4 A Living Document



Section Focus

Key Terms Founding Fathers ■ judicial review ■ elastic clause ■ Cabinet ■ senatorial courtesy ■ executive privilege

Main Idea For 200 years the Constitution of the United States has allowed government to adjust to the nation's growth and changing needs.

Objectives As you read, look for answers to these questions:

- **1.** How does the Constitution provide for change?
- **2.** What has been the role of the courts toward the Constitution?
- **3.** What has made the Constitution a flexible instrument of government?



During the sessions of the Philadelphia Convention, delegates knew that they were making decisions as much for posterity as for their own times. As James Wilson said, "We should consider that we are providing a Constitution for future generations, and not merely for the peculiar circumstances of the moment." Madison added, "In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce."

"In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce."

-James Madison

The **Founding Fathers**—the delegates to the Constitutional Convention—would be pleased to know the Constitution has been the law of the land for two centuries. It has survived longer than any other written constitution.

Yet in two centuries the United States has changed. And it has changed in ways that the Founding Fathers could not imagine. In their day, travel depended on animal power and sail. How could they have pictured a nation bound together by instant communication? How could they have imagined airplanes or spaceships? How could they have foreseen a time when Philadelphia alone would have more people than all the United States in 1789?

Yet the Constitution endures. In the words of historian Richard B. Morris, "The Constitution is

the mortar that binds the fifty-state edifice under the concept of federalism: it is the symbol that unifies nearly 250 million people of different origins, races, and religions into a single nation."

CHANGE THROUGH THE AMENDMENT PROCESS

One way the Constitution has adapted to changing times is through the amendment process. The Constitutional Convention purposely provided for such changes. Two-thirds of each house of Congress or two-thirds of the state legislatures can propose an amendment. To become law, a proposed amendment then needs the approval of three-fourths of the states. By this process the Bill of Rights became the first Ten Amendments in 1791. Since then sixteen more amendments have been added to the Constitution.

Some of these amendments provide for changes in the way the President, Vice President, or Senate are selected. United States senators are now elected by the people, not the state legislatures. A President can serve no more than two terms. Other amendments have reversed Supreme Court rulings. The Sixteenth Amendment, for instance, provides for a federal income tax. Earlier, the Supreme Court had declared such a tax unconstitutional.

A handful of amendments deal with an issue avoided by the Founding Fathers—the statement in the Declaration of Independence that all men are created equal. Equality is not mentioned either in the Constitution or in the Bill of Rights. But over time the force of events and public opinion have pushed the Constitution toward a broadened concept of equality under law. Amendments

have ended slavery and guaranteed equal protection under the law to all. Other amendments have said that a person cannot be denied the right to vote on the basis of race or sex. In recent years the nation has debated whether or not the Constitution adequately protects the rights of women. In 1982 the proposed Equal Rights Amendment. which would bar sexual discrimination, failed to get enough state votes. What kinds of equality should be protected by the Constitution has thus been an enduring issue.

CHANGE THROUGH JUDICIAL REVIEW

The Constitution does not explicitly give the Supreme Court the power of judicial review—the power to declare a law unconstitutional. Yet there are signs that that is what the delegates intended. In 1803, therefore, Chief Justice John Marshall reached a crucial decision in Marbury v. Madison. He held that the Supreme Court had the right to decide whether or not a federal law was constitutional. The courts, said Marshall, had the power to declare void any law that was "repugnant" to the Constitution.

A Supreme Court decision is final unless overturned by a constitutional amendment or reversed by a later Supreme Court. Thus judicial review has had almost the same effect as an amendment. In recent decades Supreme Court decisions have had a particular impact on issues ranging from school desegregation to the legality of abortion.

Through the power of appointment, a President can affect how the Constitution will be interpreted. Presidents have tended to name Supreme Court justices who shared their outlook on major issues.

CHANGE THROUGH LEGISLATIVE FLEXIBILITY

The Constitution is surprisingly short. With only about 7,300 words, it is the length of three or four pages in a daily newspaper. The Founding Fathers are often referred to as the framers because they framed, or gave structure to, the important ideas that make up the Constitution. They wrote a document of relatively few words because they wanted to establish broad principles, not picky rules. This effort created a Constitution that could adapt lasting principles to changing conditions.

FEDERAL POWERS INCREASE UNDER THE CONSTITUTION

Articles of Confederation

- · Declare war; make peace
- · Organize and direct an army and navy
- · Regulate trade with the Indians; manage Indian affairs
- · Set standards of weights and measures
- Establish postal services
- Borrow money to pay expenses
- Manage foreign affairs
 - Prevent the states from issuing money
 - Impose taxes
 - · Call out state militia
 - Regulate trade between the states and with foreign nations
 - Organize a system of courts
 - Protect copyrights and patents
 - · Govern the capital city and territories of the United States
 - · Take other action, as needed, to carry out the above powers

CHART SKILLS

The Articles of Confederation granted the federal government certain powers. This chart shows that in addition to those powers, the United States Constitution granted the federal government several more. CRITICAL THINKING Why did the framers believe they needed to increase the federal government's powers?

Among the powers the Constitution assigns to Congress is the power "to provide for . . . the general welfare." Another power is "to make all laws which shall be necessary and proper" to carry out its other powers. These two clauses, the "general welfare" clause and the "necessary and proper" clause, have allowed Congress to pass the laws required by a growing nation and rapidly changing society. Because the necessary and proper clause is so flexible, it is sometimes called the elastic clause.

United States Constitution

fix the

CHAN

George

is mor

habit

gover

Tra gove custo ernn writ inst they T Cat

The

me

exe

stit

1 the no sal cia

CHANGE THROUGH CUSTOM

George Washington understood that government is more than a body of written law. "Time and habit are . . . necessary to fix the true character of governments," he said.

lime and habit are . . . necessary to fix the true character of governments." -George Washington

Tradition and custom have thus influenced how government has changed in two centuries. Some customs have become so much a part of our government that they are sometimes called the "unwritten Constitution." The Constitution, for instance, says nothing about political parties. Yet they are a key part of our elective system.

The Constitution also does not provide for a Cabinet, the President's formal group of advisers. These advisers are heads of the various departments within the executive branch. As such, they exercise some of the powers assigned by the Constitution to the President.

Time has given rise to another custom. This is the practice of senatorial courtesy. Presidents now routinely consult with the senators of the same political party before appointing federal officials in their home state.

Yet another example of custom is executive privilege. Based on the principle of separation of powers, executive privilege is the right of the President to refuse to appear before a congressional committee.

New habits develop with time. But changing times, in turn, can create the need for new habits and new laws. Americans currently face a range of unresolved constitutional issues, including such questions as: Has the national government become too powerful? Is the judicial branch too powerful? Should the Constitution provide economic security for Americans? Has the President assumed too much power over war-making? Americans will have to deal with these issues and others as they work out their destiny.

Despite rapid change in American society and the world as a whole, the Constitution provides a set of goals that are unchanging. Inspired by its ideals and guided by its wisdom, the American people will continue their efforts to "form a more perfect union."

SECTION REVIEW

- 1. KEY TERMS Founding Fathers, judicial review, elastic clause, Cabinet, senatorial courtesy, executive privilege
- 2. COMPREHENSION How has the amendment process brought about constitutional change?
- 3. COMPREHENSION What was the constitutional significance of Marbury v. Madison?
- 4. COMPREHENSION How has Congress achieved powers not specifically assigned to it by the Constitution?
- 5. CRITICAL THINKING Did the adoption of the Constitution of 1787 complete the American Revolution? Why or why not?

