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The 225th anniversary of the first success of the U.S. Constitution’s amending process, the ratification of the ten amendments known as the Bill of Rights, occurs in 2016. After the passage of so much time, it seems safe to say that the amending mechanism, the most innovative feature of the longest lasting written constitution in history, has played an important role in the development of American government. Often overlooked as the device that allowed the United States to modify significantly its fundamental instrument of governance as social and political conditions changed, yet invest those alterations with as much weight as other features of the nation’s highest law, the amending instrument and the results it produced to keep the Constitution functioning deserve more attention than they have received. Thus, I am grateful for the opportunity to update this general history of American constitutional amendment twenty years after its original publication.

As I noted two decades ago, if revolution involves the sudden and fundamental transformation of basic conditions, then surely the most soft-spoken revolutions are those that occur without violence, disorder, or trauma. In Western political culture, such revolutions were virtually unheard of prior to the late eighteenth century. Before that time, political revolutions involved the forceful overthrow of regimes, the toppling of monarchies, and the often bloody removal of holders of power. During the English Civil War, however, the thought began to stir that such upheavals might be avoided if the sovereign power of the state could define and limit government through written constitutions. By the end of the eighteenth century, particularly in North America, growing optimism regarding the human capacity for reason nourished the belief that fundamental changes could be wrought in otherwise enduring governments through a preordained and agreed-upon process that embodied democratic values. The formal revision of constitutions by previously established methods could bring about revolutionary changes in governments while at the same time legitimizing their continued existence. In other words, constitutional amendment offered a means of successfully balancing competing desires for stability and change, tradition and inno-
vation, the wisdom of accumulated experience, and the aspiration for new democratic expressions of government obligation.

The United States of America, the first nation to incorporate an amendment mechanism into its constitutional system, has now operated under the same basic written instrument for more than two-and-a-quarter centuries. The connection between the existence of the amendment device and the durability of the Constitution is far from coincidental. During those two-plus centuries, the United States has undergone more than one revolutionary political transformation in which the terms of government were profoundly redrawn. Relationships between the states and the central authority were fundamentally altered, as were government controls over private property, government responsibilities to the individual, and mechanisms of republican rule. The individual changes—most notably, the articulation of civil rights and liberties; the abolition of slavery; the definition of citizenship; the establishment of direct, progressive taxation; the prohibition and then the reestablishment of the liquor trade; and the extension of suffrage to blacks, women, and late adolescents—have received considerable attention. The constitutional amending system itself, the process by which these and other momentous reforms were implemented, has attracted far less notice.

Forging an instrument to accommodate fundamental reform, the creators of the United States recognized, provided the best preparation for the changes their society and its governmental needs would inevitably undergo. Article V of the 1787 Constitution, outlining various amending processes, made manifest the idea that orderly constitutional revision from time to time was the “original intent” of the Founders. Equally evident was their notion that most matters of governance could be adjusted without resort to such extreme lengths. The repeated but not invariable use of the amending mechanism during the early years of the republic, while many of the Founders remained active in government, underscores their intention. The less frequent employment of amendment thereafter, except at moments of great constitutional challenge, further confirms that view. Altogether the Constitution has been amended twenty-seven times in just over two centuries of operation, though not once since 1992. The roughly 3,100 words in those amendments come fairly close to the 4,300 words of the original instrument. Although most students of the Constitution have considered this to be very little amending activity, the evidence seems incontrovertible that without its capacity for formal alteration, the Constitution on more than one occasion would have confronted a far more disruptive revolutionary process.

Explicit and Authentic Acts illuminates the creation of the American
amending system, the manner in which it functioned each time a major effort was made to change the Constitution, the nature of attempts to modify it, and, ultimately, its role in American constitutional development. The book begins, as any comprehensive history of the amending process must, by examining thought about amendment at the time of the creation of the first American constitutions, both those of the original states and that of the United States. The replacement of the initial Articles of Confederation arrangements for amendment by the Article V process is considered thereafter. On that base is built the complicated history of the subsequent operation of the amendment system. The individual circumstances of successful amending efforts and notable failures, together with judicial and political discussions of the Article V mechanism, provide the historical context vital to a nuanced appraisal of the amending system. This new edition, following a twenty-year period in which numerous amendments were proposed but none were adopted, offers an opportunity for further reflection on the occasional absence of amendment for extended periods. Connections between American constitutionalism and the nation’s past and present political order therewith become evident.

For years, scholars of constitutional law, political science, and philosophy, as well as less deeply informed journalists, have tended to discount or ignore altogether differences between formal constitutional alteration through the amending process and functional shifts in government achieved by judicial construction, unchallenged legislative initiative, or unchecked presidential embellishment. For their own reasons, both liberals and conservatives have advanced the interchangeability argument at times. The effect of their work has been a blurring of the important distinction between a tentative, limited, and, most important, unstable process of constitutional elaboration and, by contrast, a fundamental definition of authority granted by sovereign power. As a counterweight to such thinking, a serious reconsideration of the unique role of constitutional amendment is essential.

One of the drafters of the 1787 Constitution, James Wilson of Pennsylvania, may have foreseen the reason why the amending process itself has attracted relatively little attention. This revolutionary principle, he said, “that the sovereign power resid[es] in the people, [and] they may change their constitution and government whenever they please, is not a principle of discord, rancor, or war: it is a principle of melioration, contentment, and peace.” In other words, the eighteenth century’s great innovation was to routinize revolution, not in the sense of making constitutional change easy or frequent, but in the sense of rendering it legitimate and affirmative of the existing order when carried out in a specified, standard manner. A process
Explicit and Authentic Acts

that peaceably channels and resolves conflict in human affairs, while no
doubt highly beneficial, seldom draws much notice.

Generally speaking, studies of the creation of the 1787 Constitution and
its subsequent treatment by judicial interpreters have dominated the histo-
riography of American constitutional development. Although amendments
repeatedly redrew the framework of American government, most notably
in the 1790s, 1860s, 1910s, and 1960s, formal constitutional change has
captured comparatively little attention. For over a century, however, a few
scholars have attempted to describe and assess the history of American con-
stitutional amending. Most restricted their attention to single amendments
or, at most, a contemporary cluster of related measures such as the Bill of
Rights or the reconstruction amendments. The closely connected national
prohibition and repeal amendments became the subject of my own initial
venture into amending history, for instance.2 Over the years, only a hand-
ful of scholars attempted a more comprehensive look at the operation of
the amending process established by Article V of the Constitution. Their
efforts, for better or worse, have provided the basis for the contemporary
understanding of amendments in more general histories and in the Ameri-
can political culture at large.

Shortly after the Constitution’s centennial, Herman Ames undertook the
first substantial retrospective examination of the Article V process. Ames
carefully listed every proposed amendment introduced in Congress over the
course of a century, treating the trivial and duplicative as seriously as the
substantial and original. He drew a sharp contrast between the more than
1,700 bills that individual legislators had submitted and the mere 15 amend-
ments that Congress had adopted and the states had ratified. Writing near
the time when the ratio of amendment to the passage of time reached its
nadir, Ames helped shape an image of an immense amount of attempted
amendment and Article V’s requirements placing “insurmountable constitu-
tional obstacles” in the path of constitutional reform. Regarding the super-
majorities required for the adoption and ratification of amendments as too
great, Ames paid no attention to the question of whether a young constitu-
tion actually needed amending, much less whether, given the political cul-
ture of the nineteenth century, any alternative constitutional arrangements
enjoyed even the slenderest of majorities.

Ames bears considerable responsibility for initially shaping a negative
view of Article V. He reinforced the general historical view that scarcely
distinguished the passage of the first ten amendments from the passage of
the Constitution itself, dismissed the other two amendments adopted by
the First Congress but not ratified by sufficient states as “unwise,” and
treated the reconstruction amendments as irregular, forced, and not entirely legitimate. Such a view, in his eyes, left only the Eleventh Amendment of 1795 and the Twelfth Amendment of 1804 as independently and properly achieved Article V changes. Ames characterized amendment as excessively difficult and extraordinarily unusual. He warned that Article V’s demanding requirements could have dire consequences.3

Forty years later, Michael Musmanno extended and reinforced Ames’s analysis, cataloging all amendment proposals introduced in Congress in the intervening period. Although the early twentieth century had been a period of substantial Article V activity, with seven amendments adopted by Congress and six ratified between 1913 and 1933, the number of reform proposals also surged during this time. Musmanno, like Ames, treated each congressman’s bill as a separate amendment effort, although many were duplicative, and most were clustered around a few issues. As a consequence, he enhanced the image of a vast number of failed amendment attempts. The Ames-Musmanno characterization of amendment as an exceptionally arduous and rarely successful procedure continued to gain credence, even though contemporary experience might have suggested an alternative interpretation.4

In 1942 University of Michigan law professor Lester Orfield brought together his extensive consideration of various relevant issues in the first legal treatise devoted specifically to the amending process. He possessed considerable insight on a century and a half of Article V history but employed individual amending incidents out of historical context in narrow, if useful, discussions of constitutional procedure.5 Russell Caplan’s 1988 look at state-initiated constitutional conventions was a capable extension of Orfield’s approach. Caplan, too, used selected historical episodes merely to illuminate legal and political constitutional issues. His analysis paralleled that of Orfield. Both legal specialists represented the amendment mechanism as heavily laden with devices that could frustrate reform efforts.6

Attention to constitutional amending history increased somewhat in the 1960s and 1970s, a time during which more than a dozen amendment proposals received serious consideration. Journalist Charles Leedham’s 1964 popular account provided a narrative history of Article V activity, but it was disappointingly shallow and error-ridden, as well as attentive only to ratified amendments.7 Political scientist Clement Vose in 1972 placed amendment in a broader framework of constitutional change that encompassed judicial review and wider currents of political reform. Vose, however, paid no attention to what had transpired before 1900 and looked only episodically at twentieth-century developments, producing a truncated and uneven
picture, full of shrewd observations but far from comprehensive. Six years later another political scientist, Alan Grimes, provided a narrative superior to Leedham’s in terms of political detail but again focused narrowly on the legislative history of successful Article V actions. Grimes forced amendments into narrow categories, emphasizing—indeed, exaggerating—the regional origins of support for reform rather than fully acknowledging the national consensus required to achieve it. He also took a limited view of the substance of amendments, analyzing each in terms of its contribution to participatory democracy rather than its bearing on a broader range of issues. Leedham, Vose, and Grimes did little to alter the conventional view of amending as a rare and peripheral element in American constitutional development.

Thereafter, the failed ratification of the equal rights amendment (ERA) not only frustrated feminists but also strengthened the orthodox view of the amending process as extraordinarily difficult. Mary Frances Berry made the most substantial effort to place the ERA’s defeat in historical perspective. Before examining the ERA battle itself, she reviewed Article V activities from 1789 to the 1970s. Though superficial in many respects, her survey placed amending in the mainstream of constitutional development and called attention to expectations of federal consensus for fundamental reform. The inability of ERA proponents to understand fully the amending process historically, in particular its consensus requirements, went a long way, in Berry’s estimation, toward explaining their defeat, not to mention their subsequent discontent with the Article V system.

Michael Kammen’s seminal 1986 study of the Constitution in American culture stirred a fuller consideration of the role of amendments in the evolution of American constitutionalism. Breaking with the tradition of narrowly focused political and legal studies, Kammen examined popular perceptions and responses to the Founders, their handiwork, and the subsequent evolution of the Constitution. He set forth a compelling case for adjusting the balance of consideration between judicial and popular interpretations of the instrument. Calling attention to the American public’s gradually evolving “Constitution worship,” together with its limited understanding of the document’s intended purposes and functions, Kammen suggested that resistance to amendment rested on much more than the mechanism of Article V. A political culture that was emotionally attached to the status quo and not particularly knowledgeable about constitutional matters was not inclined to favor frequent amendment. Kammen’s pioneering cultural approach not only elevated the understanding of constitutional history to a higher plateau but also offered a new methodological model. His work set a standard that
demanded that subsequent scholars pay greater attention to the broader historical context of constitutional evolution, as well as the nuances of individual issues.

In the aftermath of Kammen’s richly detailed cultural history, legal scholar Bruce Ackerman took up the Constitution’s underlying themes of popular sovereignty and republicanism. Earlier, in a series of influential lectures, he had addressed the proper balance between the two that lies at the heart of many constitutional discussions.¹² Then, in his 1991 book *We the People: Foundations*, he provided a provocative schema for considering both elements in the American constitutional experience. Distinguishing between normal majoritarianism and higher-consensus constitutional politics, Ackerman portrayed constitutional evolution as a combination of congressional acceptance and judicial interpretation in which the sovereign people gave final democratic sanction, in one way or another, to acceptable arrangements. Ackerman’s assessment was grounded more in political philosophy than conventional history. However, his argument that the sovereign people continually reshaped the Constitution, either by embracing existing arrangements or by choosing informally or formally to change them, underscored the need for a more thorough examination of past successful and unsuccessful amending efforts.¹³

Initial responses to Kammen’s and Ackerman’s recasting of American constitutional history came not from historians but from political scientists and legal scholars. Political scientist John Vile surveyed eighteenth-century political theory to support his contention that the Founders intended amendment to be a difficult but not impossible mechanism for change. He extended his analysis to show that, on balance, the commentators of the next century embraced the Article V device that prevented easy, destabilizing alteration of the frame of government yet provided a workable alternative to revolution when a compelling need for fundamental reform arose.¹⁴ Legal scholars Richard Bernstein and Jerome Agel adopted something of Kammen’s cultural perspective. They also embraced Ackerman’s view that debate over constitutional issues represented a separate and vital element of American political life. However, Bernstein and Agel passed rapidly over much of American constitutional history, focusing instead on recent developments.¹⁵ While not contributing any strikingly fresh insights themselves, Vile as well as Bernstein and Agel helped raise the profile of amendment as a phenomenon to be taken seriously, a significant element in two centuries of constitutional evolution. They effectively underscored the need for a closer and fuller examination of formal constitutional change over the entire sweep of American history.
Two very different approaches to the subject of constitutional amending appeared in 1996. One was the first edition of my *Explicit and Authentic Acts: Amending the U.S. Constitution, 1776–1995*, an attempt at a straightforward, carefully documented historical account of the entire course of constitutional amending. The other was radical journalist Daniel Lazare’s shrill critique *The Frozen Republic: How the Constitution Is Paralyzing Democracy*. Eschewing a historical examination, Lazare offered a harsh evaluation of the contemporary Constitution as a deeply dysfunctional governance structure that was antidemocratic at its core. A self-professed socialist who favored a simple majoritarian democracy, Lazare disdained the U.S. Senate with its two seats for every state, regardless of population, as grotesquely antidemocratic. He was likewise convinced that the electoral college, bicameralism, presidential and judicial authority, the separation of powers, and the Article V amending process were all severe drags on democracy. Indifferent to the historical reasons for the rise of these constitutional devices, Lazare despaired of any solution through amendment and offered only a pipe-dream remedy. He fantasized that in the distant future of 2020, underrepresented California would threaten to secede from the Union, and the U.S. House of Representatives would stage a “democratic coup d’etat,” take unto itself the powers of a constitutional convention, abolish the Senate, and confirm its self-creation as a national parliament by seeking and gaining the approval of a national referendum. It seems safe to say that Lazare’s book reflected the discontents of the American body politic in the 1990s. It found sympathizers in the scholarly community.16

The more academically grounded discussion of constitutional change that followed Lazare’s screed shared some of his frustration with the confines of the Article V process. Over the next twenty years, several prominent legal scholars discussed the complex issue of the relationship between legal change achieved by legislative, executive, and judicial processes and that achieved by constitutional reform. Bruce Ackerman led the way in discounting the differences between formal constitutional alteration through the amending process and publicly accepted functional shifts accomplished though executive, legislative, and judicial interpretation. He began that effort to minimize differences between formal and informal change in *We the People: Foundations*, his wide-ranging and stimulating 1991 discussion of constitutional development, and fleshed out his argument in two additional volumes over the next twenty-three years. *We the People: Transformations* focused on Reconstruction and the New Deal, while *We the People: The Civil Rights Revolution* brought his discussion of constitutional evolution up to the era of the Roberts Court.17
Ackerman characterized the American tradition of higher lawmaking as constitutional change achieved by a clear mobilization of the sovereign popular will, however expressed, rather than by strict adherence to the terms of Article V. It began, he contended, with the unorthodox replacement of the Articles of Confederation by the Constitution and the Bill of Rights. He also regarded the Civil War amendments as being irregularly obtained through congressional pressure on the southern states; nonetheless, he considered them just as legitimate as the Constitution and the Bill of Rights, as they had been accepted by all three branches of the federal government. The alterations in the Supreme Court’s interpretation of federal authority during the late 1930s he treated as the functional equivalent of constitutional amendment. Ackerman perceived constitutional amendment as an extraordinary enunciation of the will of the sovereign populace, but he regarded changes that presidents and Congress desired and the Supreme Court and the public accepted as having similar “transformative” weight. The New Deal initiated by Franklin Roosevelt was endorsed by Congress and eventually by the Court, and it was ultimately confirmed by clear majorities of the electorate in two consecutive national elections in 1936 and 1940.18

In the course of a rich and sensitive account of the multifaceted civil rights revolution of the post–World War II era, Ackerman asserted that a similarly profound constitutional reform had been achieved. A new understanding of racial justice and civil rights was obtained not by constitutional amendment alone but by a combination of actions. The U.S. Constitution was fundamentally altered, Ackerman insisted, by the Supreme Court (specifically, in Brown v. Board of Education of Topeka); by presidential and congressional concurrence in the Civil Rights Acts of 1957, 1960, and 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968; by state and federal endorsement via the Twenty-third and Twenty-fourth Amendments; and, last but not least, by public confirmation of overall civil rights reform in the national elections of 1964 and after.19

What Ackerman’s theories do not adequately account for is the uncertain articulation and striking impermanence of his notion of constitutionalism. The unwritten New Deal constitutional doctrine of federal responsibility for social welfare, which he saw as becoming settled by the 1940s, was nevertheless directly and effectively challenged by Ronald Reagan in the 1980s. As subsequent decades have demonstrated, the New Deal doctrine proved to be less than firmly entrenched. Likewise, the civil rights revolution of the 1950s and 1960s, to which Ackerman accorded equivalent constitutional stature, was bluntly challenged by the Roberts Court in its 2012 dismissal of a critical enforcement section of the Voting Rights Act. Anything less than
an Article V expression of constitutional reform is always subject to the unpredictable shifts in opinion that inevitably occur from time to time. Even Article V reforms, when expressed in less than crystal-clear language, have occasionally been subject to such swings, as the long retreat from the reconstruction amendments of the 1860s reminds us. But without those amendments, declared in Article VI to be elements of the supreme law of the land, there would have been no basis for the post–World War II expectations for government to provide equal protection of the law to all Americans.

Ackerman’s Yale Law School associate Akhil Reed Amar eventually challenged his senior colleague’s overall view of an informal Constitution in two detailed and thoughtful volumes: America’s Constitution: A Biography and America’s Unwritten Constitution. Amar closely examined U.S. constitutional development through both historical evolution and judicial articulation of the document’s text. He suggested that the written Constitution points to principles beyond its textually explicit provisions. Amar’s eye for language and its contemporary meaning enriches his lengthy narrative of the Constitution’s elaboration through judicial embroidery. While both Ackerman and Amar regard the Constitution as a combination of black-and-white text and a long process of interpretation, they draw different conclusions as to which embellishments mattered and how they became constitutional doctrine. For instance, whereas Ackerman sees a variety of factors turning the New Deal concept of a social welfare state into a virtual constitutional amendment, the more cautious Amar views the Twenty-second Amendment limiting post–New Deal presidents to two terms in office as the only truly constitutional outcome of the New Deal. In essence, Amar shows more respect for the Article V–generated text than Ackerman does.

Both Ackerman and Amar take the opening words of the Constitution’s preamble, “We the People,” very seriously. Both recognize it as a declaration that the source of the nation’s power rests with the will of a popular majority. Ackerman is willing to argue that the will of We the People can be discerned in various ways, while Amar is more literal. Amar weaves together respect for Article V’s provision for the calling of a constitutional convention to propose amendments and the historical precedent of the 1787 Convention in setting new rules for achieving ratification of its work. He believes that constitutional change can legitimately be achieved when ultimately approved by a majority of We the People in a national referendum, if so stipulated by a constitutional convention. Unlike Lazare’s fantasy, Amar offers a historically well-grounded argument for a valid avenue to radical constitutional reform. Whether the American political culture would ever countenance such steps is another question.
Modern constitutional scholars and popular writers have commonly found deficiencies in the Constitution and bemoaned the difficulty of using Article V to correct them. In 1995 Sanford Levinson of the University of Texas compiled a number of such essays in *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*. Eleven years later he offered his own argument along these lines in *Our Undemocratic Constitution: Where the Constitution Goes Wrong (And How We the People Can Correct It)*, a book that is succinctly summarized by its title. Levinson acknowledged the unique power of constitutional amendment but argued that it is too demanding and ought to be relaxed. Ultimately he endorsed Amar’s solution of a constitutional convention followed by a national referendum and made the same leap of faith, believing that such a convention would produce admirable results.

Forcefully rejecting the approach of Ackerman, Amar, Levinson, and their colleagues that justifies easier methods of pronouncing constitutional principles (at least ones they prefer) was political scientist Darren Patrick Guerra. In his 2015 book *Perfecting the Constitution: The Case for the Article V Amendment Process*, Guerra explicitly and adamantly rejected all alternative approaches and held that Article V offers the only legitimate amending method. He concluded:

A written constitution that serves as the fundamental law of a given polity must itself be subject to precedent, form, and formality. To abandon such form makes change subject to usurpation, manipulation, and raw power; the type of politics that American Constitutionalism seeks to minimize through the rule of law. Again as Tocqueville observes such forms “serve as a barrier between the strong and the weak, the government and the governed, and to hold back the one while the other has time to take his bearings.” In the end, abandoning the forms and formalities of Article V undermines the Constitution as the fundamental law and as such it undermines the rule of law as a core value of the American regime. The forms and formalities of Article V allow the people to explicitly decide whether or not to amend their Constitution and to do so in a clear and democratically decisive manner. The forms of Article V support and sustain a written Constitution as the fundamental law of the polity.

At the very least, Guerra suggests that debate among political scientists and legal scholars regarding the nature of constitutional amendment is likely to continue for some time.

My more modest approach is to provide a historical account that finds unparalleled power in what George Washington called “an explicit and authentic act” of constitutional articulation. The historical evidence seems to
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affirm that in the presence of formal amendment, constitutional revolutions endure; in their absence, their long-term fate remains insecure. Amendatory reforms of the 1780s, 1860s, 1910s, and 1960s have persisted or even, in the case of the Bill of Rights and the Fourteenth, Sixteenth, and Nineteenth Amendments, grown in significance. Meanwhile, the nonamendment “transformations” of the federal government’s authority during the 1930s and 1960s have been constantly challenged and, since the 1980s, significantly diminished. Over more than two centuries, no fully adequate substitute for amendment has emerged to ensure the durability of fundamental reforms in governmental structure and obligation.

Scholars have repeatedly noted that nearly half of all amendments were added to the Constitution within the first fifteen years. The ten amendments of the first three years have commonly been regarded as steps to complete the act of creation, rather than as reforms of an existing structure. Amendments eleven and twelve quickly followed in the manner prescribed by the Founders. Then, more than a century passed during which only three additional amendments were approved. These amendments were, in a sense, irregular, emerging from the unusual circumstances of the aftermath of the Civil War, which is not to say that they were improper. Otherwise, many constitutional discussions occurred and numerous proposals for reform were offered, but no amendments were made.

Not until the early twentieth century did constitutional amending resume functioning as the Founders had anticipated, achieving fundamental changes one at a time through a conventional process of political debate and decision. In the twenty years between 1913 and 1933, six amendments, each of major consequence, were adopted. Thereafter, however, the pace of amendment slowed once again, generating only one change in nearly three decades. Then, in the 1960s, another burst of reform produced four amendments. Thereafter, various amendment proposals attracted support but not consensus until 1992, when, in a curious anomaly, an amendment that James Madison drafted and the First Congress approved in 1789 was finally ratified. If one assumes that, after its terms were settled, a well-drawn charter would need little alteration at first, the pattern of the Constitution’s first century is hardly surprising. What is more striking, and in need of careful examination, is the sudden rise in the use of the amending mechanism during the first third of the twentieth century and its irregular employment thereafter.

The era of the New Deal is pivotal in any reappraisal of U.S. constitutional amendment history. Confidence in the political necessity and efficacy of constitutional amendment waxed in the early twentieth century but
abruptly waned during the 1930s. The Great Depression, the culmination of decades of industrialization and urbanization, created the conditions for a new articulation of federal obligation and authority at a moment when a constitutional consensus regarding such matters appeared to be within reach. What emerged instead was a vague, incomplete, and insecure understanding of the desired nature and limits of the federal government, one that rested on judicial interpretation rather than explicit constitutional statement. The political opportunity passed, and the New Deal’s potential to transform the United States remained unfulfilled.

Issues left unresolved by the 1930s remained in dispute during the rest of the twentieth century, provoking a draining post–World War II debate over the nature of federal authority that distracted the country from substantive problems. Constitutionally speaking, the New Deal appears to have been a misspent opportunity. In the eight decades after 1933, amendments were fewer in number and notably less sweeping in their influence than those implemented during the previous two. In constitutional terms, as in so many other ways, the 1930s profoundly reshaped the political thought and practice of the United States. Whether these changes were for the good cannot be satisfactorily answered without setting the beliefs and behaviors of that period in the larger context of American history.

The New Deal raised the question: was the constitutional amending process a vestige of eighteenth-century political thought that no longer made sense a century and a half later? Since this issue initially emerged in the 1930s, Americans have steadfastly ignored another profoundly important question: is the entire concept of constitutionalism outmoded? This is not an abstract philosophical matter. It is a problem of vital current importance in an age of uncertainty about the best way for government to be organized and controlled to serve society’s needs. To what extent should democratic majorities be served? What justification, if any, exists for demanding a greater degree of consensus to permit or prevent government action? To what degree should government be responsive to wishes of the moment, and to what extent should it be resistant to change in order to assure stability and preserve less popular interests? Their present-day relevance should not obscure the fact that these are timeless questions best dealt with by examining them in historical context. There is contemporary value in considering why and how the amending system came to be incorporated in Article V of the U.S. Constitution, evaluating how that system functioned at various times and under different circumstances, and appraising the views of its advocates and critics.

“Article V is the most fundamental text of our Constitution, since it
Explicit and Authentic Acts

seeks to tell us the conditions under which all other constitutional texts and principles may be legitimately transformed,” Bruce Ackerman has observed. Therefore, he has insisted, “Rather than treating it as a part of the Constitution’s code of good housekeeping, we should accord the text of Article V the kind of elaborate reflection we presently devote to the First and Fourteenth Amendments.”

This book, responding to his call for reflection, ultimately locates the amending process at the very center of American constitutionalism. However, it disputes Ackerman’s contention that there are functional equivalents to amendment, agreeing with Darren Guerra that formal amendment has no equal in the American constitutional order.

Explicit and Authentic Acts examines the antecedents, creation, and operation of Article V within the broader context of American development since the 1770s. Its survey of amending efforts stretches well beyond the replacement of the Articles of Confederation with the 1787 Constitution and the twenty-seven amendments added since then. Constitutional reform proposals that failed to attract substantial political support, however interesting, receive little attention. For instance, proposals for an amendment to authorize the federal regulation of marriage and divorce, which dedicated advocates offered repeatedly in the late nineteenth and early twentieth centuries but never enlisted more than a handful of congressional supporters, fail this test. (The topic is interesting but no more constitutionally consequential than the issue of same-sex marriage a century later.) In contrast, 1960s propositions to authorize prayer in schools, which fell far short of congressional adoption but mustered majority support in the Senate, meet the standard. This book also considers devices available for amendment—namely, constitutional conventions called by the states—that have not been employed since 1787 but nevertheless influenced amending efforts. Mainly, however, the work focuses on substantial attempts to alter the formal terms of the U.S. government and the processes that produced either success or failure. A new afterword brings the narrative of amending efforts up to date. Thus, this study seeks to enhance understanding of the distinctive constitutional characteristics of the democratic culture of the United States as it actually evolved, the stable structure of government when principles were formally articulated, and the unsettled, even retrograde patterns when they were not.

This historical consideration of constitutional amending seeks not only to illuminate the past but also to enlighten current public policy discussions and future initiatives. Disagreement exists as to whether the U.S. Constitution serves today, or can continue to serve in the future, its declared purpose of expressing the sovereign will of the people with regard to the terms of
their governance, checking the momentary whims and excesses of transitory holders of power, and providing for reasoned, consensual advances in the definition of governmental responsibility. In addressing these important civic questions, it is vital that the historical process and consequences of constitutional amendment, as well as the equally important results of the failure to amend, be well understood.
Just days before his death, David E. Kyvig (1944–2015) had been happily working on the new edition of *Explicit and Authentic Acts*. During an extraordinarily productive period of several weeks, he had updated the preface and chapter 5, as well as written much of the afterword. Fortunately, his outline and notes provided a sense of the remaining issues he wanted to cover in the afterword. That material guided the preeminent constitutional historian Melvin I. Urofsky, who generously took time away from his own work to finish David’s afterword. David would have been honored by Mel’s final tribute to his scholarship. I am extremely grateful to Mel for his invaluable help and guidance, as well as to our dear friend Alan Kraut for his sage advice.

I myself am responsible for the updates (and any errors therein) to chapter 19. They are based on David’s latest writings on James Madison’s unratted first amendment, which provided a formula for expanding the size of congressional districts as the population of the United States increased.

This new edition would not have been possible without the support of a number of other people, for which I am thankful. Staff members at the Library of Congress were instrumental in providing David with a home away from home—his beloved desk in the Adams Building—for the last four and a half years, as well as critical reference assistance, especially in the Law Library. Several times a week, around a lunch table in the Madison Building’s sixth-floor cafeteria, Chris Brown, Chalmers Hood, Mark Rubin, and Jon Wakelyn allowed David to try out his ideas on them and gave him much-valued advice and camaraderie. Last but not least, from the very beginning, Chuck Myers and Mike Briggs of the University Press of Kansas were enthusiastic about publishing a new edition and were incredibly supportive of a posthumous edition.

*Christine D. Worobec*  
*October 15, 2015*
IF REVOLUTION INVOLVES the sudden and fundamental transformation of basic conditions, then surely the most soft-spoken revolutions are those that occur without violence, disorder, or trauma. In Western political culture such revolutions were virtually unheard of prior to the late eighteenth century. Before that time political revolutions involved the forceful overthrow of regimes, the toppling of monarchies, and the often bloody removal of holders of power. During the English Civil War, however, the thought began to stir that such upheavals might be avoided if the sovereign power of the state could define and limit government through written constitutions. By the end of the eighteenth century, particularly in North America, optimism regarding human capacity for reason fostered the belief that fundamental changes could be wrought in otherwise enduring governments through a preordained and agreed-upon process that embodied republican values. The formal revision of constitutions by previously established methods could bring about revolutionary changes in governments while at the same time legitimizing their continued existence. In other words, constitutional amendment offered a means of successfully balancing competing desires for stability and change, tradition and innovation, the wisdom of accumulated experience and democratic preference for new definitions of government responsibility.

The United States of America, the first nation to incorporate amendment mechanisms into its constitutional system, has now operated under the same basic instrument for over 200 years. During those two centuries, however, it has undergone more than one revolutionary political transformation in which the terms of government were redrawn. Relationships between the states and the central authority were fundamentally altered, as were government controls over private property, government responsibilities to the individual, and mechanisms of republican rule. The individual changes, most notably articulation of civil rights and liberties, abolition of slavery, establishment of direct, progressive taxation, prohibition and reestablishment of the liquor trade, and repeated extensions of suffrage, have received considerable attention. The constitutional amending system, the process by which these and other momentous reforms were implemented, has attracted far less notice.

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Creating an instrument to accommodate fundamental reform, the creators of the United States recognized, provided the best preparation for the changes that their society and its governmental needs would inevitably undergo. Article V of the 1787 Constitution, outlining an amending process, makes manifest that orderly constitutional revision from time to time was the “original intent” of the Founders. The repeated use of this amending mechanism during the early years of the republic while many of the Founders remained active in government underscores their intention. Altogether the Constitution has been amended twenty-seven times in slightly over two centuries of operation. The roughly 3,100 words in those amendments come fairly close to the 4,300 of the original instrument. Although most students of the Constitution have viewed this as minimal amending activity, the evidence seems incontrovertible that without its capacity for formal alteration, the Constitution on more than one occasion would have confronted a far more disruptive revolutionary process.

Explicit and Authentic Acts illuminates the creation of the American amending system, the manner in which it functioned each time a major effort was made to change the Constitution, the nature of attempts to modify it, and, ultimately, its role in American constitutional development. The book begins, as any comprehensive history of the amending process must, by examining thought about amendment at the time of the creation of the first American constitutions, those of the original states as well as of the United States. The replacement of the Articles of Confederation by the 1787 Constitution, itself a process of amendment, is considered in detail; arrangements for amendment by the Article V method merit particular attention. On that base is built the history of subsequent operation of the amendment system. The individual circumstances of successful amending efforts and notable failures, together with judicial as well as political discussions of the Article V mechanism, provide the historical context vital to a nuanced appraisal of the amending system. The result should recast understandings of American constitutionalism and the nation’s political order.

In recent years scholars of constitutional law, politics, and philosophy have tended to discount or ignore altogether differences between formal constitutional alteration through the amending process and functional shifts achieved by judicial construction, unchallenged legislative initiative, or unchecked presidential embellishment. For instance, in 1992 political scientist John Vile asserted, “The more expansive role the courts take in interpreting and adapting the Constitution to new exigencies, the less need there is for constitutional amendment, except perhaps as a way of reversing overly broad judicial opinions.” Whether this argument is advanced by constitu-
tional conservatives or liberals, and both have done so at times, the result is a blurring of the important distinction between a tentative, limited, and unstable process of constitutional elaboration and a fundamental definition of authority granted by sovereign power.

Bruce Ackerman of the Yale Law School minimized the differences between formal and informal change in his wide-ranging and stimulating 1991 discussion of constitutional development, *We the People*. He characterized the American tradition of higher lawmaking as constitutional change achieved by a clear mobilization of the sovereign popular will, however expressed, rather than by strict adherence to agreed-upon form. It began, he asserted, with the replacement of the Articles of Confederation by the Constitution and the Bill of Rights. The Civil War amendments he regarded as irregularly obtained but nonetheless legitimate for having been accepted by the three branches of the federal government. The alterations in the Supreme Court’s interpretation of federal authority during the late 1930s he treated as the functional equivalent of constitutional amendment. Ackerman perceived constitutional amendment as an extraordinary enunciation of the will of the sovereign populace but regarded changes that presidents and Congress desired and the Supreme Court accepted as having similar “transformative” weight.

Other historians, legal scholars, and political scientists, especially those preoccupied with short-term change, have often gone even further than Ackerman in accord with equivalence to judicial opinion and amendment. In so doing, they have recognized the political consensus-building inherent in constitutional change but neglected significant differences between ordinary political activity and decisions to reshape the fundamental terms of government, what Ackerman himself labels democratic “dualism.” This approach pays insufficient attention to one of the principle American innovations in higher lawmaking. Simply put, it undervalues the singular role of formal amendment in American constitutionalism.

Challenging the interpretations of Ackerman, Vile, and their colleagues, this book offers a historical appraisal that finds unparalleled power in what George Washington called “an explicit and authentic act” of constitutional articulation. In the presence of formal amendment, constitutional revolutions endure; in their absence, their long-term fate remains insecure. Amendatory reforms of the 1780s, 1860s, and 1910s have persisted or even, as in the cases of the Bill of Rights, Fourteenth, Sixteenth, and Nineteenth Amendments, grown in significance. Meanwhile, the nonamendment “transformations” of federal government authority during the 1930s have been constantly challenged and, in recent decades, diminished. In the course
of more than two centuries, no fully adequate substitute for amendment has emerged to ensure the durability of fundamental reforms in governmental structure and obligation.

One of the drafters of the 1787 Constitution, James Wilson of Pennsylvania, may have foreseen the reason that the amending process itself has attracted relatively little attention. This revolutionary principle, he said, “that the sovereign power residing in the people, they may change their constitution and government whenever they please, is not a principle of discord, rancor, or war: it is a principle of melioration, contentment, and peace.” In other words, the eighteenth century’s great innovation was to routinize revolution, not in the sense of making constitutional change easy or frequent but in the sense of rendering it legitimate and affirmative of the existing order when carried out in a specified, standard manner. A process that peaceably channels and resolves conflict in human affairs, while no doubt highly beneficial, seldom draws much notice.

Generally speaking, studies of the creation of the 1787 Constitution and its subsequent treatment by judicial interpreters have dominated the historiography of American constitutional development. Although amendments repeatedly redrew the framework of American government, most notably in the 1780s, the 1860s, and the 1910s, formal constitutional change has captured comparatively little attention. For over a century, however, a few scholars have attempted to describe the history of American constitutional amending. Generally, they restricted their attention to single amendments or at most to a contemporary cluster of related measures such as the Bill of Rights or the Reconstruction amendments. The closely connected national prohibition and repeal amendments became the subject of my own initial venture into amending history, for instance. Over the years only a handful of scholars attempted a more comprehensive look at the operation of the amending process established by Article V of the Constitution. Their efforts, for better or worse, have provided the basis for the contemporary understanding of amendments that exists in more general histories and in the American political culture at large.

Shortly after the Constitution’s centennial, Herman Ames undertook the first substantial retrospective examination of the Article V process. Ames carefully listed all proposals for amendment introduced in Congress in the course of a century, treating the trivial and duplicative as seriously as the substantial and original. He drew a sharp contrast between the more than 1,700 bills that individual legislators submitted and the mere fifteen amendments that they adopted. Writing near the time when the ratio of amendment to the passage of time reached its nadir, Ames helped shape an image of Arti-
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Article V’s requirements placing “insurmountable constitutional obstacles” in the path of constitutional reform. Regarding the supermajorities for adoption and ratification of amendments as too great, he paid no attention to the question of whether a young constitution particularly needed amendment, much less whether, given the political culture of the nineteenth century, any alternative constitutional arrangements enjoyed even the most slender of majorities. Instead he characterized amendment as excessively difficult and warned of possible dire consequences. Ames reinforced the general historical view that scarcely distinguished the passage of the first ten amendments from the passage of the Constitution itself and treated the Reconstruction amendments as irregular, forced, and not entirely legitimate. Such a view left only the Eleventh Amendment of 1795 and the Twelfth Amendment of 1804 as independently and properly achieved Article V changes.

Forty years later Michael Musmanno extended and reinforced Ames’s analysis, cataloging all amendment proposals introduced in Congress in the intervening period. Although the early twentieth century had been a period of substantial Article V activity with seven amendments adopted by Congress and six ratified between 1913 and 1933, it also proved to be a period during which the number of reform proposals surged. Musmanno, like Ames, treated each congressman’s bill as a separate amendment effort, although many were repetitious and most clustered around a few issues. As a consequence he enhanced the image of a vast number of failed amendment attempts. The Ames-Musmanno characterization of amendment as an exceptionally arduous and rarely successful procedure gained further credence, even though contemporary experience might have suggested an alternative interpretation.

In 1942 University of Michigan law professor Lester Orfield brought together his extensive consideration of various relevant issues in the first legal treatise devoted specifically to the amending process. He possessed considerable insight on a century and a half of Article V history but employed individual amending incidents out of historical context in narrow, if useful, discussions of constitutional procedure. Russell Caplan’s 1988 look at state-initiated constitutional conventions was a capable extension of Orfield’s approach. Caplan, too, used selected historical episodes merely to illuminate legal and political constitutional issues; his analysis paralleled that of Orfield. Both men represented the amendment mechanism as heavily laden with devices that could frustrate reform efforts.

Attention to constitutional amending history increased in the 1960s and 1970s, a time during which more than a dozen amendment proposals received serious consideration. Charles Leedham’s 1964 popular account pro-
vided a narrative history of Article V activity, but it was disappointingly shallow and error-ridden as well as attentive only to ratified amendments.⁉ Political scientist Clement Vose in 1972 placed amendment in a broader framework of constitutional change that encompassed judicial review and wider currents of political reform. Vose, however, paid no attention to events that had transpired before 1900 and looked only episodically at twentieth-century developments, producing a truncated and uneven picture full of shrewd observations but far from comprehensive.⁊ Six years later another political scientist, Alan Grimes, provided a narrative superior to Leedham’s in terms of political detail but again one that focused narrowly on the legislative history of successful Article V actions. Grimes forced amendments into narrow categories emphasizing, indeed exaggerating, the regional origins of support for reform rather than fully acknowledging the national consensus required for its completion. He also took a limited view of the substance of amendments, analyzing each in terms of its contribution to participatory democracy rather than its bearing on a broader range of issues.¹¹ Neither Leedham, Vose, nor Grimes did much to alter the conventional view of amending as a rare and peripheral element in American constitutional development.

Thereafter, the failed ratification of the equal rights amendment (ERA) not only frustrated feminists but also further strengthened the orthodox view of the amending process. Mary Frances Berry made the most substantial effort to place the defeat of the ERA in historical perspective. Before examining the ERA battle itself, she reviewed Article V activities from 1789 to the 1970s. Though superficial in many respects, her survey placed amending in the mainstream of constitutional development and called attention to expectations of federal consensus for fundamental reform. The inability of ERA proponents fully to understand the amending process historically, in particular its consensus requirements, went a long way, in Berry’s estimation, toward explaining their defeat, not to mention their subsequent discontent with the Article V system.¹²

Michael Kammen’s seminal 1986 study of the Constitution in American culture stirred a fuller consideration of the role of amendments in the evolution of American constitutionalism. Breaking with the tradition of narrowly focused political and legal studies, Kammen examined popular perceptions and responses to the Founders, their handiwork, and the subsequent evolution of the Constitution. He set forth a compelling case for adjusting the balance of consideration between judicial and popular interpretations of the instrument. Calling attention to the American public’s gradually evolving "Constitution worship" together with its limited understanding of the docu-
ment’s intended purposes and functions, Kammen suggested that resistance to amendment rested on much more than the mechanism of Article V. A political culture emotionally attached to the status quo and not particularly knowledgeable about constitutional matters was not inclined to favor frequent amendment. Kammen’s pioneering cultural approach not only elevated understanding of constitutional history to a higher plateau but also offered a new methodological model. The work set a standard that demanded that subsequent scholarship examine constitutional evolution with greater attention to its broader historical context as well as to the nuances of individual issues.

In the aftermath of Kammen’s richly detailed cultural history, Bruce Ackerman provided his schema for considering the American constitutional experience. Distinguishing between normal majoritarianism and higher-consensus constitutional politics, Ackerman portrayed constitutional evolution as a combination of amendment and judicial interpretation in which the sovereign people gave final sanction, in one way or another, to acceptable arrangements. Ackerman’s assessment was grounded more in political philosophy than in history. Yet his argument that a sovereign people continually shaped the Constitution, by either accepting existing arrangements or choosing change, underscored the need for more thorough examination of past successful and unsuccessful amending efforts.

Initial responses to Kammen’s and Ackerman’s recasting of American constitutional history came not from historians but from political scientists and legal scholars. John Vile surveyed eighteenth-century political theory to support his contention that the Founders intended amendment to be a difficult but not impossible mechanism for change. He extended his analysis to show that on balance the commentators of the next century embraced the Article V device that prevented easy, destabilizing alteration of the frame of government yet provided a workable alternative to revolution when a compelling need for fundamental reform arose. Richard Bernstein and Jerome Agel adopted something of Kammen’s cultural perspective. They also embraced Ackerman’s view that debate over constitutional issues represented a separate and vital element of American political life. However, Bernstein and Agel passed rapidly over much of American constitutional history, focusing instead on recent developments. Although not contributing any striking new insights themselves, Vile, and Bernstein and Agel helped raise the profile of amendment as a phenomenon to be taken seriously, a significant element in two centuries of constitutional evolution. They effectively underscored the need for a closer and fuller examination of formal constitutional change over the entire sweep of American history.
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Scholars have repeatedly noted that nearly half of all amendments were added to the Constitution within its first fifteen years. The ten amendments during the first three years have commonly been regarded more as steps completing the act of creation rather than as reforms of an existing structure. Amendments eleven and twelve quickly followed in the manner prescribed by the Founders. Then more than a century passed during which only three more amendments were approved. These three were in a sense irregular, emerging from the unusual circumstances of the aftermath of the Civil War. Otherwise, many constitutional discussions occurred and numerous proposals for reform were offered, but no amendments were made.

Not until the early twentieth century did constitutional amending resume functioning as the Founders had anticipated, achieving fundamental changes one at a time through a conventional process of political debate and decision. In the twenty years between 1913 and 1933, six amendments, each of major consequence, were adopted. Thereupon, however, the pace of amendment slowed once again, generating only one change in nearly three decades. Then in the 1960s another burst of reform produced four amendments. Thereafter, various amendment proposals attracted support but not consensus until 1992 when, in a curious anomaly, an amendment that James Madison had drafted and the First Congress approved in 1789 was finally ratified. If one assumes that, after its terms were settled, a well-drawn charter would need little alteration at first, the pattern of the Constitution’s first century is hardly surprising. What is more striking, and in need of careful examination, is the sudden rise in the use of the amending mechanism during the first third of the twentieth century and the irregularity of its employment thereafter.

The era of the New Deal appears pivotal in any reappraisal of U.S. constitutional amendment history. Confidence in the political necessity and efficacy of constitutional amendment waxed in the early twentieth century but abruptly waned during the 1930s. The Great Depression, the culmination of decades of industrialization and urbanization, created the conditions for a new articulation of federal obligation and authority at a moment when a constitutional consensus regarding such matters appeared within reach. Instead a vague, incomplete, and insecure understanding of the desired nature and limits of the federal government emerged, one resting on judicial interpretation rather than on explicit constitutional statement. The political opportunity passed, and the potential of the New Deal to transform the United States remained unfulfilled.

Issues left unresolved by the 1930s remained in dispute during the rest of the twentieth century, provoking a draining post–World War II debate over the nature of federal authority, a debate that continued to distract the country
from substantive problems. Constitutionally speaking, the New Deal appears
to have been a misspent opportunity. In the six decades after 1933, amend-
ments were fewer in number and notably less sweeping in their influence than
those implemented during the previous two. In constitutional terms, as in so
many other ways, the 1930s profoundly reshaped the political thought and
practice of the United States. The question of whether these changes were for
the good cannot be satisfactorily answered without setting the beliefs and behav-
iors of that period in the larger context of American history.

The New Deal raised the question of whether the constitutional amend-
ing process was a vestige of eighteenth-century political thought that no
longer made sense a century and a half later. Since it emerged in the 1930s,
Americans have confronted, but steadfastly ignored, a profoundly important
issue: is the entire concept of constitutionalism outmoded? This is not an ab-
stract philosophical problem but a matter of vital current importance in an
age of uncertainty about the best manner for government to be organized
and controlled to serve the needs of the society. To what extent should dem-
ocratic majorities be served? What justification, if any, exists for demanding
a greater degree of consensus to permit or prevent government action? To
what degree should government be responsive to wishes of the moment and
to what extent should it be resistant to change in order to ensure stability
and to preserve less popular interests? Their present-day relevance should
not obscure that these are timeless questions best dealt with by examining
them in historical context. There is contemporary value in considering why
and how the amending system came to be incorporated in Article V of the
U.S. Constitution, evaluating how that system functioned at various times
and under different circumstances, and appraising the views of its advocates
and critics.

“Article V is the most fundamental text of our Constitution, since it seeks
to tell us the conditions under which all other constitutional texts and
principles may be legitimately transformed,” Bruce Ackerman has observed.
Therefore, he has insisted, “Rather than treating it as a part of the Constitu-
tion’s code of good housekeeping, we should accord the text of Article V the
kind of elaborate reflection we presently devote to the First and Fourteenth
Amendments.” This book, responding to his call for reflection, ultimately
locates the amending process at the very center of American constitutional-
ism. However, it disputes Ackerman’s contention that there are functional
equivalents to amendment, concluding that in practice as well as by design
formal amendment has no equal in the American constitutional order.

Explicit and Authentic Acts examines the antecedents, creation, and op-
eration of Article V within the broader context of American development
from the 1770s to 1995. Its survey of amending efforts stretches well beyond the replacement of the Articles of Confederation with the 1787 Constitution and the twenty-seven amendments added since then. Constitutional reform proposals that failed to attract substantial political support, however inherently interesting, receive little attention. For instance, proposals for an amendment to authorize federal regulation of marriage and divorce, which dedicated advocates offered repeatedly in the late nineteenth and early twentieth century but never enlisted more than a handful of congressional supporters, fail this test. On the other hand, 1960s propositions to authorize prayer in schools that fell far short of congressional adoption but did muster majority support in the Senate meet the standard. Available devices for amendment are considered, namely constitutional conventions called by the states, that have not been employed since 1787 but that nevertheless exerted influence on amending efforts. Mainly, however, the work focuses on substantial attempts to alter the formal terms of U.S. government and the processes that produced either success or failure. Thus, this study seeks to enhance understanding of the distinctive constitutional characteristics of the republican culture of the United States as it actually evolved, the stable structure of government when principles were formally articulated, and the unsettled, even retrograde patterns when they were not.

This historical consideration of constitutional amending seeks not only to illuminate the past but also to enlighten current public policy discussions and future initiatives. Disagreement exists as to whether the U.S. Constitution today serves, or in the future can continue to serve, its declared purpose of expressing the sovereign will of the people as to the terms of their governance, checking the momentary whims and excesses of transitory holders of power, and providing for reasoned, consensual advances in the definition of governmental responsibility. In addressing these important civic questions, it is vital that the process and consequences of constitutional amendment, as well as the equally important results of the failure to amend, be well understood.
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My research and writing about the amending process have given me a new sense of the constitutional term “privileges and immunities.” I have been very privileged to have the support of individuals and institutions who have been generous with time, resources, and encouragement. At the same time, they deserve to be immune from responsibility for this book. They have been most helpful, but ultimately the judgments reached are mine alone. They are identified here with gratitude and in every case but one should be absolved of responsibility for what follows.

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As I began this project in 1980, the staff of the Subcommittee on the Constitution of the U.S. Senate’s Committee on the Judiciary welcomed me into their offices and made a wealth of material available to me. The subcommittee, then chaired by Senator Birch Bayh of Indiana, had long devoted its efforts to questions with which I was just beginning to grapple. I appreciated their material assistance and, even more, their encouragement that the work I was embarking upon had public policy as well as historical importance. Furthermore, they helped me at the very time that most of them were clearing out their desks and looking for new positions. At the time, their chairman had just lost his Senate seat to a then little-known Republican, J. Danforth Quayle.
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Three senior scholars gave freely of their time and insight as my work was taking shape. While I took too liberally of their time and squandered too much of their advice, I am grateful for the friendship and intellectual stimulation given me by William Leuchtenburg of the University of North Carolina, Walter Dellinger of Duke Law School, and the late Clement Vose of Wesleyan University.

I was able to try out some of my ideas on constitutional amending by presenting bits and pieces of my evolving study in different form over the years in Ohio History, The Historian, American Quarterly, Prologue, Political Science Quarterly, The Public Historian, and Akron Law Review. I appreciate the questions, suggestions, and encouragement of the editors of these journals as well as the exposure and feedback my work gained thereby.

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The one person who cannot be absolved of responsibility for this book is Professor Christine Worobec of the Kent State University history department. She is my most valued academic colleague as well as my treasured spouse. Through the example of her dedication to her own work, as well as her cheerfulness about discussing topics and critiquing manuscripts no doubt of much less interest to her than nineteenth-century Russian peasants, she provided me the incentive and support to pursue this study to completion. Of all those who have assisted me, her contribution has been the greatest. Indeed, I cannot imagine finishing the book without her encouragement and, therefore, consider her partly responsible for it. With love and gratitude, I dedicate this book to her.