

## The Breakfast Club

### Constitutional Minute for 21 September 2024

#### Should America Replace its Constitution? Is the 1787 Constitution Still Relevant Today?<sup>1</sup>

Cries of “[the Constitution is outdated](#),”<sup>2</sup> “[the Constitution has failed us](#),”<sup>3</sup> “[\[the Constitution is\] a malfunctioning piece of junk](#)”<sup>4</sup> are being heard with increasing frequency and stridency. Should we take these complaints seriously?

Criticism of the Constitution is not new; we’ve all seen the bumper sticker: “[The Constitution: frustrating liberals since 1789](#).” And as we all know, the Constitution was criticized even *before* its ratification. Antifederalists pointed to several worrisome features, particularly the ambiguous language used throughout which would likely encourage spurious interpretations of its words, particularly by the courts. “Brutus” argued that “[t]his power in the judicial, will enable them to mould the government, into almost any shape they please.”<sup>5</sup>

Exactly one hundred years ago, political scientist John Burgess warned in *Recent Changes in American Constitutional Theory*, of a growing expansion of federal government power, which he traced to governmental overreach beginning during the Spanish-American War of 1898 and continuing in the “progressive Republicanism” of Theodore Roosevelt.

In 1912, Woodrow Wilson, without a doubt our most anti-Constitution President, tried his best to get Americans to see the document as “[living](#),” not static: “*All that progressives ask or desire is permission - in an era when ‘development,’ ‘evolution,’ is the scientific word - to interpret the Constitution according to the Darwinian principle...*”

And by and large, until recently, the Supreme Court has given progressives all they have asked for, particularly a Congress “unburdened” (a very popular adjective today) by any limits on its powers, particularly the spending power.

Over the last one hundred years, the Court gave progressives the unrestrained regulation of all things commerce, whether involving an interstate transaction or not,<sup>6</sup> abortion on demand,<sup>7</sup> sodomy,<sup>8</sup> homosexual marriage,<sup>9</sup> cross-dressing in the workplace,<sup>10</sup> and (although recently reversed) the power of executive branch agencies to interpret the laws with great latitude<sup>11</sup> making “rules” with the force of law.<sup>12</sup>

Yet this isn’t enough for the progressives: not by a long shot; we are not yet the socialist utopia they have dreamed of. Americans can still think and say largely what they wish in public; they can keep and bear firearms for self-protection and even carry such firearms in public in 36 of the 50 states.<sup>13</sup> Their property is still largely protected from government confiscation. The states (through electors the states choose however they wish) still elect the President and Vice, and

the President must still compromise with Congress to get his favored legislation passed. Through the filibuster, the Senate still operates as a check on the popular but ill-conceived ideas of the House.

What else do progressives want? For that answer we should take stock of their social and legal philosophy. According to political scientist Richard Epstein in *How Progressives Rewrote the Constitution*, that philosophy includes:

1. “A belief in the power of science and economics, **employed by government**, to lift up the economic and social position of the general population.”<sup>14</sup> The thought of wielding the power of government to “lift up” favored groups is an elixir to a progressive. Progressives gave us Social Security and the plethora of welfare programs we now have.
2. A “**realist**” rather than “formalist” approach to jurisprudence. “[Formalism] they dismiss as ‘blind’ to the massive power shifts in social relations that took place with industrialization following the Civil War.”<sup>15</sup> Progressives believe strongly in a “living” Constitution and are flummoxed by the challenging Article V amendment process.<sup>16</sup>
3. Progressives believe that “the extensive interconnection of all aspects of the American economy crie[s]out for **federal regulation**.”<sup>17</sup> Today, Executive Branch agencies answer that “cry” by regulating everything that moves and many things that don’t.
4. Progressives believe that “the ever greater **inequalities of wealth** justifie[s] overriding constitutionally protected rights of liberty, property, and contract, ...the ‘public interest’ [i]s to reign supreme.”<sup>18</sup> Today, increasing cries to “tax the rich” are heard despite the fact that “the rich” already pay a disproportionate share of federal taxes. In 2021, the top 1 percent of wage earners earned 26.3 percent of total AGI and yet paid 45.8 percent of all federal income taxes.<sup>19</sup>

With the help of great progressive justices like Oliver Wendell Holmes (1902-1932), Louis Brandeis (1916-1939), Hugo Black (1937-1971), William O. Douglas (1939-1975), Harry “Roe v Wade” Blackmun (1970-1994), and Ruth “the Notorious RBG” Ginsburg (1993-2020), progressives have made great strides towards molding America into their ideal society<sup>20</sup> Today’s trio of Elena Kagan, Sonia Sotomayer, and Ketanji Brown Jackson, will try their best to push the six conservatives on the bench in a progressive direction.

The “flaws” progressives see in our Constitution run the gamut from marginally thoughtful arguments to the undecipherable. Some of the more popular:

- “The Electoral College is an institution born of slavery.”
- “The Electoral College, has protected and enabled an increasingly extremist GOP.”
- “The U.S. Senate gives vast overrepresentation to sparsely populated states like Vermont and Wyoming.”
- “A federal judiciary with lifetime appointments allows political minorities from the past to dominate present-day majorities.”

- “The Constitution was drafted in a ‘pre-democratic era’... it did not fully provide for what is now called a liberal democracy.”
- “District of Columbia residents have no representation in Congress.”
- “There’s no reason to let folks who have been dead for 200 years tell us what kind of country we should have.”

These complaints are easily addressed; but I wonder how many of them the average American could refute.

I’m concerned that progressives are trying to change or replace a Constitution they see as an obstacle to “progress” but I’m more concerned that these increasing attacks on the Constitution go without rebuttal--none at all!

Author Louis Seidman, looking like a typical, disheveled progressive, [makes the rounds of Ted Talks](#) parroting his book’s major conclusion that “we should simply ignore the Constitution,” and the audience nods in agreement. Will Ted Talks even allow someone to defend the Constitution?

[Here’s one of the progressive’s lovely ideas](#) for a new Constitution. I predict this would become known as the “Indigenous Nations Constitution” and you’ll see why. Notice they want to return “reproductive rights” to a constitutional guarantee, guarantee each citizen over 18 a lifetime annual income, and there is not a single word about gun rights. The Senate becomes simply a smaller version of the House. Individual concentrations of wealth are denounced as having corrosive effects on “a republican form of government” (gotta throw the Republicans a bone now and then, right?). Elections come under the control of a National Election Commission independently funded by the Federal Reserve. One saving grace lies in the fact that ratification requires affirmation by 60% vote of the people, a very high hurdle.

Where are the Defenders of the Constitution?????

We don’t need an [1842 Serbian political group](#), but we do need a group of knowledgeable, articulate, average citizens (which I think would carry more weight than a group of constitutional scholars) willing to “go to bat” on behalf of the Constitution. If the only “voices” the American public hears are those of blinkered progressives, the inevitable result will be the eventual replacement of our venerable Constitution, the longest serving Constitution in the history of the world, “the most wonderful work ever struck off at a given time by the brain and purpose of man,”<sup>21</sup> with something much, much worse. Much worse, that is, if you value your economic and intellectual freedom, your freedom to say what you think, your freedom to own a firearm, your freedom to live where you want (see the UN’s Agenda 2030), etc. I can guarantee that after living under a progressive Constitution for a few years, we’ll be “spending our sunset years telling our children and our childrens’ children what it was once like in the United States where men were free.”<sup>22</sup>

The famous theoretical physicist, Albert Einstein is quoted as saying: “The strength of the Constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are the constitutional rights secure. Thus,

a duty is imposed on everyone which no one must evade, notwithstanding risks and dangers for him and his family.”<sup>23</sup>

Maybe we don't have a *Defenders\_of\_the\_Constitution.org* website because the average American's knowledge of the Constitution is dismally inadequate, even to counter sophomoric statements like some of the above. Can you explain the original purpose of the Electoral College? Can you refute the claim it is “rooted in slavery?” All the information you need to form your arguments is at your fingertips on the Worldwide Web.

Progressives need not know anything about the history of the Constitution to make their outlandish claims (and their ignorance probably helps them), unfortunately for us, we need to know the document very well to counter these usually emotionally-based claims with solid facts.

Forensic Debate is not a tradition we Americans cherish, as it is in Britain for instance (for an example, simply watch the always civil and articulate debates during Prime Minister's Questions Time; or find a recorded debate at Oxford University).

We Americans know next to nothing of the Constitution's design and features, as evidenced by poll after dismal poll and thus we are reluctant to even talk about it beyond “bumper-sticker-level” statements. Even CNN complains that [“Americans Know Literally Nothing About the Constitution.”](#) Which means that claims that “the Electoral College is an institution born of slavery” will continue to sit unchallenged. Americans keep hearing that we live in “a systemically racist country.” Without rebuttals to the contrary, such a claim stands alone in the public square.

So how do we get better at speaking out? Do we simply stand out in front of Walmart and start reading the Preamble out loud? Or is there a less-conspicuous way to defend the Constitution's genius? Enter Quora.com

I joined the Quora community in April 2013 and started answering questions a year later. Over the last ten years ago, I've answered thousands of questions; not all of them having to do with the Constitution of course, many dealing with politics in general. Some people see I'm a retired Air Force pilot and ask aviation-related questions.

As of noon last Thursday, over 1.8 million people have viewed my answers and 16,000 people thought an answer worthy of an Upvote. That's actually not a lot of upvotes; but I don't sugarcoat my answers, I explain the situation as I see it and call a spade a spade. If a question is too vague to know what they are getting at, I tell them. And I don't take much time in answering; if a question will require a lot of research, I'll generally pass. You can take as much or as little time as you wish. You can answer each question posed to you or none of them. Quora has some “be nice” rules you have to observe, and I've only had a handful of answers “collapsed” (as Quora calls it, meaning no one will see them). You always have the opportunity to edit your answers after a complaint.

But I've noticed over the years, my answers have gotten more succinct, more cogent, and I think, simply better. I don't know whether I'd yet be comfortable sitting at a table on a college campus like Charlie Kirk and taking on all comers extemporaneously. But if you are looking for a way to get better at organizing and expressing your thoughts, particularly if its to defend our Constitution from these specious attacks and illuminate the misinformed in our society, I can't think of a better way to gently and safely get your feet wet. In the weeks ahead I'll be analyzing some of the claims you read earlier.

Armed with your copy of the [Heritage Guide to the Constitution](#) you will be able to answer nearly every question about the Constitution.

Will you be a Defender of the Constitution? Think about it and get back to me via email if you are interested.

For further reading:

- [\*Plundered, How Progressive Ideology is Destroying America\*](#), by Michael Coffman, 2012.
- [\*Dupes: How America's Adversaries Have Manipulated Progressives for a Century\*](#), by Paul Kengor, 2010.
- [\*How Progressives Rewrote the Constitution\*](#), by Richard A. Epstein, 2006.
- [\*Who Killed the Constitution?\*](#) by Thomas Woods and Kevin R. C. Gutzman, 2008.
- [\*Suicide of the West: An Essay on the Meaning and Destiny of Liberalism\*](#), by James Burnham, 2014.
- [\*In Defense of the Constitution\*](#), by George W. Carey, 1997.

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<sup>1</sup> This essay covers the substance of a talk given to the William \* Marry College Republicans on 19 September 2024.

<sup>2</sup> <https://www.salon.com/2020/12/10/the-us-constitution-is-hopelessly-outdated-its-time-to-re-envision-it/>.

<sup>3</sup> <https://www.acslaw.org/expertforum/our-constitution-has-failed-its-time-for-a-new-one/>.

<sup>4</sup> <https://theweek.com/articles/750816/americas-constitution-terrible-lets-throw-start-over>.

<sup>5</sup> [https://archive.csac.history.wisc.edu/Brutus\\_XI.pdf](https://archive.csac.history.wisc.edu/Brutus_XI.pdf)

<sup>6</sup> Wickard v. Filburn.

<sup>7</sup> Roe v. Wade.

<sup>8</sup> Lawrence v. Texas.

<sup>9</sup> Obergefell v. Hodges.

<sup>10</sup> Bostock v. Clayton County, Georgia.

<sup>11</sup> Chevron U.S.A., Inc. v. NRDC.

<sup>12</sup> Mistretta v. U.S.

<sup>13</sup> <https://worldpopulationreview.com/state-rankings/open-carry-states>.

<sup>14</sup> Richard A. Epstein, *How Progressives Rewrote the Constitution*, (Washington, D. C., CATO Institute, 2006), 3.

<sup>15</sup> Ibid.

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<sup>16</sup> <https://www.newyorker.com/culture/annals-of-inquiry/the-united-states-unamendable-constitution>.

<sup>17</sup> Epstein, 8.

<sup>18</sup> Ibid.

<sup>19</sup> <https://taxfoundation.org/data/all/federal/latest-federal-income-tax-data-2024/>.

<sup>20</sup> [https://en.wikipedia.org/wiki/Ideological\\_leanings\\_of\\_United\\_States\\_Supreme\\_Court\\_justices](https://en.wikipedia.org/wiki/Ideological_leanings_of_United_States_Supreme_Court_justices).

<sup>21</sup> The opinion of British Prime Minister Sir William Gladstone in 1878.

<sup>22</sup> <https://www.reaganlibrary.gov/reagans/ronald-reagan/time-choosing-speech-october-27-1964>.

<sup>23</sup> From a document held in the Shelby White and Leon Levy Archives Center at the Institute for Advanced Study, Einstein's American scholarly home, in Princeton, New Jersey. See: <https://academeblog.org/2017/06/11/einstein-on-academic-freedom-and-political-inquisitions/>.