An Analysis of the Unintended Consequences of the United States Constitution

By

Emily Cunning

A Thesis Submitted to the W. A. Franke Honors College

In Fulfillment of the Bachelors Degree with Honors in Law

THE UNIVERSITY OF ARIZONA

December 2021

Approved by:

Dr. Chad Westerland
Associate Professor
School of Government and Public Policy
University of Arizona

Abstract

Revolutionaries throughout the globe have helped establish some of the most complex forms of governments, including that of the United States democratic republic. The United States Constitution has continuously evolved over time, from its conception to the modern era. Constitutional Amendments have been made in an attempt to keep up with the evolving world, but what happens when a new issue arises that has never been discussed before? There are a plethora of ideas that the United States' Founding Fathers could not have fathomed at the creation of the Bill of Rights. The First Amendment's Freedom of Speech and Freedom of Religion clauses, as well as the Fourth Amendment's implicit Right to Privacy clause, have resulted in dissent over the past two centuries on the meanings of them and how we, as a country, should interpret them. Should we choose to interpret the United States Constitution with strict or loose constructionism? Or should the law be looked at solely as a case by case basis on whether or not strict or loose interpretation of the Constitution applies? Through the analysis of Supreme Court cases, legal precedents, and historical trends, we will dive into the true meaning of the Constitution and how to interpret it in modern times when compared to its original intent.

In the modern era, the intent of a previous decision very rarely results in what it was intended for. These unintended consequences exist within the modern United States government today through the Amendments to the Constitution. What people believed back in the 1700s was the best form of government has not necessarily translated into modern times, making it necessary for the evolution of government and laws. Amendments exist to allow changes in the law, but even current amendments can be vague to allow for a case by case use, because there are always exceptions, such as self-defense or involuntarily breaking the law. The revolutionaries that established the foundation of government the United States uses today could not have fathomed the possibilities that arose over the past two hundred and fifty years. However, they all had to start somewhere.

Three major revolutions—the French, the Mexican, and the United States—resulted in vastly different politics, economies, governments, and cultures. From start to finish, these revolutionaries sculpted a new world for generations to come. The process of these revolutions was also vastly different because they began at different times, both literally and figuratively. In terms of timeline, the revolutions took place over the course of two centuries. Furthermore, each revolution started at a different time in the country's history—politically, economically, and socially speaking. The consequences of the revolutions rippled throughout history, with the United States' Founding Fathers facing many unintended consequences of the government they were establishing.

However, all three of these revolutions began with the same thing—an idea for a better future. Yet, the results were all different. Thus brings forth many questions—how and why were the results different in all three revolutions? How do rebels keep stability amongst themselves in a revolution? What legacies have these revolutions left behind and how have they evolved?

Fortunately for the American Revolution, success was on the side of the revolutionaries, unlike that of the French and Mexican Revolutions. Many historians will agree that the American Revolution was likely sparked by the inadequacies of the British government and the inequality of the American colonists compared to British mainlanders. Lack of representation is often cited as the primary antagonist of the war, rather than the widely accepted argument for taxes being the antagonist.[1] The problem the American colonists faced with Britain was not the taxes themselves, but the lack of representation in British Parliament for their colonists. This led to friction between the Red-Coats and colonists, resulting in "the shot heard around the world." On April 19, 1775, in Concord, Massachusetts, this shot was fired from an unknown side, but sparked a flame that could not be extinguished, unlike prior clashes between the British and American colonists.[2] Prior to this turning point for the war, many other skirmishes arose between the groups, including the Boston Massacre of March 1770. This Massacre fueled anti-British sentiments as it resulted in the deaths of five American colonists, with no soldier jailed for the murders of the colonists.[3]

The French Revolution that started in 1789, just a few years after the success of the American Revolution, has since been immortalized by Victor Hugo in *Les Misérables*.[4] An

---

[1] *1776 was more about representation than taxation*. National Bureau of Economic Research. (n.d.). https://www.nber.org/digest/dec16/1776-was-more-about-representation-taxation.

[2] Nix, E. (2015, January 23). *What was the "shot heard round the world"?* History.com. https://www.history.com/news/what-was-the-shot-heard-round-the-world.

[3] Hinderaker, E. *Boston's Massacre*. Harvard University Press; 2017. Accessed September 6, 2021. https://search-ebscohost-com.ezproxy4.library.arizona.edu/login.aspx?direct=true&db=e025xna&AN=1491543&site=ehost-live.

[4] Hugo, V., & Wilbour, C. E. 1. (1992). *Les misérables.* Modern Library ed. New York: Modern Library. In this novel, Hugo writes about many story lines within the French Revolution from 1789-1799. The primary protagonist is Jean Valjean, a man arrested for stealing a loaf of bread to save his starving family. He eventually escapes, becoming a well-off and generous member of Paris. He takes in an orphaned girl, after meeting her mother on her deathbed. However, he is haunted by the violent French Revolution around him, entangling him and his daughter with the revolutionaries. French officer and primary antagonist, Javert, follows Valjean for escaping his sentence in this epic tale of love, pain, and

accumulation of problems starting in the early 18th century provoked the revolution. One notable idea that helped propel the need for revolution was the French Enlightenment, which also largely influenced the American Revolution. The ideas of Baron de Montesquieu, Voltaire, Jean-Jacques Rousseau and Denis Diderot were spread throughout France, stirring up the need to disband any of the remaining feudalistic ideas and societies.[5]

Furthermore, French assistance in the American Revolution had led France to bankruptcy, increasing the taxes in an attempt to pay their debts.[6] The French "bourgeoisie resented its exclusion from political power and positions of honour," and no longer held faith with the French monarchy.[7] Finally, France was the most populous country in Europe at the time, leading to insufficient crops and an economic crisis, causing inflated prices and hunger throughout the country.[8] The primary revolutionaries were the bourgeoisie who felt dishonored by their lack of power and the peasants of France. In the end, whether or not the revolution was successful or unsuccessful is still debated by historians. In some ways, the revolution was a success in implementing the Enlightenment ideas brought forth by the revolutionaries. The common people were able to get more rights and freedoms than they had previously held.[9] However, the revolution was unsuccessful in providing true equality for the French people and resulted in the execution of roughly "20,000 to 40,000" people, in an attempt for the National

---

forgiveness. The novel portrays the hardships faced by the modern people and the passionate revolutionaries fighting for a better life and world. Their sacrifice has since been immortalized through the tale and adapted to the screen and the stage.

[5] Encyclopædia Britannica, inc. (n.d.). *French revolution*. Encyclopædia Britannica. Retrieved September 13, 2021, from https://www.britannica.com/event/French-Revolution.

[6] Encyclopædia Britannica, inc. (n.d.). *French revolution*.

[7] Encyclopædia Britannica, inc. (n.d.). *French revolution*.

[8] Encyclopædia Britannica, inc. (n.d.). *French revolution*.

[9] UKEssays. (November 2018). The Success of The French Revolution. Retrieved from https://www.ukessays.com/essays/history/the-success-of-the-french-revolution-history-essay.php?vref=1.

Assembly to remain in power.[10] The peasant population of France was unsuccessful holding any type of power for themselves, but eventually supported Napoleon Bonaparte in 1799.[11] Just five years later, Bonaparte would declare himself emperor of France, bringing tyranny to the French people once more, but under a different name.[12]

Finally, the Mexican Revolution was further influenced by the Enlightenment ideals of both the French and U.S. revolutions. Lasting from 1910-1920, the Mexican revolution was largely a fight against social hierarchies and the elitist government of Porfirio Díaz.[13] During the Profirian years, "Porfirian officials determined that Mexicans would look modern, if nothing else."[14] This desire to adhere to societal ideals brought forth by the United States caused an uproar within the lower class. Laws forcing a certain type of clothing and other accessories required the lower class to spend money to "fit in" with the modern ideals. This forced dress code allowed "a law [requiring] the wearing of trousers with a 25 cent fine for those in breech-cloths."[15] These laws brought forth by Díaz were elitist and uncaring for those with financial hardships. "For the Porfirian bourgeoisie, Carreño's Manual de urbanidad provided essential and exhaustive instruction in proper forms of comportment for men, women, and children at home and in public."[16] In 1908, Díaz staged a mock election, under the guise of welcoming democracy into the Mexican government. This fake election resulted in the arrest of

---

[10] UKEssays. (November 2018). The Success of The French Revolution.
[11] UKEssays..
[12] UKEssays.
[13] Encyclopædia Britannica, inc. (n.d.). *Mexican revolution*. Encyclopædia Britannica. Retrieved October 24, 2021, from https://www.britannica.com/event/Mexican-Revolution.
[14] *Problems in Modern Mexican History : Sources and Interpretations*, edited by William H. Beezley, and Monica A. Rankin, Rowman & Littlefield Publishers, 2017. *ProQuest Ebook Central*, https://ebookcentral.proquest.com/lib/uaz/detail.action?docID=4828786.
[15] *Problems in Modern Mexican History : Sources and Interpretations*, edited by William H. Beezley, and Monica A. Rankin.
[16] *Problems in Modern Mexican History : Sources and Interpretations*, edited by William H. Beezley, and Monica A. Rankin.

Francisco Madero, the liberal "candidate" opposing Díaz. Shortly after this illusion of democracy, revolutionists took Ciudad Juarez in 1911, "forcing Díaz to resign, and declaring Madero president."[17] However, Madero's reign did not bring the peace and stability the revolutionists had hoped. The United States quickly turned against Madero's reign for fear he would bring along a civil war which would, in turn, harm the American economy.[18] More rebellions were stirred up during Madero's presidency, including the rebellion started by Porfirio Díaz's nephew, Félix Díaz. However, in a twist of events, federal commander, Victoriano Huerta, joined forces with Félix, with the goal to remove Madero and install Huerta as president.[19] This "Pact of the Embassy" was successful in installing Huerta at the seat of power, but resulted in more unrest and a movement for the return of constitutional government.[20] These constitutional rebels were supported by U.S. President Woodrow Wilson as the United States began to intervene in Mexican affairs.

Following a Civil War in 1914, American support backed Venustiano Carranza and brought forth the Constitution of 1917.[21] This new Constitution "conferred dictatorial powers on the president but gave the government the right to confiscate land from wealthy landowners, guaranteed workers' rights, and limited the rights of the Roman Catholic Church."[22] This limitation of the church led to many problems amongst the people of Mexico. A large population of the country was still incredibly religious and viewed this limitation as an attack on their personal beliefs. However, the Constitution, although unpopular amongst some, provided a necessary separation of church and state. Eventually, Carranza was assassinated, leaving Adolfo

---

[17] *Mexican revolution*. Encyclopædia Britannica.
[18] *Mexican revolution*. Encyclopædia Britannica.
[19] *Mexican revolution*. Encyclopædia Britannica.
[20] *Mexican revolution*. Encyclopædia Britannica.
[21] *Mexican revolution*. Encyclopædia Britannica.
[22] *Mexican revolution*. Encyclopædia Britannica.

de la Huerta as president in 1920.[23] However, the Constitution of 1917 had lasting effects on Mexican society and violence continued to plague the country for nearly two decades. A large difference with the Mexican Revolution than compared to the United States Revolution was a solidified front by a majority of the revolutionaries. The Mexican revolution had many different sides rebelling against numerous ideas, which created a lack of unity and cohesion in implementing the new Mexican government. In contrast, the United States Revolution had two major parties fighting—the Red-Coats and the American Patriots. The Patriots had the Founding Fathers leading them, who held two Continental Congresses to establish why they were revolting against England, as well as how the new government would function. This seeming lack of cohesion resulted in a turbulent start for the Mexican government that has resulted in a rocky modern government.

However, the definition of success is subjective. Although unsuccessful on face value, the Mexican Revolution, like the French Revolution, brought forth some necessary revisions to the political and social structures of Mexico. The separation of church and state was a progressive start to the developing country. Labor rights were also developed from the Revolution, as well as the establishment of a constitutional republic. Despite what can be considered as a losing battle, the Mexican Revolution allowed for the establishment of necessary rights. The necessary rights that were established through the Mexican Revolution were also rights established in the United States' Constitution. The separation of church and state is and was a primary similarity between the two governments. However, the rights of the countries have evolved over time, including that of the United States' Constitution and its individual Amendments.

The meanings of the United States' Bill of Rights and amendments drafted during the late eighteenth century have not held constant and definitive meanings. Under many politicians and

[23] *Mexican revolution*. Encyclopædia Britannica.

presidential terms, strict and loose interpretation of the Constitution has taken place, without knowing the original intent of these laws. A similar question has since arisen with the ratification of the Fourteenth Amendment, Section 1 in 1868, just after the Emancipation Proclamation.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[24]

Given the timing of its passing, this amendment was likely passed in the hopes of providing some safety for the recently-freed slaves following the Emancipation Proclamation, allowing them to be citizens in a world where they were previously viewed as lesser than livestock. The Fourteenth Amendment is shown in the landmark case of *United States v. Wong Kim Ark* in 1898.[25] This case established the current law of birthright citizenship extending to all, by allowing Wong Kim Ark citizenship because he was born in San Francisco, despite his parents' Chinese citizenship. In contrast, dissent has arisen because of birthright citizenship because it can "encourage" illegal immigration into the United States.[26] The further dilemma with looking at the birthright citizenship clause as all inclusive, is that, at its creation, immigration was not regulated and would not be regulated until 1882.[27] This has created a problem in its interpretation that is constantly debated in the 21st century. A similar issue arises with the Second Amendment in the Bill of Rights on whether or not the legal documents created 250 years ago should be viewed with loose or strict interpretation. It states as follows:

---

[24] U.S. Const. amend. XIV, § 1.
[25] United States v Wong Kim Ark (United States Supreme Court March 28, 1898).
[26] Peter H. Schuck & Rogers M. Smith. *The question of birthright citizenship*. National Affairs. https://www.nationalaffairs.com/publications/detail/the-question-of-birthright-citizenship.
[27] Peter H. Schuck & Rogers M. Smith. *The question of birthright citizenship*.

> "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[28]

The context of "Militia" can have many interpretations, but it is unlikely that the Founding Fathers could have foreseen the dangers brought by automatic and semi-automatic weapons. Both of these instances raise the following questions—how should nations look at legal documents decided over 150 years prior to the twenty-first century? Should these legal documents be held only to the original intent or evolve with modern times? This is an example of how these documents are living evolving entities with constantly changing interpretations, depending on who is viewing them.

A prominent example of this found in American history lies within the Declaration of Independence from the Second Continental Congress in 1776. It states the following:

> "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of happiness."[29]

This introduction in the Declaration of Independence is well-known and cited throughout history. However, "all Men" did not truly mean all men when the document was written. Yet, in the eyes of the Founding Fathers, they believed that they were including "all Men," at least those that they considered men. Although women are typically included in the term "mankind," they were not regarded in this document to the extent that men were. Furthermore, "Men" in this instance was exclusive to white males, rather than any man of another race. Those from other countries were not afforded the equal rights that white men were. Class was also a discriminator in this document, as many of the rights were afforded to land-owning males as well. In contrast, "all Men" in the twenty-first century extends to numerous genders, sexual orientations, and

---

[28] U.S. Const. amend. II § 1.

[29] U.S. Declaration of Independence, Introduction.

nationalities. The progressive attitudes of the past two centuries have allowed for the inclusion of all people, rather than being exclusive to straight, white, land-owning males.

Despite the Colonies' seeming disdain for England during the American Revolutionary War, many aspects of the English government remained within the newly found states. One such influence was the Magna Carta. The Magna Carta was a major turning point in British history, as it held the monarchy accountable in regards to the law and helped establish the individual rights of free people.[30] Originally signed on June 15, 1215, King John established the Magna Carta to help keep the peace amidst the "threat of civil war."[31] The importance of the charter was its lasting impact and precedents set of individual rights and freedoms. By limiting the monarchy's ability to override the law as he or she saw fit, individuals felt larger freedom and protection by the law. However, the individual freedoms established by the Magna Carta only applied to "free people," disqualifying a large part of the population from protection under the law.[32] Furthermore, because of its basis for individual liberties, the Magna Carta Charter helped establish the English Common Law.[33] The English Common Law was the precedent that American colonists pointed to as a basis for their claim that they deserved to be treated equally as Englishmen under the law, because they were in fact, Englishmen.[34] The claim was specifically cited by the following: "the law and custom of England is the inheritance of the subject."[35] By stating that the law was "inheritance," a substantial precedent of birth-right

---

[30] Encyclopædia Britannica, inc. (n.d.). *Magna carta*. Encyclopædia Britannica. Retrieved November 1, 2021, from https://www.britannica.com/topic/Magna-Carta.
[31] Encyclopædia Britannica, inc. (n.d.). *Magna carta.*
[32] Encyclopædia Britannica, inc. (n.d.). *Magna carta*
[33] Legal Information Institute. (n.d.). *Magna carta*. Legal Information Institute. Retrieved November 1, 2021, from https://www.law.cornell.edu/wex/magna_carta.
[34] Hazeltine, H. D. (1917). The Influence of Magna Carta on American Constitutional Development. *Columbia Law Review*, *17*(1), 1–33. https://doi.org/10.2307/1110845.
[35] Hazeltine, H. D. (1917). The Influence of Magna Carta on American Constitutional Development.

citizenship was established. Birth-right citizenship has become a major factor in the United States legal system and was helped establish through this inheritance claim by the colonists. Furthermore, the Magna Carta helped set the precedent for due process under the law, by "promising access to swift justice."[36] This can be seen in the Fifth Amendment and incorporated into state governments in the Fourteenth Amendment. The eight-hundred year old document still influences the United States government today as it did in the late 1800s, as seen in the Fourteenth amendment for birthright, or *ju solis,*[37] citizenship. The influence of the British government can be traced back even further to the ancient Roman government.

In the Federalist Papers, Alexander Hamilton, Founding Father and founder of the National Bank, cites many different Roman cities as references, including that of "Sparta, Rome, and Carthage in favoring an aristocratic government."[38] Hamilton used these cities as an example of the necessary backing of a country's citizens financially. Without the support of the people and the Senate failing, the country would fall shortly after.[39] Furthermore, the influence of Rome infiltrated the American government through the workings of Enlightenment leaders, such as

---

[36] Legal Information Institute. (n.d.). *Magna carta*. Legal Information Institute. Retrieved November 1, 2021, from https://www.law.cornell.edu/wex/magna_carta.

[37]Another piece of government plucked from Britain was the use of Latin legal terms, including the writ of *habeas corpus*. *Habeas corpus* was established through the help of the Magna Carta, through the promise of "protection against illegal imprisonment," shown in Section 39.# This use of Latin within the legal language stems from the Roman legal system, despite the notion that Latin is a dead language. Nonetheless, the United States' insistence on distinguishing themselves from Great Britain did not include legalese, the Latin language of the law. Despite the popular claim that Latin is a dead language, Latin is vibrantly alive and the root of many modern languages, including French and Spanish. Latin was used in Ancient Rome as the language of scholars, an idea which transferred to the United States' democratic republic. In modern times, Latin is still used in the legal system as well as science fields, including medicine. By creating and maintaining a consistent scholar language, ideas can and have transcended language barriers. This is true of the modern use of Latin in law, previously called legalese. A true understanding of the legal system in the United States requires a solid understanding and foundation of the supposed "dead" language.

[38] Ames, R. A., & Montgomery, H. C. (1934). The Influence of Rome on the American Constitution. *The Classical Journal*, *30*(1), 19–27. http://www.jstor.org/stable/3290141

[39] Ames, R. A., & Montgomery, H. C. (1934). The Influence of Rome on the American Constitution.

Locke, Montesquieu, and Voltaire, all of whom were well "acquainted with the structure of the Roman government" and its inner workings.[40] Roman historian, Polybus, actually notes several of Montesquieu's ideas in his writings based on "observations" from the Roman Empire.[41] The Roman influence on the American government essentially runs much deeper than most people believe and serves as the foundation for several other influences.

The Enlightenment's ideas established by Rome very quickly translated and united all of the previously mentioned revolutions under one umbrella. The primary notion evolving from the Enlightenment was that of equality amongst all men, regardless of social, economic, or political status. Again, as previously stated, "all men" did not truly mean all men at the time, but it was a starting point for these revolutionary movements. United States Founding Father, Thomas Jefferson, was well known for his love of the French Enlightenment and his support of the people's revolution. In 1784, Thomas Jefferson sailed to France, becoming an ambassador for the newly founded United States.[42] French Enlightenment philosopher, Voltaire, played a huge part in the development of Thomas Jefferson in his personal and political life. Voltaire, whose real name was François-Marie d'Arouet, wrote his ideas under his famous pen name.[43] He derived his philosophical ideas from many places, including England. Voltaire was briefly exiled to England for three years, under the charge of defamation against "the Duc de Rohan, a very powerful aristocrat."[44] The philosopher went through a sort of metamorphosis during his English exile, emerging into his "mature *philosophe* identity."[45] In 1729, Voltaire was allowed to return to

---

[40] Ames, R. A., & Montgomery, H. C. (1934). The Influence of Rome on the American Constitution.
[41] Ames, R. A., & Montgomery, H. C. (1934). The Influence of Rome on the American Constitution.
[42] Wilson, D. L. (1993). Thomas Jefferson's Library and the French Connection. *Eighteenth-Century Studies*, *26*(4), 669–685. https://doi.org/10.2307/2739489.
[43] Shank, J. B. (2020, May 29). *Voltaire*. Stanford Encyclopedia of Philosophy. Retrieved October 22, 2021, from https://plato.stanford.edu/entries/voltaire/.
[44] Shank, *Voltaire*.
[45] Shank, *Voltaire*.

France once more, a vastly different man than when he left. He continued his work, but eventually became known as an "intellectual outlaw," because of his publication that was released without permission of the monarchy.[46] This event, although not wanted, allowed Voltaire to grow from French Newtonian ideas to the French Enlightenment *philosophe*, with ideas of religious tolerance and free speech.[47] Voltaire's writings litter Jefferson's notebooks and are shown throughout Jefferson's political works.[48] These ideas brought forth by the French Enlightenment are directly stated in the First Amendment of the United States Constitution:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[49]

The ideas from the First Amendment show a direct connection between the French Enlightenment and the United States government, through the work of Jefferson. However, Voltaire was not the only French Enlightenment philosopher to influence the workings of the American government.

French *philosophe*, Baron de Montesquieu, brought forth one of the foundations the United States government was built upon. Montesquieu created the idea "*trias politica*," from "Spirit of the Laws," his major work.[50] This idea was that "In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law."[51] Montesquieu's primary purpose of pointing out these powers was that they should never be held in the hands of one

---

[46] Shank, *Voltaire*.
[47] Shank, *Voltaire*.
[48] Wilson, Thomas Jefferson's Library and the French Connection.
[49] U.S. Const. amend. I § 1.
[50] History.com Editors. (2017, November 17). *Three branches of government*. History.com. Retrieved October 22, 2021, from https://www.history.com/topics/us-government/three-branches-of-government.
[51] Secondat, M. C. de, Nugent, T., & Prichard, J. V. (1912). *The Spirit of the Laws*. D. Appleton.

person, but divided into multiple branches. This led to a foundational government belief in the U.S. democratic republic of separation of powers and checks and balances. Montesquieu contended that "there is no liberty if the judiciary power [is] not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression."[52] In the Federalist Papers, Montesquieu's ideas are highlighted when James Madison stated that "the accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elected, may justly be pronounced the very definition of tyranny."[53] This idea from Montesquieu helped shape the United States Constitution over the next 250 years.

Finally, John Locke, an English philosopher born in 1632, also directly influenced the United States government through his ideas.[54] Locke helped set the foundation for much of the U.S. Constitution, but largely pushed for toleration in all aspects of government. Religion was a major point of Locke's philosophy and how important religious freedom and toleration was and is.[55] Although unpopular at the time, this separation of Church and State has allowed for a more just legal system and true freedom for people to live their lives in the way they choose. However, it can be argued that separation of Church and State still does not exist in the modern era through multiple perceived, but not convicted, violations of the Establishment Clause in the First Amendment, which prohibits the federal government from establishing a national religion. Such

---

[52] Secondat, M. C. de, et. al., *The Spirit of the Laws*.
[53] Madison, J. Federalist Papers. Federalist Paper No. 51.
[54] Encyclopædia Britannica, inc. (n.d.). *John Locke*. Encyclopædia Britannica. Retrieved November 3, 2021, from https://www.britannica.com/biography/John-Locke.
[55] Encyclopædia Britannica, inc. (n.d.). *John Locke*.

violations include the phrasing of “One Nation Under God” in the Pledge of Allegiance, as well as on United States currency. The First Congress held after the ratification of the First Amendment included a prayer reading prior to the assembly. This raises the question of why the Founding Fathers did not think that the prayer prior to Congressional assembly violated the Establishment Clause. The Founding Fathers lived in a time, however, when many people were still under an umbrella of Christianity and all “technically” believed in the same God. Furthermore, the congressmen were not required to participate in the legislative prayer and, therefore, not coerced into a violation of the First Amendment. Finally, there was no legal document made that established this precedent for Christianity and was/is a tradition rather than a law. Supreme Court cases have come up regarding this issue, which will be reviewed towards the end of this analysis.

Despite the attempt to separate church and state, religion still greatly influenced laws in the early colonial era. Due to the fact that the First Amendment only applied to the federal government—state incorporation wouldn’t happen until the passing of the Fourteenth Amendment—states were given the right to create their own laws that did not necessarily follow the ratified U.S. Constitution. Despite the Fourteenth Amendment, freedom of religion wasn’t formally incorporated into the state governments until about the 1940s. Because of this fact, freedom of religion did not necessarily exist in the daily lives of United States citizens. State autonomy was an important factor for the colonists and they were not willing to give power to a centralized federal government. State autonomy resulted in severe push back against the idea of the federal government for some states. While Federalists believed in a larger government, Anti-Federalists believed in a small federal government and a stronger state government, especially by today’s standards. Alexander Hamilton fought for the establishment of a national

bank as a federalist, while Thomas Jefferson was vehemently against Hamilton's idea of a federal bank because Jefferson believed it was an overreach and not within the enumerated powers of the federal government. Nonetheless, Jefferson still approved the Louisiana Purchase, which he did not believe the federal government had the power to do. Regardless, the purchase was still made, much to the benefit of the newly established nation. This question of federalism and state autonomy has resulted in a unique way that Americans perceive themselves. The sense of personal identity resulted in the unique state governments with separate laws. This separation of state and federal government resulted in an attachment to one's state more than one's country.

Oftentimes, when a U.S. citizen is asked where he or she is from, he or she often responds with the state that he or she was born in, rather than stating his or her nationality. This is a unique characteristic of the United States and is often not seen in other countries. This partially assisted with the success of the American Revolutionary War. Because the United States was already established within its state governments, the need for a centralized government was minimal and not immediate. In contrast, France and Mexico didn't have these pre-existing state autonomies during their revolutions. The States' pre-existing state governments helped keep the country running smoothly. The tricky aspect of the United States revolution was maintaining the identities of the states while also creating a national identity outside of the unified hatred of England. However, by maintaining the identities of the states, various state constitutions and laws were created in dissonance to the United States Constitution, including freedom of religion laws.

A prime example of this dissonance between state laws is religious laws in both Massachusetts and Pennsylvania. The puritan religion shaped Massachusetts law and society,

shown in the infamous Salem Witch trials as well as Nathaniel Hawthorne's *Scarlet Letter*.[56] The Puritanism movement arose in the 1600s to eliminate any remaining Roman Catholic practices within the Church of England.[57] When the Puritans arrived in the American colonies, religion formed every aspect of their lives. Living a religious life was commonplace back in colonial America, but Puritanism was a harsh life to live and any deviation from religion was punished harshly in accordance with the law. From this lack of separation between church and state, the Puritans formed a church government in the Massachusetts colony.[58] In contrast, the Quakers, another Christian denomination, were pacifists who actively advocated against an "ordained ministry," an aspect extremely important to the Puritans.[59] When the Quakers arrived in the American colonies, they were persecuted harshly, despite the promise of religious freedom and at the bare minimum, religious toleration. William Penn, a wealthy Quaker, saw this persecution and was granted a land grant in 1681 by King Charles II.[60] With this grant, he founded the colony of Pennsylvania, a religious safe haven for persecuted Quakers.[61] Quakers began to flock to the new colony and began to establish roots. In Penn's Pennsylvania, religious tolerance was a law and all religions were welcome without fear of persecution.[62] To ensure that no one was

---

[56] Hawthorne, Nathaniel, 1804-1864. (1988). *The Scarlet Letter*. New York, N.Y., U.S.A. :Signet Classic. *The Scarlet Letter* is the tale of Hester Prynne, a young woman in Boston, Massachusetts, a Puritan colony. Prynne comes to the American colonies ahead of her husband, a man much older than she, but he never arrives. She has an affair, resulting in a daughter and public shame from the other Puritans. Prynne is forced to wear a scarlet letter "A," for adulteress so all will know what she has done. However, Hester begins to forge a better life for her and her daughter, dying a happy woman having lived with her sins.

[57] Encyclopædia Britannica, inc. (n.d.). *Puritanism*. Encyclopædia Britannica. Retrieved November 4, 2021, from https://www.britannica.com/topic/Puritanism.

[58] Encyclopædia Britannica, inc. (n.d.). *Puritanism*.

[59] Encyclopædia Britannica, inc. (n.d.). *Quaker*. Encyclopædia Britannica. Retrieved November 4, 2021, from https://www.britannica.com/topic/Quaker.

[60] Encyclopædia Britannica, inc. (n.d.). *Quaker*.

[61] Encyclopædia Britannica, inc. (n.d.). *Quaker*.

[62] *William Penn and American history*. Pennsbury Manor. (n.d.). Retrieved November 4, 2021, from http://www.pennsburymanor.org/history/william-penn-and-american-history/.

persecuted against, Penn refused to establish a state religion, something all other states (colonies) at the time had chosen to do.[63] William Penn's example set an incredible precedent for religious toleration and separation of church and state. Although Quakers were influenced by their religion in their daily lives, all were accepted, unlike Puritan Massachusetts. Another religious group that faced persecution were the Mormons of the Church of Jesus Christ of Latter-Day Saints. The Mormon religious sect was heavily persecuted in colonial America and continued to be even after the establishment of the United States. In 1838, the Missouri governor ordered Mormans in the state to be "exterminated or expelled."[64] In 1879, George Reynolds, a member of the Church of Jesus Christ of Latter-Day Saints, was charged with bigomy under an anti-bigamy law.[65] Reynolds claimed that this violated his First Amendment religious rights because he believed and practiced polygamy. In a unanimous decision, the Supreme Court ruled in favor of the law under the basis that marriage is a "sacred obligation" and "usually regulated by law."[66] The federal Edmunds Act still makes polygamy illegal and it is still illegal at the state levels. However, the basis for the Court's ruling of marriage as a "sacred obligation" is a statement clearly influenced by the more accepted versions of Christianity from the time. This shows the clear influence of personal religion infiltrating the Supreme Court's decisions during the nineteenth century.

The idea of religious freedom established during this period led to some very interesting cases in the modern era in regards to how far religious freedom extended. Were religions free to practice in any way they intended? Could religious institutions receive government aid? These

---

[63] *William Penn and American history*. Pennsbury Manor. (n.d.).
[64] History.com Editors. (2017, December 7). *Freedom of Religion*. History.com. https://www.history.com/topics/united-states-constitution/freedom-of-religion.
[65] Reynolds v United States (United States Supreme Court January, 6 1879).
[66] Reynolds v United States (United States Supreme Court January, 6 1879).

questions help establish a point of analysis to further understand the unintended consequences of the Founding Fathers in the creation of the United States Constitution. Many of these questions could not be answered or anticipated by the revolutionaries fighting for independence. Freedom of Religion, Freedom of Speech, and the implicit Right to Privacy in the Fourth Amendment have gone through an evolutionary process as the world has progressed, along with other laws in both the state and federal governments.

The often misunderstood First Amendment was built upon the previously mentioned idea of religious freedom, but has since evolved and continues to evolve. One notable landmark case in establishing this religious freedom was the case *Employment Division, Department of Human Resources of Oregon v. Smith* in 1990. This case was regarding Smith, a Native American man who used peyote in religious rituals. Smith worked at a drug rehabilitation center which required drug testing as an employee. Because of his use of peyote in religious ceremonies, Smith failed the drug test. While attempting to get unemployment benefits, Smith was denied because his termination was due to his peyote use.[67] Upon denial, Smith claimed that this was a violation of his First Amendment right to religious freedom.[68] In the majority opinion, Justice Antonin Scalia stated that the law prohibiting peyote use was a valid law and exercise of the government's power.[69] He stated: "[This exception] would open the prospect of constitutionally required exemptions from civic obligations of almost every conceivable kind."[70] Essentially, the problem had less to do with the peyote consumption of Smith and more the principle and precedent that

[67] Employment Division, Department of Human Resources of Oregon v. Smith (U.S. Supreme Court April 17, 1990).
[68] Employment Division, Department of Human Resources of Oregon v. Smith (U.S. Supreme Court April 17, 1990).
[69] Employment Division, Department of Human Resources of Oregon v. Smith (U.S. Supreme Court April 17, 1990).
[70] Employment Division, Department of Human Resources of Oregon v. Smith (U.S. Supreme Court April 17, 1990).

would be set, had the court ruled in favor of Smith. This case led to the Smith test stating the following: Is the criminal prohibition otherwise constitutional? If the answer is yes, the free exercise claim loses. If a law is otherwise constitutional and neutral, then the free exercise claim is going to lose. Otherwise neutral state criminal laws that interfere with exercise of religion are constitutional. The Free Exercise Clause will not make an exception to a law that is applied to everyone else and not specifically targeting one religion or group of people. This test does not require strict scrutiny and does not need a compelling interest or least restrictive means. The only requirement is neutrality, which threw out the previously used Sherbert Test. The four requirements of the Sherbert Test were sincere religious belief, substantial burden from the government, compelling government interest by the government, and that the law was the least restrictive to the religion.[71]This is an example of a likely unintended claim of religious freedom influenced by Locke, but was still argued in the U.S. Supreme Court. In modern times, the general rule of thumb is if the law "restricting" religious freedom is a valid exercise of government power, then it does not violate religious freedom. If a law is otherwise neutral and does not criminalize a religion, then it is not a violation of the First Amendment.[72] This conflict has risen because there are many religions that were not accounted for when talking about religious freedom and toleration. Therefore, many aspects of religious freedom and toleration were likely unforeseen when the First Amendment was drafted and religious toleration was established.

---

[71] US Legal, I. (n.d.). *Find a legal form in minutes*. Sherbert Test Law and Legal Definition | USLegal, Inc. https://definitions.uslegal.com/s/sherbert-test/.

[72] Employment Division, Department of Human Resources of Oregon v. Smith (U.S. Supreme Court April 17, 1990).

A more recent case with unforeseen challenges in regards to religious freedom has been *Burwell v. Hobby Lobby* in 2014.[73] This case was in regards to the Affordable Care Act and the contraception clause. Prior to this case, only churches could make these claims of religious exemptions. Hobby Lobby is and was a highly religious organization, which was not withheld from public knowledge. In the case, Burwell was denied a contraception plan because of the Hobby Lobby Corporation's religious beliefs. Burwell sued under the Affordable Care Act, claiming that the decision by Hobby Lobby was unconstitutional. This landmark case was ruled in favor of Hobby Lobby in a split 5-4.[74] This precedent allowed private corporations to exercise religious freedoms, which was previously reserved for individual rights and religious organizations, such as churches.[75] One contention of the ruling was that it only applied to the contraception clause of the Affordable Care Act and nothing else. This set an interesting precedent in terms of religious freedom since it only applied to contraception and not other portions of the Affordable Care Act. Justice Ruth Bader Ginsburg dissented in this case, citing *Oregon v. Smith*. The contraception clause of the Affordable Care Act was a neutral law not based in religion, according to Justice Ginsburg, and should be permitted.[76] The complexities of these cases have shown that there was no possible way that the Founding Fathers, when enacting these laws could have foreseen the consequences and likely would disagree with how many cases were decided, including *Roe v Wade*.

Furthermore, the notion of religious toleration and freedom is still highly debated within the United States Government. Swearing in on the Holy Bible is typical in many government positions, including that of United States President. This unwritten rule, which has become more

---

[73] Burwell v. Hobby Lobby Stores (U.S. Supreme Court June 20, 2014).
[74] Burwell v. Hobby Lobby Stores (U.S. Supreme Court June 20, 2014).
[75] Burwell v. Hobby Lobby Stores (U.S. Supreme Court June 20, 2014).
[76] Burwell v. Hobby Lobby Stores (U.S. Supreme Court June 20, 2014).

lenient, has still resulted in severe backlash if an elected official did not swear in on the Bible. One example of this was in New York, when a Muslim Judge chose to swear into office on the Quran, rather than the Bible.[77] In North Carolina, an elected mayor chose to swear in on the United States Constitution, but still received backlash for not swearing in on the Bible.[78] This shows that the tradition is not just against other religions, but actively pro-Christianity for elected officials. However, this is in direct disagreement with the fact that the United States does not have any official government and does not identify with a singular religion. The tradition started centuries ago and has withheld the test of time, despite the government's adamancy that there is no official United States religion. This can be seen again with the Pledge of Allegiance and U.S. currency that both sport the saying "One Nation, Under God." This has not changed thus far, but does show a religious preference by the United States government and a lack of inclusion of other religions. However, it can be argued that it is the elected official's freedom of religion to swear in on the Bible, but this is something we will not truly know until a non-Christian president is elected into office. Until such time, Christianity is and was still perceived as the primary unspoken religion of the United States.

This can be seen in the 2014 Supreme Court Case of *Greece v. Galloway*.[79] This case was about the town of Greece, New York. In this town, there was a large Christian population. The Greece City council meeting started with a prayer reading before each session. The council put out a solicitation for people to speak prayer before the meeting. Citizens were upset because

---

[77] *Courtroom drama: N.Y. judge Swears Oath on quran, sparks immediate backlash*. Americans United for Separation of Church and State. (n.d.). https://www.au.org/blogs/wall-of-separation/courtroom-drama-ny-judge-swears-oath-on-quran-sparks-immediate-backlash.

[78] Donovan, E. (2015, December 17). *Mayor Feels Bible backlash for swearing in on Constitution*. WLOS. https://wlos.com/news/local/mayor-feels-bible-backlash-for-swearing-in-on-constitution.

[79] Greece v. Galloway (U.S. Supreme Court May 05, 2014).

there have only ever been Christian prayers and felt this was government establishment of a religion. The council got a rabbi and wicken priestess to participate in the prayer reading. However, the citizens were still upset and brought the case before the Supreme Court. The predicament with this case was that prayers are standard practice before many government meetings, including Congress. In a 5-4 decision, the case was decided in favor of the council, stating that the prayers were not coercive and were accepted in 1789.[80] Since they were accepted in 1789, the prayers were acceptable in government now, according to the majority opinion by Justice Anthony Kennedy.[81] This response is incredibly interesting in the court of law because it focuses on the previously mentioned idea of strict constitutionalism. This is a unique case of attempting to perfectly match what the Founding Fathers meant, rather than adapt to the modern era. However, this is a classic example of the United States' inability to separate church and state in government. Yes, prayers before meetings were acceptable back in 1789. However, the primary religions within the United States were all a version of Christianity. The religious toleration that the Founding Fathers believed in is not comprehensive of modern religion and does not translate well into the current political and social climate.

The debate around freedom of religion does not extend to all parts of the 1st Amendment, including the freedom of speech clause, which has been upheld closely to the Founding Fathers' ideas. However, there was an initial violation of this freedom by the U.S. Congress during President John Adams's administration, just after President George Washington. In 1798, the Alien and Sedition Acts were passed, essentially prohibiting anyone from publicly denouncing

[80] Greece v. Galloway (U.S. Supreme Court May 05, 2014).
[81] Greece v. Galloway (U.S. Supreme Court May 05, 2014).

the government and its actions.[82] Adams was a member of the Federalist Party, in opposition to the Democratic-Republican Party.[83] This law was allegedly aimed at his opponents, including Congressman Lyons, who was arrested for publicly speaking ill of President Adams.[84] This resulted in an uproar from Democratic-Republicans, including future president, Thomas Jefferson. Freedom to criticize the government was something fought for during the American Revolution. In a turn of events, the act actually strengthened the Democratic-Republican Party because of the intense opposition to the law. This test and violation of the First Amendment is no longer in effect today, but was followed up by the Sedition Act of 1918.[85] This new Sedition Act further limited the freedom of speech rights during World War I.[86] The extended limitations set forth by the Espionage Act of 1917.[87] The new Sedition Act of 1918 "willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of the Government of the United States."[88] These Acts were upheld in a famous case, *Schenck v. United States*.[89] In this case, Charles Schenck was a socialist along with Elizabeth Baer protesting the draft, on the grounds that it was a violation of the Thirteenth Amendment.[90] Both Schenck and

---

[82] *A look back: Sedition, Free Speech and the president*. The National Constitution Center. (n.d.). https://constitutioncenter.org/interactive-constitution/blog/a-look-back-sedition-free-speech-and-the-president.

[83] *A look back: Sedition, Free Speech and the president*.

[84] *A look back: Sedition, Free Speech and the president*.

[85] Boyd, C. L. (n.d.). *Sedition act of 1918*. Sedition Act of 1918. Retrieved November 16, 2021, from https://www.mtsu.edu/first-amendment/article/1239/sedition-act-of-1918.

[86] Boyd, C. L. (n.d.). *Sedition act of 1918*. Sedition Act of 1918.

[87] David Asp (Updated by Deborah Fisher in May 2019). (n.d.). *Espionage act of 1917*. Espionage Act of 1917. Retrieved November 16, 2021, from https://mtsu.edu/first-amendment/article/1045/espionage-act-of-1917. The Espionage Act of 1917 made it illegal to show public dissent for World War I, including opposition to the war and the government's decisions regarding the war. This was an attempt to keep up morale amidst the bloodshed, but was and is a violation of many elements of Freedom of Speech.

[88] Boyd, C. L. (n.d.). *Sedition act of 1918*. Sedition Act of 1918.

[89] Schenck v. United States (U.S. Supreme Court March 3, 1919).

[90] Schenck v. United States (U.S. Supreme Court March 3, 1919).

Baer were arrested in violation of the Espionage Act of 1917 and the Sedition Act of 1918. The decision was unanimously ruled in favor of the Acts, in an incredibly unpopular Supreme Court Decision.[91] The reasoning for the decision was that the Acts fell within Congress's enumerated wartime powers, meaning that it would not necessarily hold true if not in wartime.[92] Furthermore, the Acts fell within the "clear and present danger test," which does not protect speech if it causes a "clear and present danger."[93] The Sedition Act of 1918 has since been repealed; however, parts of the Espionage Act of 1917 are still in effect today and have been expanded by the PATRIOT Act.

The Sedition Acts of 1798 and 1918 were two of the most upsetting unconstitutional Acts passed in American history. The fight for freedom of speech rights has only increased since these violations. In the age of technology and social media, an increasingly popular term has since hit the Supreme Court, "hate speech." "Hate speech" is defined as "abusive or threatening speech or writing that expresses prejudice against a particular group, especially on the basis of race, religion, or sexual orientation," according to Oxford Dictionary. In 1992, this issue came forward in *R.A.V. v. City of St. Paul*.[94] In this case, teenagers "allegedly" burned a cross in front of an African American family's home. The teenagers were arrested for the action, due to a local law prohibiting "the display of a symbol that 'arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender.'"[95] The law was unanimously ruled unconstitutional by the Supreme Court under the basis that the law "prohibit[ed] otherwise

[91] Schenck v. United States (U.S. Supreme Court March 3, 1919).
[92] Schenck v. United States (U.S. Supreme Court March 3, 1919).
[93] Schenck v. United States (U.S. Supreme Court March 3, 1919). A good example of the "clear and present danger test" is yelling fire in a movie theater. Any speech that causes panic or creates the possibility of danger is not protected under the First Amendment.
[94] R.A.V. v. City of St. Paul (U.S. Supreme Court June 22, 1992).
[95] R.A.V. v. City of St. Paul (U.S. Supreme Court June 22, 1992).

permitted speech solely on the basis of the subjects the speech addresses."[96] Essentially, the only reason the speech was illegal was because of the racist undertones. The act itself wasn't illegal according to the law, just the racial motivation. This idea of hate speech has become a headliner in the modern United States, with many claiming that it should not be protected speech because of the message it sends.

Alongside the greatly debated hate speech, is the controversial Fourth Amendment. The Fourth Amendment states:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."[97]

The Fourth Amendment protects certain unalienable rights that the Founding Fathers believed were at risk in their experience with the English monarchy. In the initial implementation of the Fourth Amendment, the right to privacy was not an aspect that the Founding Fathers were necessarily looking at. As the United States has progressed, the Fourth Amendment has become an amendment implicitly protecting the reasonable right to privacy that United States citizens can expect from an invasive government. However, by stating that the right against unreasonable searches and seizures was granted, the question arose of what constitutes "unreasonable" in a court of law. The Founding Fathers wanted to be so specific in what was covered under the Constitution, but at the same time allow for an evolving Constitution. They disagreed with the meaning of the Constitution constantly, but that was the beauty of it. The Constitution has allowed for each case to be taken into consideration rather than black and white laws. Each case comes with its own difficulties and what is considered "unreasonable" changes.

---

[96] R.A.V. v. City of St. Paul (U.S. Supreme Court June 22, 1992).
[97] U.S. Const. amend. IV § 1.

The Fourth Amendment roles changed remarkably in the 1900s, in ways unanticipated by the Founding Fathers' intent. *Mapp v. Ohio* set a precedent for the Fourth Amendment that has since remained through modern times. In this case, Dollree Mapp, the plaintiff, filed the case under Freedom of Expression rather than the Fourth Amendment. Mapp's home was illegally searched by the police at which time "obscene materials" were found.[98] During this case, the Supreme Court was held by justices who believed in a progressive interpretation of the U.S. Constitution. Because of this, the Fourth Amendment was expanded when the Court chose to look at this case through a right against unreasonable searches lens. This view allowed the court to incorporate the exclusionary rule.[99] The exclusionary rule prohibits evidence in "violation of the U.S. Constitution" to be used in a court of law.[100] *Mapp v. Ohio* allowed for the exclusionary rule to be extended to unreasonable searches and seizures.[101] This precedent has protected U.S. citizens from being prosecuted for events that happened because of illegal searches by law enforcement. However, the exclusionary rule will not apply if law enforcement officers have acted in good faith.[102] The good faith doctrine essentially states that if a law enforcement officer unwittingly acts on a faulty warrant while believing it is valid or a case of immediate danger, the officer has not acted in violation of the Fourth Amendment.

This doctrine came into question with the passing of the Patriot Act in 2001 by President George W. Bush. The Patriot Act was a reaction to the September 11 terrorist attacks on the World Trade Center in New York City. However, the Act itself was extremely controversial because of the extended power it gave the federal government. By instituting the Patriot Act, the

---

[98] Mapp v. Ohio (U.S. Supreme Court June 19, 1961).
[99] Legal Information Institute. (n.d.). *Exclusionary rule*. Legal Information Institute. Retrieved November 8, 2021, from https://www.law.cornell.edu/wex/exclusionary_rule.
[100] Legal Information Institute. (n.d.). *Exclusionary rule*.
[101] Mapp v. Ohio (U.S. Supreme Court June 19, 1961).
[102] Legal Information Institute. (n.d.). *Exclusionary rule*.

government was able to bypass certain parts of the Fourth Amendment.[103] There are four sections with cause for worry in the Patriot Act under the Fourth Amendment—Sections 213, 214, 215, and 218.[104] All the sections bypass the "unreasonable searches and seizures" portion of the Fourth Amendment and do not require a warrant when the federal government believes they are acting in "good faith." Section 213 allows the federal government to search a citizen's private property without "notice to the owner."[105] Section 214 allows "for spying that collects "addressing" information about the origin and destination of communications, as opposed to the content."[106] Section 215 forces any third party to hand over records regarding an individual that the government believes to be participating in terrorist activity.[107] Section 218 allows for a greater expansion of intelligence searches by the government.[108] These laws expanded federal government power in a way that the Founding Fathers would have never agreed upon. Although the Act was a knee jerk reaction to the traumatic events of September 11, the Act itself is still extremely unconstitutional and violates the fundamental right to privacy guaranteed to the American people. The law is, however, no longer in effect and expired in 2020 when the House did not extend the provisions of the PATRIOT Act. Despite the fact that the law is no longer in effect, its establishment was a direct result of the Fourth Amendment and its unintended consequences by the Founding Fathers. With modern technology, the government has been able to truly establish the "Big Brother" idea warned about in George Orwell's *1984*. This exponential

---

[103] *Surveillance under the USA/Patriot Act*. American Civil Liberties Union. (n.d.). Retrieved November 8, 2021, from https://www.aclu.org/other/surveillance-under-usapatriot-act.
[104] *Surveillance under the USA/Patriot Act*. American Civil Liberties Union. (n.d.).
[105] *Surveillance under the USA/Patriot Act*. American Civil Liberties Union. (n.d.).
[106] *Surveillance under the USA/Patriot Act*. American Civil Liberties Union. (n.d.).
[107] *Surveillance under the USA/Patriot Act*. American Civil Liberties Union. (n.d.).
[108] *Surveillance under the USA/Patriot Act*. American Civil Liberties Union. (n.d.).

technological advancement was unfathomable to the Founding Fathers who would not have believed the intimate ways in which the government can currently access its citizens.

Another extremely controversial but landmark case in the establishment of the right to privacy was *Roe v. Wade*. The plaintiff of *Roe v. Wade*, who has been anonymously dubbed under the name Jane Roe, sued the district attorney of Dallas County, Texas, Henry Wade.[109] Roe's grievance was against the Texas state laws against abortion, which only allowed abortion in the case of threat to the mother's life.[110] This was a violation of the right to reasonable privacy in accordance with "First, Fourth, Fifth, Ninth, and Fourteenth Amendments,"[111] as well as precedent set by *Griswold v. Connecticut*.[112] *Griswold v. Connecticut* helped set the stage for *Roe v. Wade* by establishing the implicit right to privacy in the Constitution. The question in the case of *Roe v. Wade* was whether or not "the Constitution recognized a woman's right to terminate her pregnancy by abortion."[113]

To fully understand this case, it is important to look at the history of abortion in the United States, as well as the world. Internationally, abortion has been a medical practice since ancient times. The first abortion case was in 1550 BCE in Egypt.[114] Greek philosopher, Aristotle,

---

[109] Roe v. Wade (U.S. Supreme Court January 22, 1973).
[110] Roe v. Wade (U.S. Supreme Court January 22, 1973).
[111] Roe v. Wade (U.S. Supreme Court January 22, 1973).
[112] Griswold v. Connecticut (U.S. Supreme Court June 7, 1965). This case came from an 1879 Connecticut law which banned the use of contraceptives in any capacity, including married people. Griswold, head of planned parenthood, and a local gynecologist opened up a birth control clinic. They were arrested for giving contraceptives, which was upheld. Griswold brought the case to the Supreme Court under the Fourteenth Amendment. In a 7-2 decision, the Supreme Court held that the fundamental right to privacy exists implicitly within the Constitution and the use of contraceptives falls under that right. Therefore, the law violated the Constitution and helped set the stage for *Roe v. Wade*.
[113] Roe v. Wade (U.S. Supreme Court January 22, 1973).
[114] *Confusion, inequity and inconsistency: Abortion in Australia*. (n.d.). Retrieved November 9, 2021, from https://obgyn.onlinelibrary.wiley.com/doi/pdf/10.1111/ajo.12332.

even commented on the "lawfulness" of an abortion.[115] Typically, an abortion was only illegal in ancient times when a husband objected to the abortion because it could possibly mean the end of his line.[116] In Rome, women would induce an abortion through a variety of herbs known to end a pregnancy. Furthermore, in the beginning of the Roman Catholic Church, abortion was legal for a time.[117] It was only deemed illegal and murderous under Pope Sixtus V in 1588.[118] In 1591, abortion was legalized once more by the following pope, only to be made illegal three hundred years later by Pope Pius IX.[119] Similarly, Abortion in Colonial America is an interesting topic because abortion itself did happen frequently, but was not illegal.[120] Many women actually had abortions because the pregnancy was a result of premarital sex or an extramarital affair. The law the pregnant women in these cases had broken was actually the law against fornication.[121] The question is whether or not the Founding Fathers accepted this practice of abortion or not. This issue is still highly debated with sources vehemently arguing for or against the Founding Fathers' beliefs on abortion. Given that abortion was technically legal, many women were getting abortions for various reasons in various different ways. However, getting an abortion was still considered socially unacceptable becuase of the implications that many women getting an abortion had participated in the illegal act of fornication. An abortion was still illegal after the point of a woman feeling the fetus kick, which was considered the point of "life" back in the

---

[115] *Confusion, inequity and inconsistency: Abortion in Australia*. (n.d.). Retrieved November 9, 2021, from https://obgyn.onlinelibrary.wiley.com/doi/pdf/10.1111/ajo.12332.
[116] *Confusion, inequity and inconsistency: Abortion in Australia*. (n.d.). Retrieved November 9, 2021, from https://obgyn.onlinelibrary.wiley.com/doi/pdf/10.1111/ajo.12332.
[117] Hovey G. Abortion: a history. Plan Parent Rev. 1985 Summer;5(2):18-21. PMID: 12340403.
[118] Hovey G. Abortion: a history. Plan Parent Rev. 1985 Summer;5(2):18-21. PMID: 12340403.
[119] Hovey G. Abortion: a history. Plan Parent Rev. 1985 Summer;5(2):18-21. PMID: 12340403.
[120] N.E.H. Hull and Peter Hoffer, Roe v. Wade: The Abortion Rights Controversy in American History (Lawrence: University of Kansas Press, 2001).
[121] N.E.H. Hull and Peter Hoffer, Roe v. Wade: The Abortion Rights Controversy in American History (Lawrence: University of Kansas Press, 2001).

Colonial Era.[122] This brings up an important question because of the lack of science behind the claim of "life." With the science and knowledge that we currently have today, it brings into question what people would have believed about abortion had they had our currrent knowledge of pregnancies. Abortion laws began to be established in the mid to late 1800s, as a result of stricter Victorian England beliefs becoming prominent.[123] The morality that began to evolve from Victorian England resulted in a hatred of sexual intercourse and a sense of disgust against it, which in part resulted in abortion laws becoming commonplace.[124] This attitude was extended into the 1900s and even exists in modern American society.

Victorian morality towards sexuality and birth control helped to establish the Texas Abortion Law that Roe was fighting against. In a 7-2 decision, the Supreme Court ruled in favor of Roe, establishing that a women's right to an abortion was constitutionally protected under the implicit right to privacy.[125] However, the court established certain rules within this ruling, which established guidelines for the first, second, and third trimesters.[126] If it was the first trimester, the woman and the doctor could make the decision on abortion.[127] In the second and third trimesters, the woman would be subject to some government regulations. The case of abortion did not close there, with numerous cases coming afterwards. One case, *Webster v. Reproductive Health Services* in 1989, shot down a Missouri statute requiring doctors to check fetus viability after 20

---

[122] N.E.H. Hull and Peter Hoffer, Roe v. Wade: The Abortion Rights Controversy in American History (Lawrence: University of Kansas Press, 2001).
[123] N.E.H. Hull and Peter Hoffer, Roe v. Wade: The Abortion Rights Controversy in American History (Lawrence: University of Kansas Press, 2001).
[124] N.E.H. Hull and Peter Hoffer, Roe v. Wade: The Abortion Rights Controversy in American History (Lawrence: University of Kansas Press, 2001).
[125] Roe v. Wade (U.S. Supreme Court January 22, 1973).
[126] Roe v. Wade (U.S. Supreme Court January 22, 1973).
[127] Roe v. Wade (U.S. Supreme Court January 22, 1973).

weeks and also found four Supreme Court Justices wanting Roe v. Wade to be reopened.[128] in 2000, Stenberg v. Carhart shot down a Nebraskan ban on partial-birth abortion for numerous reasons, including not providing an exemption for "health of the mother."[129] Abortion has continuously been a hot top, once more with the current Texas abortion laws as of 2021.[130]

On September 1, 2021, Texas Governor, Greg Abbott legalized Senate Bill 8, which outlaws abortion once a "fetal heartbeat" is heard.[131] Known as the Texas Heartbeat Act, the legalized bill gives no concessions for cases on rape or incest.[132] The only exception for the bill is medical emergencies.[133] As a result of Texas having some of the strictest abortion laws in the country, many abortion clinics have shut down despite the Supreme Court striking down many abortion laws coming out of Texas.[134] The Texas Heartbeat Act has received numerous lawsuits and will likely reach the Supreme Court for a definitive answer of the laws constitutionality. These laws show that the revolutionary principles that were fought for are not stagnant over time and continue to evolve with the Constitution. The beliefs of the Founding Fathers that helped establish the laws to guide the nation have influenced the nation in enigmatic ways.

This is something that we have seen continue to progress, but that is part of the intricate details of the Constitution. Interpretation of the Supreme Court is key to interpreting the Constitution, but how a Supreme Court Justice interprets the law depends on a multitude of factors. Although not necessarily associated with a political party, justices are often elected into

---

[128] *Summary of Roe v. Wade and other key abortion cases - USCCB*. (n.d.). https://www.usccb.org/issues-and-action/human-life-and-dignity/abortion/upload/Summary-of-Roe-v-Wade-and-Other-Key-Abortion-Cases.pdf.

[129] *Summary of Roe v. Wade and other key abortion cases - USCCB*. (n.d.).

[130] Roe v. Wade (U.S. Supreme Court January 22, 1973).

[131] *Abortion in Texas*. ACLU of Texas. (2021, October 14). https://www.aclutx.org/en/know-your-rights/abortion-texas.

[132] *Abortion in Texas*. ACLU of Texas. (2021, October 14).

[133] *Abortion in Texas*. ACLU of Texas. (2021, October 14).

[134] *Abortion in Texas*. ACLU of Texas. (2021, October 14).

office under the basis of their previous judgments—for example, Republicans tend to nominate conservative justices and Democrats tend to favor progressive justices. Despite these tendencies, the Supreme Court is meant to be an impartial court that can only be consulted if a case of an unconstitutional law is brought forth. The bench does not serve as consultants or give advice to the other branches of government. The executive branch is reserved to the powers of the President and the legislative branch reserved to the House and the Senate. Neither branch should use the judicial branch for other agendas, and yet the Supreme Court is often used as a pawn for political gain. These intricacies of the federal government allow for the separation of government powers observed by Polybus and Montesquieu.

On remaining fact stands, any Constitution is truly upheld by one thing: the people. They are the rudder of the country, helping the leaders of the nations steer them in the right direction. Government exists by the country's citizens accepting its power and authority. Without the support of the people, the government holds no authority or power over the people, often resulting in rebellion or civil war. This acceptance of the government and its legal documents provides stability in countries and allows for growth and prosperity. To ensure this stability, government by the people and for the people has withstood the test of time. By allowing people to have true control over their individual freedoms and liberties, a country can prosper for centuries. If tyranny becomes the primary government, violence and bloodshed will surely follow, noted by Hamilton in the Federalist Papers.

Yet, this Constitution is an evolving one and will never remain stagnant. Previous understandings of the Constitution and the rights it entails are useless in the modern era. New problems and technological advancements create a blockade against a stagnant government. Political and societal ideologies change. Christianity is no longer the primary religion of the

world's citizens, with the largest growing religion being Islam. A larger part of the population is also steering away from religion entirely and identifying as Atheists. Sexuality is no longer a taboo subject reserved for marriage between a man and women. Numerous sexualities, ethnicities, and ideologies must allow for an ever evolving government institution that is more inclusive of the diverse world we live in. Laws can be upheld or struck down and new laws added in. The Founding Fathers' want to be specific while also providing some fluidity in the laws has allowed for this transition and evolution within the United States Constitution.