MOST treatises on constitutional law dispose of the federal amending clause in summary fashion. The commentators have thought fit to stress chiefly the division of authority between the federal government and the states. They have attached a high degree of significance to the dogma of separation of powers. A great deal of attention has been devoted to the doctrines of judicial review, the supremacy of the Federal Constitution, and the Bill of Rights. The taxation and the commerce clauses have come in for their full share of consideration. In recent years extensive studies have been made of the due process clause of the Fourteenth Amendment. As a result, the amendment clause has almost been lost sight of. No monograph on Article Five has been published prior to the present book. Yet when one stops to realize that the subjects just referred to have to do only with the existing distribution of powers, and that the operation of the amending power may bring about a complete reshuffling of the Constitution, it becomes obvious that one is dealing with a power of a higher grade and of more potential importance than any other power provided for in the Constitution. As John W. Burgess says:

"A complete constitution may be said to consist of three fundamental parts. The first is the organization of the state for the accomplishment of future changes in the constitution. This is usually called the amending clause, and the power which it describes and regulates is called the amending power. This is the most important part of a constitution. Upon its existence and truthfulness, i.e., its correspondence with real and natural conditions, depends the question as to whether the state shall develop with peaceful continuity or shall suffer alternations of stagnation, retrogression and revolution. A
constitution, which may be imperfect and erroneous in its other parts, can be easily supplemented and corrected, if only the state be truthfully organized in the constitution; but if this be not accomplished, error will accumulate until nothing short of revolution can save the life of a state."  

One may approach the study of the amending clause from at least three different points of view: from that of constitutional law, from that of jurisprudence and legal philosophy, and from that of political science and legislation. From the standpoint of constitutional law the genesis and justiciability of the power may be considered; the procedure of amendment may be examined in detail; and the scope of the amending power may be analyzed. From the point of jurisprudence, the relation of the amending power to the concept of sovereignty may be developed. Finally, from the standpoint of political science and legislation, the reform of the amending process itself may be made the basis of investigation.

The writer has experienced considerable difficulty and hesitation with respect to the use of the expression "federal amending power." Closely analyzed, "power" admits of several meanings. It may mean the capacity to amend, the composite body which does the amending, or even the process of amending. Ambiguity at least as to title has been sought to be avoided by calling this book "The Amending of the Federal Constitution." The writer is indebted to Dean E. Blythe Stason of the University of Michigan Law School for valuable suggestions with respect to the problem of terminology.

This book was begun by the writer as the holder of a Research Fellowship in the University of Michigan Law School during the year 1928–1929. The writer there was fortunate in having the advice and assistance of Dean Henry M. Bates.

1 Burgess, Political Science and Comparative Constitutional Law (1891) 137.
Professor Edwin D. Dickinson, now Dean of the School of Jurisprudence of the University of California, offered some suggestions as to the topic of sovereignty. Full responsibility is assumed by the writer, however, for all statements and conclusions. The writer first became interested in the federal amending process as a student in the classes of Professor Henry Rottschaefer of the University of Minnesota Law School.

All but one of the chapters were published in 1930, 1931 and 1932 in various law reviews, all of which have graciously consented to the reprinting. These reviews were the Illinois Law Review, Iowa Law Review, Michigan Law Review, Minnesota Law Review, Nebraska Law Bulletin, and the North Carolina Law Review. All of these articles have since been revised and brought up to date and a new chapter has been added. Special attention has been given to the far-reaching 1939 decisions by the Supreme Court of the United States and to recent suggestions for changing the amending process.

Gratitude is due to the University of Minnesota Law School for the use of its library during the summer of 1939, and to the University of Southern California Law School for similar use in the summer of 1940. Sincere appreciation is felt to Miss Katherine Kempfer for editing the manuscript in its latest form. It would be impossible to overrate the value of suggestions made by her. She has given freely of her time and first rate ability at analysis. The writer is deeply indebted to Dean Emeritus Henry M. Bates for writing the introduction, as well as for encouragement in the revision and publication of this book.

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Lake Minnetonka, Minnesota
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