

THE LIVING CONSTITUTION

The genius and flaw within the Constitution is its lack of specificity. It needed to withstand the test of time.

- I. VIEWS OF THE CONSTITUTION
 - a. Article I establishes a bicameral Congress and empowers it to enact legislation
 - b. Article II establishes the executive power in the president
 - c. Article III establishes the judicial power in the Supreme Court and other federal courts that the Congress establishes
 - d. Article IV guarantees the privileges and immunities of citizens and specifies the conditions of admitting new states
 - e. Article V provides for means of amending Constitution
 - f. Article VI specifies that the Constitution and laws are supreme laws of the land
 - g. Article VII is 9 of 13 for ratification
 - h. 1791 1st 10 amendments (Bill of Rights) were added and since, another 17
 - i. Constitution established NATURAL LAW which defines right from wrong, which is higher than human law
 - j. The Constitution is the supreme and binding law that both grants and limits power
- II. CHECKING POWER WITH POWER
 - a. Wanted domestic tranquility and prevent future rebellions, but didn't want another King George III.
 - i. Established FEDERALISM

- b. Most important for Constitutional limits was
FREE AND FAIR ELECTIONS
- III. SEPARATION OF POWERS
 - a. The distribution of powers among three
branches of government
 - b. Key was appealing to Locke and
Montesquieu's philosophies
 - c. Not enough on its own it needs.....
- IV. CHECKS AND BALANCES: AMBITION TO
COUNTERACT AMBITION
 - a. REVIEW MADISION'S FEDERALIST #51
 - b. Each branch therefore has a role in the actions
of the others
 - i. Framers believed in checks and balances
which would check ambition with
ambition
 - c. Review figure 2-1 on page 33
 - d. Majority of voters could win control over only
part of the government at one time
 - i. House is 2 years; president is 4 years;
Senate is 6 years
 - e. Mechanisms to change the political system is
difficult
- V. THE RISE OF NATIONAL POLITICAL
PARTIES AND INTEREST GROUPS
 - a. Political parties can be a unifying force or can
be splintered and weak
 - b. In DIVIDED GOVERNMENT,
PARTISANSHIP is intensified and can act as a
check and balance between executive and
legislative branches.
 - c. Even without divided government, the pressure
from competing interest groups can serve as a
check against stronger power.

- d. Each branch can try to secure additional power by broadly interpreting the Constitution
- VI. EXPANSION OF THE ELECTORATE AND THE MOVE TOWARD MORE DIRECT DEMOCRACY
 - a. Framers initially wanted president elected by ELECTORAL COLLEGE, but mostly by electorate
 - i. Bush election of 2000- Florida electoral votes
 - b. States have expanded the role of electorate by adopting DIRECT PRIMARIES
 - i. Propose and vote on laws through INITIATIVES
 - ii. Voters reconsider actions of legislature through REFERENDUMS
 - iii. Allow voters to remove elected state and local officials through RECALL
 - iv. 17th Amendment in 1913 allows voters to elect Senators, rather than elected by state legislatures
- VII. ESTABLISHMENT OF AGENCIES DESIGNED TO EXERCISE LEGISLATIVE, EXECUTIVE AND JUDICIAL FUNCTIONS
 - a. 1887, Congress established INDEPENDENT REGULATORY COMMISSIONS
 - b. More recently, independent executive agencies have been established
- VIII. CHANGES IN TECHNOLOGY
 - a. Large changes in information processing since late 1700s
 - b. Now president can appeal directly to the masses with new technology
 - c. More power to interest groups and the press
- IX. THE GROWTH OF PRESIDENTIAL POWER

- a. The need to deal with perpetual emergencies such as Iran, Israel, etc. has concentrated power in the executive branch
 - b. The president has emerged as the most powerful person in the world
- X. JUDICIAL REVIEW AND THE “GUARDIANS OF THE CONSTITUTION”
- a. Judges did not claim the power of JUDICIAL REVIEW until some years after the Constitution
 - i. Judicial Review is a major contribution of the US to the art of government
 - b. ORIGINS OF JUDICIAL REVIEW
 - i. Federalists supported the strong role of federal courts and Judicial Review
 - ii. Framers did not include it because they believed Justices could infer it due to the power granted in the Constitution
 - iii. Jeffersonians believed that the state legislatures, not the Supreme Court, had the power to interpret the Constitution; questioned whether the Supreme Court had final authority to review state court decisions
 - c. MARBURY VS. MADISON
 - i. The “packing” of judiciary by Adams before he left presidency angered Jefferson
 - ii. Although Federalists lost the seating of their judges, JUDGE JOHN MARSHALL and the Supreme Court gained the power to declare laws unconstitutional and subsequently, the Court has taken the commanding position

as the authoritative interpreter of the Constitution

- iii. Most important is that people can challenge laws enacted by Congress and approved by the president

XI. THE CONSTITUTION AS AN INSTRUMENT OF GOVERNMENT

- a. The written Constitution is only a skeleton of the governmental system; **compared to state constitutions, the National Constitution is more flexible**
- b. THE UNWRITTEN CONSTITUTION; **whereby the Constitution can be altered without formal Amendments**
 - i. Congress has the ability for CONGRESSIONAL ELABORATION- allows Congress to give further meaning to the vague parts of the Constitution without amending it
 - ii. An excellent example of Congressional Elaboration is the IMPEACHMENT power whereby the House can Impeach either an executive or judicial member and the Senate by 2/3 confirms.
- c. PRESIDENTIAL PRACTICES:
 - i. The office is dramatically more important than it was in 1789
 - ii. A major practice is an EXECUTIVE ORDER which is a directive that has the power of a law
 - iii. Other practices:
 - 1. EXECUTIVE PRIVILEGE – power to keep communications confidential

- 2. IMPOUNDMENT – refusal to allow an agency to spend money appropriated by Congress
- iv. Increased the power to regulate the economy through federal bureaucracy and promoting general welfare
- d. CUSTOM AND USAGE
 - i. Political parties, interest groups and expanded suffrage

XII. CHANGING THE LETTER OF THE CONSTITUTION

- a. As an expression of BASIC AND TIMELESS PERSONAL LIBERTIES, the Constitution should not change.
- b. The framers understood that there might be need for changes and in Article V, allowed for amending the Constitution
- c. PROPOSING AMENDMENTS:
 - i. 2/3 vote by BOTH houses of Congress- only one used so far
 - 1. Congress has continually attempted to send a Constitutional amendment to prevent flag burning
 - 2. See figure 2-2 on page 43 to understand means of amending the Constitution
 - ii. Second method- a convention called by Congress at request of 2/3 of the states' legislatures- never been used
- d. RATIFYING AMENDMENTS
 - i. After Congress has proposed an amendment, the states must ratify it before it takes effect

1. Approval by the legislatures in $\frac{3}{4}$ of the states
2. Approval by special ratifying conventions in $\frac{3}{4}$ of the states
3. Congress has submitted all amendments except the 21st (repeal of Prohibition amendment) to state legislatures
4. Must be approved in a “reasonable time.” Must occur within 7 years of the submission date.

e. RATIFICATION POLITICS

- i. The failure of ratifying the Equal Rights Amendment (ERA) shows how politics can halt the amendment process.
- ii. They made the Federal election process less restrictive than the states to increase chances of ratification
- iii. The framers intended for the amendment process to be extremely difficult and the ERA example shows that.