

How far do you
accept this verdict?



**ASSIGN
BUSTER**

There have only been 27 amendments to the Constitution in 225 years (although 10 came with the Bill of Rights in 1791, the 18th and 21st Amendment on Prohibition cancel each other out, so there have really been 15 genuine changes to the Constitution). The reason for so few amendments could be due to the previously mentioned Amendment Process. Possible amendments must go through the proposal and ratification stage to become a formal amendment.

Super majorities are needed in both houses (two thirds) of Congress to propose an amendment or else a National Constitutional Convention must be called by at least two-thirds of the states (though this has never been used). To get both the House of Representatives and the Senate to agree is no easy task, although during Bill Clinton's presidency of 1993-2001, the House of Representatives agreed to a Balanced Budget Amendment, and although the Senate ultimately did not agree it was only one vote short of the required two-thirds majority.

There have been over 10, 000 possible proposals but only 40 have got through for ratification. The ratification process requires a staggering three-quarters majority of state legislatures to vote and ratify, or else three-quarters of the states must hold a State Constitutional Convention. The Founding Fathers knew that the Constitution would have to be adjusted, tweaked, amended even, as time progressed and situations changed (for example the 13th Amendment which abolished slavery). That is why in Article Five the Amendment Process is laid out in black and white.

However, the difficulty in amending the Constitution is not to be seen as a straight jacket but rather as a protectorate of it; it is so that no one is able to

alter the Constitution on a whim or for temporary political reasons without the proposed amendment being fully researched and reviewed and having full support of the people. The Constitution was and still is considered to be one of the greatest and well thought out codified documents ever written, and if it was changed too often it would have little value.

On another note, the Framers were a group of rich, well-educated lawyers and businessmen who possibly feared a “tyranny of the masses” and were reluctant to allow the precedent they had laid out in the Constitution to be changed. That is not to say that the Constitution has remained completely unchanged since 1787. For example, there are important elements of the US government and politics which are nowhere to be found in the codified Constitution, for example primary elections, the Executive Office of the President and Congressional Committees, to name but three.

The Constitution was written to be deliberately unspecific so that the document could evolve with the times without the need for formal amendment. For example, Congress is given the power ‘to provide for the common defence and welfare’ of the United States, which is extremely vague. Tradition can determine but not explicitly nor officially express an informal amendment to the Constitution. For example, when Roosevelt tried to increase the number of judges from 9 to 13 to add in his supporters, politicians and the public were outraged because there had been a tradition of 9 judges for 80 years.

The idea of federalism (certain powers to state, certain powers to centre) was a key principle in the original Constitution, but even this has evolved since 1787. In the 20th century we have seen the Executive and the

President gaining more power (although this can be limited by checks and balances, for example Congressional Committees). Since the War Powers Act in 1975, the President does not have to go to Congress to declare war but instead can act for the first 6 months before going to them. This power was granted to the President without the need for a formal amendment, but instead by Congressional Law.

President Roosevelt's New Deal policy to create public works and schemes for people during the Great Depression saw the federal government getting involved with the everyday life of the people of the states. The Supreme Court opposed changes and said that the federal government was taking control of the states, and subsequently that Roosevelt's schemes were unconstitutional. However, due to a strong reaction against the Supreme Court and Roosevelt claiming that he was acting purely in the interests of the states, the schemes went ahead, thus in a way allowing public opinion to informally amend the Constitution for a period of time.

Who gave the Supreme Court the power to declare that Roosevelt's actions were unconstitutional though? This brings me to my final and perhaps most significant point as to why I do not agree with the statement that the Constitution is inflexible. The power allows the Court to interpret the Constitution and thereby, in effect, change the meaning of the words written over two centuries ago to make what one might call 'interpretative amendments' rather than formal amendments. For example, the Court can state what the phrase in the 8th Amendment, which forbids 'cruel and unusual punishments', means today.

The power of judicial review to rule an action, bill or act as unconstitutional came from the case of Marbury vs. Madison in 1803. It was a stroke of brilliance and set the precedent for years to come. The Marshall Court established the basis of greater flexibility in the Constitution which has consequently allowed the modernisation of it over the last 200 years by informal means. The Brown vs. The Board of Education of Topeka Kansas in 1954 case is an excellent example of this, showing how the liberal Court at the time was able to acknowledge segregation under the 15th Amendment as unconstitutional.

This ultimately paved the way for the Civil Rights Act in 1964 and greater equality for blacks in modern day America. The Supreme Court's power of judicial review therefore helps to interpret the Constitution. The Supreme Court could be considered as one of the most progressive political institutions in America, leading policy in line more than often with the tide of public opinion. In this way, it has allowed the Constitution to become an evolving body of ideas which can be adapted to change along with modern day society, rather than being rigid and inflexible. Nevertheless, the argument can still be made that perhaps it is not the Constitution that is inflexible but the politicians and American people in general. Americans have become cautious of tampering with their Constitution as they hold it in some degree of veneration. For example, in the early decades of the 20th century, they got themselves into difficulties by amending the Constitution to prohibit the manufacture, sale and importation of alcohol.

Fourteen years later, 'prohibition' was discredited and the offending amendment was repealed. This experience proved to be an important lesson

for subsequent generations. It is clear to see that although the Constitution was designed as an entrenched and fully codified document, it was, in its vagueness, created to be incredibly flexible. The Amendment Process is long and difficult but usually when fundamental change has been needed formal amendments have been proposed and ratified.

Meanwhile, informal amendments have vitally provided a means of adapting with the times. The endurance of the principles of the Constitution as the fundamental dominant ideology of the United States and that of the American Dream has secured the US Constitution as a sacred document essential to the American way of life. Therefore, I do not accept the verdict that the difficulty in amending the Constitution shows its inflexibility, due to its open interpretation in modern America. The Constitution has its limits, but it is certainly no 18th century straight jacket.