The Constitutional Amendments

Inquire: How Do We Amend the Constitution?

Overview
A major problem with the Articles of Confederation had been the nation’s inability to change them without the unanimous consent of all the states. The framers learned this lesson well. One of the strengths they built into the Constitution was the ability to amend it to meet the nation’s needs, reflect the changing times, and address concerns or structural elements they had not anticipated.

However, in the over 225-plus years since the Constitution was written, it has only been amended 27 times, and the first ten were promised just to get the Constitution ratified. So, in reality, it has only been amended 17 times. But, two of them, the 18th (Prohibition) and 21st (ending Prohibition) cancel each other out, leaving 15 actual amendments.

Only 15 changes occurred in over 225 years to the document that is the foundation of the government of perhaps the most militarily, economically, politically, and socially powerful and influential country in all of history. That’s fairly impressive.

Big Question: What amendments have been made to the Constitution?

Watch: The Amendment Process

The Amendment Process
Though the Constitution has 27 Amendments, the Bill of Rights—the first ten Amendments—were added in 1791. Responding to charges by Anti-Federalists that the Constitution made the national government too powerful and provided no protections for individuals' rights, the newly elected federal government tackled the issue of guaranteeing liberties for American citizens. James Madison, a member of Congress from Virginia, took the lead in drafting 19 potential changes to the Constitution.

Article V of the Constitution says that amendments can originate from either Congress or the states. No matter where a proposed amendment begins, the states must ratify changes before they are incorporated into the constitution.

For an amendment proposed by Congress, a two-thirds majority in both the House and the Senate must support the proposed changes. Then they are sent to the states for ratification. All the current constitutional amendments were initiated by Congress.
A second method allows for the states to initiate change. Upon receiving petitions from two-thirds of the states, Congress must call a convention to propose amendments, which would then be forwarded to the states for ratification.

Ratification requires approval from three-quarters of the states. Congress can choose one of two forms: either three-quarters of state legislatures or three-quarters of state ratifying conventions must vote to approve an amendment, it becomes part of the Constitution.

Having drafted 19 proposed amendments, Madison submitted them to Congress. Only 12 were approved by two-thirds of both the Senate and the House of Representatives and sent to the states for ratification.

Of these, only ten were accepted by three-quarters of the state legislatures. In 1791, these first ten amendments were added to the Constitution and became known as the Bill of Rights.

The ability to change the Constitution has made it a flexible, living document that can respond to the nation’s changing needs and has helped it remain in effect for more than 225 years.

At the same time, the framers made amending the document sufficiently difficult that it has not been changed repeatedly; only 17 amendments have been added since the ratification of the first ten. And, interestingly enough, one of the 17, the 27th Amendment, was one of the two Madison proposals the states rejected in 1791!

Read: The Amendments: The Bill of Rights and 17 Others

Key Constitutional Changes

The Bill of Rights was intended to quiet the fears of Anti-Federalists who were concerned that the Constitution did not adequately protect individual liberties and thus encourage the support of the new national government. Many of these first ten amendments were based on provisions of the English Bill of Rights and the Virginia Declaration of Rights. For example, the right to bear arms for protection (Second Amendment), the right not to have to provide shelter and provision for soldiers in peacetime (Third Amendment), the right to a trial by jury (Sixth and Seventh Amendments), and protection from excessive fines and from cruel and unusual punishment (Eighth Amendment) are taken from the English Bill of Rights. The Fifth Amendment, which requires among other things that people cannot be deprived of their life, liberty, or property except by a legal proceeding, was also greatly influenced by English law as well as the protections granted to Virginians in the Virginia Declaration of Rights.

Other liberties, however, do not derive from British precedents. The protections for religion, speech, the press, and assembly that are granted by the First Amendment did not exist under English law. (The right to petition the government did, however.) The prohibition in the First Amendment against the establishment of an official church by the federal government differed significantly from both English precedent and the practice of several states that had official churches. The Fourth Amendment, which protects Americans from unwarranted search and seizure of their property, was also new.

The Ninth and Tenth Amendments were intended to provide yet another assurance that people’s rights would be protected and that the federal government would not become too powerful. The Ninth Amendment guarantees that liberties extend beyond those described in the preceding documents. This was an important acknowledgment that the protected rights were extensive, and the government should
not attempt to interfere with them. The Supreme Court, for example, has held that the Ninth Amendment protects the right to privacy even though none of the preceding amendments explicitly mention this right.

The Tenth Amendment, one of the first submitted to the states for ratification, ensures that states possess all powers not explicitly assigned to the federal government by the Constitution. This guarantee protects states' reserved powers to regulate such things as marriage, divorce, and intrastate transportation and commerce, and to pass laws affecting education and public health and safety.

Of the later amendments, only one, the 21st, repealed another amendment, the 18th, which had prohibited the manufacture, import, export, distribution, transportation, and sale of alcoholic beverages. Other amendments rectify problems that have arisen over the years or that reflect changing times. For example, the 17th Amendment, ratified in 1913, gave voters the right to directly elect U.S. senators. The 20th Amendment, which was ratified in 1933 during the Great Depression, moved the date of the presidential inauguration from March to January. In a time of crisis, like a severe economic depression, the president needed to take office almost immediately after being elected, and modern transportation allowed the new president to travel to the nation’s capital quicker than before. The 22nd Amendment, added in 1955, limits the president to two terms in office, and the 27th Amendment, first submitted for ratification in 1789, regulates the implementation of laws regarding salary increases or decreases for members of Congress.

Of the remaining amendments, four are of especially great significance. The 13th, 14th, and 15th Amendments, ratified at the end of the Civil War, changed the lives of African Americans who had been held in slavery. The 13th Amendment abolished slavery in the United States. The 14th Amendment granted citizenship to African Americans and equal protection under the law regardless of race or color. It also prohibited states from depriving their residents of life, liberty, or property without a legal proceeding. Over the years, the 14th Amendment has been used to require states to protect most of the same federal freedoms granted by the Bill of Rights.

The 15th and 19th Amendments extended the right to vote. The Constitution had given states the power to set voting requirements, but the states used this authority to deny women the right to vote. Most states before the 1830s also used this authority to deny suffrage to propertyless men and often to African American men as well. When states began to change property requirements for voters in the 1830s, many that had allowed free, property-owning African American men to vote restricted the suffrage to white men. The 15th Amendment gave men the right to vote regardless of race or color, but women were still prohibited from voting in most states. After many years of campaigns for suffrage, the 19th Amendment finally gave women the right to vote in 1920.

Subsequent amendments further extended the suffrage. The 23rd Amendment (1961) allowed residents of Washington D.C. to vote for the president. The 24th Amendment (1964) abolished the use of poll taxes. Many southern states used a poll tax, a tax placed on voting, to prevent poor African Americans from voting. Thus, the states could circumvent the 15th Amendment; they argued that they were denying African American men and women the right to vote not because of their race but because of their inability to pay the tax. The last great extension of the suffrage occurred in 1971 in the midst of the Vietnam War. The 26th Amendment reduced the voting age from 21 to 18. Many people had complained that the young men who were fighting in Vietnam should have the right to vote for or against those making decisions that might literally mean life or death for them. Many other amendments have been proposed over the years, including an amendment to guarantee equal rights to women, but all have failed.
Reflect Poll: Voting Rights

Which of the voting amendments do you believe influences you the most?
- 15th (gave men the right to vote regardless of race or color)
- 19th (gave women the right to vote)
- 23rd (gave residents of Washington D.C. the right to vote for president)
- 24th (eliminated poll taxes)
- 26th (lowered the voting age to 18)

Expand: The Bill of “Liberties”

A vital theme in this course, and in the United States government, is this idea of limited government. As discussed throughout this course, the founding fathers believed in the idea of a social contract as the basis for government power. A government has no inherent power; all power and rights reside in the people. They give the government the power it needs to perform the functions of government, and no more. Their social contract is called the Constitution. As such, the government has no power except what the people give it, and in the social contract — the Constitution — the people do not give the government the power to infringe on these personal freedoms.

However, Thomas Jefferson and others wanted even more protection, so the Bill of Rights was added to not only tell the government what it could do, but also what it could not do. The name Bill of Rights is actually a misnomer. It should have been called the Bill of Liberties. Civil liberties are legal constitutional protections against the government, and this is stated explicitly in the Bill of Rights. The First Amendment, with its historically unique and universally persuasive expression of the fundamental rights of speech, press, religion, and assembly, as well as the expression of the power of petition, is a lynchpin in American society. Not accidentally, the First Amendment starts with five vital words: “Congress shall make no law.”

“No law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Clearly, forbidding the government from infringing on these rights was an issue so important that the founding fathers not only denied giving the government the power to infringe, they also expressly told the government “no!” in the Bill of Rights. The Bill of Rights (liberties) continues this theme through the next seven amendments.

The people’s protection against the government’s infringement on these rights appears complete. However, appearances can be deceiving. This inviolate right to speech that cannot be infringed... can certainly be infringed. In 1919, in the famous case of Schenck v. United States, the Supreme Court ruled freedom of speech is not absolute: “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force.”

In fact, each of the inviolate rights in the Bill of Rights are limited, and none are absolute. Press, religion, and assembly all have their limitations. Throughout the Bill of Rights, there are exceptions to the blanket protections offered, based on the rights of others, safety, and even public opinion. Who has all power? The people. Who could alter the Constitution if they so desired? The people. Who could revoke the
Constitution? The people. The people have ordained these limitations on inviolate rights, and that is their prerogative.

Lesson Toolbox

Additional Resources and Readings
A Crash Course video covering civil rights and liberties
   ● Link to resource: https://www.youtube.com/watch?v=kbwsF-A2sTg&t=29s

A fun video explaining the Bill of Rights in greater detail
   ● Link to resource: https://www.youtube.com/watch?v=QoeYhKCcW_Q

A Crash Course video covering the Constitution
   ● Link to resource: https://www.youtube.com/watch?v=bO7FQsCcbD8&t=119s

Lesson Glossary
None

Check Your Knowledge

1. The first ten amendments were based on provisions of the English Bill of Rights and the Pennsylvania Declaration of Rights.
   a. True
   b. False

2. The First Amendment gave protections for religion, speech, the press, and assembly, all of which did not exist under English law.
   a. True
   b. False

3. It is stated explicitly in the Bill of Rights that civil liberties are legal constitutional protections against the government.
   a. True
   b. False

Answer Key:

Citations

Lesson Content:
Authored and curated by Jay Reynolds, J.D. for The TEL Library. CC BY NC SA 4.0