Constitutional Intent

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Introduction

In the course of the history of the United States, the Constitution stands as a reminder of the principles and values that the nation strives to uphold. This foundational document affects every citizen and noncitizen residing on US soil, since it is the fundamental law and basis upon which the legislative branch creates laws, the executive branch enforces the laws, and the judicial branch governs whether that enforcement was reasonable. Therefore, this document must guide and protect each of the people that it serves. Nevertheless, there will always be a conflict of interest over who is better served by the Constitution, either by what the clauses directly say or by the way the clauses are interpreted.

It is found in the Bible that "No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other"[1]. The Constitution is not a mortal man; yet as a living document created by man it has a personality of its own, one that interpreters must struggle to understand. I personally believe that it attempts to serve every person regardless of background or personal belief to the best of its ability so that all may enjoy the same liberties and freedoms. But for all the founders' good intentions, it has been demonstrated by a plethora of Supreme Court cases throughout the history of the United States, that no one who reads *The Constitution of the United States* will have exactly the same interpretation as everyone else. As fundamental law, the Constitution exists to firmly shape the pursuit of political

[1] Matthew 6:24

interests. However, as a living document it invites people to interpret it in a manner that furthers the pursuit of their own personal good. Oftentimes people will cluster together discussing whichever part of the Constitution they personally interpret as having a specific benefit or drawback for their group, hoping to satisfy their particular group's interests. Sometimes, people will find that they have the same viewpoints as a larger number of people, and other times find themselves at odds with the majority. Regardless of size, these special interests, although admittedly a part of the democratic system of government, often contribute to the misinterpretation of, and a separation from the original intent, of the Constitution. Therefore, in order to understand how the Constitution can continue to

> form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity[2]

there has to be an understanding of what the Constitution is supposed to accomplish.

What Comprises a Right

The question that was surely asked when the delegates of the original thirteen states first convened, is a question that is not as easy to answer as one might suppose, since it is highly dependent upon what the person asking is looking to obtain from the definition. What is a right? Aside from the enumerated rights in the Constitution, one way to discern the answer is through understanding what might violate a right. James Madison brings up factions as a primary threat to the rights of minority groups in *The*

[2] *Constitution of the United States of America,* Preamble in *Declaration of Independence and Constitution of the United States of America* (San Bernardino, California: ShHo Books, 2020).

Federalist Papers, when he says "the public good is disregarded in the conflicts of rival parties . . . measures are too often decided, not according to the rules of justice and the rights of the minor party."[3] Madison thought that the factions would always be in opposition to each other and that a minority group could have their rights infringed if the majority group was also to be responsible for judging the case. Here he makes a comparison to creditors and debtors, saying that "Justice ought to hold the balance between them"[4] and that the judges that decide these cases between majorities and minorities must be of sound thought and neutral. Therefore, in modern society the people look to their judicial system to provide them with what is just. One who wishes to pursue this line of analysis would understand that as creditors are owed or merited their goods persons are owed their rights.

However, what is considered merited by some people might not have been considered merited in preceding centuries by others. Health care, immigration, access to communication, a fair trial, the ability to possess firearms, protection from unnecessarily high bail, the ability to practice one's own beliefs and convictions, freedom of movement to travel, unlimited saving or spending, private property, etc., are examples of proposed or existing rights that all people merit based on their partaking in the human family. However, it should be noted that having access to a right, regardless of how narrow we may consider that access to be, is different than unlimited access at the expense of others. To each of the aforementioned advantages there is a positive

[3] *Federalist Papers* (New York: Signet, 2003), #10 (Madison).
[4] Ibid.

element that enhances an individual's ability to thrive in society. However, for every advantage that is gained by an individual in a society there is a cost: every advantage that is gained by the individual who holds rights results in a burden to the individuals who must regard those rights. Individuals' abuse of the invocation of their rights may threaten irreparable, unjustified harm to others in the community.

Two historical examples of balancing the rights of the individual and those of society involve access to firearms and access to healthcare. The Second Amendment of the Constitution states clearly: "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"[5]. For the greater part of the country's history there were no laws at the federal or state level regarding the use of firearms and this was most likely due to the commonality of firearm possession as well as the clarity of the Constitution on this subject. However, as time progressed laws were added in response to violent crimes involving the use of firearms. The first federal law was the National Firearms Act of 1934 which sought to tax certain firearms to an extent that they would be unaffordable to the common person, restrict their importation, and regulate their interstate transportation. Although this law might seem burdensome to some people, the Supreme Court disagreed that the right to bear arms had been infringed by the NFA in the case *Miller v. United States*. Miller had violated the NFA by driving across state lines with a short-barreled shotgun. Justice James McReynolds stated in his opinion that "we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument (a short-barreled

[5] *Constitution,* II Amendment.

shotgun)".[6] The judge argued that possession of a short-barreled shotgun "at this time has [no] reasonable relationship to the preservation or efficiency of a well-regulated militia"[7]. Probably, the Justice's rationale was two-fold: (1) the shotgun was not in common use by the military; (2) the now-notorious ',' that separates the word 'state' from 'the' implied to him that the second amendment may apply only to "regulated militias," opening the door to a new direction of interpretation." The probable intent of the court and the reality of the precedent set in this case was not to ban firearms outright,or their possession or use, since that would seemingly directly violate the second amendment. Rather, the precedent from this case enabled the regulation of access to firearms to be considered constitutional. This was because as long as there was access to some of the rights, as in people could still transport across state lines handguns or long-barreled guns, these rights had not been violated, although they were now restricted and not absolute. Certainly the right to bear arms is a noble one, but the courts have decided that this must be balanced by the harm potentially resulting from the misuse of the exercise of an unqualified right, in this case the possession and transportation of a short-barreled gun considered to be unlawful.

With regard to healthcare, there is no explicit mention of health or medical care anywhere in the Constitution, implying that the Constitution was historically primarily focused on limiting government and governmental services and not focused upon expanding them. That being said, the Supreme Court has made decisions on cases that impact health care; such as in the case of *Harris v. McRae*. In *Harris v. McRae*, the

[6] Miller v. United States, 357 U.S. 301 (1958).
[7] Ibid.

Supreme Court upheld denial of Medicaid funding for elective abortions, holding that the Hyde Amendment established legislative intent, and that the restriction placed no undue burden on the exercise of the (constitutionally protected) right to abortion. The Court's finding was given under the rational basis standard of review, since the woman was free to choose to have the procedure and because "It is the Government's position that the Hyde Amendment bears a rational relationship to its legitimate interest in protecting the potential life of the fetus." Additionally, the court directly addressed the Fourteenth Amendment Section 1[8]:

> Although the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom. To hold otherwise would mark a drastic change in our understanding of the Constitution.[9]

Therefore, the Court stresses that there are two issues here: the ability to choose to access 'healthcare' and the ability for that choice to be paid for by the government, the first being considered a right by the Court, the second one not.

In exercising one's personal merited rights there must be a line drawn so that people can live in a society together without conflict. This then elicits another question, where do an individual's rights end and another's begin? And then the ultimate question must be asked, on whose authority are rights given and are they even given after all?

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[8] *Constitution,* Amendment XIV Sec. 1: 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.

[9] Harris v. McRae, 448 U.S. 297 (1980).

Natural Rights and Law

The founding fathers, the majority of whom were of a Judeo-Christian point of view, held a belief that there are natural rights which all people are to enjoy, and stated as much in the *Declaration of Independence* when they justified their separation from the rule of the English King, George III, by "[assuming that] among the powers of the earth, [there is a] separate and equal station to which the Laws of Nature and . . . Nature's God entitle them"[10]. This law of nature is further stated by the founding fathers to be intrinsic to the well-being of every person when they affirm: "[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"[11]. It is noteworthy that this list is not presented as exhaustive, that is to say, this list uses the language "among these," implying that there are unlisted rights to which "we" are entitled.

Although the Declaration assists us in understanding the context in which the Constitution was written and provides insight into what the founding fathers were thinking, it is not a legal document. Nor does it carry judicial weight and so it is, legally speaking, no more than a piece of paper expressing frustrated sentiments to a distant ruler. However, using the Declaration one can determine at least three things: 1. that the founding fathers saw these rights as important, based on the language and capitalization

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[10] *Declaration of Independence* in *Declaration of Independence and Constitution of the United States of America* (San Bernardino, California: ShHo Books, 2020).
[11] Ibid.

of the word 'Right'; 2. that life, liberty, and the pursuit of happiness were worth singling out; and 3. that the founding fathers believed in natural law.

The idea of natural law was not new at the time of the formation of the United States and had for centuries been the focus of thinkers such as St. Thomas Aquinas, Plato, and Marcus Tullius Cicero. These philosophers set out a precedent for the drafters of the Declaration and Constitution to use. To the founders, natural law was self-evident and bound to all men (presently interpreted as all people) unable to be taken away or given away by an act of free will, except "that [when] a man be willing, [and] when others are so too, as far forth as for peace and defense of himself he shall think it necessary, to lay down this right" as noted by the English political philosopher, Thomas Hobbes[12]. Here Hobbes lays out the foundation for how in the course of human nature a civilization might be constructed with the reasoning that in doing so, if people are to experience the benefits of communal living, they must suppress some of their personal liberties. The rules for this commonwealth would have to be based on something that is common to all people. When the colonies were in the process of separation from Great Britain an appeal was made to the higher natural law, which was a doctrine that was widely accepted by both sides by nature of their traditional Christian education.

Natural law was also discussed by the Roman statesman, Cicero, who was not influenced by Christian thinking and was highly regarded by founding fathers, John Adams and Thomas Jefferson. Jefferson, in reference to Cicero, himself stated "the ages of the world have not produced a greater statesman and philosopher… his authority

[12] Thomas Hobbes, *Leviathan* (London: Penguin Books, 1985), Part 1 Chapter 14.

should have great weight."[13] And so it is most probable that both Adams and Jefferson were familiar with and used Cicero's theory of natural law:

> There is indeed a law, right reason, which is in accordance with nature; existing in all, unchangeable, eternal. Commanding us to do what is right, forbidding us to do what is wrong… No other law can be substituted for it, no part of it can be taken away, nor can it be abrogated altogether.[14]

Cicero distinctly shares his sentiments in his understanding of natural law as being the most basic and principal mode that defines how people live together. Any other laws in a commonwealth must abide by the natural law, and only when all laws are in unison with the natural law are all groups treated with respect and dignity. Catholic theologian, St. Thomas Aquinas, similarly stated in his *Summa Theologiæ* that "good is to be done and pursued and evil avoided."[15] Essentially this ideal of living in accordance with the natural law is the Golden Rule, "So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets"[16]. Consequently, it should be of no surprise that the founding fathers took natural law to heart when they felt that their right to taxation with representation in parliament was violated, or that the forced quartering of the British troops in the colonists' private homes was an invasion of their personal space. The confiscation of their weapons, which would have denied them the ability to defend themselves, would have also been considered a violation to this natural law. In their perspective, their natural rights of life, liberty, and the pursuit of happiness belonged to them under natural law and had been infringed by

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[13] John Adams, *Defence of the Constitutions of Government of the United States of America,* vol. 1 (3 ed.). (Darmstadt: Scientia Verlag Aalen), xvii–xviii.
[14] Marcus Tullis Cicero, *The Republic of Cicero*, Introduction, 29.
[15] St. Thomas Aquinas, *Summa Theologiæ* Ia IIae Q. 94. Article 2.
[16] Matthew 7:12.

the British Government to the extent that the positive laws they were governed by no longer emulated the natural law.

Furthermore, the framers of the Constitution wanted to protect themselves from what they viewed as an abuse of government power. The Constitution that they wrote would provide for the direction of the government and would also place limits on it so that natural law was sustained. Additionally, the Constitution would only apply to the federal government so as to leave the states the freedom to govern as they saw fit, with their own constitutions, as the founders thought local governments would not be as inclined to run afoul of natural law. This view paved the way for the Tenth Amendment: "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"[17].

The First Constitutional Rights

Aristotle famously noted that "man is by nature a political animal"[18] and so it should be unsurprising that eventually man gathers together to first form communities and then governments to protect these communities from internal and external destruction. The framework chosen by the delegates to determine who in the government is responsible for what and how much power they are to receive was determined in the Constitution. However, since each of the parties had differing ideas about what should be included in the document, the initial Constitution lacked a "bill of

[17] *Constitution,* Amendment X.
[18] Aristotle, Politics in The Complete Works of Aristotle, vol. I, ed. Jonathan Barnes (Princeton University Press, 1995), 1253a.

rights" and looked similar to what was in use in British law since 1689. This greatly dismayed the likes of James Madison, a member of the Anti-Federalist party, and a strong believer in a bill of rights. Madison believed that if a bill of rights was not included certain groups, namely the majority, would try and take advantage over minority groups. He knew that "causes of faction"—differences between groups that could result in a violation of rights—"cannot be removed, and that relief is only to be sought in the means of controlling its effects".[19] The easiest way to control its effects was by the use of a bill of rights which would provide an equal playing field for all. However, in the spirit of compromise between the Federalist and the Anti-Federalist parties, a bill of rights was left out of the original Constitution and was only considered at a later date, in 1791. The only protections that were enumerated in the original Constitution ratified in 1788 were: habeas corpus, which is the protection against unlawful detention or imprisonment[20]; bills of attainder, which are laws targeting a specific group for punishment often without a trial, and *ex post facto* laws, which are laws that criminalize an act prior to the law's enactment[21]. Certainly, each of these three actions can be detrimental to rights merited to every person: imprisonment without cause, falsely trying or punishing a person, or criminalizing an action that was done in good faith when legal. All would most certainly appear to violate Aquinas's view that good is to be done and evil is to be avoided. However, each of these protections within the Constitution only provided for protection from persecution by what the progressive platform might now consider to be a weak federal government and not each individual

[19] *Federalist* #10 (Madison).
[20] *Constitution,* Article 1 Section 9, clause 2.
[21] Ibid., clause 3.

states' governments. I do not think that this was an oversight on the part of the founders, since it was not until the Fourteenth Amendment was ratified during the reconstruction period in 1868 that the application of the Constitution to every states' government was started. And since in the minds of the Federalists and Alexander Hamilton the federal government or congress would not have the power to do anything other than create laws and enforce them, there was no reason to create a bill of rights which would provide protections against actions the government was not even authorized to do. Hamilton stated in the Federalist papers:

> I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for (by Madison and the Anti-Federalists), are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?[22].

Since the Federalist party was predominantly in control, their wishes were granted for the time being and clauses 2-3 of section 9 article 1[23] remained as the only protection of rights until 1789.

The Bill of Rights

[22] *Federalist* #84 (Hamilton).
[23] *Constitution,* Article 1. Sec 2. Clause 2: The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it; Clause 3: No Bill of Attainder or ex post facto Law shall be passed.

In order to secure the votes of several states for the ratification of the Constitution in 1788, a compromise was adopted, known as the Massachusetts compromise, wherein the Federalist and Anti-Federalist parties agreed upon amendments to the Constitution to be reviewed and passed at a later date, amendments that would provide for the protection of individual rights and liberties. This greatly reduced the fear of the Anti-Federalists, who believed that the federal government would grow over the course of time and if so might be more able to abuse its power in much the same way that the British government had previously done to the colonists. Additionally, this compromise provided the Federalists with a catalyst to encourage Massachusetts and other states to ratify the Constitution, since at the time only four of the required nine states had done so. It provided the states with the stipulation that they would be able to submit proposed amendments for the creation of a bill of rights. Hamilton however, still stuck with his position that

> [a] minute detail of particular rights is certainly far less applicable to a Constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution which has the regulation of every species of personal and private concerns.[24]

Regardless of the opposition of Hamilton, a Bill of Rights consisting of ten amendments was ratified on December 15th, 1791.

The first three of these amendments constituting the Bill of Rights to the Constitution can be considered safeguards of liberty. They provide for freedom of expression and religion, the bearing of arms, and protection from governmental abuse

[24] *Federalist* #84 (Hamilton).

of private residences. These three rights are considered to be necessary so as to allow people to have freedom to exercise their day-to-day activities in a reasonable manner without fear of government intervention. The next five amendments can be considered to be safeguards of justice. They provide a limit to the actions of the government in cases of search and seizure, personal rights, criminal rights, civil trials, and guarantees in criminal cases. These rights in turn are necessary to ensure the integrity of the criminal justice system and the safety of individuals against improper prosecution or a state sanctioned invasion. Each of these amendments specifically addressed different problems that the Anti-Federalist Party foresaw: amendments one through eight concerned the enumerated powers of the federal government, and the Ninth Amendment addresses a "great residuum (of rights which have not been) thrown into the hands of the government"[25], according to Madison upon his introduction of the Bill of Rights. The Tenth Amendment, solidifies Madison's Anti-Federalist view by stating that the federal government was to have only such powers as stated in the constitution and that all other power was reserved to local governments or the citizens themselves,[26] thereby ensuring that the states, and ultimately the people, retain the power to decide what they consider a right. This remained the law of the land until the Fourteenth Amendment was ratified.

The Ninth Amendment is unique in that it does not define which rights it protects; rather, it specifies that the enumeration provided by the previous eight not be

[25] James Madison, *Speech Introducing Bill of Rights* <http://press-pubs.u.chicago.edu/founders/documents/bill_of_rights11.html>.
[26] *Constitution,* Amendment X.

held against the rights retained by the people. However, there is a great problem implicit within this particular amendment that is heightened by its non-definitiveness, and this can lead to the Ninth Amendment being used as a blank check to ensure any particular action or position as a right even though the action may be considered a privilege. Justice Antonin Scalia, a previous member of the Supreme Court of the United States, wrote in his dissenting opinion in *Troxel v. Granville* that

> [the] Declaration of Independence... is not a legal prescription conferring powers upon the courts; and the Constitution's refusal to "deny or disparage" other rights is far removed from affirming any one of them, and even farther removed from authorizing judges to identify what they might be, and to enforce the judges' list against laws duly enacted by the people.[27]

In effect Justice Scalia, although here, notably, of the minority opinion, is offering the interpretation that the Ninth Amendment is not to be used to secure a right by judicial review. An example of where the Ninth Amendment could have been used to secure a right by judicial review is the case of *Hendrick v. Maryland*.[28] The appellant claimed that his rights were infringed upon by the motor vehicle code of the state of Maryland. At the time there was a requirement that any vehicle operating within the state of Maryland be registered to the state of Maryland and since the appellant was a resident of the District of Columbia which borders Maryland, upon the appellant's entry into said state within the county of Prince George he was charged with the violation of the state motor vehicle law. The appellant argued that he had a constitutional right to freedom of movement as guaranteed in the ruling of *Corfield v. Coryell*. However, the Supreme Court decided that although the appellant did indeed have a right to freedom of

[27] Troxel v. Granville, 530 U.S. 57 (2000).
[28] Hendrick v. Maryland, 235 U.S. 610 (1915).

movement, this freedom would not be infringed by the state regulation of motor vehicles nor would it "constitute a direct and material burden on such commerce".[29] In its decision, the Supreme Court could have cited the Ninth Amendment, since the right to free movement is in line with natural law and was not enumerated in the other nine amendments comprising the Bill of Rights, but rather the court used the privileges and immunities clause[30] to inform their decision, thereby avoiding securing a right by judicial review though the Ninth Amendment. This was preferable since the ambiguity of the Ninth Amendment has grave potential to be broadly interpreted, potentially in a way contrary to natural law, and specifying the exact parameters of a right protected by this amendment would seem to contradict its very intent, namely that the other rights enumerated in the Constitution not be held as an exhaustive list. Aquinas argued that positive law such as the Bill of Rights contained both positive and natural rights, but that positive law was unable to establish natural rights, such as the freedom of movement, and is only able to express them. Lastly, he believed that positive law could create positive rights, such as the operation of a motor vehicle, but these "positive rights" were not equivalent to natural rights, "For positive right has no place except where it matters not, according to the natural right, whether a thing be done in one way, or in another."[31]

Selective Incorporation and Judicial Review

[29] Ibid.
[30] *Constitution,* Article 4, Section 2, Clause 1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.
[31] *Summa Theologiæ* II-II Q. 67. Article 2.

One of the most consequential cases expanding the rights of citizens did not come about until 1925. Although the Fourteenth Amendment had been adopted in 1868 and had required the states to observe the protections of the Constitution with regard to their citizens, for various reasons some states were not compliant with any or all of the provisions of the Constitution. Therefore, the case of *Gitlow v. New York* became a turning point in the way that the Supreme Court viewed the doctrine of incorporation of the Constitution to the states.

In 1925 Benjamin Gitlow, a member of the Socialist Party, was accused and convicted of writing revolutionary propaganda in the state of New York. Upon review the Supreme Court determined that the First Amendment was "among the fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the States."[32] However the Supreme Court did not apply the Fourteenth Amendment to the states in practice for the rest of the Constitution, thereby setting the precedent of selective incorporation. As of the year 2020, the Supreme Court has only incorporated the First, Fourth, Fifth, Sixth, and Eighth Amendments by way of the Fourteenth Amendment and applied them to the states. Justice Benjamin Cardozo justified selective incorporation with the explanation that only those rights considered to be fundamental need to be incorporated into the Fourteenth Amendment, and he characterized these rights as "the very essence of a scheme of ordered liberty . . . rooted in the tradition and conscience of our people."[33]

[32] Gitlow v. New York, 268 U.S. 652 (1925).
[33] Palko v. Connecticut, 302 U.S. 319 (1937).

The Supreme Court might never have had the chance to make decisions on any of these cases were it not for the practice of judicial review that was established in 1803 in the *Marbury v. Madison* case. During the process of judicial review, the executive, or legislative actions of the government are subjected to the review by the judiciary. Chief Justice John Marshall officially made judicial review a part of the jurisdiction of the Supreme Court when he held that the Supreme Court had the authority to overturn laws passed by Congress if they violated the Constitution saying;

> It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each… The judicial power of the United States is extended to all cases arising under the Constitution.[34]

Absolute Freedom

When I hear the word "freedom", I cannot help but associate the word with an image of US soldiers raising the American flag over Iwo Jima, a bald eagle soaring over Yosemite National Park, or my right to travel to Bridal veil Falls in Yosemite to enjoy that view. But the word "freedom" means more than the images its use evokes. Above all, this word in the most literal context is both the most destructive and most liberating word to an American. It is the word that enables a person to espouse horrid sentiments, and allows yet another person to adamantly disagree with them. But even with constitutional protection, freedom and rights have their limits. They cannot be absolute in a society. Take as an example a man living in a suburban neighborhood who has a

[34] Marbury v. Madison, 5 U.S. 137 (1803).

right to enjoy peace and quiet, and also to play music even though his particular taste in Justin Bieber others may call misguided. His freedom to play music is not absolute and so he may not play a song at an extremely obnoxious volume, simply because if he played at an obnoxious volume he would infringe on other people's right to peace and quiet or their right to play music at a lower volume. Of course, this example trivializes "right" to a degree by assuming that playing music is just as important as the right to a fair trial. But in an almost comedic way Hobbes expressed that "To lay down a man's right to anything is to divest himself of the liberty of hindering another of the benefit of his own right to the same."[35] Therefore by the nature of living in a society we have already limited some of our rights and freedoms. For example, Justice Oliver Holmes, Jr., in his deciding opinion in the case of *Schenck v. United States* wrote:

> The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic… The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about… substantive evils.[36]

In this case Justice Holmes is defining when certain types of speech are inappropriate and is stating that we cannot yell "fire" in a crowded theater when the need does not exist because of the grave danger that these "false" words could result in. But we can disagree with our politicians and debate them in the public forum, even when it is considered dangerous, as long as what we convey is "truthful" since it is our right to have our own expressed opinion even if that opinion does not align with the majority or is considered "fake news". The Constitution acts as a protection so that these rights are

[35] *Leviathan,* Part 1 Chapter 14.
[36] Schenck v. United States, 249 U.S. 47 (1919).

not completely removed and so that we can live in harmony with other members of society, respecting our neighbors while retaining those rights that are ours under natural law.

Conclusion

As demonstrated by the formation of the United States of America, the rejection of a tyrannical government by its subjects and the inauguration of a new form of government, which, as President Lincoln so eloquently reminded us in his Gettysburg Address, is “a government of the people, by the people, for the people”, was of utmost importance so that natural law might be better emulated by the positive law. Therefore, any future amendments to the Constitution should also closely parallel natural law so as to keep continuity with observing man's rights. It also remains that any future interpretation of the Constitution not following on precedent—which may be described as the mindset of the founding fathers, close reflection of natural law, our reasons for rebirth as a new nation, and a thorough understanding of the Declaration of Independence—would result in a misinterpreted and misguided understanding of the Constitution; we must respect each other’s God given rights.