launched peacefully. The French observer Alexis de Tocqueville (1805–1859) later wrote:

> That which is new in the history of societies is to see a great people, warned by its lawgivers that the wheels of government are stopping, turn its attention on itself without haste or fear, sound the depth of the ill, and then wait for two years to find the remedy at leisure, and then finally, when the remedy has been indicated, submit to it voluntarily without its costing humanity a single tear or drop of blood.[35]

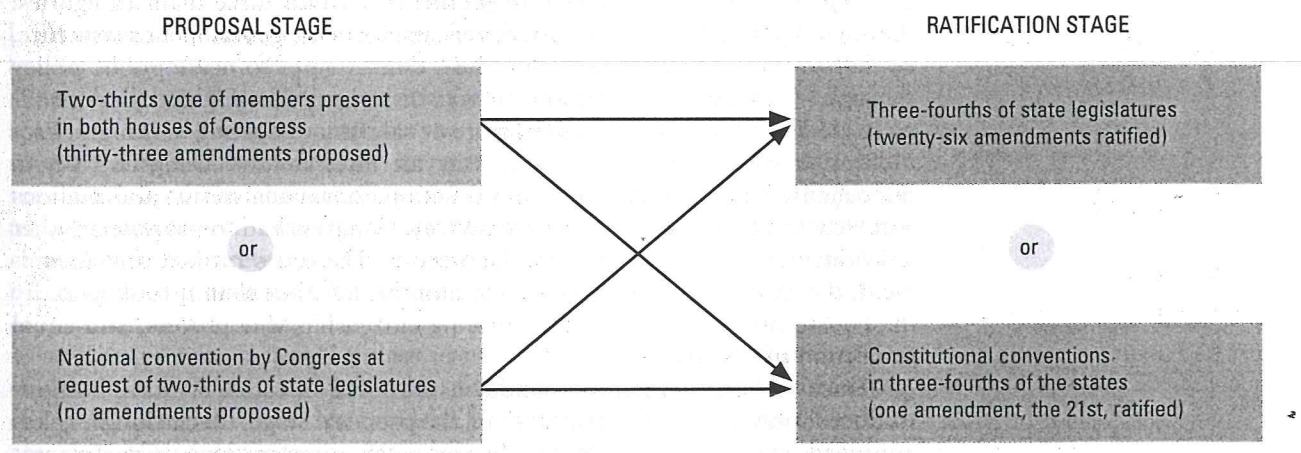
## Constitutional Change

The founders realized that the Constitution would have to be changed from time to time. To this end, they specified a formal amendment process, and one that was used almost immediately to add the Bill of Rights. With the passage of time, the Constitution has also been altered through judicial interpretation and changes in political practice.

### The Formal Amendment Process

The amendment process has two stages, proposal and ratification; both are necessary for an amendment to become part of the Constitution. The Constitution provides two alternatives for completing each stage (see Figure 3.3). Amendments can be proposed by a two-thirds vote in both the House of Representatives and the Senate or by a national convention, summoned by Congress at the request of two-thirds of the state legislatures. All constitutional amendments to date have been proposed by the first method; the second has never been used.

**FIGURE 3.3 Amending the Constitution**




Amending the Constitution requires two stages: proposal and ratification. Both Congress and the states can play a role in the proposal stage, but ratification is a process that must be fought in the states themselves. Once a state has ratified an amendment, it cannot retract its action. However, a state may reject an amendment and then reconsider its decision.

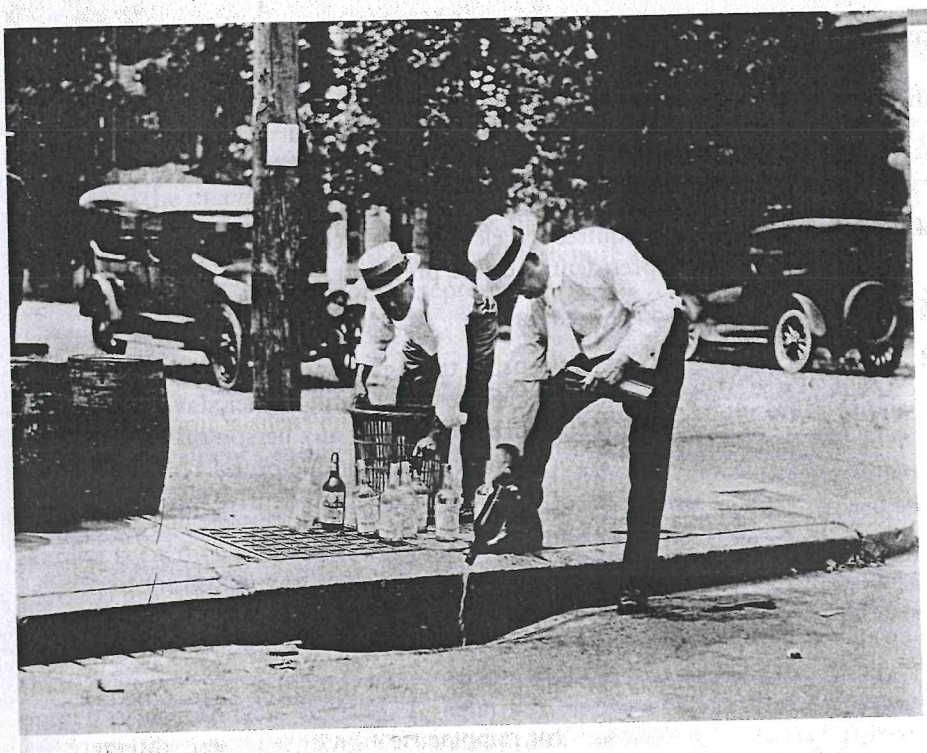
A proposed amendment can be ratified by a vote of the legislatures of three-fourths of the states or by a vote of constitutional conventions held in three-fourths of the states. Congress chooses the method of ratification. It has used the state convention method only once, for the Twenty-first Amendment, which repealed the Eighteenth Amendment (prohibition of intoxicating liquors). Congress may, in proposing an amendment, set a time limit for its ratification. Beginning with the Eighteenth Amendment, but skipping the Nineteenth, Congress has set seven years as the limit for ratification.

Note that the amendment process requires the exercise of extraordinary majorities (two-thirds and three-fourths). The framers purposely made it difficult to propose and ratify amendments (although nowhere near as difficult as under the Articles of Confederation). They wanted only the most significant issues to lead to constitutional change. Note, too, that the president plays no formal role in the process. Presidential approval is not required to amend the Constitution, although the president's political influence affects the success or failure of any amendment effort.

Calling a national convention to propose an amendment has never been tried, and the method raises several thorny questions. For example, the Constitution does not specify the number of delegates who should attend, the method by which they should be chosen, or the rules for debating and voting on a proposed amendment. Confusion surrounding the convention process has precluded its use, leaving the amendment process in congressional hands.[36] The major issue is the limits, if any, on the business of the convention. Remember that the convention in Philadelphia in 1787, charged with revising the Articles of Confederation, drafted an entirely new charter. Would a national convention called to consider a particular amendment be within its bounds to rewrite the Constitution? No one really knows.

Most of the Constitution's twenty-seven amendments were adopted to reflect changes in political thinking. The first ten amendments (the Bill of Rights) were the price of ratification, but they have been fundamental to our system of government. The last seventeen amendments fall into three main categories: they make public policy, they correct deficiencies in the government's structure, or they promote equality (see Table 3.3). One attempt to make public policy through a constitutional amendment was disastrous. The Eighteenth Amendment (1919) prohibited the manufacture or sale of intoxicating beverages. Prohibition lasted fourteen years and was an utter failure. Gangsters began bootlegging liquor, people died from drinking homemade spirits, and millions regularly broke the law by drinking anyway. Congress had to propose another amendment in 1933 to repeal the Eighteenth. The states ratified this amendment, the Twenty-first, in less than ten months, less time than it took to ratify the Fourteenth Amendment, guaranteeing citizenship, due process, and equal protection of the laws.

Since 1787, about ten thousand constitutional amendments have been introduced; only a fraction have survived the proposal stage. Once Congress has approved an amendment, its chances for ratification are high. The Twenty-seventh Amendment, which prevents members of Congress from voting themselves immediate pay increases, was ratified in 1992. It had been submitted to the states in 1789 without a time limit for ratification, but it languished in a political netherworld until 1982, when a University of Texas student, Gregory D. Watson, stumbled upon the proposed amendment while researching a paper. At that time, only eight states had ratified the amendment. Watson took up



**Down the Drain**
The Eighteenth Amendment, which was ratified by the states in 1919, banned the manufacture, sale, and transportation of alcoholic beverages. Banned beverages were destroyed, as pictured here, by federal agents from the Treasury Department, which enforced prohibition. The amendment was spurred by moral and social reform groups, such as the Woman's Christian Temperance Union, founded by Evanston, Illinois, resident Frances Willard in 1874. The amendment proved to be an utter failure. People continued to drink, but their alcohol came from illegal sources. *(© Bettmann/ Corbis)*

the cause, prompting renewed interest in the idea. In May 1992, ratification by the Michigan legislature provided the decisive vote, 203 years after congressional approval of the proposed amendment.[37] Only six amendments submitted to the states have failed to be ratified.

## Interpretation by the Courts

In *Marbury* v. *Madison* (1803), the Supreme Court declared that the courts have the power to nullify government acts that conflict with the Constitution. (We will elaborate on judicial review in Chapter 14.) The exercise of judicial review forces the courts to interpret the Constitution. In a way, this makes a lot of sense. The judiciary is the law-interpreting branch of the government; as the supreme law of the land, the Constitution is fair game for judicial interpretation. Judicial review is the courts' main check on the other branches of government. But in interpreting the Constitution, the courts cannot help but give new meaning to its provisions. This is why judicial interpretation is a principal form of constitutional change.

What guidelines should judges use in interpreting the Constitution? For one thing, they must realize that the usage and meaning of many words have changed during the past two hundred years. Judges must be careful to think about what the words meant at the time the Constitution was written. Some insist that they must also consider the original intent of the framers—not an easy task. Of course, there are records of the Constitutional Convention and of the debates surrounding ratification. But there are also many questions about the completeness and accuracy of those records, even Madison's detailed notes. And at times, the framers were deliberately vague in writing the document. This may reflect lack of agreement on, or universal understanding of, certain

**TABLE 3.3 Constitutional Amendments: 11 Through 27**

| No. | Proposed | Ratified | Intent* | Subject |
|---|---|---|---|---|
| 11 | 1794 | 1795 | G | Prohibits an individual from suing a state in federal court without the state's consent. |
| 12 | 1803 | 1804 | G | Requires the electoral college to vote separately for president and vice president. |
| 13 | 1865 | 1865 | E | Prohibits slavery. |
| 14 | 1866 | 1868 | E | Gives citizenship to all persons born or naturalized in the United States (including former slaves); prevents states from depriving any person of "life, liberty, or property, without due process of law," and declares that no state shall deprive any person of "the equal protection of the laws." |
| 15 | 1869 | 1870 | E | Guarantees that citizens' right to vote cannot be denied "on account of race, color, or previous condition of servitude." |
| 16 | 1909 | 1913 | E | Gives Congress the power to collect an income tax. |
| 17 | 1912 | 1913 | E | Provides for popular election of senators, who were formerly elected by state legislatures. |
| 18 | 1917 | 1919 | P | Prohibits the making and selling of intoxicating liquors. |
| 19 | 1919 | 1920 | E | Guarantees that citizens' right to vote cannot be denied "on account of sex." |
| 20 | 1932 | 1933 | G | Changes the presidential inauguration from March 4 to January 20 and sets January 3 for the opening date of Congress. |
| 21 | 1933 | 1933 | P | Repeals the Eighteenth Amendment. |
| 22 | 1947 | 1951 | G | Limits a president to two terms. |
| 23 | 1960 | 1961 | E | Gives citizens of Washington, D.C., the right to vote for president. |
| 24 | 1962 | 1964 | E | Prohibits charging citizens a poll tax to vote in presidential or congressional elections. |
| 25 | 1965 | 1967 | G | Provides for succession in event of death, removal from office, incapacity, or resignation of the president or vice president. |
| 26 | 1971 | 1971 | E | Lowers the voting age to eighteen. |
| 27 | 1789 | 1992 | G | Bars immediate pay increases to members of Congress. |

*P: amendments legislating public policy; G: amendments correcting perceived deficiencies in government structure; E: amendments advancing equality.

provisions in the Constitution. Some scholars and judges maintain that the search for original meaning is hopeless and that contemporary notions of constitutional provisions must hold sway. Critics say that this approach comes perilously close to amending the Constitution as judges see fit, transforming law interpreters into lawmakers. Still other scholars and judges maintain that judges face the unavoidable challenge of balancing two-hundred-year-old constitutional principles against the demands of modern society.[38] Whatever the approach, unelected judges with effective life tenure run the risk of usurping policies established by the people's representatives.

### Political Practice

The Constitution is silent on many issues. It says nothing about political parties or the president's cabinet, for example, yet both have exercised considerable influence in American politics. Some constitutional provisions have fallen out of use. The electors in the electoral college, for example, were supposed to exercise their own judgment in voting for the president and vice president. Today, the electors function simply as a rubber stamp, validating the outcome of election contests in their states.

Meanwhile, political practice has altered the distribution of power without changes in the Constitution. The framers intended Congress to be the strongest branch of government. But the president has come to overshadow Congress. Presidents such as Abraham Lincoln and Franklin Roosevelt used their formal and informal powers imaginatively to respond to national crises. And their actions paved the way for future presidents, most recently George W. Bush, to enlarge further the powers of the office.

The framers could scarcely have imagined an urbanized nation of 300 million people stretching across a landmass some three thousand miles wide, reaching halfway over the Pacific Ocean, and stretching past the Arctic Circle. Never in their wildest nightmares could they have foreseen the destructiveness of nuclear weaponry or envisioned its effect on the power to declare war. The Constitution empowers Congress to consider and debate this momentous step. But with nuclear annihilation perhaps only minutes away and terrorist threats a regular occurrence since September 11, 2001, the legislative power to declare war is likely to give way to the president's power to wage war as the nation's commander in chief. Strict adherence to the Constitution in such circumstances could destroy the nation's ability to protect itself.

## ★ An Evaluation of the Constitution

The U.S. Constitution is one of the world's most praised political documents. It is the oldest written national constitution and one of the most widely copied, sometimes word for word. It is also one of the shortest, consisting of about 4,300 words (not counting the amendments, which add 3,100 words). The brevity of the Constitution may be one of its greatest strengths. As we noted earlier, the framers simply laid out a structural framework for government; they did not describe relationships and powers in detail. For example, the Constitution gives Congress the power to regulate "Commerce . . . among the several States" but does not define interstate commerce. Such general wording allows interpretation in keeping with contemporary political, social,