1 The Six Basic Principles

Section Preview

Objectives

1. **Outline** the important elements of the Constitution.
2. **List** the six basic principles of the Constitution and evaluate constitutional principles for limiting the role of government.

Why It Matters

The Constitution is a brief, straightforward document that has guided American government for over 200 years. Its authors wrote the Constitution based on the principle of republicanism—that political power rests in the body of citizens entitled to vote and is exercised by representatives chosen by them.

Political Dictionary

- ★ **Preamble**
- ★ **articles**
- ★ **constitutionalism**
- ★ **rule of law**
- ★ **separation of powers**
- ★ **checks and balances**
- ★ **veto**
- ★ **judicial review**
- ★ **unconstitutional**
- ★ **federalism**

The Constitution of the United States dates from the latter part of the eighteenth century. It was written in 1787, and took effect in 1789. The fact that the Constitution is more than 200 years old does *not* mean, however, that now, in the twenty-first century, it is only an interesting historical artifact, fit for museums and dusty shelves. It is, instead, a vitally important and vibrant document.

The Constitution is this nation's fundamental law. It is, by its own terms, "the supreme Law of the Land"—the highest form of law in the United States.

An Outline of the Constitution

The Constitution sets out the basic principles upon which government in the United States was built and operates today. The document lays out the basic framework and procedures of our government, and sets out the limits within which that government must conduct itself.

The Constitution is a fairly brief document. Its little more than 7,000 words can be read in half an hour. You will find the text of the Constitution beginning on page 758. As you read it, think about the surprising fact that this brief document has successfully guided this nation through two centuries of tremendous growth and change. One of the Constitution's greatest strengths is that its words deal largely with matters of basic principle. Unlike most other constitutions—those of the 50 States and those of most other nations—the document is not weighted down with detailed and cumbersome provisions.

As you read the Constitution, you will also see that it is organized in a simple and straightforward way. It begins with a short, noteworthy

▷ Although the members of the Federal Government are continually changing, from leaders of the past like Senator Henry Cabot Lodge (R., Massachusetts) to new lawmakers such as first-term Senator Michael Crapo (R., Idaho), the Constitution provides a lasting link between the past and present.

introduction, the **Preamble,** and the balance of the original document is divided into seven numbered sections called **articles.** The first three articles deal with the three branches of the National Government: Congress, the presidency, and the federal court system. These articles outline the basic organization and powers of each branch and the methods by which the members of Congress, the President and Vice President, and federal judges are chosen. Article IV deals mostly with the place of the States in the American Union and with their relationship with the National Government and with one another. Article V explains how formal amendments may be added to the document. Article VI declares that the Constitution is the nation's supreme law. Finally, Article VII states the requirements for ratification.

The seven articles of the original document are followed by 27 amendments, printed in the order in which they were adopted.

Articles of the Constitution

Section	Subject
Preamble	States the purpose of the Constitution
Article I	Legislative branch
Article II	Executive branch
Article III	Judicial branch
Article IV	Relations among the States
Article V	Amending the Constitution
Article VI	National debts,.supremacy of national law, and oaths of office
Article VII	Ratifying the Constitution

Interpreting Tables The Constitution sets up the basic structure of our Federal Government. ***How do the first three articles differ from those that follow?***

The Basic Principles

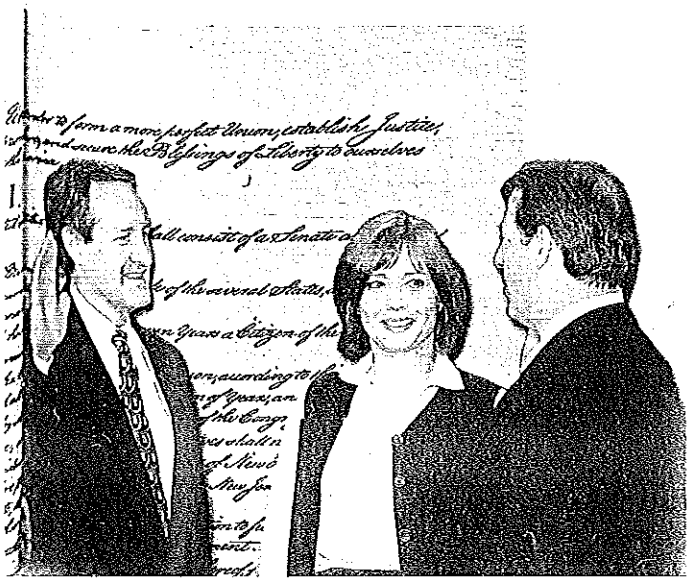
The Constitution is built around six basic principles: popular sovereignty, limited government, separation of powers, checks and balances, judicial review, and federalism.

Popular Sovereignty

In the United States, all political power resides in the people. The people are sovereign. They are the *only* source for any and all governmental power. Government can govern only with the consent of the governed.

The principle of popular sovereignty, so boldly proclaimed by the Declaration of Independence, is woven throughout the Constitution. In its very opening words, in the Preamble, the Constitution declares: "We the People of the United States . . . do ordain and establish this Constitution for the United States of America."

In essence, the National Government draws its power from the people of the United States, and the people have given their government the power that it has through the Constitution. Similarly, each one of the State governments draws its authority from the people of that State, through that State's constitution.



Limited Government

The principle of limited government holds that no government is all-powerful, that a government may do *only* those things that the people have given it the power to do.

In effect, the principle of limited government is the other side of the coin of popular sovereignty. It is that principle stated the other way around: The people are the only source of any and all of government's authority; and government has only that authority the people have given to it.

The concept of limited government can be expressed another way: Government must obey the law. Stated this way, the principle is often called **constitutionalism**—that is, that government must be conducted according to constitutional

△ ***The Rule of Law*** During the Watergate scandal prosecutors accused many of President Richard Nixon's closest advisers of breaking the law. This poster implies that Nixon shared their guilt and would soon be exposed.

principles. The concept of limited government is also described as the **rule of law,** which holds that government and its officers are always subject to—never above—the law.

In large part, the Constitution is a statement of limited government. Much of it reads as clear prohibitions of power to government.[1] For example, notice the Constitution's guarantees of freedom of expression. Those great guarantees—of freedom of religion, of speech, of press, of assembly, and of petition—are vital to democratic government. They are set out in the First Amendment, which begins with the words: "Congress shall make no law. . . ."

Separation of Powers

Recall the brief discussion of the parliamentary and the presidential forms of government in Section 2 of Chapter 1. In a parliamentary system the legislative, executive, and judicial powers of government are all gathered in the hands of a single agency. British government is a leading example. In a presidential system, these basic powers are distributed—separated—among three distinct and independent branches of the government.

This concept is known as **separation of powers.** The first modern formulation of the doctrine of separation of powers was that of the French writer Charles de Montesquieu, who defined the principle of the separation of powers in *The Spirit of Laws* (1734). Although John Locke had distinguished the legislative from the executive function of government, he did not assign these functions to separate institutions. Montesquieu was the first to make the division among the legislative, executive, and judiciary. Arguing that the definition of tyranny is the concentration of all power in the same hands, he urged the division of the three functions of government among three separate institutions. Montesquieu's thinking profoundly influenced the framing of the Constitution of the United States.

The Constitution distributes the powers of the National Government among the Congress (the legislative branch), the President (the executive branch), and the courts (the judicial branch). This separation of powers is clearly set forth in the opening words of each of the first three Articles of the Constitution.

Article I, Section 1 declares: "All legislative Powers herein granted shall be vested in a Congress of the United States. . . ." Thus, Congress is the lawmaking branch of the National Government.

Article II, Section 1 declares: "The executive Power shall be vested in a President of the United States of America." Thus, the President is given the law-executing, law-enforcing, law-administering powers of the National Government.

Article III, Section 1 declares: "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Thus, the federal courts, and most importantly the Supreme Court, interpret and apply the laws of the United States in cases brought before them.

[1]See, especially, Article I, Sections 9 and 10; the 1st through the 10th amendments; and the 13th, 14th, 15th, 19th, 24th, and 26th amendments.

Remember, the Framers of the Constitution intended to create a stronger government for the United States. Yet they also intended to limit the powers of that government. The doctrine of separation of powers was designed to that end.

Defending this arrangement, James Madison wrote:

PRIMARY Sources

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many . . . may justly be pronounced the very definition of tyranny."

—*The Federalist* No. 47

Checks and Balances

The National Government is organized around three separate branches. As you have just seen, the Constitution gives to each branch its own field of governmental authority: legislative, executive, and judicial.

These three branches are not entirely separated nor completely independent of one another. Rather, they are tied together by a complex system of **checks and balances.** This means that each branch is subject to a number of constitutional checks (restraints) by the other branches. In other words, each branch has certain powers with which it can check the operations of the other two.

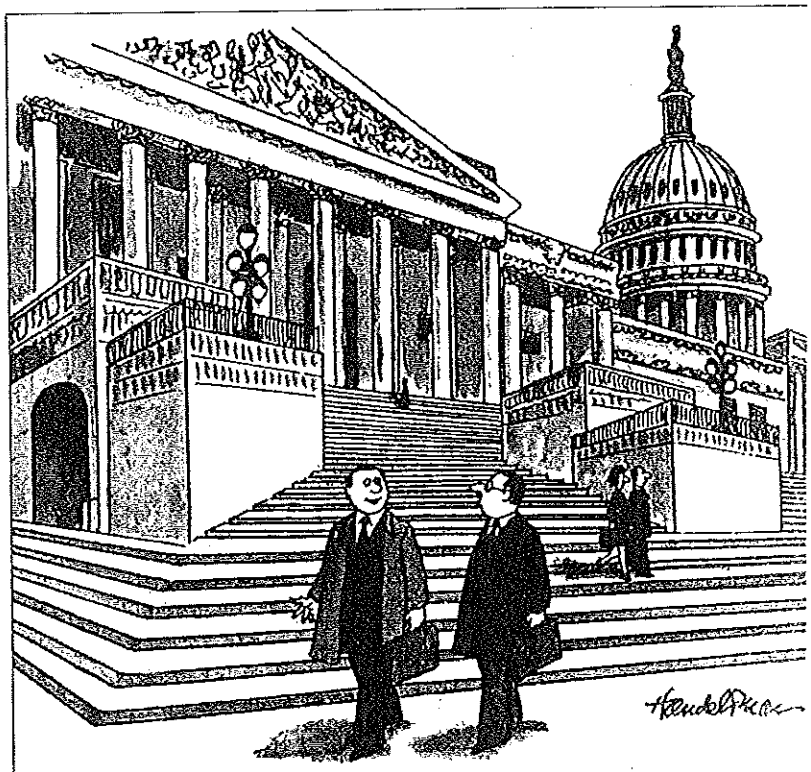
The chart on the next page describes the major features of the check-and-balance arrangement. As you can see, the Congress has the power to make law, but the President may **veto**, or reject, any act of Congress. In its turn, Congress can override a presidential veto by a two-thirds vote in each house. Congress can refuse to provide funds requested by the President, or the Senate may refuse to approve a treaty or an appointment made by the President. The President is the commander in chief of the armed forces, but Congress provides that military force; and so on.

The chart also shows how the system of checks and balances links the judicial branch to the legislative and the executive branches. The President has the power to name all federal judges. Each appointment, however, must be approved by a majority vote in the Senate. At the same time, the courts have the power to determine the constitutionality of acts of Congress and of presidential actions, and to strike down those they find unconstitutional.

Head-on clashes between the branches do not often happen. The checks-and-balances system operates all the time, however, and in routine fashion. The very fact that it exists—that each branch has its several checks—affects much of what happens in Washington, D.C.

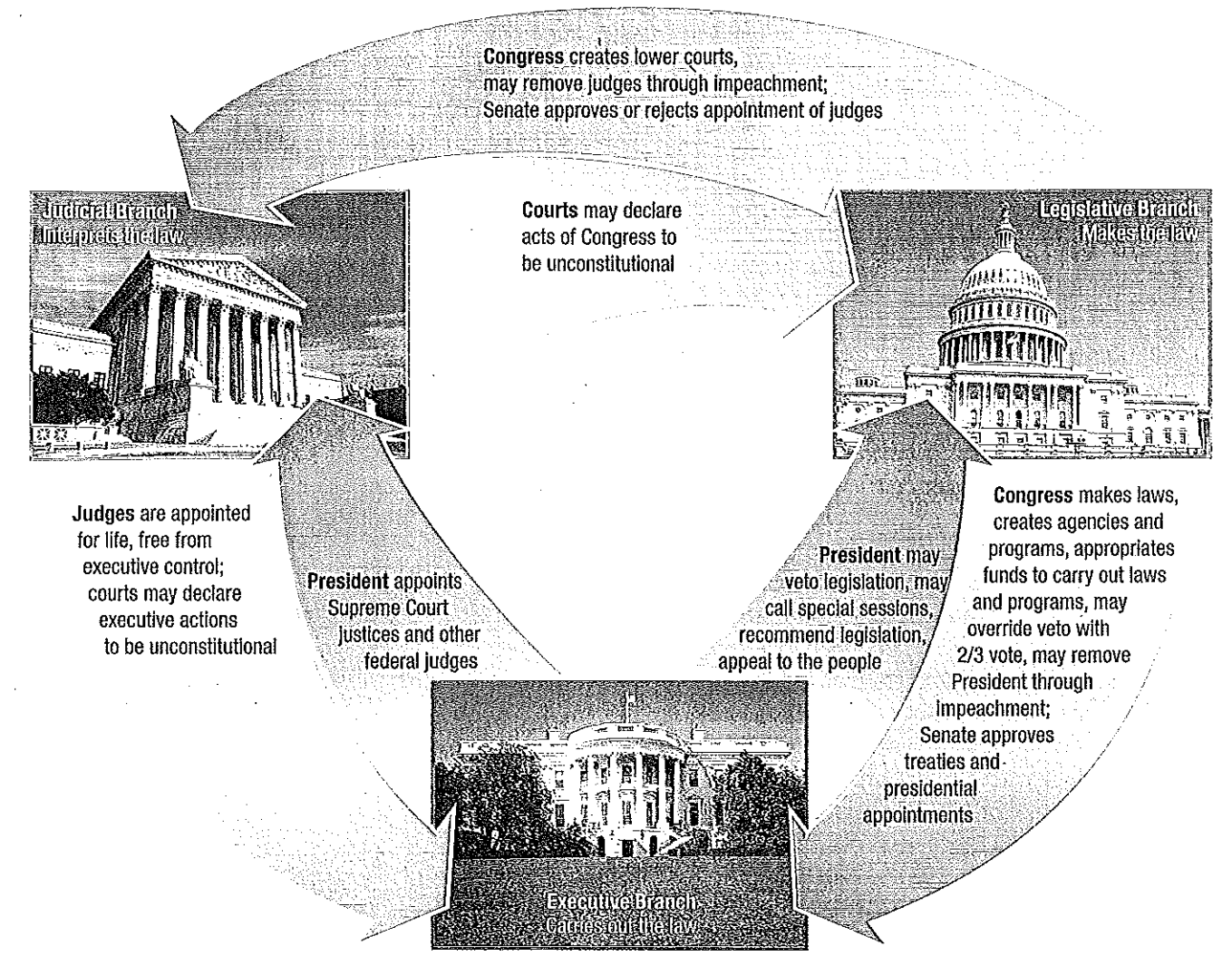
For example, when the President picks someone to serve in some important office in the executive branch—as, say, secretary of state or director of the Central Intelligence Agency (CIA)—the President is quite aware that the Senate must confirm that appointment. So, the President is apt to pick someone who very likely will be approved by the Senate. In a similar sense, when Congress makes law, it does so with a careful eye on both the President's veto power and the power of the courts to review its actions.

Spectacular clashes—direct applications of the check-and-balance system—do sometimes occur, of course. The President does veto some acts of Congress. On rare occasion, Congress does override one of those vetoes. Similarly,



"Hey, the Constitution isn't engraved in stone."

Interpreting Political Cartoons ***What does the speaker in this cartoon mean when he says "the Constitution isn't engraved in stone"?***



Interpreting Diagrams Under the system of checks and balances, each branch of government can check the actions of the others. ***In what way can the power of the judiciary be checked by the other branches?***

the Senate can reject one of the President's appointees. And twice in our history, the House of Representatives has impeached, or brought charges against, a President—Andrew Johnson in 1868 and Bill Clinton in 1998—although on both occasions the President was acquitted by the Senate.

But, again, these and other direct confrontations are not common. Congress, the President, and even the courts try to avoid them. The check-and-balance system makes compromise necessary—and compromise is a vital part of democratic government.

Over time, the check-and-balance system has worked quite well. It has done what the Framers intended it to do. It has prevented "an unjust combination of the majority." At the same time, it has not very often forestalled a close working relationship between the executive and legislative branches.

Note, however, that that working relationship runs more smoothly when the President and a majority in both houses of Congress have been of the same political party. When the other party controls one or both houses, conflicts play a larger than usual part in that relationship.

In fact, the American people have lately become accustomed to divided government, to a political environment in which one of the major parties holds the presidency and the other party

controls Congress. Since the Eisenhower era in the 1950s, one of the two major parties (most often the Republican party) has usually occupied the White House, while the other party (regularly the Democratic party) has had a firm grip on Capitol Hill.

That now-familiar pattern of divided government has had a marked effect on the conduct of business between the President and Congress. Much of the executive-legislative relationship has been rooted in partisanship in recent years. It has been much more difficult and much more confrontational over those years than it has been through most of the nation's history.

Judicial Review

One aspect of the principle of checks and balances is of such overriding importance in the American constitutional system that it stands, by itself, as one of that system's basic principles: judicial review.

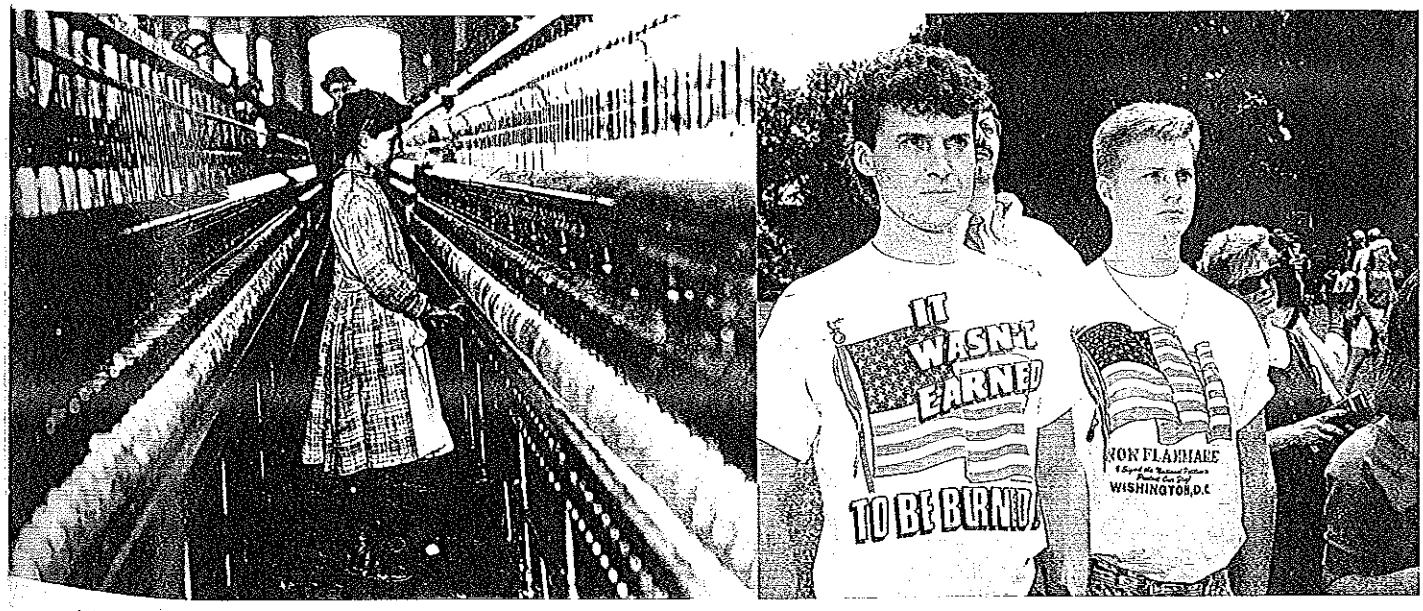
The power of **judicial review** is the power of courts to determine whether what government does is in accord with what the Constitution provides. More precisely, judicial review may be defined this way: It is the power of a court to determine the constitutionality of a governmental action.

In part, then, judicial review is the power to declare **unconstitutional**—to declare illegal, null and void, of no force and effect—a governmental action found to violate some provision in the Constitution. The power of judicial review is held by all federal courts and by most State courts, as well.[2]

The Constitution does not provide for judicial review in so many words. Yet it seems clear that the Framers intended that the federal courts, and in particular the Supreme Court, should have that power. In *The Federalist* No. 78 Alexander Hamilton wrote that "independent judges" would prove to be "an essential safeguard against the effects of occasional ill humors in society." In *The Federalist* No. 51 James Madison called the judicial power one of the "auxiliary precautions" against the possible dominance of one branch of government over another.

In practice, the Supreme Court established the power of judicial review in the landmark case of *Marbury* v. *Madison* in 1803. (We shall take a close look at that case and the doctrine of judicial review in Chapter 18.) Since *Marbury*, the Supreme Court and other federal and State courts have used the power in thousands of cases. For the most part, the courts have

[2]Generally, the power is held by all courts of record. These are courts that keep a record of their proceedings and have the power to punish for contempt. Usually, only the lowest courts in a State—justice of the peace courts, for example—are not courts of record.



▲ The Supreme Court has struck down federal laws that regulated child labor and outlawed the burning of the United States flag. ***Critical Thinking What characteristic of a law can lead the Supreme Court to overturn it?***

upheld challenged governmental actions. That is, in most cases in which the power of judicial review is exercised, the actions of government are found to be constitutional.

That is not always the case. To date, the Supreme Court has decided some 150 cases in which it has found an act or some part of an act of Congress to be unconstitutional. It has struck down several presidential and other executive branch actions as well. The Court has also voided hundreds of actions of the States and their local governments, including more than 1,000 State laws.

Federalism

As you know, the American governmental system is federal in form. The powers held by government are distributed on a territorial basis. The National Government holds some of those powers, and others belong to the 50 States.

The principle of **federalism**—the division of power among a central government and several regional governments—came to the Constitution out of both experience and necessity. In Philadelphia, the Framers faced a number of difficult problems, not the least of them: How to build a new, stronger, more effective National Government while preserving the existing States and the concept of local self-government.

▲ This statue in Concord, Massachusetts, pays tribute to the Minutemen who fought British troops to protect self-government.

The colonists had rebelled against the harsh rule of a powerful and distant central government. They had fought for the right to manage their local affairs without the meddling and dictation of the king and his ministers in far-off London. Surely, they would not now agree to another such government.

The Framers found their solution in federalism. In short, they constructed the federal arrangement, with its division of powers, as a compromise. It was an alternative to the system of nearly independent States, loosely tied to one another in the weak Articles of Confederation, and a much feared, too powerful central government. We shall explore the federal system at length in the next chapter.

Section 1 Assessment

Key Terms and Main Ideas

1. What is the purpose of the **Preamble** to the Constitution?
2. Explain how certain provisions of the Constitution provide for **checks and balances** among the branches of government.
3. What is the immediate effect if a law is declared **unconstitutional?**
4. Explain **federalism** in your own words.

Critical Thinking

5. **Drawing Inferences** Analyze the role of each branch of government in protecting the rights of individuals.
6. **Understanding Point of View** Why were the Framers of the Constitution careful to limit the powers of the Federal Government?
7. **Drawing Conclusions** Some people consider the judicial branch the least democratic of the three branches of the government because federal judges are not elected and cannot be easily removed. How can voters and their elected representatives check the power of the judicial branch?

Take It to the Net

8. Read about the division of power in the United States, Britain, and France and write a paragraph explaining how this element of the Constitution differentiates our Federal Government from the French and British systems. Use the links provided in the Social Studies area at the following Web site for help in completing this activity. **www.phschool.com**

2 Formal Amendment

Section Preview

Objectives

1. **Analyze** the processes by which the United States Constitution can be changed and evaluate their effectiveness.
2. **Understand** the history of the 27 amendments to the Constitution.

Why It Matters

The Constitution has grown and changed with the United States through the addition of 27 amendments. The first ten amendments guarantee many of our basic freedoms and are known as the Bill of Rights.

Political Dictionary

- ★ **amendment**
- ★ **formal amendment**
- ★ **Bill of Rights**

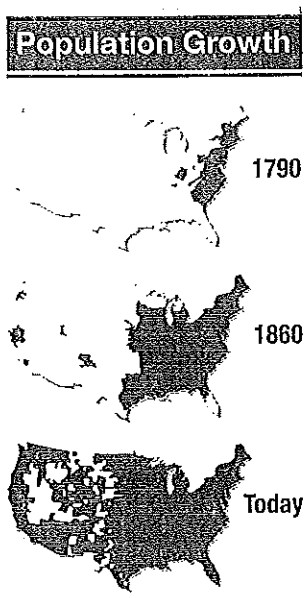
The Constitution of the United States has now been in force for more than 200 years—longer, by far, than the written constitution of any other nation in the world.[3]

When the Constitution became effective in 1789, the United States was a small agricultural nation of fewer than four million people. That population was scattered for some 1,300 miles along the eastern edge of the continent. Travel and communications among the 13 States were limited to horseback and sailing ships. The new States struggled to stay alive in a generally hostile world.

Today, more than 285 million people live in the United States. The now 50 States stretch across the continent and beyond, and the country also has many far-flung commitments. The United States is today the most powerful nation on Earth, and its modern, highly industrialized and technological society has produced a standard of living that has long been the envy of the rest of the world.

How has the Constitution, written in 1787, endured despite that astounding change and growth? Strict constructionists point out that the Constitution is based on timeless principles. These principles should not be tampered with lest the words of the Constitution become meaningless. We must thus look to the Framers' original intent for guidance when grappling with today's issues. Liberal constructionists, on the other hand, believe that the answer to this question lies with the concept of a "Living Constitution." That is, that the Constitution has endured because it can change and grow with the times.

This process of constitutional change can occur in two basic ways: (1) by formal amendment and (2) by informal procedures. In this section, you will look at the first of them: the addition of formal amendments to the Constitution.



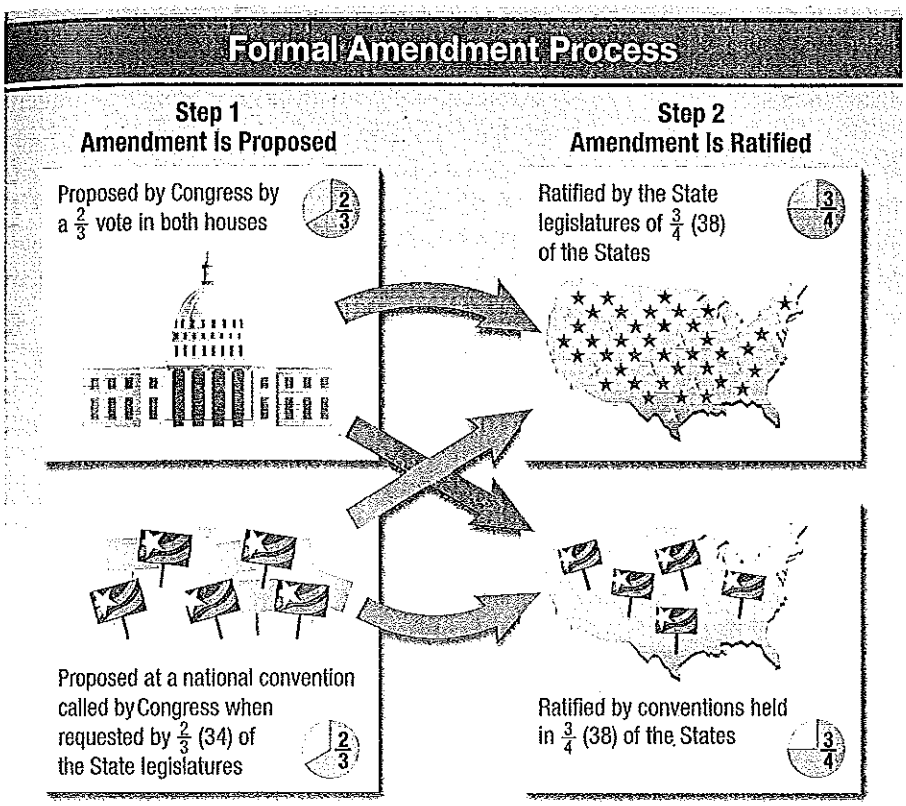
◀ The United States population has grown and expanded across the continent since the Constitution was adopted. The Constitution has been amended to meet the changing needs of the country.

Changing the Constitution

The Framers knew that even the wisest of constitution makers cannot build for all time. Thus, the Constitution provides for its own **amendment**—that is, for changes in its written words.

Article V sets out two methods for the proposal and two methods for the ratification of constitutional amendments. So, there are four

[3]The British constitution dates from well before the Norman Conquest of 1066, but it is not a single, written document. Rather, it is an "unwritten constitution," a collection of principles, customs, traditions, and significant parliamentary acts that guide British government and practice. Israel, which has existed only since 1948, is the only other state in the world without a written constitution.



Interpreting Diagrams The four different ways in which amendments may be added to the Constitution are shown here. Conventions are rarely used. All but one of the 27 amendments were proposed in Congress and then ratified by the State legislatures. ***How does the formal amendment process illustrate federalism?***

possible methods of **formal amendment**—changes or additions that become part of the written language of the Constitution itself. The diagram above sets out these four methods.

First Method An amendment may be proposed by a two-thirds vote in each house of Congress and be ratified by three fourths of the State legislatures. Today, 38 State legislatures must approve an amendment for it to become a part of the Constitution. Twenty-six of the Constitution's 27 amendments were adopted in this manner.

Second Method An amendment may be proposed by Congress and then ratified by conventions, called for that purpose, in three fourths of the States. Only the 21st Amendment, added in 1933, was adopted in this way. Conventions were used to ratify the 21st Amendment largely because Congress felt that the conventions' popularly elected delegates would be more likely to reflect public opinion on the question of repeal than would State legislators.

Third Method An amendment may be proposed by a national convention, called by Congress at the request of two thirds of the State legislatures—today, 34. As you can see in the diagram, it must then be ratified by three fourths of the State legislatures. To this point, Congress has not called such a convention.[4]

Fourth Method An amendment may be proposed by a national convention and ratified by conventions in three fourths of the States. Remember that the Constitution itself was adopted in much this same way.

Federalism and Popular Sovereignty

Note that the formal amendment process emphasizes the federal character of the governmental system. Proposal takes place at the national level and ratification is a State-by-State matter. Also note that when the Constitution is amended, that action represents the expression of the people's sovereign will. The people have spoken.

Some criticize the practice of sending proposed amendments to the State legislatures rather than to ratifying conventions, especially

[4]The calling of a convention has been a near thing twice in recent years. Between 1963 and 1969, 33 State legislatures, one short of the necessary two thirds, sought an amendment to erase the Supreme Court's "one-person, one-vote" decisions; see Chapter 24. Also, between 1975 and 1983, 32 States asked for a convention to propose an amendment that would require that the federal budget be balanced each year, except in time of war or other national emergency.

because it permits a constitutional change without a clear-cut expression by the people. The critics point out that State legislators, who do the ratifying, are elected to office for a mix of reasons: party membership; name familiarity; their stands on such matters as taxes, schools, welfare programs; and a host of other things. They are almost never chosen because of their stand on a proposed amendment to the federal Constitution. On the other hand, the delegates to a ratifying convention would be chosen by the people on the basis of only one factor: a yes-or-no stand on the proposed amendment.

The Supreme Court has held that a State cannot require an amendment proposed by Congress to be approved by a vote of the people of the State before it can be ratified by the State legislature. It made that ruling in *Hawke* v. *Smith* in 1920. However, a state legislature can call for an advisory vote by the people before it acts, as the Court most recently held in *Kimble* v. *Swackhamer* in 1978.

Proposed Amendments

The Constitution places only one restriction on the subjects with which a proposed amendment may deal. Article V declares that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

When both houses of Congress pass a resolution proposing an amendment, Congress does not send it to the President to be signed or vetoed, though the Constitution would seem to require it.[5] This is because when Congress proposes an amendment, it is not making law (not legislating).

If a State rejects a proposed amendment, it is not forever bound by that action. It may later reconsider and ratify the proposal. Most constitutional scholars agree that the reverse is not true,

[5]See Article I, Section 7, Clause 3. This practice of not submitting proposed amendments to the President is an example of the many informal procedures applied to the Constitution, a matter we shall turn to shortly.

The Living Constitution

Changing Views of Free Speech

1800 — 1925

Many Americans, including many who supported the new Constitution, criticized the document because it lacked a bill of rights—a listing of the basic rights held by the people against the new National Government. That criticism was soon met: ten amendments, the Bill of Rights, were added to the Constitution in 1791. The guarantees of freedom of speech and press, set out in the 1st Amendment, have produced controversy for more than 200 years now.

1798 Sedition Act makes it a crime to criticize the government in speech or writing. The law is not renewed after the election of 1800.

1919 Supreme Court rules that sending written material to draftees urging them to resist the draft is unlawful because it creates a "clear and present danger" to national security. (*Schenck* v. *United States*)

however. Once a State has approved an amendment, that action is final and unchangeable.

More than 10,000 joint resolutions calling for amendments to the Constitution have been proposed in Congress since 1789. Only 33 of them have been sent on to the States. Of those, only 27 have been finally ratified. One of the unratified amendments had been offered by Congress in 1789—along with 10 other proposals that became the Bill of Rights in 1791, and another that became the 27th Amendment in 1992. The unratified amendment of 1789 dealt with the distribution of seats in the House of Representatives. A second amendment, proposed in 1810, would have voided the citizenship of anyone accepting any foreign title or other honor. Another, in 1861, would have prohibited forever any amendment relating to slavery. A fourth, in 1924, was intended to empower Congress to regulate child labor. A fifth one, proclaiming the equal rights of women (ERA), was proposed by Congress in 1972; it fell three States short of ratification and died in 1982. An amendment to give the District of Columbia seats in Congress was proposed in 1978; it died in 1985. Congress can place "a reasonable time limit" on the ratification process, *Dillon* v. *Gloss*, 1921. When Congress proposed the 18th Amendment (in 1917), it set a seven-year deadline for its ratification. It has set a similar deadline for the ratification of each of the amendments (except the 19th) it has proposed since, although Congress granted the ERA a three-year extension in 1979.

The 27 Amendments

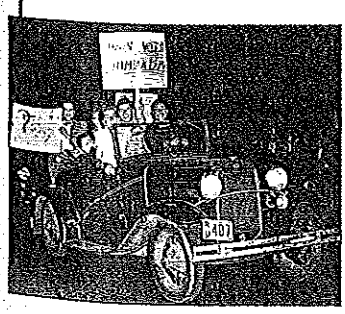
The Constitution's 27 amendments are described in the table on the next page. As you review the amendments, note this important fact: As significant as they are, these 27 amendments have not in fact been responsible for the extraordinary vitality of the Constitution. That is to say, they

1969 Supreme Court decides that the First Amendment protects students who wear armbands in school to protest the Vietnam War. (*Tinker* v. *Des Moines School District*)

1989 Supreme Court rules that burning an American flag as a political protest is "symbolic speech," protected by the First Amendment. (*Texas* v. *Johnson*)

25 | 1950 | 1975 | 2000

1951 Eleven American Communists are convicted of sedition for advocating the overthrow of the government. Supreme Court decides that the First Amendment does not protect them. (*Dennis* v. *United States*)



1971 Government tries to stop the *New York Times* publication of the "Pentagon Papers" about the Vietnam War. The Supreme Court upholds the paper's right to do so. (*New York Times* v. *United States*)

1999 Anti-censorship groups challenge Child Online Protection Act, which limits minors' access to certain Internet sites.

Analyzing Time Lines

1. What was the Court's reason for protecting a protester who burned an American flag?
2. Both the *Schenck* case (1919) and the *Tinker* case (1969) involved antiwar protests. How would you explain the difference between the Supreme Court decisions?

have *not* been a major part of the process by which the Constitution has kept pace with more than two centuries of far-reaching change.

The Bill of Rights

The first ten amendments were added to the Constitution less than three years after it became effective. They were proposed by the first session of the First Congress in 1789 and were ratified by the States in late 1791. Each of these amendments arose out of the controversy surrounding the ratification of the Constitution itself. Many people, including Thomas Jefferson, had agreed to support the Constitution only if a listing of the basic rights held by the people were added to it immediately.

Collectively, the first ten amendments are known as the **Bill of Rights.** They set out the great constitutional guarantees of freedom of belief and expression, of freedom and security of the person, and of fair and equal treatment before the law. We shall consider these guarantees at some length in Chapters 19 and 20. The 10th Amendment does not deal with civil rights as such. Rather, it spells out the concept of reserved powers in the federal system.

The Later Amendments

Each of the other amendments that has been added to the Constitution over the past 200 years also grew out of some particular, and often interesting, set of circumstances. For example, the 11th Amendment declares that no State may be sued in the federal courts by a citizen of another State or by a citizen of any foreign state. It was proposed by Congress in 1794 and ratified in 1795, after the State of Georgia had lost its case in the United States Supreme Court. The case (*Chisholm* v. *Georgia,* decided by the Court in 1793) had been brought to the brand new federal court system by a man who lived in South Carolina.

Amendments to the Constitution

Amendment	Subject	Year	Time Required for Ratification
1st–10th	Bill of Rights	1791	2 years, 2 months, 20 days
11th	Immunity of States from certain lawsuits	1795	11 months, 3 days
12th	Changes in electoral college procedures	1804	6 months, 6 days
13th	Abolition of slavery	1865	10 months, 6 days
14th	Citizenship, due process, equal protection	1868	2 years, 26 days
15th	No denial of vote because of race, color, or previous enslavement	1870	11 months, 8 days
16th	Power of Congress to tax incomes	1913	3 years, 6 months, 22 days
17th	Popular election of U.S. Senators	1913	10 months, 26 days
18th	Prohibition of alcohol	1919	1 year, 29 days
19th	Woman suffrage	1920	1 year, 2 months, 14 days
20th	Change of dates for start of presidential and Congressional terms	1933	10 months, 21 days
21st	Repeal of Prohibition (18th Amendment)	1933	9 months, 15 days
22nd	Limit on presidential terms	1951	3 years, 11 months, 6 days
23rd	District of Columbia vote in presidential elections	1961	9 months, 13 days
24th	Ban of tax payment as voter qualification	1964	1 year, 4 months, 27 days
25th	Presidential succession, vice presidential vacancy, and presidential disability	1967	1 year, 7 months, 4 days
26th	Voting age of 18	1971	3 months, 8 days
27th	Congressional pay	1992	202 years, 7 months, 12 days

Interpreting Tables These 27 amendments have been added to the Constitution since it became effective in 1789. ***Which amendment was adopted in the shortest time? Which one took the most time to ratify?***

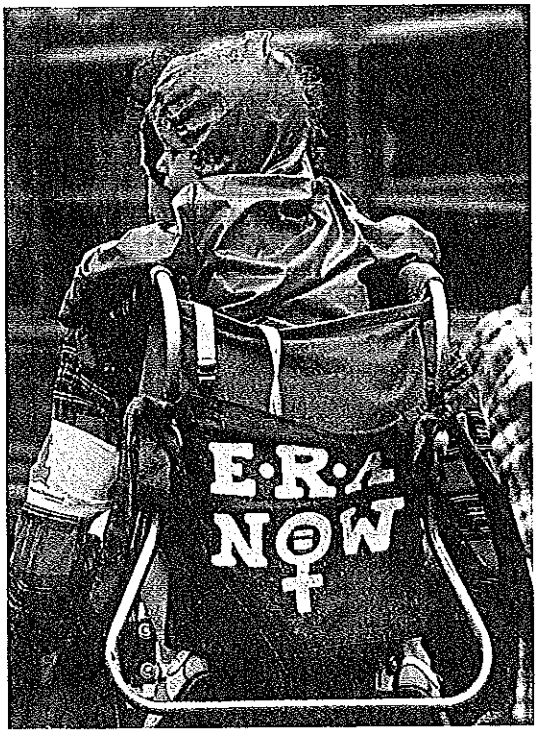
The 12th Amendment was added to the Constitution in 1804 after the electoral college had failed to produce a winner in the presidential election of 1800. Thomas Jefferson became the third President of the United States in 1801, but only after a long, bitter fight in the House of Representatives.

The 13th Amendment, added in 1865, provides another example. It abolished slavery in the United States and was a direct result of the Civil War. So, too, were the 14th Amendment on citizenship (in 1868) and the 15th Amendment on the right to vote (in 1870).

As you can see in the table on page 76, the 18th Amendment, establishing a nationwide prohibition of alcohol, was ratified in 1919. What came to be known as "the noble experiment" lasted fewer than 14 years. The 18th Amendment was repealed by the 21st in 1933.

The 22nd Amendment (1951) was proposed in 1947, soon after the Republican Party had gained control of Congress for the first time in 16 years. Over that period, Franklin D. Roosevelt, a Democrat, had won the presidency four times.

The 26th Amendment was added in 1971. It lowered the voting age to 18 in all elections in the United States. Many of those who backed the amendment began to work for its passage during World War II, with the argument "Old enough to fight, old enough to vote." Its ratification was spurred by the war in Vietnam.



▲ ***Two ERA Supporters*** People fought unsuccessfully in the 1970s and 1980s to add the Equal Rights Amendment to the Constitution.

The most recent amendment, the 27th, was among the first to be offered by Congress. This amendment forbids members of Congress from raising their own pay during that term. It was proposed in 1789 and ratified nearly 203 years later, in 1992.

Section 2 Assessment

Key Terms and Main Ideas

1. How many **amendments** were added to the Constitution in the twentieth century?
2. Describe the four possible methods of **formal amendment.**
3. In your own words, describe three freedoms protected by the **Bill of Rights.**

Critical Thinking

4. **Drawing Conclusions** Why does the Constitution provide that *both* houses of Congress must agree to the proposal of an amendment?
5. **Determining Cause and Effect** Cite three events or controversies that led to amendments to the Constitution, and explain how each of these amendments settled a particular question.
6. **Drawing Inferences** Why does the Constitution require an extraordinary majority for the ratification of amendments to the Constitution?

Take It to the Net

7. Read a recent debate on a proposed amendment to the Constitution and write a letter to one member of Congress to explain why you support or oppose this amendment. Use the links provided in the Social Studies area at the following Web site for help in completing this activity. **www.phschool.com**

3 Informal Procedures

Section Preview

Objectives

1. **Identify** how basic legislation has changed the Constitution over time.
2. **Explain** the powers of the executive branch and the courts to amend the Constitution.
3. **Analyze** the role of party practices and custom in shaping the Federal Government.

Why It Matters

In addition to the 27 formal amendments, Americans have made many more informal changes to the Constitution. As the Federal Government expanded, all three branches introduced new ways to govern that do not conflict with the original Constitution.

Political Dictionary

- ★ **executive agreement**
- ★ **treaty**
- ★ **electoral college**
- ★ **Cabinet**
- ★ **senatorial courtesy**

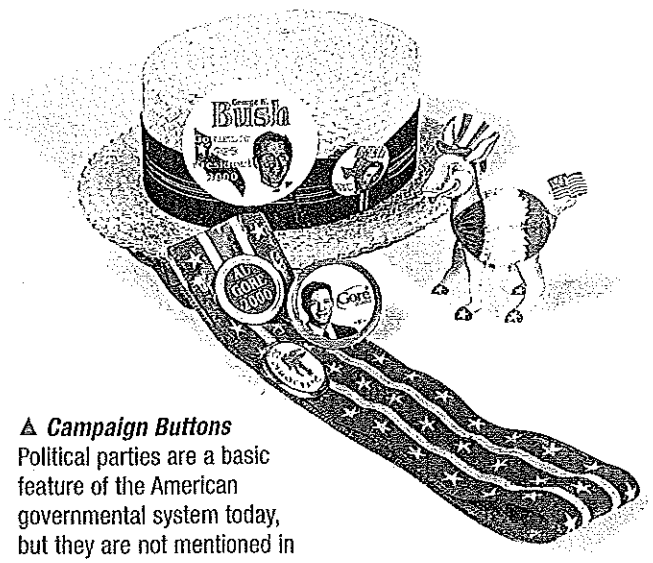
The Constitution is a comparatively short document. Much of it is devoted to matters of principle and of basic organization, structure, and process. Most of its sections are brief, even skeletal in nature. For this reason, constitutional change and development have occurred through a process of informal procedures. These informal procedures are the process by which, through custom and practice, changes have been made over time in the interpretation of the Constitution. They do not involve adding actual amendments or any other written changes, nor are they specifically provided for in the Constitution itself. In addition, some Americans argue that this process is not in keeping with the intents of the Framers. Nevertheless, these informal procedures have developed as the result of the day-to-day, year-to-year experiences of government under the Constitution.

This highly important process of Constitutional interpretation has taken place—and continues to occur—in five basic ways: through (1) the passage of basic legislation by Congress; (2) actions taken by the President; (3) key decisions of the Supreme Court; (4) the activities of political parties; and (5) custom.

Basic Legislation

Congress has been a major agent of informal procedures in two important ways. First, it has passed a number of laws to spell out several of the Constitution's brief provisions. That is, Congress has added flesh to the bones of those sections of the Constitution that the Framers left purposely skeletal for Congress to add details and meaning as circumstances have required.

Take the structure of the federal court system as an example. In Article III, Section 1, the Constitution provides for "one supreme Court, and . . . such inferior Courts as the Congress may from time to time ordain and establish." Beginning with the Judiciary Act of 1789, all of the federal courts, except the Supreme Court, have been set up by acts of Congress. Or, similarly, Article II creates only the offices of President and Vice President. The many departments, agencies,



▲ ***Campaign Buttons*** Political parties are a basic feature of the American governmental system today, but they are not mentioned in the Constitution.

▲ ***Across the Border*** Congress can pass laws under its constitutional right to regulate interstate commerce, or trade that crosses State boundaries.

and offices in the now huge executive branch have been created by acts of Congress.

As another example, the Constitution deals with the matter of presidential succession, but only up to a point. The 25th Amendment says that if the presidency becomes vacant, the Vice President automatically succeeds to the office. Who becomes President if both the presidency and the vice presidency are vacant? The Constitution leaves the answer to that question to Congress and its lawmaking power.

Second, Congress has added to the Constitution by the way in which it has used many of its powers. The Constitution gives to Congress the expressed power to regulate foreign and interstate commerce.[6] But what is "foreign commerce"? What is "interstate commerce"? What, exactly, does Congress have the power to regulate? The Constitution does not say, and at the time of ratification, "commerce" was understood as only "trade in tangible commodities." Congress has done much to define those words, however, by exercising its commerce power with the passage of literally thousands of laws. As it has done so, Congress has informally amended—added much to—the Constitution.

Executive Action

The manner in which various Presidents have used their powers has also produced changes in the way the Constitution is interpreted. For example, the Constitution states that only Congress can declare war.[7] But the Constitution also makes the President the commander in chief of the nation's armed forces.[8] Acting under that authority, several Presidents have made war without a declaration of war by Congress. In fact, Presidents have used the armed forces abroad in combat without such a declaration on no fewer than 200 separate occasions in our history.

Among many examples of expanded executive powers is the use of executive agreements in the conduct of foreign affairs. An **executive agreement** is a pact made by the President directly with the head of a foreign state. A **treaty,** on the other hand, is a formal agreement between two or more sovereign states. The principal difference between these agreements and treaties is that executive agreements need not be approved by the Senate. They are as legally binding as treaties, however. Recent Presidents have often used them in our dealings with other countries, instead of the much more cumbersome treaty-making process outlined in Article II, Section 2 of the Constitution.

▲ President Bush used his power as commander in chief to commit armed forces to Afghanistan in 2001. ***Critical Thinking Should the President be able to make war without a declaration of war by Congress?***

Court Decisions

The nation's courts, most tellingly the United States Supreme Court, interpret and apply the Constitution in many

[6]Article I, Section 8, Clause 3.
[7]Article I, Section 8, Clause 11.
[8]Article II, Section 2, Clause 1.

cases they hear. You have already read about several of these instances of constitutional interpretation by the Court, such as in *Marbury* v. *Madison,* 1803. You will encounter more of these landmark cases throughout this book, for the Supreme Court is, as Woodrow Wilson once put it, "a constitutional convention in continuous session."

Party Practices

The nation's political parties have also been a major source of Constitutional interpretation over the course of American political history, despite the fact that the Constitution makes no mention of political parties. In fact, most of the Framers were opposed to their growth. In his Farewell Address in 1796, George Washington warned the people against what he called "the baneful effects of the spirit of party." Washington feared the divisive effect of party politics. Yet, even as he spoke, parties were developing in this country. They have played a major role in the shaping of government and its processes ever since. There are numerous examples of that point.

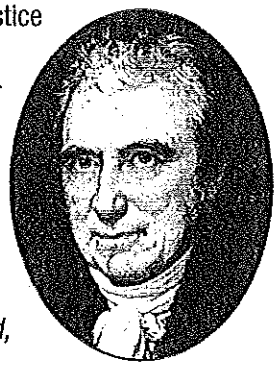
Neither the Constitution nor any law provides for the nomination of candidates for the presidency. From the 1830s on, however, the major parties have held national conventions to do just that. The parties have converted the **electoral college,** the group that makes the formal selection of the nation's President, from what the Framers intended into a "rubber stamp" for each State's popular vote in presidential elections. Both houses of Congress are organized and conduct much of their business on the basis of party. The President makes appointments to office with an eye to party politics. In short, government in the United States is in many ways government through party.

Custom

Unwritten customs may be as strong as written laws, and many customs have developed in our governmental system. Again, there are many examples. By custom, not because the Constitution says so, the heads of the 14 executive departments make up the **Cabinet,** an advisory body to the President traditionally made up of the heads of the executive departments and other officers.[9]

Voices on Government

John Marshall (Chief Justice of the United States) set precedents that established important powers of the federal courts. Marshall served as Chief Justice of the United States from 1801 until 1835. As a Federalist, he established the independence of the judicial branch. In *Marbury* v. *Madison,* Marshall claimed for the Supreme Court the power to declare a law unconstitutional, and he affirmed the superiority of federal authority under the Constitution in *McCulloch* v. *Maryland* and *Gibbons* v. *Ogden.* In *McCulloch* v. *Maryland,* he wrote:



> *"This provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs."*

Evaluating the Quotation

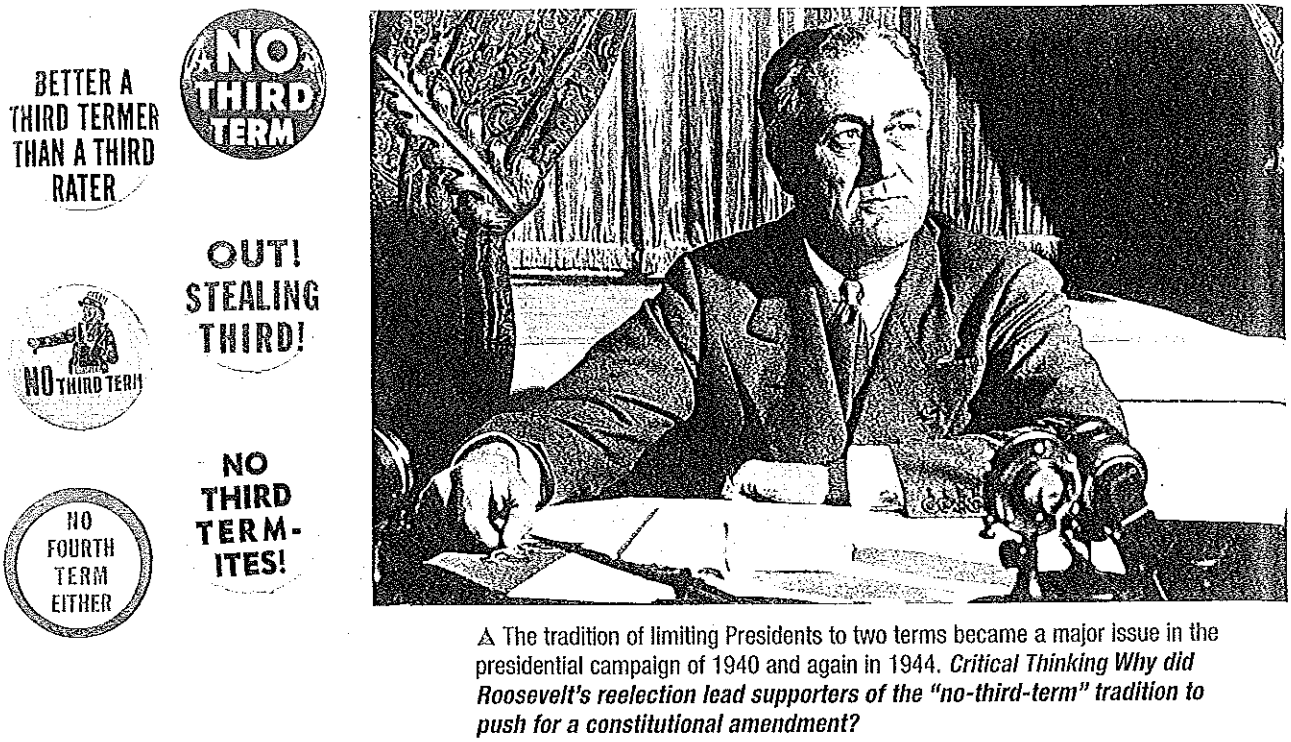
(a) Write a paragraph explaining your understanding of Marshall's statement. (b) How might Jefferson and Madison have responded to Marshall's statement?

On each of the eight occasions when a President died in office, the Vice President succeeded to that office—most recently in 1963. Yet, the written words of the Constitution did not provide for this practice until the adoption of the 25th Amendment in 1967. Until then, the Constitution said only that the powers and duties of the presidency—but *not* the office itself—should be transferred to the Vice President.[10]

It is a long-established custom that the Senate will only approve those presidential appointees that are acceptable to the senator or senators of the President's party from the State involved, for example, a federal judge or a United States marshal. This practice is known as **senatorial courtesy,** and it is closely followed in the Senate. Notice that its practical effect is to shift a portion of the appointing power from the

[9]The Constitution provides for the Cabinet (the heads of departments who are in the line of presidential succession) only indirectly, in Article 2, Section 2.

[10]Read, carefully, Article II, Section 1, Clause 6, and then Section 1 of the 25th Amendment.



A The tradition of limiting Presidents to two terms became a major issue in the presidential campaign of 1940 and again in 1944. ***Critical Thinking Why did Roosevelt's reelection lead supporters of the "no-third-term" tradition to push for a constitutional amendment?***

President, where the formal wording of the Constitution puts it, to certain members of the Senate.

Both the strength and the importance of unwritten customs can be seen in the reaction to the rare circumstances in which one of them has not been observed. For nearly 150 years, the "no-third-term tradition" was a closely followed rule in presidential politics. The tradition began in 1796, when George Washington refused to seek a third term as President, and several later Presidents followed that lead. In 1940, and again in 1944, however, Franklin Roosevelt broke the no-third-term custom. He sought and won a third and then a fourth term in the White House. As a direct result, the 22nd Amendment was added to the Constitution in 1951. What had been an unwritten custom became a written part of the Constitution itself.

Section 3 Assessment

Key Terms and Main Ideas

1. How do informal procedures for interpreting the Constitution differ from formal amendment?
2. What role does the **Cabinet** play in government?
3. What is the current role of the **electoral college?**
4. What is an **executive agreement?**

Critical Thinking

5. **Drawing Conclusions** Explain, in your own words, why informal procedures are such an important part of constitutional change.
6. **Determining Cause and Effect** What do you think would happen if the President appointed federal officials without concern for senatorial courtesy? How does the Constitution provide for a solution?

Take It to the Net

7. Read about the ways in which the Constitution can be amended. Then write a "constitution" for your classroom that consists of 10 rules for good classroom behavior. Debate whether these rules should remain fixed or be flexible. If fixed, will they become outdated? If flexible will they eventually become meaningless, as students interpret them to get away with whatever behavior they want? Use the links provided in the Social Studies area at the following Web site for help in completing this activity. **www.phschool.com**

CLOSE UP FOUNDATION

on the Supreme Court

May Schools Use Corporal Punishment?

The 8th Amendment declares, in part, that "cruel and unusual punishment" may not be inflicted. It does not, however, state on whom such punishment may not be inflicted. The amendment is commonly applied to convicted criminals. Does it also protect others, such as students, from physical punishments?

Ingraham v. *Wright* (1977)

James Ingraham and Roosevelt Andrews, students in the eighth and ninth grades in a Dade County, Florida, junior high school, were paddled in 1970 for violating school rules. Florida law allowed corporal punishment of students as a means of maintaining discipline, so long as it was not "degrading or unduly severe" and was administered only after the principal or teacher in charge of the school had been consulted.

Ingraham and Andrews filed suit in federal court against Willie J. Wright (their school's principal) and other school officials. They said that the paddlings had violated their 8th Amendment protection against cruel and unusual punishment. They presented evidence showing the seriousness of the discipline they had received, which caused both students physical injuries. The trial court ruled against them, finding that the punishment was not sufficiently arbitrary, severe, or unacceptable under contemporary standards to violate the 8th Amendment.

The students then appealed to the court of appeals. A panel of the court concluded that the punishment was too severe, and that the students should have been given an opportunity to be heard before being punished. The entire court of appeals then heard the case. It concluded that the punishment did *not* violate the Constitution and that students did *not* have a right to a hearing before being punished. The students then appealed to the Supreme Court.

Arguments for Ingraham

1. The 5th Amendment gives students the right to receive proper notice and to have an opportunity to be heard before the government can punish them. These rights help ensure that the government does not punish people improperly.
2. Severe paddlings are unacceptable in a civilized society and should not be permitted under the 8th Amendment.
3. Convicted criminals cannot be paddled. Criminals should not have greater constitutional protection against cruel and unusual punishment than school children do.

Arguments for Wright

1. Corporal punishment has long been accepted as a means of maintaining discipline in public schools. When this case arose, only two States prohibited corporal punishment in schools.
2. Because teachers may be sued for damages if they use excessive or unreasonable force, there is no need to create a special constitutional rule governing the use of corporal punishment in school.
3. The 8th Amendment protects criminals, and should not be applied to schoolchildren.

Decide for Yourself

1. Review the constitutional grounds on which each side based its arguments and the specific arguments each side presented.
2. Debate the opposing viewpoints presented in this case. Which viewpoint do you favor?
3. Predict the impact of the Court's decision on the rights of public school students. (To read a summary of the Court's decision, turn to the Supreme Court Glossary on page 799.)

CHAPTER 3 Assessment

Political Dictionary

Preamble (p. 65)
articles (p. 65)
constitutionalism (p. 65)
rule of law (p. 66)
separation of powers (p. 66)
checks and balances (p. 67)
veto (p. 67)
judicial review (p. 69)
unconstitutional (p. 69)
federalism (p. 70)
amendment (p. 72)
formal amendment (p. 73)
Bill of Rights (p. 76)
executive agreement (p. 80)
treaty (p. 80)
electoral college (p. 81)
Cabinet (p. 81)
senatorial courtesy (p. 81)

Practicing the Vocabulary

Matching *Choose a term from the list above that best matches each description.*

1. The President's advisory board
2. A group that makes the formal selection of the nation's President
3. The idea that government must work in accordance with the principles of the Constitution
4. The power of courts to determine if a law or government action is constitutional
5. A system by which any one branch of government can be restrained by one or both of the other branches

Fill in the Blank *Choose a term from the list above that best completes each sentence below.*

6. Under the principle of _____, the Federal Government has three equal branches.
7. _____ is the process by which the Constitution has been changed and added to during the course of United States history.
8. The first ten amendments to the United States Constitution are known as the _____.
9. _____ results in changes to the written words of the Constitution.
10. The principle of _____ states that government must be bound by a fundamental law.

Reviewing Main Ideas

Section 1

11. How is the text of the Constitution organized?
12. What are the six basic principles of the Constitution?
13. **(a)** How are popular sovereignty and limited government related? **(b)** Why were these principles important to the Framers of the Constitution?
14. What is the purpose of checks and balances?
15. **(a)** How can the judicial branch check the legislative branch? **(b)** How can the executive branch check the legislative branch?

Section 2

16. How many amendments have been formally added to the Constitution?
17. **(a)** What has been the most common method for adding an amendment to the Constitution? **(b)** Which method has only been used once?
18. How does the formal amendment process show the importance of federalism?
19. **(a)** Which amendment required the longest amount of time to ratify? **(b)** How long did it take?
20. What event led to the 13th, 14th, and 15th amendments?

Section 3

21. What are five informal procedures for changing the interpretation of the Constitution?
22. How can Congress change the interpretation of the Constitution?
23. Identify two examples of presidential powers that illustrate informal procedures for interpreting the Constitution.
24. What is the role of custom in government?

Critical Thinking Skills

25. ***Applying the Chapter Skill*** Use the Internet to find three recent proposed amendments to the Constitution. Who is promoting these amendments, and why?

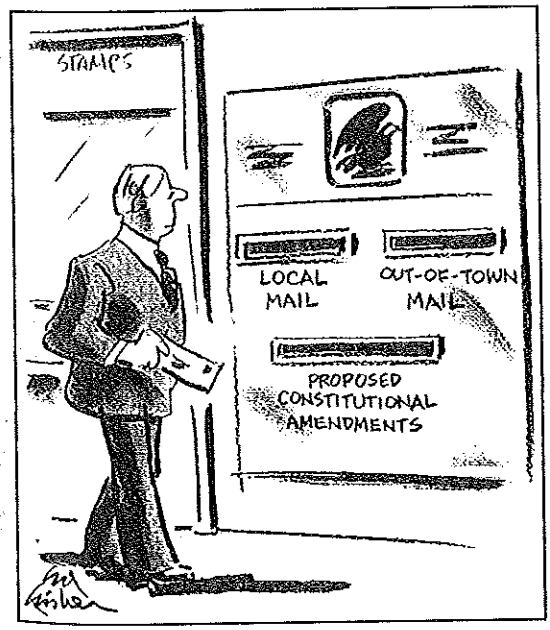
26. ***Drawing Conclusions*** The Preamble to the Constitution begins with the words "We the People." **(a)** Was every person living in the United States in 1789 included in that collective "We"? **(b)** Which, if any, of the 27 amendments to the Constitution corrected that situation?

27. ***Demonstrating Reasoned Judgment*** James Madison defended the concepts of separation of powers and checks and balances in *The Federalist* No. 51. What did he mean when he wrote that, to guard against a concentration of power in one of the branches of government, "ambition must be made to counteract ambition"?

28. ***Testing Conclusions*** Find evidence from the text to support the following conclusion: It is important for the beliefs and principles of the American people to be set out in a written constitution.

Analyzing Political Cartoons

Using your knowledge of American government and this cartoon, answer the questions below.



29. What point is the cartoonist trying to make about the ease or difficulty of proposing constitutional amendments?
30. Based on your reading, do you agree or disagree with the cartoonist's opinion? Explain your answer.

You Can Make a Difference

The passage of the 26th Amendment brought a spurt of interest in voting and political action by young people. Do you think many teenagers today are still as interested in politics and voting? Prepare a 10-question survey of student attitudes. Ask, for instance, whether the person is registered to vote, knows where to vote, and plans to vote in an upcoming election. Does he or she think that giving 18-year-olds the vote was a good idea? Then use your survey to interview people between the ages of 16 and 21. Record your answers in a table.

Participation Activities

31. ***Current Events Watch*** The Constitution gives the President the power to appoint all federal judges. However, it also gives the Senate the power to confirm or reject those appointments by majority vote. Research the recent appointment of a federal judge and write a brief report on his or her background and how senators from the opposing party responded to the President's nomination.

32. ***Time Line Activity*** Create a time line of the Equal Rights Amendment, beginning with its proposal in 1972 and ending with its failure to be ratified ten years later. List the number of States that voted to ratify it each year and include the three-year extension to the time limit passed in 1979. Compare this time line to the table on page 76. What does your time line tell you about the ratification process? Do you think the ten-year time limit was fair? Explain your answer.

33. ***It's Your Turn*** You are a newspaper editor in the late 1700s. Alexander Hamilton has just referred to democracy as "mobocracy." Write an editorial in response to Hamilton's view. Define the position that you want to take in the editorial. Next, list your arguments. As you revise your editorial, make certain that your arguments are persuasive. Finally, proofread and make a final copy.

Take It to the Net

Chapter 3 Self-Test As a final review activity, take the Chapter 3 Self-Test in the Social Studies area at the Web site listed below, and receive immediate feedback on your answers.

www.phschool.com