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Amending the Constitution: The Path Toward A More Perfect Democracy

Although the Constitution of the United States has been in place for over two centuries, it continues to play a vital place in American society. The American people represent a wide variety of backgrounds, religions, and ethnicities, and the Constitution serves as a point of unification for a nation consisting of such a diverse group of individuals. To best understand the critiques and praises for the Constitution, a brief understanding of the document's origins is necessary. After utilizing the Articles of Confederation for eight years, America's political leaders could no longer allow the continuation of this document, which had facilitated a system with such a weak national government that each state was largely acting as an independent entity. In 1787, delegates of all states (barring Rhode Island) attended the Philadelphia Convention to draft a new document that would create a stronger central government to unify the nation while also ensuring that no branch of government would become too powerful (National Archives). Because the Constitution has been in place for so long, the United States Constitution is revered among the population, and some nations have modeled their founding documents after the United States Constitution. However, many critics of the document also exist, who make the case that, in order to improve democratic conditions in the United States, changes must be made to the founding document. The Constitution possesses many strengths and weaknesses, which are often intertwined with one another, and thus the document is viewed as important, but not one without faults.

A key aspect of the Constitution is that it establishes three separate but co-equal branches of government to prevent any one branch from becoming tyrannical and subjecting one will onto the entire population. The document details the roles and responsibilities of each branch, providing the legislative branch with the most power while giving limited authority to the executive and placing the judiciary as an oversight body. In doing so, the Constitution provides a framework in which each branch of the government can operate while also establishing a system of checks and balances between the branches. Through the system laid forth in the Constitution, responsibilities are frequently shared as one branch cannot operate without some degree of cooperation from another. While Congress can pass a law, that law is still subject to the approval of the president, and, at any time, the constitutionality of that law can also be reviewed the Supreme Court. This system provides a basic understanding of the authority that each branch possesses, and by doing so, the Constitution provides the essential framework necessary for the functioning of the United States government.

In addition to laying forth the responsibilities of the three branches of government, the Constitution—specifically, the Bill of Rights—establishes the basic rights and protections of all American citizens. These rights provide the foundation for many of the principles Americans view as paramount to their understanding of what the United States is and does for its people. The first ten amendments to the Constitution are where many of these rights are found, including the right to free speech, free exercise, and to freely assemble. Although the Bill of Rights was not a part of the original document, it went into effect just two years after the initial ratification of the Constitution. These first ten amendments were the first demonstration that the United States government could be improved upon so the nation can move toward a more equitable practice of government. The Bill of Rights was established to address the rights that had been initially omitted to ensure the initial passage of the Constitution, as the Anti-Federalists were fearful at the time of such a strong declaration of centralized state power (American Civil Liberties Union). Since then, amendments have continued to be added to further establish the rights of

Americans periodically when both legislators and the public believe them to be necessary. For example, in the case of the passage of the Fifteenth Amendment, the right to vote was explicitly guaranteed and protected to recently formerly enslaved people, which was then extended to racial minorities more broadly. The fact that the Constitution can be altered is a major strength of the document, especially with the knowledge that the amendments added to the Constitution are brought forward to further enhance the democratic process and therefore make the country a more just place.

Though the Constitution established necessary components of American government, the document utilizes vague wording, which means it is highly subject to interpretation and thus has left many unsure of the intricacies of governing. The vagueness of the Constitution's language is viewed by many as both a strength and a weakness of the document. Through the ruling in *Marbury v. Madison*, the Supreme Court established judicial review, which provides Supreme Court Justices with the power to interpret the nuances embedded within the Constitution. Those who view the ambiguous wording of the Constitution as a strength argue that such language allows for the document to remain relevant and adapt to the ways that the country evolves. One notable example is how the understanding of the equal protection under the law that is included within the Constitution was allowed to change with the times. In *Plessy v. Ferguson*, the concept of separate but equal was established; this decision meant that racial segregation was not in violation of the Fourteenth Amendment. However, six decades later, the Supreme Court ruled in *Brown v. Board of Education of Topeka* that the premise of separate but equal was a direct violation of the Fourteenth Amendment. As the nation enters new decades and grows, the Constitution has the flexibility to allow it to be interpreted in a variety of different manners as the needs of its people dictate.

Conversely, some argue that the Constitution's vague wording hinders the document. The nature of the Founders' language lends itself to debate and disagreements over the meaning of certain passages. Debates over whether the document should be interpreted based upon the original intent of the Founders or in modern day contexts are frequent, especially in the modern era with complex problems arising. The idea of the Constitution as a "living document" has become increasingly popular, with fifty-five percent of the general population believing that the Supreme Court should interpret the document as it means "in current times" (Bialik 2020). Since the nation is divided as to how people believe the Constitution should be interpreted, changes in interpretations can be unpopular and lead to public dissent. A prime example of controversial constitutional interpretations is evidenced in *Dobbs v. Jackson Women's Health* in the summer of 2022. The Supreme Court justices ruled that the right to privacy did not include access to abortions, and yet fifty-seven percent of the population disagreed with the decision of the court to overturn the established precedent of *Roe v. Wade* (Nadeem 2023). The ambiguous wording of the Constitution laid the groundwork for debates about the meaning of the document, which can cause disagreements among, and even between, politicians and the public.

When discussing the weaknesses of the Constitution, the difficult process of amending the document frequently arises. As is the case with any nation, the needs of a population are ever evolving. Having a difficult process to amend the Constitution can be a weakness because changes occur slowly even if the problems to be solved arise rapidly. While this slow pace of change was the intent of the Framers, in 2022, forty-one percent of the population believed the Constitution should be "more frequently reviewed and amended" (Lepore 2022). For an amendment to pass, it first must be "proposed by a two-thirds vote of both Houses of Congress, or, if two-thirds of the States request one, by a convention called for that purpose. The

amendment must then be ratified by three-fourths of the State legislatures, or three-fourths of conventions called in each State for ratification” (The White House 2021). This process has proven to be difficult with only twenty-seven amendments ever having been ratified even though more than eleven thousand have been proposed (National Archives Foundation 2023).

Amendments that would have expanded upon the current rights and protections contained in the Constitution have infamously been halted. Such was the case with the Equal Rights Amendment (ERA) which, despite its popularity, ultimately failed. Just two years after the passage of the ERA, the amendment had 74 percent of Americans favoring it (Bowman 2021) and yet, despite having the support of a majority of Americans, the states were unable to ratify the document in the allotted timeframe. When the Constitution proves difficult to amend, the document may be unable to best serve the current population including those who are not explicitly granted protections in the original text or its amendments.

Critics also highlight the fact that the Constitution contains undemocratic components. The amendment process is often argued to be one of the archaic processes that limits the flow of democratic ideals, but others draw attention to the rules the Constitution places on who can run for office, the operational procedures of the government, and the election process. Specifically, to run for president, any individual must be at least thirty-five years of age, a natural born citizen, and a resident of the United States for fourteen years. These rules place restrictions on who can and cannot run for this highest office, which some have argued is not an equitable approach to the governing process. Additionally, the Electoral College prevents the direct election of the president by its citizens. While this buffer between the people and the president was an intentional facet of the Founders’ governmental design, it has proven to be an undemocratic institution that grants citizens varying degrees of power in elections and has even led to presidents being elected without the support of a majority of voters. The Constitution also does not address certain aspects of maintaining an equitable, democratic society. By refusing to address the issue of slavery, women’s right to vote, as well as the voting rights of other racial and ethnic minorities, the original document contains undemocratic aspects of how to approach the citizenry as well as the actual governing structure of the United States.

Ratified in 1788, the United States’ Constitution is the oldest constitution in the world, and the United States is one of the few nations that uses its original constitution. While this longevity shows the ability of the United States’ Constitution to stand against the tests of time, many of America’s peers and allies have restructured and revised their documents to best accommodate their populations’ needs. For example, one of America’s longest standing allies, France, is currently on its fifth constitution, which established the Fifth Republic of France. This constitution was ratified in 1958 and shows how the people of France learned from past mistakes and worked to create a document that more accurately reflected the needs of its people in the face of major social change (Boissoneault 2017). Other nations have also adjusted their documents (e.g., Switzerland and Austria’s frequent amendments to their documents ((Elkins)) and even Thomas Jefferson believed that the Constitution should be revitalized with each new generation to better promote and ensure democracy. Especially notable about the United States’ Constitution is the fact that it does not utilize the word “democracy”. The Founders were skeptical of a pure democracy and thus created a system that reflected this vision. The United States could embrace democracy more fully by altering the Constitution in several ways, first and foremost by including the term “democracy” in the document itself.

Many of the founders of the United States were wary of majoritarian rule—Founders James Madison and John Adams were notoriously concerned about the tyranny of the majority

and the power a majority could wield over minority factions. This viewpoint led the Founders to create a governmental system designed to keep the will of the majority in check. By adjusting the voting system that was laid forth in the Constitution, the United States could improve its democracy. First and foremost, this aim could be accomplished through utilizing explicit language in the Constitution to guarantee the right to vote. The United States was not truly governed by popular rule until the passage of the Voting Rights Act and Civil Rights Act in the 1960s (Thomas 2020). The denial of the franchise for several decades to women and people of color showcases the ways in which the government refused concepts of equity. As voting is a crucial aspect of democratic society, guaranteeing the right to vote to all citizens would make improvements to how democracy is enacted in the United States—especially in the face of mounting legislation that challenges minority groups’ right to vote. In recent years, some states have begun to impose restrictive voting legislation through means such as voter identification laws, voter roll purges, and decreased voting times. All these methods have placed an additional burden on the youngest and oldest voters as well as racial minorities and the lower class (Brennan Center for Justice 2023). Already by January of 2023, thirty-two states had introduced or pre-filed restrictive voting bills (Brennan Center for Justice 2023), which typically have a disparate impact on minority groups who may lack the means to meet the requirements legislators have imposed to vote. As states have taken action to impose restrictions on voting, including a federal guarantee to vote in the Constitution would mean that individual states could no longer enact their own voting legislation that unevenly provides access to the right to vote. Voting legislation has largely been considered a states’ rights issue throughout U.S. history, even though Congress has the authority to intervene in state election laws under the Constitution.

Additionally, to improve upon the United States’ democracy, the Constitution could be altered to best reflect the needs of the population by providing additional protections for all people. Various amendments of the Constitution have addressed the rights of specific populations, and yet many individuals continue to lack a guarantee of these same protections based upon their identity. For example, while issues of race are addressed through the equal protections clause of the Fourteenth Amendment, other characteristics such as gender, sexual orientation, age, class, and a variety of other characteristics are never mentioned by name. Though many Supreme Court cases have extrapolated the Fourteenth Amendment to include these various groups of people (e.g., *Reed v. Reed* and *Obergefell v. Hodges*), including language in the Constitution that directly addresses these individuals would guarantee their rights without having to rely on interpretations of the document, particularly considering that interpretations could change, being subject to the current composition of the Supreme Court. The attempt to amend the Constitution to include the Equal Rights Amendment in 1970s shows the need and interest in an equality amendment has been longstanding. Processes have already begun to include more people in the Civil Rights Act of 1964 through the passage of the Equality Act. Such a decision would simply alter the Civil Rights Act and would not provide a guarantee in the Constitution. However, such legislative initiatives do show a demonstrated will of the people to extend these protections beyond their current bounds, which could be taken to the highest level and expand American democracy by altering the language in the Constitution. While this would be incredibly difficult to do given the stringent amendment process in the United States, making these alterations would greatly improve upon the foundations laid forth by the Founders.

The Constitution of the United States is a product of the time during which it was created; the Founders were fearful of a government that would impose its will upon the people and bring forth a return to tyrannical practices. The ratification of the Constitution was not an easy process,

and thus its weaknesses as well as its strengths reflect the Founders' need to seek compromise to enact a document that was stronger than the Articles of Confederation. Ultimately, the Constitution is the supreme law of the land in the United States, and thus it should be one of the first places the people should turn to improve democracy. By guaranteeing the right to vote and expanding the protected classes specifically discussed in the Constitution, equity and democracy would be further extended to all the nation's people. America's founding document served as a start to the country, and with the document now being over two hundred years old, the social fabric of America has changed, and so the Constitution must be updated to reflect the current needs of the population in an improvement of the democratic system in the United States.

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