The original constitution is just 4,543 words.

Why, after 215 years have we not written another constitution? Because it has the ability to adapt and be flexible and change with the times.

Natural law - law that defines right from wrong, law that is higher than human law.

Constitution is seen as a symbol of national loyalty.

It is a supreme and binding law that both grants and limits powers.

The constitution is both a positive instrument of government, which enables the governors to control the governed, and a restraint on government, which enables the ruled to check the rulers.

CHECKING POWER WITH POWER

Founders were keenly aware that the people would not accept too much central control - nothing was as important as liberty.

They allotted certain powers to the national government and reserved the rest for the states, establishing a system of FEDERALISM.

Most important was the idea of free & Fair elections - voters would be able to throw out of office those who abuse power.

Separation of Powers

Constitutional division of powers among the legislative, executive, and judicial branches, with the legislative branch making law, the executive applying and enforcing the law and the judiciary interpreting the law.

Many attributed the evils of state government and the lack of energy in the central government to the fact that there was no strong executive both to check legislative abuses and to give energy and direction to administration.

Checks & Balances: Ambition to Counteract Ambition

Checks & Balances - constitutional grant of powers that enables each of the three branches of government to check some acts of the others and therefore ensure that no branch can dominate.

Gives each department the necessary means and personal motives to resist encroachments of the others...

Vetoes - President has vetoed more than 2,500 acts of Congress, Congress has overridden the vetoes more than 100 times.

Judicial Review - Supreme Court has ruled some 164 congressional acts of parts thereof unconstitutional.

Impeachment - the House of Re却s has impeached two presidents and 15 federal judges; of these, the Senate has convicted 7 judges, but neither president.

Confirmation - the Senate has refused to confirm nine cabinet nominations, and many other cabinet and subcabinet appointments were withdrawn because of likely Senate rejections.
The framers also ensured that a majority of the voters could win control over only one part of the government at a time (staggered elections)

Modifications of Checks and Balances

- The framers deliberately built inefficiency into our political system. They designed the decision-making process so that the national government can act decisively only when there is a consensus among most groups and after all sides have had a chance to have their say.

- 1. Rise of National Political Parties - political parties can serve as unifying factors, at times drawing together pres., senate, etc. when parties do this, they bridge the separation of powers.

- Divided Government - governance divided between the parties, especially when one holds the presidency and the other controls one or both houses of Congress. It leads to so much competition between the legis and exec. That at times, we see each promoting itself and looking at the constitution and its powers under it, in broad terms. Divided government makes it difficult for the voters to hold anybody or any party accountable.

- 2. Expansion of the electorate and the move toward more direct democracy - voters actually do select the president, because the presidential electors chosen by the voters are pledged in advance to cast their electoral votes for their party’s candidates for president and vice president. Voting rights have extended from property-owning white males, to all citizens over 18 years of age.

- Direct Primaries - election in which voters elect party nominees for the House and Senate and even for President; by doing so, it allows:
  - Initiatives - procedure where a certain number of voters may, by petition, propose a law or constitutional amendment and have it submitted to the voters.
  - Referendum - procedure for submitting to popular vote measures passed by the legislature or proposed amendments to a state constitution.
  - Recall - procedure for submitting to popular vote the removal of officials from office before the end of their term.

- 3. Establishment of agencies deliberately designed to exercise legislative, executive and judicial functions - beginning in 1887 Congress created independent regulatory commissions like Interstate Commerce Commission, and FCC, also independent executive agencies like EPA

- 4. Changes in Technology - tv news shows 24 hours a day, presidential press conferences, live coverage of wars, tv, computers, cellphones, fax machines, all create conditions today that are very different from those of two centuries ago. We also have instant polls. In some ways new tech. Have added to Presidential powers by permitting them to appeal directly to millions of people and giving them immediate access to public opinion. Also added leverage to organized intere3sts, and greater independence and influence to nongovernmental institutions like the press. Allows groups and individuals with $ to bypass political parties and take their message directly to the people.
5. **Growth of Presidential Power** - office of the president has on occasion served to modify the system of checks and balances to provide some measure of national unity.

**JUDICIAL REVIEW AND THE “GUARDIANS OF THE CONSTITUTION”**

- **Judicial Review** - the power of a court to refuse to enforce a law or a government regulation that in the opinion of the judges conflicts with the US Constitution, or in a state court, the state constitution.

**Origins of Judicial Review**

- The constitution says nothing about who should have the final word in disputes that might arise over its meaning.
- Why didn’t the framers specifically provide for judicial review - probably because they believed the power could be inferred from several general provisions.

**Marbury v. Madison 1803**

- Outgoing Federalist Congress created dozens of new federal judgeships to be filled with Federalist party members. The Secretary of State, John Marshall, didn’t finish delivering all of the sealed appointments by midnight the night his term was up - it was assumed the successor would deliver them. The “packing” of the judiciary angered Andrew Jackson, new President, and instructed them not to be delivered.
- After waiting, and not getting his appointment, William Marbury, found Section 13 of the Judiciary Act of 1789.
- **Writ of Mandamus** - a court order, under Sec. 13, that directs an official, such as the sec. Of state, to perform a duty about which the official has no discretion, such as delivering the commission.
- The court knew if they issued the writ, Madison & Jefferson would probably ignore it, and the court would lose its prestige and power. If they refused to issue the writ, they would appear to support the Republican’s claim that the court had no authority to interfere with Executive branch.
- Feb. 24, 1803 - court issued its opinion - said Marbury was entitled to his commission, and it should have been delivered to him. THEN the surprise: Sec. 13 of the Judiciary Act gives the Supreme Court original jurisdiction in cases such as this one. It is contrary to Article III of the Constitution, which gives the Supreme Court original jurisdiction only when an ambassador or other foreign ministers affected or when the state is a party.
- If we follow Sec. 13, the SC has jurisdiction, if we follow the Constitution, we have no jurisdiction.
- The Constitution is the supreme and binding law, and the courts cannot enforce any action of Congress that conflicts with it. By limiting the Court’s power to what is granted in the Constitution, Marshall gained the much more important power to declare laws passed by Congress unconstitutional. – **IT GAVE THE SUPREME COURT THE ROLE OF AUTHORITATIVE INTERPRETER OF THE CONSTITUTION.**
- IT means people can challenge laws enacted by Congress and approved by the President.
Also allows organized interest groups to achieve their goals unattainable by legislation through litigation. Litigation supplements and at times takes precedence over, legislation as a way to make public policy.

THE CONSTITUTION AS AN INSTRUMENT OF GOVERNMENT

The Unwritten Constitution

♦ It is not necessary to amend the Constitution every time a change is needed. Instead, Congress can create legislation to meet the need.
♦ Judiciary Act of 1789- laid the foundations of our national justice system- example of Congress meeting a need by creating legislation.
♦ Impeachment- a formal accusation against a public official and the first step in removal from office. Article II calls for removal of the President, Vice-Pres, and all civil officers of the US on impeachment for, and conviction of, “Treason, bribery or other high crimes and misdemeanors.” It is up to Congress to give meaning to that language.
♦ Article I gives the House of Reps the sole power to initiate impeachment’s and the Senate the sole power to try impeachments. Chief Justice presides. Conviction on impeachment charges requires 2/3 of the Senate present. Judgements shall extend no further than removal from office and disqualification from holding any office under the US, but a person convicted may also be liable to indictment, trial, judgment, and punishment according to the law.
♦ 67 individuals have been investigated for possible impeachment, 17 have been impeached (2 pres- Clinton & Andrew Johnson) and 15 Federal Judges.

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Presidential Practices

♦ Executive Orders- directive issued by the President or governor that has the full force of the law. They can make major policy changes, or withhold federal $
♦ Executive Privilege- the power to keep executive communications confidential, especially if they relate to national security.
♦ Impoundment- presidential refusal to allow an agency to spend funds authorized and appropriated by Congress.

Judicial Interpretation

♦ The Supreme Court plays an important role in keeping the constitutional system up to date. As social and economic conditions have changed and new national demands developed, the Supreme Court has changed its interpretation of the Constitution accordingly.

CHANGING THE LETTER OF THE CONSTITUTION

♦ The Constitution is an expression of basic and timeless personal liberties, and an instrument of government- a positive grant of power, we realize that if it does not grow with the nation it serves, it would soon be irrelevant and ignored.
Article V gave responsibility for amending the Constitution to Congress and to the states.

**Proposing Amendments**
- 1. 2/3 vote of both houses of Congress can get an amendment proposed. Congress has proposed only 31 amendments, of which 27 have been ratified.
- Balanced Budget Amendment - congressional attempt at amendment.
- Why is proposing amendments to the Constitution so popular? In part because interest groups unhappy with Supreme Court decisions seek to overturn them, in part because groups frustrated by their inability to get things done in Congress hope to bypass Congress. And in part because scholars or interest groups (not necessarily mutually exclusive categories) seek to change the procedures and processes of government to make the system more responsive.
- 2. Second method - a convention called by Congress at the request of the legislatures in 2/3 of the states. This has never been used.
- **CHART P. 41 - AMENDING POWER AND HOW ITS BEEN USED.**

**Ratifying Amendments**
- After an amendment has been proposed, it must be ratified by the states. Again, 2 methods are provided by the Constitution:
  - 1. Approval by the legislatures in 3/4 of the states
- Congress decides which method is used - all amendments except the 21st have been given to the state legislatures for ratification.
- Once a state has ratified an amendment, it cannot “unratify” it.
- Ratification must take place within a “reasonable time.” So that it is “sufficiently contemporaneous to reelect the will of the people.” Ex. 27th amendment.
- The framers intended amending the Constitution to be difficult.