THE U.S. CONSTITUTION

AFTER THE COMPROMISE ON THE PRESIDENCY, work proceeded quickly on the remaining resolutions of the Constitution. The Preamble to the Constitution, the last section to be drafted, contains exceptionally powerful language that forms the bedrock of American political tradition. Its opening line, "We the People of the United States," boldly proclaimed that a loose confederation of independent states no longer existed. Instead, there was but one American people and nation. The original version of the Preamble opened with:

> We the people of the States of New Hampshire, Massachusetts, Rhode Island and the Providence Plantations, Connecticut, New Jersey, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, do ordain, declare and establish the following Constitution for the government of ourselves and our Posterity.

Substituting the simple phrase "We the People" ended, at least for the time being, the question of whence the government derived its power: it came directly from the people, not from the states. The next phrase of the Constitution explained the need for the new outline of government: "in Order to form a more perfect Union" indirectly acknowledged the weaknesses of the Articles of Confederation in governing a growing nation. Next, the optimistic goals of the Framers for the new nation were set out: to "establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity"; followed by the formal creation of a new government: "do ordain and establish this Constitution for the United States of America."

On September 17, 1787, the Constitution was approved by the delegates from all twelve states in attendance. While the completed document did not satisfy all the del-

egates, of the forty-one in attendance, thirty-nine ultimately signed it. The sentiments uttered by Benjamin Franklin probably well reflected those of many others: "Thus, I consent, Sir, to this Constitution because I expect no better, and because I am not sure that it is not the best."[16]

The Basic Principles of the Constitution

The ideas of political philosophers, especially two political philosophers, the French Montesquieu (1689–1755) and the English John Locke, heavily influenced the shape and nature of the government proposed by the Framers. Montesquieu, who actually drew many of his ideas about government from the works of Greek political philosopher Aristotle, was heavily quoted during the Constitutional Convention.

The proposed structure of the new national government owed much to the writings of Montesquieu, who advocated distinct functions for each branch of government, called **separation of powers,** with a system of **checks and balances** between each branch. The Constitution's concern with the distribution of power between states and the national government also reveals the heavy influence of political philosophers, as well as the colonists' experience under the Articles of Confederation.[17]

separation of powers
A way of dividing power among three branches of government in which members of the House of Representatives, members of the Senate, the president, and the federal courts are selected by and responsible to different constituencies.

checks and balances
A governmental structure that gives each of the three branches of government some degree of oversight and control over the actions of the others.

federal system
Plan of government created in the U.S. Constitution in which power is divided between the national government and the state governments and in which independent states are bound together under one national government.

Federalism. The question before and during the convention was how much power states would give up to the national government. Given the nation's experiences under the Articles of Confederation, the Framers believed that a strong national government was necessary for the new nation's survival. However, they were reluctant to create a powerful government after the model of Britain, the country from which they had just won their independence. Its unitary system was not even considered by the colonists. Instead, they employed a system (now known as the **federal system**) that divides the power of government between a strong national government and the individual states. This system, as the Supreme Court reaffirmed in 1995 in considering the constitutionality of state-imposed term limits on federal office holding, was based on the principle that the federal, or national, government derived its power from the citizens, not the states, as the national government had done under the Articles of Confederation.[18]

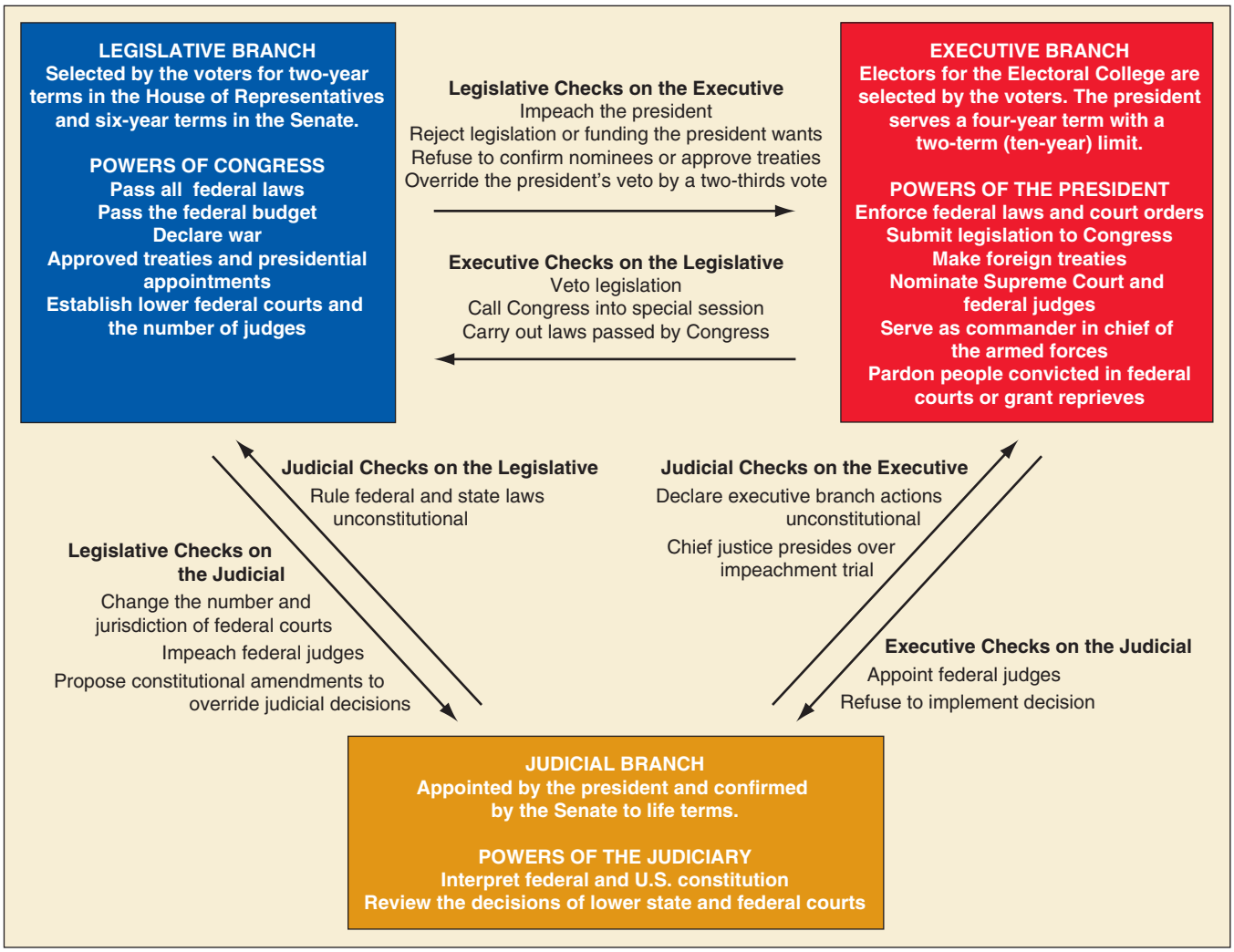
Opponents of this system feared that a strong national government would infringe on their liberty. But, supporters of a federal system, such as James Madison, argued that a strong national government with distinct state governments could, if properly directed by constitutional arrangements, actually be a source of expanded liberties and national unity. The Framers viewed the division of governmental authority between the national government and the states as a means of checking power with power, and providing the people with double security against governmental tyranny. Later, the passage of the Tenth Amendment, which stated that powers not given to the national government were reserved by the states or the people, further clarified the federal structure (see chapter 3).

Separation of Powers. Madison and many of the Framers clearly feared putting too much power into the hands of any one individual or branch of government. Madison's famous words, "Ambition must be made to counteract ambition," were widely believed at the Philadelphia convention.

Separation of powers is simply a way of parceling out power among the three branches of government. Its three key features are:

1. Three distinct branches of government: the legislative, the executive, and the judicial.
2. Three separately staffed branches of government to exercise these functions.
3. Constitutional equality and independence of each branch.

FIGURE 2.1 Separation of Powers and Checks and Balances Illustrated. ■



As illustrated in Figure 2.1, the Framers were careful to create a system in which law-making, law-enforcing, and law-interpreting functions were assigned to independent branches of government. On the national level (and in most states), only the legislature has the authority to make laws; the chief executive enforces laws; and the judiciary interprets them. Moreover, initially, members of the House of Representatives, members of the Senate, the president, and members of the federal courts were selected by and were therefore responsible to different constituencies. Madison believed that the scheme devised by the Framers would divide the offices of the new government and their methods of selection among many individuals, providing each office holder with the "necessary means and personal motives to resist encroachment" on his or her power. The Constitution originally placed the selection of senators directly with state legislators, making them more accountable to the states. The Seventeenth Amendment, ratified in 1913, however, called for direct election of senators by the voters, making them directly accountable to the people, thereby making the system more democratic.

The Framers could not have foreseen the intermingling of governmental functions that has since evolved. Locke, in fact, cautioned against giving a legislature the ability

to delegate its powers. In Article I of the Constitution, the legislative power is vested in the Congress. But, the president is also given legislative powers via his ability to veto legislation, although his veto can be overridden by a two-thirds vote in Congress. Judicial interpretation, including judicial review, a process cemented by the 1803 decision in *Marbury* v. *Madison*, then helps to clarify the implementation of legislation enacted through this process.

So, instead of a pure system of separation of powers, a symbiotic, or interdependent, relationship among the three branches of government has existed from the beginning. Or, as one scholar has explained, there are "separated institutions sharing powers."[19] While Congress still is entrusted with making the laws, the president, as a single person who can easily capture the attention of the media and the electorate, retains tremendous power in setting the agenda and proposing legislation. And, although the Supreme Court's major function is to interpret the law, its involvement in areas such as the 2000 presidential election, criminal procedure, abortion, and other issues has led many to charge that it has surpassed its constitutional authority and become, in effect, a law-making body.

Checks and Balances. The separation of powers among the three branches of the national government is not complete. According to Montesquieu and the Framers, the powers of each branch (as well as the two houses of the national legislature and between the states and the national government) could be used to check the powers of the other two branches of government. The power of each branch of government is checked, or limited, and balanced because the legislative, executive, and judicial branches share some authority and no branch has exclusive domain over any single activity. The creation of this system allowed the Framers to minimize the threat of tyranny from any one branch. Thus, for almost every power granted to one branch, an equal control was established in the other two branches. The Congress could check the power of the president, the Supreme Court, and so on, carefully creating balance among the three branches. For example, although the president, as the commander in chief, has the power to deploy American troops, as George W. Bush did to Iraq in 2003, he needed authorization from the Congress to keep the troops in the Middle East for longer than ninety days. Similarly, to pay for this mission, the president had to ask Congress to appropriate funds, which it did in the form of an initial $87 billion supplemental appropriations bill and additional funds.

Visual Literacy
The American System of Checks and Balances

The Articles of the Constitution

The document finally signed by the Framers condensed numerous resolutions into a Preamble and seven separate articles. The first three articles established the three branches of government, defined their internal operations, and clarified their relationships with one another. All branches of government were technically considered equal, yet some initially appeared more equal than others. The order of the articles, and the detail contained in the first three, reflects the Framers' concern that these branches of government might abuse their powers. The four remaining articles define the relationships among the states, declare national law to be supreme, and set out methods of amending the Constitution.

Article I: The Legislative Branch. Article I vests all legislative powers in the Congress and establishes a bicameral legislature, consisting of the Senate and the House of Representatives. It also sets out the qualifications for holding office in each house, the terms of office, the methods of selection of representatives and senators, and the system of apportionment among the states to determine membership in the House of Representatives. Article I, section 2, specifies that an "enumeration" of the citizenry must take place every ten years in a manner to be directed by the U.S. Congress.

Join the Debate

The "Equal Opportunity to Govern" Amendment

Overview: Article II, section 1, clause 5, of the U.S. Constitution declares: "No person except a natural-born citizen, or a citizen of the United States at the time of the Adoption of this Constitution, shall be eligible to the Office of President." Why would the Founders put such a restriction on the qualifications for president of the United States? In a letter to Washington, John Jay argued that the duty of commander in chief was too important to be given to a foreign-born person—the potential for conflict of interest, danger, and appearance of impropriety in matters of war and foreign policy should not be left to chance. Charles Pinckney, a South Carolina delegate to the Constitutional Convention, expressed concern that foreign governments would use whatever means necessary to influence international events, and he cited the example of Russia, Prussia, and Austria manipulating the election of Stanislaus II to the Polish throne—only to divide Polish lands among themselves. Furthermore, Pinckney contended that the clause would ensure the "experience" of American politics and principles and guarantee "attachment to the country" so as to further eliminate the potential for mischief and foreign intrigue.

The recent election of Austrian-born Arnold Schwarzenegger and of Canadian-born Jennifer Granholm to the governorships of California and Michigan, respectively, has reopened the debate concerning the citizenship requirement for president. Why shouldn't naturalized citizens be eligible for president? Many naturalized citizens have performed great service to their adopted country; both Henry Kissinger (born in Germany) and Madeleine Albright (born in Czechoslovakia) performed admirably as secretary of state, and over 700 foreign-born Congressional Medal of Honor recipients have demonstrated patriotism and the willingness to die for the country they embraced. With these viewpoints in mind, in July 2003, Senator Orrin Hatch introduced the Equal Opportunity to Govern Amendment to strike the natural-born-citizen clause from the Constitution. The proposed amendment takes into account the Framers' fear of foreign intervention and of divided loyalty by placing a lengthy citizenship requirement—twenty years—before naturalized citizens become eligible to run for presidential office.

Is it just that a nation whose fundamental principle is equality of citizens has a constitutional clause that denies some citizens the presidency? Doesn't the Constitution allow the means to adapt to changes in history and social mores, and further to realize the principle of equality of citizens? On the other hand, shouldn't a president be above the appearance of suspicion and divided loyalty? Doesn't the clause help prevent corruption from foreign sources?

Arguments for the Equal Opportunity to Govern Amendment

- **The United States is in part built by its immigrant population and they should have a share in all political offices.** America is a nation of immigrants and many of the original Founders were foreign born, notably Alexander Hamilton, who helped shaped Washington's administration and the executive branch. The Constitution allows for naturalized citizens to attain other high

enumerated powers
Seventeen specific powers granted to Congress under Article I, section 8, of the U.S. Constitution; these powers include taxation, coinage of money, regulation of commerce, and the authority to provide for a national defense.

necessary and proper clause
The final paragraph of Article I, section 8, of the U.S. Constitution, which gives Congress the authority to pass all laws "necessary and proper" to carry out the enumerated powers specified in the Constitution; also called the elastic clause.

One of the most important sections of Article I is section 8. It carefully lists the powers the Framers wished the new Congress to possess. These specified or **enumerated powers** contain many key provisions that had been denied to the Continental Congress under the Articles of Confederation. For example, one of the major weaknesses of the Articles was Congress's lack of authority to deal with trade wars. The Constitution remedied this problem by authorizing Congress to "regulate Commerce with foreign Nations, and among the several States." Congress was also given the authority to coin money.

Today, Congress often enacts legislation that no specific clause of Article I, section 8, appears to authorize. Laws dealing with subjects such as the environment, welfare, education, and communication are often justified by reference to a particular power plus the necessary and proper clause. After careful enumeration of seventeen powers of Congress in Article I, section 8, a final, general clause authorizing Congress to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers" was added to Article I. Often referred to as the elastic clause, the **necessary and proper clause** has been a source of tremendous congressional activity never anticipated by the Framers, as definitions of "necessary" and "proper" have been stretched to

political office such as speaker of the House, senator, or Supreme Court justice; why should naturalized citizens be denied the presidency?

- **The natural-born-citizen clause has outlived its usefulness.** The Constitution has proved to be durable and the problems that existed in 1787 either have changed or do not exist in the twenty-first century. The amendment process was created to allow for historical and political change, and ratification of the Equal Opportunity to Govern Amendment will increase the talent pool for presidential nominees, thus increasing the quality and choice of presidential aspirants for the American people.
- **The natural-born-citizen clause is discriminatory.** The clause is un-American in that it denies equality of opportunity for all American citizens. Naturalized citizens serve in the military, pay taxes, run for local, state, and federal office, endure the same national hardships and crises, and add to the overall quality of American life; thus, naturalized citizens should have the same rights and privileges as the native born.

Arguments Against the Equal Opportunity to Govern Amendment

- **Foreign governments still attempt to have undue influence in American politics.** The Framers were correct in assuming foreign governments attempt to manipulate American politics. For example, in 1999, the Democratic National Committee returned over $600,000 in campaign contributions to Chinese nationals attempting to gain influence with the Clinton administration. The clause was meant to be another institutional safeguard against presidential corruption.
- **Running for president is not a right.** The Office of the President is an institution designed for republican purposes. The Founders strongly believed foreign influence within the U.S. government must be restricted (the language was unanimously adopted by the Constitutional Convention) and thus they did not grant a right to run for presidential office.
- **There is no public movement or outcry to remove this clause from the Constitution.** Many constitutional scholars argue the Constitution should be amended only for pressing reasons, and amendments should be construed with a view to the well-being of future generations. Foreign policy and events are too fluid and too volatile to risk undermining the president's foreign policy and commander-in-chief authority. Until the American people determine otherwise, the clause should remain.

Questions

1. Is the natural-born clause discriminatory? Does it truly deny equality of citizenship and opportunity? If so, shouldn't the Constitution be amended to realize the principle of equality of citizens?
2. Were the Framers wise in their analysis of foreign influence on American politics? Did they create a true institutional barrier to help prevent corruption by foreign governments?

Selected Reading

Akhil Amar. *America's Constitution: A Guided Tour.* New York: Random House, 2004.

accommodate changing needs and times. The clause is the basis for the **implied powers** that Congress uses to execute its other powers. Congress's enumerated power to regulate commerce has been linked with the necessary and proper clause in a variety of Supreme Court cases. As a result, laws banning prostitution where travel across state lines is involved, regulating trains and planes, establishing federal minimum-wage and maximum-hour laws, and mandating drug testing for certain workers have passed constitutional muster.

implied powers
Powers derived from the enumerated powers and the necessary and proper clause. These powers are not stated specifically but are considered to be reasonably implied through the exercise of delegated powers.

Article II: The Executive Branch. Article II vests the executive power, that is, the authority to execute the laws of the nation, in a president of the United States. Section 1 sets the president's term of office at four years and explains the Electoral College. It also states the qualifications for office and describes a mechanism to replace the president in case of death, disability, or removal.

The powers and duties of the president are set out in section 3. Among the most important of these are the president's role as commander in chief of the armed forces, the authority to make treaties with the consent of the Senate, and the authority to

■ President George W. Bush delivers the State of the Union Address to Congress as millions across the nation watch in their homes. Behind him are the vice president and the speaker of the House.

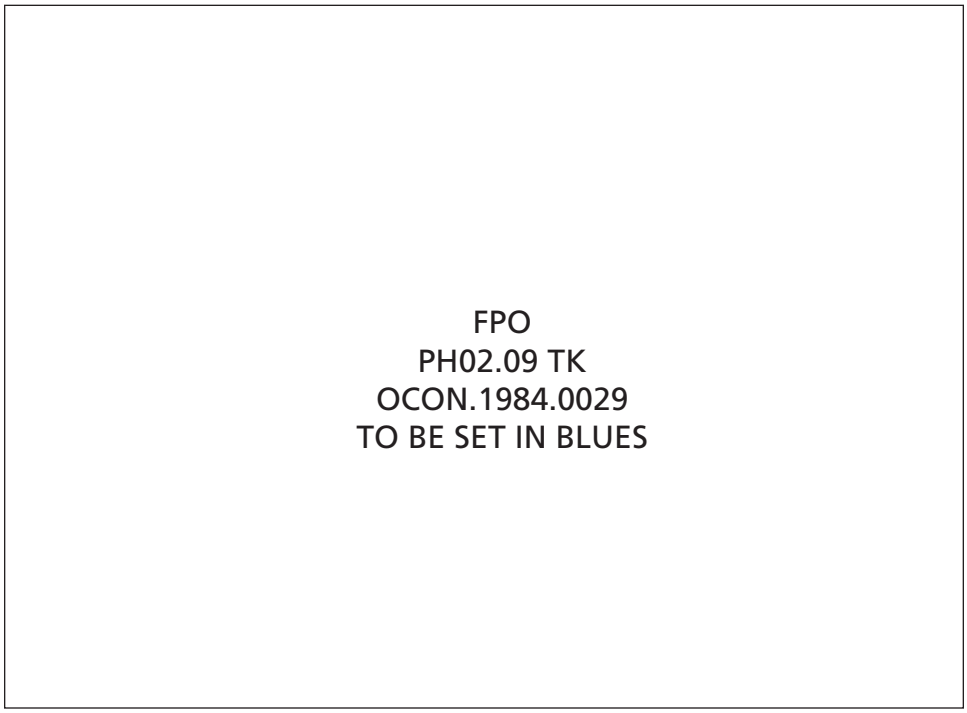


Photo courtesy: [[TO BE SET IN BLUES]]

"appoint Ambassadors, other public Ministers and Consuls, the Judges of the supreme Court, and all other Officers of the United States." Other sections of Article II instruct the president to report directly to Congress "from time to time," in what has come to be known as the State of the Union Address, and to "take Care that the Laws be faithfully executed." Section 4 provides the mechanism for removal of the president, vice president, and other officers of the United States for "Treason, Bribery, or other high Crimes and Misdemeanors" (see chapter 8).

Article III: The Judicial Branch. Article III establishes a Supreme Court and defines its jurisdiction. During the Philadelphia meeting, the small and large states differed significantly as to the desirability of an independent judiciary and on the role of state courts in the national court system. The smaller states feared that a strong unelected judiciary would trample on their liberties. In compromise, Congress was permitted, but not required, to establish lower national courts. Thus, state courts and the national court system would exist side by side with distinct areas of authority. Federal courts were given authority to decide cases arising under federal law. The Supreme Court was also given the power to settle disputes between states, or between a state and the national government. Ultimately, it was up to the Supreme Court to determine what provisions of the Constitution actually meant.

Although some delegates to the convention urged that the president be allowed to remove federal judges, ultimately judges were given appointments for life, presuming "good behavior." And, like the president's, their salaries cannot be lowered while they hold office. This provision was adopted to ensure that the legislature did not attempt to punish the Supreme Court or any other judges for unpopular decisions.

Articles IV Through VII. The remainder of the articles in the Constitution attempted to anticipate problems that might occur in the operation of the new national

Global Perspective

Writing a Constitution: How Do We Compare?

There is no such thing as a one-size-fits-all constitution. National constitutions frequently are products of political crises. The U.S. Constitution was written following the Revolutionary War and the failure of the Articles of Confederation to provide a workable governing structure. South Africa wrote its 1996 constitution after the struggle to end apartheid. Russia wrote its 1993 constitution following the breakup of the Soviet Union and the fall of communism. In the Middle East, Iran created a new constitution in 1979 after the shah was forced from power. Following the end of Saddam Hussein's regime, Iraq began to put a new constitution in place. In August 2004, more than 1,100 Iraqis met at a conference to select an interim national assembly to take the next step toward full democratization.

The content of these constitutions reflects not only the struggles of the moment but also the country's historical experiences and the influence of ideas about the meaning of good government and the proper relationship between those in power and those whom they rule. These influences often can pull constitutions into different directions requiring political compromises and creating lengthy and complex documents. The Russian Constitution of 1993 contained 146 articles; as of 2002, the Mexican Constitution had 123 articles.

In spite of these variations, four important features are common to all constitutions. First, most contain a preamble that sets forward the principles on which the government is to operate. Although this section often contains a great deal of flowery rhetoric, it also tells us much about the country. The Soviet constitution of 1917 proclaimed in its preamble: "The Great Socialist October Revolution, carried out by the workers and peasants of Russia under the leadership of the Communist Party headed by V. I. Lenin, overturned the power of the capitalists and landowners, broke the chains of oppression, and established the dictatorship of the proletariat." Nigeria, a country that has experienced much ethnic strife and a bloody civil war, begins its most recent constitution with the words "we the people . . . [have] solemnly resolved: to live in unity and harmony as one indivisible and indissoluble Sovereign Nation under God dedicated to the promotion of inter-African solidarity."

Second, constitutions specify the organization of the government. Whereas the United States has a system of checks and balances among the president, Congress, and the courts, the French and Russian constitutions created strong presidents whose powers exceed those of the other two branches.

Third, constitutions specify individual rights. The U.S. Constitution does this through its Bill of Rights and other amendments. In some cases, references may also be added to government obligations to citizens. Brazil's 1988 constitution pledged the government would ensure citizens the rights to work and to receive medical care.

Fourth, constitutions provide a means for making amendments. In general terms we can distinguish between rigid constitutional frameworks that are difficult to change and flexible ones. Each has its advantages. Rigid frameworks provide predictability and ensure that if an extremist group achieves power it cannot easily change the rules. Flexible frameworks allow constitutions to remain relevant to the changing requirements of governing societies and the changing definitions of human rights. In Canada, both houses of the parliament have to approve an amendment, as do two-thirds of the provinces containing at least one-half the population of the country. In Japan, a two-thirds majority in both houses of the parliament must approve an amendment, and then a majority of the population must do so in a referendum.

Lastly, we should note that not all constitutions are written. In Great Britain the constitution is collectively made up of key documents such as the Magna Carta and acts of Parliament. Israeli leaders tried to write a constitution in 1949 shortly after its independence but gave up because of deep conflicts between religious and secular groups. Like Great Britain, Israel's constitution is a series of basic laws. Saudi Arabia's constitution, too, is not a written one but is, instead, a series of royal decrees.

Questions

1. If you were writing a constitution today, what would be the most important influences on your decisions about what you will include?
2. How important is it that constitutions be written?

government as well as its relations to the states. Article IV begins with what is called the full faith and credit clause, which mandates that states honor the laws and judicial proceedings of the other states. Article IV also includes the mechanisms for admitting new states to the union.

Comparative
Comparing Constitutions

Article V (discussed in greater detail on p. 61) specifies how amendments can be added to the Constitution. The Bill of Rights, which added ten amendments to the

Constitution in 1791, was one of the first items of business when the First Congress met in 1789. Since then, only seventeen additional amendments have been ratified.

supremacy clause
Portion of Article VI of the U.S. Constitution mandating that national law is supreme to (that is, supersedes) all other laws passed by the states or by any other subdivision of government.

Article VI contains the supremacy clause, which asserts the basic primacy of the Constitution and national law over state laws and constitutions. The **supremacy clause** provides that the "Constitution, and the laws of the United States" as well as all treaties are to be the supreme law of the land. All national and state officers and judges are bound by national law and take oaths to support the federal Constitution above any state law or constitution. Because of the supremacy clause, any legitimate exercise of national power supersedes any state laws or action, in a process that is called preemption. Without the supremacy clause and the federal court's ability to invoke it, the national government would have little actual enforceable power; thus, many commentators call the supremacy clause the linchpin of the entire federal system.

Mindful of the potential problems that could occur if church and state were too enmeshed, Article VI also specifies that no religious test shall be required for holding any office. This mandate strengthens the separation of church and state guarantee that was quickly added to the Constitution when the First Amendment was ratified.

The seventh and final article of the Constitution concerns the procedures for ratification of the new Constitution: nine of the thirteen states would have to agree to, or ratify, its new provisions before it would become the supreme law of the land.

THE DRIVE FOR RATIFICATION

WHILE DELEGATES TO THE CONSTITUTIONAL CONVENTION labored in Philadelphia, the Congress of the Confederation continued to govern the former colonies under the Articles of Confederation. The day after the Constitution was signed, William Jackson, the secretary of the Constitutional Convention, left for New York City, by then the nation's capital, to deliver the official copy of the document to the Congress. He also took with him a resolution of the delegates calling upon each of the states to vote on the new Constitution. Anticipating resistance from the representatives in the state legislatures, however, the Framers required the states to call special ratifying conventions to consider the proposed Constitution.

Jackson carried a letter from General George Washington with the proposed Constitution. In a few eloquent words, Washington summed up the sentiments of the Framers and the spirit of compromise that had permeated the long weeks in Philadelphia:

> That it will meet the full and entire approbation of every state is not perhaps to be expected, but each [state] will doubtless consider, that had her interest alone been consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote lasting welfare of that country so dear to us all, and secure her freedom and happiness is our ardent wish.[20]

The Second Continental Congress immediately accepted the work of the convention and forwarded the proposed Constitution to the states for their vote. It was by no means certain, however, that the new Constitution would be adopted. From the fall of 1787 to the summer of 1788, the proposed Constitution was debated hotly around the nation. State politicians understandably feared a strong central government. Farmers and other working-class people were fearful of a distant national government. Those who had accrued substantial debts during the economic chaos following the Revolutionary War feared that a new government with a new financial policy would plunge them into even greater debt. The public in general was very leery of taxes—these were the same people who had revolted against the king's taxes. At the heart of many of their concerns was an underlying fear of the massive changes that would be brought about by a new system. Favoring the Constitution were wealthy merchants, lawyers, bankers,

and those who believed that the new nation could not continue to exist under the Articles of Confederation. For them, it all boiled down to one simple question offered by James Madison: "Whether or not the Union shall or shall not be continued."

Federalists Versus Anti-Federalists

Almost as soon as the ink was dry on the last signature to the Constitution, those who favored the new strong national government chose to call themselves **Federalists.** They were well aware that many still generally opposed the notion of a strong national government. Thus, they did not want to risk being labeled nationalists, so they tried to get the upper hand in the debate by nicknaming their opponents **Anti-Federalists.** Those put in the latter category insisted that they were instead Federal Republicans, who believed in a federal system. As noted in Table 2.1, Anti-Federalists argued that they simply wanted to protect state governments from the tyranny of a too powerful national government.[21]

Federalists
Those who favored a stronger national government and supported the proposed U.S. Constitution; later became the first U.S. political party.

Anti-Federalists
Those who favored strong state governments and a weak national government; opposed the ratification of the U.S. Constitution.

Federalists and Anti-Federalists participated in the mass meetings that were held in state legislatures to discuss the pros and cons of the new plan. Tempers ran high at public meetings, where differences between the opposing groups were highlighted. Fervent debates were published in newspapers, which played a powerful role in the adoption process. The entire Constitution, in fact, was printed in the *Pennsylvania Packet* just two days after the convention's end. Other major papers quickly followed suit. Soon, opinion pieces on both sides of the adoption issue began to appear around the nation, often written under pseudonyms such as "Caesar" or "Constant Reader," as was the custom of the day.

The Federalist Papers

One name stood out from all the rest: "Publius" (Latin for "the people"). Between October 1787 and May 1788, eighty-five articles written under that pen name routinely appeared in newspapers in New York, a state where ratification was in doubt. Most were written by Alexander Hamilton and James Madison. Hamilton, a young, fiery New Yorker born in the British West Indies, wrote fifty-one; Madison, a Virginian who later served as the fourth president, wrote twenty-six; and jointly they penned another three. John Jay, also of New York, and later the first chief justice of the United States, wrote five of the pieces. These eighty-five essays became known as ***The Federalist Papers.***

The Federalist Papers
A series of eighty-five political papers written by John Jay, Alexander Hamilton, and James Madison in support of ratification of the U.S. Constitution.

TABLE 2.1 Federalists and Anti-Federalists Compared

	Federalists	*Anti-Federalists*
Who were they?	Property owners, landed rich, merchants of Northeast and Middle Atlantic states.	Small farmers, shopkeepers, laborers.
Political philosophy	Elitist: saw themselves and those of their class as most fit to govern (others were to be governed).	Believed in the decency of the common man and in participatory democracy; viewed elites as corrupt; sought greater protection of individual rights.
Type of government favored	Powerful central government; two-house legislature; upper house (six-year term) further removed from the people, whom they distrusted.	Wanted stronger state governments (closer to the people) at the expense of the powers of the national government; sought smaller electoral districts, frequent elections, referendum and recall, and a large unicameral legislature to provide for greater class and occupational representation.
Alliances	Pro-British, Anti-French	Anti-British, Pro-French



Photos courtesy: left, The Metropolitan Museum of Art, Gift of Henry G. Marquand; 1881 (81.11) copyright © 1987 The Metropolitan Museum of Art; center, Colonial Williamsburg Foundation; right, Bettmann/Corbis.

■ Alexander Hamilton (left), James Madison (center), and John Jay (right) were important early Federalist leaders. Jay wrote five of *The Federalist Papers* and Madison and Hamilton wrote the rest. Madison served in the House of Representatives (1789–1797) and as secretary of state in the Jefferson administration (1801–1808). In 1808, he was elected fourth president of the United States and served two terms (1809–1817). Hamilton became the first secretary of the treasury (1789–1795). He was killed in 1804 in a duel with Vice President Aaron Burr, who was angered by Hamilton's negative comments about his character. Jay became the first chief justice of the United States (1789–1795) and negotiated the Jay Treaty with Great Britain in 1794. He then served as governor of New York from 1795 to 1801.

Today, *The Federalist Papers* are considered masterful explanations of the Framers' intentions as they drafted the new Constitution. At the time, although they were reprinted widely, they were far too theoretical to have much impact on those who would ultimately vote on the proposed Constitution. Dry and scholarly, they lacked the fervor of much of the political rhetoric that was then in use. *The Federalist Papers* did, however, highlight the reasons for the structure of the new government and its benefits. According to *Federalist No. 10*, for example, the new Constitution was called "a republican remedy for the disease incident to republican government." These musings of Madison, Hamilton, and Jay continue to be the clearest articulation of the political theories and philosophies that lie at the heart of our Constitution.

Forced on the defensive, the Anti-Federalists responded to *The Federalist Papers* with their own series of letters written by Anti-Federalists adopting the pen names of "Brutus" and "Cato," two ancient Romans famous for their intolerance of tyranny. These letters (actually essays) undertook a line-by-line critique of the Constitution.

Anti-Federalists argued that a strong central government would render the states powerless.[22] They stressed the strengths the government had been granted under the Articles of Confederation, and argued that the Articles, not the proposed Constitution, created a true federal system. Moreover, they argued that the strong national government would tax heavily, that the Supreme Court would overwhelm the states by invalidating state laws, and that the president eventually would have too much power, as commander in chief of a large and powerful army.[23]

In particular, the Anti-Federalists feared the power of the national government to run roughshod over the liberties of the people. They proposed that the taxing power of Congress be limited, that the executive be curbed by a council, that the military consist of state militias rather than a national force, and that the jurisdiction of the Supreme Court be limited to prevent it from reviewing and potentially overturning the decisions of state courts. But, their most effective argument concerned the absence of a bill of rights in the Constitution. James Madison answered these criticisms in *Federalist Nos. 10* and *51*. (The texts of these two essays are printed in Appendices III and IV.) In *Federalist No. 10*, Madison pointed out that the voters would not always succeed in electing "enlightened statesmen" as their representatives. The greatest threat to individual liber-

ties would therefore come from factions within the government, who might place narrow interests above broader national interests and the rights of citizens. While recognizing that no form of government could protect the country from unscrupulous politicians, Madison argued that the organization of the new government would minimize the effects of political factions. The great advantage of a federal system, Madison maintained, was that it created the "happy combination" of a national government too large to be controlled by any single faction, and several state governments that would be smaller and more responsive to local needs. Moreover, he argued in *Federalist No. 51* that the proposed federal government's separation of powers would prohibit any one branch from either dominating the national government or violating the rights of citizens.

Ratifying the Constitution

Debate continued in the thirteen states as votes were taken from December 1787 to June 1788, in accordance with the ratifying process laid out in Article VII of the proposed Constitution. Three states acted quickly to ratify the new Constitution. Two small states, Delaware and New Jersey, voted to ratify before the large states could rethink the notion of equal representation of the states in the Senate. Pennsylvania, where Federalists were well organized, was also one of the first three states to ratify. Massachusetts assented to the new government but tempered its support by calling for an immediate addition of amendments, including one protecting personal rights. New Hampshire became the crucial ninth state to ratify on June 21, 1788. This action completed the ratification process outlined in Article VII of the Constitution and marked the beginning of a new nation. But, New York and Virginia, which at that time accounted for more than 40 percent of the new nation's population, had not yet ratified the Constitution. Thus, the practical future of the new nation remained in doubt.

Simulation
You Are James Madison

Hamilton in New York and Madison in Virginia worked feverishly to convince delegates to their state conventions to vote for the new government. In New York, sentiment against the Constitution was high. In Albany, fighting resulting in injuries and death broke out over ratification. When news of Virginia's acceptance of the Constitution reached the New York convention, Hamilton finally was able to convince a majority of those present to follow suit by a narrow margin of three votes. Both states also recommended the addition of a series of structural amendments and a bill of rights.

North Carolina and Rhode Island continued to hold out against ratification. Both had recently printed new currencies and feared that values would plummet in a federal system where the Congress was authorized to coin money. On August 2, 1788, North Carolina became the first state to reject the Constitution on the grounds that no Anti-Federalist amendments were included. Soon after, in September 1789, owing much to the Anti-Federalist pressure for additional protections from the national government, Congress submitted the **Bill of Rights** to the states for their ratification. North Carolina then ratified the Constitution by a vote of 194–77. Rhode Island, the only state that had not sent representatives to Philadelphia, remained out of the new nation until 1790. Finally, under threats from its largest cities to secede from the state, the legislature called a convention that ratified the Constitution by only two votes (34–32)—one year after George Washington became the first president of the United States.

Bill of Rights
The first ten amendments to the U.S. Constitution.

Amending the Constitution: The Bill of Rights

Once the Constitution was ratified, elections were held. When Congress convened, it immediately sent a set of amendments to the states for their ratification. An amendment authorizing the enlargement of the House of Representatives and another to prevent members of the House from raising their own salaries failed to garner favorable votes in the necessary three-fourths of the states. (See On Campus: A Student's Revenge: The Twenty-Seventh [Madison] Amendment.) The remaining ten amendments, known as the Bill of Rights, were ratified by 1791 in accordance with the procedures set out in the Constitution. Sought by Anti-Federalists as a protection for individual liberties, they offered numerous specific limitations on the national govern-

Timeline
The History of Constitutional Amendments

A Student's Revenge: The Twenty-Seventh (Madison) Amendment

On June 8, 1789, in a speech before the House of Representatives, James Madison stated:

> there is a seeming impropriety in leaving any set of men without controul to put their hand into the public coffers, to take out money to put into their pockets. . . . I have gone therefore so far as to fix it, that no law, varying the compensation, shall operate until there is a change in the legislation.

When Madison proposed that any salary increase for members of Congress could not take effect until the next session of Congress, he had no way of knowing that more than two centuries would pass before his plan, now known as the Twenty-Seventh Amendment, would become an official part of the Constitution. In fact, Madison deemed it worthy of addition only because the conventions of three states (Virginia, New York, and North Carolina) demanded that it be included.

By 1791, when the Bill of Rights was added to the Constitution, only six states had ratified Madison's amendment, and it seemed destined to fade into obscurity. In 1982, however, Gregory Watson, a sophomore majoring in economics at the University of Texas–Austin, discovered the unratified compensation amendment while looking for a paper topic for an American government class. Intrigued, Watson wrote a paper arguing that the proposed amendment was still viable because it had no internal time limit and, therefore, should still be ratified. Watson received a C on the paper.

Despite his grade, Watson began a ten-year, $6,000 self-financed crusade to renew interest in the compensation amendment. Watson and his allies reasoned that the amendment should be revived because of the public's growing anger with the fact that members of Congress had sought to raise their salaries without going on the record as having done so. Watson's perseverance paid off.

Photo courtesy: Ziggy Kaluzny/People Magazine Syndication

Gregory Watson with a document that contains the first ten amendments to the Constitution, as well as the compensation amendment ("Article the second: No law varying the compensation for services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened"), which finally was ratified in 1992 as the Twenty-Seventh Amendment.

On May 7, 1992, the amendment was ratified by the requisite thirty-eight states. On May 18, the United States Archivist certified that the amendment was part of the Constitution, a decision that was overwhelmingly confirmed by the House of Representatives on May 19 and by the Senate on May 20. At the same time that the Senate approved the Twenty-Seventh Amendment, it also took action to ensure that a similar situation would never occur by declaring dead four other amendments.

Source: Fordham Law Review (December 1992): 497–539; and Anne Marie Kilday, "Amendment Expert Agrees with Congressional Pay Ruling," *Dallas Morning News* (February 14, 1993): 13A.

ment's ability to interfere with a wide variety of personal liberties, some of which were already guaranteed by many state constitutions (see chapters 5 and 6).

The Bill of Rights includes numerous specific protections of personal rights. Freedom of expression, speech, press, religion, and assembly are guaranteed by the First Amendment. The Bill of Rights also contains numerous safeguards for those accused of crimes.

Two of the amendments of the Bill of Rights were reactions to British rule—the right to bear arms (Second Amendment) and the right not to have soldiers quartered in private homes (Third Amendment). More general rights are also included in the Bill of Rights. The Ninth Amendment notes that these enumerated rights are not inclusive, meaning they are not the only rights to be enjoyed by the people, and the Tenth Amendment states that powers not given to the national government are reserved by the states or the people.

METHODS OF AMENDING THE CONSTITUTION

THE FRAMERS DID NOT WANT to fashion a government that could be too influenced by the whims of the people. Therefore, they made the formal amendment process a slow one to ensure that the Constitution was not impulsively amended. In keeping with this intent, only seventeen amendments have been added since the addition of the Bill of Rights. However, informal amendments, prompted by judicial interpretation and cultural and social change, have had a tremendous impact on the Constitution.

Formal Methods of Amending the Constitution

Article V of the Constitution creates a two-stage amendment process: proposal and ratification.[24] The Constitution specifies two ways to accomplish each stage. As illustrated in Figure 2.2, amendments to the Constitution can be proposed by: (1) a vote of two-thirds of the members in both houses of Congress; or, (2) a vote of two-thirds of the state legislatures specifically requesting Congress to call a national convention to propose amendments.

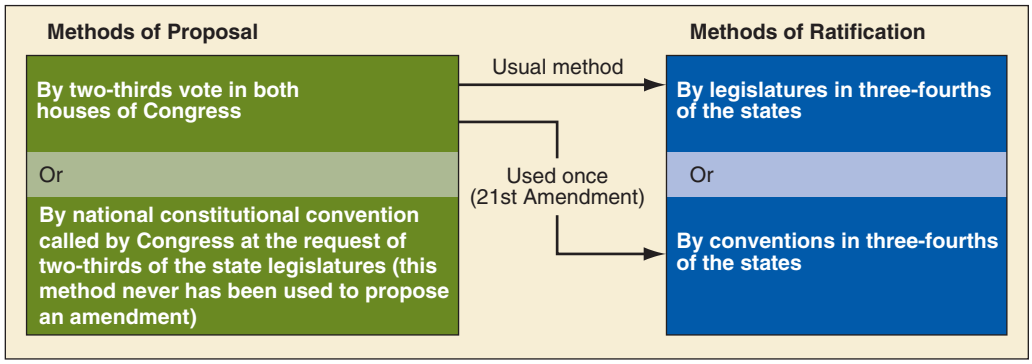
The second method has never been used. Historically, it has served as a fairly effective threat, forcing Congress to consider amendments that might otherwise never have been debated. In the 1980s, for example, several states called on Congress to enact a balanced budget amendment. To forestall the need for a special constitutional convention, in 1985, Congress enacted the Gramm-Rudman-Hollings Act, which called for a balanced budget by the 1991 fiscal year. But, Congress could not meet that target. The act was amended repeatedly until 1993, when Congress postponed the call for a balanced budget, the need for which faded in light of surpluses that occurred during the Clinton administration. The act also was ruled unconstitutional by a three-judge district court that declared the law violated separation of powers principles.

Simulation
You Are Proposing a Constitutional Amendment

The ratification process is fairly straightforward. When Congress votes to propose an amendment, the Constitution specifies that the ratification process must occur in one of two ways: (1) a favorable vote in three-fourths of the state legislatures; or, (2) a favorable vote in specially called ratifying conventions in three-fourths of the states.

The Constitution itself was ratified by the favorable vote of nine states in specially called ratifying conventions. The Framers feared that the power of special interests in state legislatures would prevent a positive vote on the new Constitution. Since ratification of the Constitution, however, only one ratifying convention has been called. The Eighteenth Amendment, which caused the Prohibition era by outlawing nationwide the sale of alcoholic beverages, was ratified by the first method—a vote in state legislatures. Millions

FIGURE 2.2 Methods of Amending the Consititution. ■



The Living Constitution

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.

—Article V

With this article, the Framers acknowledged the potential need to change or amend the Constitution. This article provides for two methods to propose amendments: by a two-thirds vote of both houses of Congress or by a two-thirds vote of the state legislatures. It also specifies two alternative methods of ratification of proposed amendments: by a three-quarters vote of the state legislatures, or by a similar vote in state ratifying conventions.

During the Constitutional Convention in Philadelphia, the Framers were divided as to how frequently or how easily the Constitution was to be amended. The original suggestion was to allow the document to be amended "when soever it shall seem necessary." The Committee on Detail wanted to entrust this authority to the state legislatures; however, others feared that it would give states too much power. James Madison alleviated these fears by suggesting that both Congress and the states have a role in the process.

In the late 1960s and early 1970s, leaders of the new women's rights movement sought an equal rights amendment to the Constitution. Their efforts were rewarded when the ERA was approved in the House and Senate by overwhelming majorities in 1971 and then sent out to the states for their approval. In spite of tremendous lobbying, a strong anti-ERA movement emerged and the amendment failed to gain approval in three-quarters of the state legislatures. While it is not unusual to have over 100 potential amendments introduced in each session of Congress, some to ban same-sex marriage, stop flag burning, and allow naturalized citizens to become president are those most often mentioned of late.

The failed battles for the ERA as well as other amendments, including one to prohibit child labor and another to grant statehood to the District of Columbia, underscore how difficult it is to amend the Constitution. Thus, unlike the constitutions of individual states or many other nations, the U.S. Constitution rarely has been amended.

broke the law, others died from drinking homemade liquor, and still others made their fortunes selling bootleg or illegal liquor. After a decade of these problems, Congress decided to act. An additional amendment—the Twenty-First—was proposed to repeal the Eighteenth Amendment. It was sent to the states for ratification, but with a call for ratifying conventions, not a vote in the state legislatures.[25] Members of Congress correctly

predicted that the move to repeal the Eighteenth Amendment would encounter opposition in the statehouses, which were largely controlled by conservative rural interests. Thus, Congress's decision to use the convention method led to quick approval of the Twenty-First Amendment.

The intensity of efforts to amend the Constitution has varied considerably, depending on the nature of the change proposed. Whereas the Twenty-First Amendment took only ten months to ratify, an equal rights amendment (ERA) was introduced in every session of Congress from 1923 until 1972, when Congress finally voted favorably for it. Even then, years of lobbying by women's groups were insufficient to garner necessary state support. By 1982, the congressionally mandated date for ratification, only thirty-five states—three short of the number required—had voted favorably on the amendment.[26]

Congress also has made several attempts to pass an amendment to ban flag burning, prompted by a Supreme Court decision protecting such actions as free speech. Many were outraged by the Court's 5–4 decision in *Texas* v. *Johnson* (1989) but have been unable to muster the two-thirds vote necessary to send the proposed amendment to the states.[27] More recently, senators have proposed a variety of constitutional amendments ranging from one protecting victims' rights to others balancing the federal budget and banning same-sex marriages. If the history of the failed ERA is any indication, chances are slim that either amendment will be ratified quickly.

Photo courtesy: Hulton Archive/Getty Images

■ For all its moral foundation in groups such as the Women's Christian Temperance Union (WCTU), whose members invaded bars to protest the sale of alcoholic beverages, the Eighteenth (Prohibition) Amendment was a disaster. Among its side effects was the rise of powerful crime organizations responsible for illegal sales of alcoholic beverages. Once proposed, it took only ten months to ratify the Twenty-First Amendment, which repealed the Prohibition Amendment.

Informal Methods of Amending the Constitution

The formal amendment process is not the only way that the Constitution has been changed over time. Judicial interpretation and cultural and social change also have had a major impact on the way the Constitution has evolved.

Judicial Interpretation. As early as 1803, under the leadership of Chief Justice John Marshall, the Supreme Court declared in *Marbury* v. *Madison* that the federal courts had the power to nullify acts of the nation's government when they were found to be in conflict with the Constitution.[28] Over the years, this check on the other branches of government and on the states has increased the authority of the Court and significantly has altered the meaning of various provisions of the Constitution, a fact that prompted Woodrow Wilson to call the Supreme Court "a constitutional convention in continuous session." (More detail on the Supreme Court's role in interpreting the Constitution is found in chapters 5, 6, and 10 especially, as well as in other chapters in this book.)

Today, some analysts argue that the original intent of the Framers, as evidenced in *The Federalist Papers*, as well as in private notes taken by James Madison at the Constitutional Convention, should govern judicial interpretation of the Constitution.[29] Others argue that the Framers knew that a changing society needed an elastic, flexible document that could conform to the ages.[30] In all likelihood, the vagueness of the document was purposeful. Those in attendance in Philadelphia recognized that they could not agree on everything and that it was wiser to leave interpretation to those who would follow them.

Politics and Amending the Constitution

"The union of a man and a woman is the most enduring human institution, honored and encouraged in all cultures and by every religious faith." So spoke President George W. Bush in announcing his initial support of congressional action to amend the Constitution to ban same-sex marriages. He did not endorse a specific amendment but instead called upon Congress to endorse an amendment in the wake of the specter of the thousands of same-sex marriages that were conducted in San Francisco, California (and later ruled invalid by that state's Supreme Court).

Members of the House and Senate took up the president's call. In May 2003, Representative Marilyn Musgrave (R–CO) and five co-sponsors introduced a resolution to amend the Constitution to define marriage as a union between a man and a woman. A companion resolution was introduced in the Senate on November 2003 by Senator Wayne Allard (R–CO). Neither action went anywhere. Some states, however, were not so reticent. In 2004, eleven states had varying forms of state constitutional amendment provisions on their ballots.

Although neither presidential candidate supported same-sex marriage, it became a major factor in the 2004 campaign as the press highlighted the state efforts and the May 2004 actions of the Massachusetts Supreme Court (and the home state of Senator John Kerry) that legalized same-sex marriages in that commonwealth. In 1996, Congress had overwhelmingly passed the federal Defense of Marriage Act. It prevents federal recognition of same-sex marriage and allows states not to recognize same-sex marriages or legal unions from other states, such as Massachusetts or Vermont. In spite of that act, President Bush and many others continued to claim that a constitutional amendment was necessary because there was "no assurance that the Defense of Marriage Act will not be struck down by activist courts."[a] Of particular concern was the fact that the Constitution's full faith and credit clause requires states to honor legal contracts made in other states.

Nationwide campaigns to pass as well as to defeat the amendments were waged by a variety of interest groups, including the Human Rights Campaign (HRC), the largest gay rights group in the United States. But, as it was fighting these state amendments, the Republican leadership in the House and Senate decided to resurrect the proposed amendment to force lawmakers, especially members of the House who were all up for re-election, as well as John Kerry and John Edwards in the Senate, to go on record as for or against the proposed federal constitutional amendment.

The 2003 resolution calling for a constitutional amendment introduced by Musgrave and Allard had read:

> Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution nor the Constitution of any state, **nor state or federal law,** shall be construed to require that marital status or the legal incidents thereof be conferred upon **unmarried couples or groups.**

When the new Federal Marriage Amendment was introduced in September 2004, it was modified slightly to read:

> Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution nor the Constitution of any **State,** shall be construed to require that marriage or the legal incidents thereof be conferred upon **any union other that the union of a man and a woman.**

In the Senate, the amendment was killed for the 108th session in July when a procedural vote to get the resolution to the floor failed on a 48–50 vote—12 votes shy of the 60 votes required by Senate rules. (Note: 67 votes are necessary for a constitutional amendment to be approved by the Senate.) Six Republicans and one Independent voted with 43 Democrats to kill the amendment. The White House issued a statement noting the president's "disappointment" and urged the House to take up the measure, which it did a few days later. The resolution did come to a floor vote there, but the 227–186 vote tally failed to reach the two-thirds required.

Although the move for an amendment failed, its backers were heartened by what happened in the states. Efforts to highlight the need for a federal amendment bolstered ballot measures in key swing states, especially Ohio and Michigan. Studies conducted after the election concluded that focus on same-sex marriage and moral values drew some African American voters who generally opposed same-sex marriage to the polls—diminishing traditional Democratic Party strength and energizing in all eleven states the Republican Party's conservative base. All of the eleven state bans on same-sex marriage passed by significant majorities, which harbingers well for state support of a constitutional amendment should it be sent to the states for their ratification.

In addition, in December 2004, the U.S. Supreme Court rejected an appeal of the Massachusetts Supreme Court's legalization of same-sex marriage, which may provide additional fodder for members of Congress to step up efforts to pass the amendment.

Questions

1. Senator Allard changed the language of his amendment when some Republicans voiced objections that it would prevent states from legalizing civil unions, which provide many legal protections for heterosexual as well as same-sex couples. How do you think the language change might affect the eventual ratification of such an amendment?
2. Historically, issues about marriage have been left to the states. How appropriate do you think it is to alter the Constitution to take authority over marriage away from the states? Can you think of other instances in which authority has been taken away from the states?

[a]CNN.com, "Bush Calls for Ban on Same-Sex Marriages," cnn.allpolitics/02/24/elec04.prez.bush.marriage

[b]Human Rights Campaign, "HRC: Changing the Constitution Can't Be Concealed with Tweaks and Maneuvering," March 2004 press release.

Analyzing Visuals

WHY DID THE FRAMERS WRITE THE CONSTITUTION AS THEY DID?

The U.S. Constitution contains many phrases that are open to several interpretations. There are also omissions that raise questions about the democratic nature of the Constitution. The lingering question of how to interpret the Constitution still sparks debates among scholars and citizens. In the cartoon below, Garry Trudeau depicts a conversation between two Framers of the Constitution. Analyze the cartoon by answering the following questions: Who were Pinckney and Rutledge, mentioned in the first frame? To what does the representation compromise refer? Which position on the interpretation of the Constitution does the cartoonist appear to take? Which effect is the cartoonist trying to achieve: exaggeration, irony, or juxtaposition? Does the cartoon achieve its desired effect?

Recently, law professor Mark V. Tushnet has offered a particularly stinging criticism of judicial review and our reliance on the courts to interpret the law. He believes that, under our present system, Americans are unwilling to enforce the provisions of the Constitution because they believe this is the sole province of the court system. If we were to eliminate the deference given to court decisions, Tushnet argues, citizens would be compelled to become involved in enforcing their Constitution, thereby creating a system of populist constitutional law, and a more representative government.[31]

Social and Cultural Change. Even the most far-sighted of those in attendance at the Constitutional Convention could not have anticipated the vast changes that have occurred in the United States. For example, although many were uncomfortable with the Three-Fifths Compromise and others hoped for the abolition of slavery, none could have imagined the status of African Americans today, or that Colin Powell or Condoleezza Rice would serve as the U.S. secretary of state. Likewise, few of the Framers could have anticipated the diverse roles that women would play in American society. The Constitution often has evolved to accommodate such social and cultural changes. Thus, although there is no specific amendment guaranteeing women equal protection of the law, the federal courts have interpreted the Constitution to

prohibit many forms of gender discrimination, thereby recognizing cultural and societal change.

Social change has also caused changes in the way institutions of government act. As problems such as the Great Depression appeared national in scope, Congress took on more and more power at the expense of the states to solve the economic and social crisis. In fact, Yale law professor Bruce Ackerman argues that on certain occasions, extraordinary times call for extraordinary measures such as the New Deal that, in effect, amend the Constitution. Thus, congressional passage (and the Supreme Court's eventual acceptance) of sweeping New Deal legislation that altered the balance of power between the national government and the states truly changed the Constitution without benefit of amendment.[32] Today, however, Congress is moving to return much of that power to the states. The actions of the 104th and 105th Congresses (1995–1999), in particular, to return powers and responsibilities to the states may be viewed as an informal attempt not necessarily to amend the Constitution but to return the balance of power between the national and state government to that which the Framers intended.

Advances in technology also have brought about constitutional change. Wiretapping and other forms of electronic surveillance, for example, now are regulated by the First and Fourth Amendments. Similarly, HIV testing must be balanced against constitutional protections, and all kinds of new constitutional questions are posed in the wake of congressional efforts to regulate what kinds of information can be disseminated on the Internet. Still, in spite of these massive changes, the Constitution survives, changed and ever changing after more than 200 years.

SUMMARY

THE U.S. CONSTITUTION has proven to be a remarkably enduring document. In explaining how and why the Constitution came into being, this chapter has covered the following points:

1. **The Origins of a New Nation**
   While settlers came to the New World for a variety of reasons, most remained loyal to Great Britain and considered themselves subjects of the king. Over the years, as new generations of Americans were born on colonial soil, those ties weakened. A series of taxes levied by the Crown ultimately led the colonists to convene a Continental Congress and to declare their independence.

2. **The First Attempt at Government: The Articles of Confederation**
   The Articles of Confederation (1781) created a loose league of friendship between the new national government and the states. Numerous weaknesses in the new government became apparent by 1784. Among the major flaws were Congress's inability to tax or regulate commerce, the absence of an executive to administer the government, the lack of a strong central government, and no judiciary.

3. **The Miracle at Philadelphia: Writing a Constitution**
   When the weaknesses under the Articles of Confederation became apparent, the states called for a meeting to reform them. The Constitutional Convention (1787) quickly threw out the Articles of Confederation and fashioned a new, more workable form of government. The Constitution was the result of a series of compromises, including those over representation, over issues involving large and small states, and over how to determine population. Compromises were also made about how members of each branch of government were to be selected. The Electoral College was created to give states a key role in the selection of the president.

4. **The U.S. Constitution**
   The proposed U.S. Constitution created a federal system that drew heavily on Montesquieu's ideas about separation of powers. These ideas concerned a way of parceling out power among the three branches of government, and checks and balances to prevent any one branch from having too much power.

5. **The Drive for Ratification**
   The drive for ratification became a fierce fight between Federalists and Anti-Federalists. Federalists lobbied for the strong national government created by the Constitution; Anti-Federalists favored greater state power.

6. **Methods of Amending the Constitution**
   The Framers did not want to fashion a government that could respond to the whims of the people. Therefore, they designed a deliberate two-stage formal amendment process that required approval on the federal and state levels; this process has rarely been used. However, informal amendments, prompted by judicial interpretation and by cultural and social change, have had a tremendous impact on the Constitution.

KEY TERMS

Anti-Federalists, p. 57
Articles of Confederation, p. 41
Bill of Rights, p. 59
checks and balances, p. 49
Committees of Correspondence, p. 37
confederation, p. 39
constitution, p. 44
Declaration of Independence, p. 40
enumerated powers, p. 52
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necessary and proper clause, p. 52
New Jersey Plan, p. 46
Second Continental Congress, p. 39
separation of powers, p. 49
Shays's Rebellion, p. 43
Stamp Act Congress, p. 36
supremacy clause, p. 56
Three-Fifths Compromise, p. 47
Virginia Plan, p. 46

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WEB EXPLORATIONS

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http://lcweb2.loc.gov/ammem/bdsds/intro01.html

For a full text of the Articles of Confederation, see
http://www.usconstitution.net/articles.html

For demographic background on the Framers, see
http://www.usconstitution.net/constframedata.html

To compare *The Federalist Papers* with *The Anti-Federalist Papers,* see
http://www.law.emory.edu/FEDERAL/federalist/ and
http://wepin.com/articles/afp/index.htm

For the text of these failed amendments to the U.S. Constitution, see
http://www.usconstitution.net/constamfail.html