

The Constitution and Freedom To

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Introduction

Few documents outside the realm of religion have taken on such a sacrosanct status as the Constitution of the United States. In the mind of many Americans, this two centuries old work of literature encapsulates within itself the very thin boundary between freedom and tyranny. Moreover, it is propped up as the only document that is capable of doing so. In an 1856 speech, a then former congressman Abraham Lincoln would claim as much, pleading to his political rivals not to “interfere with anything in the Constitution. That must be maintained, for it is the only safeguard of our liberties” (Lincoln). This notion of the Constitution as the sole home of all of the American’s liberties and political rights has placed it on a pedestal far beyond any sense of reproach – good faith or otherwise. This is – if I may be permitted to say – a most regrettable fact, regardless of whether one embraces the liberal mythologizing of the Constitution or not. If one is truly to view the Constitution as the last barrier between her or him and all of the oppressions the state can conjure up, then the Constitution must not be above the ability to evolve. In actuality, there is much that is laudable about the Constitution and much that it lacks. That in mind, let me briefly embrace the attitude of tough but nevertheless good-faith reformers, willing to speak highly of what is functional about this document but also to critique what is distinctly less so.

Freedom From: Constitutional Strengths

When considering constitutional strengths, it may initially strike one as superfluous to commend its most basic elements – those of course being the assurance of such basic rights as self-expression and democratic participation, which have become so deeply ingrained in the American psyche as to have taken on the form of something akin to a law of nature. This initial supposition is worthy of significant dispute in that it reduces such powerful, liberatory notions which enable the most basic forms of human expression to negligible facts of reality when they are, of course, not so. One should need no reminding of the utter lack of freedom of expression and assembly in many portions of the globe. The Iranian people faced harsh retributions for mass protests in defiance of the violent enforcement of that nation’s hijab requirements – nearly 500 people lost their lives throughout this state-sanctioned repression (Freedom House). This instance in and of itself is only a fraction of the suffering regularly inflicted on the human family at the behest of state power. It is raised simply to observe that one should not take for granted the basic political rights of the American public. The path to these basic rights is long and paved with death for so many.

However, it is crucial – and counterintuitive – to posit that the Constitution's greatest strength lies not exclusively in what it says, but more so in what it represents. If one were to walk down a typical American street and interrogate a citizen on the ins and outs of every enumerated power and every amendment delineated in the Constitution, it is doubtful that she or he would be able to state much more than the aforementioned “basics” (it is fair to say that this is the case even for many citizens in general). And yet, there is an unspoken, intellectual recognition that the Constitution carries a certain essence, and it is perhaps best articulated in those first three words of the preamble – “we the people.” It is tempting to assume that the Constitution is something of a gift from the state to the people – a gift by which the state affirms all of those rights which it deigns to give the people. This order of operations has in fact been reversed. The Constitution is an imposition, placed by “the people” – that great, mysterious and

powerful monolith – onto the state so that it abides by the former’s standards. This notion underlies all that occurs in the American political system. It grants to the individual a sense of collective power, and advantage over all of the potential tyrannies of state. In short, it is the simple encapsulation of all that is democratic – rule vested in the power of the people. Or at least, it is so on paper. It will soon be explored in greater detail exactly how this constitutional spirit is sufficiently lacking in its ability to uphold America’s democratic project. But for the time being, it is not insignificant to affirm that were it not for this people-based philosophy of governing, the expansion of this democratic project would have been entirely moot. What obligation will a liberal, representative republic, dominated by wealthy white men have to expand suffrage to women or to people of color, if they are not reconceptualized to be a portion of that “people ” to which the political powers that be owe all of their strength?

Very much in line with this intangible constitutional spirit is the crucial notion of judicial interpretation – that is to say the courts must hold the power not just to uphold the law, but to *interpret* it. In an era when the Constitution is held to be nearly holy, such a power in the hands of the courts may strike one as frightening – a threat to constitutional liberty. This, however, is a deeply misguided view. In fact, the Constitution necessitates the power of judicial interpretation in order to be applicable to all Americans at all times. In the words of R.B. Bernstein, the courts “must apply the Constitution’s provisions to changing times and circumstances” (Bernstein 23). This is true of the Constitution now, and it has been true of it since its very inception. Edmund Randolph, a key figure in the development of the first draft of the Constitution, made clear that it was his obligation to keep the terminology of the document in a generalized form (Bernstein 24). This characteristic wholly transforms the Constitution from a document locked forever in its own place and time into something far more eternal, capable of answering the problems not just of yesterday’s American, but also of today’s and tomorrow’s. The framers understood well the forward progression of human societies and recognized that as time passed and the nation aged, new challenges would inevitably arise – questions which need answers beyond what they could clearly offer in their materially finite states. All of this said, it is not at all uncommon to hear, both among the common person as well as among the experts of the law, that there is a certain sanctity to the perspectives of the men whose minds crafted the Constitution, and that – by extension – their intent in creating the Constitution is the ultimate arbiter for all constitutional questions. This position fails in numerous areas, but highly worthy of note, it is a premise that many of the founding fathers rejected. Alexander Hamilton, in his spirited defense of the constitutionality of the formation of a national bank, opposed this theory of originalism explicitly, stating “...whatever may have been the intention of the framers of a constitution, or of a law, that intention is to be sought for in the instrument itself, according to the usual and established rules of construction” (Hamilton 625). To place undue power in the hands of the framers is to subject the contemporary American to something of a “necrocracy” - sacrificing their interests to appease the appetites of dead men who could never have understood or responded to the needs of the United States in the present day. For better or for worse, the words and deeds of the founders are left forever in the past to be either condemned or glorified by those who look backwards. The Constitution, in significant contrast, lives and breathes still. It marches forward. It is a document constructed not for one generation but all generations, and not for one time, but for all of time.

Freedom To: Constitutional Weaknesses

If the Constitution's greatest strengths can be found not in what it *says* but what it *means*, then its greatest weaknesses are found most poignantly in what it *does not say*. Before reviewing this subject in full, it is beneficial to briefly consider the lofty and perhaps gaudy conceptions of freedom and liberty that are supposedly held in the highest esteem in American political discourse. It is easy to envision individual freedom simply as living in the absence of external obstruction and coercion – to believe that being free is merely the ability to say and do what one wants to when one wants to without any competing powers to inhibit those actions. But this view is narrow and misses a crucial aspect of human liberty – the freedom to self-actualization. Consider a 21st century American dropped in the middle of the unexplored, uninhabited desert. Here she or he is free of all coercion, as there is no state, no society, and no culture. Here there can be no restrictions on her or his speech or expression. There are no powerful political establishments forcing the individual to pay taxes. Such a person is supposedly living in a state of perfect liberty. And yet this citizen is struck by a profound sense of “unfreedom.” She or he is incapable of self-fulfillment – there are no books to read, no problems to solve, nor any sort of work to be done. There is nothing to do but watch as eternity evolves. Any and all sense of choice has evaporated. And in that sense, in a barren place absent from any institutions to weigh him down, humans experience a new tyranny, terrible and silent. Thus it can be clearly understood that this “freedom to” is just as important as “freedom from.” This is a matter which the Constitution severely misunderstands – if it even attempts to do so at all. No human being is capable of living freely absent the material resources needed to do so, and it necessarily follows from this that any document aiming to enshrine the political liberties of a certain population must address this aforementioned need.

This notion would, of course, come as no surprise to American socialists and labor movement advocates who have long recognized an urgency for the political assurance of basic economic needs (Democratic Socialists of America). But one certainly need not be explicitly anti-capitalist to hold this view, and in fact it has long been understood by American liberal leaders and intellectuals stretching back even to the country's founding. In the early days of the republic, property ownership was a necessary prerequisite for suffrage. Thomas Jefferson, who supported expanding the electorate, advocated for the guarantee of a small piece of land to all white men of age, holding this modicum of property to be necessary to ensure that a greater amount of freedom could be experienced and actualized by a greater amount of men (Matthews 50). The tacit implication of this position is clear – there is an inextricable relationship between the material assets people hold at their disposal and their ability to truly live and act as free. This is at the very core of what Jefferson means when he uses that mythologized and glorified phrase “the pursuit of happiness.” To participate freely in society, one needs to have at her or his disposal the full range of economic and political choice – a certain mobility that is only available if one starts from a financially stable position, with access to resources that enhance the likelihood of personal success. What could it possibly mean to pursue one's happiness whilst stuck in a rut? Moreover, in order for America to be considered a functionally democratic system – at least in a republican sense – the power of the state apparatus must be involved in guaranteeing these basic means to its citizens. And while Jefferson never articulated this as an error of the American Constitution specifically, one of his many successors in the office of the presidency - Franklin Delano Roosevelt – did so vociferously.

In his 1944 State of the Union address, Roosevelt would make this radical claim – the Constitution was failing. Referencing the political rights guaranteed by the Constitution, Roosevelt stated they were “inadequate to assure us equality in the pursuit of happiness.” He

stated clearly and concisely, in no uncertain terms, that for the individual to view himself as free, he must first be guaranteed a “basis of security and prosperity” – a second Bill of Rights. If we understand the first Bill of Rights to be centered on the freedom of Americans *from* state power, the second Bill of Rights centers its sights on the freedom of Americans *to* participate more fully in their society. These new rights, as Roosevelt outlines them, are the right to a job, the right to a living wage, the right for farmers to sell their products at reasonable pricing, the right for businesses to compete in unmonopolized markets, the right to a home, the right to Social Security in retirement, and the right to a quality education. This list of demands should be astounding, as many of them would be (and in some cases are) chastised as radical and idealist even for the progressive wing of today’s Democratic Party (FDR). The guarantee of these economic rights is for Roosevelt, an indisputable requirement for the ability of the American citizen to live and act in freedom. While Roosevelt did not envision this second Bill of Rights as being a collection of constitutional amendments akin to its namesake – a process which he correctly deduced would be far too difficult to set in motion and bring to completion – he explicitly proposes these reforms as a means of adjusting for the Constitution’s shortcomings. It is unmistakable as a critique of the Constitution itself, and his aim was to fill in the gap of freedom that the Constitution left open. This is the *freedom to* – a good education, access to quality healthcare, and a well-paying job are all fundamental requirements for the purposes of allowing individuals *to* be and *to* do as they freely want. This is where the Constitution falls short of its own democratic spirit. These general and crucial economic rights – more specifically the lack of them – are its greatest weaknesses in its present state.

The Democratic Case for Constitutional Revision

But it must be understood that the benefits of these economic rights transcend merely the liberation of the individual. They carry with them also a potential to reinvigorate American democracy as it has come to be known. Present here is a clear, democratic case for a revision of the Constitution. Let us for a moment cast aside Roosevelt’s pessimism, and glance into a hypothetical (and perhaps unbelievable), new America, in which Roosevelt’s economic rights have been constitutionally guaranteed in the form of amendments. Consider that the millions of eligible voters in the United States who refuse to exercise their right to vote, do so primarily because of apathy, and a profound sense that their political system is incapable of addressing them adequately or seriously. Guaranteeing a quality education that offers robust learning in civics and social studies will greatly reinvigorate this disengaged populace. Research has long indicated that there is a strong relationship between higher rates of education and stronger, more proactive democratic politicking (Glaeser et al). Citizens who understand the political power vested within them will be far more inclined to use it than the one who does not. But it is far more than a simple issue of ignorance that holds a death grip on American rates of democratic participation. Eligible voters from low-income households are significantly less likely to participate in national elections than their counterparts from high-income households (Hartley). Creating constitutional mechanisms to alleviate the general sting of income inequality would abrogate a major obstruction to greater rule by the people. Full employment and a guaranteed living wage would eradicate poverty, and imbue millions of working class Americans with a renewed sense of financial and economic power, and the impression that they hold a significant stake in society that is worthy of fighting to protect. This minor horizontal redistribution of wealth will bolster and strengthen working class interests in a nation where the state strongly favors – and almost exclusively responds to – the interests and values of the wealthiest

individuals (Gilens). Furthermore, there is a strong relationship between democracy and higher rates of healthcare access and coverage (Templin et al).

And why should these facts take anyone by surprise? If we are to understand democracy as ruled by the people, it is mere intuition that democratic polities will be highly responsive to the economic and social needs of their citizens. It is the responsibility of the democratic state not just to shelter their citizens from external coercion, but also to defend them from the more overlooked tyrannies of poverty and corporate greed. As the Constitution advances, the United States ages, and wealth inequality continues to widen, this question of economic freedom – of the freedom to self-actualize – will continue to grow in significance. Recognizing as Roosevelt did that implementing new constitutional amendments is highly difficult, those who would call these prescriptions for American society “idealistic” or “impractical” in general are nonetheless wholly wrong in their analysis. So many countries around the world – including the United States’s geopolitical allies – have implemented robust universal healthcare systems and powerful social safety nets to great success. It is ludicrous to suggest that these policies are out of reach, as so many pundits – be they conservative or liberal – love to do. And moreover, their implementation may be key in addressing tumult rising within the American working class. Recall what Roosevelt warned in his initial proposal for a second Bill of Rights, “People who are hungry and out of a job are the stuff of which dictatorships are made” (FDR).

Conclusion

In the history of the United States, a great deal has been said of the Constitution and its function as something of a last defense of the people against state power. This view has indubitably constructed a stubborn wall around the Constitution that makes it immune to reevaluation despite its flawed character. If it is beyond today’s capabilities to consider a post-liberal America, let it at least consider the steps by which a better liberal America can be formed. The Constitution carries within itself a timelessness, reflected in its general spirit and exercised in the power of judicial interpretation. It must be allowed not necessarily to change, but to evolve with the needs of the people from whom it derives its power – and to open itself up to a truer embodiment of its mandate.

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