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A-M

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## CONSTITUTIONAL AMENDMENTS,

## PROPOSED AMENDMENTS,

## AND AMENDING ISSUES,

1789-2010

THIRD EDITION

JOHN R. VILE

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*Encyclopedia of  
Constitutional  
Amendments,  
Proposed  
Amendments,  
and Amending  
Issues,  
1789–2010  
Third Edition*

❖ ❖

VOLUME ONE  
A–M



*John R. Vile*



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***This book is dedicated to  
three great teachers,  
scholars, and gentlemen:  
Henry J. Abraham, Alpheus  
T. Mason, and Walter F.  
Murphy***



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 WALLACE, WILLIAM KAY (1886–?)  
 WAR, DECLARATION OF  
 WAR, OPPOSITION TO GOVERNMENT  
 DURING  
 WAR, POWER DURING  
 WAR, PROHIBITION OF  
 WARREN COURT  
 WASHINGTON, GEORGE (1732–1799)  
 WATSON, GREGORY (1960– )  
 WEDGWOOD, WILLIAM B. (?–1883)  
 WELFARE PAYMENTS, RIGHT TO  
 WEST, JAMES C. (?–1946)  
 WILLARD, FRANCES (1839–1898)  
 WILLARD, SIMON, JR. (1795–1874)  
 WILSON, THOMAS WOODROW  
 (1856–1924)  
 WOMEN'S CHRISTIAN TEMPERANCE  
 UNION  
 WOODHULL, VICTORIA CLAFLIN  
 (1838–1927)  
 WOODWARD, AUGUSTUS B.  
 WORKERS' COMPENSATION LAWS  
 WORLD GOVERNMENT

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## ❖ FOREWORD ❖

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I am one who believes that the single most important provision of any constitution is its amending clause. This is not, obviously, to deny the importance of how a given constitution allocates decision-making authority or protects individual rights. But unless one is deluded into believing that a given constitutional text, whether with regard to allocating power or recognizing rights, is doubly perfect—that is, perfect with regard to the issues and contexts within which it was originally written and then perfect throughout time, when both issues and contexts might well be quite different—one must agree that changes even in foundational documents will be necessary. Indeed, I drew the title for a book that I edited, *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, from a letter written by George Washington to his nephew, Bushrod Washington: “The warmest friends and best supporters the Constitution has do not contend that it is free from imperfections; but they found them unavoidable and are sensible if evil is likely to arise there from, the remedy must come hereafter.” Although many have insisted on portraying the founders as “demigods” whose views on constitutional wisdom we are obligated to follow, Washington himself—who was, of course, president of the Constitutional Convention in Philadelphia before becoming the first president of the United States—was becomingly more modest. “I do not think,” he wrote, “we are more inspired, have more wisdom, or possess more virtue, than those who will come after us.” Fortunately, “there is a Constitutional door open” to provide any necessary remedies, as future generations, themselves inspired by their own mixtures of wisdom and experience, will take advantage of Article V. From this perspective, one pays most fealty to the father of our country by contemplating the potential presence of imperfections and then working politically to amend the Constitution as a means of truly achieving the “more perfect Union” that is the ultimate aspiration of anyone who joins in our constitutional covenant.

Anyone who shares my (and Washington’s!) view of the importance of amendment knows that John Vile is nothing less than a treasure. He is by far our most persistent student of amendment, with unending fascination for everything thought by anyone—whether truly wise or really quite daffy—to be an imperfection and what, therefore, has been proposed as a responsive amendment. But, of course, proposal is quite literally only the beginning of a complex process, and Professor Vile is well aware of every last facet of the process and its implications for the success or failure of proposals for reform.

Professor Vile is also aware of every theoretical debate surrounding amendment. He mentions one of them in his preface: Does Article V set out an exclusive process of amendment per se, or an exclusive procedure only for something we might call “textual” amendments? The very use of this adjective is designed to suggest the possibility that textual amendments are only a subset of a wider set of amendments that include, in their complete description, what can only be described as nontextual amendments that have entered our notion of what the Constitution means even in the absence of a formal Article V process. Another theoretical question, which he addressed in his own contribution to *Responding to Imperfection*, is whether the Constitution is open to limitless change, so long as the formalities of Article V are followed. This allows the possibility that anything might be added to the Constitution should the requisite number of votes be cast in support. That is, the only protection against the reinstitution of slavery, the establishment of the United States as a religious theocracy, or whatever else may be one’s worst nightmare is [Page xviii] the procedural difficulty established by Article V. But some constitutions, including the German constitution, rule out certain categories of amendments—in Germany’s case, any amendment that would undercut the constitution’s commitment to protecting “human dignity”—and at least some persons have suggested the same is true of our own Constitution, whether or not it is spelled out clearly.

And, of course, there is the Constitution's wild card, the Article V procedure by which a brand-new convention can be called by Congress on petition of two-thirds of the states. (Presumably, Congress has no discretion in the matter once the states unite in their call.) Although there is little doubt that the generation of the framers anticipated that this would actually become part of the American system of government (after all, most states have experienced constitutional conventions and, indeed, the replacement of an outmoded constitution by one thought more suitable to the times) this part of Article V has, of course, basically become a dead letter. One of the reasons is that the Constitution gives no clue at all as to the procedures that would structure a new convention. For starters, would a second convention be required to adopt the same voting rule—one state, one vote—as that followed by the framers in Philadelphia? With regard to these issues as well, Professor Vile's encyclopedia provides

essential guidance for any scholar or layperson trying to wrestle with the truly knotty problems posed by this aspect of our Constitution.

There is little point in going on. It is enough to scan the "List of Entries" to appreciate the comprehensiveness of Professor Vile's grasp of his subject. Most encyclopedias are the handiwork of an editor who commissions others to write the entries. There was no need to follow that route in this case, for anyone who thinks about constitutional amendment knows that the expert—the possessor of literally encyclopedic knowledge—is John Vile. We are all fortunate to have this absolutely up-to-date third edition in hand even as we can be confident that, if developments warrant, Professor Vile will be busy preparing a fourth edition for scholars (and others) who depend on him!

*Professor Sanford Levinson, W. St. John  
Garwood, and W. St. John Garwood Jr.  
Regents Chair in Law,  
University of Texas Law School*



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## ❖ ABOUT THIS EDITION ❖

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### **How This Edition Differs from Earlier Editions and from Works by Other Scholars**

When I wrote the first edition of this encyclopedia, I was determined to write the most comprehensive and up-to-date volume of its kind. Although I think it accomplished this objective, a book, like a constitution, can profit from amendments, and this will be the third edition of this work (previous editions were dated 1996 and 2003). Each time, the publishers and I have sought not only to add new entries but also to update, and at times to pare down, earlier entries.

Like earlier editions, this volume includes not only proposals that members of Congress have introduced in that body but also proposals that ordinary citizens have made, especially for comprehensive changes. Since the last edition Professors Sanford Levinson and Larry Sabato have both written books advocating a series of constitutional changes, and it is a pleasure not only to include these but also to continue to find similar sets of proposals from earlier in American history that I have previously missed.

The first edition of my *Encyclopedia* was published at a time when others were also turning renewed attention to the amending process. Professor David Kyvig published his *Explicit and Authentic Acts* (1996a), another important contribution to our understanding of existing amendments, in the same year as the Encyclopedia's first edition. In 2000 Kris Palmer in turn edited another major review of existing amendments in his *Constitutional Amendments, 1789 to the Present*, with Pendergast, Pendergast, and Sousanis subsequently publishing a three-volume survey of amendments under the editorship of Elizabeth Shaw Grunow the following year (2001) entitled *Constitutional Amendments: From Freedom of Speech to Flag Burning*.

Valuable though these other resources are, the third edition of the *Encyclopedia of Constitutional Amendments*, like the earlier ones, is unique on today's market in its central focus on short explanatory essays that group and describe

not only existing amendments but also proposed amendments that were not successful and proposed new or revised constitutions. Such proposals continue to multiply, and the ability to find them is increasing with technological advances. Once limited to books and pamphlets, proposals for new constitutions and amendments are increasingly finding their way onto the Internet, and they too have been included in this volume.

In the second edition, the publishers and I tried our best to keep everything within a single volume. This publication finally bows to the almost inevitable necessity of going to two volumes. Avoiding length for length's sake, we have cut back redundancies in existing entries and have continued to strive for leaner entries throughout the book. We aim to see that this third edition remains an indispensable tool for those who are interested in constitutional amendments, proposed amendments, and amending issues. I have continued to update sources and have added additional cross-references to help those who are conducting research.

### **Previous Works on the Subject**

Members of state ratifying conventions and of Congress began proposing amendments to the Constitution even before all the states had joined the Union, and such proposals have continued at a steady pace ever since. Individual proposals, especially those in the Bill of Rights and later in the post-Civil War period, were often subject to intense dispute and occasional scholarly analysis, but no major compilation of amendments proposed in Congress was prepared until 1896. At this time, Professor Herman Ames, soon to be a historian at the University of Pennsylvania, published a book, which had begun as his Ph.D. dissertation, covering the constitutional amendments that members of Congress had proposed during the nation's first 100 years. The American Historical Association awarded this book its first prestigious Justin

Winsor Prize, and the volume's continuing relevance was recognized with its replication in 1970 and again in 2002. In addition to describing the subjects of proposed amendments in his text, Ames included a list of the topics of the 1,736 amendments proposed in the nation's first century. He also included a comprehensive index and bibliography. One hundred years later, his book is still readable and useful.

In 1929, M. A. Musmanno, then a Pennsylvania lawyer and later a judge, analyzed the 1,370 amendments that members of Congress had proposed since Ames wrote his book. In part because Musmanno's volume was published as a government document and in part because it covered a shorter time period and was therefore less comprehensive than Ames's, it is less well known but is still a valuable resource.

Although literally hundreds of articles, essays, and books have subsequently addressed the subject of amendments and proposed amendments, no author sought to survey the field in the same comprehensive manner as did Ames and Musmanno until I published the first edition of this *Encyclopedia* in 1996. Once between the time that Ames and Musmanno wrote (Tansill 1926) and several times afterward, lists of amendments proposed in Congress during designated periods have been published (*Proposed Amendments* 1957, 1963, 1969; Davis 1985; Harris 1992). In 2003, I was privileged to edit a set of three volumes that has republished and updated existing listings of these proposed amendments along with Ames's and Musmanno's analyses. I also included a compilation of state petitions to Congress for constitutional conventions that relied largely on a compilation by Michael Stokes Paulsen (1993) (also see Van Sickle and Boughey 1990). These lists and analyses, as well as more recent entries that are now available on the Internet, form the starting point and vital foundation of my study.

From the time that Musmanno wrote to the time that ABC-CLIO published the first edition of this book, the number of proposed amendments grew from just over 3,000 to about 10,000; this number has now grown to more than 11,700 (see Number of Proposed Amendments). It has been both a pleasure and a challenge to compile a book to cover all these

proposals. I recognize the impossibility of being an expert on every subject discussed in this volume, as well as the difficulty of covering everything of importance in essays short enough to be of value for a general reader or high school or college student. My knowledge of the limitations of both editions of this work has been balanced by the realization of how useful it is to have a book that provides a starting point for an analysis of individual proposals and issues.

### Current Interest in the Amending Process

Interest in various scholarly topics waxes and wanes over time, but interest in the amending process had clearly increased in the decade prior to my first edition of this *Encyclopedia*, and it continues to wax today. Recent years have witnessed numerous scholarly treatments of amendments and constitutional change.

Bruce Ackerman's sophisticated theory of constitutional moments, which has now been explicated in two of three anticipated volumes of *We the People* (1991, 1996), had salted discussion of amending issues with terms like "constitutional moments" and "dualist democracy," and has received the most attention (given the number of citations in law reviews, one might indeed refer, with little exaggeration, to "Ackermania"), but many other authors have also addressed the topic. Another Yale professor, Akhil Reed Amar (1988), has advanced the challenging thesis, which he continues to reiterate, that it is possible to amend the Constitution outside of Article V channels, and Walter Murphy (1980) revived interest in the idea that there may be certain implicit limits on the subject of constitutional amendments. Donald Lutz (1994) examined a number of challenging hypotheses about constitutional change in an influential article in the *American Political Science Review* that also compares the U.S. system with that in other nations and points out how much more difficult the American process is in comparison to those of most other nations. In addition to writing several scholarly articles and leading a number of panels at meetings of the American Political Science Association on the subject of constitutional change, Professor Sanford Levinson of the University of Texas (1995) has com-

piled a book of essays presenting theoretical views of leading scholars on the subject. More recently, Melissa Schwartzberg (2004, 2007) has examined the theoretical origins of constitutional change, and her scholarship promises continuing insights in the years ahead.

At the time of my first edition of this *Encyclopedia*, the putative ratification of the Twenty-seventh Amendment in 1992, as well as the attempt to extend the ratification deadline of the proposed Equal Rights Amendment, had spawned a great deal of commentary on the amending procedure. Much of it had taken its point of departure from an earlier essay by Walter Dellinger (1983) that asked whether such issues should be considered political questions and a response by Laurence Tribe (1983). Both before and after the first edition of this *Encyclopedia*, there has been renewed interest in the still-unused Article V constitutional convention mechanism. Russell Caplan's book on the subject (1988) complemented legislation that Orrin Hatch sponsored to deal with such unresolved convention issues (See Vile 1993c, 466–483).

Just prior to the first edition of this *Encyclopedia*, the Republican electoral victories of 1994 and the Contract with America focused considerable attention on specific amending proposals, such as the balanced budget amendment, term limits, flag desecration, prayer in schools, and the item veto. What is therefore so interesting about most current academic works is that so many focus primarily on the theory of constitutional amendments and constitutional change.

At the time of my first edition, Bernstein and Agel's (1993) survey of amendments was a notable exception that has since been joined by the Kyvig, Palmer, and Pendergast, Pendergast, and Sousanis volumes identified above. Although adhering to generally high scholarly standards, Bernstein's book, like Kyvig's, succeeded in reaching a popular audience in a fashion that earlier works—most notably the judicious treatment of amendments by Alan P. Grimes (1978)—never quite managed. (The Palmer book and the Pendergast, Pendergast, and Sousanis volumes seem more appropriate to reference libraries, with the latter especially appropriate for high schools.) In any case, Bernstein and Agel's work and Kyvig's, as well as other

new books—Michael Vorenberg's account of the Thirteenth Amendment in *Final Freedom* (2001) is an especially noteworthy contribution to the literature—have necessarily focused chiefly on amendments that have been adopted rather than those that have been proposed. This third edition of the *Encyclopedia of Constitutional Amendments*, like the first two, thus has a unique niche in the literature and on the reference shelf.

Although their short discussion of proposed amendments was lively (Bernstein with Agel 1993, 169–198), it may unintentionally have left many readers with the impression that most proposed amendments have been trivial or ridiculous. If this impression were true, one might well question the value of this book, but the study of proposed amendments is far from a trivial pursuit. Undoubtedly, there are proposed amendments (just as there are proposed laws) that are naive, unnecessary, or ridiculous—proposals, for example, to outlaw war, to give the president authority over the air force, or to take citizenship away from all nonwhites. Sometimes proposals are wiser than they seem. Many point to real problems or identify areas for future legislation, if not amendment.

It is a rare issue indeed that has not been introduced as an amendment at some point in history. The study of such proposals thus provides a unique window into American history and politics. The fact that the goals of proposed amendments are often achieved by other means testifies not so much to the inadequacy of the amending process as to the dynamics of the U.S. federal system.

I am fascinated with the theoretical arguments about constitutional amendments, but I think that it is important to keep such scholarship anchored in actual practice. I have written all three editions of this book to address topics of interest to those with theoretical inclinations, while keeping the primary focus on amendments and proposed amendments.

### **Subjects Covered in This Book**

#### ***Amendments and Proposed Amendments***

Altogether, there are more than 525 entries in this book. The majority deal with the 27 amendments that have been ratified and with the