

Introduction

In its list of the 50 most influential books of all time, the Open Education Database names Plato's *The Republic*, Harriet Beecher Stowe's *Uncle Tom's Cabin*, and the Bible among others. If this list was expanded to include other documents, the Constitution of the United States of America would undoubtedly rank highly. It is unknown if the Founding Fathers were aware that the document they crafted would go to on help incite revolution in France; inspire the constitutions of a vast range of nations, including Canada, India, El Salvador, and even China; and lay the ideological groundwork that would help America become the only superpower in the modern world.¹²³

In recent years, the Constitution has become criticized for being “out of touch” or incompatible with modern America. Yet by its very design, the document was designed to adapt with the times: the Founding Fathers allowed for continuous Amendments with the understanding that the country would be drastically different 50—if not 250—years out from its inception. The only major roadblock to this is that due to rising partisanship and stalemate in Congress, the last amendment to the Constitution came over 30 years ago, in 1992.⁴ This essay aims to imagine how the country could be if these bureaucratic barriers were not in place.

¹ Cotter, Daniel A. “American Founding Observations of the French Revolution That Influenced the United States Constitution and Governing.” *Constituting America*, 7 July 2022, constitutingamerica.org/90day-aer-american-founding-observations-of-the-french-revolution-that-influenced-the-united-states-constitution-and-governing-guest-essayist-daniel-a-cotter/. Accessed 12 Apr. 2024.

² Blaustein, Albert P. “Long Live the New Iraq!” *The Coalition Provision Authority*, govinfo.library.unt.edu/cpa-iraq/democracy/blaustein.html#:~:text=The%20U.S.%20precedent%20became%20an. Accessed 12 Apr. 2024.

³ Kratz, Jessie. “Global Influence of the U.S. Constitution.” *Pieces of History*, 17 Sept. 2021, prologue.blogs.archives.gov/2021/09/17/global-influence-of-the-u-s-constitution/. Accessed 11 Apr. 2024.

⁴ National Constitution Center. “The 27th Amendment of the U.S. Constitution.” *National Constitution Center*, 2022, constitutioncenter.org/the-constitution/amendments/amendment-xxvii. Accessed 12 Apr. 2024.

The division of rights and responsibilities among the Federation

In many ways, America, a country that first achieved unity through a system of divisionary governance, was founded on a contradiction. Despite the apparent discrepancy between this unity and division, the nation's constitutional framework presents an argument advocating for the preservation of America through division. The Preamble of the Constitution states that, "We the people of the United States, in Order to form a more perfect Union... do ordain and establish this Constitution for the United States of America," unequivocally asserting that the Constitution serves as the keystone ensuring America's unity under common law.⁵ While the Constitution itself serves as a formidable force for unification among all Americans, it is the allocation of rights and responsibilities delineated within it that ensures the enduring success of the nation's governance and the preservation of its democratic ideals.

The split between federal and state governments has fueled significant controversy throughout the nation's history. Despite the Constitution's meticulous delineation of the federal government's responsibilities, it also grants states considerable leeway to exercise their "police powers." Consequently, America's legal landscape has witnessed a tradition of challenging statutes on constitutional grounds, reshaping governance at both federal and state levels, seen as early South Carolina state legislature nullification crisis of the 1830s.⁶ Recent legislative actions reflect this dynamic interplay, driven by evolving interpretations of constitutional principles. Particularly

⁵ National Constitution Center. "The 27th Amendment of the U.S. Constitution." *National Constitution Center*, 2022, constitutioncenter.org/the-constitution/amendments/amendment-xxvii. Accessed 12 Apr. 2024.

⁶ Library of Congress. "Today in History: The Nullification Crisis." *Library of Congress*, www.loc.gov/item/today-in-history/january-13/#:~:text=The%20Nullification%20Crisis%20of%201832. Accessed 12 Apr. 2024.

contentious are laws concerning bodily autonomy and free speech, which have become focal points of societal division. For example, the landmark decision of *Roe v. Wade*, overturning state restrictions on abortion and affirming a constitutional right to bodily autonomy, exemplifies this tension.⁷

Individual states have recently enacted statutes that restrict certain rights and freedoms. In Florida, three laws (HB 1557, HB 7, HB 1467) address materials deemed "sensitive" or "inappropriate." Notably, HB 1557, known as the "Don't Say Gay" Law, prohibits discussions on sexual orientation and gender identity in schools, extending restrictions to other grade levels based on age appropriateness.⁸ According to a Pew Research Center Survey, Florida, like other states, has also implemented censorship legislation, notably banning over 800 books in 2022, with LGBTQIA+ content being the primary target, resulting in the censorship of over 200 books.⁹ This censorship disproportionately impacts minority communities and violates the First Amendment's protection of freedom of speech. Such legislative actions raise fundamental questions about the power and efficacy of the Constitution as a unifying force. How can some Americans enjoy certain rights and freedoms in certain states, while others are completely restricted from exercising these rights in others? When state legislation violates the Constitution,

⁷ Physicians for Human Rights. "No One Could Say: Accessing Emergency Obstetrics Information as a Prospective Prenatal Patient in Post-Roe Oklahoma." *PHR*, 25 Apr. 2023, phr.org/our-work/resources/oklahoma-abortion-rights/?CID=701f40000018pCMAAY&ms=FY20_SEM_GoogleGrant&gad_source=1&gclid=CjwKCAjwT-OwBhBnEiwAgwzrUppfRAMkvss9dWMKrrg0cFbw0ws-INASwbS3avtOfYLukQsXpYDSVhoCphsQAvD_BwE. Accessed 13 Apr. 2024.

⁸ Staff Writers. "Banning Books Is First Amendment Violation." *Wildcat Chronicle*, 20 Oct. 2023, wildcatchronicle.org/14952/editorial/banning-books-is-a-violation-of-the-first-amendment/#:~:text=Book%20banning%2C%20however%2C%20is%20a. Accessed 12 Apr. 2024.

⁹ Pew Research Center. "6. Evaluations of Members of Congress and the Biggest Problem with Elected Officials Today." *Pew Research Center*, 19 Sept. 2023, www.pewresearch.org/politics/2023/09/19/evaluations-of-members-of-congress-and-the-biggest-problem-with-elected-officials-today/. Accessed 12 Apr. 2024.

the Supremacy Clause of Article VI establishes that federal law should take precedence over state law. However, enforcement mechanisms often fail, allowing state laws to persist in defiance of federal mandates. To lessen the division of rights to the American people, the balance of power between the federal and state governments must be reassessed and clarified to reflect contemporary challenges and current societal needs.

Firstly, it is imperative for the federal government to play a proactive role in ensuring the constitutionality of state legislation. By reaffirming the principles of constitutional governance, the nation can forge a more equitable and coherent legal framework that safeguards the rights and freedoms of all Americans, as upheld in the Equal Protection Clause of the 14th Amendment, transcending state boundaries. Secondly, the discretion of state governments to invoke the Supreme Court as a tool for nullifying legislation deemed constitutional should be curtailed by federal oversight. While the Constitution grants states the authority to exercise "police powers" over their citizens, the primacy of constitutional legality should supersede individual state agendas. The paramount concern of the federal government should be the safety and security of American citizens. To avert a recurring nullification crisis in the modern era, there should be a concerted effort to enact more federal laws that uphold constitutional integrity and promote national unity. That's not to say that the powers of the state government would be completely nullified and restricted, although each state must uphold the Constitution through its statutes, and will therefore be liable to any violations overseen by stricter federal oversight. While there is uncertainty in the realm of federal overreach, there is a greater need for oversight of laws involving health and the American way of life safeguarded by the Constitution.

The division of power within the Federal government

The key to the withstanding success of the U.S. Constitution is both simple and commonly noted: checks and balances. Executive, legislative, and judicial are words frequently recited in a United States primary school Social Studies class. Just as the Constitution guarantees that no singular person can amass complete power in America, the document itself was not the brainchild of one man or ideology. It represents an amalgamation of ideas and is filled with compromises, the creation of an Electoral College and a Senate with equal representation for each state among them.¹⁰ But once again, the Constitution *is* a living document. In 1868, the 14th Amendment officially repealed the once constitutionally mandated Three-fifths compromise, and later, the 17th Amendment, which guaranteed that senators would be directly elected to their seats rather than be appointed by state legislatures.¹¹¹² These Amendments prove the beauty of the Constitution: it encourages its own correction for the sake of the American people. But what are Americans today demanding? Americans are not necessarily calling for a recalibration in the power between the different branches of government; rather, each branch of the government as it exists currently desperately needs concrete reform.

According to a 2023 Pew Research Center survey on the public perception of Congress in America, just 36% of all Americans say that members work to “promote the public interest.”

¹⁰ Farrand, Max. “Compromises of the Constitution.” *The American Historical Review*, vol. 9, no. 3, 1904, pp. 479–489, www.jstor.org/stable/1833471#metadata_info_tab_contents, <https://doi.org/10.2307/1833471>. Accessed 12 Apr. 2024.

¹¹ Kareem Nittle, Nadra. “How the Three-Fifths Compromise Changed U.S. History.” *ThoughtCo*, 30 Oct. 2020, www.thoughtco.com/three-fifths-compromise-4588466#:~:text=The%2013th%20Amendment%20of%201865. Accessed 12 Apr. 2024.

¹² United States Senate. “Landmark Legislation: The Seventeenth Amendment to the Constitution.” *United States Senate*, www.senate.gov/about/origins-foundations/senate-and-constitution/seventeenth-amendment.htm. Accessed 12 Apr. 2024.

Meanwhile, the survey finds that 81% of the country believes that congressmen do a bad job at “keeping their personal financial interests separate from their work,” 84% find these national politicians incapable of effective bipartisanship, and 86% feel that congressmen fail at taking accountability for their own actions. While these statistics do not necessarily indict Congress of any specific wrongdoing, they highlight the lack of faith that Americans have in their leadership, where stories run rampant of the government’s inability to either pass a budget that ensures millions of federal employees get paid or agree on legislation that could benefit marginalized communities across the country. In its current state, the United States Congress is defined by partisanship, inefficiency, and bureaucracy. If politicians cannot be relied on to work for their constituents—the job that they were elected to do—constitutional action **must** be taken to address this issue.

Countless suggestions have been made in recent years on how Congress can be reshaped to better serve the American people. In a 2023 article for the National Public Radio, journalist Hansi Lo Wang details several different proposals for proportional representation in the House of Representatives specifically. These include expanding the number of total seats (from 435) and requiring states to use the relatively new method of ‘ranked choice voting’ in elections. Others have proposed the institution of term limits for congressmen, aimed to increase productivity for congresspeople during their term in office. While popular amongst Americans, many experts have questioned its actual value in producing results.¹³¹⁴ In his article, Wang acknowledges the

¹³ Lopez, Ashley. “Term Limits for Congress Are Wildly Popular. But Most Experts Say They’d Be a Bad Idea.” *NPR*, 29 Oct. 2023, www.npr.org/2023/10/29/1207593168/congressional-term-limits-explainer. Accessed 12 Apr. 2024.

¹⁴ Mourtoupalas, Nick, et al. “Term Limits Would Upend Congress as We Know It.” *Washington Post*, 16 Sept. 2023, www.washingtonpost.com/politics/2023/09/16/term-limits-congress-senate-house/. Accessed 12 Apr. 2024.

limitations of these structural reforms, especially in consideration with the clear lack of general consensus surrounding them.

In vain with concerns over proportional representation in the House, the equal representation model that the Senate was designed with under the Constitution has faced heightened criticism. When the first U.S. Census was recorded in 1790, the largest and smallest states (Virginia and Delaware) had a population difference of just under 690,000 people (including non-voting women, children, and slaves).¹⁵ As of the most recent census in 2020, the difference between the largest and smallest states (now California and Wyoming, respectively) is nearly 39,000,000 people.¹⁶ Given the massive and uneven distribution of population across the country today, the system that worked nearly 250 years ago as a compromise between small states and large states no longer works to the same effect that it once did. If the numbers of Senators from each state were decided in a proportional manner, it would mean the death of the small state's voice. Instead, it would simply guarantee that rights and freedoms of those living in a more populous part of the country would not be put in a chokehold by a senator from a smaller state, especially someone in the backpocket of lobbyists and political action committees.

Similarly to the structure of the Senate, the Electoral College has become an undemocratic relic of a past era. American politicians can not in good conscience support the promotion of democratic values nationally and internationally while simultaneously advocating for the

¹⁵ US Census Bureau. "Decennial Census Official Publications: 1790." *United States Census Bureau*, www.census.gov/programs-surveys/decennial-census/decade/decennial-publications.1790.html. Accessed 12 Apr. 2024.

¹⁶ ---. "Decennial Census Official Publications: 2020." *United States Census Bureau*, www.census.gov/programs-surveys/decennial-census/decade/decennial-publications.2020.html#list-tab-799609106. Accessed 13 Apr. 2024.

preservation of the Electoral College. In simple terms: no person's vote should carry more weight than another, and doing so is antithetical to the values that this country was founded on. If the Constitution is a document for the people, the people must be the first priority in conversations about the government structure that it dictates.

This essay barely scratches the surface of the challenges today's federal government must address. Accountability for Supreme Court justices remains a controversial topic and a steep hill to climb by activists, and issues such as gerrymandering and campaign finance reform are at the heart of many of the problems that frustrate modern Americans daily. Though the government is by no means, it has the tools to correct itself for the people of this great nation. Yet the power lies in the hands of politicians, who must propose, support, and pass legislation that they may directly face personal consequences from. This dilemma highlights a question that Americans must be firm in consistently asking their lawmakers on all levels: whose best interest are they working for? The Constitution does not write itself, and as evidenced by the fact that the last Amendment to the Constitution was over 30 years ago, those responsible for its writing are hesitant to take any drastic action. As such, the duty falls on the shoulders of people: Americans have a duty to demand accountability, efficiency, and empathy from their politicians. This is not just a duty for oneself: it is a duty to future generations, a duty to democracy, and a duty to the survival of the greatest nation in the world.

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