congressional representation for the District of Columbia, fell far short of the thirty-eight state ratifications needed before its August 22, 1985, deadline.

On May 7, 1992, Michigan became the thirty-eighth state to ratify the Twenty-seventh Amendment (on congressional compensation)—one of the two “lost” amendments of the twelve that originally were sent to the states in 1789. Because most of the amendments proposed in recent years have been given a time limit of only seven years by Congress, it was questionable for a time whether the amendment would take effect even if the necessary number of states ratified it. Is 203 years too long a lapse of time between the proposal and the final ratification of an amendment? It apparently was not, because the amendment was certified as legitimate by archivist Don Wilson of the National Archives on May 18, 1992.

The National Convention Provision
The Constitution provides that a national convention requested by the legislatures of two-thirds of the states can propose a constitutional amendment. Congress has received approximately 400 convention applications since the Constitution was ratified; every state has applied at least once. Fewer than 20 applications were submitted during the Constitution’s first hundred years, but more than 150 have been filed in the last two decades. No national convention has been held since 1787, and many national political and judicial leaders are uneasy about the prospect of convening a body that conceivably could do as the Constitutional Convention did—create a new form of government. The state legislative bodies that originate national convention applications, however, do not appear to be uncomfortable with such a constitutional modification process; more than 230 state constitutional conventions have been held.

Informal Methods of Constitutional Change
Formal amendments are one way of changing our Constitution, and, as is obvious from their small number, they have been resorted to infrequently. If we discount the first ten amendments (the Bill of Rights), which were adopted soon after the ratification of the Constitution, there have been only seventeen formal alterations of the Constitution in the more than two hundred years of its existence.

But looking at the sparse number of formal constitutional amendments gives us an incomplete view of constitutional change. The brevity and ambiguity of the original document have permitted great alterations in the Constitution by way of varying interpretations over time. As the United States grew, both in population and in territory, new social and political realities emerged. Congress, presidents, and the courts found it necessary to interpret the Constitution’s provisions in light of these new realities. The Constitution has proved to be a remarkably flexible document, adapting itself time and again to new events and concerns.

Congressional Legislation
The Constitution gives Congress broad powers to carry out its duties as the nation’s legislative body. For example, Article I, Section 8, of the Constitution gives Congress the power to regulate foreign and interstate commerce. Although there is no clear definition of foreign commerce or interstate commerce in the Constitution, Congress has cited the commerce clause as the basis for passing thousands of laws that regulate foreign and interstate commerce.
Similarly, Article III, Section 1, states that the national judiciary shall consist of one supreme court and “such inferior courts, as Congress may from time to time ordain and establish.” Through a series of acts, Congress has used this broad provision to establish the federal court system of today.

In addition, Congress has frequently delegated to federal agencies the legislative power to write regulations. These regulations become law unless challenged in the court system. Nowhere does the Constitution outline this delegation of legislative authority.

**Presidential Actions**

Even though the Constitution does not expressly authorize the president to propose bills or even budgets to Congress, presidents since the time of Woodrow Wilson (1913–1921) have proposed hundreds of bills to Congress each year. Presidents have also relied on their Article II authority as commander in chief of the nation’s armed forces to send American troops abroad into combat, although the Constitution provides that Congress has the power to declare war.

The president’s powers in wartime have waxed and waned through the course of American history. President George W. Bush significantly expanded presidential power in the wake of the terrorist attacks of 2001. Until then, there had been a period of decline in the latitude given to presidents since the Vietnam War ended in 1975.

Presidents have also conducted foreign affairs by the use of executive agreements, which are legally binding documents made between the president and a foreign head of state. The Constitution does not mention such agreements.

**Judicial Review**

Another way of changing the Constitution—or of making it more flexible—is through the power of judicial review. Judicial review refers to the power of U.S. courts to examine the constitutionality of actions undertaken by the legislative and executive branches of government. A state court, for example, may rule that a statute enacted by the state legislature violates the state constitution. Federal courts (and ultimately, the United States Supreme Court) may rule unconstitutional not only acts of Congress and decisions of the national executive branch but also state statutes, state executive actions, and even provisions of state constitutions.

**Not a Novel Concept.** The Constitution does not specifically mention the power of judicial review. Those in attendance at the Constitutional Convention, however, probably expected that the courts would have some authority to review the legality of acts by the executive and legislative branches, because, under the common law tradition inherited from England, courts exercised this authority. Indeed, Alexander Hamilton, in Federalist Paper No. 78 (see Appendix C), explicitly outlined the concept of judicial review. Whether the power of judicial review can be justified constitutionally is a question that has been subject to some debate, particularly in recent years. For now, suffice it to say that in 1803, the Supreme Court claimed this power for itself in *Marbury v. Madison*, in which the Court ruled that a particular provision of an act of Congress was unconstitutional.

**Allows Court to Adapt the Constitution.** Through the process of judicial review, the Supreme Court adapts the Constitution to modern situations. Electronic technology, for example, did not exist when the Constitution was ratified. Nonetheless, the Court has used

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21. Note, though, that the Constitution, in Article II, Section 3, does state that the president “shall from time to time . . . recommend to [Congress’s] Consideration such Measures as he shall judge necessary and expedient.” Some scholars interpret this phrase to mean that the president has the constitutional authority to propose bills and budgets to Congress for consideration.

PART 1 • The American System

The Fourth Amendment guarantees against unreasonable searches and seizures to place limits on the use of wiretapping and other electronic eavesdropping methods. The Court has had to decide whether antiterrorism laws passed by Congress or state legislatures, or measures instituted by the president, violate the Fourth Amendment or other constitutional provisions. Additionally, the Court has changed its interpretation of the Constitution in accordance with changing values. It ruled in 1896 that “separate-but-equal” public facilities for African Americans were constitutional; but by 1954 the times had changed, and the Court reversed that decision. Woodrow Wilson summarized the Court’s work when he described it as “a constitutional convention in continuous session.” Basically, the law is what the Supreme Court says it is at any point in time.

Interpretation, Custom, and Usage

The Constitution has also been changed through interpretation by both Congress and the president. Originally, the president had a staff consisting of personal secretaries and a few others. Today, because Congress delegates specific tasks to the president and the chief executive assumes political leadership, the executive office staff alone has increased to several thousand persons. The executive branch provides legislative leadership far beyond the expectations of the founders.

One of the ways in which presidents have expanded their powers is through executive orders. (Executive orders will be discussed in Chapter 11, in the context of the presidency.) Executive orders have the force of legislation and allow presidents to significantly affect the political landscape. Consider, for example, that affirmative action programs have their origin in executive orders.

Changes in the ways of doing political business have also altered the Constitution. The Constitution does not mention political parties, yet these informal, “extraconstitutional” organizations make the nominations for offices, run the campaigns, organize the members of Congress, and in fact change the election system from time to time. Perhaps most striking, the Constitution has been adapted from serving the needs of a small, rural republic to providing a framework of government for an industrial giant with vast geographic, natural, and human resources.