

THE RELEVANCE OF THE CONSTITUTION IN TODAY'S SOCIETY

by

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ABSTRACT

How relevant is the Constitution in today's society? This is the document that guides the three branches of government in day to day operation, demonstrating that what the Constitution means to the people of the United States is essential in gauging how relevant people think our government is. In this experiment, I surveyed 348 different college students on Boise State campus with a list of different questions to first find out their general knowledge of our Constitution, then their opinion of it. Students were randomly assigned to receive a text about a Supreme Court case that involves interpreting the Constitution or receive no information. I predicted that providing information about different Constitutional interpretation would lead to more negative attitudes towards the Constitution. In contrast to my predictions, the results show us that when comparing the treatment and control group, even though the treatment group had a less favorable opinion of the Constitution, the difference was not statistically significant enough to indicate that people with greater knowledge of the Constitution and the Supreme Court interpretation had any different opinions about the Constitution than those who did not. This tells us that individuals may already have sufficient information about the Constitution or they have preconceived notions of the document itself.

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INTRODUCTION

In 1789, the world saw the formation of a new government unlike any that had come before. In an era of aristocrats and monarchies, the United States Constitution was a bold step away from the status quo. Our founding fathers had a vision for a country ruled by the people that lived and worked in it rather than the people and families at the top of society on the other side of the globe. With this idea, they structured our Constitution accordingly. After much deliberation and multiple conventions, a final document was settled on and eventually pitched to the 13 states. When ratified in 1788, the Constitution was seen skeptically by our infant nation with many assuming that such a government would crash and burn not long after it started. Our success as a country and rise to the status of world hegemon today proves that a country can in fact be successfully run on a democratic government.

This document we call our Constitution is, in today's society, relatively unknown in its details to the citizens of the United States. Many people either blindly follow the Constitution out of a sense of patriotism or curse it because of their unhappiness with the current government.¹ These very same people hardly possess any real knowledge of the Constitution, making their patriotism for or rebellion against the document unfounded. One cannot necessarily blame them for not knowing every in and out of the Constitution, as it is still studied, interpreted, and changed to this day; it is surrounded by a labyrinth of

¹ Daniel McCleary et. al., "Types of Patriotism as a Primary Predictors of Continuing Support for the Iraqi War" *Journal of Political and Military Sociology*, no. 37 (2009): 80.

legal code, precedents, and laws. My goal in this research is to try to bring more understanding to this complicated and intricate government we have created.

In my experiment, we examine two groups of people, one treated with a certain interpretation about the Constitution and the other receiving no prior information, in order to test their general opinions and attitudes about the Constitution. The questions I ask vary in style and difficulty to gain a sense of how much the control group knows about the Constitution and to get accurate opinions out of the treatment group. One group, the treatment group, will have a script to read before answering the questions I pose. This will detail a specific Supreme Court case and may alter their favorability of the Constitution. The control group will not have this information before answering the questions and will go into them with whatever previous knowledge they already have. This testing lets us look at the two groups at once, can help show us what people actually know about the Constitution, and tell us what needs to be done to educate them on it. This experiment carries significant implications as large-scale empirical research projects on attitudes towards the Constitution are rare. Analyzing the Constitution and its precedents can help the average citizen determine the relevance of this document that governs their lives. Knowledge of our government is often a source of contention but understanding said government's origin does not have to be.

We see with the experiment results that people overwhelmingly think that the Constitution is a relevant document in today's society. But we see no significance in the relationship between the treatment and control group on their opinion on the Constitution, telling us that showing a different interpretation of the Constitution does not necessarily lead to a less favorable opinion of it or a greater want to rewrite it.

LITERATURE REVIEW

History

Starting at the first Constitutional Convention, the American people set out to create a government based on none other before it. After winning the Revolutionary War, the 13 original colonies, now states, found themselves struggling with problem after problem under the Articles of Confederation. The selfishness of each state seemed to take precedence over the idea of a union and the United States as a whole suffered from it. Max Farrand states in his book *The Framing of the Constitution of the United States* that once the colonies were on their own, in order to be taken seriously anywhere outside of our country, they needed “to justify themselves before the world and to justify themselves in their own eyes.”² The only way they saw to do this was to create an effective union. Up until the creation of the Constitution, this effective union was unattainable with our weak congress, missing executive, and little interjection from the courts. Demonstrating the governments ineffectiveness, Farrand states that “the decisions of congress were little more than recommendations”³ as they had no official power over the states through the Articles of Confederation.

With this in mind, the men of power in Congress and the states set the date for a Constitutional Convention in Annapolis in September of 1786. At this first convention,

² Max Farrand, *The Framing of the Constitution of the United States* (United States: Yale University Press, 1913), 2.

³ Max Farrand, *The Framing of the Constitution of the United States* (United States: Yale University Press, 1913), 4.

only five of the 13 states showed. Seeing that this situation of constant fighting between states would only get worse over the next year, the delegates there set the date for what was to become the famous second Constitutional Convention; May of 1787. This meeting is where the debates over the future of our country took place, with powerful individuals such as James Madison, Alexander Hamilton, and Benjamin Franklin leading the charge. As a distinguished group of elites, they proved themselves to be a remarkable body of individuals and scholars. Farrand states that “most of them had played important parts in the drama of the revolution, a large majority...had served in congress, and practically all of them were persons of note in their respective states.”⁴ Almost every man there was a politician, scholar, or a combination of the two. Together they brought ideas and answers to America’s problem of unity to be debated on and forged into the new law of the land. The men of the convention took their work seriously and struggled day in and day out to find a solution that was agreeable to all. One of the most significant inspirations to the conventioners was our own Declaration of Independence, crafted 11 years earlier. This document did not specify what kind of government the United States should have, but detailed the natural rights the people should, and are, guaranteed. James Moseley states in his article “The U.S. Constitution of 1787, Based on Reason and Revelation” that “the natural rights of the Declaration are the basis for the civil rights of the Constitution.”⁵ The Declaration established the founders’ belief in the natural rights of man and led them to the end result of what we call our Constitution. James Madison claimed “to the

⁴ Max Farrand, *The Framing of the Constitution of the United States* (United States: Yale University Press, 1913), 39.

⁵ James Moseley, “The U.S. Constitution of 1787, Based on Reason and Revelation” *Journal of Interdisciplinary Studies* 30, no.1/2 (2018): 146.

transcendent law of nature and of nature's God" and that the "safety and happiness of society are the objects at which all political institutions aim."⁶ Madison showed us that these natural rights are an essential part of government, to both guarantee and protect.

Even with these agreed upon values, the Convention appeared to be split between the large and small states with no middle ground in between, as was evident with the Virginia and then New Jersey Plans. Even the most prestigious man of the assembly and its president, George Washington, could not seem to reconcile the two sides. Finally, with the appointment of a special committee, an agreement known as the Connecticut Compromise was reached and the delegation was able to move forward.⁷ Many rumors circulated the Convention, as it had closed its doors to the general public in order to be able to debate openly without fear of criticism. When people saw delegates leaving the convention early or staying late into the night, concerns were raised that they were not making any progress. Inside the doors was a different story; the Convention made steady progress and eventually adjourned in late July to early August, leaving five men to compile a comprehensive report of what had happened and what had been decided.

With this report from the detail committee, a final draft was made and the last details of the new Constitution were hammered out. From August to September, its 23 articles were narrowed down to seven articles with a preamble.⁸ Unanimity was of utmost importance to those at the Convention, forcing the process to drag out until finally, all present besides three men signed the Constitution and stood behind what they had made.

⁶ George Carey and James McClellan, *The Federalist* (Indianapolis, Indiana: Liberty Fund, 2001), 229.

⁷ Max Farrand, *The Framing of the Constitution of the United States* (United States: Yale University Press, 1913), 106.

⁸ Max Farrand, *The Framing of the Constitution of the United States* (United States: Yale University Press, 1913), 127, 134.

The next day, the main newspaper of Philadelphia, the *Pennsylvania Packet and Daily Advertiser*, had nothing but this new constitution printed in it. Farrand states “there could be no better indication of contemporary opinion as to the importance of what the federal Convention had accomplished.”⁹ James Madison and James Wilson have been credited as the two most important and influential members at the Convention. Without their work and ideas, the constitution that would have resulted may very well have been quite different. Along with these men, George Washington is recognized as outstandingly important through the Convention process. Hardly having any record speaking through the months at the convention, Washington contributed something different; he gave the convention a sense of leadership and support and by backing Madison’s ideas, he gave them significant sway in the rest of the Convention. Washington was a man of unquestionable character and was seen as a hero to all in the United States. His track record from the Revolutionary War of surviving Valley Forge, aiding in the Siege of Yorktown, and maintaining his command of the Continental Army through the duration of the war gained him great respect from American citizens. We saw when the time came to choose an executive leader and a title for the position, Washington’s “trustworthiness with power helped make the new government thinkable but whose very popularity, and the veneration he inspired threatened to turn the presidency into a monarchy.”¹⁰

All three of these men knew a more powerful central government was needed to run the United States and wove this idea into the document. The constitution that resulted

⁹ Max Farrand, *The Framing of the Constitution of the United States* (United States: Yale University Press, 1913), 195.

¹⁰ Brian Steele “For Fear of an Elective King: George Washington and the Presidential Title Controversy of 1789” *Political Science Quarterly*, no. 131 (2016): 185.

was “a practical piece of work for very practical purposes.”¹¹ The result stunned the nation but was eventually adopted in 1789 with the first ten amendments being guaranteed as the first act of the Congress established in the Constitution. This was done in order to secure the vote from the final states who had not ratified it. Massachusetts helped drive the conversation for these amendments and thus gave people with doubts about the Constitution the confidence to ratify it with the hope of a Bill of Rights to come soon after.¹² The Constitution of the United States was hotly debated in the states, but eventually accepted, ushering in a new government, the one we follow to this day in our country.

Skipping to modern day, most knowledge of the process of the Constitution and its creation is unknown the public. The younger generation of our country is constantly behind in both their political knowledge and their desire to discover it; this is problematic as we see as the youth grow older, there are less people to impart a desire to know one’s government on the upcoming generation.¹³ William Galston states in his article “Political Knowledge, Political Engagement, and Civic Education” that “a well-ordered polity requires citizens with the appropriate knowledge, skills, and traits of character.”¹⁴ This knowledge is found both through school and one’s own curiosity in politics, but our countries current state of misinformation is leading us to troubling issues including lack

¹¹ Max Farrand, *The Framing of the Constitution of the United States* (United States: Yale University Press, 1913), 201.

¹² Pauline Maier, *Ratification, The People Debate the Constitution* (New York, NY: Simon and Schuster, 2010).

¹³ William Galston “Political Knowledge, Engagement, and Civic Education” *Annual Political Science Review*, no. 4 (2001).

¹⁴ William Galston “Political Knowledge, Engagement, and Civic Education” *Annual Political Science Review*, no. 4 (2001) 217.

of constitutional knowledge, greater political polarization, and less desire to participate in political and community functions.

The origins of our Constitution are complicated and dynamic. They are still being researched today both in terms of historical accuracy and interpretation of them. But knowing the facts surrounding the Constitutional Convention gives us an insight to a different time in America and shows us why we are the country we are today.

Preservation of the Constitution

At the center of its matter, American Federalism was the first and most aggressive defender of the Constitution. Federalism preached for the adoption of the Constitution and constantly lobbied for the powers vested within it. Today, we see people still preaching federalism in our government to uphold the original intent of the Constitution, also called “originalists.” The men at the Constitutional Convention knew that a stronger central government was needed to run the country, but still wanted a strong idea of individualism and independence present in it. The separation between states and the federal government was essential to their idea of a harmonious Union. A textualist approach is another popular method of interpretation used to read the Constitution, both in academics and in the court system. Textualism says that what is in the Constitution is the law of our country and if the issue before you does not involve some part of the Constitution, no further action can be taken by the Court or Congress. This narrow interpretation of the Constitution is called upon whenever looking at an issue in the Supreme Court or when a new law is being proposed, saying that one will find the answer within the Constitution as the founding fathers would have. In *American Constitutional Law* by Ralph Rossum and Alan Tarr, textual analysis is described as “If the Constitution

is to control the outcome of a case, and if its text is plain, then constitutional interpretation should stop right there.”¹⁵ These boundaries are seen to create accountability, and with this comes distinct laws and outcomes that can be traced back to their origin if something goes awry. With this, textualism has both fought off policies and ushered in new ones, as how one can read the literal language of the Constitution changes from person to person. For example, Justice Anthony Scalia, known as one of the most conservative judges of the Supreme Court, used textualism to greatly expand the Constitutional interpretation in the case *Citizens United v FEC*.¹⁶ This court case was a large expansion of corporate power and, in an originalist sense, was an expansion of the current interpretation of the Constitution. How one reads the Constitution in a literal sense can also promote the expansion of the federal government we are seeing in today’s world.

This train of thought is what we see from people such as William Voegeli in his book *Never Enough*, where he explains how there is no end to the modern expansion of government and the Constitution. This in turn is straying from our original founders’ values and intent. Voegeli uses the idea of social welfare expansion to demonstrate the large growth of the government in the past century; he puts forth the theory that as our country asks and receives more in terms of social welfare, more will continually be needed in order to continue to progress as a country. Voegeli states “the success of this project would not mean that the American welfare state would stop expanding...it would mean, instead, that after the U.S. had ascended to a level of welfare state spending

¹⁵ Ralph Rossum and Alan Tarr, *American Constitutional Law* (Boulder CO: Westview Press, 2017), 4.

¹⁶ Ralph Rossum and Alan Tarr, *American Constitutional Law* (Boulder CO: Westview Press, 2017).

comparable to Europe's, further increases would also be on the scale taking place in Europe over the past quarter-century."¹⁷ This is to say that Americans have never determined that 'x' amount is enough and will be content to stop once it is reached. Voegeli believes that this is a root cause of the problems between conservatives and liberals and is one of the main reasons we are straying from our Constitution today. We see though that the expansion of this social welfare state is not necessarily a bad thing as we have made great strides as a country from it. The minimum wage, Social Security, and workers' rights and safety, just to name a few, are all results of this expansion of the social welfare state. While a government has a duty to keep itself in check, it also has a duty to take care of its people.¹⁸ The way to do this has varied, but government funded programs are needed at times when private interests do not align with the common good.

This expansion of the Constitution was first demonstrated by Franklin Roosevelt in the 1930s and later perpetuated in Lyndon Johnson's 'Great Society' movement. The undertaking by American progressives spearheaded things such as the civil rights movement, new ideas for women's rights, and greater help for the impoverished of the country. This new way of life came under harsh criticism from proponents of the original Constitution as it is seen as a strict departure from stability and the American way, despite presenting major benefits for citizens. John Andrew III talks about this idea in his book "Lyndon Johnson and the Great Society," saying "critics argue that LBJ's "wrongheaded" legislative initiatives and excessive use of federal funds bear the responsibility for deteriorating urban conditions and rising welfare rolls."¹⁹ These new

¹⁷ William Voegeli, *Never Enough* (New York, New York: Encounter Books, 2010), 59.

¹⁸ Woodrow Wilson, *Congressional government* (New York, New York: Meridian Books, 1956).

¹⁹ John Andrew III, *Great Society* (Chicago, Illinois: Ivan R Dee, 1998), 184.

social welfare programs were a direct violation and departure from our Constitution in originalist eyes, claiming that this kind of overarching government reach into the local lives of the states was never within the scope of the federal government.

Federalism says that, in a democratic society, there are two different levels of government that get their power from the people, and that each level only has power in the areas assigned to it.²⁰ This structure of government arose because in the time of our founding fathers, there was a strong sense of the propriety of local governing, with resentment towards a greater power. This is how the weak and decentralized Articles of Confederation came to be, as the men who wrote them were outstandingly scared of governmental tyranny. When the Articles of Confederation proved to be ineffective, we see the Federalists take hold and expand the extremely weak government to what they thought was just and necessary. With the Great Society, defenders of the founding fathers saw federalism being thrown to the wayside and the federal government taking a greater role in the local lives of citizens, far beyond what the current meaning the Constitution called for. This in turn caused a large outcry and attempted reversal in the Reagan era of politics.

Lastly, we see a critical defense of the Constitution expressed through the court system, particularly the Supreme Court. Article III, pertaining to the Courts, is much shorter than Article I and II that give power to the two other branches of government, the Congress and Executive. Because of this, we get the idea that the founding fathers had a less concrete idea of the purpose of the Court - what we do know is that the intention of the Court is to provide coherence within our government. The Court has attempted to be

²⁰ Richard Leach, *American Federalism* (New York, New York: Norton & Company, 1970).

the institution of unity in the United States. In *the Upside-down Constitution* by Michael Greve, the Supreme Court is addressed through the idea of federalism. He states “The Supreme Court postulates a free-standing federalism “balance” between the states and the nation...although great controversy surrounds the question of what and how much the justices should do by way of preserving the balance, the major premise (federalism as balance) is shared across the judicial spectrum.”²¹ This balance gives us a choice between state and federal law, showing us that when you choose more of one, you get less of another. With this mindset, we see originalists and defenders of the Constitution claim that we see the balance of American politics tipping in favor of the federal government. Without the even distribution, local governments would have less power over the everyday lives of its citizens and must answer to the federal government on a more regular basis.

The defenders of our Constitution strive to maintain a certain accountability between the federal and local levels of government by keeping clear lines between the powers of the two.

Expansion of Constitutional Rights

On the other side of the table, we see Americans advocating for more Constitutional protections at the center of the criticisms of the failings of the Constitution. One of the largest criticisms we see is the claim that the Constitution does not do enough to support the people of America today. The notion that the Constitution is ‘perfectly fine the way it is’ stems from the blind worship it receives from the general public on all sides

²¹ Michael Greve, *Upside-down Constitution* (Cambridge, Massachusetts: Harvard University Press, 2012), 20.

of the political spectrum. Woodrow Wilson was a major critic of this unquestioning following of the Constitution, thinking that “the Constitution did not, in fact, strike a good balance between the government’s need to control the governed and its need to be controlled by the governed.”²² Wilson was of the thought that the Constitution left the government overly restrained and unable to properly serve the people of the nation. Public appeal grew warmer to this idea as the Great Depression set in, giving Wilson’s admirer, Franklin Roosevelt, the spark needed to set out to correct the massive downturn of the American economy. People saw the inefficiencies in the federal government as a Constitutional problem and wanted reform for the citizens, not more power for corporate interests. Wilson says in his book “Congressional Government” that “the government of a country so vast and various must be strong, prompt, wieldy, and efficient. Its strength must consist in the certainty and uniformity of its purposes.”²³ Wilson is seen as one of the most influential constitutional thinkers in the 19-20th century, with his policies and ideas called upon to this day. Wilson started his ideas on the expansion of the Constitution in the late 19th century, not 100 years after the document had been formed; this spurred the political movement to break down corporate interests and monopolies and the curtailing of industrialist abuses caused by these same corporations. The firm belief that the government needs to be proactive, not reactive, is a belief Wilson as well as most in the country shared. Those who preach for a limited Constitution and less restriction claim that this goes against the original writings of the Constitution. Rebutting such claims, Wilson and others saw that though the founding fathers were brilliant men

²² Michael Greve, *Upside-down Constitution* (Cambridge, Massachusetts: Harvard University Press, 2012), 61.

²³ Woodrow Wilson, *Congressional government* (New York, New York: Meridian Books, 1956), 206.

and writers, it was impossible for them to foresee every problem America would have in the future. Because of this, changes are needed in order to meet the growing demands of an ever-changing population that is entangled with poverty, drug use, and social welfare. These programs are all on the forefront of modern minds, while they were hardly of any consideration to the founding fathers. This disconnect is where the problem lies, and some balance must be struck in order to survive as a nation.

The second argument for revision of the Constitution that we see is that a document that is hundreds of years old does not represent the best interest for Americans today. Those who preach for Constitutional rights firmly believe that this document was ideal for an 18th/19th century America, but even Woodrow Wilson criticized this Constitution for being out of touch in the late 19th century. Wilson claimed that America had become so large in both its world influence and the scope of its population, that the traditional idea of Federalism and the Constitution did not meet the basic needs of the American people. Wilson says “as presently constituted, the federal government lacks strength because its powers are divided, lacks promptness because its authorities are multiplied...its processes are roundabout...its responsibility is indistinct.”²⁴ This issue stemmed across all government, but those who saw the problems wanted Constitutional solutions as these are the best guarantee for preserving rights. Our national government was unable to provide for Americans because it was reduced to something so small that it simply did not have the power to act. Wilson looked to both the restraining of the executive branch and the lack of power the government had to provide for the citizens in

²⁴ Woodrow Wilson, *Congressional government* (New York, New York: Meridian Books, 1956), 206.

general. Voegeli says “the –ism of progressivism is the belief in progress,”²⁵ showing us that at the core, progressives stand for change in the direction of the future, which is exactly what the founding fathers were afraid of. The Constitution was written in a time gripped by fear of tyranny, something is seen as much less of a threat in modern times. Along with this, we also see people wanting a better balance of bigger government and personal rights; yes, numerous rights and liberties are essential to the success of a country, but so is maintaining the health of the people. One without the other is useless. The idea that Americans should have guarantees of social standards, defined and provided for by the government, is more important than remaining totally free of any government influence in our everyday lives. Constitutional progressives today stand behind figures such as Woodrow Wilson and claim that we, as Americans, need greater assurances for our own quality of life than the Constitution gives us.

We see that with our Constitution, the ideas it poses are very general. As proponents of Constitutional rights call for greater expansion of the document and its guarantees, we encounter the problem of constitutional interpretation and constitutional construction. This document was written with broad characteristics in mind, showing us that “the Constitution, in addition to at least opposing identity-based subordination, itself expresses tremendous faith in heterogeneity.”²⁶ The broadness left the Constitution silent on specific topics that people ask of it, such as the rights of gays, standards on child labor, and welfare benefits for impoverished Americans. Because of this, “The question, therefore, is not whether we will have living constitutionalism in the United States, but

²⁵ William Voegeli, *Never Enough* (New York, New York: Encounter Books, 2010), 62.

²⁶ Harvard Law Review “The Virtues of Heterogeneity, in Court Decisions and in the Constitution” *Harvard Law Review*, no.131 (2018): 874.

what kind of living constitutionalism we will have.”²⁷ This living constitution is the source of contention, as there is much more room than we give to expand and interpret the values of the Constitution. We see this from all sides, with progressives calling for expansion of personal guarantees and conservatives reading and interpreting the Constitution in a more expansive way for certain business interests.

The changes we make are a back and forth battle, with most people supporting the idea of a ‘living Constitution.’ Both the judiciary and other political branches contribute to this notion.

Amendments and Current Precedent

With our rapidly growing country, greater federal action has been called for time and time again, with the Supreme Court taking a leading role in expanding the government’s scope and responsibilities. In the 1956 landmark case *Cooper v. Aaron*, the idea of Constitutional supremacy and the fact that the Court has the ability to make decisions that are legally binding came into greater light. With a unanimous decision by the Court and every justice signing the opinion as the author, Chief Justice Warren stated that the Court’s interpretation of the Constitution is the supreme law of the land and rules over all other political actors. This, in turn, created a regime level change of the Court’s place in the American political system. This idea has become more and more popular in the 20th and 21st century, the thought that “The courts are expected to be prescriptive as well as proscriptive” and that they are to “participate more actively in the policy-making progress.”²⁸ Whether or not this is what the founding fathers intended, the Court believes

²⁷ Jack Balkin “Arguing about the Constitution: The Topics in Constitutional Interpretation” *Constitutional Commentary*, no.33 (2018): 150.

²⁸ Ralph Rossum and Alan Tarr, *American Constitutional Law* (Boulder CO: Westview Press, 2017), 61.

it should take an active role in our society today and use its power to help shape the law making process. With the public fueling the Supreme Court to take a larger role, the reality that the Court can make a judicial decision while going unchecked further pushes the idea of judicial supremacy.

Judicial supremacy can be seen coming from both those who call for greater involvement from the federal government and those who want less government regulation. The current precedent has been set in this manner because of people such as Woodrow Wilson calling the Court to take a greater role – this idea has been embraced by justices on all sides of the spectrum. Congress’ inability to speak with one voice makes policy difficult to pass, and when it does pass, it rarely retains its original meaning. Wilson spoke out on Constitutional interpretation in his book *Constitutional Government in the United States* saying “the Constitution of the United States is not a mere lawyers’ document: it is a vehicle of life, and its spirit is always the spirit of the age.”²⁹ Wilson believes that the Constitution will change with time, and as we move forward as a nation the Constitution must move forward as well in order to properly keep up with demands. The Court has been seen as the most effective body for changing the Constitution as they can move about and make decisions relatively easier than the rest of government. The Constitution states that the federal government is the supreme law of the land that cannot be disputed by the states; they must adhere to it. In turn, the courts have the power to interpret laws as they see best fit for the people of the country at the time they are presented. This judicial decision making has taken hold of both sides of the

²⁹ Ronald Pestritto, *Woodrow Wilson, the Essential Political Writings* (Lanham, MD: Lexington Books, 2005), 183.

argument, liberal and conservative, and has become the dominant way of changing the Constitution. This comes from the difficulty that Article V presents to adding any amendments to the Constitution, requiring a supermajority in Congress and among the States. Mandating a national consensus on the approval of Constitutional changes gives us more confidence because “Citizens and legislatures cannot be certain how amendments are going to affect themselves later in life or their children. Hence, they are more likely to consider the long-term public interest than their short-term personal gain when determining whether to support revision.”³⁰ Presently, the process of using the Court to generate the same result is more effective, as you only need a five to four ruling within the Supreme Court for change. Giving the judiciary the discretion to keep up with the changing times and culture of our country is dangerous because of the small field of view and representation on the Supreme Court.

Judicial supremacy also stems from the lack of action we see in the rest of government, particularly Congress. As stated before with the difficulty of passing a new Constitutional amendment, passing laws in general in Congress has become a challenge with partisan gridlock. The people of our country have become increasingly polarized on issues and see Congress as an ineffective body for presenting new law.³¹ Paul Quirk says in his article “Polarized Populism” that “in fact, the most active sliver of constituents – the party activists who volunteer time and effort in political campaigns – have gradually become more ideologically extreme since at least the late 1950s.”³² Because of this

³⁰ John McGinnis “Protecting the Originalist Constitution” *Harvard Journal of Law and Public Policy*, no.42 (2018): 81-89

³¹ Raymond La Raja, *New Directions in American Politics* (New York: Routledge, 2013).

³² Raymond La Raja, *New Directions in American Politics* (New York: Routledge, 2013), 192.

increase in polarization and consequential ineffectiveness, people turn to the courts to progress policy. The courts have presented themselves as unafraid to ‘rock the boat’ and make landmark decisions that greatly changes legal precedent. *Brown v Board of Education* for segregation, *Roe v Wade* for abortion, and *Obergefell v. Hodges* for gay marriage are but a few cases that dramatically changed the legal landscape of the United States. Today we see people and corporations alike going to the courts to make decisions on issues, as moving Congress to act has become increasingly difficult.

To compliment this, rather than making the change to the Constitution agreeable to the citizens of America, people will “put their energy into trying to get the right judge appointed and creating a culture where it is thought proper for judges not to be constrained by the original meaning of the Constitution.”³³ Courts take their power vested through the Constitution articles to prove their point of federal supremacy when deciding what laws to interpret and how they should be enforced. The ability to interpret the Constitution to change its standing is the main reason for the rise of judicial supremacy since the early to mid-20th century, proving that this idea of federal supremacy has prevailed in the court system.

With the rise of power in the Supreme Court, we have also seen a massive increase in the inherent power of the Executive. His ability to move freely within government and be the sole, national voice of the people was something that the founding fathers were afraid of, with many protesting against the idea at the Constitutional Convention. An ‘executive branch’ sounded like a king to many at the Convention,

³³ John McGinnis “Protecting the Originalist Constitution” *Harvard Journal of Law and Public Policy*, no.42 (2018): 85.

something most were against. The Articles of Confederation intentionally did not create any kind of executive, but the founders had realized that a country could not run without someone as the head of state. The President was therefore created by Article II and given to the most trusted man in the union, George Washington, to establish a precedent on how it should act. Woodrow Wilson again comes forward as defender of a strong Executive, saying “If he rightly interprets the national thought and boldly insist upon it, he is irresistible: and the country never feels the zest of action so much as when its President is of such insight and caliber. Its instinct is for unified action, and it craves a single leader.”³⁴ American people often rally around their president, much more so if he is a person that relates to the people and their struggles. Being a charismatic and powerful speaker can garner a kind of power in the executive that no other branch can even hope to achieve. Wilson believes that this is essential for our country to run properly and we as a people are inherently drawn to this type of leadership. The founding fathers were hesitant of these kinds of charismatic individuals because this is how they saw tyrants seize power; by making the executive weaker than that of the King of England they hoped to prevent this phenomenon. Today we see the executive moving far outside this limited mindset and trying to build support around him for his own political goals. This is being done to, once again, move around the other branches of government and is effective for the enforcement of laws and policies.

The reach of the federal government has exponentially grown since the creation of our Constitution and can be clearly seen in the supremacy of the Supreme Court and the

³⁴ Ronald Pestritto, *Woodrow Wilson, the Essential Political Writings* (Lanham, MD: Lexington Books, 2005), 183

power of the Executive. The ability for both branches to make sweeping decisions without public input creates a system rife for abuse. Both branches can affect how our Constitution is interpreted and then enforced.

EXPERIMENT

To test my hypotheses, I turn to an experimental study. This study was conducted in Spring of 2018 on a sample of Boise State Undergraduate Students. Participants took the questionnaire in exchange for course credit and came mostly from political science courses. A total of 344 students participated in this study. As expected with a student sample, the age of participants was rather young with an average age of 22.5. The sample was about 62% female and 80% white with 39.5% identifying as Republicans, 47.5% as Democrats, and 13% as independents.

In this study, students were randomly assigned to one of two groups; control or treatment. The first group, the control group, received no information. The second group, the treatment group, was asked to read a two-paragraph quote providing information about current Constitutional precedent from the 1958 Supreme Court decision *Cooper v. Aaron*. The full text reads as follows:

“This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land.”³⁵

³⁵ Ralph Rossum and Alan Tarr, *American Constitutional Law* (Boulder CO: Westview Press, 2017), 75

“This quote is from the 1958 Supreme Court case *Cooper v Aaron*. The Courts ruling demonstrates a break from the plain text of the Constitution, called unconstitutional by many, and shows that the Court wishes to take a more active role in determining American law, something previously reserved for Congress. This break from the Constitution is not the first or last that we see and is one example of how the laws and precedent today are much different than they were in 1789 when the Constitution was first made law.”

After reading this text, participants were asked 5 questions about their knowledge of the Constitution as well as two questions about their support for the Constitution. The answer choices ranged from true and false, fill in the blank, or multiple choice for the knowledge questions and a scale of one for strongly disagree to seven for strongly agree for the attitudinal questions. I predicted that those in my treatment group are going to have a less favorable view of the Constitution than people in the control. I expect that this is because the information presented gives an alternative view to modern thought on the Constitution; this opinion on the interpretation of the Constitution is different than I believe most people will have. I then said that the control group will have a more favorable view of the Constitution because I believe blind patriotism as well as a lack of knowledge in ways of Constitutional interpretation is a major factor in its acceptance in today's world. This is because as new precedent has come about new ideas and opinions are formed on what exactly the text of the Constitution means. Different bodies of government have added new meaning to the Constitution through interpretation of the it

which is then considered Constitutional law. Much of this was needed in our changing and growing country but the implementation of these new interpretations and how individuals view them may lead to differences in attitudes towards the Constitution. We now interpret the Constitution in a much different and more expansive way than we did during the 19th and 20th centuries; this new interpretation came from apparent lacking's in our Constitution to address everyday issues. I will frame my hypothesis as such:

Hypothesis 1: Most people take for granted that the meaning of the Constitution is plain and controls the law directly; those who learn of the assertion of judicial supremacy by the court to decide the meaning of the Constitution will lose faith/trust in the power of the Constitution.

Our case, as discussed earlier, set the precedent of the Supreme Court as a lawmaking body, ushering in an era of judicial supremacy that is still recognized today. The Court established that its *interpretation* of the Constitution is the law of the land and that it has the power to interpret the document. Our quote from the case shows that the Supreme Court is taking on a role greater than a body of judgement, it is becoming one of policy making power. It reads such that the Supreme Court is taking a leading role and wants to be an active player in American politics. With this, peoples trust of the inherent text of the Constitution and its power over our lives will be lessened as they will see that it can be radically changed with one ruling. This piece of information must be short and concise, but also powerful in order to have any effect on the reader. If it is more than a few sentences, people will not be bothered to read it and simply skip the question,

making the results of the experiment unusable. I believe the quote we have chosen suffices for these criteria.

Our short explanation puts forth the opinion that some think this decision to be unconstitutional and that it is a departure from what the founding fathers intended when writing the document. This will be given to the treatment group of students, giving them an interpretation that I believe very few, if any, people in the control will have before answering the same questions on their opinion of the Constitution.

The next question³⁶ will help us see what the respondents personally think of their prior knowledge of the Constitution going into this experiment. This will be done with a self-rated score. We can use this information to see if people with a self-judged higher knowledge of the Constitution have different opinions from those with a low self-judged knowledge. This is important as we can compare what people think they know about the Constitution to how much they actually do, both content and history wise.

Questions six through ten will help us figure out just how knowledgeable our respondents are about the Constitution. These questions measure a literal knowledge of the document, asking easy to hard questions. Question six³⁷ will be the ‘easy’ question to make sure the respondents are paying attention and not randomly clicking through our

³⁶ One a scale of 1 to 10, with 1 being the lowest and 10 being the highest, rate your current knowledge on the United States Constitution.

³⁷ Easy: What does the first amendment of the Constitution establish? **a.** Freedom of religion, press, speech, and right to assemble / **b.** No soldier can be quartered in a civilian’s house / **c.** The right to a speedy and public trial with a jury of your peers / **d.** The Electoral College and its process for electing the president - Answer is ‘**a**’

questions, as well as know what the Constitution is. Questions seven,³⁸ eight,³⁹ and nine⁴⁰ will be classified as ‘medium’ difficulty questions, questions I believe someone who took general American history or government classes could answer without hesitation. Two of these gauge content knowledge of the document (questions seven and nine) while one (question eight) will give us an idea of historical knowledge surrounding the document. I believe each of these questions is fair and answerable to someone who has even relatively little background in Constitutional knowledge.

Question ten⁴¹ will be classified as my one ‘hard’ question as I expect very few people to get it right, and even fewer correct answers that are not simply guesses. The answer to this question comes from scholarly research, particularly Max Farrand’s *The Framing of the Constitution of the United States* and is a question that is not normally gone over in depth in history or government classes. This is also a difficult question because for the other answer options I put recognizable and logical revolutionary names that people may assume had a principal hand in the Constitution.

We can compare this to what each person says their knowledge of the Constitution is, with getting five out of five questions right will constitute as a nine or ten on the scale, while getting none right would be a one or two. This will make it so we have

³⁸ Medium: How many amendments are in the Constitution? - *This will be a fill in the blank answer to prevent people from simply guessing and choosing the right number or seeing the proper number and having it jog their memory* - Answer is **2**

³⁹ How many states were needed to pass the Constitution at the time of its creation? **a.** Simple Majority (7 States) / **b.** 2/3 (9 States) / **c.** Unanimous Consent (13 States) - Correct answer is ‘**b**’

⁴⁰ The Bill of Rights was part of the original Constitution written in Philadelphia in 1787 / **a.** True or False question - Correct answer is ‘**False**’

⁴¹ Hard: Who was the principle author of the Constitution? / **a.** Thomas Jefferson / **b.** George Washington / **c.** John Adams / **d.** James Madison / - Correct answer is ‘**d**’

an actual idea of how smart our respondent is on the Constitution and will be asked after they rate their own knowledge, not knowing that these questions are coming.

Question eleven⁴² will cut to the heart of the experiment and we can compare its results to each respondent's actual, then self-judged knowledge of the Constitution. It will be interesting to compare the self-judged knowledge and this answer to their actual knowledge and this answer to see the differences.

To conclude, question twelve⁴³ is another opinion question that can help us gauge the general feeling towards the Constitution and how people think it should be handled in today's world.

These questions together will give us a very clear picture of what each person knows about the Constitution and their opinion of it in today's society. Combining these, we can line the answers up to my hypothesis and examine our results. I wanted to keep the survey to 15 questions or less, as any more could bore our respondents especially the treatment group that must read the two excerpts before starting to answer any of the questions on their knowledge and opinions.

⁴² 9. In our society today, do you think the Constitution of the United States is a relevant document? - **Y/N** answer

⁴³ 10. (Optional question) Do you think the Constitution should be rewritten by people in the United States or it should be left as it is? / **a.** Rewritten / **b.** Left as it is

DATA AND RESULTS

In my introduction, I stated that through the results of my experiment, we found that our numbers were not significant to what we were testing for. While this means that an increase in a person's knowledge of Constitutional precedent and interpretation does not relate to someone having a more favorable or unfavorable opinion of the Constitution, we can still see data on how many people think the Constitution is a relevant document and gauge different measures of satisfaction with our government. Along with this we can tell how much average citizens know about our Constitution as a whole, rather than specific amendments or sections of it. This kind of testing is rare as we see most studies focus on individual aspects or freedoms we have as American citizens. Below I detail specific results of my analyses. I continue on to describe how the data can be applied and used in future experiments.

Table 1. Treatment Effects on Constitutional Knowledge and Support

	Constitutional Knowledge	Constitution Relevant	Re-write Constitution
Control	3.41 (0.08)	5.41 (0.11)	4.51 (0.14)
Treatment	3.35 (0.09)	5.45 (0.11)	4.80 (0.14)
Difference	0.05 (0.12)	-0.04 (0.16)	-0.30 (0.20)
<i>N</i>	338	337	337
<i>t</i>	0.41	0.26	1.48
<i>p</i> (two-tailed)	0.68	0.80	0.14

When running difference of means tests for data, we see that there is no statistical significance between the treatment group and their general Constitutional knowledge, their opinion on the relevance of the Constitution, or if they think the document should be rewritten, as shown in Table 1. Starting this test, I wanted to see whether Constitutional knowledge influenced a person's opinion of the Constitution, as I hypothesized. When looking at the results, I used a difference of means test to find the absolute difference in the means between our treatment and control groups in different situations.⁴⁴

The difference of means test is perfect for our experiment as it measures, on average, the amount the experimental intervention changes the outcome with the control. This allows me to compare first the treatment group and their general knowledge of the

⁴⁴ Michael Lewis-Beck, *Data Analysis, An Introduction* (Thousand Oaks, California: Sage Publishing, 1995).

Constitution. We see that when we run the difference of means test both the treatment and control group have relatively equally knowledge of the document; 3.40 questions right for the treatment and 3.35 questions for the control. Being this close together gives us a high probability that these two numbers are not different from each other. A confidence interval of approximately 68% tells us that there was relatively little difference in literal Constitutional knowledge of our two groups. This could be because the questions I asked to gauge the participants knowledge of the Constitution were trivial in nature and tested a person's literal knowledge of the document, which was not affected by the Supreme Court case I provided as treatment. What this does tell us though is that participants only scored an average of approximately 3.40 questions correct out of 5. This is a moderate score, demonstrating that knowledge of the Constitutions origins and content go unknown to the general population, while 79% of the respondents rated their opinion of the Constitution as "somewhat" to "very" positive (five, six, or seven on the favorability scale). This is especially important as the study group is primarily undergraduates studying political science – one of the groups in society that should have the *most* knowledge of the Constitution. This relationship is odd as we can plainly see that even though people know only some basic information about the document, an overwhelming majority approve of it.

Next, we compared the difference of means between our treatment and control group on the relevance of the Constitution. Here, those in the treatment and control group were both relatively supportive of the Constitution and were not distinguishable from each other. Once again, we get an insignificant relationship with a p-value of approximately .80 telling us there was essentially no difference between the two groups.

Here, the reason is more confusing to pick out as the point of the excerpt given to the treatment group was to give them a less favorable opinion of the Constitution. This tells us that a possible lower favorability of the document does not correlate to the belief of its relevance as a Constitution since our treatment did not generate a less favorable opinion of the document. Earlier in the paper, we discussed the fact of blind patriotism and with our results, we can confirm this bias. We can see here that no matter if someone was in the treatment or control, they still will have a 79% chance of having a favorable opinion of the Constitution.

Lastly, I measured the difference of means between whether or not respondents think the Constitution should be rewritten. This was the closest we came to a significant finding with a p value of .14, but still not enough to declare a relationship between the treatment group and a want to rewrite the document. Totaled, 183 or 53% of the respondents answered “somewhat” to “very” (five, six, or seven) to if they think the Constitution should be rewritten. With no correlation between the treatment group and the want to rewrite the document, this tells us that wanting to change our Constitution may be connected to something other than having additional information about the document. We see this fact demonstrated through the latter two of our three difference of means tests. What we also see is that while people have a positive opinion of the Constitution, over half of the respondents still believed that the document should be rewritten. Being so high, these numbers give us almost contradicting thoughts of the people. If we think about the blind patriotism discussed before, people may be affected by this in this situation, but the two questions of ‘do you think the Constitution is a relevant document in today’s society’ and ‘do you think the Constitution should be

rewritten' were asked one after the other; people answered yes to rewriting the Constitution immediately following saying they thought the Constitution was a relevant document. So while having a blind approval of the Constitution may be happening, this approval does not translate to keeping the exact document we have. These two ideas seem to go against each other but when thought about on a wider scale, may help us draw broad conclusions about the United States Government and people's opinion of it.

To see the importance of this study, we must look beyond our data and results. What we can see from our results is that a majority of people have only moderate factual knowledge of the Constitution, a majority in the test want to see the Constitution rewritten, yet a super majority of participants see the Constitution as a relevant document. This tells us that the people are in consensus of the idea of a 'constitution' running the government. Where we see the difference is many have their own opinions of what should be included within such a document. The idea of a constitution is patriotic to the American people, connects us to our roots as a nation, and separates our country from others in how it is run. Americans are proud of the idea of being American and following a constitution, but the contents of such a document are debatable to many people. When we know people's opinion on the relevance of the Constitution, we can more accurately predict the stability of our government. Conversely, here we see that peoples 'opinion of the government' may not mean the government that is currently running the country and creating policy at right this moment; it may mean the opinion of the governmental system as a whole, and people's approval of continuing to run our country in a democratic way.

The data here, though not significant for our hypothesis, can be used to launch other studies forward. Knowing that people follow the idea of our Constitution

religiously can indicate new ways to move for experiments involving the changing of amendments, favorability of democracy, or trust in the government. These are all studies that have been discussed in some capacity. Furthermore, knowing that people will support the idea of a Constitution gives us greater confidence in our governmental system and its lasting effect it has on the people of America. An interesting course of study would be to measure approval of the Constitution and want to rewrite it, as we did here, as we move through different political figures in government and see how these opinions change as approval for the current government fluctuates.

Problems

The single outstanding problem I have found with this experiment is that I have chosen a topic that, to some citizens, is more of a value than an opinion. Our Constitution is often held to a mythical standard with some seeing changing its contents as unlawful. This is where ideas on the Constitution change from an opinion one has to a core value they live by. Patriotism and love for the Constitution may be something that is more than a political opinion that cannot be changed with an entire class on the subject, let alone a small Supreme Court excerpt. Values are formed over a lifetime of experience and are difficult to change in people, and I believe that the following of our Constitution falls into this category. Because of this, my small section on *Cooper v. Arron* would have no effect on the respondents reading it.

Another problem I see with the experiment is that it is only going to be tested on college students. College students are more educated and a microcosm of America's population as a whole. With college, we also see that our sample size is on average, extremely young. Our average student age was 22.5. I suspect this will affect our results

by possibly showing more bias to the changing of the Constitution, as younger individuals are more likely to embrace and adapt to large changes.

Another fact about college students is that I believe their literal knowledge on the Constitution is going to be low while their passion for politics will be relatively higher. Especially when compared to older populations, we see that politics and government does not interest students as it does older generations. As college students, we are more disconnected from society and have much less real-life experience to run into Constitutional policies that have been made, giving us less firsthand experience and having to rely on opinions instead of our own personal research.

Finally, we may see that our treatment group might not actually read the given interpretation about the Constitution before taking the test and answering the opinion questions. This is because many people do not want to take the time to stop and read a survey, even if it is only three sentences. This will make our data completely invalid as our treatment group will be no different than the control if they do not read the excerpts beforehand. This is also a difficult thing to both prevent and identify if it is actually happening. Consequently, we saw that there was no statistical significance between the treatment and control group, making this a valid option. As discussed earlier, such a small amount of information may not be enough to change a person's opinion of the Constitution if the respondent did in fact read the excerpt. The difference between values and opinions stands clearly here.

CONCLUSIONS

Constitutional knowledge is something that is not very common in America today. I predicted that our treatment group, which will be given a new way to interpret our Constitution, will have a less favorable opinion towards the Constitution. This is because I believe that as people learn more about the Constitution and the precedent that is set today, they will begin to think that it is not a document worth keeping. The questions I have designed are made to first gauge respondents' knowledge and then determine their opinion on the Constitution; with this, my goal was to compare the two and see if there are any trends towards our hypothesis. I believe that blind patriotism was a large factor in our results as well as the idea of opinions versus values. But the low knowledge about the Constitution is something we saw across the board, no matter what group we tested. Even with these results, no statistical significance in what we tested for does not mean we cannot draw anything from this experience. Seeing that a super majority of people approve of the Constitution but a majority of people also believe the document should be rewritten shows an interesting relationship between the value of a 'constitution' to run our country and the want to reform our government. Moving this study forward and incorporating its results into approval of the government and favorability to changing certain parts of it may lead us to new understandings of what influences Constitutional values.

Our founding fathers intentionally wrote our Constitution ambiguously in 1787 in order to allow it to grow and change with the country. Many argue that today the

Constitution limits our government far too much to be effective, while others say we have defied the founding fathers original intentions of the document. Our success as a democracy must be credited to these men, as they had the foresight and knowledge to design something that could carry us through over 200 years of struggles and turmoil. Our Constitution, though heavily debated at times, is not something that can be thrown away without great care and consideration beforehand.

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