

A LIVING CONSTITUTION

The U.S. Constitution: Does it stand the test of time?

By Mr. Samuel H. Wedes

In 1835, less than half a century after the ratification of the U.S. Constitution, Alexis de Tocqueville observed in his famous book, *Democracy in America*, "...The social state of America is a very strange phenomenon. Men there are nearer equality in wealth and mental endowments ... than in any other country of the world or in any other age or recorded history."¹ Indeed, by Tocqueville's time, America had already begun to live up to the legacy that the Founding Fathers had ardently expressed in the Constitution: that America be the exemplar of freedom and equality. Today, America continues to grow and prosper from these ideals of democratic governance. And in so doing, the Constitution lives on as it regulates and adapts to new generations and new ideas.

Much of the Constitution's flexibility can be attributed to the elastic clause (Article I, Section 8), which gives Congress the power to make all laws that are "necessary and proper" to carry out the laws explicitly listed in the Constitution. Such implied powers allow Congress not to be limited solely to the expressed powers of the Constitution and have been used throughout history as a means to adapt to a rapidly changing culture. For example, in the landmark case, *McCulloch v. Maryland* (1819), the controversy regarding whether Congress had the power to charter a bank was brought to the forefront.² Albeit the Constitution made no explicit reference to a national bank, Marshall declared that chartering a bank was among the implied powers of Congress "necessary and proper for carrying into execution the foregoing powers [such as taxation borrowing money, and regulating commerce],"³ thus allowing the Constitution to evolve along with the changing needs of the nation.

Another means by which the Constitution lives through today is the amendment process. As James Madison explained, "It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults."⁴ The first ten amendments are known as the Bill of Rights, which were added to the Constitution to "reassure the people that the vastly strengthened federal government would not oppress them and to secure individual rights for the long term."⁵ For example, Amendment I guarantees the freedoms of religion, speech, press, assembly, and petition. Other amendments include the abolition of slavery (Amendment XIII); the rights of citizens, including due process of law and equal protection under the law (Amendment XIV); and women's suffrage (Amendment XIX). Some amendments reflect issues unheard of at the time that the Constitution was ratified, but that became prominent as the country and society progressed. For example, Amendment XXVI, ratified in 1971, lowered the voting age from 21 to 18 after people complained during Vietnam that if they could be drafted into the army at age 18, then they should also be able to vote. Throughout the course of American history, the Constitution has been amended 27 times, allowing it to become one with the ever-changing American identity.

Lastly, the Constitution remains as America's ideological underpinning simply because of the timeless democratic governance that it defines and expresses. As George Bancroft noted, 'The Constitution establishes nothing that interferes with equality and individuality It leaves the individual alongside of the individual.... As the sea is made up of drops, American society is composed of separate, free, and constantly moving atoms, ever in reciprocal action ... so that the institutions and laws of the country rise out of the masses of individual thought, which, like the waters of the ocean are rolling evermore.'⁶ Within the Constitution's first three words - "We, the People" - the concept of popular sovereignty is manifest: that power, indeed, comes from the people.⁷ To ensure the people's power, the Constitution limits the power of the central government by reserving some power for the states. In addition, the central government is separated into three branches - legislative, executive, and judicial - each branch having checks on the other two to balance the power. On the necessity of the checks and balances system, Madison commented, "...Unless these departments be so far connected and blended, as to give to each a constitutional controul [sic] over the others, the degree of separation which the maxim requires as essential to a free government, can never in practice, be duly maintained."⁸ So long as power remains in check, the people retain their sovereignty, and the Constitution lives on alongside the glory of democracy.

For over two centuries, the Constitution has stood as the archetype of democracy. Over the years, shifting ideologies and perspectives amid an ever growing and changing people have resulted in amendments to the Constitution. Those, in addition to the elasticity from implied powers, allow the Constitution to always live as one with the people and the times. Although interpretations and opinions vary, the quintessence of the Constitution remains forever unchanged: freedom, justice, and equality for all. For the Constitution is not solely about laws and regulations; it is also about people. As Alexis de Tocqueville explained, "The people reign over the American political world as God rules over the universe. It is the cause and the end of all things; everything rises out of it and is absorbed back into it."⁹

1 Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence, ed. J. P. Mayer (New York: Harper & Row, 1969), 56.

2 Theodore J. Lowi and Benjamin Ginsberg, *American Government: Freedom and Power*, 6th ed. (New York: Norton, 2000), 76.

3 Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, with an introduction by Garry Wills (New York: Bantam Books, 1982), 456.

4 *Ibid.*, 223.

5 Helen E. Veit Kenneth R. Bowling, and Charlene Bangs Bickford, eds., *Creating the Bill of Rights: The Documentary Record from the First Federal Congress* (Baltimore: Johns Hopkins University Press, 1991), ix.

6 George Bancroft, *History of the Formation of the Constitution of the United States of America*, Vol. 2 (New York: D. Appleton and Co., 1882), 324.

7 Margaret Moran and W. Frances Holder, *AP Success: U.S. History* (Lawrenceville, NJ: Peterson's, 2000), 137.

8 Hamilton, Madison, and Jay, *The Federalist Papers*, 250.

9 Tocqueville, *Democracy in America*, 60

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