

## Article V of the U.S. Constitution: The Portal of Adaptability, Change and Continuity

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*"I never expect to see a perfect work from an imperfect man", Alexander Hamilton, 1788*

The first phrases of the U.S. Constitution make it clear that the aspiration was not for a perfect constitution and perfect union but for "a more perfect union", implying a non-stop work of progress and not a finished one. The U.S. has a remarkable recent history of relay-scripting the most enduring constitution. The content of the constitution has become "more perfect" with the entry of each Amendment. Context wise, the U.S. constitution operates in a very stable and reassured political environment. Many other Constitutions, including the current Ethiopian Constitution lack such an environment more than they do in the qualities of their contents.

Obviously, constitutional value contexts and contents are two separate aspects but not meant to be a static duality: they influence one another and they do change over time and across generations, mostly for a better. Constitutions that originated with solid or poor start-up value can and should endlessly grow and recreate themselves with renewed or added values. That is why many constitutional thinkers believe the ability of constitutions to upgrade and update themselves is more important than the level of perfection or purity they embody at the time of their origination.

It needs no emphasis that individuals and groups in a given nation should be more concerned with issue of whether there is enough functional and philosophical space to work around an existing constitution rather than about having a good constitution from the start. If all it matters were about purity of content, the living constitution of the U.S. would make no sense today with its provision stipulating 6 whites are equal to 10 blacks in its original script: Article I, Section 2. It took 81 years to change that law.

One concludes rather easily that the visible quality of the U.S. constitution is not in the essence of the very provisions it carries but in its quality of adjustability, adaptability and continuity. This leads us to be mindful of the fact that no content, in any given constitution, is good or bad as much as the guarantee of choice it provides to revisit the contents for any needed negations or additions.

In the Ethiopian context, for example, a lot of attention is exaggeratingly given to Articles 39 and 40, but much less so to Articles 104 and 105. We should have fought tooth and nail to get the ones in the latter right as they would be the enablers to remove, improve or replace unneeded and outdated articles as the case may be in the future. You will notice such a magic role in Article V on all over the amendments, thus bringing a fundamentally flawed and utterly racist U.S. supreme law to a one that is globally enviable as we know it today.

The role of Article V in the U.S. Constitution in extending the relevance of the Constitution into a far future can never be over exaggerated. While providing an access of entry for successive generations to add their own legislations into the Constitution, it keeps the old from growing obsolete. And yet this Article appears to be overlooked by legislators, scholars and citizens alike, and never given the attention and respect that deserves. This is puzzling when accounted against the fact that Article V may have been the single most important provision in the U.S. Constitution which has enabled the document to have survived centuries intact with only some incremental changes.

United States' constitutional history is rather admirable for its continuity under an enduring single written document. It is the first written constitution in the modern world and it still remains a working Constitution with no match.<sup>1</sup> France has changed its constitution fifteen times and its latest version is only 49 years old. Britain has never had a written constitution. Canada's single constitution is nearly a century younger than that of the U.S.<sup>2</sup> There are plenty of testimonies given to argue that the great quality of the constitution lies in its delicate provisions of the separations of power and its mechanisms of checks and balances among the branches. A different argument would point to the notion that the true strength of the document rests probably on Article V.

The Articles in the Constitution are all there, with the exception of Article V, as an end values to the extent the framers were able to envision them. For example, Article I deals with the powers and structures of the Congress and the Senate.<sup>3</sup> It is there as a finished product. If one needs to alter or refashion this product, it can only be done through the blessing of Article V.<sup>4</sup> Article V reconciles the values in the Constitution with future sensibilities, modernizations and adaptabilities.

Article V of the U.S. Constitution is the part that deals with issues and procedures of amending the Constitution. The entire Constitution is amendable except that there was only one clearly restricted area. Linder notes the following: "The words and history of article five indicate that there is one express limitation on the amendment power: no state can (without its consent) be deprived of its equal suffrage in the Senate."<sup>5</sup> It also appears obvious to understand that there is another implied restriction. "Through an understanding of the underlying purposes of the Constitution it is possible to appreciate a second limitation on the amendment power: article five itself cannot be amended so as to create any new limitations on the amending power."<sup>6</sup> Untouchable as it is, Article V is meant to stay longer than any other Article in the Constitution.

The Constitution has added twenty-seven Amendments since it came to life in 1789. When ratified by either of the modes of ratification as stipulated in Article V of the Constitution, Amendments are as good as the original articles: "[they]...shall be valid to all Intents and Purposes, as part of this Constitution"<sup>7</sup> Imagine the U.S Constitution without those twenty-seven Amendments. Imagine it without the Bill of Rights- the first ten Amendments added to the Constitution four years later. What would America look like without a constitution that guarantees "Freedom of Speech and Press"- proviso of the First Amendment?<sup>8</sup> Under those imagined situations, either we would have had a totally different America or there would have been a necessity for undergoing revolutions to replace the Constitution.

Some believe the United States Constitution is usually difficult to amend, pointing to the more than ten thousand proposed amendments that failed to make it into the Constitution. Others say the process to amend the Constitution is not that difficult because it has been amended far frequently than most others.<sup>9</sup> Difficult or easy, Article V has brought the constitution intact a long way and will continue doing so.

It is amazing to learn what ideas went into the making of the Constitution and how it has evolved to address the problems of a growing and ever-changing nation. During what apparently was one of the heightened moments in the ratification process, Alexander Hamilton was arguing hard to persuade the delegates on how Article V would be solving all future problems once the Constitution was ratified. Federalist 85 argued: "If... the Constitution proposed should once be ratified by all the States as it stands, alterations in it may at any time be effected by nine States. Here, then, the chances are as thirteen to nine in favor of subsequent amendments, rather than of the original adoption of an entire system."<sup>10</sup> The framers laid down a final and binding Constitution, in design and substance, to the best of their knowledge, experience and wisdom at the time. For whatever they did not or could not have envisioned, they left an opening: Article V, which has made the Constitution not only final and binding but also "living".<sup>11</sup>

Much to their credit, the framers had no illusion in the fact that what they tried to produce could have been anything but perfect. Hamilton acknowledged this point in Federalist 85: "I never expect to see a perfect work from an imperfect man." Many years later, Akhil Amar wrote the following: "Even, had they somehow believed that their blue print would solve every problem in sight; they understood that new challenges and opportunities in the unforeseeable future might require new approaches."<sup>13</sup> The short-lived; preceding document's (the Confederation's) fatal flaw was its practical unamendability. "Any amendment to the Articles [of Confederation] required the agreement of all 13 State legislatures. Such unanimity was almost impossible to achieve."<sup>14</sup> Thus, the Article V amendment clause decisively rejected the old requirement of State unanimity.

Once the Constitution's new rules were in place and, consequently, Article V has come into effect, it would then facilitate for other alterations. "Such alterations could adjust the basic structure of the new, add a more comprehensive catalogue of explicit constitutional rights and move in any other direction that seemed advisable."<sup>15</sup> The path has been laid for all ideas of amendments to come and flow through. Some would survive

the course and find their way into the Constitution. Some would certainly die and get buried on their way. A few of them would resurface some other time and succeed.\*

Whenever an amendment was added, it means, the Constitution has gained some level of living continuity. If it were not for Article V, the Constitution would have reached a dead end long ago. The horizons of its functionality would have faded as it lived further and further away from its time of creation. Article V has been and continues to be its connecting door to the future. The door opens wider and wider to accommodate newer sophistications and philosophies.\*\*

Mason said at the Convention, "there was disagreement over precisely how difficult or easy it should be to change the Constitution, but almost nobody argued that change should not be possible."<sup>16</sup> Article V tells us as to how much the framers wanted to leave the door open. Indeed, using that opening, more has been written later into the Constitution in the form of Amendments than when it was originally drafted. We can reasonably assume a lot more are to be added yet.

Political and civic leaders in Washington are being heard frequently calling for a constitutional amendment that defines or redefines marriage as a union between genders or not necessarily.<sup>17</sup> New amendments may be demanded to address breakthroughs or excesses of technological, scientific and research controversies like on the use of stem/embryo cell and cloning; on ruling new advancements and competitions such as those for space control; on managing potential threats such as global warming and desertification...could be some of the issues that may try to enter the U.S. Constitution in the future thanks to Article V.

Change has always been an inevitable condition of life and it will continue to be so. Only Article V can guarantee the continuity and adaptability of the Constitution to a changing nation and its surroundings. If there is anything between the framers and the authors of the 27<sup>th</sup> Amendment or the 100<sup>th</sup> Amendment or the last Amendment to come, it can only be Article V that has been enabling successive generations to co-author the same document in perpetuity.

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\*The 27<sup>th</sup> Amendment, the last Amendment that rules out on congress members not to pass any law related to their salary, was first proposed by James Madison on June 8, 1789. More than two centuries has passed before it has become part of the constitution

\*\* It is tempting to contemplate the shape of the symbolic name of the Article, "V", in relation to the meaning of its essence. It stands at a point and grows up and ever widening as if to embrace numerous upcoming amendments into the Constitution.

## Notes

1. Karen O'Connor and Larry J. Sabato, *Essentials of American Government: Continuity and Change*, (New York City: Pearson Longman, 2005) 4<sup>th</sup> Edition, 61.
2. Ibid.
3. Ibid, 524.
4. Ibid.
5. Douglas Linder, "What in the Constitution Cannot Be Amended", *Arizona Law Review* 717, <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/unamendable.html>
6. Ibid.
7. Alexander Hamilton, "Concluding Remarks", *Federalist No. 85*, August 13 and 16, 1788.
8. O'Connor and Sabato, *Essentials of American Government*, 526.
9. Darren R. Latham, "The Historical Amendability of the American Constitution: Speculations on an Empirical Problematic", *American University Law Review* (February 24, 2006) Vol. 55, 150.
10. Hamilton, "Concluding Remarks", *Federalist No. 85*.

11. Akhil Reed Amar, *America's Constitution: A Biography*, (New York: Random House Trade Paperbacks, 2006), 285.
12. Hamilton, "Concluding Remarks", *Federalist No. 85*.
13. Amar, *America's Constitution*, 285.
14. Ibid, 286
15. Linder, "What in the Constitution Cannot Be Amended".
16. Hamilton, "Concluding Remarks", *Federalist No. 85*.
17. White House, "President Calls for Constitutional Amendment Protecting Marriage": *Remarks by the President* (February004)  
<http://www.whitehouse.gov/news/releases/2004/02/20040224-2.html>

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