A Modernized Constitution for a Modern Society

It is a frequently asked question today, is our Constitution relevant in today’s American Society? The arguments presented can be made against the Constitution stating that it is outdated, and that it is too vague in its wording to ensure equal protection under the laws. The argument is presented at a great time because of the difficulty in trying to interpret the Constitution in today’s modern society. Some people argue that the United States needs to look at either revising the current document or adopting a new constitution like that of South Africa. “The Constitution of the United States was established, in part, to insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity…the Constitution seeks to achieve these goals in ways that frequently reflect the times of a bygone era” (Ramano, 2005, p. 1) As we just enter the year of 2013 with modernized technology, industry, and economy, the outdated constitution need not be replaced; however it should be updated. The Constitution is outdated indeed, however it is always kept current through the Amendment process and case law. It needs to be revised, reinterpreted for today’s society, and finally, new amendments should be added such as rights to education and equality.
The constitution is a very old and maybe a physically outdated legal document; however it is constantly being updated through the amendment process. An amendment can usually take a lot longer to actually be inputted into the constitution because of the process it must go through. The Constitution provides that an amendment may be proposed either by the Congress with a two-thirds majority vote in both the House of Representatives and the Senate or by a constitutional convention called for by two-thirds of the State legislatures. For example, in the birth years of the United States, slaves where only counted as property, not people, therefore their rights where not protected by the constitution. The 13th amendment which was ratified in December of 1865, prohibited slavery anywhere in which the United States had jurisdiction over. Many amendments have been proposed to congress to be added to the Constitution, but only “thirty three amendments have been submitted to the states after having been approved by the required two-thirds vote in each chamber of Congress.” It took about 80 years for the government to prohibit slavery within the U.S. The definition of Democracy states that it is a system of government in which political authority is vested in the people. So why are “the people” putting blame on an outdated constitution? Technically, it is “the people” who are making the rules we live by, right? There aren’t any problems with our Constitution, but its rather the people’s minds that are stuck in the 17th century. The people are deciding on what the framers where thinking back in 1787 when the Constitution was ratified when decisions should be made on how the people’s minds are thinking today. We are living in 2013 in which life has drastically changed, technology is the new leading way through communication, industry has modernized and became more efficient, cities and towns diversified with people from all over the world. Decisions need to be guided on what we, “the people” of today believe in rather than what the framers believed in more than 200 years ago.
The second way that our Constitution maintains its name as “a living document” is through case law or precedent, in which the government decides what the law is, based on former court case decisions. Precedent plays a huge role in determining current day laws because it allows lawmakers to look back at cases which are similar to that of today, and gives them an insight of what happened in similar cases, and allows them to make a decision based on that insight. Laws are also created after major court decisions made by the Supreme Court, in which the State governments must follow the path of the Federal court. “The U.S. Supreme Court is the highest court in the nation. Its decisions set precedents that all other courts then follow, and no lower court can ever supersede a Supreme Court decision. In fact, not even Congress or the president can change, reject or ignore a Supreme Court decision.” (Ed Grabianowski) For example, in the days of segregation, public places like schools and bars were either for white, or black only, but this was changed when the famous 1954 court case, *Brown v. Board of Education*, which declared it unconstitutional to segregate schools based on color or ethnic background. *Brown v. Board of Education* struck down the previous court case of *Plessy v. Ferguson* which was another major court case in the segregation of blacks and whites. In *Mapp v. Ohio*, Dollree Mapp’s house was raided by authorities in order to look for a fugitive. The police waved a piece of paper in the air, which Mapp could not identify as a warrant. Following the raid, the police found pornography that violated Ohio’s obscenity laws, and Mapp was convicted of obscenity based on that evidence. Later on, it was discovered that no actual warrant was ever produced and the court case made its way up to the Supreme Court. The Supreme Court decided that it was unconstitutional to use illegally obtained evidence in State courts to convict a suspected criminal. These are both two very different examples of case law; however both are
examples of the Supreme Court overturning previous decisions based on changing social and political situations.

“From the beginning, the American constitutional order has contained within it ambiguities and tensions which must be worked out over time—tensions between liberty and equality, between stability and change, between government’s role and private initiative, between law and discretion, between heritage and heresy. Whether change comes through explicit revision of constitutional text, or through judges’ interpretations, the process must operate to reconcile the legacy of earlier generations with the insights of our own time and our obligations to generations unborn.” – A.E. Dick Howard

It is the roll of the Judicial branch of government with the assistance of the Constitution to rule whether something is constitutional or unconstitutional. They must use present day social and political ideas and beliefs so that decisions that are overturned reflect that of the current society. Changing laws, both through the amendment process as well as making laws through precedent, the government is constantly changing the rules we live by. This ensures a living document that will live on through the people of the United States and so that it is always being revised and reinterpreted by the Supreme Court Justices.

The second step in fixing the way our Constitution works would be reinterpretation of the Constitution through the Supreme Court Justices. A question that is frequently asked by the people of the United States and the Supreme Court is, what where the framers thinking about when they wrote out the Amendments. For a long time now, Justices of the Supreme Court have been trying to guess at what the Framers had meant when they said by “The powers not delegated to the United States by the Constitution, nor prohibited, by it to the States, are reserved to the States respectively, or to the people.” Peter Berkowitz (2012) says that “it would have been possible to specify in the Fourth Amendment the kinds of searches and seizures that were forbidden.” As we can see in the Constitution, the framers didn’t go into specifics. However, this is our nation now and we should fix it so that it fits the wants and needs of the people. We can do this by having the Justices look back at the Constitution and reinterpreting vague sections like
the 10th amendment and its reference to *the people*. The Justices should create an official interpretation of who *the people* are so that it is clear. “The Constitution instructs judges to determine the import and scope of the standards and principles in light of developing norms and changing social and political circumstances…” (Berkowitz 2012, p. 84) Reinterpreting vague parts of the Constitution, like the 10th Amendments reference to *the people* would benefit Americans because it would make clear who exactly the powers belong to. For example, the 10th amendment and a reinterpretation could sound something like this:

> “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

**Supreme Court Justice reinterpretation:** The framers where thinking very differently from we do now 200 years ago. Their meaning of “the people” and its reference in the 10th Amendment was most likely very different. This nation is supposed to be a Democracy. Democracy, a Greek word in which “demo” means the people, and “kratos” meaning power. Therefore the powers not delegated to the United States by the Constitution, nor prohibited to it by the states respectively, or to the people, and the reference to “the people” is not limiting the power to only government officials, but rather all of the American Citizens that comprise this nation.

The Supreme Court Justices need to take it into their hands to reinterpret all of the vague parts of the Constitution and use this as an example of how to make it more straight forward for the citizens of the U.S. For the most part, all of the Amendments in the Constitution are great Amendments, they are just very old and outdated, but the reinterpretation process would help to update them for the current time period.

There are many Amendments that could be added to the U.S. Constitution to make it a much more complex document. One of the most important examples of a new Amendment that could be added would be in close relation to the South African Charter of Religious Rights and Freedoms. We need to incorporate an Amendment that does what South African Constitution does which Malherbe (2012) “states unequivocally that it aims to eliminate the discrimination,
inequality, and injustice of the past, and that the protection of human rights is accordingly a major focus and objective (Malherbe 2011, p. 616)” in the newly born Constitution. The Amendment that should be added would be considered the 28th Amendment in the United States Constitution and it would ensure rights to all American citizens, and none of the other rights in the Constitution shall be denied by somebody’s gender, ethnic background, working title, sexual preference, or age. The new Amendment will guarantee education and also ensure equality and equal protection under the laws and shall not be denied under any circumstances.

Amendment XXVIII (Education and Equality):

Section 1: “Everyone has the right

a. to a basic education, including adult basic education; and
b. to further education, which the state, through reasonable measures, must make progressively available and accessible.

Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account

c. equity;
d. practicability; and
e. the need to redress the results of past racially discriminatory laws and practices.

Everyone has the right to establish and maintain, at their own expense, independent educational institutions that

f. do not discriminate on the basis of race;
g. are registered with the state; and
h. maintain standards that are not inferior to standards at comparable public educational institutions.

Subsection (3) does not preclude state subsidies for independent educational institutions.” (South African Gvmt. Information, 1996)

Section 2: “Everyone is equal before the law and has the right to equal protection and benefit of the law.
Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

*1 No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.” (South African Gvmt. Information, 1996)

By adding this new amendment, it will ensure the rights of American citizens to education as well as equal protection under the laws. It also defines equality and states that no person shall be unfairly discriminated against.

Over time the United States Constitution has started to fall out of popularity because of the vagueness and the fact that it isn’t as in depth as newer constitutions, for example the South African Religious Charters and Freedoms. Our Constitution has been a model for a multiple countries including South Africa, but the problem lies in the actual writing of the document. However, with the ongoing Amendment process and laws being made through precedent, the rules we live by are always being updated to fit the modern society. The process is slow at times, however it is a large system and it takes time to adjust. By having the Supreme Court Justices reinterpret the Constitution in a modern sense to the people of the United States, this will help people understand the wording as well as its meaning. It will also bring the Constitution to modernized society and work in a more updated way. By adding the new 28th Amendment, this will ensure the rights to education to all citizens as well as equality. It also distinguishes what
equality is. With the laws always being updated through the Amendment process and case law, as well as the reinterpretation of the Constitution, and the newly requested 28\textsuperscript{th} Amendment, this would propel our beloved document into the 21\textsuperscript{st} century so that it works within our modernized technology, industry, economy, and diversity.

