



Perfecting the Constitution: The Case for the Article V Amendment Process

By Darren Patrick Guerra

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He who can change the Constitution controls the Constitution. So who does control the Constitution? The answer has always been: “the people.” The people control the Constitution via the Article V amending process outlined in the Constitution itself. Changes can only be made through Article V and its formal procedures. Article V has always provided a means of perfecting the Constitution in an explicit, democratically authentic, prudent, and deliberative manner. In addition to changing the Constitution Article V also allowed the people to perfect and preserve their Constitution at the same time.

In recent years Article V has come under attack by influential legal scholars who criticize it for being too difficult, undemocratic, and too formal. Such scholars advocate for ignoring Article V in favor of elite adaptation of the Constitution or popular amendment through national referendums. In making their case, critics also assume that Article V is an unimportant and expendable part of the Constitutional structure. One notable scholar called the Constitution “imbecilic” because of Article V.

This book shows that, to the contrary, Article V is a unique and powerful extension of the American tradition of written constitutionalism. It was a logical extension of American constitutional development and it was a powerful tool used by the Federalists to argue for ratification of the new Constitution. Since then it has served as a means of “perfecting” the US Constitution for over 200 years via a wide range of amendments. Contrary to contemporary critics, the historical evidence shows Article V to be a vital element in the Constitutional architecture, not an expendable or ancillary piece. This book defends Article V against critics by showing that it is neither too difficult, undemocratic, nor too formal. Furthermore, a positive case is made that Article V remains the most clear and powerful way to register the sovereign desires of the American public with regard to alterations of their fundamental law. In the end, Article V is an essential bulwark to maintaining a written Constitution that secures the rights of the people against both elites and themselves.

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Editorial Review

Review

Guerra (Biola Univ.) posits that the Article V provisions for formally amending the US Constitution are under attack from scholars, judges, and politicians. He argues that many of these individuals seek to amend the Constitution through permissive 'interpretation' rather than formal amendment. However, the author writes that Article V is not only *a* form of amendment but *the* exclusive form of amendment to the Constitution. Other forms, he suggests, do not comport with history or logic. Part 1 of this work examines the history and context of Article V, while part 2 defends Article V from its critics. Whether readers agree or disagree with Guerra's premise, this work makes for interesting reading and is recommended for those who study constitutional law. Summing Up: Recommended. General readers, undergraduate students, graduate students, and research faculty. (*CHOICE*)

At a time when some prominent scholars are questioning the continuing efficacy of America's constitutional foundations, Darren Patrick Guerra makes a powerful case for America's written Constitution and its accompanying amending process. He argues that they help secure a system of ordered liberty embodied in a fundamental law that is grounded in popular sovereignty while protecting natural rights. He carefully explains how the amending process was designed to be an explicit, authentic, and exclusive means of amendment; how it promotes wisdom and justice through enhancing deliberation and prudence; and how the process complements federalism and separation of powers. Guerra thoughtfully challenges arguments by leading constitutional theorists that the process is too difficult, too undemocratic, or too formalistic. He traces many current criticisms to the misplaced Progressive faith in the perfectibility of man and the inevitability of progress and argues for the importance of recognizing the differences among constitution interpretations, constitutional constructions, and constitutional amendments. A must read both for those who continue to believe in, defend, and praise the existing process and for those who think it should be ignored, replaced, or supplemented by less deliberative measures. (John R. Vile, Dean of University Honors College, Middle Tennessee State University)

In this well researched and carefully argued book, Darren Patrick Guerra makes a compelling case for why the amendment process spelled out in Article V is the explicit, authentic, and exclusive means of amending the Constitution because it is the only process consistent with the Framers' commitments to separation of powers and federalism. He mounts a vigorous and successful attack on those progressives who argue that Article V is 'a' but not 'the' means of amending the Constitution and contend that informal adaptations through Supreme Court interpretations, unchallenged congressional initiatives, and unchecked presidential actions are as legitimate and controlling as formal constitutional amendments. Until Guerra's book, these progressive arguments have gone largely uncontested, but no longer. The battle over Article V has now been joined. (Ralph A. Rossum, Claremont McKenna College)

It is easy to take Article V for granted. Most Americans know that it establishes a two-stage process involving Congress and the states that makes it difficult to amend the Constitution, but few among the public and the scholarly community appreciate the vital importance of Article V to American constitutional democracy. In this fine work of historical and political scholarship Professor Guerra shows how central Article V was to the design of the Constitution and he ably defends it against the growing number of scholars who view it as an indefensible restraint on majority rule. In the process Guerra offers a powerful critique of the increasingly influential arguments that the Constitution may be legitimately amended through court decisions or congressional acts. (Joseph M. Bessette, Alice Tweed Tuohy Professor of Government and

Ethics, Claremont McKenna College)

This book provides a brief intellectual and constitutional history of the Article V amending process from the Imperial Crisis until the present and shows Article V to be a vital part of the Constitutional architecture. Furthermore, it defends Article V from critics who claim it is too difficult, undemocratic, and too formal; and it makes the case for Article V as the sole legitimate form of Constitutional amendment.

About the Author

Darren Patrick Guerra is an associate professor of political science at Biola University where he teaches courses on Constitutional Law and American Politics. He formerly taught at Vanguard University of Southern California.

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William Prentice:

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