PROJECTS to amend the Constitution of the United States have poured in an almost unceasing stream upon the nation ever since the beginning of our national history. Most of these have had slight intrinsic importance, and for that reason and because backed by little popular approval nor by strong pressure groups, they have not been given official life by Congress or the States. Only twenty-one of these proposals have been adopted in the century and a half of our life as a nation. But the acutely transitional character of the last quarter of a century has stimulated more general discussion and more intensive study of our constitutional system than had heretofore taken place since the decade or two following the adoption of the Articles of Confederation. The shattering impact of World War Number One and its aftermath, and the even more profound dislocations caused by the present war have inevitably induced intense study of the organic features of our constitutional scheme as well as of such other provisions as those relating to civil liberties. From these changes in the conditions of life of the nation and possibly still more from changed and changing theories as to the objectives of government, has come the tendency to revise and modify our constitutional arrangement, which is fairly certain to produce many definite proposals to amend the Constitution in the near future.

There has been much less study of the Amending Clause of the Constitution than of any other of its important provisions. Consequently, there is comparatively little material of an official sort relating to the process of amending. There have been strangely few amendments. It is apparent from a study of the debates in the Constitutional Convention and contemporary discussion in the States, that our much publicized
"founding fathers" anticipated that the Amending Clause would be employed far more often than has proved to be the case. While most of the twenty-one amendments which are now part of our Constitution have been frequently involved in litigation in both Federal and State Supreme Courts, that litigation has been concerned chiefly with the content of the amendments and not with the manner of their adoption. During the last five years, questions regarding the validity of the methods actually adopted have come with greater frequency than at any prior time in our history. That frequent amendment of the Constitution has been avoided, whatever the reasons therefor, is probably a most fortunate circumstance for the country. To have amended the Constitution frequently during the first century of our national existence might have resulted in the addition of some hastily conceived and unwise changes creating new problems and defects and tending to reduce our whole constitutional structure to the level of ordinary legislation.

Nevertheless, the pressure from recent changes in our national life and others which will inevitably develop, would seem likely to increase the demand for constitutional amendments, particularly when the present world-wide and revolutionary war has wreaked its complete vengeance upon society. If present governmental tendencies in this country continue to advance in the direction they are now taking, it is reasonably certain that bills will be introduced in Congress, the purpose of which is to create new boards, commissions or other offices, granting new authority and still further extending governmental regulatory power or control, especially in the fields of commerce, industrial relations, agriculture and taxation. Already there has been an enormous extension of governmental administration into fields which had heretofore been regarded as strictly private and insulated from governmental interference by the Due Process Clause in both the Fifth and Four-
teenth Amendments. But with the decision of *Munn v. Illinois*, 94 U. S. 113, the old strictly limited category of public utilities and other businesses subject to public regulation was demonstrated to be utterly inadequate and illogical. The concept of businesses charged with a public interest, which had lain relatively dormant since Sir Mathew Hale’s time, was revived and became the justification for an extension of governmental activity which shocked and frightened a great many people whose sincere beliefs concerning political and economic matters, or whose selfish interest, had made them the partisans of an extreme laissez faire theory of government. And recent decisions of the Supreme Court, especially several since the First World War, have opened the way for repeated and successful attacks upon the economic and political theories of John Stewart Mill and his followers in this country. It is not easy to find any logical and permanent limit beyond which the doctrines with regard to businesses charged with public interest may not be carried to sustain public regulation and perhaps control.

For a half century at least, the United States and the several States have been greatly enlarging the field of administrative law and action. Until recently Congress has been restrained by a rigid and historically unsound conception of due process of law, which has now been greatly modified if indeed not wholly rejected by the Supreme Court.

Important decisions of the Court during the last five years have all but destroyed the heretofore prevailing view that administrative proceedings must be conducted in accordance with certain implicit requirements, not unlike those which dictate judicial procedure. The same decisions have come near to establishing the power of administrative commissions and officers to exercise so-called quasi-judicial functions without review by the courts, but complete finality of determination by administrative functionaries has not been de-
declared by the courts, and agitation for constitutional amendment to bring about that finality is not improbable.

Theories and even sentimental notions about state sovereignty and the Reserved Powers Clause of the Tenth Amendment had imposed other restrictions upon the exercise of the police power of the States and unduly restrained the exercise of the so-called implied powers of Congress. There had been a gradual invasion of the supposed field of reserved rights through a slowly enlarging conception of the scope of the interstate commerce power of Congress. Recent decisions of the Court have practically discarded the old and very unsatisfactory test of the direct or indirect effect upon interstate commerce by the application and enforcement of both state and congressional legislation concerned with industrial and business functioning. This, of course, has opened the door wider for both state and federal regulation of business. But the door is not yet as wide open as some think it should be, and it is far too wide open to accord with the views and opinions of a probably small minority at the present time. That minority, however, may after a time develop new strength and find new opportunity, say from an increasing popular fear of totalitarian government, to impose restraints, with the probable result of a demand for constitutional amendment.

As to the scope of the commerce power of Congress, opinions continue to differ greatly. And so, the vexing question whether state legislation interferes with or usurps the power given to Congress, and the converse of that question whether Congressional legislation is in reality regulation of interstate commerce, or whether it goes beyond such regulation and affects the exercise of state police powers, and interferes with legal intra-state commerce, are bound to arise and to be vigorously debated. So it is with respect to some areas in the field of taxation.

The specific grants of authority have left the extent of the President's power far from clear. Thus the bitter con-
troversy raging about our relationship to the present war has made it painfully clear that the clause making the President the Commander-in-Chief of the Army and Navy, those conferring the power over foreign relations, and the general grant of executive power, make it entirely possible for the President to make war in effect or bring on war, even though the power to declare war is given to Congress exclusively. If a President, however wisely, were so to exercise his clearly granted power as to bring us into war, and if the Congress were opposed to his policy and refused to make adequate appropriations and other arrangements for carrying on the war, the consequences obviously might be disastrous.

There are many other unsettled areas of national power concerning the executive and other departments, and, while probably it is fortunate that the Constitution makers refrained from making many specific grants, and from making any disposition of some areas of power not falling clearly within any of the three great departments of government, it seems probable that there may be a demand for making, clarifying or re-arranging some of the distributions of power in this and other fields. How many are the possibilities of clash of views, how many important matters are still undetermined, are made very clear by Professor E. S. Corwin’s book recently published, entitled “The President, Office and Powers.” This book is based upon an exhaustive, analytical and historical study of the Presidency, and is one of the most important contributions to the understanding of American government made in many years. It gives expression to a few interpretations and some views with which the writer, at least, does not wholly agree, but the book as a whole is thoroughly sound and penetrating.

Doubtless the stream of criticism of our judicial department will continue. Criticism of our courts is inevitable, and, if it is not accompanied by maladroit efforts to weaken the
foundations of the judicial system, criticism is healthful. Already many proposals to amend Article Two of the Constitution have been made and doubtless many more will be made in the future.

By no means all of the possible defects or deficiencies indicated in the foregoing pages are likely to require or be accorded constitutional amendment. They have been suggested merely as illustrative of the fact that at any time we may have the beginning of a more determined and systematic attempt to amend the Constitution; and this makes Professor Orfield's book particularly timely. Professor Orfield has made an exhaustive study of all of the materials available for consideration of his subject. His book presents a comprehensive picture of constitutional amendment as provided for and developed during the century and a half of our national existence. The author presents a statement of what has happened and of judicial and other official opinions relating to the Amending Clause. He has said comparatively little by way of argument for any particular theory relating to the various steps in procedure. To have restricted his treatment of the subject in this manner, seems to the writer a wise decision. The important thing at the present time is to have an accurate, fair and wholly non-partisan presentation of the subject. Various steps in procedure can best be investigated and the existing ones perhaps improved upon by separate studies of each step, or of groups of related steps. A reader of Professor Orfield's book would do well to examine Everett S. Brown's book "The Ratification of the Twenty-First Amendment to the Constitution of the United States," and also Professor Brown's article on the same subject in the "American Political Science Review" XXIX (Dec. 1935) 1005-1017.

Professor Orfield has made a valuable contribution to a most important subject.

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