

The Erosion of Liberty in Modern America

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The founding of America was a new beginning for its people. It was a blank slate on which the word of the nation could be established, the ideals of its citizens could be manifested, and the concept of 'rights' could be polished. Since 1789, Americans have reached milestones in fulfilling basic civil liberties. Though the Civil Rights Movement, Women's Liberation Movement, and the recent legalization of same-sex marriage have created a civilization in which we are guaranteed protection of our natural rights, I argue that our liberty today is more threatened than ever. A correlation between the idea of 'liberty' and the ideals of economic prosperity, the right to public contestation, and technological advancement is often drawn in highly developed civilizations. I dispute this concept, as 'liberty' is simply the ability to practice free will. Indeed, the obsession with pursuing the aforementioned metrics has plagued the practical applications of our liberties. With over 200 years of precedence, growth in the regulatory legislature, and the rise of government surveillance, I argue that Americans, on balance, are allowed less liberty today than in 1789.

Following the Articles of Confederation's failure, the founding founders faced the monumental tasks of maximizing both collective security and individual liberties within the nation's governing framework. Their efforts to balance federal and state powers are apparent upon examination of the Constitution. The Constitution outlined several effective strategies for combating abuse of centralized control. Credited to Roger Sherman, the Great Compromise negotiated the needs of both large and small states in the newly established nation. Article 1 Section 1 of the Constitution established a bicameral legislature — the Lower House with populous representation, and the Senate with an equal number of votes per state to protect small states from the tyranny of the majority (*United States Constitution*, Art. I, Sec. 1). For the nation's collective security, the Constitution also gave the federal government the power to lay and collect taxes if distributed evenly across the country, regulate currency, deal with patents,

and declare war (*United States Constitution*, Art. I, Sec. 8). The Constitution outlines the powers of the executive branch in Article 2 and those of the Supreme Court in Article 3. The division of power between the state/federal governments coupled with the checks and balances system in the federal government intended to protect citizens from potential abuse of power while maximizing the nation's collective security as a whole.

However, the great debate of whether to ratify this attempt at governance proved the framers' efforts insufficient. While the Federalists favored the Constitution, the anti-Federalists claimed that individual liberties would be threatened under the proposed Constitution. More specifically, many state leaders opposed the Constitution in fear that a more robust federal function would threaten state sovereignty. The ratification debate was proof that the Constitution itself was insufficient. The final compromise was what we know today as the Bill of Rights. The Bill of Rights was groundbreaking in its content, ideals, and implications. Composing the first 10 Amendments to the Constitution, it defined the relationship between the government and its people. The 1st Amendment clearly outlined several fundamental rights, including free speech, press, religion, peaceful assembly (*United States Constitution*, Amend I). The 2nd Amendment outlined the citizens' right to bear arms (*The Bill of Rights*, Amend II). To preserve state sovereignty, the 10th Amendment stated that all powers not delegated to the federal government were reserved for the states or people (*United States Constitution*, Amend X).

Of course, however, the Constitution did not extend these liberties to all. The 14th Amendment is credited as a catalyst of the nation's future expansion of civil liberties. More specifically, Section 1 of the 14th Amendment revolutionized the conception of rights in the United States. The Amendment granted citizenship to all people born or naturalized in the United States citizenship, prohibited the passage of laws that infringed upon their privileges, denied State deprivation of rights without due process, and outlawed the refusal to grant equal protection to minorities (*United States Constitution*, Amend XIV). The 14th Amendment opened the door to incorporation — expanding the security of civil liberties and rights on a federal level. It was not only a crucial step in expanding the realm of constitutional rights for African-Americans but also served the interests of other minority groups.

The examination of the nation's founding documents gives credence to the claim that 'liberty' was the core concept that unified provisions of the Constitution. To present-day America, 'liberty' remains an integral, binding force of all fundamental ideals in the United States. However, it is essential to understand that none of the Constitution, Bill of Rights, nor

any legislative mediums are sufficiently dense to encompass all areas of human life. Consequently, our liberties have slowly been stripped away in modern America.

It is indisputable that modern-day America provides an objectively higher standard of living than in 1789. However, 'liberty' in its most natural state is threatened more than ever before. In 1776, the American colonists united under the common goal of independence. The Constitution in 1789 established the identity of American soil with vigor and ambition. The Constitution aimed to divide the federal and state governments' powers while providing collective security to its people. The Bill of Rights and subsequent expansions promised guaranteed liberties to all. This blank slate allowed for the expansion of rights, amends to its legislature, and unbiased interpretation of scenarios on a case-by-case basis. Despite all that, modern-day America sits on a different soil.

Claiming the erosion of liberties in the present-day does not seek to discredit the expansion of civil liberties in American political history: through the Civil Rights Movement, the Women's Liberation Movement, and the ruling of *Obergefell v. Hodges*, the American people have seen huge advancements in its demographic inclusivity of 'liberty.' However, as a civilized society, the inclusion of all citizens in its civil guaranteed rights should not be an arbiter in judging the scope of liberties in our nation. Rather, we must examine both the nature and breadth of the rights enjoyed by contemporary American citizens. America was founded 200 years ago under the ideals of freedom, justice, and liberty. In the present day, the government alone determines the framework of American 'liberty'. Under this perception, I argue that Americans are controlled by government functions, social pressures, and segregation more than ever before.

With the exponential rise of technology, privacy has become an increasing concern of the American people. Although the right to privacy is not explicitly stated in the Constitution, first through allusion in the Fourth Amendment and furthered through landmark court cases such as *Griswold v. Connecticut*, Americans have found their rights to privacy via "the penumbras" of the Constitution. The Fourth Amendment outlines that all persons hold the right to be secure from unreasonable searches and seizures (*United States Constitution*, Amend IV). In modern America, however, advancements in technology and surveillance methods have acted as agents of privacy infringement for decades, in the hands of both private and state actors. We now live in a generation where companies can track consumer activity via cookies and sell this personal data for profit. The government and private surveillance that Americans apathetically face is disconcerting, to say the least. An excellent exhibit of such is *United States v. Valle*, often referred

to as the NY Cannibal Cop Case. In this case, Gilberto Valle, a former police officer, was arrested for discussing his fantasies of kidnapping and abducting women in Internet chat rooms (*United States v. Valle*). Valle argued that, since he did not commit any true crime, he could not be tried for the crime. The Supreme Court upheld the officer's innocence, stating that no overt act was committed that posed a danger to potential victims (*United States v. Valle*). However, the focal point of the case was the infringement of liberty showcased through digital surveillance.

The case raises concerns on the thin line of criminality — when does a thought become a crime? Perhaps we now all live in a perpetual state of panic that even the most subconscious, discreet of our thoughts may be criminalized. This fear of surveillance is apparent in the increased filtering of our speech and actions to avoid repercussion. The exponential polarization in government has trickled into the daily lives of its citizens. One particular exhibit is the rise of so-called alternative-left and alternative-right groups, including but not limited to Antifa and the Proud Boys. With the nation as a whole becoming increasingly polarized, we plunge into a state of censorship and fear. This fear of speech not only stems from potential legal consequences but also physical or psychological violence that may rise in return. Modern America stands more divided, more fearful, and less autonomous in its liberties than ever before.

The growth of federal power has also eaten away at the liberty of Americans. Since 1789, approximately thousands of new statutes have been added to federal legislation. The content of mass media that Americans have access to is regulated by the federal government: the Federal Communications Commission “regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states.”. In simpler terms, the content we are exposed to has undergone initial filtering by federal institutions. Our ability to formulate decisions and opinions is largely dependent on the information that we are provided access to. Thus, federal media regulations hampers the democratization of data and, by extension, limits our ability to foster distinct perspectives and ideologies. Additionally, the implications of current drug regulations, including but not limited to the federal alcohol and tobacco consumption age, speak volumes on the limitations of liberties in this country. The protection of liberty to take conscious risks separates adults from children, the autonomous from the coerced, and the educated from the stunted. Some argue that regulations and limitations based on age are precautionary national efforts related to the safety of its citizens. However, the process in which safety in America is achieved must first be fulfilling one's constitutional rights — the very liberties that the country was founded upon. The core argument I make is the erosion of liberty that derives from rising institutional involvement. In premise, liberty must not be the ability to

practice free will under specific, regulated conditions, but the ability to unconditionally take self-decided risks and make decisions based solely on personal conscience.

To preserve the ideals of this nation, we must consciously treat liberty independent from subjective, moral implications. Examination of the United States' current incarceration rates speaks volumes on the increased regulations, surveillance, and governmental functions that seek to excessively moralize the concept of liberty and strip away our people of their autonomy. The American Civil Liberties Union states that the United States currently has a level of mass incarceration reaching 25% of the world's incarceration population. Of those incarcerated, the number of felonies is disproportionate to its counterparts of infractions and misdemeanors. Additionally, despite popular belief, the criminal justice system continues to fail in protecting minorities. Through the Civil Rights Movement, Americans ended *de jure segregation* of African-Americans. However, *de facto* segregation is apparent upon examination of overpowering racial disparities in federal imprisonment rates. Moreover, even post-incarceration, people are controlled through parole systems, monitoring and surveillance, and the stripping of felons' right to vote. According to the Federal Bureau of Justice Statistics, there were about 1.68 million African-Americans under the supervision of state and federal criminal justice systems. The institutional racism and interpersonal discrimination in modern America continue to limit the liberties of marginalized groups in this country.

Over the past 200 years, the United States has expanded its guarantee of natural rights to increasingly broader parts of the populace. However, with the growing surveillance of governmental functions, the rise of federal control, and the failure of the criminal justice system, the nation stands more polarized and regulated more than ever before. All things considered, do our present-day liberties reflect higher levels of autonomy than in 1987? I argue not.

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*“What We Do.” The Federal Communications Commission,
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