

## **To what extent do the provisions of the US constitution meet the needs of the late 20th Century ?**

The US constitution was written in 1787 after 13 former British colonies had declared independence and modelled themselves into a confederation of states (1776). Individual states held almost all the power in this system and the confederation was very loosely grouped together. By 1787 this confederation was restructured again into a planned system of joint central and state government under the first written constitution. This constitution of the United States was constructed by a powerful and wealthy group of men calling themselves the "Founding Fathers" and led by George Washington. Other notable contributors were Ben Franklin and Thomas Jefferson. The "Founding Fathers" were a group of liberals with powerful economic interests, united by the great sense of American nationalism which emerged from the revolution and the belief that America needed to be united to enable it to exercise power in world affairs. They set about writing the first ever constitution for the governing of a nation. It was based largely upon the belief that everyone had wide ranging civil rights deriving from their fundamental right to own property. The new constitution strengthened significantly central power but installed a system of checks and balances to limit the power of each branch of government. There was great suspicion of monarchs and also the mass action of the proletariat. To protect against these threats, protective systems were built into the constitution. These protective measures included indirect presidential election through electoral college and the election of the various governing elements for different periods of time (Senators for 6yrs and Representatives for 2yrs). These checks have led to the fragmented nature of US government and the stark division of government between central (Federal) government and state government. This is different to the UK, where government is almost completely centralised with very minimal regional powers. The new Scottish and Welsh parliament's are a move towards a more US style system.

The original US constitution has remained relatively unchanged since its conception in 1787 and passing into law in 1789. The only significant amendments were made in 1791 when the Bill of Rights was added to the constitution with the first ten amendments. This major group of amendments arose out of a wide cross section of US citizens fearing that their new constitution did too little to protect their own civil rights and too much to protect the property rights of the rich. The Bill of Rights outlines the fundamental rights deriving from being a US citizen and serves as a sort of protection for those rights within law. Other significant amendments include the thirteenth amendment to abolish slavery (1865), the eighteenth and twentieth amendments imposing and abolishing prohibition, the start of universal suffrage in 1919 (nineteenth amendment) and the reduction of voting age to eighteen in 1971 (twenty-sixth amendment).

The relative scarcity of amendments to the constitution (twenty-seven in total) shows how remarkably good the original was. When you consider the massive changes in lifestyle and shifts in economically and politically important sections of the economy, it is remarkable that a document governing people in the 18th century has remained

capable of its task and is even revered now. That the constitution has remained so unchanged is partly due to the emphasis of the constitution being changed in certain key areas. There has been a high degree of flexibility within the constitution, with parts of it being ignored at times when the greater interest is thought to be paramount. These can be explained by the assertion that all courts are committed to upholding the prevailing order and they will not countenance activities to threaten that order (Pontin and Gill, p184-185). An example of this occurred in 1940 when congress passed the Smith Act which made it an offence "to advocate the overthrow of the United States government". This was a clear contradiction of the first amendment in the bill of rights: "congress shall make no law..... abridging the freedom of speech". At the height of the cold war there were at least two cases that highlighted the US court's willingness to abandon its ideological, constitutional purity. In the first, involving a member of the American Communist Party, Eugene Dennis was tried and convicted for merely advocating governmental overthrow. This was a clear contradiction of the first amendment and was upheld by the US Supreme Court (the most powerful judiciary in the country). A further case was fought by the US Communist Party against the Subversive Activities Control Board where the right of the government to require the registration of "subversive" organisations was upheld. As the cold war subsided into the 1970's, the supreme court began to act to protect so called "subversives" from federal law by upholding the constitution once again.

The US constitutional model has been used by most other westernised countries since 1787 (only Great Britain, New Zealand and Israel do not have a form of written constitution) and contains the first Bill of Rights for a citizen. Indeed, it could be said that either the founding fathers has tremendous foresight and foresaw the future needs of a country, or that as society has developed in a capitalist way it has moulded itself to the ideological model created in Philadelphia 1787. This incredible proliferation of American style constitutions and Bill's of Rights is testament to the remarkable efficiency and longevity of the Founding Father's work. It is unclear if this degree of longevity was what was intended in 1787. Thomas Jefferson argued that the constitution "ought to be rewritten each generation to protect the dead from governing the living" while John Marshall's (one of the Founding Fathers) hope was that it would indeed "endure for ages to come." Clearly the wish of Marshall has come true and it would appear that Jefferson's vision has faltered, however, when you consider the degree of flexibility and the extent to which it has become a living constitution, both men had made a successful prophecy.

The provisions of the US constitution meet very adequately the needs of the late 20th century, and should provide a very sound governmental base for the future. The success of the constitution over time has had, perhaps, more to do with luck and the emergence of the US as a major force than its writer's forethought. The degree of flexibility taken from it over the years has served to prolong it as a viable document and it is this level of implied flexibility that will preserve it and allow it to adapt for modern life and any future eventualities. The American constitution was the first written constitution and contains the first Bill of Rights for a citizen. For these reasons it is tremendously important and its success is testament to its writer's vision.

