

The US Constitution Still Effectively Safeguards the Rights of the Individual. Discuss.

Before America declared independence in 1779, it was ruled by a hereditary monarch, King George the III, who, in the eyes of the American people, acted like a dictator. Thus when the Founding Fathers were devising the US constitution, they did so with a fear of the previous tyranny that ruled them at the forefront of their minds. The original constitution was predominantly concerned with how the government should work, and what measures should be taken to prevent a tyrannical government or leader emerging; however, other measures, in the form of the bill of rights and certain other amendments, offered the US citizens protection from their new government, in case it started to revert back to how it was before. However, it has become debatable whether or not this constitution still effectively protects the rights of the people, or is in effect, a dead document which now strangles the people and no longer serves to protect them, but rather, suffocates them.

What is considered as one of the most important and effective ways that the constitution protects the citizens of the US is the Bill of Rights. This is the collective name by which the first ten amendments to the United States Constitution are known. They limit the powers of the federal government of the United States and protect the individual and collective rights of all citizens, residents and visitors of the US. As they are included in the Constitution, they are given a higher status than ordinary laws and thus are much more permanent. The difficulty involved in formally amending the constitution is evidence of their importance. Furthermore, it is nearly impossible for governments to pass any legislation that would contravene these rights, and if they do so, the US Supreme Court has the power to intervene and strike them down. This is all due to their constitutional status. The first amendment guarantees US citizens' rights to freedom of religion, speech, press, and the right to peaceably assemble. In the 1969 *Tinker v. Des Moines Independent Community School District* case, several students who were punished for wearing black arm-bands to school in protest against the Vietnam War, were able to look to the first amendment for protection. The Supreme Court ruled that freedom of expression rights extended to students in school and that there could be no restrictions placed on these students' protests as it did not cause undue interruptions of school activities. It is clear that although these rights were created over two hundred years ago, they are still as significant and valuable to the US citizens today as they were then.

On the other hand however, there have been many instances when the Bill of Rights has failed to safeguard the individual rights of US citizens. For example, the atrocities, fear and violence that has stemmed from 'the right to bear arms' which is guaranteed in the second amendment. Between 1979 and 2001, gunfire killed 90,000 children and teens in America, with over 80 Americans being killed each day through gun violence. Though this cannot necessarily be attributed to the second amendment, it cannot be denied that it is linked. The US sees 26 times as many murders carried out by gun shootings than the UK, a country which has much stricter regulations on gun ownership. Surely each individual in the US should have a right to security, however, this security is undermined by the second amendment.

Another amendment that helps safeguard individual liberties is the eighth amendment which prohibits the federal government from imposing excessive bail, excessive fines, and cruel and unusual punishments, has been used to help protect those who have been subjected to capital punishment. The U.S. Supreme Court has ruled that criminal sentences that are inhuman, outrageous, or shocking to the social conscience

are cruel and unusual. Although the Court has never provided meaningful definitions for these characteristics, it is clear that they have been applied in some cases. The Georgia Supreme Court explained that the Eighth Amendment was intended to prohibit barbarous punishments such as castration, burning at the stake, and quartering, and any other punishments that caused a lingering death. The Court also invalidated an Oklahoma law that compelled the state government to sterilize "feeble-minded" or "habitual" criminals in an effort to prevent them from reproducing and passing on their deficient characteristics (*Skinner v. Oklahoma*). Obviously this amendment has been used to extreme effect to protect American people, especially earlier this year when the electric chair was disbanded as a form of capital punishment because of how undignified, degrading and inhumane it was.

Significantly, however, the Court had let stand, fifteen years earlier, a Virginia law that authorized the sterilization of 'mentally retarded individuals' who were institutionalized at state facilities for the "feeble-minded" (*Buck v Bell*). Thus, it is clear that although the Bill of Rights can protect citizens, it can often depend on how the constitution is interpreted. For example, in the *Coker v Georgia* trial, it was declared that Capital punishment is a cruel and unusual punishment for rapists because apparently 'rape by definition does not include the death of or even the serious injury to another person.' Justice Brennan wrote in 1972 that he would not expect any state or government to pass any legislation that violates the principle of 'no cruel or unusual punishment'. However it is questionable whether or not the death penalty in itself goes against this principle. Perhaps this is why the federal government shies away from dealing with the subject and leaves it up to State governments to decide their own stances on it. Similarly, the issues that have been made public about Guantanamo bay and Rendition, that the USA is aware of and continues to let happen, should surely be in violation of the eight amendment. Clearly, this particular amendment needs to be clarified if it is to truly protect the citizens of the US from their government.

In the same way, Judicial Interpretation has had profound implications for individuals who have looked to the courts to use the constitution as protection. In one of the most prominent cases; *Roe v. Wade*, it was argued that the woman's right to privacy (though privacy nor abortion is *explicitly* mentioned in the constitution) should give her the right to choose whether or not she wanted an abortion. The judiciary ruled in favor of Pro-Choice as they felt that privacy is a basic human right, and as such is protected by virtue of the 9th Amendment. Therefore the case won and this was seen as a major example of people exercising their rights and now women across America have the option of abortion if they want it. In addition, in June 2008, the Supreme Court ruled in the *District of Columbia v. Heller* case, that the D.C gun law which banned possession of handguns was in fact unconstitutional as it violated the second amendment; which protects the individual's right to possess firearms. This was the first Supreme Court case in United States history to directly address whether the right to keep and bear arms is a right of individuals or a collective right that applies only to state-regulated militias.

However, many people argue that judicial interpretation has given the courts power far beyond what they should have. They can now preside over areas which they should not be able to and their ability to 'interpret' what the constitution means is clearly not what the founding fathers intended. Strict constitutionalists argue completely against this increasing level of power. How can people today know exactly what the creators of the constitution meant when they wrote it over two hundred years ago? Abortion is not mentioned in the constitution and therefore it should not be allowed simply through an 'interpretation' or an amendment. In a poll taken in May 2007, 50%

of Americans said that they would consider themselves to be Pro-Life. Therefore the ruling of the judiciary to allow *all* women the right to access abortion is representative of just half of the nation. Furthermore, at another time, they ruled that 'mentally retarded' individuals can still be subjected to execution. This means that people who may have little or no control over their actions or who are unaware of their punishment can be subjected to a heinous punishment that is actually in violation of the constitution. Thus, many argue that the judiciary's power has exceeded that which the constitution assigns to it, and this has been abused in such ways that violates many individuals' civil liberties.

In contrast, other intricacies of the US government system also help safeguard people's rights, as the Founding Fathers hoped. Federalism in the USA holds that there is a decentralisation of power to the States in the USA, but there is also a decentralisation of sovereignty to the States. Though the power of the states is constitutionally guaranteed and the government cannot take it back, unlike that of devolution, the sovereignty and power is split between the national and state level. This helps protect the people against the State or Federal government gaining too much power and becoming a tyranny which could in turn possibly remove their individual rights. On the other hand however, the reality of this is often disputed. The original 13 colonies had a lot of their power taken away from them; as do each of the States now. This means that the federal government in DC controls states that are thousands of miles away such as California, and this government can enforce certain laws which the State government and people of California may disagree with, such as Conscription to the army.

Similarly, the fact that government is made up of two chambers, known as bicameralism, also helps safeguard civil liberties. The upper house, the Senate is made up of two senators from each state which means that every state, and therefore person, is represented equally and fairly in the federal government. Furthermore, each state receives representation in the House of Representatives proportional to its population but they are all entitled to at least one Representative. They have smaller constituencies, known as districts, and can therefore represent a wide and diverse range of views; thus helping protect even more peoples rights, in government.

In addition, other formal amendments to the constitution help to effectively safeguard individual liberties today. In 1870 suffrage denied on account of race, was abolished. Women's right to vote was introduced in 1920 and the voting age was lowered to 18 in 1971. This helped extend the rights of nearly all Americans. Yet the 18th amendment is an example of how the constitution could effectively remove people's rights. It took away the right to sell or make and therefore consume alcohol and evidence of how ineffective and offensive to people's freedom it was, is the fact that it actually had to be repealed through a further amendment; the 21st.

In conclusion, the argument of whether or not the constitution effectively safeguards the rights of the individual is always going to be open to debate due to the amount of evidence in support of each side. I personally feel that in many areas it offers the American people protection; however, the constitution is used and exploited by the government to their own advantage and at the individual's expense. It fails to deal with key issues that the USA needs to have addressed now, such as that of capital punishment and rendition. Judge Damon Keith stated that 'democracy dies behind closed doors' and it is evident that the American people and government do not uphold or adhere to their constitution when it doesn't suit them. Therefore whether or not it safeguards individual rights or not is irrelevant if it is not always honoured and maintained.

