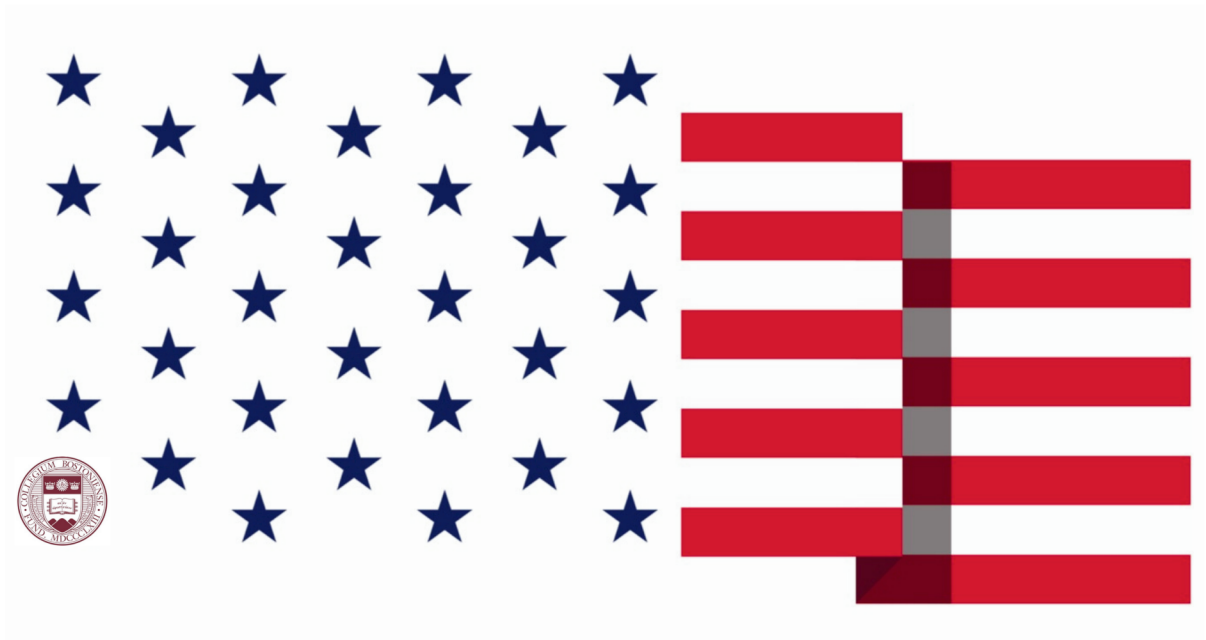


THE CLOUGH CENTER
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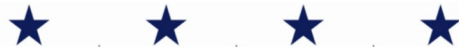
WHAT THE
CONSTITUTION
MEANS TO *US*

An Oral History, Vol. 1



2023

BOSTON COLLEGE



What the Constitution Means to Us

Proceedings from Constitution and Citizenship Day 2022

**ENGLISH ★ INTERNATIONAL STUDIES ★ LAW ★ ENVIRONMENTAL SCIENCES
NEUROSCIENCE ★ POLITICAL SCIENCE ★ HISTORY ★ THEOLOGY**

Table of Contents

Introduction by Prof. Jonathan Laurence.....	3
"Marshall, Kagan, and What the Constitution Means to Me" by Emily Turner.....	4
"it's still at work today" by Jesse Julian.....	6
"What the Constitution Means to Us: Penning Past and Present" by Justin Brown-Ramsey.....	7
"The Lesson That The Constitution Is Reminding Us Today" by Boyu Jin.....	9
"What the Constitution Means to an Aspiring Civil Rights Attorney" by Tracy Werick.....	10
"The Kitchen Table" by Sophia Lodes.....	12
"Breaking the Glass Ceiling" by Anisha Kundu.....	14
"The Prophetic Capacity of the Constitution" by Shaun Slusarki.....	15
"A Personal Connection to the United States Constitution" by Jacob Saliba.....	17
"Respect the Constitution, Someone Has To" by Mathew Malec.....	19
"The Constitution in Numbers" by Marina Rakhilin.....	21
"The Constitution, Social Contract and Living Document" by Barbara Anne Kozee.....	22
"Envisioning" by Meghan McCoy.....	24
The Ills of a 'Paramount' Constitution Without Evolution" by Brendan Mahoney.....	26
"Corruption" by Anisha Kundu.....	28
Remarks by Prof. Angela Ards.....	29
Remarks by Prof. Kenneth Kersch.....	30
Remarks by Prof. Laura Steinberg.....	32
Remarks by Prof. Hosffman Ospino.....	34
Remarks by Prof. Cathleen Kaveny.....	36
Remarks by Prof. Vlad Perju.....	38
Remarks by Prof. Peter Krause.....	39

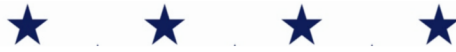


THE CLOUGH CENTER
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CONSTITUTIONAL DEMOCRACY



SCHILLER INSTITUTE FOR
INTEGRATED SCIENCE AND SOCIETY





Introduction

Jonathan Laurence

Director, Clough Center for the Study of Constitutional Democracy



We did something different to mark Constitution and Citizenship Day last year. Instead of the customary lecture by a Constitutional scholar, the Clough Center convened a campus-wide discussion. A mix of students and faculty from different disciplines were invited to submit their impressions in writing, in artwork, or to deliver a few minutes of oral remarks. The Schiller Institute joined with an appeal for submissions related to energy, health or the environment. The results make for compelling reading.



What was on our mind at the time we met in 2022? More than a year had transpired in the presidency of Joe Biden and since the rioting at the Capitol on January 6th. Only a few months had passed since the Supreme Court handed down its *Dobbs* ruling on reproductive freedom. The country was preparing for midterms that featured hundreds of candidates who contested the results of the preceding elections. Opinion polls revealed voters' greatest concern to be the range of threats to our democracy.

It was an opportune moment to start reflecting publicly on the Constitution's meaning. After the breakdown in the peaceful transfer of power, many were shocked that democratic regression and backsliding could take place in a political system with a centuries-old Constitution. For marginalized groups, a crisis in government legitimacy is nothing new: The imperfections of US democracy have long been apparent to them. Recent events have forced a more general reckoning with the fragility of our Constitutional order and the reversibility of progress.

The framing for this booklet is inspired by the playwright Heidi Schreck and her pioneering stage play, ***What the Constitution Means to Me*** (2019). A finalist for the Pulitzer Prize, it was nominated for *Tony* awards on Broadway and enjoyed streaming success online. Schreck's soliloquy on the founding document – told from the perspective of a woman at key moments in her life – is riveting theatre and a galvanizing experience. Discovering a Boston College connection to the play – Sarah Lunnie ('08) was the show's original dramaturg – made an extension to campus feel even more natural.

In these pages, our students and scholars meet Schreck's challenge to join a lively national debate over the state of our union, and they offer a range of fascinating views of the Constitution. One praises it as the ideal-type of state-church separation, whereas another calls it the "greatest American religious document." For one, the Constitution is a bridge, for another it is akin to a river. One challenges us to replace it, while another warns of the consequences of discarding it. The frustrations, the hopes, the scorn and the praise all ring true.

This is not a run-of-the-mill publication. It is a snapshot and a time capsule – a record of impressions that have only been lightly edited from their initial delivery. It is the first volume of what aspires to become an annual tradition.





Marshall, Kagan, and What the Constitution Means to Me

Emily Turner

Graduate Student in Theology

Recipient of the 2022 Clough Prize for Best Submission



When asked to talk about her mentors, U.S. Supreme Court Justice Elena Kagan frequently tells a story about the great jurist and advocate, Thurgood Marshall, for whom Kagan clerked in the 1980s.

During the Court's 1987-88 term, it heard a case concerning what was, functionally, a secretarial error. On its face, the case was far from challenges under the Due Process, Free Exercise, or garnering cases. Rather, the issue before the Court was statutory and procedural.



The case was *Torres v. Oakland Scavenger Co.*, and involved allegations of employment discrimination brought by a group of Hispanic employees in California. The employees lost at the trial level, and appealed their case. But one of the plaintiffs' names was left out on the notice of appeal, and the issue before the Supreme Court was whether an appellate court had jurisdiction to adjudicate the omitted employee's claim.

Justice Marshall's clerks saw a fairly uncomplicated case. What difference, they asked, could it possibly make that there had been an administrative error? Surely, they thought, the anti-discrimination crusading Justice for whom they worked would see that a secretarial mishap ought not preclude appellate jurisdiction over the omitted litigant, depriving the man. Failure to comply with the relevant procedural rule, Marshall wrote, "presents a jurisdictional bar to the appeal" irremediable by judicial discretion.

In her telling, Justice Kagan acknowledges that Marshall's response to the case may be surprising to some, as it had been surprising to her. But, as Kagan reflects nearly four decades later: "He had spent a whole life litigating cases, and knew you cannot expect anyone to bend the rules for you. All you can ask is that they apply the rule straight." Furthermore, she sometimes adds "People who litigated like



I litigated—their salvation was in the rules.’ If he had a chance of success,” she goes on, “it was because of the rules. It was because people decided to take those rules seriously.... Sometimes it worked against you and they put in the wrong name. But especially for people who were disliked and disadvantaged, you needed the rules.” And on that basis, “You better make sure you created a system where those rules are there.”

The lesson, Kagan concludes, was as significant as any she learned from Marshall about the importance of education and eradicating inequality.

The possible lessons, it seems, are myriad. Allow me to suggest two.

First, Marshall, through Kagan, teaches that the **Constitution is neither a manual, nor a magical document** which provides for the resolution of every collision between the many, sometimes conflicting, good things which it endorses. The same text whose Equal Protection Clause provides ultimate grounding for a claim based on employment discrimination legislation also contains the Due Process clause which calls for procedural rigorism in service of defendants’ rights. And yet, Marshall’s life and work testify to the idea that the attempt to resolve such conflicts of values when they arise is not a fool’s errand. Indeed, the procedural rules which precluded an appeal of discrimination in *Torres v. Oakland Scavenger Co.* had been the solid ground upon which Marshall the advocate had himself built case upon case for civil rights, in the days before the Civil Rights Act of 1964 outlawed discrimination in employment.

Second, Kagan’s account of Marshall’s decision in *Torres* teaches that the Constitution itself, and legislation promulgated under it, are not—indeed, cannot be—interpreted the same way. The Constitution furnishes a structure according to which legislators and executives and jurists, with the assent of the American people, co-create a system of laws consistent with their best interpretation of principles articulated at the creation. Neither the principles nor the formal elements constitutive of the Constitution are served by complete capitulation of one to the other.

In its content, and in the fact of its telling, Justice Kagan’s narrative of the *Torres* decision captures what the Constitution means to me. In it, bright-line legal rules, and a Constitution capable of meeting refined moral standards over decades and centuries, exist not in competitive, but in symbiotic relationship; in it, the inveterate advocate is formed, not compromised, as a consummate jurist; and in it, the wisdom of a past which we do not inhabit, and which we have not escaped, lives on in the student-citizens who become its stewards.



it's still at work today

Jesse Julian

Undergraduate, Department of Neuroscience
Recipient of the 2022 Schiller Prize for Best Submission



fighting for the principle protecting liberty for all
finding direction; what's right in what is left
when search and seizure is now considered theft



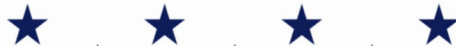
freedom of speech
freedom of religion
freedom of assembly
freedom to petition

framework for the government
made with good judgment
altered with Amendments
to fix the accidental dents

i live under protection
away from misdirection
in this country, i feel safe
but there's still so much to change

like women's rights and healthcare
and breathing cleaner air
controlling the pandemic
and better academics

WHAT THE
CONSTITUTION
MEANS TO *US*



What the Constitution Means to Us: Penning Past and Present

Justin Brown-Ramsey,
Graduate Student in English



In principle, the Constitution of the United States of America is supposed to be a guide stone for representative democracy's social, moral, and legal contracts. While the language in the document is straightforward enough to define and structure our government – as it has done for nearly 250 years – it remains, as with any other notable historical document, a product of its time.

For this reason, especially in recent history, the legitimacy of the ink-soaked parchment is, oftentimes, called into question. Does the document carry the grandeur of its signers, or the wisdom of their pen? Does the manuscript enshrine the sin of slaveholders and warmongers, and are such legacies redeemable? It is hard to say definitively, and even harder to discuss without bringing into question the key differences between various parties who, at the end of the day, are all subject to the norms and rules described therein. It is our job, then, to bring to the forefront our own experiences with handling, living, defending, or dismissing the document, so that its implications – both good and bad – are highlighted for the sake of our fellow citizens.

As a book historian, print culture fanatic, and reader of history, the Constitution's presence in our current moment—which is to say, the frequency that it is brought into consideration, even outside of scholarly, or legal conversation—appears to me to be unique in contradistinction to other historical documents that feature in my work. Unlike Shakespeare's *First Folio* or the Magna Carta, the Constitution is something which, even in a roundabout way, features prominently in contemporary media, at dinner table conversations, behind storied wooden doors at capitol buildings, and so on. It is, unlike many of its well-preserved, oft uncited reading-room-confined compatriots, something with equal parts history and heartbeat.

What do I mean by this?

When scholars write about historical documents, be they printed or handwritten, the context for their creation and implementation often takes center stage. Take, for example, Shakespeare's plays. While a good scholar would convince you of the practicality of finding Shakespeare's themes, motifs, and lessons in our day-to-day lives, there is an extent to which even the most published professor has his or her hands tied, preventing audiences from experiencing life now as governed by the Immortal Bard or his writings.

WHAT THE
CONSTITUTION
MEANS TO *US*



Certainly, new light may be shined on the background for Shakespeare's penning of *All's Well that End's Well*, but how frequently do discussions of Elizabethan and Jacobean England truly cause tension at Thanksgiving Day tables, at protests, or at publishing houses?

The Constitution, by contrast and necessity, has feet planted in both past and present. As alluded to earlier, questions about the applicability of the Constitution often straddle the moment in which it was written, and the moment in which we live. If I, a straight white man, had been born some 200 years ago in

"The Constitution should be viewed as merely a historical document in rare form"

one of the 13 colonies – or at any other point in American history, for that matter – the Constitution would work for me, without question. The rights, rules, and norms of America described therein would require no thought: Such goings-on seem natural and require no contemplation. I could, it seems, count myself a counterpart to the Washingtons, Lincolns, or Roosevelts of the day. But alongside those words which guarantee the promotion of my general welfare, are syntactical choices which set my

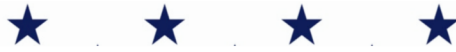
partner, a woman of color, below my caste. Though my partner and I are hardly made to consider such divisions nowadays – the Amendments have codified some of her rights, eventually – the language in the Constitution, as well as the laundry list of less-than-kind drafters who fleshed it out, points towards an always existing tension between the past and present in American law, history, and social fabric. This tension, more than two centuries existent, cannot be ignored.

What, then, is the lesson to be learned from a document which straddles the past and present, which forces its way into contemporary conversations about sex, race, class, indigenouness, wealth, social cohesion, power, obligation, and more? What should be done with it? What should it mean to us?



The answer, in short, is that the Constitution should be viewed as merely a historical document in rare form. Able to direct questions and conversations from past and present (and back again), the formational literature should be treated with cautionary respect. Insofar as it continues to be a signifier – something to inspire cohesion, representative of a Just and Good country – it ought to remain unsullied. However, when the moment arises that we must reconsider not only the document itself, but the people who drafted it and the legacy they left behind, we should feel obliged to wrestle with the past, and write a better future forthwith.

**WHAT THE
CONSTITUTION
MEANS TO US**



The Lesson that the Constitution is Reminding Us Today

Boyu Jin

Undergraduate, Department of International Studies



I see the Constitution as the child of compromises. Its greatest complexity lies within its capability to unite different factions of our society through balancing their influences and allowing compromises to be made. In other words, the Constitution was created through people compromising and it serves the purpose of ensuring that people in the future can compromise with each other when making decisions. The Constitution is the cornerstone of our democracy because compromise is what makes a democracy possible—people who failed to make preferable decisions need to be able to compromise with the result and people who won majority ruling need to be able to compromise with those that lost through compensating part of their interest—this is what keeps a democratic society united and strong.



However, what I am witnessing today is that compromises are becoming harder and harder to reach between people with different backgrounds and opinions. Arguments are becoming more extreme and the capacity to tolerate and agree is much reduced. Therefore, we are in need to remind ourselves of the root of our democracy—the ability to compromise—in order to move away from the personal and partisan interests and focus on the common good. The inability to compromise has significantly reduced our responsiveness to problems such as climate change and environmental protection. And this is not only hurting our own democracy and unity: our lack of leadership in combating international environmental issues have lowered the world's faith over democratic institutions as many countries have turned themselves toward China and the so-called authoritarian environmentalism. Hence, think more for others and the greater good; being able to compromise is the lesson from learning the Constitution today.

The Constitution is only the protector of our freedom when we are able to compromise, otherwise, it will become the handcuffs of our own progression.

WHAT THE
CONSTITUTION
MEANS TO *US*



What the Constitution Means to an Aspiring Civil Rights Attorney

Tracy Werick
Graduate Student in Law



The Constitution's meaning to me has shifted throughout my lifetime. Growing up in the United States, we are taught about the Constitution from a young age. My first understanding of the Constitution was as an artifact, a part of our nation's history. The Constitution is a physical document, which I saw in person at the National Archives on a family vacation to Washington, D.C. I knew the framers drafted the document to establish our three branches of government: Legislative, Executive, and Judicial. I also knew the original document had shortcomings, which inspired the passage of 27 amendments.

The amendments were what captured my attention in high school history classes. **Not merely a set of laws governing our country, the amendments were a timeline—an illustration of changing systems and victories in battles for rights.** After the Civil War, the 13th Amendment abolished slavery. In 1920, women gained the right to vote with the ratification of the 19th Amendment. These major amendments were landmarks, signaling new eras in American history. They indicated progress toward fulfilling the truth set out in the Declaration of Independence that all humans have unalienable rights. Had the 19th Amendment not been ratified, I would not have the right to vote. However, the Constitution also served as a reminder of the work remaining to be done to advance rights and equality. As a law student, I have considered the ways in which we can use the Constitution to advance civil rights.



My understanding of the Constitution has changed significantly from my first day of law school. More than a mere historical record, the Constitution is an essential framework—the supreme law of the United States. In my first year of law school, I learned contracts, property, and criminal law, to name a few subjects. Although these legal areas differed, they shared the common principle that no law, regulation, or statute may violate the United States Constitution. My Constitutional Law class afforded me the opportunity to take a deep dive into the meaning and significance of the Constitution. We studied Supreme Court cases that established the foundational principle of judicial review, defined the bounds of legislative power, and secured fundamental rights for United States citizens.

WHAT THE
CONSTITUTION
MEANS TO *US*



While other areas of law that my classmates and I studied seemed abstract and removed from daily life, Constitutional Law's impact on our lives and choices was eminently clear.

The *Dobbs* decision leaked days before my Constitutional Law final exam. When learning about *Roe v. Wade* and *Planned Parenthood v. Casey*, some of my classmates shared their views and feelings about abortion, and how people's lives would change should the Supreme Court overturn *Roe* and *Casey*. We discussed the Supreme Court's power to expand, uphold, and restrict rights through its interpretation of the Constitution. During my internship with the United States Attorney's Office this past summer, I worked on investigations that used the Constitution and federal statutes to enforce the civil rights of marginalized populations throughout Massachusetts.

I engaged in research relating to the 14th Amendment right to bodily integrity and the 8th Amendment right to freedom from cruel and unusual punishment. I learned that where individuals were subject to cruel and unusual punishment or their bodily integrity was violated, the Amendments can be invoked as tools to combat these harms. Beyond the Amendments, I worked on investigations involving the Americans with Disabilities Act and the Civil Rights Act of 1964. I view these laws as extensions of the Constitution, working to ensure that all Americans equally and equitably enjoy the fundamental rights outlined in the Constitution.

What does the Constitution mean to me? I would have given you a different answer at each stage of my life. Today, my answer is that the Constitution is the foundation of my legal aspirations. By combining Constitutional Law and civil rights work, I believe that attorneys have the power to make a real difference in effecting individual and systemic change throughout the country. I eagerly await the day I obtain my law degree and can join this fight.

"The Constitution is the foundation of my legal aspirations"



WHAT THE
CONSTITUTION
MEANS TO *US*



The Kitchen Table

Sophia Lodes

Graduate Student in History



“What does the Constitution do?”

“Set up the Government.”

That’s the answer taught to students studying for the US Naturalization Exam. Though after six years of teaching citizenship, I’ve learned that the words “set up” doesn’t mean much, if anything, to people still trying to learn English and pass the Naturalization Exam. Any follow up question about what “set up” means leads to blank stares, furtive glances around the table to see if anyone else knows, and a chorus of “teacher, I don’t understand.”



It’s at this point that I break out one of my favorite analogies—the Constitution sets up the government just like you, or your kids, set up the table before a meal. You need some sort of dish—plates, bowls, a serving platter—as well as silverware, napkins, maybe glasses, a table cloth perhaps. You can’t just have dinner without setting up the table, just like we can’t really have a government without the Constitution setting it up, or at least providing some malleable (or not, depending on your interpretation of the Constitution as a living or static document) rules for what powers belong to what branch and what sorts of things are allowed or explicitly not allowed. And just like there are debates about how flexible the Constitution is, there are debates about the requirements for setting up a table.

I like the table analogy mostly because it never fails to help my students understand what “sets up” means, but also because I think it accurately reflects how I think of the Constitution. There are rights that are “staples,” or those basics that are on every table, and then there are rights that have only been granted to select groups of people at select historical moments. Depending on your race, ethnicity, gender, or class, certain parts of your “table” were, historically, missing.

The Constitution is also something you don’t have to think about daily, despite the impact it has on your everyday life. I think about the Constitution at least three days every week during the summer and at least

WHAT THE
CONSTITUTION
MEANS TO *US*



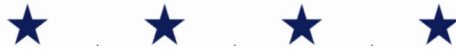
once a week during the school year—because I’m teaching students what it does and what it means in their life. Sometimes I think about the Constitution for myself, but I’ll be honest, when you have privilege you don’t think about it. To beat the table analogy to death, how often do you think about your kitchen table? Probably never, unless you’re thinking about replacing it or it suddenly goes missing. (Maybe you study tables, then yeah, you’re probably an expert who thinks about the Constitution all the time.)

At the end of the day, I hold two truths about the Constitution: it allows me to function as a citizen and define my Americanness based on the ability to dissent, to speak freely, to have equal protections under the law. It is also a fairly inaccessible document in that no matter my personal interpretation of it, those inalienable rights, and how the government is set up depends entirely on interpretations by those in power. I can set up my table however I like, but the Supreme Court decides who eats there and if certain dishes get taken off the menu.

So, the Constitution isn’t really a table after all, it’s more of a contradiction. I recognize the rights it gives me, but I also recognize the limitations and the ways that I have relatively little influence over the interpretation of the document.



WHAT THE
CONSTITUTION
MEANS TO *US*



"Breaking the Glass Ceiling"

Anisha Kundu

Undergraduate, Carroll School of Management



WHAT THE
CONSTITUTION
MEANS TO *US*



The Prophetic Capacity of the Constitution

Shaun Slusarski
Graduate Student in Theology



This December, I will be attending my first gay wedding. On New Year's Eve, my best friend Colin will marry Tim, his devoted and loving partner of three years. Although Colin is a devout Catholic, he is obviously prohibited from marrying his partner in the church that means so much to him.

While there have been significant tonal shifts towards the LGBTQ community during the papacy of Pope Francis, same-sex relationships remain officially forbidden under official Catholic teaching. As a result, for millions of gay Catholics across the globe, the sacrament of matrimony is not an option. Of course, there are far more urgent concerns for queer Catholics and queer people in general than religious exclusion; nonetheless, the Church's persistent anti-gay stance and failure to recognize the dignity of the love shared between people like Colin and Tim undoubtedly contributes to wider homophobic and transphobic trends that can result in deadly consequences.



In light of this context of sacramental discrimination, the Supreme Court's decision in *Obergefell v. Hodges* takes on almost prophetic meaning. In this famous 2015 case, the court ruled that the Fourteenth Amendment to the Constitution requires states both to issue marriage licenses to same-sex couples and honor marriages between same-sex couples licensed and performed out-of-state. The recognition that is denied by the Catholic Church is explicitly affirmed by the Constitution in this ruling. In the majority opinion, Justice Kennedy asserts, "There is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices." Although the decision only affirms gay marriage as a secular rather than a religious institution, Kennedy's affirmation that marriage fulfills "transcendent purposes" signals an acknowledgement of the sacredness of the marital bond. Thus, in the face of the Catholic Church's denial of the goodness and holiness of same-sex marriage, the Constitution attests to the equal dignity of gay and straight couples.

WHAT THE
CONSTITUTION
MEANS TO *US*



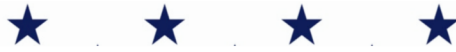
At its best, the Catholic Church is a prophetic community. My own faith life has been nourished by Catholics' witness against oppressive and destructive policies of the state. The church has condemned militarism in official documents such as Pope John XXIII's *Pacem in terris* and the dramatic anti-war protests of Catholics like Dorothy Day and Daniel and Phillip Berrigan. The church has condemned labor exploitation in Pope Leo XIII's *Rerum novarum* and through the activism of Catholic labor reformers like Monsignor John Ryan. The church has condemned ecological degradation in Pope Francis's *Laudato si* and the unyielding commitment of environmental activists like Sister Dorothy Stang.

Yet when it comes to LGBTQ issues, the institutional Church largely upholds stances that harm queer people. Although the majority of U.S. Catholics support gay marriage and countless Catholics throughout the world have sought ecclesial change by living out their authentic sexual and gender identities, the church as a whole fails to adequately respect its LGBTQ members. For many gay Catholics, *Obergefell* represents hope for a more egalitarian future, both in society at large and even in the church. Such advances in the civil sphere not only ensure the rights and protections of LGBTQ people, but they also contribute to the wider transformation of hearts and minds, including (one would hope) those of the Catholic magisterium.

Obergefell thus expresses something of the prophetic capacity of the Constitution. While the Constitution has also fortified fundamentally unjust and even evil social practices, this decision exemplifies its function to foster progressive change. This prophetic capacity, however, is not guaranteed. *Obergefell* was only possible because of the decades-long efforts of countless LGBTQ activists.

Furthermore, the rights that this decision has affirmed are not actually secure. The decision in *Dobbs v. Jackson Women's Health Organization* not only enabled states to ban abortion, but as many have argued, it also signaled the instability of related rulings, including *Obergefell*. **Thus, in order to actualize the prophetic capacity of the Constitution, the people must hold the Supreme Court accountable and make sure their voices are heard.** Those committed to a more just and equitable future must remain vigilant and ensure that the Constitution is used not to restrict people's rights but to uphold and expand upon them.

Although Colin and Tim cannot get married in Colin's church, they fortunately are welcome to do so in Tim's Episcopal Church. The Episcopal Church's commitment to hospitality and justice for LGBTQ people will enable those present to properly recognize the holiness of Colin and Tim's union. It is the Constitution, however, that will help to ensure that the larger community recognize this holy bond as well.



A Personal Connection to the United States Constitution

Jacob Saliba

Graduate Student in History



Growing up as the son of a Lebanese immigrant, my understanding of the United States Constitution and its impact on American political life has been filtered through my father's experiences as a naturalized citizen of this country. The Constitution has played a concrete role in my life in the sense that without Section 1 of the Fourteenth Amendment, my father would not be here and neither would I. Indeed, the ways I reflect on American politics are firmly linked to my family heritage and my father's life here in this nation. He originally left Lebanon in the early 1980s in the heat of the Lebanese Civil



War and found political refuge in the democracy of the United States. During this time, Lebanon was disfigured as a result of widespread poverty, the imminent danger of foreign invasion, frequent acts of terrorism, relentless government corruption, and the sheer lack of socio-economic mobility. Meanwhile, in the United States, my father graduated with a degree at an American university, married my mother, acquired a job with a steady-paying income, and started a family in a quiet suburb of Columbus, Ohio.

For my father, the positive outcomes of his immigration and citizenship status here have remained an important pillar of his own self-understanding; it has also become a litmus test for measuring other forms of political rights around the world. So, when I discuss politics with him, he typically makes interpretations and claims by relying on America's opportunities as opposed to the faults of other countries. Why denounce the Western country that provided him an avenue for social freedom and political stability at a time when neither were available in his home country? The original context of his position is understandable and rightfully so. And, yet, as a student of history and political thought myself, I cannot help but wonder if there may be flaws in his general acceptance of U.S. politics. How many of those problems from 1970s and 1980s Lebanon find their mirror-images in American political life, too? While no two events or places are exactly the same, it is telling how in recent times American culture has manifested many of its uglier

WHAT THE
CONSTITUTION
MEANS TO *US*



shadow-sides. From school shootings and police brutality to income inequality and religious extremism, the question of democracy in the United States is just as urgent as other countries that we normally think of as spatially distant, culturally different, or even politically incongruent.

I often find myself reflecting on the puzzling nature of this difference in opinion that tends to arise in conversation with my father. How is it that he—a Lebanese immigrant—is able to affirm the legacy of the American political system as enshrined in the rights of U.S. Constitution, yet I—an American-born citizen—have less confidence in this framework? Rather than dwell on the theoretical or philosophical claims that may be at stake in this kind of disagreement, I think that my father’s point of view and personal connection to the U.S. Constitution offers a unique, historical perspective for understanding the American system of rights. For a long time, I examined the meaning of Constitutional rights through a narrow lens of its initial context in the Enlightenment tradition and how today’s contemporary culture has responded to this tradition—either critically or affirmatively. While this framework provides various insights, it is unable to fully grasp how a present-day immigrant may come to appreciate the system despite its apparent flaws.

Upon greater reflection, the reason for my evolved outlook stems from the ways in which my own family experience with a Lebanese-born father has “personalized” or “humanized” an interpretation of the U.S.

"this nearly 250-year-old document does not sink in, so to speak, unless I consider it in the context of my father" Constitution for me. Conventionally, we think of Constitutional rights as abstract political goods with assigned meanings in the form of private property, freedom of the press, freedom of religion and so on. And while these liberties are clearly enumerated in the Constitution, the fact of the matter is that this nearly 250-year-old document does not sink in, so to speak, unless I consider it in the context of my father. Over the years, and despite some of my qualms with the current state of American politics, the Constitution still retains a personal connection to me and one which I uphold as an integral feature to my own self-understanding as a U.S. citizen.



WHAT THE
CONSTITUTION
MEANS TO *US*



Respect the Constitution, Someone Has To

Matthew Malec

Undergraduate, Department of Political Science



It's not a popular view on campus, but I believe the Constitution is the greatest secular document ever written. At a time when having a written Constitution that laid out the people's rights was virtually unheard of, our founders came together and made it happen. It is a nearly perfect synthesis of a variety of influences from the ancients to the Judeo-Christian tradition to the Enlightenment. The result has been one of the most stable and effective governing documents ever written; a document that is the bedrock of the nation that has helped hundreds of millions of people prosper and resisted some of the most dangerous totalitarian threats to ever exist.



Democracies around the world have adopted many of its principles such as the separation of powers and checks and balances. Overall, the Constitution has done more to influence and further the Clough Center's mission of cultivating political cultures of healthy liberal democracy than any other document. It is true that our leaders have not always lived up to the principles outlined in the Constitution. For most of our nation's history, African-Americans have been victims of the barbaric institutions of chattel slavery and Jim Crow segregation, and their Constitutional rights were trampled over and neglected. Women were not able to vote in all elections until 1920 and they were not allowed to own property in their own name until the mid-19th century. There is no doubt that while the United States has had many great successes, we also have our share of failures.

But to blame the Constitution for our shortcomings is unfair. The Constitution put the slave trade on borrowed time intending to eliminate slavery down the line, and while we all agree it was wrong today, no country allowed women to vote in 1787. One could credibly argue the Constitution should have done more

WHAT THE
CONSTITUTION
MEANS TO *US*



to curb slavery and it certainly is not a perfect document, but its overall message that government comes from the consent of the people and that there are certain inalienable rights possessed by all are the key components to establishing a liberal democracy, the form of government which has created the most economic prosperity and greatest expansion of human rights by a wide margin.

Today, the Constitution has many detractors. Most of them argue that it is not majoritarian enough. They want to reform the Senate, abolish the Electoral College, or remove the filibuster, arguing that these things are undemocratic. I completely agree that the Constitution could be improved considerably if the goal of politics is to make the state as majoritarian as possible. But that is not what the Constitution set out to do—and I believe the founders were wise to install these guardrails. As Chuck Clough Jr. said “There are two common visions of democratic government. One calls for a government of, for, and by the people, founded on the bedrock of debate and compromise with the objective of creating a society in which basic human rights of freedom of speech, sanctity of private property, and minority rights exist. The other is based on the simple concept of rule by the majority; whoever gets the most votes wins as in ‘I won; you lost.’” The Constitution establishes the former system, while increasing partisans of all stripes, frustrated by their inability to ram their agendas through, are increasingly calling for a shift to the latter. Our politics is now about winning more than protecting people’s rights or finding compromise.

Constitutional democracy should be about more than a majority steamrolling a minority. People have rights that must be unconditionally respected and these rights should be enshrined in a written document. Our Constitution does that extremely effectively.

An effective Constitutional democracy requires balance. The people need means to have their voices heard and must be able to remind the government that it only exists through their consent, but the best Constitutional democracies respect the rights of the minority and force political actors to play by the rules, even when it is inconvenient to their political goals. While our Constitution has faced some of its stiffest tests in recent years and more are likely coming as the obsession with winning engulfs more of our political discourse, thus far it has held up against every challenge and slowed the descent into demagoguery. That said, even a document as great as the Constitution cannot uphold the republic alone. As John Adams said “Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.” To preserve our country, we need to look to the Constitution as the frame that guides politics and upholds order rather than as an obstruction to partisan victories and our side “winning.” If the Constitution is discarded, we all lose.

WHAT THE
CONSTITUTION
MEANS TO *US*



Marina Rakhilin

Graduate Student in the School of Social Work

The Constitution in Numbers

The US Constitution describes a country created by (some) people, for (some) people. The health and well-being of the majority has never been a constitutional priority, but the battle for an equitable country continues.



0

There is zero mention of the word "democracy" in the constitution. Scholars say that the Founding Fathers feared the "tyranny of the majority."



6%

At the time of the first Presidential election in 1789, only 6 percent of the population – white, male property owners – was eligible to vote.



62%

Of the 55 delegates who attended the Constitutional Convention, 34 were lawyers (62%).



4,400

The U.S. Constitution has 4,400 words. It is the oldest and shortest written constitution of any major government in the world.



11,770

The US Constitution is the hardest constitution to amend in the world. The constitution has been amended 27 times out (as of 2022) of 11,770 amendment proposals.



800,000

The 13th amendment outlawed slavery or involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted. According to the ACLU, roughly 800,000 individuals are working while incarcerated. Some states pay prisoners nothing at all for non-industry work.

WHAT THE
CONSTITUTION
MEANS TO *US*



The Constitution: Social Contract and Living Tradition

Barbara Anne Kozee
Graduate Student in Theology



In June 2022, Gallup reported that confidence in the Supreme Court had decreased to a historic low, with only 25% of Americans saying they had “a great deal” or “quite a lot” of confidence in the institution. In the weeks to follow, the Supreme Court would implement rulings such as the rolling back of *Roe v. Wade* that Pew Research polls showed to be inconsistent with the views of the majority of Americans.

How should we look at the Constitution today, when our legal system seems to be facing a veritable crisis of legitimacy? In my view, the Constitution should serve as two things: our social contract and a living tradition. Firstly, a nation’s Constitution operates as its social contract because it

dictates how we are to relate to one another. It determines what we mean by justice and equality and articulates the relationship and responsibilities of individuals and the state. Secondly, the Constitution is a living tradition. While staying true to a nation’s values, it also must be adaptable and applicable to the times in which it operates.

Our current legitimacy crisis reveals issues with these points. As our nation’s politics becomes dramatically polarized, it is starting to feel like we are no longer operating on the same common ground of values, historical analysis, and interpretation of language that holds an imagined community such as a nation together. And we are struggling to enact basic policy responses to social issues, such as explosions of gun violence, in part due to a literalist Constitutional approach stuck in 1789.

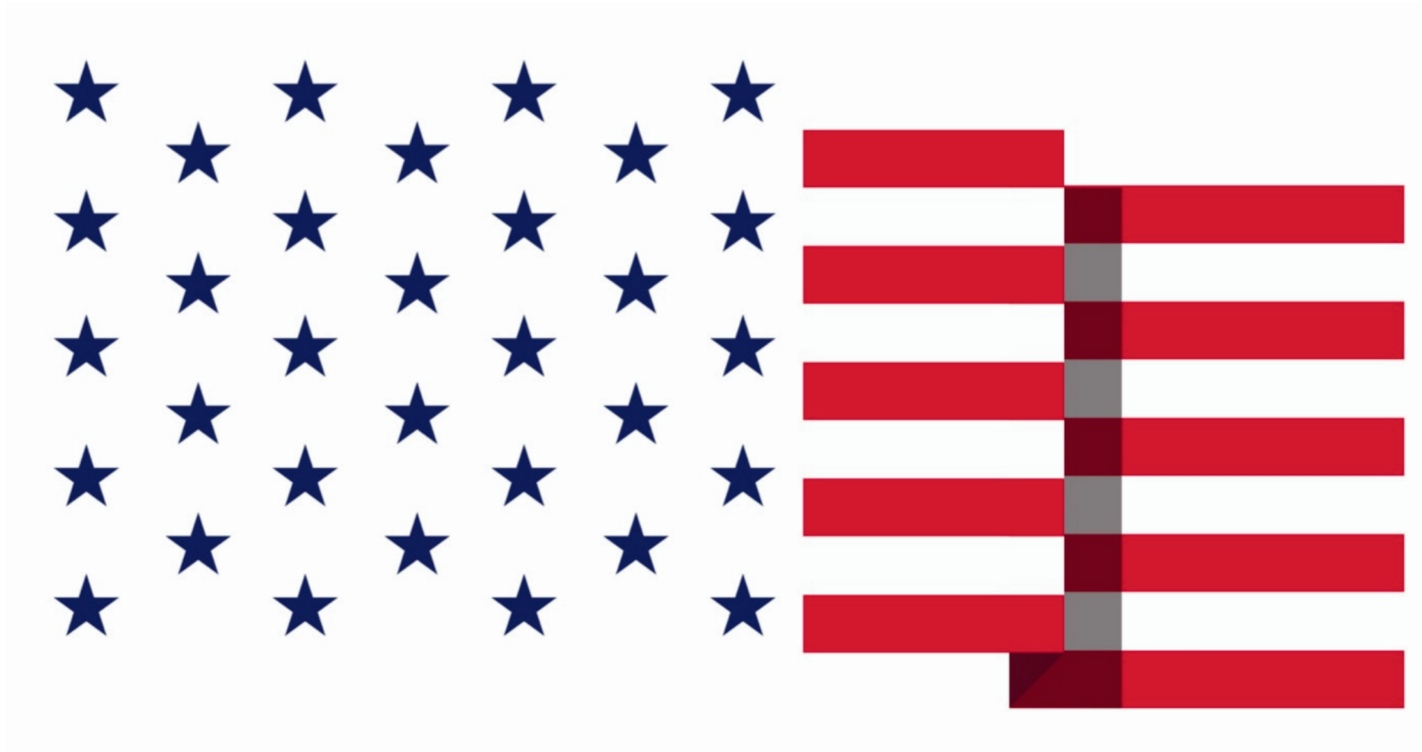
Looking to the Constitution today to maintain our common ground and a distinct, coherent tradition should return us to fundamental questions about our relationships to each other and our world. In this way, we can view the Constitution, in its purest form, as a document of moral philosophy with ethical implications. When those in power interpret the Constitution

WHAT THE
CONSTITUTION
MEANS TO *US*

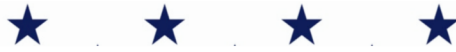


without these values and questions in mind, politics and private interests enter the sphere and our ability to trust in institutions as right and just becomes compromised

Ultimately, the Constitution, as social contract and living tradition, fails to unify when its interpretations by our highest courts do not uphold the common good. The document is hollow without its social impacts, and our current Supreme Court throws the document's ethics into jeopardy with its recent rulings that prove contrary to majority opinions about gender and environmental justice. While it might be naive to suggest that issues of power and political economy should not factor into the interpretation of our founding document, an ideal but impossible reality, I wonder if these Constitutional questions can guide our accountability processes for our branches of government. What are our relationships and responsibilities to each other? What kind of world do we want to live in? On Constitution Day amidst our current legitimacy crisis, these are questions worth returning to.



WHAT THE
CONSTITUTION
MEANS TO *US*



Envisioning

Meghan McCoy
Graduate Student in History



On Sunday, July 24, my uncle committed suicide. A lifetime of depression, loneliness, and liquor had become his daily theme, and I imagine that, when one can no longer make it to the bathroom, any sense of purpose or meaning crystallizes into bleakness quite quickly. My uncle was "not like the brazen giant of Greek fame," and he didn't live a life that you could say resembled someone particularly bold or magnificent, who seemed to exist with "conquering limbs astride from land to land." He lived his final years at my grandmother's house, completing a routine schedule that consisted of Walmart, sports games, and grocery shopping. When I called to talk with her, he never asked to speak with me and I'm ashamed to say that I never asked to speak with him. Such, I suppose, is the nature of regret.



Now, exactly one week to the day of his passing, as I sit and try to think about what the United States Constitution means to me, I can't seem to think of anything remotely patriotic. Instead, all I can think about is that "here at our sea-washed, sunset gates still stands a mighty woman with a torch whose flame is the imprisoned lightning" that the Constitution is supposed to represent. And, to me, that lightning is not a flame that burns or destroys, but one that protects, accepts, and cares for all those who have been made vulnerable in any way, shape, or form. I think the United States as a country has often mistaken power for strength and violence for conviction, and forgotten that the "name of this mighty woman, Mother of Exiles," is an ideal to cherish, not discard.

For, wasn't the Constitution written by exiles, and then changed for the better by those who knew that the United States could never "glow world-wide welcome" if it continued to oppress, discriminate, and hate against everyone who makes this world, and thus this country, so beautiful? I once read that fear is the only thing that can defeat life, and, over the past several years, I believe that we have all seen far too many instances when fear has been victorious, and turned a torch that welcomes into a weapon.



If I ever have children, I don't want them to believe that the Constitution is nothing more than a hypocritical document that could talk pretty but often walked so brutally and inconsistently, ensuring rights and dreams for some but denying them to others. I want them to understand that mild eyes command better than angry ones, and "the air-bridged harbor that twin cities frame" is not meant to be possessively guarded or sealed off, but – instead – lined with compassion, equity, and as much decency as we flawed human beings can muster.

The Constitution shouldn't mean more to me because it shouldn't guarantee more to me than it does to another person. The Constitution, as impressive as it is, is not perfect and it should never be treated as a stagnant relic but a living, breathing reflection of our continued striving for truth, fairness, humanity, and holistic justice. The Constitution is a promise, one that "cries with silent lips keep, ancient lands, your storied pomp!," except here the storied pomp is our own hesitancy and lack of courage to bolster in the Constitution what protects all people and to change that which no longer serves our country.

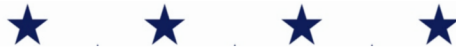
In early July, I visited an exhibit at the Chicago History Museum on, of all things, Constitutional Freedom. A small sign introducing the exhibit explained that the word "freedom" isn't actually written once in the entire Constitution, and thus all Americans would have to fight to define what freedom meant for themselves. This country's history is littered with innumerable instances of what freedom isn't, and today we once again face daunting challenges that reiterate just how precarious freedom can be and how ardently it must be protected. Nothing, even the rights we thought were inalienable, can be taken for granted.

When I read the final few lines of Emma Lazarus's poem "The New Colossus," as a human I'm filled with hope. Yet, as a graduate student in History, I'm filled with sadness. This poem was written after the Civil War destroyed much of the country and the promises of Reconstruction turned out to be hollow and bitter. Native American tribes would continue to face land removal, endless broken treaties, and be decimated by war and disease. The list of horrors both before and after the Constitution was written have continued, and today fill a heartbreaking number of pages that still doesn't seem to end.

Yet, I keep returning over and over again to this poem. In the wake of my family's loss, the words "give me your tired, your poor, your huddled masses yearning to breathe free" remind me of ourselves, that right now many of us are the tired, the poor, the huddled masses yearning to breathe free from whatever keeps us from living with the dignity that we deserve. Despair, fear, and resentment are powerful obstacles, yet they are not insurmountable.

In its best form, **the Constitution is an ideal**, a wish of how we might do better than the generations that came before and an inspiration to build on the legacies left by those who fought for a Constitution that would honestly represent, care for, and protect all of us. Every single person in this country deserves a foundational document that gives them nothing less, and I refuse to believe we are not capable of achieving that. Compassion is not a weakness, and idealism is not a marker of foolishness. I hope for the day when the Constitution truly embodies both, and casts the same light, warmth, and luminous freedom as a "lamp lifted beside a golden door."

WHAT THE
CONSTITUTION
MEANS TO *US*



The Ills of a "Paramount" Constitution without Evolution

Brendan Mahoney

Undergraduate, History Department



Perhaps the most contemporary, yet permanent, debate surrounding the Constitution of the United States is whether or not it should be interpreted strictly or loosely. This debate has existed for almost the entire lifetime of the document, starting almost immediately after its inception. This argument first materialized itself over Thomas Jefferson's advocacy against the National Bank of the United States, in opposition to the pro-bank stance of Alexander Hamilton. Jefferson's argument consisted in the lack of Constitutionality of the Bank, suggesting that it be up to the states, as it was not mentioned explicitly in the Constitution. This debate began in 1791, a mere four years after the creation of the Constitution, showing the contemporariness of the Constitution, in this instance. James Madison, an ally of Jefferson on this debate, in 1788 argued that the Constitution should be the "paramount" law of the land, to be obeyed strictly above all.



There was no problem with a strict interpretation of the Constitution in the late eighteenth century, because of its recent creation. The Constitution was a document built for the time of Jefferson. If the Constitution remained a living document as George Washington had hoped for in his Farewell Address, as he claimed that the Constitution "contained within itself a provision for its own amendment," then it would garner support and confidence from the masses, if it was amended as often as needed. This argument is not necessarily against the strict interpretation of the Constitution from people such as James Madison and Thomas Jefferson. This debate was a prelude to the seemingly never-ending debates about how the Constitution should be understood. This argument is against the modern adherence to a strict interpretation of the Constitution in its current state. We live in a world that is vastly different from the world of the eighteenth century.

When comparing the Constitution of the United States to another democracy, such as France, for example, we see so much more change and modernization of the French Constitution. For starters, France, who declared itself a Republic only two years after we did, has had fifteen Constitutions from then to the present. Additionally, since their most recent Constitution in 1958, they have had twenty-four amendments to that Constitution over sixty-four years.

WHAT THE
CONSTITUTION
MEANS TO *US*



Yet, the United States has only amended its Constitution twenty-seven times over 234 years. France averages an amendment around every three years, while the United States only averages about one every nine years. Somehow, this does not seem to add up.

It is not solely that we need more amendments, but it is also that we need amendments that reflect contemporary issues. To use France again as an example, France has enacted several liberal amendments, while the U.S. has not. France created an environmental charter in 2005 focusing on sustainability, incorporating it into the Constitution through an amendment. The French still believe in the rigidity of their Constitution, but they also believe that it is necessary to have an up-to-date Constitution if it is to be read literally, or strictly. If the definition of having a Constitution that is “paramount” as Madison had hoped, was applied to France, strict Constitutionalism would be appropriate, as it has evolved to suit modernity. However, this definition is not being applied to France by modern Americans, it is being applied by Americans to their own Constitution in the United States.

The Constitution of the United States is an anachronistic document in this day

"The Constitution of the United States is an anachronistic document in this day and age, so strict Constitutionalism is essentially defunct." and age, so strict Constitutionalism is essentially defunct. It is not the same to say that you want an AR-15 under the protection of the Second Amendment, as it is For the founding fathers to say that they want a musket to protect their family from patrolling British soldiers. It is not the same to claim free speech under the protection of the First Amendment when you spew hateful messaging on social media. The Constitution must evolve through amendments, or revision in another sense, if it is to stay viable in the twenty-first century.

It is true that the Constitution needs to be the backbone of the law in the United States, nobody is denying that. But in order for a backbone to exist, it must be strong. Think about it like a suspension bridge. The bridge cannot exist without the suspension portions, but at the same time, if the suspension on the bridge is not strong, the bridge will collapse. If the Constitution is the suspension, and the bridge is democracy, it is clear that democracy needs a Constitution. However, without a strongly evolved Constitution, democracy collapses. Every bridge needs routine maintenance and updating, in order to maintain functionality, and in this case, maintain democracy.

WHAT THE
CONSTITUTION
MEANS TO *US*

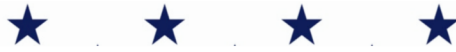
★ ★ ★ ★
"Corruption"

Anisha Kundu

Undergraduate, Carroll School of Management



WHAT THE
CONSTITUTION
MEANS TO *US*



Remarks by Prof. Angela Ards

English



Even the most radical thinkers and activists frame their demands for equality within the words and structures of the Constitution, simultaneously denouncing its flaws while relying on its very ideals. Examples of this include David Walker's 1827 *Appeals*, a fiery jeremiad condemning a slave holding nation written to mimic the Constitution's articles, the Black Panther parties, and the 1966 10 point program that was modeled on the Constitution's 10 amendments and the bill of rights. Even Thurgood Marshall and the NAACP's legal defense fund used very sophisticated, Constitutional reasoning in



cases such as *Brown* so persuasively that the Judge could not resist bending the arc of history toward justice during the mid 20th century civil rights movement. Since our movements have over-relied on the court to secure the civil rights outlined in the Constitution, recent Supreme Court decisions have reminded us perhaps dishearteningly, but not surprisingly, that savvy Constitutional interpretations alone will never overcome social injustices. Rather, as Harvard law professor Nicholas Bowie argues, it is time to revive other tools to build political power.

- It's time for organizing.**
- It's time for movement building.**
- It's time for legislating.**

And this means collectively committing not just to the biannual ritual of voting, but also to the day to day grit of organizing our neighbors, the people around us to commit to collective action. And in this way, we might create once again, a common folk narrative that makes us feel a part of a larger community.

WHAT THE
CONSTITUTION
MEANS TO *US*



Remarks by Prof. Kenneth Kersch

Political Science



The Constitution has meant many things to me at different times, as a lawyer, a law student, a political scientist, a scholar, and as a teacher. Not only has my position changed what it has meant to me, but getting older and the passage of time and witnessing events happening in the world has caused me to rethink positions I've had and even moods I've had about the Constitution.

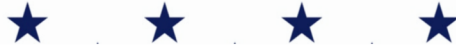
For me, the Constitution embodies a hope for a certain kind of politics in a certain sort of polity. The way I think about the founding of the United States is

that it was an effort by a remarkable group of men in the 18th century to create the conditions best suited to setting in motion and sustaining that type of politics. What is that type of politics? And what is the basis of that type of politics?

In Political Science, it's some pretty basic concepts: popular rule and popular sovereignty. In that sense, the Constitution is a hope for a Republic for popular government. It was a hope of a certain type of government that was calibrated appropriately, given the society they knew and who they were, to adequately empower the governments of the United States and to limit the governments of the United States.

And if I were to even distill further from that popular sovereignty, liberal democracy and republicanism where I am now with the Constitution, I confess I'm not feeling so good. The Constitution was always meant to manage political contention in a pluralist polity. I know enough about the history of the United States to generally steer away from saying that bad things in the present are unprecedented; it is a very raucous and bitter history at times, and it has been even a violent history at some times, including a Civil War, which was at best a Constitutional dispute. Even acknowledging that difficult history, we are not in a good place right now.



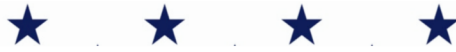


January 6th was one of the worst things to happen in U.S. history. Not just the storming of Congress, but the things that are continuing to happen now, make it one of the worst things that ever happened Constitutionally to the United States. And people today — especially given the media environment — move on as if it is routine. There is nothing more important to our system than the peaceful transfer of power between parties in a presidential election. Constitutional maintenance depends on a modicum of unwritten norms concerning civic spirit: Good faith participation in a pluralist polity, generosity, honor, self restraint. The current state of the party system is a very real threat to the future of the Constitution itself. In my view, vindicating the founder's hopes means we need renewed effort to restore an appropriate civic spirit.

Will that happen anytime soon?
I really don't know.



WHAT THE
CONSTITUTION
MEANS TO *US*



Remarks by Prof. Laura Steinberg

Schiller Institute



I happen to have been a very informed, bookish kid. I grew up in Newark, New Jersey in the mid to late 1960s, when something called the urban race riots of the mid '60s were occurring throughout the country. Sometime in the mid 1960s, a report came out in 1968 that President Johnson had created a commission. It was called the President's National Advisory Commission on Civil Disorders or the Kerner commission report. And I read that report when I was 14. Cover to cover.



What I read in this report was an analysis about what had happened on the streets of Newark and Detroit and Chicago in other

places. And the Kerner commission wrote in uncompromising language that our nation was moving toward two societies, one black, one white— separate and unequal. And it said that white racism was what fueled the riots, putting the problem clearly at the feet of the American people. So I was confused. As a kid, I was trying to square that with what I had learned from the Declaration of Independence, that all people are created equal. And from what I knew, the triumphs we were having as a nation in promoting equality and equity in *Brown v. Board of Education*, the Voting Rights Act, and the 24th Amendment that outlawed the poll tax.

So I knew all these things were happening, but I was seeing in front of me, something that was very, very different. And so living in Newark at the time and growing up in what was really a center of black nationalism, I believe the Constitution was letting us down. I was really unhappy and kind of scared for the future.

And, at the same time, there was this big prevailing rhetoric about anticommunism and the Red Menace. I started to question whether there was any way that we could construct a government that served all people with compassion and for the common good. And I know that over time, the Kerner commission's study has met with much historical critique and review. As a young person, however, reading that study really spoke to me of the problems that our country was facing and in an uncompromising language. And then a bit later along came Watergate and I was riveted by the Watergate hearings.



I had learned about impeachment as sort of a theoretical provision of the Constitution invoked only once for the infamous president, Andrew Johnson. But now it was playing out in real time in my living room. It brought up the question; what are the moral as well as the legal obligations and standards of conduct that we expect our civic leaders to live up to? And then I was fascinated again, as a high school student by the realization that the Constitution wasn't a cut and dry document, that for example, we needed to debate what an impeachable offense was, what did other high crimes and misdemeanors mean? Later in high school, I was appointed a Congressional page to the 94th Congress, and that's when I saw up close the provisions of the Constitution working. I was there for the Constitutionally mandated article two, section three, clause one, State of the Union address by president Darrell Ford, in which the President is asked to periodically give Congress information of the state of the union and recommend their consideration such measures as he shall judge necessary and expedient.

Later on, I went to grad school in environmental engineering and took an environmental law course in Duke's Law School. And I realized that the material in that course was so central to the efforts that environmental engineering students were making to clean up pollutants and to save ecosystems and biodiverse environments that I needed to educate my fellow grad students and environmental engineering faculty. On the aspects of the Constitution that would put our engineering work actually into practice. I learned about the spending and general welfare clause. I learned about and the property clause, which gives Congress the right to make laws about federal land. My graduate seminar, when I was supposed to be talking about my research on wastewater digestion tanks, then became a kind of a lecture on the Constitutional underpinnings of the Clean Air Act, the Clean Water Act and the Endangered Species Act. Fast forward to now and here I am running the Schiller Institute for Integrated Science and Society.

But attempts to use the Clean Air Act to regulate these gasses continue to go awry as challenges to EPA regulations, attract court challenges or challenges to those regulations, which are met with support at the Supreme Court. For example, earlier this year, the Justices decided in *West Virginia v. EPA*, that the EPA is limited and its power to set limits on emissions from coal fired power plants under the clean air act. For the EPA to go further, Congress would have to be given the authority to regulate quote, major questions. But since Congress has not made additions to the clean air accent to the 1990s, it doesn't appear this is gonna happen anytime soon. An underlying problem in the clean air act is that it spells out specific gasses and types of particles for regulation, but doesn't include greenhouse gasses as these were little known 30 years ago.

The Constitution has provided a constant source of intriguing questions for me to ponder, and it has intersected in significant ways with my life. I return to it again and again, hoping that it is sturdy enough, flexible enough, and fair enough to take all of us, to take all of us safely into the future.



Remarks by Prof. Hosffman Ospino

School of Theology and Ministry



Why do so many immigrants or so many people throughout the world want to come to the United States of America and become part of this nation? I was born in Colombia, South America, and migrated to the United States 25 years ago.

Migrating to the United States of America meant that I left not only my family, friends, and culture behind, but also a particular way of being a citizen, a way of being a citizen in Colombia. That particular way of being a citizen in Colombia was shaped by history, by convictions, and also by ideals that the people who wrote the Constitution had in their minds at the time.

It was shaped by an understanding of what it means to be human, an understanding of what it means to be a community and ultimately an understanding of what it means to be a nation. Colombia also has a rather new Constitution, which was drafted in 1991. That Constitution within which I grew up was written in 1886. I was 16 years old when I saw a nation change its Constitution, change the grammar that made it what it was. Each of these Constitutions, 1886, 1991, reflected two different ways of being. Two different ways of being a nation. When I migrated to the United States of America, I was exposed to my third Constitution.



This time I was not given a Constitution, I was embracing a Constitution. I did not come to the United States of America because of the Constitution. I did not read it prior to migrating into the United States of America. Most immigrants never read the Constitution prior to coming here, but we came to the United States of America and wanted to become part of this nation because of the mystery and the magic that the Constitution created and makes this nation be what it is. Obviously not perfect. Of course, always with room for development and growth. As an immigrant, I did not take the idea of citizenship for granted or lightly. For many years, my wife and I thought about what it meant, the commitment. And it was by reading the Constitution together that we made that commitment. We said “yes,” because we believed in what this document is actually attempting to do in this nation.

**WHAT THE
CONSTITUTION
MEANS TO US**



I don't take the Constitution of the United States of America for granted today either. I chose to be a citizen of this nation, mindful of its values and its commitments mindful of its limitations. I studied the Constitution and pondered about its commitments.

What does the Constitution mean to me? The Constitution of the United States of America means that I choose as an immigrant to be part of the way of being human that appears in this particular document. I choose to be part of the community that this document has put together or brought together. And I choose the particular way of being a nation that the Constitution continues to inspire. I have two children, the children of immigrants. Now I, the immigrant who chose the nation, am teaching my children how to love, not only the United States of America, but its Constitution. And I know that I'm not the only one; millions of American citizens born and raised in the United States of America are growing up with immigrants like me, teaching them the Constitution and the miracle that the Constitution has created in this nation.



WHAT THE
CONSTITUTION
MEANS TO *US*



Remarks by Prof. Cathleen Kaveny

Theology



I began thinking about this question by turning to the preamble, which I am going to read but not sing because that would be a violation of the Geneva Convention:

"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 the 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."

Then follows the seven articles of the Constitution and the 27 amendments, the first 10 of which are the Bill of Rights. The Constitution was written in 1787, ratified the next year, and has been in operation since 1789.

How do I think about it? Drawing on my experience as both a lawyer and a theologian, I think of it as a secular scripture on the one hand, or a sacred compact on the other. By secular I don't mean irreligious, but of pertaining to an age or to an era. If you think of the Latin phrase *in saecula saeculorum*, meaning

"from age to age," or "forever." You get the idea. Our Constitution was designed to constitute and to accompany a people from age to age. It is broader than a contract and more compassionate than a will. By sacred, I actually mean both meanings of sake in Latin on the one hand, sacred, holy, and consecrated. And on the other hand, cursed, horrible, and detestable. It is sacred, holy, and consecrated in its vision of liberty and equality. But in some respects, it is also cursed, horrible, and detestable. William Lloyd Garrison called the Constitution "a covenant with death and agreement with hell" because of its entrenched racism and slavery, without even mentioning the word.



WHAT THE
CONSTITUTION
MEANS TO *US*



What do I mean by saying our Constitution is our nation's scripture, our secular scripture? The key words here are, as many people have noted, "We the People." They are intrinsically related to thinking of the Constitution as a kind of scripture. If you think of religious scriptures, such as the Hebrew Bible or the Christian Bible, the scriptures constitute the people and the people interpret and give life to the scriptures. The people and the scriptures are mutually defining. The Hebrew Bible for example shows that the Jewish people are constituted by their covenant with God. As they move through time, they reaffirm and reinterpret the application of that covenant to them. But there are also stories in both the Old and the New Testament, in both the Christian and the Jewish scriptures, about how the people failed the scriptures and even how the scriptures failed the people. That is true of sacred scripture, but also of our secular scripture, the Constitution.

Honoring our Constitution means recognizing the ways in which we have failed it and it has failed us. Let us go back to that key phrase. "We the People." Who are the people? They are not just the founders who signed the document, nor the population of the original 13 Colonies. "We the People" is us, as we stand in both continuity and difference with them, even if we weren't there or could not have been there, because we are women, people of color, certain kinds of immigrants, with certain kinds of histories. We take their original ideas, extend them, transform them, and correct them as we move through time. We then hand the label. "We the People," the peoplehood of our nation, onto the next generation as their gift and their task. And they do the same with us in audacity and humility.

"We the People" is the key to the text and to the country. What is its basic challenge? In my view, it is negotiating the tensions of particularity and unity on the level of individuals, families, communities, states, and the nation itself. One of our nation's earliest mottos, *E Pluribus Unum*, is "out of many one." It was on the first great seal approved by Congress in 1782. We have done this negotiation well at times. As Jacob Saliba noted, the 14th Amendment states that all persons born in the United States, no matter where they are from, are citizens of the United States. Our unity is enriched in each generation with each child's birth, with diversity. We have recognized the creativity of immigrants in their place among us, as noted through Megan McCoy's quotation from Emma Lazarus's "The New Colossus," which adorns The Statue of Liberty. But we have also done this badly in our treatment and appropriation of the land of Native Americans, in our enslavement and appropriation of the bodies of African Americans, when the United States Supreme Court permitted the internment of Asian Americans in camps in the course of World War II, and in our betrayal of our own citizens on the basis of fear. Is there a second chance, a third chance, and a fourth chance?

Is there mercy in the interpretation of our secular scripture? Well, I do think that in remembering our flaws and humbly confessing them, we can begin to correct them. But we also need appropriate interpretations, appropriate glasses to our scripture. We need the hope kindled by Martin Luther King, who corrected the Constitution and the light of the Declaration of Independence, when we hold these truths to be self-evident that all men, all people, are created equal. But we also need the humility and compassion of Abraham Lincoln in his second inaugural address when he urged us to not forget our sins, but to bind up our wounds "with malice toward none and charity for all."

That is what the Constitution means to me. And I have hope that it will continue to mean much to the generation that follows mine.

**WHAT THE
CONSTITUTION
MEANS TO US**



Remarks by Prof. Vlad Perju

Law School



Does Constitutional meaning change over time? Look at the job, it's not a hard question. Yes, it does. How Constitutional meaning changes over time is only a slightly harder question. It changes when the justices of the Supreme Court change, when doctrines that seek to stabilize Constitutional meaning, what lawyers call *stare decisis*, become weaker. It changes when political, cultural, and social forces align to bring about such change. But there is a further, and to my mind, harder question: Why do only some Constitutional meanings change, but not others?



Take two examples out of many. First, the Eighth Amendment prohibition on cruel and unusual punishment does not outlaw capital punishment. Nor does it prohibit the punishment of life in prison without the possibility of parole for children, or to speak law, for juvenile offenders. The Constitutional meaning of “cruel and unusual” has long been compatible, with some qualifications, with these forms of punishment. Why is this the case? It is because the community standards by which to interpret punishments as “cruel and unusual” allow it. Now the hard question: How do we define the community? If defined narrowly, then these harsh punishments will be allowed and perhaps with others, some even more cruel. What if we define it broadly? The world community has long retired both the death penalty and life imprisonment without the possibility of parole for children from the repertoire of humane and decent punishments available to the state.

My second and last example is the meaning of Constitutional equality and Constitutional liberty. Officials in the United States are not mandated to pass laws or enact mechanisms that meet the social needs of individual right holders. Constitutional liberty or equality does not recognize the right of access to healthcare, the right to education, adequate nutrition, shelter, or access to sanitation. Why not? It seems like an easy question; because the Supreme Court said so. In the context of education, the Court made its ruling in a case it decided in the early 1970s in a five to four decision. Constitutional meaning settled and cast in stone by one vote. Why hasn't that meaning changed? Not an easy question, but not a terribly hard one either. It is because of a concern that it would open a Pandora's box of positive rights that would obligate the government to act, as opposed to refrain from doing something like interfering with speech or discriminating or torturing people.

It seems that a Constitution of positive rights is unimaginable, but is it? It's certainly been imagined. For some time now it has been implemented with some considerable success in the Constitutional system of other political communities that are both committed to the rule of law and to a market economy. We must continue to ask the hard questions of the Constitution and of ourselves.

**WHAT THE
CONSTITUTION
MEANS TO US**



Remarks by Prof. Peter Krause

Political Science



I research and teach about political violence, national movements, and Middle East politics in part because when I was growing up in the late 90's and early 2000's, I felt that despite significant involvement of the United States in the region, the Middle East was a key area that few Americans, including me, really understood. And I thought that this lack of understanding significantly endangered both Americans and the many proud peoples of the Middle East. American democracy was something that had its flaws, but that I and many others at the time assumed was in decent shape and not under significant threat. Two decades later, things have changed.

I speak to you today as a proud but very concerned American. The Constitution is impressive. It's impressive because it was so much better than anything that had come before or existed at the time. And its creators deserved to be praised for their bravery and genius, winning our country's independence and subsequently designing a real lasting democracy. I study national movements. Let me tell you, the vast majority never achieve self-rule. And many of those who do effectively fight for freedom fail to effectively consolidate it with strong institutions, backsliding into tyranny. Our Constitution is one of the biggest reasons we have had a relatively stable and successful democracy for two-and-a-half centuries.

However, the Constitution is also inadequate. It is inadequate because although it was better than what had come before, it was not enough to live up to our founding principles, treating all of us as whole people, equally with the right to vote and participate fully in government and society. Thankfully, after generations of struggle, some of those inadequacies were addressed in Constitutional amendments. Nonetheless, the Constitution remains inadequate and inadequately protected for a vibrant healthy democracy.

Some say that American democracy was a system designed by angels so that it could be run by devils. America's founders were certainly no angels, nor were they representative of a society as a whole. However, they did skillfully design a revolutionary system of government while not being embedded in partisan politics, as robust political parties like we have today did not exist in the 18th century United States. In fact, parties and

**WHAT THE
CONSTITUTION
MEANS TO US**



factions had such a bad name in the era of the American Revolution that George Washington devoted a third of his 1796 Farewell Address to warning about the dangers of political parties. In it he argued that parties “serve to organize faction, to give it an artificial and extraordinary force; to put, in the place of the delegated will of the nation the will of a party ... They are likely, in the course of time and things, to become potent engines by which cunning ambitious and unprincipled men will be enabled to subvert the power of the people and to use surp for themselves the reigns of government destroying afterwards, the very engines which have lifted them to unjust dominion.” Rarely have more prescient words been spoken.

Politicians come and go, but the foundations of American democracy are its liberal institutions embodied in our Constitution. Free and fair elections, an independent judiciary, a free press, and apolitical military and intelligence services are a few of these institutions. George Washington, America's first and most important leader, recognized this when he willingly left the presidency in a time with no term limits, placing the country and its nascent institutions over personal ambition. These institutions protect American values that are not the sole property of any individual or party. And they embody foundational principles of freedom, equality, and justice that structure our politics and society.

Unfortunately, each of these institutions, which are supposed to be impartial public servants, are themselves increasingly penetrated by partisanship as the number of institutionalists who put process over party continues to decline. Instead of a system designed by nonpartisans to weaken the influence of partisans, American democracy has become a system designed by partisans for partisans. There are innumerable examples, whether it is gerrymandering; secretaries of state that openly aim to shift the rules and outcomes of elections to favor their own parties; or an increasingly partisan and polarized Supreme Court, whose nomination process, oral arguments, and decisions are increasingly captive to the same power seeking parties that have ossified Congress. The Constitution and the democracy it created are currently being warped in spirit and in practice.

In some sense, we shouldn't be surprised that the Constitution is inadequate. One can read it in under a half an hour. I know because I did right before I spoke here after wondering how long it would take. The entire basis of our country can be consumed in less time that it takes to watch a single episode of a television show. We've had nearly the same Constitution for the last 50 years, more than my entire lifetime, and yet so much has changed in our politics and society in that period. I realize now that the Constitution is just a foundation and that every generation has to work tirelessly to fill in the gaps, to protect the Constitution and ensure that its application reflects our true values. How many of us here truly define ourselves as institutionalists, or even know what that means? Where is the robust movement whose primary purpose is to promote and protect the Constitution and the liberal rights and institutions that it establishes, rather than to do everything possible to degrade the process on the path to power and influence?

The fight for a more perfect union lives on and it requires a new generation to do something that is unfamiliar to most of us – passionately struggle for process, not just party. And fight first and foremost for the values and institutions the Constitution established. Thinking about what the Constitution means to me, and to all of us, is a good start. But it will be a lot of hard work to ensure that 20 years from now, when this ceremony is still going and hopefully marked by optimism for healthy democracy, we have actually built something, rather than just speeches about how it all went wrong.

**WHAT THE
CONSTITUTION
MEANS TO US**



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