

The Survival of the US Constitution

by Steven Mintz

The United States has the oldest written national framework of government in the world. At the end of the twentieth century, there were about 159 other national constitutions in the world, and 101 had been adopted since 1970. While the United States has been governed by a single framework of government for over two centuries, France, in contrast, has had 10 separate and distinct constitutional orders (including five republics, two empires, a monarchy, and two dictatorships). The country of El Salvador has had 36 constitutions since 1824.

Nearly all of the national constitutions now in use bear the marks of the 55 men who met in Philadelphia in the summer of 1787 to create the framework of the United States government. Like the US Constitution, they are written constitutions. They also spell out human and civil rights similar to those contained in the US document. A bill of rights is particularly common. The principles of American constitutionalism—the separation of powers, the bill of rights, a bicameral legislature, and a presidential form of government—were followed by many nations. The Constitutional Convention of 1787 created a governmental framework that has not only lasted two centuries but has also served as a model for freedom-loving people all over the world.

In almost every way imaginable, the United States has been radically transformed over the past two centuries. Its population has soared from just 4 million to 300 million. The federal budget has risen from \$4 million in 1790 to over \$1 trillion today. Yet the basic framework of government has remained unchanged.

THE US CONSTITUTION AND THE ORGANIZATION OF THE NATIONAL GOVERNMENT

The US Constitution created a system of checks and balances and three independent branches of government.

THE LEGISLATIVE BRANCH

Article I of the Constitution established Congress. The framers of the Constitution expected Congress to be the dominant branch of government. They placed it first in the Constitution and assigned more powers to it than to the presidency. Congress was given “all legislative powers,” including the power to raise taxes, coin money, regulate interstate and foreign commerce, promote the sciences and the arts, and declare war.

THE EXECUTIVE BRANCH

Article II of the Constitution created the presidency. The president’s powers were stated more briefly than those of Congress. The president was granted “executive Power,” including the power “with the Advice and Consent of the Senate,” to make treaties and appoint ambassadors. The president was also to serve as commander in chief of the army and navy.

In delegate James Wilson’s view, the presidency was “the most difficult [issue] of all on which we have had to decide.” Americans had waged a revolution against a king and did not want concentrated power to appear in another guise. The delegates had to decide whether the chief executive should be one person or a committee; whether the president should be appointed by Congress; and how long the chief executive should serve.

On August 18, 1787, a Pennsylvania newspaper carried a leaked report from the Constitutional Convention. It was the first word on the proceedings that directly quoted a delegate. “We are well informed” of “reports idly circulating, that it is intended to establish a monarchical government. . . . Tho’ we cannot, affirmatively, tell you what we are doing, we can, negatively, tell you what we are not doing - we never once thought of a king.”

The conflict with royal governors had made the public deeply distrustful of powerful executives. Alexander Hamilton argued for a chief executive to be given broad powers and elected for life. Edmund Randolph of Virginia thought executive power should not be put into the hands of a single person since a single executive would be “the fetus of monarchy.”

To ensure a check on presidential power, Congress was given the power to override a presidential veto and to impeach and remove a president. Congress alone was given the power to declare war.

THE JUDICIAL BRANCH

Article III of the Constitution established a Supreme Court.

The Constitution does not specify the size of the Supreme Court. Over the years the designated size of the supreme court has varied between six, seven, nine, and even ten members. Nor does the Constitution explicitly grant the courts the power of judicial review—to determine whether legislation is consistent with the constitution.

Today, no other country makes as much use of judicial review as the United States. Many of our society's policies on racial desegregation, criminal procedure, abortion, and school prayer are the product of court decisions. The concept of judicial review was initially established on the state level and in the debates over the ratification of the Constitution.

In contrast to Britain's judges, American judges do not wear wigs. When the Supreme Court held its first session in 1790, one justice did arrive wearing a wig. But the public expressed derision at wig wearing, and the justice decided that republican judges should not wear wigs.

VOTING RIGHTS

The Constitution included no property qualifications for voting or office holding like those found in the state constitutions drafted between 1776 and 1780. In a republican society, office holding was supposed to reflect personal merit, not social rank.

The Constitution did not bar anyone from voting. It only said that voting for members of the House of Representatives should be the same in each state as that state's requirements for voting for the most numerous branch of the legislature. In other words, qualifications for voting were left to the individual states. The New Jersey constitution allowed women to vote if they met the same property requirements as men.

WHY HAS THE CONSTITUTION SURVIVED?

At the end of the Constitutional Convention, George Washington said, "I do not expect the Constitution to last for more than 20 years." Today, the United States has oldest written constitution in the world. Why has the Constitution survived?

The framers of the Constitution established the broad structure of government but also left the system flexible enough to adapt to changing conditions. A document of less than 6,000 words, the Constitution is not overly detailed. Over the years, Congresses, presidents, and the courts have reinterpreted the document to meet the needs of the moment.

HOW HAS THE CONSTITUTIONAL SYSTEM CHANGED?

When the Constitution was ratified, the states were dominant. Since then, the national government has gradually become dominant. When George Washington became president, he had just five cabinet officers: the secretaries of state, war, and treasury, an attorney general, and a post-master general. Since then, the presidency has accumulated more and more authority. Today, there are 14 executive departments and 2.7 million civilian federal employees.

The framers of the Constitution expected Congress to be the dominant branch of government. In the early years of the republic, presidential candidates were usually nominated by a caucus system centered in the House of Representatives. Today, Congress is less inclined to initiate policy than to let the president set the legislative agenda. Congress now has about 290 committees and subcommittees. More than 10,000 people work for the 535 members of Congress.

Especially in the twentieth century, the Supreme Court has become a powerful vehicle for making public policy as it interprets the law.

Political parties, which are not mentioned in the Constitution, have become an integral part of the American political system. They remain the means through which political officeholders are nominated and elected.