

## The Originalist and the Objections

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2020 1018

The confirmation hearing for the nominee to the Supreme Court has once again ignited a debate about the validity of what is referred to as the 'Originalist' view of the Constitution. Those critical of the Originalist jurist have most often cited the fact that the Constitution didn't recognize women and minorities as people. While true, the statement is misleading. The Constitution as adopted in 1787 did not acknowledge anyone at all as a person. The only time that the number of persons is mentioned is in Article One which uses the number of persons living in each state as a means of apportioning the number of representatives each state shall have.

The term 'persons' is qualified, however, and a distinction is made between free persons and all others. Such a distinction did not eliminate women from the calculation. In an ironic twist, it was the slave owners of the South who wanted the slaves counted as a full person and the freemen of the North who objected. Counting the slaves as 'whole persons' would have given Southern States more representatives and therefor more power in the House of Representatives.

The second objection to the Originalist was that neither slaves nor women were allowed to vote. In fact, the Constitution of 1787 did not address who could vote at all. The qualifications for voting were strictly a matter of the state in which elections were held.

But what does the Originalist have to offer that makes the philosophical position desirable? The most important tenet of Originalism is that of adherence to the original concept of freedom that is embodied in the Constitution, but a close look also identifies Article Five as deserving of our attention. Article Five delineates the procedure for amending the original document. What may be overlooked by those who object to Originalism is that the Originalist accepts Article Five as written just as he does the others. It is often also misunderstood that an amendment actually changes the Constitution and the one we have today is not the same one that was adopted in 1787.

In 2020, therefore, the Constitution does, in fact, address who can vote and does recognize all people as equal in that regard. The freed slaves were given the right to vote in 1870 by virtue of the Fifteenth Amendment. Women had to wait longer, but the Nineteenth Amendment (1920) was adopted correcting that exclusion. In 1971, the

Twenty-Sixth Amendment set the voting age at 18, equalizing inequities across state lines.

Today's Constitution protects equality and voting rights across the board and today's Originalist will defend those rights. The opposition to such a view is particularly troubling because it is flawed in its construction, implying a fealty to the Constitution of 1787 over that of today.

The Originalist adherence to the Constitution does have implications, however, and it may be these that are troubling to those in opposition. The Originalist will hold that should an issue such as the elimination of private ownership of weapons arise, the Second Amendment ought to be revised and that legislation cannot suffice to alter it.