

## Constitutional Convention: Key Agreements and the Great Compromise

### Virginia Plan

proposed on May 29, 1787

This plan was also known as the “Randolph Resolution,” since it was proposed by Edmund Randolph of the Virginia Delegation on May 29, 1787. Randolph’s recommendations are summarized below.

#### Legislative

**A bicameral (two-house) legislature based either on states’ population or on states’ contributions to the central government.**

**Lower house to be elected by popular vote.**

Upper house to be chosen from lists provided by state legislatures to the lower house. Congress would also have the power to legislate where “the separate States are incompetent” or where “the harmony of the U.S. may be interrupted by the exercise of individual legislation.”

#### Executive

A national executive would have “a general authority to execute the national laws.”

#### Judicial

Consisting of “one or more supreme tribunals [courts] and of inferior tribunals.”

Jurisdiction over “admiralty, diversity of citizenship cases, cases involving collection of the national revenues, impeachment of national officers and questions which involve the national peace and harmony.”  
(Smith 38)

### New Jersey Plan

proposed on June 15, 1787

This plan was also known as the “Paterson Resolution,” since it was proposed by delegate William Paterson of New Jersey. His proposals are summarized below.

#### Legislative

Legislature to be unicameral.

**Each state to be equally represented as in the Articles of Confederation.**

Legislative powers to be broadened to include regulation of foreign and interstate trade, as well as the right to levy import taxes and postal fees.

#### Executive

“Plural Executive” to be chosen by Congress; such “Executive” could be removed by Congress at the request of a majority of the governors of the states.

Executive to have power to appoint federal officials and to direct military operations.

#### Judicial

To consist of a single supreme tribunal (court).

Each state in the Union must abide by all the laws and treaties of the United States.

(Smith 39)

### Connecticut Compromise

proposed on July 5, 1787

This plan was also known as “The Great Compromise.” It was proposed by the Compromise Committee composed, in part, of the Connecticut delegation. Its purpose was to offer a compromise between the Virginia and New Jersey Plans. The compromise is outlined below:

**Congress to be bicameral.**

The lower house to be composed of members according to **popular representation.**

The upper house to have **equal representation for each state.**

All spending bills to be **originated in the lower house.**

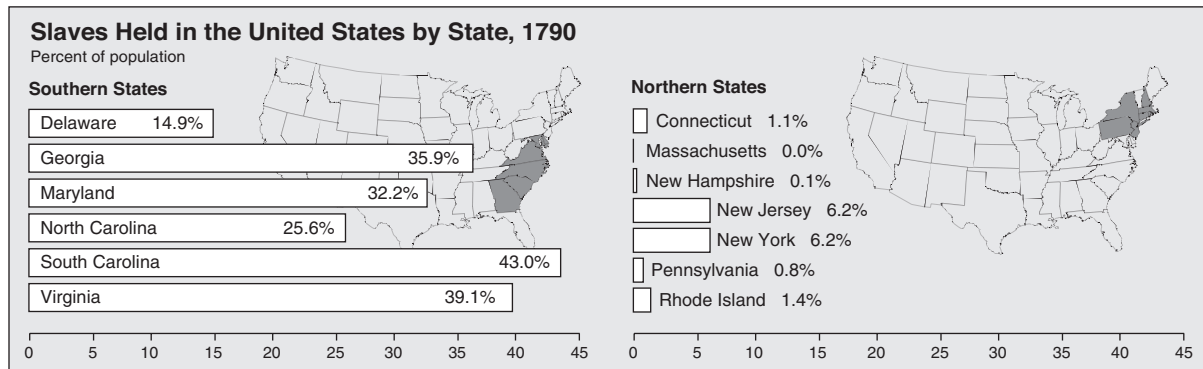
## Constitutional Convention: Other Key Compromises



### 3/5 Compromise

proposed on August 29, 1787

The South's agricultural interests and reliance on slavery led to conflict with the Northern states. The extent of the South's reliance on slavery is shown in the following graph:



The 3/5 Compromise concerned representation in the lower house:

Most slave-holding states favored including slaves in the population count.

Most northern, non-slave-holding states opposed including slaves in the population count.

All freemen  =  1 person

All other persons  =  3/5 of a person

For taxation purposes, each slave to be counted as 3/5 of a person as well. In 1865, with the passage of the 13th Amendment, all slaves became freemen.



### Commerce Compromise

proposed on August 29, 1787

The national government was given the right to regulate commerce or trade. Limitations are cited below:

**The National government**



 No taxing exports

**State government**



 No taxing imports from other states or foreign nations



### Slave Trade Compromise

proposed on August 29, 1787

The southern states feared that the Congress would be controlled by northern commercial interests rather than by the agricultural interests of the South. The compromise followed from that fear:



**Southern states' assent to Commerce Compromise = No action on slavery for 20 years**

## Constitutional Convention: Other Agreements & Compromises



### Electoral College

agreed to on September 6, 1787

Large and small states debated over the election of the executive. Thus the development of the idea of the electoral college. James Wilson, delegate from Pennsylvania, suggested that:

*"the states be divided into districts and that the persons qualified to vote in each district for members of the first branch of the national legislature elect members for their respective districts to be electors of the executive magistracy. Each state shall appoint in such a manner as its Legislature may direct a number of electors equal to the number of Senators and members of the House of Representatives to which a state may be entitled in the Legislature."*



**Number of Each State's  
Electoral College Members**

=



**# State Senators**

+



**# State Representatives**



### President's term of office and re-election

agreed to on September 6, 1787

After considerable debate, the term of the president was agreed upon. The debate on re-eligibility of the president was left to history.

**Initial proposition defeated:**

**Compromise:**



**Presidential term ≠ 7 years**

**Presidential term = 4 years**

With this compromise came the provision that, in the event that no president was elected by majority vote of the electors, the House of Representatives would elect the president. This was a concession to the small states.



**No majority vote of electors**

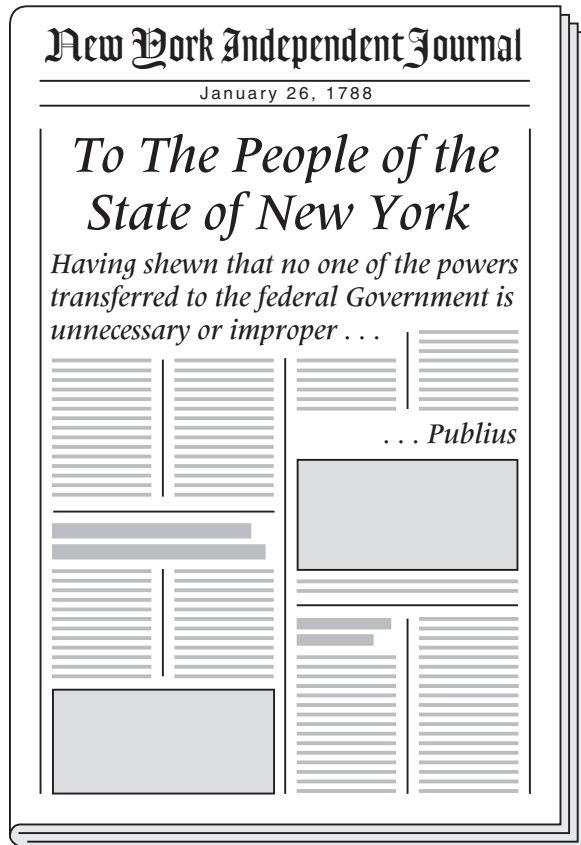
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**Election by House of Representatives**

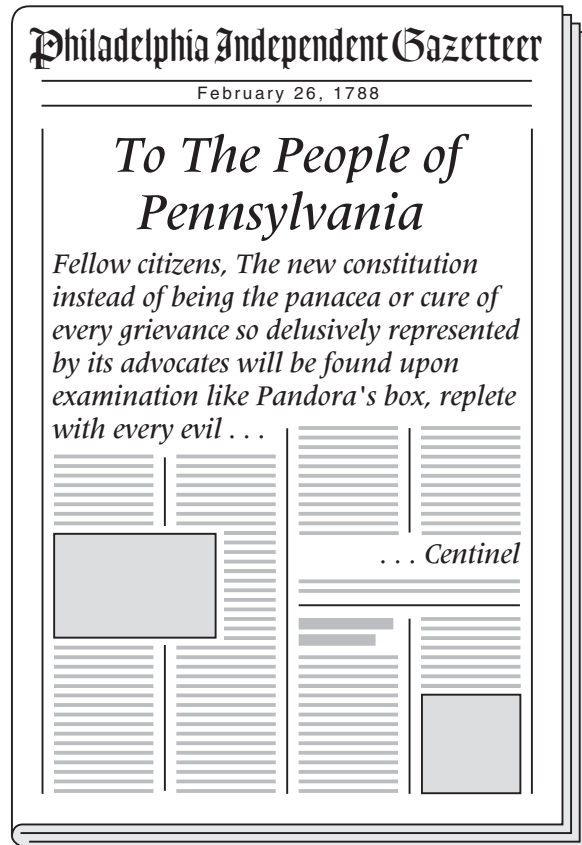
## Ratification of the Constitution: Federalists vs. Anti-Federalists

### Overview of the Conflict



### Federalists

Individuals who supported the Constitution and sought its ratification. James Madison, Alexander Hamilton, and John Jay wrote a series of 85 articles published in New York newspapers in support of the Constitution. These were known as "The Federalist Papers." Many articles were signed with the name "Publius." New York was a key state in the ratification process because of its large population. The Constitution's advocates felt that the support of New York and Virginia, Madison's state, was vital to the success of the new government.



### Anti-Federalists

Those who were opposed to the Constitution and its principles, in particular a strong central government. George Mason, Edmund Randolph, Eldridge Gerry, John Hancock, Samuel Adams and Patrick Henry were all outspoken anti-Federalists who also wrote articles that were published in several newspapers explaining their opposition to the Constitution. Several of the anti-Federalist writings were signed with the name "Centinel." Mason, Randolph and Gerry were delegates and contributors to the Constitutional Convention, yet they opposed the final document.

## Ratification of the Constitution: Federalists vs. Anti-Federalists

### An Outline of the Ideological Debate

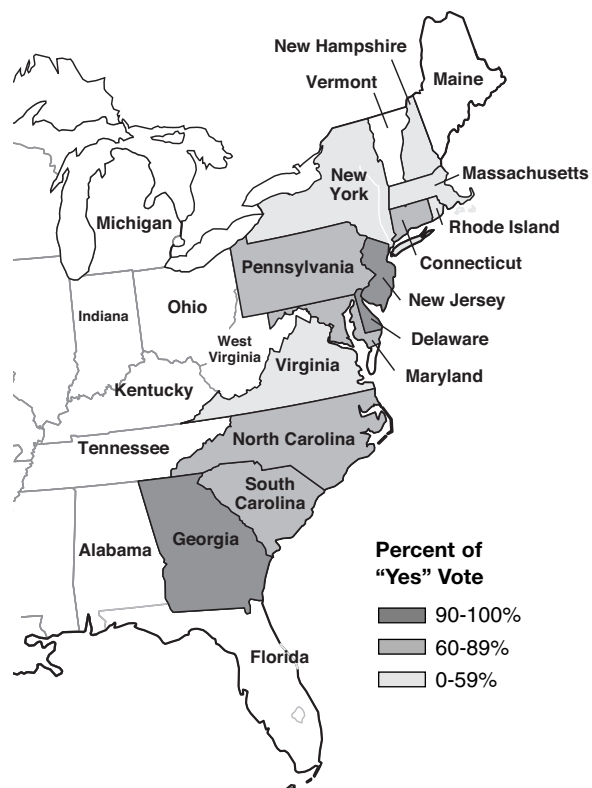
	Anti-Federalist Argument	Federalist Response
<b>Selfish Interests and Common Welfare</b>	The diversity of people and their wealth in such a large nation make it impossible for the people to decide on their common welfare. Republican forms of government work only in small communities.	Throughout history, small republics have been destroyed by the selfish interests of certain groups. Large republics, which have checks and balances and a division of power between national and state government, can guard against such interests and can protect the common welfare.
<b>Central Authority and Active Participation</b>	Free government depends on the participation of its citizens. The size of the country and the location of the national government prevent active participation.	The principles of checks and balances and separation of powers can prevent the tyranny of the national government and ensure that many voices are heard.
<b>Supremacy Clause and Abuse of Power</b>	The "Supremacy Clause" grants too much power to the central government, thus threatening the existence of state governments.	The increased powers of the national government concern the entire nation in areas such as defense, trade, and currency. The Constitution also provides safeguards against the national government's abuse of power.
<b>Necessary and Proper Clause, and Abuse of Power</b>	"The Necessary and Proper Clause" in Article I, Section 8, Clause 18 grants too much power to the national government. Much clearer limits must be set.	"The Necessary and Proper Clause" is essential to the functioning of the national government under changing situations. Without it, the national government will be limited as it was under the Articles.
<b>Individual Liberties</b>	A "Bill of Rights," which is essential to protect the rights of individuals, is not included. Without it, there can be no limited government.	A "Bill of Rights" is not necessary to the Constitution because the powers of the national government are limited by the text of the Constitution as it is.
<b>Executive Power</b>	The same abuse of power will occur as in England because the executive branch is given too much power. A monarchy is inevitable.	The principle of checks and balances adequately restricts the power of the executive. A strong executive is essential to the enforcement of the laws of the national government.

## Ratification of the Constitution: The Results

### States' Objections to and Ratification of the Constitution

State	Votes Yes	Votes No	Percent Yes Vote	Strong opposition due to:
Delaware	30	0	100%	
New Jersey	38	0	100%	
Georgia	26	0	100%	
Maryland	63	11	85%	
Connecticut	128	40	76%	
North Carolina	195	77	72%	
Pennsylvania	46	23	67%	
South Carolina	149	73	67%	
New Hampshire	57	46	55%	Absence of Bill of Rights
Massachusetts	187	168	53%	Absence of Bill of Rights
Virginia	89	79	53%	Absence of Bill of Rights, Federal Courts had jurisdiction over treaties
New York	30	27	53%	Central government was too powerful
Rhode Island	34	32	52%	Central government was too powerful

### 1787-1790



## The Living Constitution: Major Principles

The U.S. Constitution is often referred to as a “living constitution.” The following quote from Chief Justice John Marshall will shed light on why:

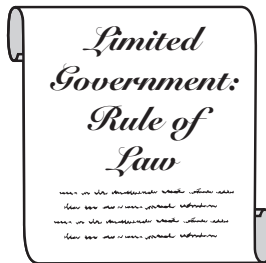
*The subject is the execution of those great powers on which the welfare of a nation essentially depends . . . This provision is made in a Constitution intended to endure for ages to come and, consequently, to be adapted to the various crises of human affairs.*

### Major Principles



**Popular Sovereignty**  
The power to rule belongs to the people. People of the nation are the sources of government power.

The government can govern only with the consent of the governed. Preamble: “We the People of the United States . . . do ordain and establish the Constitution for the United States of America.”



**Limited Government**  
Government is not all powerful, it can do only those things that the people have given it the power to do. Government must obey the law. This is referred to as “rule of law” or “constitutionalism.” The government and government officials are subject to the law, never “above the law.” Article VI, Section 2: “The Constitution and the laws of the United States . . . shall be the supreme law of the land . . .”



**Separation of Powers**  
The Constitution distributes the powers of the central government among the three branches—legislative, executive, judicial. Each branch has its own responsibilities. Each branch addresses different tasks of the whole society . . . separation of powers is meant to increase the efficiency of government. Article I, Sec. 1: “All legislative powers herein granted shall be vested in a Congress of the United States . . .” Article II, Sec. 1: “The Executive power shall be vested in a President of the United States.” Article III, Sec. 1: “The Judicial power of the United States shall be vested in one Supreme Court . . .”



### Checks and Balances

Each branch of the government would have some control over the other branches. The principle of checks and balances would prevent any one branch from ignoring or overriding the decisions of the other branches. Article I, Sec. 7,

Cl.3: “every order, resolution, or vote to which the concurrence of the Senate and the House of Representatives may be necessary shall be presented to the President of the United States: and before the same shall take effect, shall be approved by him . . .”

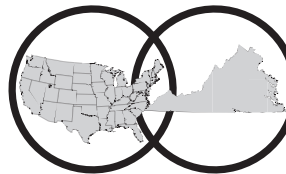


### Judicial Review

This is the power of the Supreme Court to declare an act of Congress to be “unconstitutional.”

Nowhere in the Constitution is this power stated. However, the interpretation of the Supremacy Clause by

Chief Justice Marshall in the case of *Marbury v. Madison* (1803) set a precedent for the Court to act as the guardian of the Constitution. Article VI, Sec. 2: “The Constitution, and the laws of the United States . . . shall be the supreme law of the land.”



### Federalism

The Constitution divided the powers of government between the central or national government and

the state or regional governments. Neither kind of government was given all the powers. They are independent of each other in terms of certain powers; however, they must cooperate on certain shared or concurrent powers. Amendment 10: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

## **The Constitution: General Outline**

**Preamble** Introduction, explanation of why the Constitution was written

**Articles (7)** Main body of the document; each article deals with a general topic and most are divided into sections that provide specifics on the topics.

**Article I      Legislative Branch**

- Section 1: Establishment of the Legislature
- Section 2: The House of Representatives
- Section 3: The Senate
- Section 4: Legislative Elections and Meetings
- Section 5: Legislative Proceedings
- Section 6: Compensation, Privileges & Restrictions
- Section 7: Lawmaking Rules
- Section 8: Expressed Powers of Congress
- Section 9: Powers Denied to Congress
- Section 10: Powers Denied to States

**Article II      Executive Branch**

- Section 1: Establishment of the Presidency and Vice Presidency
- Section 2: Presidential Powers and Duties
- Section 3: Other Presidential Powers and Duties
- Section 4: Impeachment

**Article III      Judicial Branch**

- Section 1: Establishment of the Judiciary
- Section 2: Jurisdiction (Power to Hear Cases)
- Section 3: Trying Cases of Treason

**Article IV      Relationship among the states and between the states and national government**

- Section 1: Full Faith and Credit of All States
- Section 2: Individuals within the States
- Section 3: New States and Territories
- Section 4: U.S. Responsibilities to the States

**Article V      Amendment Process**

**Article VI      National Debt, Supremacy Clause, Officials' Oaths**

**Article VII      Ratification of Constitution**

Note: For full text see appendix.

## The Amendments: General Outline

### **The 27 Amendments** Changes or additions to the Constitution

#### **Bill of Rights**

##### **First 10 Amendments, Ratified by December 15, 1791**

Amendment 1:	Freedom of Religion, Speech, Press, Assembly, Petition
Amendment 2:	Bearing Arms
Amendment 3:	Quartering Troops
Amendment 4:	Searches and Seizures
Amendment 5:	Criminal Proceedings, Due Process, Eminent Domain
Amendment 6:	Criminal Proceedings
Amendment 7:	Civil Trials
Amendment 8:	Punishment for Crimes
Amendment 9:	Unenumerated Rights
Amendment 10:	Powers Reserved for States

##### **Early Post-Bill of Rights Amendments, from 1796 to 1804**

Amendment 11:	Suits against States
Amendment 12:	Election of President and Vice President

##### **Amendments Arising from the Civil War**

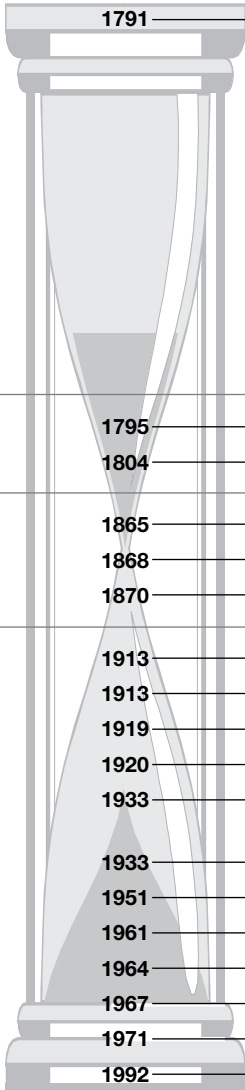
Amendment 13:	Slavery and Involuntary Servitude
Amendment 14:	Civil Rights of Citizens in the States
Amendment 15:	Right to Vote: Race, Color, Servitude

##### **20th Century Amendments**

Amendment 16:	Income Tax
Amendment 17:	Popular Election of Senators
Amendment 18:	Prohibition of Liquor
Amendment 19:	Right to Vote: Women
Amendment 20:	Commencement of Terms: Lame Duck Amendment
Amendment 21:	Repeal of Prohibition
Amendment 22:	Presidential Term of Office
Amendment 23:	Presidential Election for the District of Columbia
Amendment 24:	Right to Vote in Federal Elections: Poll Tax
Amendment 25:	Presidential Succession, Vice Presidential Vacancy, Presidential Inability
Amendment 26:	Right to Vote: Age
Amendment 27:	Congressional Pay

Note: For full text see appendix.

## Amending the Constitution: A Timeline and Summary of Issues

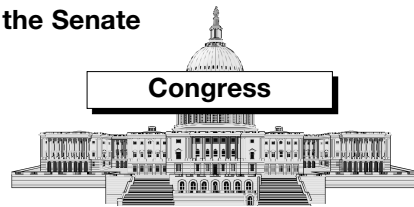
	Date	Amendment #	Change or Addition to Constitution
<b>Bill of Rights</b>		1	Freedom of religion, speech, press, assembly, petition
		2	Right to keep and bear arms and for a state to have a militia
		3	Right not to have to lodge soldiers
		4	Right to be safeguarded against unreasonable searches and seizures
		5	Right to a grand jury, no double jeopardy, no self-incrimination, eminent domain
		6	Right to a speedy trial, impartial jury, witnesses
		7	Right to a jury trial in civil cases
		8	Freedom from excessive bail and cruel and unusual punishment
		9	Guarantee of rights not enumerated in the Constitution
		10	Rights not given to national government are reserved for the states.
<b>Early Post-Bill of Rights Amendments</b>	1795	11	Limitation of federal court jurisdiction in suits against states
	1804	12	Electoral college's election of president and vice-president revised.
<b>Amendments Arising from the Civil War</b>	1865	13	Abolition of slavery
	1868	14	Due process and equal protection for all individuals in all states
	1870	15	Black suffrage
<b>20th Century Amendments</b>	1913	16	Congress has the right to impose income tax.
	1913	17	Senators elected directly by people of each state.
	1919	18	Prohibition of alcohol
	1920	19	Women's suffrage
	1933	20	"Lame Duck" period (time between election and swearing in) shortened.
	1933	21	Repeal of prohibition
	1951	22	Presidential terms limited.
	1961	23	District of Columbia granted right to vote in presidential elections.
	1964	24	Abolition of poll tax
	1967	25	Presidential succession
	1971	26	18-year-olds granted right to vote.
	1992	27	Congress limited in power to fix salaries of its members.

### Issues Addressed by the Amendments

Issue	Amendments				
Civil Rights	1-9	13	14		
Government Power & Function	10	11	16	27	
Election Rules & Office-Holding	12	17	20	22	25
Social Concerns	18	21			
Voting Rights	15	19	23	24	26

## Amending the Constitution: Four Methods

**Proposed in Congress by a 2/3 vote  
in both the House and the Senate**



Ratified by state legislatures  
in 3/4 of the states (38)

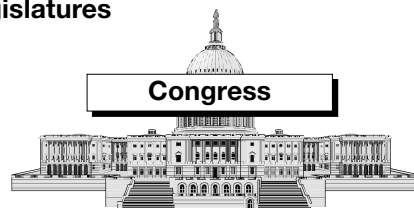
**OR**



Ratified by state conventions  
held in 3/4 of the states (38)

**OR**

**Proposed at a National Convention  
called by Congress when requested  
by 2/3 of the State Legislatures**

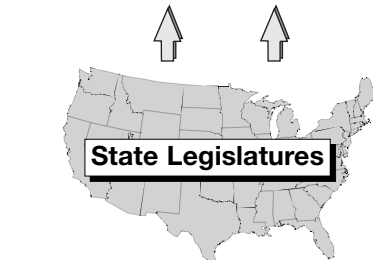


Ratified by state legislatures  
in 3/4 of the states (38)

**OR**



Ratified by state conventions  
held in 3/4 of the states (38)



### Problems with Proposing Amendments by National Convention

Thus far, no amendment has been proposed in a convention called by Congress. The last convention called by Congress was the Constitutional Convention, which was supposed to revise the Articles of Confederation and which evolved into the drafting of a new constitution. Possible reasons why the convention formula has been unsuccessful follow:

What would be considered a valid call of 2/3 of the legislatures?

How long will the required 2/3 of the states be allowed to submit their resolutions?

Can a state rescind its call for a convention?

2/3 of the states may call for a convention, but Congress may fail to do so. How should this be resolved?

How should the apportionment of the delegates be decided and how are the delegates to be chosen?

### Problems with Ratification by State Conventions

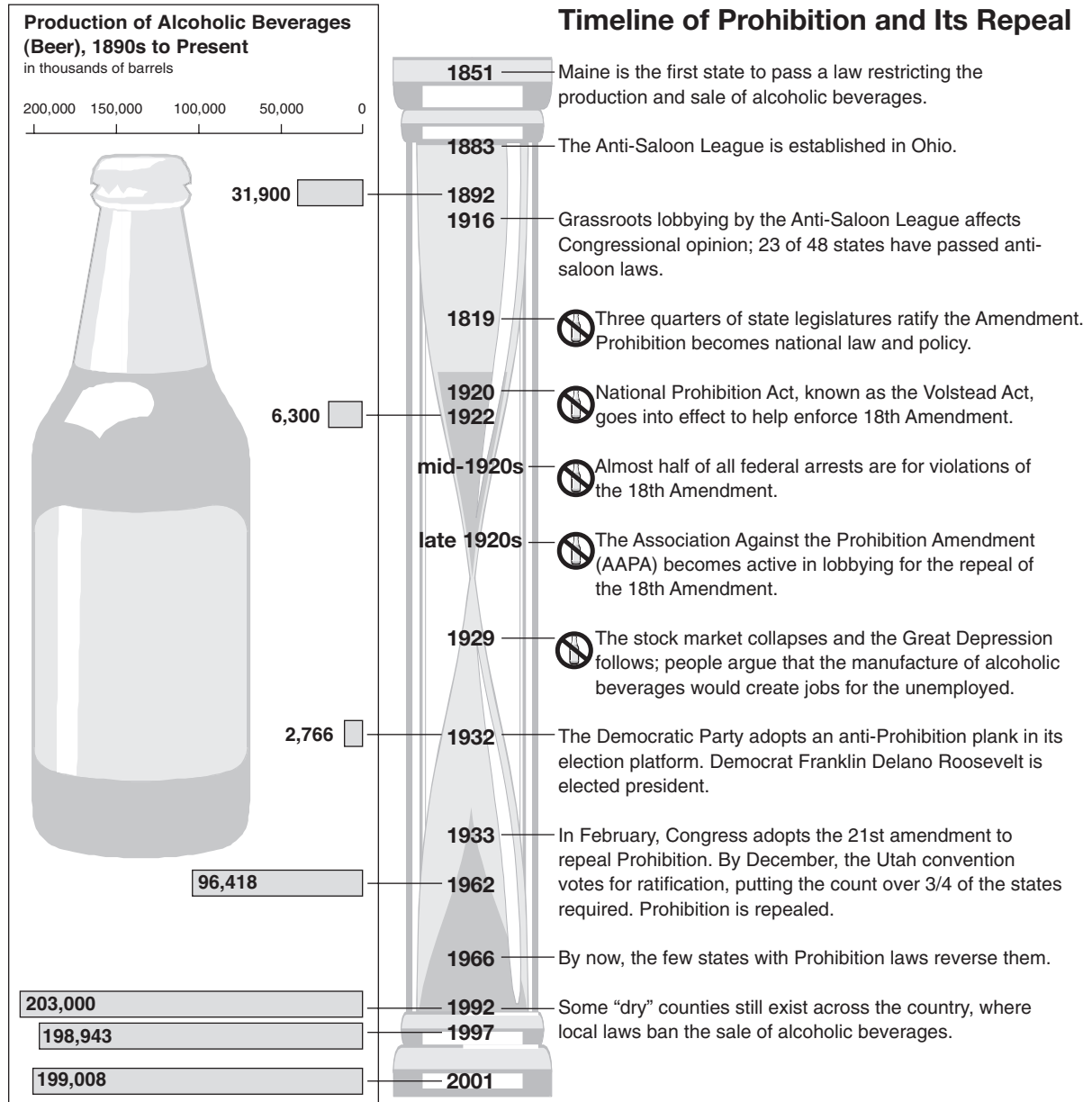
Only one amendment has been ratified by state conventions, the 1933 21st Amendment that repealed Prohibition (see page 1.47). Possible reasons why the state convention ratification formula is unsuccessful follow:

Should Congress or state legislatures determine procedures for ratification by state conventions?

What is a reasonable time period for ratification? The Supreme Court determined that Congress had the power to decide on a time period.

## Amending the Constitution: Case Study on the Repeal of Prohibition

**Amendment 21:** Proposed by Congress in February 20, 1933 and ratified in state conventions by December 5, 1933. The 21st Amendment repealed the 18th Amendment, which forbade the production and sale of alcoholic beverages in 1919. This was the first and only time an amendment was sent to state conventions for passage.



Congress and supporters of repeal pushed for ratification of the 21st Amendment by state conventions rather than by state legislatures, which is the usual method. They did this for three reasons:

1. There was a desire for a speedy ratification.
2. They believed that state legislatures gave in to the pressure tactics of Prohibition forces in ratifying the 18th Amendment, were over-represented by rural areas favoring Prohibition, and had not fairly represented the views of the majority of their constituents.
3. Congress wanted to remove this divisive issue from the political arena. It had caused disunity among the states, political parties, and regions of the United States for too long.

## Informal Methods of Changing the Constitution

The body of law in the United States consists of both fundamental law and statutory law.

### Fundamental Law

Laws that are specifically outlined in the U.S. Constitution and in state constitutions.

### Statutory Law

Laws enacted by legislative bodies including the U.S. Congress, state legislatures, local legislative bodies, and the people through voter initiatives and referendums.

The fundamental laws of the U.S. Constitution are changed through the formal amendment process, through passage of statutory laws, as well as through informal methods outlined here and on the next page.

## Informal Methods of Amending the Constitution

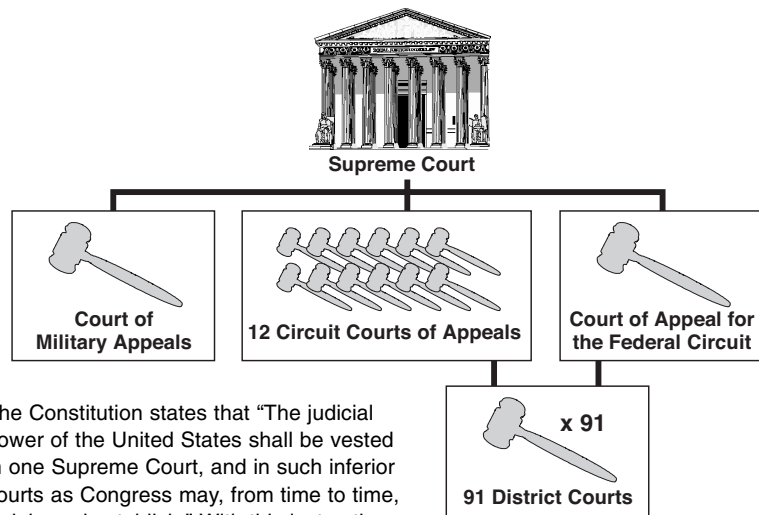
### CHARACTERISTICS

### EXAMPLES & ILLUSTRATIONS

### Congressional Legislation

#### Purposeful Flexibility

The writers of the Constitution purposely left the framework of the government flexible to allow for changing times. Congress has added details to the framework in the form of new legislation. In other words, Congress has elaborated on the fundamental laws of the Constitution.



The Constitution states that "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish." With this instruction, Congress has established 12 Circuit Courts of Appeals, 91 Federal District Courts in the U.S., as well as numerous other courts for specialized matters such as military affairs.

### Congressional Interpretation

Congress has also assumed the role of determining the intent of the framers by passing thousands of statutes. In doing so, Congress is interpreting the fundamental laws of the Constitution.

