrative theory must make greater use of political theory.”<sup>10</sup> As Michael Hail and Stephen Lange noted in examining comparative constitutionalism in North America, “Important influences on both the Canadian and American foundings were British political theory and English political culture.”<sup>11</sup> They further specified, “Dual Federalism was central to the argument of the Federalists because this conceptualization of a system of federalism overcame the limitation of republican government that Montesquieu advocated as for

---

<sup>8</sup> Dinan, John J. *The American State Constitutional Tradition*. Lawrence, KS: University Press of Kansas, 2006, p.3.

<sup>9</sup> Fritz, Christian G. “The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth Century West.” *Rutgers Law Journal* (Summer 1994) 25: pp.945-953.

<sup>10</sup> Rosenbloom, David H. “Public Administrative Theory and the Separation of Powers.” In Jay M. Schafritz and Albert C. Hyde, eds. *Classics of Public Administration*. Boston: Thompson Wadsworth, 2007, P.442.

<sup>11</sup> Hail, Michael W. and Stephen J. Lange. “Federalism and Representation in the Theory of the Founding Fathers: A Comparative Study of U.S. and Canadian Constitutional Thought.” *Publius: The Journal of Federalism*. Volume 40, number 3, p. 367.

small political jurisdictions.”<sup>12</sup> My research then examines this relationship of political theory to constitutionalism and public administration. Additionally, understanding Kentucky’s founding and constitutions are important contributions to the literature on Kentucky politics and to better inform future constitutional debates and reforms.<sup>13</sup>

## **The State of Virginia and Her Territory Kentucky**

The Commonwealth of Virginia, founded as one of the original thirteen colonies, was admitted into the Union on June 25<sup>th</sup>, 1788. Virginia was considered fertile country, for Virginians were capable of growing tobacco, soybeans, hay, cotton, wheat, peanuts, and barley. Livestock such as beef cattle and even wild turkey were also prominent – and still are today. Virginia also happened to be the home of founding fathers George Washington and Thomas Jefferson. However, Virginia had an extra boost for the agricultural economy, helping her to rise to the top of the thirteen colonies as one of the best suppliers of grown products; the District of Kentucky, a territory owned by Virginia, was equally as fertile as Virginia and was capable of cultivating crops such as hemp, that Virginia could not. The people who lived in the District of Kentucky felt that they were being taken advantage of – the Virginia government did not want to help Kentuckians protect themselves from Indians, and they were not able to keep any of the profits made from the crops they were growing. These were the sort of events that began taking place more and more, causing Kentuckians to begin talking about a way to break free from Virginia.

---

<sup>12</sup> IBID, p.384.

<sup>13</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

This Territory known as Kentucky was mainly populated by people from Virginia, but people from South Carolina, North Carolina, Pennsylvania, and New Jersey also claimed Kentucky as home. It is also worth noting though, that people from all thirteen colonies came to live in Kentucky – not just people from the states listed above; Isaac Shelby for example, Kentucky’s first governor, was from Maryland. At any rate, these were the people who felt they were being taken advantage of by their government, recognized the population of the District of Kentucky was growing, and ultimately decided if the thirteen colonies could start becoming their own free states, so could Kentucky.

Kentucky was originally settled by the whites as a colony of Virginia, but after the Revolutionary War the settlers demanded an independent government, under the following provision in the first constitution of Virginia: “The Western and Northern extent of Virginia shall, in all other respects, stand, as fixed by the charter of King James I, in the year 1609, and by the public treaty of peace between the courts of Great Britain and France, in the year 1763, unless by act of this legislature one or more governments be established westward of the Alleghany Mountains. It was not, however, until after there had been ten successive conventions elected by the people of the “district,” and four successive enabling acts passed by the legislatures of Virginia, that Kentucky was allowed to enter the Federal Union as an Independent State, on an equality with those which had established themselves as a nation.<sup>14</sup>

## **Kentucky’s Pre-Constitutional Conventions, 1784 - 1790**

Thomas D. Clark, in *A History of Kentucky*, discusses the events that ultimately lead to the first Pre-Constitutional Convention in 1784. A man named “Benjamin Logan called for a convention to meet in Danville on December 27<sup>th</sup>, 1784, to discuss Kentucky’s predicament and

---

<sup>14</sup> Thorpe, Francis Newton. *The Federal and State Constitutions: Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*. Washington Government Printing Office, 1909.

to provide for local protection.”<sup>15</sup> The predicament at hand was that Kentucky was growing and wanting to expand, and Virginia was not allowing it. Therefore, causing the District of Kentucky and Virginia to clash over issues such as limitations that were imposed by Virginian laws and especially protection against Indians. At the time of settlement in Kentucky, prominent Indian tribes included Cherokee, Chickasaw, and the Shawnee – just to name a few. “Samuel McDowell and Thomas Todd were elected President and Secretary of the Convention” and went on to serve in these positions for all nine Pre-Constitutional Conventions and the tenth, actual Constitutional Convention.<sup>16</sup>

“Delegates to the first Convention came instructed to petition the mother state (Virginia) for permission to join the Confederation of States...the delegates expressed a profound regard for the established law. Until Virginia could reply to their recent petition, they wished to go no further than to voice their sentiments in general debate upon urgent questions confronting the community. The will of the assembly was to proceed along strict, ethical lines that would not antagonize Virginia.”<sup>17</sup> It is clear that Kentuckians were serious about the thought of breaking away from Virginia, but also that they were focused on being respectable citizens who were not looking for a vicious battle. They recognized that if they wanted their freedom, it would largely have to be on Virginia’s terms. Meanwhile, “in the month of March 1785 the Indians attacked a family who had settled at the mouth of the Kentucky river, killed a part and the remainder

---

<sup>15</sup>Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

<sup>16</sup>Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

<sup>17</sup>Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

escaped.”<sup>18</sup> The terror of Indian attacks continued with no protection from Virginia, and the people of the District of Kentucky could only hope that their petition was answered soon.

The next Pre-Constitutional Convention was held at the beginning of May, and this time, Kentuckians came prepared to negotiate their freedom from Virginia to join the Confederation. In May 1785, “a second petition asking for relief in the protection of Kentucky’s frontier was framed and submitted to the mother state.”<sup>19</sup> This petition was drafted after the realization that the first petition drafted in December of 1784 was not going to be answered – Virginia’s government had grown silent on the matter. Virginians could see where this petition for more protection was headed, and losing their daughter territory would be distressing on the economy. Kentuckians then sent along a set of resolutions to Virginia that they were intending to follow, stating things like: “permission for Kentucky’s separation from Virginia be requested, instructions are to be issued for a third Convention to meet in Danville to consider the condition of the district, and that delegates to future Conventions be elected on the basis of population.”<sup>20</sup> Virginia fought to keep her offspring, Kentucky, joined at the hip – but Kentucky fought harder to uncouple and gain the independence that was sought after and arguably much needed. Kentucky composed the set of five resolutions that were meant to help separate her from Virginia, if however, Virginia would comply. Virginia on the other hand was still focused on constraining Kentucky against leaving, stating outrageous requirements such as Kentucky was to share its profits on trade (fur and crop) if departure occurred, in order to prohibit a successful

---

<sup>18</sup> Bradford, John. *The Voice of the Frontier: Notes on Kentucky*. Ed. Thomas D. Clark. The University Press of Kentucky, 1993.

<sup>19</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

<sup>20</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

transition from territory to state. The Virginia Assembly drafted two sets of Enabling Acts, the content of which will be discussed later, with the sole purpose of keeping Kentucky at bay and proving it to be near impossible for Kentucky to justifiably leave.

Kentuckians eventually heard back from their mother state, who denied their request to join the Confederation and their request for protection against Indians. It seemed as if you are wanting to be a free state, you must learn to protect yourself and not ask for help to be the attitude of Virginia's government. However, Kentuckians were persistent in acquiring their freedom, so "violating their instructions, delegates asked for a complete separation from Virginia without promising to affiliate with the Confederation."<sup>21</sup> Since Kentucky was a Western territory of Virginia, "Kentucky's right to self-protection was limited. As a member of the Confederation, Kentucky would have to respect all existing trade agreements. These restrictions gave birth to the idea that Kentucky would become an independent state."<sup>22</sup> The second Convention was really just a preview of the Conventions to come. The fact that these Conventions were held over an elongated eight-year period, the atmosphere could be summed up as pandemonium.

On August 8<sup>th</sup>, 1785, the third Pre-Constitutional Convention was held, as required by the delegates, in Danville Kentucky. The main purpose of this Convention was for the delegates to further discuss their separation from Virginia. Trade, protection from Indians, and the economy were all still issues at hand – but Kentuckians had since prioritized that a separation from Virginia was the main concern. While economic disquietude is often labeled as the central reason for detachment from Kentucky's mother state, Virginia, the District of Kentucky was still

---

<sup>21</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

<sup>22</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

flourishing at an accelerated rate and Virginia was benefitting from it. Kentucky continuing to flourish was actually working against the delegates who were fighting for Kentucky's freedom – of course they are not going to be relieved if they are valuable to Virginia. Thomas Clark sums up the main purpose of the third Convention in just a single sentence – “the third Convention was definite in expressing Kentucky's desire for immediate relief.”<sup>23</sup> Below one can catch a glimpse of what was really bothering the men at the third Convention from one of the journals that they kept.

To recite minutely the causes and reasoning which have directed, and will justify this address, would, we conceive, be a matter of impropriety at this juncture. It would be preposterous for us to enter upon the support of facts and consequences, which we presume are incontestable; our sequestered situation from the seat of government, with the intervention of a mountainous desert of two hundred miles, always dangerous, and passable only at particular seasons, precludes every idea of a connexion on republican principles: The patriots who formed our constitution, sensible of the impracticability of connecting permanently in a free government, the extensive limits of the commonwealth, most wisely made provision for the act which we now solicit.<sup>24</sup>

It is important to consider the political agendas in America at this time as well – for there were men who were out to stop states from joining the Confederation, and then there were men who wanted America to begin her expansion. Keep in mind that during this time period, America was being governed by the Articles of Confederation, which was created in 1777 and carried out until 1788, when it was replaced by the United States Constitution. Thomas Jefferson for example, a proud Virginian, at first opposed a separation between Virginia and Kentucky “on the grounds that such a move tended to diminish Virginia's prestige among other states of the

---

<sup>23</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

<sup>24</sup>Bradford, John. *The Voice of the Frontier: Notes on Kentucky*. Ed. Thomas D. Clark. The University Press of Kentucky, 1993.

Confederation.”<sup>25</sup> Thomas Paine on the other hand, wrote a pamphlet expressing how he thought the two should separate and go their own ways. “In 1780 Thomas Paine made a case for separation with another of his famous pamphlets: in *The Public Good* Paine argued that because of the Proclamation Line of 1763, the trans montane had reverted to the Crown and was no longer a part of Virginia. Anyways, he continued, the differences between Virginia and Kentucky were so great that the two would be better off apart.”<sup>26</sup>

Meanwhile back in the territory known as Kentucky, Indian attacks were still occurring in large numbers that were often left with fatalities for both parties. “In the month of October (1785), a Mr. M’Clure and family, together with several other families, on their passage through the wilderness, were attacked by a party of Indians on Skegg’s creek, and defeated – six of the whites were killed, and Mrs. M’Clure and one of her children made prisoners, together with a number of others.”<sup>27</sup>

However, on January 10<sup>th</sup>, 1786, Kentuckians finally heard back from the Virginia Assembly who were responding to the petitions that their Western Territory, Kentucky, had sent them. ‘The Virginia Assembly responded to Kentucky’s petitions and addresses by passing an Enabling Act, which contained the terms for Kentucky’s separation.’<sup>28</sup> The Enabling Acts, passed in 1786, 1787, 1788, and 1789, were often considered to be road blocks due to the fact

---

<sup>25</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

<sup>26</sup>Harrison, Lowell Hayes and James C. Klotter. *A New History of Kentucky*. The University Press of Kentucky, 1997.

<sup>27</sup>Bradford, John. *The Voice of the Frontier: Notes on Kentucky*. Ed. Thomas D. Clark. The University Press of Kentucky, 1993.

<sup>28</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

that as Thomas Clark states, “it was evident that Virginia was not going to let the area become a state without every possible safeguard, and, realizing that ambitious and selfish promoters would cause trouble, the Virginia Assembly did not intend to permit her Western district to be given over to Spain.”<sup>29</sup> It would seem that these Acts were produced for multiple reasons, one being for the benefit of Virginia, ensuring that she would continue to reap the benefits of Kentucky’s success. The first set of Enabling Acts established that “boundaries of the State of Kentucky were to remain the same as those of the territory of Kentucky, residents and nonresidents were to be treated alike, Kentucky was to assume a proportionate share of Virginia’s Revolutionary War Debt, land which Virginia had claimed to pay her Revolutionary soldiers was to be reserved for her until 1788, the Ohio River was to be free for the use of all citizens of the Union of States, and lastly all disputes over the foregoing matters were to be settled by arbitration.”<sup>30</sup>

Virginia actually called for the fourth convention in order to further discuss the matter of separation after the first Enabling Act. “It was evident that Virginia was not going to let area become a state without every possible safeguard, and, realizing that ambitious and selfish promoters would cause trouble, the Virginia Assembly did not intend to permit her Western district to be given over to Spain. As for Spain, an almost hidden factor in Kentucky’s fight for independence, is also discussed in Clark’s *A History of Kentucky* in Chapter Six. Clark sheds light on the corruption and selfish political agendas that were taking place during this struggle. Spain was just as interested in the economic prosperity that was taking place in Kentucky, almost as much as Virginia was due to the fact that Frankfort was already a thriving location for

---

<sup>29</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

<sup>30</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

business. Spain was seeking full access to the Kentucky River in order to continue to ship goods down to New Orleans, and General Wilkinson of Lexington was right amongst the Spanish and their plan. Virginia seemed to be semi-aware of this plan, hence the Enabling Acts, but the Acts did not offer up much protection for the Spanish almost succeeded in taking Kentucky anyways.

The District of Kentucky's fourth Pre-Constitutional Convention was rather a unique one, in that major people such as George Rogers Clark and Benjamin Logan were called away to participate in a raid on Indian Tribes that were causing a scene in Northern Kentucky, so many of the delegates were not able to attend. "In January, 1787, the remaining members of the convention selected John Marshall of Virginia to present Kentucky's problems to the Virginia Assembly, one of which was a need for additional time in which to consider the question of separation." During this process Virginia passed the second set of Enabling Acts, which called for January 1<sup>st</sup>, 1789 as the date that Kentucky may be able to enter the Union, "provided that Congress of the Confederation would approve the admission of the state prior to July 4<sup>th</sup>, 1788."<sup>31</sup> This announcement is ultimately what lead the Spanish to their involvement in Kentucky.

An effective damper was placed upon the spirit of the West when the Spanish Governor at New Orleans unceremoniously withdrew the Americans' "right of deposit." He not only closed the port of New Orleans to Kentuckians and Americans in general, but he also questioned the free use of the Mississippi River. Simultaneously with Spanish withdrawal of the "right to deposit" and the free use of the river, the rumor reached the Western country (set afloat by a group of Pittsburg agitators styling themselves a "Committee of Correspondence") that John Jay, Secretary of Foreign Affairs to the Congress of the Confederation, was attempting to trade the westerners' right to free passage over the river in order to gain commercial advantages for the East.<sup>32</sup>

---

<sup>31</sup>Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

<sup>32</sup> Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

The fifth Convention was held, as directed, in Danville on September 17<sup>th</sup>, 1787 and was meant to be a continuation of the discussion of separation. Everyone was present at this Convention except for General Wilkinson who was working in New Orleans with the Spanish Governor in order to ensure that trade between New Orleans and Kentucky would continue to happen. The Virginia Assembly elected John Brown to Congress in order to represent the District of Kentucky in Philadelphia – however, Brown too thought Kentucky would be better off with the Spanish and not with Americans.

The sixth Pre-Constitutional Convention was held in July 1788 in hopes of drafting a constitution for Kentucky, but was not followed through due to the indifference of Congress and the impression of John Brown. Since Kentucky was in chaos, the Convention ended almost as soon as it started and the delegates hoped the next Convention would be better.

November 1788 saw the seventh Convention, and during this one, General Wilkinson was actually the first to speak on the matter of independence for Kentucky. However, Wilkinson discussed how important the Mississippi River was to Kentucky, in order to feed the interest, the Spanish had in Kentucky. John Brown was next to speak at the Convention, and he was supposed to introduce the Spanish plot to annex Kentucky to the delegates. For whatever reason though, Brown ended up changing his mind and outed the Spanish plot. Instead, he ended up encouraging Kentucky's independence and the push for Congress. Since Congress did not grant Kentucky independence the first time around, Virginia passed the third enabling act, which expressed Virginia's willingness to separate, but Kentucky was to assume a proportionate share of Virginia's public debt, and the western district was to remain dependent until Virginia could complete the surveys of land which she had begun for the purpose of paying off her Revolutionary officers and soldiers.

The main headliner of the eighth Convention (July 1789) was to discuss what was going to be done about the two new provisions that had derived from the third set of enabling acts. A letter was sent to the Virginia Assembly requesting an amendment for the third act to be granted to Kentucky the same liberal terms as those embodied in the first two acts, and after that the eighth convention became a waiting game and went into recess. Shortly thereafter the Virginia Assembly passed the Fourth set of enabling acts, which simply reiterated the terms for the first two acts.

Kentucky's Ninth Pre-Constitutional Convention took place in July 1790 and was too meant to lay the foundation for Kentucky's constitution, but also was held to accept the terms of Virginia's fourth set of enabling acts. This finalized that Kentucky was to be admitted into the Union on June 1<sup>st</sup>, 1792.

## **Kentucky Becomes a State, 1792**

The first constitution was an eighteen-page document carefully crafted and developed to guide a new state into stabilization. Before Kentucky became a state in June, Isaac Shelby was elected to be Kentucky's first Governor, and Kentucky's founding fathers began looking at the newly founded U.S. Constitution for inspiration. In examining Kentucky's first constitution one can easily see that Virginia and Great Britain both heavily influenced the document, but one will ultimately observe that through all four of the constitutions that Kentucky has adopted and the natural changes that come with time, she has always remained devoted to the United States Bill of Rights and to the thought of personal freedom that America offers.

Drafted by George Nicholas and mostly adapted from the Pennsylvania constitution of 1790, and with influence from the U.S. Bill of Rights, Kentucky's first constitution proved to be

very unique. In Article VIII, Section 7 Kentucky shows its adherence to Virginia for it is stated that the compact with the state of Virginia, subject to such alterations as may be made therein, agreeably to the mode prescribed by the said compact, shall be considered as part of this Constitution.<sup>33</sup> In continuity with the colonial powers of Governor under Great Britain, only the Governor had sole executive power – there is no one else sharing the responsibility in 1792. The supreme executive power of this Commonwealth shall be vested in a Governor.<sup>34</sup> The use of the word “supreme” is the key word showing loyalty to English Common Law and constitutional tradition.

It is now important to note that the ratio for Representatives to Senators is 1 to 4 in this document, and in Article XII, Section 23 the right to bear arms has been enumerated, instead of being combined with another right showing its importance to the state of Kentucky. This is another place where Kentucky proves her allegiance to the United States as well. The age limit also varies from the first to second constitution – the Governor is required to be at least thirty years of age, while in the second constitution the Governor must be at least thirty-five years of age. Residency requirements for the candidates also increased from one constitution to the next, going from two years to six years. An intriguing form of the constitution is the increase in the age limit because Isaac Shelby was forty-two when he became the first Governor, and James Garrard was forty-seven when he became our second Governor. Neither of these men were close to thirty years of age, so why was the age limit increased by five years in 1799? Shelby and Garrard were not the young and ambitious men that would require a need for age limits to be

---

<sup>33</sup> *The First Constitution of Kentucky, 1792.*

<sup>34</sup> *The First Constitution of Kentucky, 1792.*

increased; nonetheless, Kentucky would need men of maturity and respectability that the age provision would ensure.

Most importantly though, is the rarity of the selection of Governor. This special constitution has stated that the Governor is to be selected by the Kentucky Electoral College – an election technique completely unique to Kentucky. The goal was to elect our Governor the same way we elected our President – another tie to the American constitution. Unfortunately, this uncommon idea proved to be an issue in 1796 when the Kentucky Electoral College failed to give any of the four candidates for Governor a majority vote, and instead of declaring the recipient of the plurality of votes the winner, conducted a second ballot between the two highest vote getters.<sup>35</sup> Resulting in the candidate who was originally in second place winning the Gubernatorial election the second time around. This caused such a controversy it became a political issue that a movement for a new constitution resulted. With this being said, this is the main reason why the first constitution only lasted seven years, and only two years after the 1796 Gubernatorial election. This decision caused quite a stir throughout the state and brought the Kentucky Electoral College to an end with respect to Gubernatorial elections. After this election, it took Kentuckians a little over two years to gather up yet another constitutional convention and adopt their new constitution.

Not only did Pennsylvania's 1790 constitution influence Kentucky's 1792 constitution, but so did Virginia's constitution. Virginia, as noted, was the mother state from which Kentucky derived. Virginia was a very significant influence in terms of political thought and political influence, especially with thinkers such as Thomas Jefferson paving the way. However, Virginia

---

<sup>35</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

was also influential in terms of its constitution and institutions of government.<sup>36</sup> Virginia's local governments and state government cabinets and agencies were adopted by Kentucky.

Magistrates, Sheriffs, Constables, Clerks, and Judges all have institutional parallels in both states, and Virginia's influence of Kentucky is both significant and endures to this day. When one looks at state level intergovernmental relations, no state has more significance than Virginia for Kentucky.<sup>37</sup>

## **Comparison of Kentucky's and the United States' Constitutions**

There are extensive parallels in the structure of the U.S. and Kentucky constitutions. These similarities reflect similar influences and the continued importance of the United States constitution for state constitutions. A summary of these constitutional structures between the U.S. and Kentucky constitutions is highlighted in Table One below.

---

<sup>36</sup> Dinan, John J. *The Virginia State Constitution*, 2nd ed. Oxford: Oxford University Press, 2014.

<sup>37</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

## Table 1: US and KY Constitution Comparisons

### United States

3 Branches of GOVT

Senate & House

Each House shall keep a journal of its proceedings.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member

President 4 year term and Vice President 4 year term

President is Chief Executive

House has sole power to impeach, the Senate has the sole power to try all impeachments

The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior. Judges are appointed by the executive.

### Kentucky

3 Branches of GOVT

Senate & House

Each House shall keep a journal of its proceedings.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member

Governor 4 year Term but no Lieutenant Governor

Governor is Chief Executive

House has sole power to impeach, the Senate has the sole power to try all impeachments

The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior. Judges are elected.

The common features and structural design parallels are clear in Table 1. Some differences to note are in areas like the judicial branch. While judicial tenure is commonly defined, the court is appointed at the national level and elected at the state level in Kentucky. Many of the comparison points are a result of the national constitutional convention in

Philadelphia in 1787 and with both the political thought of those deliberations and the structure of the final constitution having enduring state constitution influences. These influential men and their views of how government should work led up to the United States own constitutional convention that took place over the course of four months, from May to September of 1787 in Philadelphia. During the course of the convention, James Madison took extensive notes that documented not only what was popular and unpopular among the delegates, but also offered up his own outlook on the new constitution and how the convention was perceived. In a letter to Thomas Jefferson, Madison stated: “It (the convention) appeared to be the sincere and unanimous wish of the convention to cherish and preserve the union of the states. No proposition was made, no suggestion was thrown out, in favor of a partition of the empire into two or more confederates.”<sup>38</sup> While it was mutually agreed by all that the union of states was to be preserved, there were several delegates present who had their own ideals of how the new constitution should be designed and reflecting philosophical influences.

There were three carefully crafted plans that were introduced to the delegates at the convention in hopes that the new constitution would embrace what they believed to be the best fit for America. The Virginia Plan, drafted by James Madison himself, was the first to be presented to the delegates by Edmund Randolph. This plan is largely what we see in the constitution today, with minor suggestions from the other two plans being included; the section regarding the presidency in the constitution derives from the Hamilton Plan, for example. The Virginia Plan has also been credited for being the driving force behind the convention and its agenda due to the fact that almost everything was already lined out and was popular among the other men present. To demonstrate Montesquieu’s influence on James Madison, Madison

---

<sup>38</sup> Madison, James. *The Writings of James Madison*, Oct. 24<sup>th</sup>, 1787, Vol. V, G.P. Putnam’s Sons, 1904.

suggested in this plan that three branches of government were needed, as well as two houses in Congress and that they be elected based on population.

The New Jersey Plan, introduced by William Patterson, was also known as the “small state plan” and was widely unpopular by the large states being represented at the convention. This plan featured a committee of presidents and modification of the Articles with retention of states’ rights structures. The last plan to be introduced was the Hamilton Plan, designed by Alexander Hamilton. Hamilton’s plan was noted as being too close to the British system that focused on a strong central government, and focused less on America being her own independent model. As noted above, the blueprint for the presidency was the only significant ideal that crossed over.

The supreme Executive authority of the United States to be vested in a Governour to be elected to serve during good behavior – the election to be made by Electors chosen by the people in the Election Districts aforesaid- the authorities & functions of the Executive to be as follows: to have a negative on all laws about to be passed, and the execution of all laws passed; to have the direction of war when authorized or begun; to have with the advice and approbation of the Senate the power of making all treaties; to have the sole appointment of the heads or chief officers of the departments of Finance, War and Foreign Affairs; to have the nomination of all other officers (Ambassadors to foreign Nations included) subject to the approbation or rejection of the Senate; to have the power of pardoning all offenses except Treason; which he shall not pardon without the approbation of the Senate.<sup>39</sup>

The final compromise among the three plans was the Connecticut Compromise proposed by Roger Sherman of Connecticut. This featured establishment of a bicameral legislature with the U.S. House of Representatives elected based on population (the Virginia Plan) and that the Senate would be granted equal votes per state (the New Jersey Plan). This Connecticut Compromise was also known as The Great Compromise, and it held the convention together, and ultimately, held the union together. Montesquieu’s separation of powers and philosophical view that sovereignty can be divided is reflected in the dual sovereignty of states and the national

---

<sup>39</sup> Hamilton, Alexander. *The Hamilton Plan*. June 18<sup>th</sup>, 1787.

government that defined the “dual federalism” era of the founding until the New Deal in the twentieth century.

## **The United States Founding Documents and the Influences**

As noted previously, Kentucky’s founding was influenced by the works and ideals of philosophers and based on many documents in order to help ensure that the state would flourish and not fall back into the hands of Virginians. The U.S. Constitution was also influenced by philosophers and documents alike, with authors such as James Madison wanting to set a solid foundation for the United States that would last forever. Several great thinkers and their ideals were incorporated into the founding document, and even into Thomas Jefferson’s Declaration of Independence – proving that political philosophy has a huge role in not just ancient founding, but modern day Western Civilization founding too.

The Enlightenment period is where most of the guidance for our founding documents derived from. Philosophers such as John Locke, Thomas Hobbes, Jean-Jacques Rousseau, and Baron de Montesquieu all left their stamp on philosophy for future generations to learn and then govern on. These ideals ranged from all men are created equal, to the ideal that we are all given natural rights, to the ideal that there should be three branches of government and a separation of power; who would have ever thought that these principles are the ones we hold so dear in today’s society. How much of the United States’ founding documents have been influenced by these men and what significance has it had on other documents such as state constitutions? Hail and Lange suggest it was significant influence, “The revolution was premised upon a political

understanding of rights derivative of John Locke just as the development of federalism was centrally connected to the Founding Fathers understanding of Montesquieu's political theory."<sup>40</sup>

Philosopher John Locke believed that all men were created equal and that there should be a social contract between government and its people; Locke also believed that government should be limited. These very ideals are almost directly mentioned in Thomas Jefferson's Declaration of Independence, for Locke is evident in the first two paragraphs. John Locke states in *The Second Treatise of Government*:

A *State also of Equality*, wherein all the Power and Jurisdiction is reciprocal, no one having more than another: there being nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and use the same faculties, should also be equal one amongst another without Subordination or Subjection, unless the Lord and Master of them all, should by any manifest Declaration of his Will set one above another, and confer on him by an evident and clear appointment an undoubted Right to Dominion and Sovereignty.<sup>41</sup>

Thomas Jefferson then states in The Declaration of Independence:

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel to the separation.

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. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...<sup>42</sup>

---

<sup>40</sup> Hail, Michael W. and Stephen J. Lange. "Federalism and Representation in the Theory of the Founding Fathers: A Comparative Study of U.S. and Canadian Constitutional Thought." *Publius: The Journal of Federalism*. Volume 40, number 3, p. 384.

<sup>41</sup> Locke, John. *Two Treatises of Government*. Ed. Peter Laslett. Cambridge University Press, 2013.

<sup>42</sup> Jefferson, Thomas. The Declaration of Independence. 1776.

Jefferson's "life, liberty, and the pursuit of happiness" derives straight from Locke's *Second Treatise*, and so does the fact that government is supposed to protect these rights – this is the government's purpose. Locke goes on to argue that liberty is the most important right, for a person needs liberty in order to secure things as simple as food and water. In today's society we still hold all three unalienable rights to very high standard, allowing Locke's philosophical view of all men are created equal to continue governing us. Edmund Morgan discusses a different view of the influence of Locke on the Declaration when he states

Their original intention had been merely to affirm their equality with Englishmen. When they called upon Locke's philosophy of government to support the affirmation, they did not perceive that they were opening the door to developments that Locke himself would probably have disavowed. Locke had described the state of nature as a state of perfect equality, in which no man enjoyed any kind of right or authority or dignity beyond another. In so doing he had no intention of unseating English dukes and earls from their exalted position in the settled state of English society. Locke's state of nature was purely hypothetical, and he did not suggest that the equality prevailing in it ought to continue in organized society. Nor did the revolution he envisaged and approved bring about any upset in the social structure of England.<sup>43</sup>

While Morgan's enlightenment on Locke's influence is one of a different perspective, it still demonstrates the Lockean presence on not only the founders but on founding documents such as the Declaration nonetheless. However, Edmund Morgan offers up yet another side of the Lockean influence when he describes how not only did Americans relate to what Locke had written, but who else was influencing the American minds during this time period.

James Harrington and Locke were popular reading in America, perhaps more so than in England, because what they said made more sense in America. When Locke described his state of nature, he could explain it most vividly by saying that "in the beginning all the World was America." And indeed many Americans had had the actual experience of applying labor to wild land and turning it into their own. Some had even participated in social compacts, setting up new governments in wilderness areas where none had previously existed.

---

<sup>43</sup> Morgan, Edmund S. *The Birth of the Republic 1763-89*. The University of Chicago Press, 1992.

During the years of controversy from 1763 to 1776 the colonists studied Locke and Harrington closely (along with subsequent writers like Thomas Gordon, John Trenchard, and James Burgh, who carried on the tradition of Locke and Harrington). And as they tried to define the constitutional limits of British authority, they had ever in mind the elemental principles by which the political philosophers taught them to measure a government's performance.<sup>44</sup>

John Locke's concept of the social contract is also present in the Declaration, when Jefferson states "that whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it; and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness."<sup>45</sup> Locke's thoughts on the social contract went on to influence other philosophers such as Rousseau and Montesquieu, as well as other founding fathers; the Lockean way of thinking was just one that went on to guide other significant documents.

Philosopher Thomas Hobbes worked alongside John Locke on the thought of the social contract, but Hobbes also wrote on natural laws and how these laws derive from nature first and not a society. Hobbes breaks down before Chapter II on "Of the Law of Nature Concerning Contracts", "that the law of nature is not an agreement of men, but the dictate of reason. That the fundamental law of nature, is to seek peace, where it may be had, and where not, to defend ourselves. That the first special law of nature, is not to retain our right to all things."<sup>46</sup> These laws of nature stated above sound a lot like the unwritten agreement we have in today's society. In fact, the Preamble of the U.S. Constitution was influenced by Thomas Hobbes when it states

---

<sup>44</sup> Morgan, Edmund S. *The Birth of the Republic 1763-89*. The University of Chicago Press, 1992

<sup>45</sup> Jefferson, Thomas. *The Declaration of Independence*. 1776.

<sup>46</sup> Hobbes, Thomas. *Man and Citizen (De Homine and De Cive)*. Ed. Bernard Gert. Hackett Publishing Company, 1991.

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”<sup>47</sup>

The beginning phrase “We the People” indicates that it is in fact the people who will establish a government that is then expected to “ensure Justice, promote general Welfare,” and so on. This is exactly what Hobbes thought a society should be like – people establish and form a government. Hobbes believed that if a King was not doing his dutiful job, the people have a natural right to overthrow the government and form a new one. Is this not how America was founded after all? Chapter XII titled “Concerning the Duties of Them Who Bear Rule” in *De Cive* discusses the matter of overthrowing a Supreme in charger in greater detail, but it also discusses self-defense. The Second Amendment to the Constitution which addresses a Militia, is in sync with Hobbes on view self-defense and a free state. “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>48</sup> Hobbes in turn stated that “furthermore, it is necessarily requisite to the people’s defense, that they be forearmed. Now to be forearmed is to be furnished with soldiers, arms, ships, forts, and monies, before the danger be instant; for the listing of soldiers and taking up of arms after a blow is given, is too late at least, if not impossible.”<sup>49</sup> So while Thomas Hobbes did not play as large of a role in influencing the necessities found in our founding documents as

---

<sup>47</sup> The Preamble to the United States Constitution, 1787.

<sup>48</sup> Amendment II U.S. Constitution.

<sup>49</sup> Hobbes, Thomas. *Man and Citizen (De Homine and De Cive)*. Ed. Bernard Gert. Hackett Publishing Company, 1991.

John Locke did, Hobbes' presence is still there to remind us of not only the social contract but of our natural rights as well.

Baron de Montesquieu played a very large role when our founding documents were being drafted. To begin with, Montesquieu believed that a government should have three branches: executive, legislative, and judicial (judging), and that they should all work together to form a checks and balances system. Montesquieu thought that there needed to be some sort of restraint on the government in order to keep the government from damaging individual – individuals were his main concern. With this being said, it comes as no surprise that Montesquieu believed in and encouraged this separation of power within the government.

In each state there are three sorts of powers: legislative power, executive power over the things depending on the right of nations, and executive power over the things depending on civil right.

By the first, the prince or the magistrate makes laws for a time or for always and corrects or abrogates those that have been made. By the second, he makes peace or war, sends or receives embassies, establishes security, and prevents invasions. By the third, he punishes crimes or judges disputes between individuals. The last will be called the power of judging, and the former simply the executive power of the state.<sup>50</sup>

Montesquieu also discusses how members of the legislative should be selected, and it mirrors our system of government and thought spot on.

As, in a free state, every man, considered to have a free soul, should be governed by himself, the people as a body should have legislative power; but, as this is impossible in large states and is subject to many drawbacks in small ones, the people must have their representatives do all that they themselves cannot do.

One knows the needs of one's own town better than those of other towns, and one judges the ability of one's neighbors better than that of one's other compatriots. Therefore, members of the legislative body must not be drawn from the body of the nation at large; it is proper for the inhabitants of each principle town to choose a representative from it.

---

<sup>50</sup> Montesquieu, Baron de. *The Spirit of the Laws*. Ed. Anne M. Cohler, Basia C. Miller, & Harold S. Stone. Cambridge University Press, 2008.

The great advantage of representatives is that they are able to discuss public business. The people are not all appropriate for such discussions; this forms one of the great drawbacks of democracy.<sup>51</sup>

Montesquieu's ideals for a three branch government and even the explanation of how and why legislators should be selected were carried over not only with the United States Constitution but onto state constitutions like Kentucky's too. It is necessary to include that not only did Montesquieu's ideals spread to and impact our founding fathers and Americans alike, but that he also inspired Englishman John Locke and his philosophy, which in turn had a very large part in America's dawning.

Jean-Jacques Rousseau, like many other philosophers of the Enlightenment, also agreed with John Locke and his way of thought. However, Rousseau did not believe that the majority would always act in the best interests for the overall common good. Therefore, Rousseau set out to persuade people that government was needed to help protect the common good and the general welfare of its people. The social contract, which outlined Rousseau's ideal of a legitimate government based on popular sovereignty, was a huge part of Rousseau's theory - and is ultimately what we see today.

The People having, in regard to Social relations, united all their wills into a single one, all the articles about which this will pronounces become so many fundamental Laws that obligate all the members of the State without exception, and one of which regulates the selection and the power of the Magistrates charged with attending to the execution of the other Laws. This power extends to everything that can preserve the Constitution, without going so far as to change it. To it are joined honors that render the Laws and their Ministers respectable and, for the Ministers personally, prerogatives compensating them for strenuous labors which good administration requires.<sup>52</sup>

---

<sup>51</sup> Montesquieu, Baron de. *The Spirit of the Laws*. Ed. Anne M. Cohler, Basia C. Miller, & Harold S. Stone. Cambridge University Press, 2008.

<sup>52</sup> Rousseau, Jean-Jacques. *The Discourses and Other Early Political Writings*. Ed. Victor Gourevitch. Cambridge University Press, 1997.

Under Rousseau's social contract theory, it was suggested that all members of a civil society should have a relationship with said society. Rousseau also reasons that the governing body should act and serve at the will of the people. Democracy is the rule of many, the rule of the people; this is how America and her government operates today. While Rousseau did not have a direct line in our founding documents, his thoughts did lay the foundation for our view on and the execution of social order.

## **Federalism and Thoughts of Our Founding Fathers**

John Breckinridge was one of the most influential men in Kentucky's early founding. While Breckinridge was born in Virginia, he moved West to Kentucky to plant his roots in Fayette County and continue his political career.

John Breckinridge, one wave of leaders who came to the Commonwealth after statehood and quickly rose to political power, was born December 2, 1760, near Staunton, Virginia, the son of Robert and Lettice (Preston) Breckinridge.

In December 1793 Breckinridge was appointed attorney general of Kentucky. After four years in that part-time post, he won election in 1797 to the state House. The next year, his humanitarian reform of the criminal code was enacted by the General Assembly. After the 1798 enactment of the Federalist-inspired Alien and Sedition acts, Breckinridge visited his friend Thomas Jefferson and returned with a confidential draft, written by the man from Monticello, of what became known as the Kentucky Resolutions. Introduced by Breckinridge, with his own modifications, the resolutions passed in 1798. Only years later did Jefferson's role become public; in his lifetime, Breckinridge was seen as the author of the Kentucky Resolutions.

As a student of political theory, Breckinridge was a delegate to Kentucky's 1799 constitutional convention. Breckinridge received credit as the father of the state's second constitution (1799) and emerged as the acknowledged leader of his party (Democratic-Republican) in Kentucky.<sup>53</sup>

As one can see, John Breckinridge was the keystone to Kentucky's second constitution, which had traces of Thomas Jefferson and the Anti-Federalists concealed in the text. Many Kentuckians

---

<sup>53</sup> Kleber, John E. *The Kentucky Encyclopedia*. Lexington: University Press of Kentucky, 1992.

had become exasperated with the delay for a new constitution, especially since many felt that the 1792 constitution was not representative of the people as a whole; therefore, many Kentuckians were receptive to Breckinridge's ideals.

Agitation for a new constitution started in Kentucky almost as soon as the first one was adopted in 1792. Many citizens considered the document which George Nicholas had largely shaped to be too aristocratic for their tastes. The division tended to be between the wealthy, conservative element which was determined to retain social and economic control, and the poorer, discontented group which was convinced that more democracy was the cure for all its problems. While there were many exceptions, the clash was largely between the well-to-do Bluegrass planters and businessman and the settlers who occupied the worst lands or had been pushed onto the barrens of the Green River country. John Breckinridge described the latter area as being "filled with nothing but hunters, horse thieves, and savages...where wretchedness, poverty, and sickness will always reign."<sup>54</sup>

Breckinridge had to fight alongside people such as Isaac Shelby, George Nicholas, and Henry Clay in order to secure the votes calling for a Constitutional Convention. However, the elite aristocrats in both the House and Senate continued to push back hoping to hold off another Constitutional Convention for as long as possible. When the votes had been secured, it came as no surprise that Breckinridge was going to be a delegate (and a very influential one at that) during the Convention.

Breckinridge had his own ideas of what should be done, and it was typical of the man and his methods that he took time during June to draft the detail points that he intended to stress on the floor. His conclusions revealed a willingness to compromise on some issues provided basic safeguards were retained. Both the governor and the senators should continue to be elected by an electoral college, but the term of chief executive was to be reduced to three years with no re-election possible for four years. The electors would be prohibited from selecting either a governor or a senator from among their number or from the House of Representatives. Breckinridge would also provide a lieutenant governor, an official lacking under the 1792 constitution.<sup>55</sup>

---

<sup>54</sup> Harrison, Lowell H. "John Breckinridge and the Kentucky Constitution of 1799." *The Register of the Kentucky Historical Society*, Vol. 57, No. 3 (July 1959), pp. 209-233.

<sup>55</sup>Harrison, Lowell H. "John Breckinridge and the Kentucky Constitution of 1799." *The Register of the Kentucky Historical Society*, Vol. 57, No. 3 (July 1959), pp. 209-233.

While Breckinridge had many more contributions to Kentucky's second constitution, the ones listed above were the most consequential. As mentioned earlier, the conception of electing the Governor by using the Electoral College happened to be one of the main reasons why Kentuckians felt that another Constitutional Convention was necessary. It then should come as no surprise that using the Electoral College to elect the Governor and Senators was not an ideal favored by the other delegates and was not reinstated into the 1799 constitution. With that being said, Breckinridge's recommendation for the term limit on the chief executive was not upheld either. However, the position of Lieutenant Governor (modeled off of the Vice President of the United States) stuck and we still have this tie-breaking position today.

Thomas Jefferson played a huge role in the influence of the 1799 constitution, and he played an even bigger role in fighting the Federalists who were being led by Alexander Hamilton and happened to be in control Congress during this time period. The Kentucky Resolutions, John Breckinridge's claim to federal government fame, were written in 1798 and 1799 by Jefferson.

The indignation of the Jeffersonian Republicans over the Alien and Sedition acts passed by the Federalist-dominated Congress in June and July of 1798 found its most lasting expression in a series of resolutions adopted by the Kentucky legislature later that year. The acts, directed against supposedly subversive influences in the United States, gave the president sweeping powers to deport "dangerous" aliens and – far more important to Kentucky, where there were few resident aliens – to punish speech and writing critical of the U.S. government. Protest meetings were held in Kentucky, giving the young Henry Clay, recently come from Virginia, the chance to deliver a blistering oration against the federal laws.

Thomas Jefferson was the principle author of the resolutions. His friend John Breckinridge brought them from Virginia and introduced them in the Kentucky House of Representatives on November 9. The authorship of Jefferson, the vice-president of the United States, was kept from the public, and the resolutions were long thought to be Breckinridge's work.<sup>56</sup>

---

<sup>56</sup> Kleber, John E. *The Kentucky Encyclopedia*. Lexington: University Press of Kentucky, 1992.

Due to the popularity of the Kentucky Resolutions only inside the state and inside Virginia, John Breckinridge went on to become the 5<sup>th</sup> U.S. Attorney General from 1805-1806 under Thomas Jefferson after he became President.

Jefferson, a huge advocate for states' rights, wrote the Kentucky Resolutions in order to ensure that new states such as Kentucky that were being admitted into the union were not taken advantage of. Jefferson wanted Kentuckians to know, and he argued, that states had the right to deem unconstitutional acts committed by Congress unconstitutional if these acts were not warranted by the Constitution; in fact, he felt that it was the states' duty to call these acts unconstitutional. Therefore, the overall goal of the Kentucky Resolutions was to further argue for small government and for the protection of states' rights. Jefferson wanted protection for the smaller states in the South, such as Virginia and Kentucky, and he knew the Federalists were out to remove states' rights and let all of the decision making fall in the hands of the rapidly growing government. An example of this behavior is when Kentucky was fighting for her Statehood; the Federalist ran Congress did not want to admit Kentucky into the Union, so they kept stalling and looking for excuses not admit her. Due to this standoff between the Federalist and the Anti-Federalist Parties, Kentucky lost the chance of becoming the 14<sup>th</sup> state admitted to the Union to Vermont, and had to accept being the 15<sup>th</sup> state admitted – even though Statehood for Kentucky was filed first.

## **Kentucky's Constitutionalism**

### **Kentucky's Second Constitution, 1799**

After the 1796 gubernatorial controversy, it was concluded that there was a need for a new constitution to resolve some of the kinks that were in the first one. The next Constitutional Convention was held in 1797 and 1798, meeting for just twenty-seven days in the summer of 1799.<sup>57</sup> During this period it was decided that a new position needed to be created, the Kentucky Electoral College needed to be replaced and Kentucky needed to have a more efficient and fair election system. The Table 2 below illustrates the differences by comparison of Kentucky's first and second constitutions.

---

<sup>57</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

**Table 2: Comparison of Kentucky's First and Second Constitutions**

**FIRST CONSTITUTION**

**SECOND CONSTITUTION**

House elected by citizens to 2 year terms and Senate elected by electors to 4 year terms

House elected by citizens to 2 year terms and Senate elected by citizens to 4 year terms

Governor elected by electoral college

Governor directly elected by the citizens

Governor appoints all constitutional offices with the advice and consent of the KY Senate

Governor appoints all constitutional offices with the advice and consent of the KY Senate

No Lieutenant Governor, Speaker of the KY Senate replaces the Governor

Lieutenant Governor is elected as is Governor to 4 year term by citizens

Governor can call of special session of the General Assembly and he can adjourn it

Governor can call of special session of the General Assembly and he can adjourn it

Governor has veto power, and a 2/3 vote of both houses is required to over-ride his veto

Governor has veto power, and a majority vote of both houses is required to over-ride his veto

House can impeach executive, trial by Senate and 2/3 for conviction

House can impeach executive, trial by Senate and 2/3 for conviction

Tax and Spending action must be initiated in the House and annual public budget and expenditure report must be published

Tax and Spending action must be initiated in the House and annual public budget and expenditure report must be published

Article XII provided a bill of rights

Article X provided a bill of rights

Amendments can be done only by convention, and then, either after annual consecutive votes of the citizens, or a 2/3 vote of both House and Senate

Amendments can be done only by convention, and then, either after annual consecutive votes of the citizens

Appointed executive branch offices of Secretary of State, State Treasurer, and Attorney General.

Appointed executive branch offices of Secretary of State, State Treasurer, and Attorney General.

There were to be new age limits specifically for the Governor. Interestingly enough, one will come to notice that most of the changes from the first constitution to the second constitution mainly happen in the executive branch – a unitary sovereignty in the executive like the King of England verses a divisible executive like the American model. The constitution of 1799, however, retained the major features of the original document. Its principle change, reflecting an interest in greater democratic control, was the abolition of the Kentucky Electoral College in favor of direct election, by voice vote, of the Governors and Senators. It created the office of Lieutenant Governor. More power was given to local governments, and the counties became the most significant agencies of the government, responsible for taxation, regulation of business, and patronage. Freed blacks lost the franchise they had since 1792.<sup>58</sup> Our second constitution is when we are introduced to the position of Lieutenant Governor. The Lieutenant Governor is to be elected for four years the same way as the Governor, and will now be the Speaker of the Senate; the Lieutenant Governor shall also act as the Governor during an impeachment, death, or when the Governor is absent from the state.<sup>59</sup> The creation of Lieutenant Governor is a further development reflecting republican influence and fragmenting executive power from that inherited from Great Britain. Having a Governor and a Lieutenant Governor is a mirror image of the President and Vice President, and no longer a reflection of the British constitutional system.

The Bill of Rights is still included in this constitution as well as the House and Senate elections, which also remained unchanged. Impeachment of the Executive still belongs to the House with a trial by the Senate and 2/3 for conviction. The seat of government is also changed in the second constitution, moving from Danville to Frankfort where the seat has remained. This

---

<sup>58</sup> Kleber, John E. *The Kentucky Encyclopedia*. Lexington: University Press of Kentucky, 1992.

<sup>59</sup> *The Second Constitution of Kentucky, 1799*.

change shows a break from Virginia since Danville was chosen for the convenience of Virginians'. The need for our third constitution arose from a battle between the two major political parties, the Democrats and the Whigs. The Whigs controlled the governorship, and held the majority in legislature allowing them to dominate Kentucky through every aspect. The result of the Whig domination was an outcry from Democrats insisting on a new constitution to prevent this from happening again.

### Kentucky's Third Constitution, 1850

Kentucky's third Constitutional Convention was held in 1849-1850 with the help of a split in the Whig party, barely allowing for Democrats to attain the constitutional delegates needed. "The new constitution removed most of the governor's patronage powers, continued the prohibition of gubernatorial succession, and, following a national trend, provided for the popular election of all judges and all county officers for limited terms (sheriffs could serve for only two successive two-year terms)."<sup>60</sup> Just like its predecessors, this constitution also found most changes occurring inside the executive position. There was however, a new factor for the time period that had to be taken into consideration – railroad corporations. The Louisville and Nashville Railroad was bringing a lot of economic opportunities to the state of Kentucky between 1865 and 1880, but legislation proved to be an issue. Legislators were being bribed by lobbyists to ensure any legislation passed lacked authority to stop the railroads from dominating. But not only was legislation for railroads an issue, so were legislatures and legislation in general. "[T]here were so many exceptions to the general statutes that even lawyers were uncertain about

---

<sup>60</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

what the law of Kentucky was on many subjects.”<sup>61</sup> These were just two of the flaws in Kentucky’s third constitution – another concerned casting votes. The buying of votes was a common occurrence during this time period to arrange the victory of a certain candidate or party. Since there was not secret voting, just vocal, it was easy to buy votes and be successful in getting away with it. It was decided that this was “a defect that could be cured only by a constitutional requirement for a secretly cast written ballot (if voting was done alone in secret, it would be theoretically impossible for vote buyers to know for certain that the seller had fulfilled the sales agreement).”<sup>62</sup>

The limit on counties was absent in this constitution as well – by 1890 there were already 119 of the 120 counties Kentucky would have. The concern here was that too many counties were developing and they could not easily support themselves. These counties were all relying on the state for funding and to keep them afloat – it was proving to be difficult to keep the counties and the state itself above the water. With all these flaws inside Kentucky’s third constitution, there were some things that were going to be changing for good when Kentucky found herself in need of yet another constitution beginning in 1875, but not securing a constitutional convention until 1890.

Despite these constitutional deficiencies, voters in five referenda between 1875 and 1885 rejected convention calls, in large part because of a controversial method that legislature had devised to ascertain the number of voters that were needed to approve such a call. Reform of that method in 1887 facilitated voter approval of a convention call in a referendum of that year and another in 1889. The constitutional convention convened in September 1890.<sup>63</sup>

---

Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.<sup>61</sup>

<sup>62</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

<sup>63</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

So then in 1891, Kentucky settled on the fourth and current constitution in hopes of having a better Commonwealth, and while the fourth constitution has been amended on multiple subjects there has never been another constitutional convention called forth.

### **Table 3: Comparison of Kentucky's Third and Fourth Constitutions**

#### **THIRD CONSTITUTION**

House of Representatives elected by citizens to a term of 2 years, must be 24 years of age

Governor serves one term of 4 years

Governor must be 35 years of age

Lieutenant Governor serves one 4 year term

Voters must be 21 years of age, 2 year resident of Kentucky

100 Representatives, 38 Senators

Senators serves 4 year term, must be 30 years of age

Article XIII is the Bill of Rights

Section concerning slaves

#### **FOURTH CONSTITUTION**

House of Representatives elected by citizens to a term of 2 years, must be 24 years of age

Governor now serves 2, 4 year terms - ratified Nov. 3, 1992

Governor must be 30 years of age

Lieutenant Governor now serves 2, 4 year terms - ratified Nov. 3, 1992

Voters must be 18 years old, 1 year 6 month resident of Kentucky

100 Representatives, 38 Senators

Senators serve 4 year term, must be 30 years of age

Bill of Rights now located at the beginning

No longer includes section concerning slaves

Kentucky's final constitution came as a strict surprise to Kentuckians, for the nature of this fourth constitution limited legislation for a change and not the executive. "The constitution prohibited most private, local, and special legislation, limited legislative sessions to once every two years and to only sixty days, required bills to be read at least once in their entirety to the full House and Senate, and specified that no law could be amended by reference to its title only; rather, a bill needed to be published in its entirety so that legislators would know what and how they were amending."<sup>64</sup> The Governor is actually given more freedom, for this constitution allowed for the Governor to be able to use the line-item veto when appropriate – for the first time in history. This fourth constitution also made the creation of new counties nearly inconceivable, and local governments were severely limited across all fields. Salaries for most of Kentucky's public officials were cut, and this constitution "rendered another constitutional convention less likely but made constitutional change easier by providing for the first time that individual amendments could be proposed by legislature (two per legislative session) and adopted by popular vote."<sup>65</sup>

Kentucky's courts were also affected, for it "eliminated legislatively created courts, including the Superior Court, which had been established by the legislature in 1880 as an intermediate appellate court designed to relieve a temporary burden on the Court of Appeals."<sup>66</sup>

The need for a stricter legislation is apparent with this new document – for a limited legislature

---

<sup>64</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

<sup>65</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

<sup>66</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

was openly the main concern at the constitutional convention and is reflected with each restriction made to the legislative branch in Kentucky. The voting age for elections in Kentucky also changed from the third constitution to the fourth, going from the age of twenty-one down to the age of eighteen where it has remained unchanged since.

Since this constitution called for individual amendments to be allowed, Kentucky's fourth constitution has had quite a few changes made to it between 1891 and present day. Some of these changes have been minor, while other adjustments have been significant to Kentucky and her desire for growth and success. One major amendment was made in 1992, allowing the governor to serve two consecutive terms instead of a single term and then having to wait at least four years in order to run for office again. A candidate being able to run for two consecutive terms has allowed for Kentucky and Kentuckians to further prosper and benefit from a governor who can accomplish more in eight years instead of four. The amendment has therefore allowed Kentucky to have 3 governors serve consecutive terms to present date. Another adjustment that has been made has been to Kentucky's local governments. Cities and counties found themselves capable of levying licenses and franchise taxes based on income.<sup>67</sup> Another amendment allowed the state to provide credit to the counties for such things as road repairs and the county could also use voter approved taxes for road and bridge repairs as well. Salaries have also found their way onto the amended list, finally being ratified in 1949. All legislators and officials with the exception of state officers are to be elected in even numbered years was ratified in 1979 and 1992.

Kentucky has had several constitutional commissions and call for constitutional reform. The Legislative Research Commission is the administrative bureau for the Kentucky General Assembly. They provided support for the commissions on constitution reform that occasionally

---

<sup>67</sup> Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

come forth. The 1966 proposal was probably the most significant effort in the 20<sup>th</sup> century but it fell short of action.

## **Conclusion**

My research addressed the question of the *relationship of state constitutionalism to national constitutionalism in the context of American federalism*, with a focus on the state of Kentucky as the case study for answering this question. My findings confirmed my main hypothesis that similar influences of political theory and experience affected the national and state constitutions in positive ways and these are demonstrated in the case study of Kentucky's constitutional founding.

I asked "What political theory influenced the development of the U.S. and Kentucky Constitutions?" and I found the major political philosophers influenced the constitutional development at both levels. John Locke and Montesquieu were the most significant influences and their conceptualization of central aspects of constitutional construction such as natural rights and the separation of powers demonstrated that influence.

I asked "How did the political thought of the Kentucky Founders relate to that of the American Founders?" In answering this question, I found a strong relationship between the Kentucky founders and the American founders. The Kentucky founders were most influenced by Thomas Jefferson, while the influence of Virginia and Virginians was also prominent. Retention of Virginia local government structures is evidence of the influence on Kentucky; but influences from Pennsylvania's constitution were also clearly present. Clearly the same political theory and institutional design of the American founders influenced that of the Kentucky founders.

Related, I asked “How does American politics at the time of statehood and constitutional founding affect federalism?” The pre-constitutional conventions were not only reflecting the same influences on the thought of the Kentucky founders, but the politics of federalism in the balance of power is reflected in the long process to statehood for Kentucky. Jefferson was very influential on the Kentucky founders, but his allies did not control Congress and the Federalists made Kentucky’s statehood a long process that advanced Vermont ahead of Kentucky. The grueling pre-constitutional conventions and ultimately the final Kentucky convention reflect a process that might affect statehood even today, depending on the balance of power under federalism. Finally, the addressed question, “What can these constitutional relationships to federalism inform future constitutional development in the states?” One finds the structural aspects of conventions informative from Kentucky’s extensive pre-conventions process. The enduring relationship of national politics to state constitution-making reflected in Kentucky’s road to statehood would certainly be evident if any new state were to enter the process in the 21<sup>st</sup> century. Even more important is the relevance to constitutional revision and modern conventions for that purpose. Research demonstrates the likelihood of constitutional revision comes for most states more frequently in the past than in the present. In the 19<sup>th</sup> century, there were 144 constitutional conventions in the states (including 3 in Kentucky), and in the 20<sup>th</sup> century, there were 64 state constitutional conventions.<sup>68</sup> However, in the 21<sup>st</sup> century, there have been no state

---

<sup>68</sup> Levinson, Sanford V. and William D. Blake. "When Americans Think About Constitutional Reform: Some Data and Reflections." *Ohio State Law Journal*. 2016 [Vol. 77:2] p. 227.

constitutional conventions, and most researchers consider us past due for extensive state constitutional convention activity, and that is important for my research.<sup>69</sup>

These research findings on Kentucky's Constitutional process and federalism are relevant for two reasons. First, it is instructive to look at state constitutional conventions and the resulting state constitutions from them, because the literature and political practice show us that in the 21<sup>st</sup> century, numerous states will be undertaking constitutional reform and holding constitutional conventions. Second, territories such as Puerto Rico continue evaluation as potential states and would under conventions to establish their first constitutions as states. Understanding state convention processes and the relationships to politics and federalism that affect them better informs future conventions.

In summary, among my findings are that first, there are several aspects of influence and interconnectedness between national constitutionalism and state constitutionalism reflected in the Kentucky case. The political theory influences, as well as the structure of the institutions in the U.S. Constitution of 1787, and certainly the political thought expressed at the convention in Philadelphia, all are major influences on how state constitutional conventions are modeled. Core constitutional provisions such as separation of powers, checks and balances, and bicameral legislative bodies are among the constitutional features of the U.S. constitution that are consistently incorporated in state constitutions. Second, the politics in Congress as well as in the territory itself play a significant role in framing the terms under which statehood and state constitutional conventions can operate. Third, interest groups, factions, individual designs on power, personalities, partisanship, and even foreign governments make this a fractured, complex,

---

<sup>69</sup> Dinan, John J. The Political Dynamics of Mandatory State Constitutional Convention Referendums: Lessons from the 2000s Regarding Obstacles and Pathways to their Passage." *Montana Law Review*. (2010) Vol. 71, pp. 395-432.

and uncertain process. The information age of the 21<sup>st</sup> century extends the reach of all these factors, making the process of the conventions and statehood evermore complex. My findings confirmed my main hypothesis that similar influences of political theory and experience affected the national and state constitutions in positive ways and these are demonstrated in the case study of Kentucky's constitutional founding.

## Bibliography

Amendment II U.S. Constitution.

Bradford, John. *The Voice of the Frontier: Notes on Kentucky*. Ed. Thomas D. Clark. The University Press of Kentucky, 1993.

Clark, Thomas D. *A History of Kentucky*. The John Bradford Press. Lexington, Kentucky, 1960.

Clinger, James C. and Michael W. Hail. *Kentucky Government, Politics, and Public Policy*. Lexington: University Press of Kentucky, 2013.

Cornwall, Jr., Elmer E., Jay S. Goodman and Wayne R. Swanson. *Constitutional Conventions: The Politics of Revision*. New York: National Municipal League, 1974.

Corwin, Edward S. "The Passing of Dual Federalism," *Virginia Law Review*. (1950) 36: 1-24.

Coward, Joan W. *The Kentucky Constitutions of 1792 and 1799: The Formation of a Political Tradition*. Evanston, IL: University of Southern Illinois, 1972.

Dinan, John J. *The American State Constitutional Tradition*. Lawrence, KS: University Press of Kansas, 2006.

Dinan, John J. "The Political Dynamics of Mandatory State Constitutional Convention Referendums: Lessons from the 2000s Regarding Obstacles and Pathways to their Passage." *Montana Law Review*. (2010) Vol. 71, pp. 395-432.

Dinan, John J. *The Virginia State Constitution*, 2nd ed. Oxford: Oxford University Press, 2014.

Elazar, Daniel J. "Federal-State Collaboration in the Nineteenth-Century United States." *Political Science Quarterly*. Vol. 19, Issue 2 (June 1964), pp.248-281.

Fritz, Christian G. "The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth Century West." *Rutgers Law Journal* (Summer 1994) 25: pp.945-953.

Hail, Michael W. and Stephen J. Lange. "Federalism and Representation in the Theory of the Founding Fathers: A Comparative Study of U.S. and Canadian Constitutional Thought." *Publius: The Journal of Federalism*. Volume 40, number 3, pp. 366-388.

Harrison, Lowell H. "John Breckinridge and the Kentucky Constitution of 1799." *The Register of the Kentucky Historical Society*, Vol. 57, No. 3 (July 1959), pp. 209-233.

Harrison, Lowell H. *Kentucky's Governors*. Lexington: University Press of Kentucky, 2004.

Harrison, Lowell Hayes and James C. Klotter. *A New History of Kentucky*. The University Press of Kentucky, 1997.

Hobbes, Thomas. *Man and Citizen (De Homine and De Cive)*. Ed. Bernard Gert. Hackett Publishing Company, 1991.

Ireland, Robert. *The Kentucky State Constitution*. New York: Oxford University Press, 2012.

Jefferson, Thomas. *The Declaration of Independence*. 1776.

Jensen, Jason L. and Robert Rodgers. "Cumulating the Intellectual Gold of Case Study Research." *Public Administration Review*. Vol. 61, No. 2 (March/April 2001), pp.235-246.

Jewell, Malcolm. *Kentucky Politics*. Lexington: University of Kentucky Press, 1968.

Kerr, Charles, William E. Connelley, E. M. Coulter. *History of Kentucky*. Chicago: American Historical Society, 1922.

Kleber, John E. *The Kentucky Encyclopedia*. Lexington: University Press of Kentucky, 1992.

*The First Constitution of Kentucky*, 1792.

*The Second Constitution of Kentucky*, 1799.

Levinson, Sanford V. and William D. Blake. "When Americans Think About Constitutional Reform: Some Data and Reflections." *Ohio State Law Journal*. 2016 [Vol. 77:2] pp. 211-236.

Locke, John. *Two Treatises of Government*. Ed. Peter Laslett. Cambridge University Press, 2013.

Marbach, Joseph, Ellis Katz, and Troy Smith, editors. *Federalism In America*. Westport, CT: Greenwood Press, 2006.

Montesquieu, Baron de. *The Spirit of the Laws*. Ed. Anne M. Cohler, Basia C. Miller, & Harold S. Stone. Cambridge University Press, 2008.

Morgan, Edmund S. *The Birth of the Republic 1763-89*. The University of Chicago Press, 1992.

O'Toole, Laurence J., Jr. "Intergovernmental Relations (IGR): The Concept of IGR as Interdependence, Complexity, and Bargaining". In Richard Stillman II, *Public Administration: Concepts and Cases*. Boston: Houghton Mifflin Company. 2000. p 128.

David Robertson. *Federalism and the Making of America*.

Rosenbloom, David H. "Public Administrative Theory and the Separation of Powers." In Jay M. Schafritz and Albert C. Hyde, eds. *Classics of Public Administration*. Boston: Thompson Wadsworth, 2007, pp.434-444.

Rousseau, Jean-Jacques. *The Discourses and Other Early Political Writings*. Ed. Victor Gourevitch. Cambridge University Press, 1997.

The Preamble to the United States Constitution, 1787.

Thorpe, Francis Newton. *The Federal and State Constitutions: Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*. Washington Government Printing Office, 1909.

Walker, David B. *The Rebirth of American Federalism*. Chatham, NJ: Chatham House, 1995.

Watlington, Patricia. *The Partisan Spirit: Kentucky Politics, 1779-1792*. New York: Atheneum, 1972.

Wood, Gordon. *The Creation of the American Republic 1776-1787*. New York: W.W. Norton & Co., 1969.