Foundation for Freedom:

A Study of the United States Constitution

of the United States, in Order to form a more perfect Union, 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, do ordain and establish this CONSTITUTION for the United States of America.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office

Based On: *The Story of the Constitution*, Sol Bloom, Editor, Copyright © 1937 by United States Constitution Sesquicentennial Commission, and *The Story of a Great Document*, Julia Kathryn Garrett and Lulu Underwood, Copyright © 1945 by The Steck-Vaughn Company

Originally published as *The Story of the Constitution*, Second Edition, Copyright © 2001 by Christian Liberty Press

Currently published as *Foundation for Freedom: A Study of the United States Constitution*, Copyright © 2014 by Christian Liberty Press

Christian Liberty Press

502 W. Euclid Avenue

Arlington Heights, IL 60004

www.christianlibertypress.com

www.shopchristianliberty.com

Compiled and written by Lars R. Johnson

Edited by Kurt Bennett and Edward J. Shewan

Copyedited by Diane C. Olson

Layout by Edward J. Shewan

Cover design Bob Fine

Cover image © 2014 by DesignPics, Chris and Kate Knorr

Portraits of the Founders by Vic Lockman

Timelines by Christopher Kou

Scripture references are conformed to The Holy Bible, New King James Version © 1982, Thomas Nelson, Inc., so that modern readers may gain greater comprehension of the Word of God.

ISBN 978-1-935796-37-4

Printed in the United States of America

Table of Contents

Acknowledgments

I could have never completed this book without the aid of many others. Glenn Grevengoed assisted with valuable research on Supreme Court cases. A number of people were involved with critical editorial assistance: Kurt Bennett, Diane Olson, and Edward Shewan. Christopher Kou created the timelines, while Ed Shewan did the layout and much of the graphics work. Bob Fine designed the cover and created most of the charts. Vic Lockman contributed the pictures for the appendix on America's Founding Fathers. I would like to thank all of these for their help; any errors that may appear in the text are my responsibility alone.

—Lars Johnson

Authors

Sol Bloom: 1870–1949; born in Pekin, Illinois, raised in San Francisco, lived in Chicago and New York City; self-made businessman; represented a New York City district in the House of Representatives from 1923 to 1949, chairman of the House Foreign Affairs Committee (1939–1949); chairman of the United States Constitution Sesquicentennial Commission, compiled the original edition of *The Story of the Constitution*.

Julia Kathryn Garrett: 1897–1988; born in Fort Worth, Texas; graduated with a B.A. in history from Randolph-Macon Women's College; received an M.A. (1924) and a Ph.D. (1934) from the University of California at Berkeley; briefly attended Oxford University; taught in Texas public schools for over forty-five years; authored several books and articles on Texas history; coauthored *The Story of a Great Document* and *Our American Constitution: The Story of a Great Document* with Lulu Underwood.

Lars Johnson: 1957–; born in Atlanta, Georgia; lives in the Chicago suburbs; attended Covenant College (1975–1977), graduated from Florida State University with a B.A. in 1979 and an M.A. in 1981 in International Affairs; United States Army, 1981–1983; on staff with Christian Liberty Academy School System and Christian Liberty Press since 1984; ruling elder in a Chicago-area Orthodox Presbyterian congregation since 1991.

—Chapter 2—

The Struggle for American Independence

From the early days of the colonies, the people claimed for themselves and their posterity exemption from all taxation that was not imposed by their own representatives. Since it was impossible for them to be represented in the British Parliament, they denied the right of that body to tax them. Attempts by Parliament to impose taxes as a means of regulating commerce were opposed, with increasing tension on both sides, but the climax was not reached until after the French and Indian War of 1754–1763. During this war, the colonists were drawn nearer the British sovereign as their legitimate protector. Bitter experiences and common impositions afterwards, however, drew them closer toward a colonial union in order to more effectively protest British actions.

Causes of the War for Independence

Colonial Conflict

In many respects, the eventual rupture with Great Britain can be traced to the effects of the decades-long colonial rivalry between England, France, and Spain. This competition between rival European powers resulted in a series of wars that usually started in Europe, but spread to colonial holdings around the world. The rivalry in North America was particularly intense between England and France. By the mid-eighteenth century the rivalry had developed into a full-blown struggle for control of Canada, the Great Lakes region, and the Ohio River Valley. The French and Indian War began in 1754, becoming part of what was known in Europe as the Seven Years' War (1756–1763). While there were important European issues at stake in the Seven Years' War, the conflict between England and France was primarily over the colonial prizes of North America and India.

When the French and Indian War began, England was disorganized. A particularly able leader arose, however, in the person of William Pitt the Elder, who became British secretary of state in 1757 and, for four years, was virtually the one-man government of George II's England. His strengthening of British sea power weakened France and its effort to supply its North American colonial forces. Under Pitt's leadership, British forces on the ground in North America were able to reverse earlier problems and defeat the French-Indian alliance. Britain also defeated France in their conflicts in India. Spain eventually entered the war near its close out of support for France and out of fear of British expansion in the New World. England proved victorious against both of its colonial enemies in North America, the West Indies, and Asia.

In the Peace of Paris (1763), Britain accomplished virtually every goal it had in fighting the war. It now ruled India, Canada, Florida, and the entire area from the Atlantic seaboard colonies to the Mississippi River. Britain's next major task was to organize its new empire, but its first attempt to do so led to disaster.

IMPERIAL TROUBLES

When peace came after the Seven Years' War, the English decided that the American colonies should make a greater contribution to the expense of the government. This last phase of the English-French struggle vastly increased Britain's national debt. The new territories acquired from the French brought increased administrative costs. On the western frontier, a large military force was needed because of the Indian threat. English landlords and merchants objected violently to higher taxes for any of these purposes. It seemed logical that the colonies should pay. At the same time, Britain wanted to slow down the rate of western settlement so it could be more carefully controlled. The colonists were not happy with these changes.

The changes that the British wished to make would affect the colonists' political freedom. In the colonial assemblies, the people, through their elected representatives, were able to have their way because the assemblies had the power to levy taxes. If Parliament, in which Americans had no representation, could raise money directly from America, the colonists and their representatives would be powerless. The Americans were used to self-government and were determined to keep it.

The relationship between Britain and the colonies began to change in 1763 with the appointment of George Grenville as George III's new prime minister. He put into effect a series of regulations and laws in an effort to solve Britain's financial and defensive problems with the North American colonies. He began with the Proclamation of 1763, which strictly limited colonial settlement west of the Appalachian Mountains. While from the British perspective, it was seen as a way of appeasing the Indian tribes and controlling westward expansion, the colonists saw it as an oppressive act by the British that ran counter to the western land claims of several of the colonies.

TAXATION WITHOUT REPRESENTATION

Grenville's plan also included two new taxes, the Sugar Act of 1764 and the Stamp Act of 1765. The Sugar Act, which changed the taxes on imported sugar, and the Stamp Act, which levied a tax on every printed paper and legal document, both came at a time of depression. These acts differed from most earlier trade laws because their purpose was to raise revenue, while the older laws were designed to regulate colonial commerce.

These taxes raised a storm of protest in the colonies, with the greatest complaint being about the Stamp Act. Since no American representatives sat in Parliament, some colonists felt this was *taxation without representation*. They decided to boycott English goods. The colonies also took their first united action of protest with the Stamp Act Congress of 1765, held in New York and attended by delegates from nine of the thirteen colonies, mostly appointed by the as-

George Grenville, 1712 –1770

semblies. Voting by colonies, each having one vote, it framed petitions to the king and to Parliament and adopted an important Declaration of Rights, the first platform of American principles.

The colonists also received significant support in England from such important members of Parliament as Edmund Burke and William Pitt the Elder. Pitt, in December 1765, declared that, while British authority over the colonies was supreme in matters of government and legislation, "Taxation is no part of the governing power. The taxes are a voluntary gift and grant of the commons alone. In an American tax, what do we do? We, your majesty's commons of Great Britain, give and grant to your majesty—what? Our own property? No. We give and grant to your majesty the property of your majesty's commons in America. It is an absurdity in terms."[1] Before long, the boycott and problems in collecting the money forced Britain to repeal the hated stamp tax.

Parliament did not, however, renounce its claim to have the right to tax the colonies. In 1766, on the same day that Parliament repealed the stamp tax, it passed the Declaratory Act. Parliament claimed that "… the said colonies and plantations in America have been, are, and of right ought to be, subordinate unto, and dependent upon, the imperial crown and Parliament of Great Britain," and that the king, with the advice and consent of Parliament, "… had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of *America* in all cases whatsoever."[2]

As soon as the Grenville crisis passed, some duties called the Townshend Acts were levied in 1767 on tea, glass, paper, and other goods. Protests broke out in Boston, and five colonists were killed by British troops on March 5, 1770, in what is known as the Boston Massacre. In 1770, all the duties were repealed except those on tea. For a time, relations between Britain and the colonies were peaceful, but it was more like the calm before the storm. Samuel Adams of Massachusetts helped to organize in 1772 inter-colonial committees of correspondence to keep the leaders of the different regions in touch with one another.

William Pitt, 1st Earl of Chatham, 1708–1778

TRADE ISSUES

Aside from the issue of "taxation without representation," colonists also had problems with other British policies. British authorities tended to ignore the fact that a number of grievances had arisen from differences that had grown up in the economic and social life of the colonies. The British government persisted in sacrificing the rights of the colonies to the advantage of Britain in matters of trade. Since many colonial leaders believed in the concept of free trade, such British policies resulted in endless friction, complaint, and evasion of British regulations. The colonies were moving toward separation from Britain. The more the colonists studied the subject, the more they doubted the right of Parliament to assert supreme authority over them.

Relations with Britain reached a crisis in 1773 when the almost bankrupt East India Company was given a monopoly by the British Parliament through the Tea Act to export tea to the colonies without hav-

ing to go through middlemen in England. Although the cost of the East India tea would be cheaper than smuggled tea from Holland, the colonists objected to the monopoly given to the company and to the effort to entice them to pay the tea tax. A boycott against the East India tea was established, and ships with tea were even ordered to turn back from the ports of New York and Philadelphia. In Boston, some colonists dressed as Indians, one night in December, boarded a ship loaded with tea and dumped its cargo into Boston Harbor.

LIBERTIES THREATENED

The "Boston Tea Party" failed to amuse either the king or Parliament. Between March and June 1774, Parliament passed a series of Coercive Acts that closed Boston's port and changed the constitution of Massachusetts. Along with these attempts to tighten economic control over the colonies, the crown increased its judicial and political power. These acts, designed to coerce Massachusetts into obedience to British measures, became known to the colonists as the "Intolerable Acts."

In response to the Coercive Acts, the colonies took united action to support Boston. Supplies were shipped overland from throughout the colonies to provide food for Boston. In June 1774, the Massachusetts legislature called for the step that led directly to the present Union, the meeting of delegates from all of the colonies to discuss what should be done in response to this crisis. This was the meeting of the First Continental Congress on September 5, 1774, in Carpenters' Hall in Philadelphia.

Further inflaming the situation was the passage of the Quebec Act by the British Parliament in 1774. It gave broad power to the Roman Catholic Church by recognizing it as the official religion of Quebec. It also established a centralized system of government for the province and recognized the French legal code. The borders of Quebec were extended to the Ohio and Mississippi Rivers, which had the effect of canceling colonial land claims in the Ohio River region and closing off immigration from New York, Pennsylvania, and Virginia into the Ohio Territory. Although not part of the Coercive Acts, the colonists felt that the Quebec Act was also an "intolerable act," because they saw it as a potential threat to their religious and political liberties.

American Independence

THE FIRST CONTINENTAL CONGRESS

The First Continental Congress was attended by delegates from all the colonies except Georgia. Representation of the people was indirect—only Connecticut and Rhode Island directly elected their delegates—a practice that was continued by the Second Continental Congress and Articles of Confederation. The First Continental Congress, following the practice of the Stamp Act Congress, also adopted the rule of one vote for each colony without respect to size, population, or wealth. This became the pattern

Leaders of the Continental Congress
John Adams, Gouverneur Morris, Alexander Hamilton, and Thomas Jefferson

for all subsequent legislative events down to 1789; it was continued by the Second Continental Congress, the Articles of Confederation, and the Constitutional Convention. It was a rule that often impeded congressional action and hindered the development of a competent general government; the efforts to continue it almost disrupted the Constitutional Convention.

The petitions and declaration were similar to those of the Stamp Act Congress. The First Continental Congress issued the "Declaration of Rights and Grievances," which asserted that government should be limited and that the colonies had the right to govern themselves. Of particular importance was the establishment of a boycott of British goods. The enforcement of the nonimportation and nonconsumption agreement remained with the people of the colonies, but the direction was at least given by a united action. Before the Congress adjourned on October 26, 1774, it provided for another Congress if the crisis continued.

The Second Continental Congress

The Second Continental Congress met in Philadelphia on May 10, 1775, and continued until it was finally replaced in 1789 by the government organized under the new Constitution. It went from being an extra-legal group acting as a government for the states—trying to coordinate the war effort and keep an army in the field—to that of a constitutional body under the Articles of Confederation after March 1, 1781. It was the only civil institution representing the union of the states during the years 1775–1789. In it were all the national powers—legislative, executive, and judicial—not then withheld by the states. These powers existed to keep the states together as one nation, and to the Congress belonged all the responsibility. But neither before nor after the Articles of Confederation went into operation did it possess the power to enforce its measures. The only instrument for this was the states; as Washington said, Congress could "merely recommend and leave it to the States afterwards to do as they please, which … is in many cases to do nothing at all."[3]

The Declaration of Independence

Independence was not part of the initial struggle. To the colonists, their rights as free people were at stake in the struggle. Rather than a bunch of hotheaded radicals, initially they were conservatives, merely trying to keep the liberties they possessed. They were proud of being Englishmen, so long as they were permitted to be such with full recognition of what they claimed as their rights. Only a few at first, such as Patrick Henry in his famous "give me liberty or give me death" speech of March 3, 1775, saw that the conflict would inevitably lead to independence. The conflict between the colonies and Britain was not essentially a revolution but an armed conservative insurrection to maintain an established order.

The political nature of the struggle eventually changed, however, as the conflict progressed. It became a war for independence—although not a battle for revolutionary political change such as would later occur in France. George III refused to receive Congress's Olive Branch Petition—which Congress had approved in July 1775—and, instead, issued "A Proclamation for Suppressing Rebellion and Sedi-

Changing Attitudes

No better example of the change in the attitude of the colonists toward the British can be found than that of Rev. Samuel Cooke, pastor of a church in Cambridge, Massachusetts. On May 30, 1770, he preached the annual election sermon before the royal governor and many of the leading men of the colony. In his sermon, Cooke spoke about issues related to good government and colonial rights, but emphasized that the colonists "… glory in the British constitution, and are abhorrent, to a man, of the most distant thought of withdrawing their allegiance from their gracious Sovereign, and becoming an independent state."[4] Subsequent events, however, caused a change in his point of view. Rev. Cooke became so outspoken in his opposition to British rule that five years later British troops retreating from Concord looted his house—stealing his wig and gown.

tion" on August 23, 1775. A break with Great Britain became inevitable after Parliament, in essence, placed the colonies outside British protection in December 1775 with the passage of the Prohibitory Act. The British and their supporters then began a series of attacks in early 1776, ranging from Maine to North Carolina. These actions caused many colonial leaders to reconsider their relationship with Great Britain. Thomas Paine's *Common Sense*, published in January 1776, helped push Americans toward separation from England with its attacks on British royalty and arguments for independence. It was instantly popular, with 120,000 copies printed within three months and possibly as many as half a million copies eventually sold.[5]

Americans came to believe that they must become independent from England; they did not have any real choice. The Virginia Convention on May 15 ordered its delegates at the Congress to propose a resolution asserting American independence, and a number of other colonies authorized their delegations to vote for such a measure. The Second Continental Congress, therefore, declared on July 4, 1776, that the colonies were independent of England. In the Declaration they stated an old English Puritan idea—that people did not have to submit to Parliament if its laws were unjust. Further, the Declaration took the Puritan and Enlightenment belief in equality and made it a cornerstone of the American nation. "All men are created equal," the colonists proclaimed. Finally, the Declaration listed the unfair acts of the king, hoping to win allies as well as world sympathy.

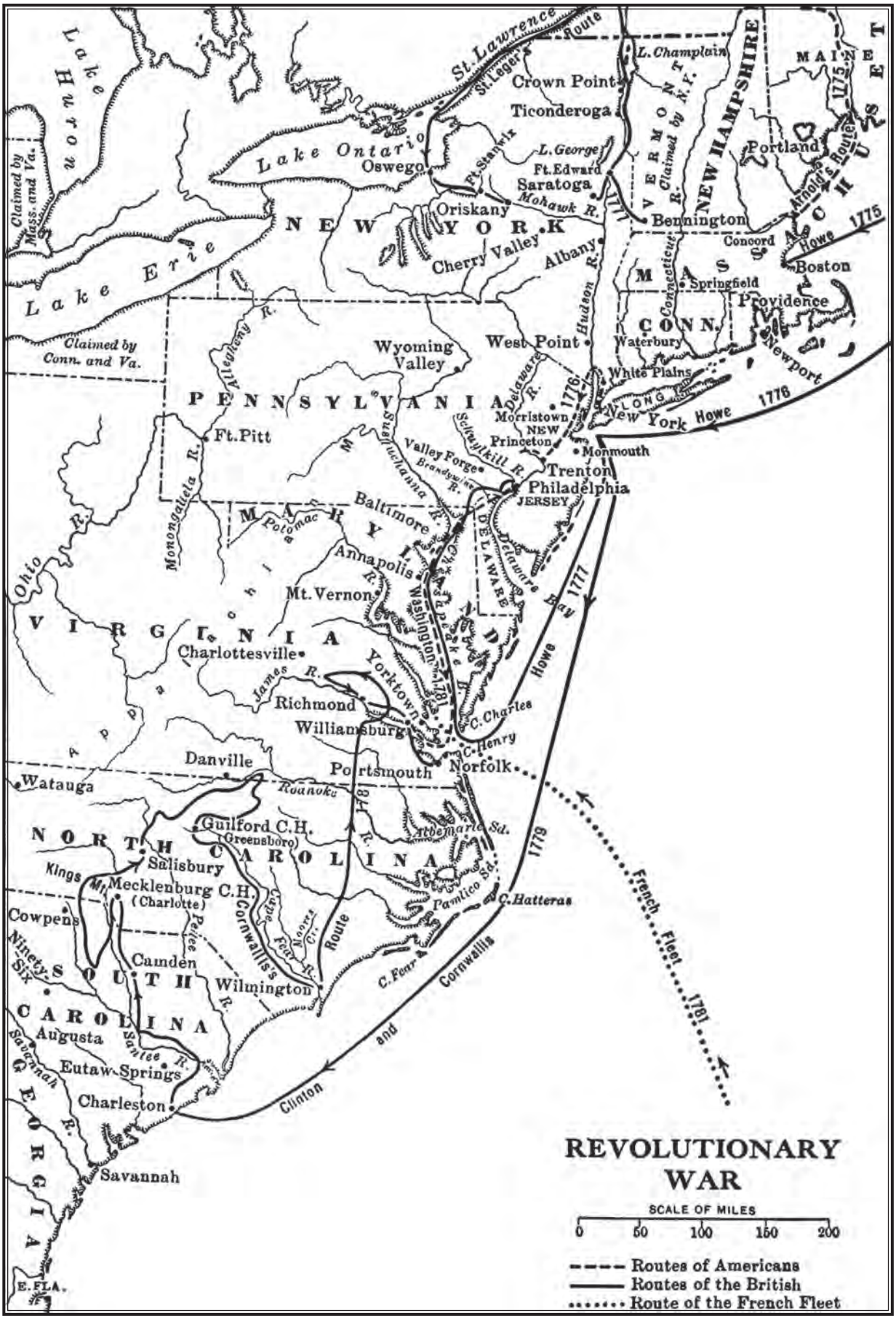
Franklin, Adams, and Jefferson working on the Declaration of Independence, Painting by Jean Leon Gerome Ferris, 1900

THE WAR FOR INDEPENDENCE

Shortly before the second meeting of the Congress, a colonial force of local militiamen met British troops marching from Boston at Lexington Green and Concord Bridge on April 19, 1775. On that day, "the shot heard around the world" was fired, and the war was begun. Militia forces converged on Boston soon afterwards, and the conflict spread quickly as Vermont militia under Ethan Allen captured the British posts at Fort Ticonderoga and Crown Point in May 1775.

At first the colonists fought alone. They bottled up the British in Boston and tried to conquer Canada. Though Boston was captured in March 1776, the invasion of Canada was defeated a few months later. In July 1776, English forces landed near New York City—capturing it in a four-month campaign—and began a drive to divide the colonies. In 1777, however, with the defeat and surrender of England's General John Burgoyne at Saratoga in upstate New York, the British plan was frustrated. Moreover, this victory encouraged the French to enter the war on the American side. French arms and troops were to prove decisive. Later the Dutch and Spanish likewise declared war on Britain.

The war was partly a civil war and partly another eighteenth-century European colonial war. Pitting colonist against colonist, the conflict drove some 80,000 Loyalists—people who supported the king—out of the colonies. Many Loyalists remained, but they kept silent about their beliefs. It has been estimated that 20 percent of the colonists were active Patriots, 15 percent were Loyalists, and the remaining 65 percent were indifferent. In general, the established, well-to-do people, with the exception of the Virginia planters and the New England merchants, were opposed to independence. As punishment, Loyalists lost their citizenship and property and had to pay fines. The



sale of Loyalist holdings made landowners of many more Americans.

The character of George Washington was also crucial to the American cause. He was the unanimous choice of the Second Continental Congress on June 15, 1775, to lead the new Continental Army. A sober, responsible Christian, he had come out early for independence. Washington became an early symbol of colonial unity, as a Virginian leading what initially was a largely New England army.

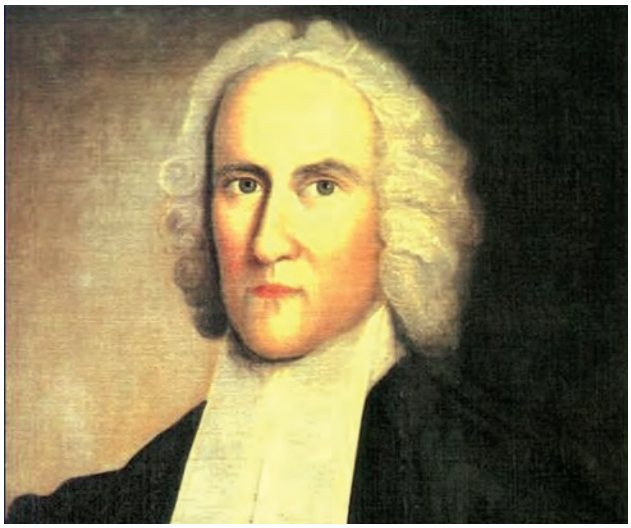
In the face of impossible circumstances, Washington's integrity and determination kept the Continental Army together. He came to be admired and trusted by many. Never numbering more than 20,000, the army fell to 5,000 men during the winter of 1776–1777. England had more than 30,000 troops in America in 1776 and almost won the war. However, with French aid and Washington's leadership, the fighting began to turn in the colonists' favor.

The British decided to concentrate their northern forces in New York and change their focus to the South, enjoying considerable success in Georgia and South Carolina during much of 1779 and 1780. However, when the British moved into Virginia, a sizable French army and a French fleet enabled Washington to force the surrender of General Charles Cornwallis's British army at Yorktown, Virginia, in October 1781. Although fighting still continued on the frontier, the British realized that the war was unwinnable and began peace negotiations the next year. Britain recognized the independence of the colonies in the Treaty of Paris in 1783.

The Role of Religion

Much debate has occurred over the years as to the role of religion and contemporary philosophy in the American struggle. There can be little doubt that Puritanism, the religion of many of the early settlers and the rationale for their very arrival on American shores, left a lasting legacy that carried on into the late eighteenth-century birth of the nation. Puritanism emphasized principles that can be seen in the American political development—voluntary association, limits on power, a necessity for civic involvement by the saints, and a careful delineation of the realms of the church and state. The heart of the

Surrender of Lord Cornwallis, **Painted by John Trumbull 1819–1820**



Jonathan Edwards, 1703–1758
Rev. Edwards was an important Great Awakening preacher.

Puritan system was the idea of covenant, initiated by God and concerned both with individual salvation and the creation of a people, or society. Puritanism also emphasized the rule of fundamental laws that harmonized with the Bible.

The Great Awakening also had an impact on the creation of the American ideal and identity. The Awakening preachers taught that men are depraved sinners, and can be saved only by the work of the Holy Spirit uniting them to Christ. This essentially Puritan and Reformed teaching challenged not only the formalism of the Anglican Church, but also its view of authority, that the monarch is the head of the church. As England attempted to promote imperialistic control, the Awakening revived the Puritans' stress upon Christian freedom. Moreover, the Puritan understanding of sin and depravity fostered the idea of limiting the power of government. This led in turn to the rejection of a hierarchical view of political authority in favor of a representative government under law, which is a constitutional republic. In a speech reflecting on the 150th anniversary of the Declaration of Independence, President Calvin Coolidge emphasized the importance of the spiritual moorings of the people in the creation of the Declaration: "[The Declaration of Independence] is the product of the spiritual insight of the people."[6]

Secular philosophies were also present in the formative American vision. One was the Enlightenment idea of radical libertarianism. According to this belief, power is evil and corrupting, and must be limited and restrained in every way compatible with social order. Related to this was the idea that privilege, an artificial and man-made endowment, is an impediment to mankind's hope for fulfillment. These ideas were deeply ingrained in Whiggism—the prevailing political philosophy of the day.

What stand did colonial churches take on the "revolutionary" ferment? For the most part, they favored resistance to the English. Most of the Presbyterians, Congregationalists, and Baptists actively supported the colonies' move toward independence. The Anglicans, or Episcopalians, in New England remained loyal to England, but in the South they opposed the British. In the Middle Colonies, the Episcopalians were evenly divided. Episcopal clergymen were often in a dilemma, since part of their ordination vow included support for the king of England as the head of their church. Nevertheless, two thirds of the signers of the Declaration of Independence were Episcopalians.

Methodists were also in a difficult position. John Wesley took the English side, with the result that active American patriots were skeptical of the Methodists' commitment to the colonial cause. Quakers and Moravians, being conscientious objectors to war, did only what little they could to give moral support to their fellow colonists.

John Witherspoon

There was one Presbyterian clergyman who was seen at the time as the chief spiritual architect of the American struggle for independence. His name was John Witherspoon, the president of Princeton College and the only clergyman to sign the Declaration of Independence. He was an heir of the Scottish Presbyterian movement of 1648, in which Christian men covenanted to protect religious and civil liberty. As Horace Walpole, eminent British writer and mem-

John Knox Witherspoon, 1723–1794

ber of Parliament of the day, once observed, "Cousin America has run off with a Presbyterian parson."[7]

Witherspoon did not see the colonists' actions as treasonous or as motivated by selfish economic concerns. He and his followers did not see their actions as "revolution" but as necessary for the preservation of a godly order that America had originally been destined to establish. For Witherspoon, freedom of conscience, and therefore freedom to worship, was bound up with the notion of political or civil freedom. In one of the most famous political sermons of the day, Rev. Witherspoon made the following defense of the American cause in May 1776:

> …I willingly embrace the opportunity of declaring my opinion without any hesitation, that the cause in which America is now in arms, is the cause of justice, of liberty, and of human nature. So far as we have hitherto proceeded, I am satisfied that the confederacy of the colonies has not been the effect of pride, resentment, or sedition, but of the deep and general conviction that our civil and religious liberties, and consequently in a great measure the temporal and eternal happiness of us and our posterity, depended on the issue. The knowledge of God and his truths have from the beginning of the world been chiefly, if not entirely confined to those parts of the earth where some degree of liberty and political justice were to be seen, and great were the difficulties with which they had to struggle, from the imperfections of human society, and the unjust decisions of usurped authorities. There is not a single instance in history, in which civil liberty was lost, and religious liberty preserved entire. If therefore we yield up our temporal property, we at the same time deliver the conscience into bondage.[8]

Witherspoon preached numerous sermons along such themes and taught his Calvinist political theology to his Princeton students, many of whom became key individuals in the American drive for liberty and independence. Among his students were a future American President—James Madison—and vice president, nine Cabinet officers, twenty-one U.S. senators, thirty-nine U.S. representatives, three Supreme Court justices, twelve state governors, six members of the Continental Congress, thirty-three judges, and thirteen college presidents in eight states.

An examination of the writings and speeches of the Founding Fathers leads to the general conclusion that Puritan Christianity, Enlightenment philosophies, and Whig political ideology were largely responsible for the development of the original guiding principles of the new nation. As one analyst has summarized it:

> The historian of religion would stress three interrelated intellectual strands that gave the pattern to the new national consciousness: [1] the new emphasis in evangelical Calvinism (the prevalent religious commitment of the people), stressing the individual's direct, personal, experiential relationship to God; [2] the general acceptance of the deistic theory of inalienable natural rights and contractual self-government; and [3] the resurgence of the radical Whig ideology with its fear of hierarchical tyranny (the united despotism of church and state)....[9]

Chapter 2 Review Exercises

TRUE OR FALSE

Write T in the blank if the statement is true or F if the statement is false.

_____ 1. The French and Indian War was fought between the British and French to determine who would control India.

_____ 2. The Tea Act required the colonists to purchase tea from Holland.

_____ 3. Representation of the people for most of the colonies at the First Continental Congress was indirect.

_____ 4. The Quebec Act established a decentralized form of government for Quebec.

_____ 5. John Wesley took the side of the English during the War for Independence.

MATCHING

Write the letter of the correct description beside the number of each person on the left.

_____ 1. William Pitt the Elder	a. commander of the Continental Army
_____ 2. George Grenville	b. author of *Common Sense*
_____ 3. Samuel Adams	c. captured Fort Ticonderoga and Crown Point
_____ 4. Patrick Henry	d. surrendered at Saratoga, New York
_____ 5. Thomas Paine	e. president of Princeton College
_____ 6. Ethan Allen	f. surrendered at Yorktown, Virginia
_____ 7. George Washington	g. gave the "give me liberty or give me death" speech
_____ 8. General Burgoyne	h. became George III's prime minister in 1763
_____ 9. General Cornwallis	i. organized committees of correspondence
_____10. John Witherspoon	j. became British secretary of state in 1757

MULTIPLE CHOICE

In each of the following blanks, place the letter of the word or phrase that makes the statement correct.

_____ 1. Parliament stated in the (a) Intolerable, (b) Stamp, (c) Declaratory Act that the colonies were subordinate to the Crown and Parliament of Great Britain.

_____ 2. The Coercive Acts were passed by Parliament in response to (a) the Boston Tea Party, (b) the Boston Massacre, (c) boycotts of English goods.

_____ 3. The First Continental Congress issued the (a) Declaration of Rights and Grievances, (b) Declaration of Rights, (c) Declaration of Independence.

_____ 4. The colonies were in essence placed outside the protection of Britain by the (a) Declaratory Act, (b) Prohibitory Act, (c) Coercive Acts.

_____ 5. American independence was declared by the (a) Stamp Act Congress, (b) First Continental Congress, (c) Second Continental Congress.

FILL IN THE BLANK

Complete each of the following sentences with the word or phrase that makes it a correct statement.

1. The main European colonial rivals were _____, _____, and _____.
2. The purpose of the _____ was to limit colonial settlement west of the Appalachian Mountains.
3. The colonists responded to the Stamp Act with _____ and _____.
4. The colonies responded to the Coercive Acts by _____ and _____.
5. The Declaration of Independence stated the Puritan ideas that _____ and _____ _____.

ESSAY QUESTIONS

Answer the following questions on separate paper.

1. Why did the English decide that the American colonies should make a greater contribution to the expense of the government?
2. Identify and explain the elements in George Grenville's plan.
3. What were the main areas of contention between the colonists and the British?
4. List four principles of Puritanism that can be seen in American political development.
5. What were the main ideas that were deeply ingrained in the political philosophy of Whiggism?

Chapter 2 Notes—

1. George Bancroft, *History of the United States of America From the Discovery of the American Continent*, rev. ed. 6 vols., 1882, cited in the CD Sourcebook of American History (Provo, UT: Infobases, Inc., 1992), Record 24826.

2. "The Declaratory Act," 6 George III, c. 12, (1766), http://www.constitution.org/bcp/decl_act.htm (accessed 27 Nov 2013).

3. Sol Bloom, *The Story of the Constitution* (Washington, DC: The United States Constitution Sesquicentennial Commission, 1937),12.

4. Samuel Cooke, "An Election Sermon," in *American Sermons: The Pilgrims to Martin Luther King Jr.*, ed. Michael Warner (New York: Literary Classics of the United States, Inc., 1999), 487.

5. John Richard Alden, *The American Revolution* (New York: Harper & Row, Publishers, 1954; Harper Colophon Books, 1962), 76–77.

6. Calvin Coolidge, "Speech on the 150th Anniversary of the Declaration of the Independence," July 5, 1927, *TeachingAmericanHistory.org*, http://teachingamericanhistory.org/library/document/speech-on-the-occasion-of-the-one-hundred-and-fiftieth-anniversary-of-the-declaration-of-independence/ (accessed 7 Jan 2014).

7. Horace Walpole, cited in Garry J. Moes, *Streams of Civilization,* Vol. Two (Arlington Heights, IL: Christian Liberty Press), 110.

8. John Witherspoon, "The Dominion of Providence Over the Passions of Men (excerpt)," *TeachingAmericanHistory.org*, http://teachingamericanhistory.org/library/index.asp?document=597 (accessed 27 Nov 2013).

9. William McLoughlin, "The Role of Religion in the Revolution," in *Essays on the American Revolution*, ed. Stephen Kurtz and James Hutson (New York: W. W. Norton & Company, Inc., 1973), 199.

—Chapter 15—

The Nature of Our Constitution

Now that we have almost completed our study of the Constitution, we should take a moment to consider the nature and vitality of our Constitution. Is it foundational to our system of government, or is it simply an interesting historical document? Originally, the Constitution was considered the basic law of the country. Many today, however, believe that the Constitution is pliable and simply represents what the courts decide. Charles Evans Hughes—who served on the Supreme Court as an associate justice from 1910–1916 and chief justice from 1930–1941—illustrates this sentiment when he wrote in 1907 that "We are under a Constitution, but the Constitution is what the judges say it is." He went on to expand this idea the following year when he stated: "The Constitution, with its guarantees of liberty and its grants of federal power, is finally what the Supreme Court determines it to mean."[1]

Our Constitution has often been described as a "living" Constitution, with the ability to change to keep pace with a dynamic American society. There is certainly some truth to this portrayal—our constitutional system of government is certainly not static—yet this description is often used to define a document that can be adjusted at will, as putty in the hands of those who wish to change it.

A better description would be that of a durable document. The Constitution has been remarkably stable, in spite of the many changes that have occurred in American life and society during the more than 200 years that have passed since the Constitution became effective. The United States has been, and continues to be, a growing and developing nation. The American people have been a dynamic society. Changing ways of living have been characteristic of our nation's growth.

Charles Evans Hughes

Charles Evans Hughes, 1862–1948: Baptist; Governor of New York; Associate Justice of the Supreme Court of the United States, 1910–1916; Republican candidate for President, 1916; Secretary of State, 1921–1925; member of Permanent Court of Arbitration at The Hague; sworn in as Chief Justice of the United States, February 24, 1930; retired from office, June 30, 1941.

Yet, in spite of times of change and testing, the plan of government incorporated in the document produced by the Convention has endured. It is the oldest written constitution for a nation in existence. Considering the complexity of changes that have come about since our Constitution became effective, it is remarkable that a document written in the words and context of eighteenth-century life can still serve as the foundation of our government today. The key to understanding the enduring qualities of our Constitution lies in recognizing that it is a document that is stable enough to maintain a consistent system of government and yet able to meet the needs of a changing nation. It is this characteristic that insures the continuing vitality of our Constitution.

An apt analogy for the American system of government is that of the human body. The Constitution is the skeleton, which maintains both the form and shape of the body while providing the ability to move if needed. The amendments, laws, traditions, and court decisions are the organs, muscles, and nerves that enable the skeleton to be put to use.

Organic Law

Just as a skeleton is fundamental to the body, so is the Constitution fundamental to our system of government. It is the fundamental law of the nation, from which all else develops. As Alexander Hamilton stated in Federalist No. 78: "A constitution is, in fact, and must be, regarded by the judges as a fundamental law."[2]

This understanding is reflected, at least formally, in compilations of the laws of the United States, which have included the text of the Constitution since 1796. Subsequent compilations of United States laws in 1814 and 1845 continued to include the Constitution, as well as the Declaration of Independence and the Articles of Confederation. In 1877, Congress authorized President Rutherford B. Hayes to appoint a commissioner to revise the statutes of the United States and stipulated that the new revision include the Declaration of Independence, Articles of Confederation, the Northwest Ordinance of 1787, and the Constitution. The commissioner, Senator George Boutwell of Massachusetts, compiled these four documents under the heading "The Organic Laws of the United States." Since 1878, when Senator Boutwell completed his work, these four documents have been included in what is now known as the *United States Code*.[3]

What does it mean for the Constitution to be one of the organic laws of the United States? Organic law can be defined as "… pertaining to the constitutional or essential law or laws organizing the government of a state."[4] Joseph Story reflected this concept when he wrote the following about the rules of constitutional interpretation: "[The Constitution] is to be construed, as a *frame*, or *fundamental law* of government, established by the PEOPLE of the United States, according to their own free pleasure and sovereign will."[5] Story saw the Constitution as the basic law of the United States, not simply as a statement of principles that can be used as a guide when determining the law. The Supreme Court, in the 1944 voting rights case of *Smith v. Allwright* (321 U.S. 649), affirmed this understanding of the Constitution when it stated that the United States's "… organic law grants to all citizens a right to participate in the choice of elected officials without restrictions by any State because of race."[6]

Applying the Constitution

The United States of today would be virtually unrecognizable to the Framers of the Constitution. It has grown from a collection of thirteen states clustered along the Atlantic coast to a nation of fifty states spread from the Atlantic to the Pacific. The population has increased from less than four million in 1787 to more than 316 million in 2013. Primarily an agricultural nation at the time the Constitution was written, the United States is now the leading industrial and technological nation of the world. America has also endured many trials during its history. The United States has been involved in several wars, was almost torn apart as a unified nation, has undergone periods of economic distress, suffered serious terrorist attacks, and endured times of social unrest since the ratification of the Constitution.

All of these times of change and trouble have affected our political system and, in some cases, even influenced our Constitution. Yet, in spite of all of this, our constitutional system of government has endured and adapted to meet the changing needs of the United States.

CONSTITUTIONAL AMENDMENT

The Framers of the Constitution were well aware that changes would occur in the United States as time passed. They knew that changing ways of living

would create situations that would require alterations in the plan of government. For this reason they incorporated formal amending procedures in Article V of the document. It was this very amendment process that removed any doubts Thomas Jefferson might have had about other provisions of the Constitution.

The United States Constitution has been remarkably stable over the years. Ten amendments were added almost immediately in 1791 to insure personal rights and liberties with which the new federal government could not interfere. In the years that followed, only seventeen more amendments have been added as new situations arose that created needs for additions or changes in the Constitution.

CONSTITUTIONAL PRACTICE

The delegates to the Constitutional Convention wrote what might be called a "skeletal" document, enabling the various branches of government to put "meat on the bones" of our system of government. Many provisions of the Constitution were not stated in great detail—although certainly some articles have greater specificity than others—rather, power was given to Congress to make laws filling in specific details when the need arose. The "Necessary and Proper" Clause in Article I, Section 8, is a good example of a built-in feature that gives the Constitution flexibility. Another example is the power conferred upon Congress in Article III to establish courts inferior to the Supreme Court.

Because the Framers intentionally made many provisions of the Constitution general, the inherent adaptability in the Constitution has enabled changes to be made within our system of government without having to go through the process of formally amending the Constitution. This flexibility in the practice of our constitutional system has inevitably given rise to political debate and, at times, constitutional questions, but it has enabled our system to deal with events as they have arisen.

The Louisiana Purchase is an early example of the ability of the Constitution to be adapted to new situations. In 1803, American representatives

Lewis and Clark on the Lower Columbia,
Painted by Charles Marion Russell

Lewis and Clark explored the new Louisiana Territory, which had been purchased from France in 1803.

concluded a treaty with France to buy the entire Louisiana Territory. President Jefferson doubted that the Constitution gave the federal government the authority to purchase new territory and create new states beyond the original borders of the United States. He considered, therefore, proposing a constitutional amendment to Congress to grant specific power to enable the United States to do so. President Jefferson was persuaded, however, by then Secretary of State James Madison and others that such an amendment was unnecessary. The treaty-making power of the Constitution gave the government sufficient authority to acquire foreign territory. This action by President Jefferson provided the precedent for the subsequent acquisition of territory from such foreign powers as Spain, Great Britain, Mexico, Russia, and Denmark.

The establishment of the Air Force as a separate branch of the armed forces is a more recent example of the application of existing constitutional principles to a new situation. No provision is made for the operation of an air force, since no such thing existed anywhere in the world at the time of the Constitutional Convention; only the Army and Navy are referenced in the Constitution. Initially, American air units were part of either the Army or Navy, but the experience of World War II pointed toward the need for a separate branch of the armed forces. Therefore, in 1947 the

personnel of the Army Air Force were transferred to the new Department of the Air Force, which was established as a separate agency under the newly established Department of Defense. An amendment authorizing the Air Force could have been added to the Constitution, but Congress and President Truman took instead the "skeletal" constitutional instructions for the original branches of the armed forces—the Army and Navy—and applied them to the new Air Force.

Customs and traditions that have developed through usage have also been important features in the operation of our system of government. One of the most important traditions that became part of the American political system was the development of political parties soon after the ratification of the Constitution. In spite of the fact that political parties were not part of the explicit constitutional system, they quickly became such an integral part of American politics that they significantly affected the way Presidents were selected. This tradition of political parties led directly to the addition of the Twelfth Amendment to the Constitution.

Another striking illustration of change effected by tradition is that of presidential term limits. The original Constitution set no limit on the number of terms for the President. This became a matter of some controversy during the ratification debate. Thomas Jefferson, in his letter to James Madison of December 20, 1787, stated: "The second feature [of the Constitution] I dislike, and greatly dislike, is the abandonment in every instance of the necessity of rotation in office, and most particularly in the case of the President."[7]

George Washington, however, set a precedent for an unofficial limit of two terms by refusing a third term as President. The tradition was followed until President Franklin D. Roosevelt was elected to third and fourth terms in 1940 and 1944. President Roosevelt's breaking of the tradition of serving no more than two terms as President was accepted by the people of the United States due to the danger of the times, but the two-term tradition was reasserted after his death. The limit of two terms for Presidents became a formal part of the Constitution when the Twenty-second Amendment was adopted in 1951.

SUPREME LAW OF THE LAND

As we consider the nature of the Constitution as organic law, it must always be kept in mind that the Constitution claims legal supremacy for itself, and the laws and treaties of the United States. Article VI states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Yet it has often been a matter of controversy as to what this "Supremacy Clause" actually put into effect.

In our political system, we have tended to place the responsibility of applying the Supremacy Clause into the hands of the federal judiciary, in particular the Supreme Court. As we have already seen, there was a general, although not unanimous, consensus among the Framers that the judiciary would have a limited authority to review cases in which the law and the Constitution were clearly inconsistent with each other. Oliver Ellsworth of Connecticut, who later went on to become chief justice of the Supreme Court, for example, supported this concept in a speech before the Connecticut state convention on January 7, 1788. Ellsworth declared:

> This constitution defines the extent of the powers of the general government. If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the constitution does not authorise, it is void, and the judicial power, the national judges, who to secure their impartiality are to be made independent, will declare it to be void. On the other hand, if the states go beyond their limits, if they make a law which is an usurpation upon the general govern-

ment, the law is void, and upright independent judges will declare it to be so.[8]

Chief Justice John Marshall emphasized the importance of the Supremacy Clause in the case of *Gibbons v. Ogden* (1824). The Supreme Court overturned a law of the state of New York that gave a transportation monopoly across the Hudson River from New York to New Jersey, because it violated the control over interstate commerce that was given to the federal government by the Constitution. In his decision, Marshall said that:

> … it has been contended, that if a law passed by a State, in the exercise of its acknowledged sovereignty, comes into conflict with a law passed by Congress in pursuance of the Constitution, they affect the subject, and each other, like equal opposing powers.
>
> But the framers of our Constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of an act, inconsistent with the Constitution, is produced by the declaration, that the Constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the State legislatures as do not transcend their powers, but though enacted in the execution of acknowledged State powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the Constitution, or some treaty made under the authority of the United States. In every such case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.[9]

The power exercised by the Supreme Court to review legislative and executive actions has been a factor of great importance in applying the Constitution to our system of government. The Constitution does not, however, explicitly provide for the power of judicial review; it can only be inferred from the Constitution. It is a power that has developed through tradition and custom during the years that have passed since our government was established. This has given rise at times to considerable debate over the Court's possible misuse of judicial review, especially after particularly controversial Court decisions, when it has been argued that the high Court has exceeded its constitutional authority.

Changes to the Constitutional Order

The Framers created a Constitution that is able to meet the changing needs of the country. The Constitution can be amended as needed, and can be applied to a varying set of circumstances. At an earlier time, most people believed with George Washington, who stated in his Farewell Address, that "… the Constitution which at any time exists, 'till changed by an explicit and authentic act of the whole People, is sacredly obligatory upon all."[10] However, many no longer hold this understanding of the Constitution.

Many now argue that the Constitution is whatever we wish to make of it, or seem to think that the Constitution is irrelevant. Former Speaker of the House of Representatives Nancy Pelosi, in 2009, when responding to a question by a reporter about Congress's constitutional authority to require the insurance mandate of Obamacare, asked: "Are you serious? Are you serious?" Her spokesman later stated: "That is not a serious question. That is not a serious question."[11] Others suggest that the Constitution is inadequate for the issues of today. Many argue that history has changed and our constitutional order must change with it. For example, it has been suggested that the federal government "shutdown" in 2013 was really James Madison's fault because of problems in our constitutional system.[12]

This attitude has permeated much of our national government. As we have seen in previous chapters, all of the branches of the federal government—Congress, President, and Supreme Court—have at times acted beyond their original constitutional boundaries. Presidents have fought wars without congressional warrant, established agreements with foreign countries without

Senate approval, and engaged in lawmaking beyond the scope of authority granted by the Constitution or Congress. Congress has granted extensive lawmaking authority to the presidency. The Supreme Court has at times engaged in legislating from the bench. All of these tend to blur the separation of powers between the branches of government.

THE PRESIDENT

The belief that changes in history require changes in America's constitutional order is nothing new. Important progressive politicians of both major political parties were making this argument early in the twentieth century. Former President Theodore Roosevelt stated the following in 1910: "We should permit [a fortune] to be gained only so long as the gaining represents benefit to the community. This, I know, implies a policy of a far more active governmental interference with social and economic conditions in the country than we have yet had, but I think we have got to face the fact that such an increase in governmental control is now necessary."[13] Two years later, Woodrow Wilson, during his 1912 presidential campaign, made the following statement: "Living political constitutions must be Darwinian in structure and in practice. Society is a living organism and must obey the laws of life, not of mechanics; it must develop."[14]

Progressivism has had an important impact on the governmental system of the United States. The first three Presidents of the twentieth century—Theodore Roosevelt, William Howard Taft, and Woodrow Wilson—are considered progressives, although they did not always agree with one another. However, during the administrations of these three Presidents, the progressive movement helped to pass the Sixteenth through the Nineteenth Amendments and establish many of America's regulatory agencies, such as the Federal Trade Commission.

Later Presidents may not have technically been part of the Progressive Era, but a number were influenced by progressive thinking. One of the most important was Franklin Roosevelt. During the 1932 presidential campaign, Franklin Roosevelt showed that he had similar sentiments to earlier progressives: "New conditions impose new requirements upon Government and those who conduct Government."[15] After Franklin Roosevelt won reelection in 1936 and then took the oath of office again early in 1937, he revealed his thinking on the Constitution in the following comment:

> When the chief justice read me the oath and came to the words "support the Constitution of the United States," I felt like saying: "Yes, but it's the Constitution as I understand it, flexible enough to meet any new problem of democracy–not the kind of Constitution your court has raised up as a barrier to progress and democracy."[16]

After becoming President, Franklin Roosevelt made changes to our constitutional system through his New Deal programs in an effort to deal with the economic conditions of the Great Depression. Later, in 1944, he proposed an economic bill of rights, going beyond the original idea of the Bill of Rights as preventing government interference on the rights of citizens to one where citizens have a right to certain goods and services that are to be ensured by the government. President Lyndon Johnson had a similar idea in his Great Society programs, which were enacted in the 1960s.

SUPREME COURT

The branch of government that has seen the greatest change from the original constitutional order has been the judiciary, especially the Supreme Court. Some would give the Supreme Court wide latitude in its ability to make decisions that may have a significant effect on American society. Woodrow Wilson characterized the Supreme Court as a continuous constitutional convention. Likewise, Senator George Norris, who served in the United States Senate from 1913 to 1943, critically commented that the Supreme Court had become "a continuous constitutional convention" in light of the Court's increasing tendency to reverse acts of Congress.[17]

More recently, William Brennan—who served on the Supreme Court from 1956 to 1990 as one of

the twentieth-century's most influential justices—stated in a speech in 1985 that the Supreme Court justices "… are the last word on the meaning of the Constitution…."[18] The Supreme Court expressed Justice Brennan's belief in 1958, in the case of *Cooper v. Aaron*, when it claimed that its interpretations were as much a part of the Supreme Law of the Land as the specific statements of the Constitution, treaties, and laws passed by Congress. In other words, the Court has erroneously claimed that its rulings are supreme, equal to the Constitution.

Two of the Supreme Court decisions we have reviewed earlier in this book clearly illustrate the tendency of the Court to go beyond its original boundaries. An early example was the *Dred Scott* case (1857). In this case, Chief Justice Roger Taney ruled that African-Americans could not by definition be United States citizens, and, therefore, had no right to sue in federal court, regardless of whether they were free or slave. In addition, he ruled that the 1820 Missouri Compromise was in violation of the Due Process Clause of the Fifth Amendment and thus unconstitutional, because it had the effect of depriving slave owners of their property by preventing them from taking their human property—that is, their slaves—wherever they wanted within the territories of the United States. Chief Justice Taney may have thought that this decision would help to settle the slavery issue, but it had, instead, the effect of inflaming the passions surrounding slavery.

The Court made this decision in the face of clear historical evidence to the contrary. Free blacks had been able to vote in five states at the time of the ratification of the Constitution, and Congress—both under the Articles of Confederation and the Constitution—had a consistent legislative record of regulating slavery in the territories, even to the point of prohibiting it in some instances. A number of the Framers of the Constitution voted for such regulations or prohibitions while serving in Congress.

This decision was an early example of judicial lawmaking, undermining the separation of powers between the Supreme Court and Congress. The Court decided on its own for the entire nation that blacks could not be United States citizens, in spite of the fact that nowhere in the Constitution was the Court given the authority to determine the qualifications for citizenship. In addition, as we have seen, its use of the Due Process Clause went beyond the original intent of the authors of the amendment, thus justifying the Court's interference with Congress's oversight of the territories.

Another, more recent, decision was that of the infamous 1973 *Roe v. Wade* case. The Supreme Court, in this case, voided a Texas law restricting abortion, and by extension all such laws throughout the country. The Court based its decision on a right of privacy it had determined to be in the Bill of Rights and in the protection of personal liberty found in the Fourteenth Amendment.

The problems with this decision are several. First, it misconstrued both the Fourteenth Amendment and the Bill of Rights. The Fourteenth Amendment was originally intended to secure a narrow set of fundamental rights for the freed slaves—not reproductive or gender civil rights—and was not meant as a means of applying the Bill of Rights to the states. In addition, while it is clear that some form of privacy rights can be determined from the Bill of Rights, nowhere can it be concluded that this applies to abortion.

This case also illustrates the damage done to the federal nature of the Constitution since the Supreme Court began to selectively apply provisions of the Bill of Rights to the states. In the *Roe* decision, it acted as an unelected legislature for the entire country, nationalizing abortion policy for all of the states. It overrode the clear historical record that abortion had always come under the control of the states, some of which in 1973 had lenient laws, while others had stringent regulations.

The Penumbra of the Bill of Rights

In 1965, the Supreme Court discovered in the case of *Griswold v. Connecticut* (381 U.S. 479) a generalized right of privacy. The state of Connecticut had an old law that forbade the use of contraceptives, even by married couples, and a variety of groups—such as Planned Parenthood and the American Civil Liberties Union—supported a court case to get this law overturned.

Justice Arthur Goldberg, 1908–1990

In its decision overturning the Connecticut law, the Court determined that the Bill of Rights contained a right of privacy. It stated that "The Connecticut statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights." The Court did not claim that there is a specific right to privacy found in the Constitution; Justice Arthur Goldberg in his concurring opinion stated that "… the Constitution does not speak in so many words of the right of privacy in marriage…." Rather, it applied privacy issues that earlier courts had dealt with at the "penumbras," or fringes, of the First, Third, Fourth, and Fifth Amendments. The Court then determined that these specific "penumbras" created a more general right of privacy from the "penumbra" of the entire Bill of Rights.[19]

This "penumbra" of the Bill of Rights had an important impact on the 1973 case of *Roe v. Wade* (410 U.S. 113). Those who brought suit contended that the Texas abortion laws "… improperly invade a right, said to be possessed by the pregnant woman, to choose to terminate her pregnancy. Appellant [or pregnant woman] would discover this right in the concept of personal 'liberty' embodied in the Fourteenth Amendment's Due Process Clause; or in personal, marital, familial, and sexual privacy said to be protected by the Bill of Rights or its penumbras…." Notice that this claim is based largely on the reasoning of the *Griswold* decision. The Court essentially agreed with the appellant, stating:

> The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, … the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution.…
>
> This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.[20]

The Supreme Court has continued to reaffirm the basic principles of the *Roe* decision. In the case of *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), the Court stated that "*Roe* determined that a woman's decision to terminate her pregnancy is a 'liberty' protected against state interference by the substantive component of the Due Process Clause of the Fourteenth Amendment."[21] This "liberty" referenced in the *Casey* decision is based in large measure on the general right of privacy discovered by earlier Court decisions in the "penumbra" of the Bill of Rights.

CONGRESS

While the judiciary may have seen the greatest change in the constitutional order, the legislative branch has done much to change our constitutional order, as well. Congress has taken actions that have both encroached upon and augmented presidential authority. It has encroached upon presidential authority through the use of legislative vetoes. One such example is the War Powers Resolution, which requires the President to remove armed forces engaged in hostilities when directed to do so by Congress in

cases where there is neither a declaration of war nor a statutory authorization for the use of military force. This and other examples of the use of legislative vetoes would seem to be an unconstitutional vesting of executive power within the Congress.[22]

At the same time, while Congress was encroaching on executive authority, it was also adding to executive authority. Congress frequently delegates lawmaking authority to the executive branch. Congress particularly likes to invest independent agencies with lawmaking power, which it often then controls through congressional oversight committees.[23] Congress went so far as to grant the President line-item veto authority in 1996, granting Presidents authority to cancel certain provisions of appropriations bills. However, in 1998, the Supreme Court in *Clinton v. City of New York* (524 U.S. 417), ruled that the line-item veto was unconstitutional because the Constitution only granted the President the authority to veto bills in their entirety.

Independent agencies would seem to have obvious separation of power issues due to the way Congress structures them. In a speech about the Federal Trade Commission in 2009, Commissioner Thomas Rosch stated the following: "The administrative agencies, in particular, present a separation of powers conundrum because they pose the question of whether, when Congress establishes an independent agency or commission in one branch with power that belongs to another, does it unconstitutionally vest legislative, executive, or judicial power in that entity?" So far, the Supreme Court, in a series of cases beginning in 1935, has accepted this structure for independent agencies.[24]

The Future of the Constitution

As we have seen, the Constitution is the organic law or fundamental law of the nation. The Constitution itself claims to be the supreme law of the land. That means, therefore, that all branches of government—President, Congress, and the Supreme Court—are subordinate to the Constitution.[25] All actions of these branches of government should be guided by the provisions of the Constitution. Undoubtedly, there will continue to be differences of interpretation regarding the Constitution, as there have been throughout American history, but nonetheless the focus should be on the faithful application of the Constitution to meet the needs of the nation.

How is this to be accomplished; how are the branches of government to be kept in line? The Constitution has built-in safeguards—the separation of powers and checks and balances—to preserve our political liberties. One of the greatest protections of the Constitution is left unspoken, however. That protection is an informed, constitutionally literate citizenry. Citizens who appreciate the Constitution and elect to office those who understand it are the greatest protectors of our constitutional order. James Madison wrote in 1817 about the need of the people to be vigilant in order to protect their liberties:

> The people of the U. S. owe their Independence & their liberty, to the wisdom of descrying in the minute tax of 3 pence on tea, the magnitude of the evil comprised in the precedent. Let them exert the same wisdom, in watching [against] every evil lurking under plausible disguises, and growing up from small beginnings.[26]

Self Restraint

The Constitution has established an independent judiciary that is supposed to be insulated from the impact of politics; citizens are unable to directly influence the federal courts. Ideally, the courts should restrain themselves, following principles that can be determined from the nature of the Constitution and from early constitutional history. Most importantly, the very nature of the Constitution limits the authority of the Supreme Court. The Court is subject to the Constitution, and its decisions are to be based on the Constitution. The decisions of the Court should not in any sense be considered equal to the Constitution itself.

When determining particular cases, the Court should only overrule national or state laws in situa-

tions where there is a clear contradiction between the laws and the Constitution. Alexander Hamilton stated that the courts should "… declare all acts contrary to the *manifest tenor* of the constitution void"[27] (emphasis added). Only those acts that were inconsistent with the "… manifest tenor of the constitution …" should be overruled. Chief Justice John Marshall reinforced this principle in more than one Court decision. In the case of *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819), he stated that "… in no doubtful case, would [the Court] pronounce a legislative act to be contrary to the constitution."[28] A few years later, he stated the principle "… that the presumption is in favour of every legislative act, and that the whole burden of proof lies on him who denies its constitutionality" when ruling in *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419 (1827).[29]

Judges must also recognize that they are not lawmakers and should not be making policy decisions. They are to attempt to evaluate laws in terms of the intentions of those who write the laws. The debates on the proposed Council of Revision, which have been discussed earlier, make it clear that the Convention did not want judges involved in policy decisions; their veto power should extend solely to deciding upon the constitutionality of laws in particular court cases. Alexander Hamilton indicated in his discussion of the judiciary in Federalist No. 78 that the judiciary must remain distinct from both the legislative and executive branches; the judiciary should not exercise either legislative or executive powers. The courts are to exercise legal *judgment*, not legislative *will*. Hamilton also emphasized in the same essay the importance of the intent of lawmakers in guiding judges as they decide cases. Abraham Lincoln reinforced the importance of the intent of legislators when he stated in his first inaugural address regarding the fugitive slave provision of the Constitution that "… the intention of the law-giver is the law."[30] Chief Justice Marshall reiterated this very principle in his decision in *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 737 (1824), when he stated that "Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law."[31]

INSTITUTIONAL RESTRAINT

The Supreme Court, however, has not always done a good job of restraining itself. In such situations, as individual citizens, and particularly as Christians, we still must hold the Court in respect. As President Lincoln put it in his first inaugural address, regarding the *Dred Scott* decision:

> I do not forget the position assumed by some that constitutional questions are to be decided by the Supreme Court; nor do I deny that such decisions must be binding in any case, upon the parties to a suit, as to the object of that suit, while they are also entitled to very high respect and consideration, in all parallel cases, by all other departments of the government.[32]

President Lincoln recognized, however, the danger to the nature of the Republic if the Court's rulings were considered to be equivalent to the Supreme Law of the Land. He went on to say in his inaugural address that:

> … the candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, in personal actions, the people will have ceased, to be their own rulers, having to that extent, practically resigned their government, into the hands of that eminent tribunal.[33]

If the Supreme Court is to be restrained, other than by itself, it must be by the other branches of government. Early Presidents did not accept the claim that the Supreme Court was necessarily the final word on the meaning of the Constitution. Their reasoning was that the executive branch was coequal to that of the judiciary, and they as Presidents had taken an oath to uphold the Constitution, just as the judges. Therefore, they had a responsibility to determine constitutionality for themselves. President Andrew Jackson, for example, vetoed the law rechartering

the Bank of the United States in 1832, in part due to constitutional scruples, in spite of the fact that the Supreme Court had already declared in *McCulloch v. Maryland* that the national bank was constitutional. Even Chief Justice Marshall accepted the coequal principle when he did not challenge President Jefferson's refusal to comply to a subpoena for documents in the 1807 Aaron Burr treason case.[34]

The failure of Presidents to fully appreciate and carry out their coequal responsibilities to evaluate the constitutionality of legislation can result in the Supreme Court unnecessarily getting involved in "fixing" legislation. For example, on March 27, 2002, President George W. Bush signed the Bipartisan Campaign Reform Act (also known as the McCain-Feingold Act) into law, in spite of the fact that he had serious questions about the constitutionality of portions of this bill. As he signed the bill into law, President Bush stated the following: "… [T]he bill does have flaws. Certain provisions present serious constitutional concerns." He also expressed concerns that First Amendment questions might arise. Instead of dealing with these problems himself, however, President Bush left it to the courts when he said: "I expect that the courts will resolve these legitimate legal questions as appropriate under the law."[35] While President Bush's expectations were ultimately justified, it took seven years and a series of four narrowly decided Supreme Court decisions before much of the substance of the law's provisions was ruled unconstitutional. The federal campaign finance law went through much turmoil, however, during those years, and the Court's final decision about this law in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), continues to remain controversial. If President Bush had vetoed the act, a better law might have been crafted that could have passed constitutional muster.

The impeachment clause was used once to try to control the Supreme Court, but it proved to be a failure. Congress has exercised its impeachment power against members of the judiciary on occasion, but has never removed anyone for political partisanship or judicial performance. Fourteen lower court federal judges have been impeached for possible criminality, seven of whom were convicted by the Senate and removed from office—one for taking $150,000 in bribe money. President Thomas Jefferson sought to use impeachment to control the Federalist-dominated Supreme Court. This effort proved, however, to be ineffective because the Senate refused to convict Supreme Court Justice Samuel Chase. The Senate acquitted Chase of all charges because, while Chase was overly political, he was not guilty "… of Treason, Bribery, or other high Crimes and Misdemeanors."[36] This case did, however, have the effect of reducing partisanship by judges and defending the independence of the judiciary.


Justice Samuel Chase, 1741–1811

Congress has a potentially potent but rarely used tool to restrain the Court found in Article III, Section 2, Clause 2. This gives Congress the power to regulate the Court's appellate jurisdiction. There has been some disagreement whether this clause means that the Court only has whatever appellate jurisdiction given to it by Congress, or whether the Court has complete appellate jurisdiction unless restricted by Congress. Joseph Story commented that "[t]he appellate powers of the Supreme Court are not given by the judicial act (of 1789). They are given by the constitution. But they are limited, and regulated by that act, and other acts on the same subject. And where a rule is provided, all persons will agree, that it cannot be departed from."[37] The Supreme Court affirmed this power in *The Francis Wright* case, 105 U.S. 381 (1881), when it stated "… that while the appellate power of this court under the Constitution extends to all cases within the judicial power of the

United States, actual jurisdiction under the power is confined within such limits as Congress sees fit to prescribe."[38]

Congress has so rarely used this power, however, that it has become largely ineffective as a check upon Supreme Court activism. Congress has on occasion specifically granted or withheld appellate jurisdiction, but in only one situation did it ever forestall review by the Supreme Court by using its authority to restrict appellate jurisdiction. This was in the case of *Ex parte McCardle*, 73 U.S. 318 (1867), when the Court accepted review of a case of denial of a writ of habeas corpus for a civilian who had been convicted by a military commission under reconstruction laws. Congress was concerned that the Court might undermine or nullify congressional reconstruction, and so passed a law repealing the act McCardle had used in his appeal, in spite of the fact that the Court had already heard the arguments on the case. In response to this action by Congress, the Court stated the following in 1868 in *Ex parte McCardle*, 74 U.S. 506:

> What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.[39]

SHAPING THE COURT

Presidents have often attempted to influence the Court through their appointment power. President Franklin Roosevelt attempted to have Congress expand the size of the Court so that he could add additional favorable justices in his 1937 "court packing" plan. Although not successful, he was able to eventually mold the Court to his liking as he appointed justices to replace those who either died in office or retired. Due to the growing impact Court rulings have had on American society, appointments to the Supreme Court have now become a presidential campaign issue. In the 2000 presidential election campaign, for example, Vice President Al Gore encouraged voters to support him by pledging that he would only appoint justices who would uphold the *Roe* decision and support a woman's "right to choose," while Governor George W. Bush, in one of the presidential debates, stated that he would appoint justices who would strictly interpret the Constitution.

The ability of Presidents to influence the direction of the Court through their appointment power, however, can be uncertain. Presidents also cannot guarantee how a justice will vote on the Court; more than one justice has ended up deciding cases in ways that were unexpected by the President who appointed him. For example, Justice David Souter proved to be far more liberal in his rulings than the George H. W. Bush administration expected. Finally, it is very rare for a President to be able to appoint a sufficient number of justices so that the direction of the Court is radically changed.

The Senate has the potential to influence the President's shaping of the judiciary. The Senate is responsible for approving presidential appointments to the federal courts, both the Supreme Court and the lower courts. This power has been used effectively at times to force Presidents to compromise on their desired appointments to the judiciary. For example, Presidents Nixon and Reagan were forced to choose other Supreme Court appointees after earlier choices—such as Robert Bork—were blocked in the Senate.

CONCLUDING THOUGHTS

While it is important that the branches of government faithfully maintain the separation of powers, and exercise the proper checks and balances, if our constitutional form of government is to be maintained, it is up to the citizens to understand their Constitution and participate in the civil life of the nation. Only then will we be able to truly ensure that our representatives function according to the requirements of the Constitution.

We have spent considerable time studying the Constitution, reviewing its history, particulars, and principles. We have seen how the Constitution was developed to preserve the gains of the War for

American Independence and maintain the Union of the states, but in so doing it created new principles of government. The Framers redefined the principles of republicanism and federalism in such a fundamental manner that these standards of the United States Constitution have become the standards of the world.

Now it is up to you as young citizens and future voters to decide what to do with what you have learned. Will you view the Constitution as a dead letter, able to be ignored or used as anyone wants, or will you consider the Constitution to be fundamental to our system of government? Will you seek to preserve the basic principles of the Constitution that have served us so well, applying them to the new situations that will surely arise, or will you allow them to wither away into obscurity?

We make no claims for perfection in the Constitution; it was made by fallen men for a fallen people. Only the Word of God is inspired by God and, thus, perfect. Our constitutional system of government has, however, provided us with a wide range of liberty, and given us the ability to make the necessary modifications in the way the system operates when needed. God has used our constitutional system of government as an answer to Paul's directive to Timothy in 1 Timothy 2:1–2: "Therefore I exhort first of all that supplications, prayers, intercessions, and giving of thanks be made for all men, for kings and all who are in authority, that we may lead a quiet and peaceable life in all godliness and reverence." Under the Constitution, God's people have been able to lead such lives; we have had the freedom to do God's work in this country. Will the Church continue to have the freedom to preach and practice the Word of God? Christians should do what they can to protect our constitutional order in order to preserve such freedoms.

Even though God's people are spiritual exiles here in this world, they still have a responsibility to live for the Lord here on earth. They should follow Jeremiah's admonition to the Israelite exiles in Babylon and be concerned for the needs of the communities in which they live.[40] God's people should seek His favor for the lands in which they live. May God give peace to His people, so they might serve Him, and grant liberty for all.

Through this study, you have gained an understanding of how our Constitution is supposed to work. Now it is time for you to take up your responsibilities as a citizen, to seek the good of our country by defending and preserving our constitutional liberties.

Chapter 15 Review Exercises

TRUE OR FALSE

Write T in the blank if the statement is true or F if the statement is false.

_____ 1. The Constitution was written in great detail.

_____ 2. The "Necessary and Proper" Clause is an example of the flexibility found in the Constitution.

_____ 3. The Constitution is part of the organic laws of the United States.

_____ 4. Chief Justice Roger Taney was the author of the *Roe v. Wade* decision.

_____ 5. Thomas Jefferson originally doubted that the federal government had authority from the Constitution to purchase the Louisiana Territory.

MATCHING

Write the letter of the correct description of the Supreme Court decision beside the number of each case on the left.

_____ 1. *Smith v. Allwright*	a. reaffirmed the *Roe* decision
_____ 2. *Ex parte McCardle*	b. state law must yield to proper acts of Congress
_____ 3. *Dartmouth College v. Woodward*	c. right of privacy discovered in the penumbra of the Bill of Rights
_____ 4. *Cooper v. Aaron*	d. line-item veto unconstitutional
_____ 5. *Dred Scott*	e. judicial power to be used to give effect to the will of the law
_____ 6. *Gibbons v. Ogden*	f. abortion protected by a right of privacy and personal liberty
_____ 7. *Roe v. Wade*	g. Constitution is organic law
_____ 8. *Griswold v. Connecticut*	h. African-Americans cannot be United States citizens
_____ 9. *Planned Parenthood of Southeastern Pa. v. Casey*	i. "… in no doubtful case, would [the Court] pronounce a legislative act to be contrary to the constitution"
_____10. *Osborn v. Bank of the United States*	j. Supreme Court decisions are part of the Supreme Law of the Land
_____11. *Clinton v. City of New York*	k. Congress removed appellate jurisdiction

MULTIPLE CHOICE

In the blank beside each statement, place the letter of the choice that makes the statement correct.

_____ 1. The amending procedures of the Constitution are found in Article (a) III, (b) V, (c) VI.

_____ 2. (a) Rutherford Hayes, (b) Franklin Roosevelt, (c) Harry Truman was the only President to serve more than two terms.

_____ 3. The Supreme Court ruled that the Bank of the United States was constitutional in the case of (a) *Brown v. Maryland*, (b) *Gibbons v. Ogden*, (c) *McCulloch v. Maryland*.

_____ 4. (a) Alexander Hamilton, (b) Joseph Story, (c) John Marshall wrote in Federalist No. 78 that judges must regard the Constitution as fundamental law.

_____ 5. (a) John Marshall, (b) William Brennan, (c) Charles Evans Hughes stated that Supreme Court justices "… are the last word on the meaning of the Constitution…."

FILL IN THE BLANK

Complete each of the following sentences with a word or phrase that makes it a correct statement.

1. The organic nature of the Constitution is formally reflected in _____.
2. The Constitution has within it the ability to adapt to new situations through _____ _____.
3. The Supreme Court ruled that the _____ was unconstitutional in the *Dred Scott* decision.
4. The federal government's control over interstate commerce was upheld by the Supreme Court in the case of _____.
5. The courts must exercise _____, not _____ when deciding cases.

ESSAY QUESTIONS

Answer the following questions on separate paper.

1. How should the fundamental nature of the Constitution affect judicial review?
2. Explain the Supremacy Clause of the Constitution.
3. Explain how the Louisiana Purchase is an example of the ability of the Constitution to be adapted to new situations.
4. Explain how the tradition of a two-term limit established by George Washington eventually led to the Twenty-second Amendment.
5. What is the coequal principle?
6. How did abortion become considered by the Supreme Court as a "liberty" protected by the Fourteenth Amendment?
7. Describe the impact of the progressive movement on the governmental system of the United States.

Chapter 15 Notes—

1. Samuel Hendel, *Charles Evans Hughes and the Supreme Court* (New York: King's Crown Press, Columbia University), 11–12, quoted in Richard Cox, *Four Pillars of Constitutionalism: The Organic Laws of the United States* (Amherst, NY: Prometheus Books, 1998), 13.

2. Alexander Hamilton, "'Publius,' The Federalist LXXVIII," in *The Debate on the Constitution*, ed. Bernard Bailyn (New York: Literary Classics of the United States, Inc., 1993), 2:470.

3. Richard Cox, *Four Pillars of Constitutionalism: The Organic Laws of the United States* (Amherst, NY: Prometheus Books, 1998), 26–34.

4. Laurence Urdang, ed., *The Random House Dictionary of the English Language: College Edition* (New York: Random House, Inc., 1968), 936.

5. Joseph Story, "Joseph Story on the Rules of Constitutional Interpretation (1833)," *Belcher Foundation*, http://www.belcherfoundation.org/joseph_story_on_rules_of_constitutional_interpretation.htm (accessed 13 Dec 2013).

6. "Smith v. Allwright," *Justia.com*: US Supreme Court Center, http://supreme.justia.com/cases/federal/us/321/649/case.html (accessed 22 Nov 2013).

7. Thomas Jefferson, "To James Madison," in *Thomas Jefferson: Writings*, ed. Merrill Peterson (New York: Literary Classics of the United States, Inc., 1984), 916.

8. Oliver Ellsworth, "Oliver Ellsworth Defends the Taxing Power and Comments on Dual Sovereignties and Judicial Review," in *The Debate on the Constitution*, ed. Bernard Bailyn (New York: Literary Classics of the United States, Inc., 1993), 1:883.

9. "Gibbons v. Ogden," *Legal Information Institute*. Cornell University Law School, http://www.law.cornell.edu/supct/html/historics/USSC_CR_0022_0001_ZO.html (accessed 22 Nov 2013).

10. George Washington, "Farewell Address," in *George Washington: Writings*, ed. John Rhodehamel (New York: Literary Classics of the United States, Inc., 1997), 968.

11. Matt Cover and Michael W. Chapman, "Flashback: Pelosi on Obamacare's Constitutionality: 'Are You Serious?,'" *cnsnews.com*, August 12, 2011, http://www.cnsnews.com/news/article/flashback-pelosi-obamacares-constitutionality-are-you-serious (accessed 11 Nov 2013).

12. Dylan Matthews, "The Shutdown is the Constitution's Fault," *Wonkblog*. *The Washington Post*, October 2, 2013, http://www.washingtonpost.com/blogs/wonkblog/wp/2013/10/02/the-shutdown-is-the-constitutions-fault/ (accessed 2 Oct 2013).

13. Theodore Roosevelt, "The New Nationalism," in *Theodore Roosevelt: Letters and Speeches*, ed. Louis Auchincloss (New York: Literary Classics of the United States, Inc., 2004), 806-807.

14. Woodrow Wilson, *The New Freedom: A Call for the Emancipation of the Generous Energies of a People*, (New York: Doubleday, Page & Company, 1913), Project Gutenberg Literary Archive Foundation, http://www.gutenberg.org/catalog/world/readfile?fk_files=3276550&pageno=1 (accessed 25 Nov 2013).

15. Franklin D. Roosevelt, "Speech to the Commonwealth Club," in *American Speeches: Political Oratory From Abraham Lincoln to Bill Clinton*, ed. Ted Widmer (New York: Literary Classics of the United States, Inc., 2006), 394.

16. Jerry Bowyer, "Presidents and the Constitution," *Forbes*, January 20, 2009, http://www.forbes.com/2009/01/19/obama-roosevelt-constitution-oped-cx_jb_0120bowyer.html (accessed 18 Dec 2013).

17. Robert S. McElvaine, *The Great Depression: America*, 1929–1941, (New York: Times Books, 1984), 283–284.

18. Cox, 10.

19. "Griswold v. Connecticut," *FindLaw*. Thomson Reuters, http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=381&page=479 (accessed 13 Dec 2013).

20. "Roe v. Wade," *FindLaw*. Thomson Reuters, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=410&invol=113 (accessed 13 Dec 2013).

21. "Planned Parenthood of Southeastern Pa. v. Casey," *FindLaw*. Thomson Reuters, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=505&invol=833 (accessed 13 Dec 2013).

22. Theodore Olson, "Restoring the Separation of Powers," *Regulation: AEI Journal on Government and Society*, July/August (1983): 20, Cato Institute, http://object.cato.org/sites/cato.org/files/serials/files/regulation/1983/7/v7n4-4.pdf (accessed 7 Oct 2013).

23. Steven G. Calabresi, Mark E. Berghausen, and Skylar Albertson, "The Rise and Fall of the Separation of Powers," *Northwestern Law Review*, Vol. 106, No. 2 (2012): 53–540, Northwestern University School of Law, https://www.law.northwestern.edu/lawreview/v106/n2/527/LR106n2Calabresi.pdf (accessed 7 Oct 2013).

24. J. Thomas Rosch, "Thoughts on the FTC's Relationship (Constitutional and Otherwise) to the Legislative, Executive, and Judicial Branches," *Federal Trade Commission*, September 19, 2009, 8, http://www.ftc.gov/sites/default/files/documents/public_statements/thoughts-ftcs-relationship-constitutional-and-otherwise-legislative-executive-and-judicial-branches/090919roschberlinspeech.pdf (accessed 7 Feb 2014).

25. George Carey, *A Defense of the Constitution*, rev. ed. (Indianapolis: Liberty Fund, 1995), 132.

26. James Madison, "Detached Memoranda," cited in *The Founders' Constitution*, Volume 5, Amendment I (Religion), Document 64,The University of Chicago Press, http://press-pubs.uchicago.edu/founders/documents/amendI_religions64.html (accessed 8 July 2013).

27. Hamilton, 2:469.

28. "Trustees of Dartmouth College v. Woodward," *FindLaw*. Thomson Reuters, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=17&invol=518 (accessed 13 Dec 2013).

29. "Brown v. State of Maryland," *FindLaw*. Thomson Reuters, http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=25&invol=419 (accessed 13 Dec 2013).

30. Abraham Lincoln, "First Inaugural Address," in *Abraham Lincoln: Speeches and Writings 1859–1865*, ed. Don Fehrenbacher (New York: Literary Classics of the United States, Inc., 1989), 216.

31. "Osborn v. Bank of U.S.," *FindLaw*. Thomson Reuters, http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=22&invol=738 (accessed 13 Dec 2013).

32. Lincoln, 220–221.

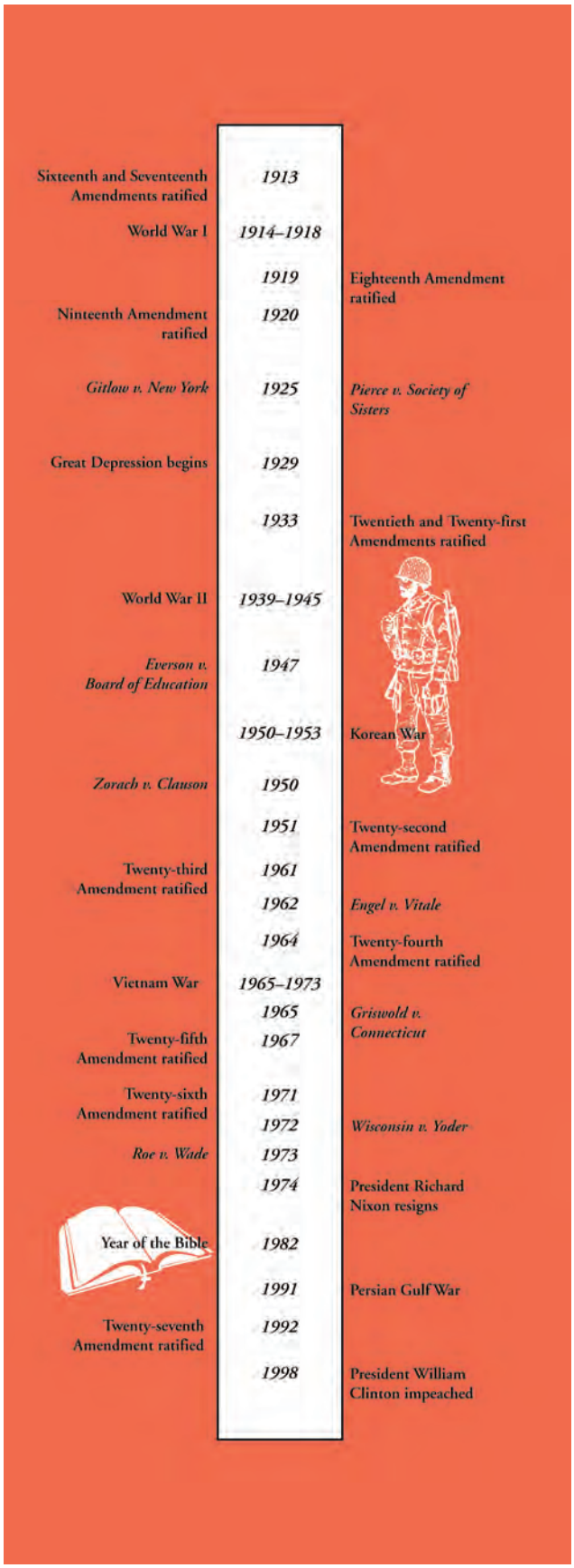
33. Lincoln, 221.

34. Forrest McDonald, *A Constitutional History of the United States* (Malabar, FL: Robert E. Krieger Publishing Company, 1986), 60.

35. George W. Bush, "The President Signs Campaign Finance Reform Act," *The White House*, March 27, 2002, http://georgewbush-whitehouse.archives.gov/news/releases/2002/03/20020327.html (accessed 3 June 2013).

36. See Article II, Section 4 of the United States Constitution.

37. Joseph Story, *Commentaries on the Constitution of the United States* (Boston, 1833), 3:§1767, cited in *The Founders' Constitution*, Volume 4, Article 3, Section 2, Clause 2, Document 11, The University of Chicago Press, http://press-pubs.uchicago.edu/founders/documents/a3_2_2s11.html (accessed 27 Nov 2013).



38. "The Francis Wright," *FindLaw*. Thomson Reuters, http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=105&invol=381 (accessed 27 Nov 2013).

39. "Ex parte McCardle," *Legal Information Institute*. Cornell University Law School, http://www.law.cornell.edu/supct/html/historics/USSC_CR_0074_0506_ZO.html (accessed 27 Nov 2013).

40. See Jeremiah 29:7.