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The Constitution: A Scapegoat of the Partisan Divide

In operation for 235 years, the United States Constitution has survived centuries of skepticism while maintaining a foundation of principles and human rights, all the while acting as the infrastructure of American society. The Constitution serves as a bedrock; it is the underpinning for the institutions that emerge from its written composition and outlines the ideal shape of the central government. The Bill of Rights, which calls for the protection of civil rights and liberties, is incredibly vital to the integrity of this operation, evident by its addition just three years after ratification of the original Constitution. However, with the United States falling in the Global Democracy Index (GDI), despite holding higher rankings when gay marriage was illegal, and stop and frisk was not, one cannot help but wonder about the integrity of the GDI system, or wonder if these documents that were so integral in the formation of today's country have arrived at their expiration date. However, the Constitution is a scapegoat for a separate issue. The two-party system that has emerged from the founding document perpetuates a political climate rife with division. Instead of blaming the Constitution for the flaws in the U.S. society, rank choice voting is the solution to the growing dissatisfaction with polarized partisan elections. The implementation of rank choice voting could reunite the nation.

To properly analyze and identify the shortcomings of the Constitution, it is first imperative to acknowledge the components that have enabled this historical document to flourish as the backbone of the United States democracy for nearly two and a half centuries. While intentionally difficult to amend, the Constitution is amenable and has been able to sustain new developments within a progressing society. The Bill of Rights encloses key additions and alterations absent in the Constitution's original form. The later Thirteenth, Fourteenth, and Fifteenth Amendments are known as the Reconstruction Amendments, which were responsible for legally eradicating slavery, establishing equal rights for formerly enslaved people, and enabling the ability to vote autonomously based on race. Riding on the coattails of the American Civil War, the years 1865 to 1877 mark a period of Reconstruction, or attempts made to rectify the political, social, and economic inequities created by slavery. The ability of the Constitution to remedy antiquated and abusive systems ingrained in society displays a quondam ability to evolve with the times.

Despite the advancements made in ameliorating government sanctioned slavery and oppression mirrored in the Constitution, equality was not achievable for all in the confines of the document. The Women's Suffrage Movement consisted of a decades-long battle for the right to vote, spanning from 1849 to 1920. Parades, campaigns, and committees began as a joint effort between black men and feminists, then, after the Fifteenth Amendment passed, changed course with many white women arguing for suffrage to offset black men's votes. This eventually led to a state-by-state conquest, ultimately gaining enough momentum to warrant the Nineteenth Amendment (American Bar Association). The Constitution was able to be altered when the subjugation of minorities and ostracized groups became a blatant government condoned policy that did not reflect the advancements of society. However, history has demonstrated that such movements are long and drawn out processes.

Amendments can be caught in gridlock if either house in just thirteen states oppose ratification, and the challenge of amending the Constitution has made reflecting a persistently fluctuating society unfeasible. It is imperative to note that there have only been 27 amendments ratified since the Constitution's inception, despite the reality that over 11,000 have been

proposed in U.S. history. This, in some cases, is a strength. Some of the proposed amendments included a cap limiting personal wealth to one million dollars, and one called for the elimination of the president as the head of the executive branch, instead proposing a three-person roman leadership structure (Moody and Ramirez). The intricacies and hassles of amending the Constitution have prevented tyranny in the United States, intercepted ludicrous laws, and mitigated power distribution. It has created a strong and stable foundation from which to assess and assemble legislation.

The founders of the Constitution intended the civil rights enumerated within the document to serve a narrow constituency, excluding minorities and women. Members of Congress and the Supreme Court have edited the Constitution retrospectively when inequality was recognized, such as the termination of *de jure* segregation by way of illustration. Furthermore, while the structure of the Constitution has permitted ample navigation that compensates for the changing times, its purposeful ambiguity can be exploited. This is a fault; the Constitution and the governmental body protecting leaves certain advancements up to assumption. The Equal Rights Amendment, originally proposed in 1923, just three years after the ratification of the Nineteenth Amendment, calls for the Constitution to include a clause that would eradicate any and all legal distinctions between men and women. It is 2023, and this piece of legislature still has not been formally ratified, despite approval from the House and Senate in 1972, and achievement of support from state legislatures. The vague nature of the Constitution, however, enabled five states to revoke their support retroactively, and the bill was never passed (National Archives and Records Administration). This sets up a precedent that could derail amendments already included in the Constitution if there is no timeline set. The ability for states to back out of an amendment poses a complicated future. If a state was legally allowed to back out of the Equal Rights Amendment, they could potentially back out from others. In 2020, this amendment suddenly received ratification from enough states to be acknowledged legally. Quickly, arguments ensued about the fact that the state ratification in 2020 occurred 41 years after the 1979 deadline, but even more unknown is whether a state can rescind ratification in the first place.

While constitutional law is the supreme law of the land, it is guided into execution through the assistance of common law and statutory law. This aids in devising and dictating how society is managed. The rights available due to common law rulings, however, are not guaranteed and have often fallen under criticism and revocation as partisan power switches in the executive, legislative, and judicial branches. Unenumerated rights are critical in supporting the Constitution as they address legal rights that may not be written in the document, but are inferred. These inferences protect fundamental civil liberties, and are condoned through the existence of the Ninth Amendment, which states that “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”. The issue with unenumerated rights, however, lies in the ease in which they can be altered or abolished and the difficulty of transitioning them into enumerated rights. Unenumerated constitutional rights are often decided based on precedents and interpretations of the Constitution. This is where unenumerated rights are challenging, since they are left up to interpretation, perception, analysis, and party domination. There has been less emphasis on civil rights, and more on acquiring political power. The two-party system in place forces citizens to choose what they view to be the lesser of two evils. It is a political game that demands compromise, despite ethics or individual preferences. The Constitution defines no way to alleviate or terminate this battle, and this pendulum of rights is here for the foreseeable future.

Abortion has been a wedge issue since the Women's Liberation Movement in the 1960s, and shows no signs of abating. Abortions have been criminalized, stigmatized, bureaucratized, and legalized, but they have not been stabilized under the law. It is a soapbox issue, but at the root of it is the attempted denial of basic human and privacy rights for women, as outlined by *Roe v. Wade* (Lindsey). The legal interpretation of the Constitution is so reliant on inference, that each precedent relies on multiple layers of assumptions. If one is overturned, they all can fall. The right to privacy is a commonly referenced fundamental civil liberty, however it is not explicitly delineated in the Constitution. Instead, it was introduced by the Supreme Court, and has served as the backing of many subsequent rulings. If this unenumerated right to privacy was ever reversed, every case based on this common law could be renegotiated.

The United States society is vulnerable, and the Constitution, while strong in original foundation, now balances a stack of precedents on which the nation runs. There is no denying that the Constitution has flaws, and Congress has had to rectify some of those flaws. This, however, does not warrant the dissatisfaction that has occurred in recent years. The only explanation is that the problem does not lie within the Constitution. It has lasted for centuries beyond expected; George Washington predicted the framework would only last for twenty years, yet it has been able to adapt with the undulating political tides (Mitgang). Shortcomings have been mitigated and fortified through common and statutory law, but the document is challenged in the twenty-first century.

This is a result of the enormous and unexpected partisan divide. Democracy may be on the downswing—but it is not because of the Constitution. Amendments cannot fix this issue, but a bridge could. The founding fathers did not outline the two-party system that has invaded the United States political arena. Bipartisan efforts whose fragile bond once concealed the imperfections of the Constitution have fallen to the wayside as citizens become more than ever entrenched in forming identities around a political party affiliation. As voters become increasingly polarized, so do the parties, and thus, the candidates. Therefore, amending the Constitution is not the answer. Doing so would only enhance the probability of more challenges and requests when the issue that needs to be addressed is truly in the voting system.

The current voting system leaves little room for even a third party to play on an even field. Instead, the Republicans and Democrats become increasingly divided and have created a cycle of extreme polarization. The system is broken, but there is a way to reunify the country before it unravels completely. A potential solution is a complete overhauling of the existing voting structure. With five presidents now having lost the popular vote, there is a clear discrepancy between what the people want, and who prevails in the Electoral College. Plurality elections allow candidates to win that are not supported by the public, and the first past the post system makes division in the opposition a blinding weakness. This forces candidates to conform to certain expectations to gain popularity and backing, rather than listening to the public, while intentionally and strategically cultivating distrust in the opposition. Additionally, plurality elections foster voter apathy, where citizens refrain from voting thinking that they have no impact.

Accordingly, ranked choice voting (RCV) is the most promising solution. Rank choice would allow for the public to vote for more than one candidate on the ballot, listed in an order of preference. If no candidate gains more than half of the voters, the candidate with the least support would then be eliminated, with the votes redistributed until there is a candidate with a majority. This system serves to foster a more inclusive, and less apathetic, citizen political participation. According to an NBC news review, 27 bills proposing the implementation of RVC

have been introduced by lawmakers in 14 states (Edelman). Alaska and Maine have recently begun transitioning to this new system as well, with favorable responses from citizens. Parties splitting the vote has been a longstanding issue, allowing for some controversial candidates from the opposition to slip into a prime political position. With the current fragmentation in the political arena, RVC has become an increasingly lucrative option. It can reduce voter passivity, and incentivize more turnout at the polls, as each vote could hold more weight, and it seems less like picking between two undesirable options. It will create a more civil, and less polarized system that will increase democracy as voters have more choice and impact. The United States can unite again under a new voting system, and without stark bipartisan divisions, amendments will become more possible if still necessary. Political polarization is the biggest issue that this nation and democracy faces, and it can be readily resolved.

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