

Lesson 15

THE AMENDMENT PROCESS AND THE BILL OF RIGHTS

Lesson Objectives

When you complete Lesson 15, you will be able to:

- Describe the procedure for amending the Constitution and explain why the Framers created an amendment process.
- Understand what the Eighteenth Amendment did and why it is a failed amendment.
- Explain the relationship of the Twenty-first Amendment to the Eighteenth Amendment and the effect of the Twenty-first Amendment on states' power over alcohol regulation.
- List the amendments included in the Bill of Rights and understand the debate during ratification about the necessity of a Bill of Rights.
- Explain the three originalist theories of the purpose of the Ninth Amendment and how this amendment affects the Bill of Rights.
- Describe the main reasons why the Framers developed the Tenth Amendment.
- Understand how the Supreme Court has applied the Ninth and Tenth Amendments and why these decisions have been controversial.

The Amendment Procedure

More than 5,000 bills proposing to amend the Constitution have been introduced in Congress since 1789, but only 27 amendments have been added to the Constitution. Each successful amendment represents the codification of a national consensus that crossed the hurdles set out in Article V to assure that this consensus would be deliberative, reasonable, and legitimate. The Article V amending process affirms the rule of law and links our highest law to the republican idea that government ultimately derives its just powers and legitimate authority from the consent of the governed and that the governed can alter their government to affect their safety and happiness.

At key moments, under unusual circumstances, the amendment process expands our constitutional discourse beyond the courts and our political institutions to engage the American people in national deliberations about core principles and fundamental questions. In so doing, it invokes their sovereign authority, through the extraordinary process of constitutional lawmaking, to settle the issue at hand.

Unit 6

Amendments — Article V

Essay by Trent England and Matthew Spalding (pp. 284–287)

As Matthew Spalding and Trent England explain, Article V provides the mechanisms by which the Constitution can be amended. This provision belies the claims that the Constitution is unable to adapt to changing times. The Founders clearly understood that there would be situations they could not predict and that the Constitution would need to be amended to address such demands.

The amendment process of the Articles of Confederation required a proposal by Congress and unanimous ratification by all 13 state legislatures. Such a structure effectively made amendments impossible to pass. The amendment process for the Constitution rectifies this failure; as James Madison explained in *The Federalist* No. 43, “It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults.” Amending the Constitution is deliberately difficult but not impossible.

The amendment process adheres to the Founders’ concept of structural federalism based on the mixed sovereignty of the state and national governments. It ensures that sufficient deliberation and discussion take place and that the amendment truly reflects the reasoned will of the American people. There are two methods for proposing a constitutional amendment: Either Congress proposes the amendment after two-thirds agreement in each house, or two-thirds of the state legislatures petition Congress, which will then call a convention for proposing amendments. Congress chooses the mode of ratification: either by three-fourths of the states’ legislatures or by three-fourths of the states’ ratifying conventions.

Amending the Constitution by convention is still full of unknowns, as even the Founders recognized. Madison spoke out strongly during the Constitutional Convention, posing the questions: “How was a Convention to be formed? By what rule decide? What the force of its acts?” It is unclear whether a call for a convention ever “expires,” or can be redacted, or whether one specific amendment must be put forth in the petition for a convention. These ambiguities explain why Congress has proposed every successful amendment—27 out of the thousands of proposed amendments—and an amendment convention has never been convened.

State legislatures have come close to meeting the two-thirds requirement for proposing an amendment at times, but every time, the threat of a disorderly convention has pushed Congress to take on the matter itself. The Founders regarded an amendment convention as something to be employed only in an extreme situation (such as the convention that led them to create the Constitution itself). Madison brought up the possibility of a convention during the Nullification Crisis of 1832 as a desperate attempt to quell the rumblings of nullification and secession. Abraham Lincoln considered the merits of a convention during the turmoil of the Civil War. However, as soon as the war was over, he advocated an amendment through congressional means; the result was the Thirteenth Amendment.

The courts have rarely addressed the amendment process. The Supreme Court has weighed in on a few procedural challenges, including whether the amendments Congress proposes must be presented to the President and time limits for ratification. Substantive challenges to amendments have been unsuccessful.

The Founders recognized the need for prudent flexibility within the Constitution, but also that laws must remain immutable for a time for their full weight to be felt. Article V allows for amendments to the Constitution as necessary over time but creates a structure to ensure deliberation and respect for the document as a whole.



Active Reading

Read students the following Madison quote from *The Federalist* 43 on the amendment process: "It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults." **Ask the students to paraphrase Madison's quote** (The Constitution's Amendment process is not so difficult that it can never be amended, but it is not so easy as to allow it to change constantly.) **Ask: Why did the Founders alter the amendment process of the Constitution to make it easier than that of the Articles of Confederation?** (The Founders altered the process because the Articles of Confederation required unanimous approval of the states, making ratification of an amendment virtually impossible. The new Constitution required only three-fourths of the states to approve it. This would allow the Constitution to be altered with some ease when and if changes became necessary.) **Ask: How and why is the process of amending the Constitution still difficult?** (The process is difficult because the Founders wanted to ensure that a majority faction would not radically alter the Constitution on a whim. Amending the Constitution is a two-step process. First, there is a process to propose the amendments: Either Congress proposes the amendment after two-thirds agreement in each house, or two-thirds of the state legislatures petition Congress, which will then call a convention for proposing amendments. Then there is the ratification process: either by three-fourths of the states' legislatures or three-fourths of the states' ratifying conventions. These steps ensure that only an amendment with very broad support will be approved.)



Research It

Have students research one of the thousands of amendments that have been proposed but not ratified since 1789. **What was the intent of the amendment? Who proposed it? If the states have petitioned the Congress to vote on the amendment, how many states have supported the amendment?** (Answers will vary.)



Research It

Have students research one of the 17 amendments that were ratified after the Bill of Rights (Amendments XI–XXVII). *How and by whom were these amendments proposed? How quickly were they ratified? What were some of the factors that led to their eventual ratification?* (Answers will vary.)



Check Understanding

When the Framers developed the Constitution, they envisioned that it would create a system of “mixed sovereignty.” *Ask: What is “mixed sovereignty”? In what ways can a system of mixed sovereignty be disturbed?* (A mixed sovereignty system means that both the state and federal governments have power over citizens, but they have power over different objects of government. State governments exercise general powers. The federal government has a narrow set of responsibilities. There will be times when laws conflict, but the Constitution provides a process for reconciling conflicts. The mixed sovereignty system is disturbed when states attempt to usurp federal powers or the federal government usurps state powers.)

Understanding the Limits to the Amendments: A Failed Amendment

Each successful amendment to the Constitution represents the codification of a national consensus that crossed the hurdles set out in Article V. Because the purpose of the Constitution is to establish a structure of government and certain processes for government, most amendments—most *successful* amendments—change a procedural or structural issue. For instance, the Twelfth Amendment fixed a problem in the Electoral College.

The Eighteenth and Twenty-first Amendments are unique. The Eighteenth Amendment attempted to constitutionalize a particular policy. The Twenty-first Amendment repealed the Eighteenth and returned legislative power regarding that policy to the states.

Prohibition — Amendment XVIII

Essay by David Wagner (pp. 416–417)

Ratified in 1919, the Eighteenth Amendment was one of the four “Progressive” amendments to the Constitution. Though temperance movements had been present throughout American history, the influence of Progressivism explains the quick

approval and ratification of the Eighteenth Amendment: Congress passed it with six hours of debate, and the states ratified it within one month. The other “Progressive” amendments may explain the support for Prohibition. The Sixteenth Amendment permitted an income tax and therefore freed the government from dependence on liquor taxes. The Seventeenth Amendment mandated the direct election of Senators, making Senators more vulnerable to popular pressure in favor of the temperance movement. Finally, the Nineteenth Amendment reflected a growing support for women’s suffrage and the temperance movement, the staunchest supporters of which were women.

Section 2 of the Eighteenth Amendment led to some friction between Congress and the states. Although Section 2 asserts that Congress and the states shall have concurrent powers to enforce the amendment, the courts largely deferred to Congress. In 1919, Congress passed the Volstead Act, which defined “intoxicating liquors” as any drink containing .05 percent alcohol or more. Later, the Supreme Court ruled in the *National Prohibition Cases* (1920) that the states could not enact legislation that conflicted with congressional enactments regarding Prohibition.

The amendment ultimately failed for several reasons. First, it attempted to constitutionalize a policy, but the states were not inclined to enforce the law. Second, organized crime maintained the widespread presence of alcohol in the United States. Finally, the Great Depression led to a drop in tax revenues. All of these factors combined to lead to ratification of the Twenty-First Amendment in 1933, ending this failed Progressive experiment in social reform.



Check Understanding

Tell students that the Progressive Movement began in the early 20th century. Progressives advocated expanding the scope and activity of government, including centralizing power in the federal government; established the key features of the administrative state; and attempted to democratize political processes. Both major political parties had Progressive wings. Prominent Progressives included Woodrow Wilson, Theodore Roosevelt, John Dewey, Frank Goodnow, Robert La Follette, and Herbert Croly.



Active Reading

Ask: Why did Amendment XVIII ultimately fail? (The amendment failed because it was an attempt to constitutionalize a particular policy. In the end, the states would not enforce the law, organized crime kept alcohol easily available, and the Great Depression led to a drop in tax revenues.)

Repeal of Prohibition – Amendment XXI

Essay by David Wagner (pp. 421–424)

The Twenty-first Amendment, passed in 1933, repealed the Eighteenth Amendment and returned power over alcohol regulations to the states. The amendment has three sections, but the second is the source of most conflict. Section 1 repeals the Eighteenth Amendment, and Section 3 focuses on ratification by state conventions. Section 2 bans the importation or transportation of alcohol into any state when such an act would violate the laws of the state.

The difficulty surrounding the amendment (Section 2 in particular) lay in the uncertainty as to the extent to which continued federal intrusion would be allowed. Did the amendment give states absolute control over regulating alcohol, notwithstanding the Import–Export Clause or the Commerce Clause, or did it permit states enough autonomy without infringing on the scope of the rest of the Constitution? From the debates surrounding the amendment, it is clear that Congress did not retain the power to regulate alcohol in the states.

This amendment has received significant legal attention. In two cases in 1936 and 1939, the Supreme Court ruled that the Twenty-first Amendment was an absolute exception to the Commerce Clause, thus giving states full regulatory powers. However, in 1964, the Court reversed itself and went on to strike down a Kentucky law taxing imported whiskey as violating the Import–Export clause. In 1984, the Court finally gave a balancing test, arguing that state law could directly conflict with federal policy only if the interests of the state were closely related to the powers reserved to the state by the Twenty-first Amendment.

The Court has continued to chip away at the Twenty-first Amendment, ruling in 1987 that Congress could use its power over federal highway funds to regulate state drinking ages indirectly and finding in 1996 that a Rhode Island law that restricted advertising the price of liquor violated the First Amendment. States may choose to be completely dry, but beyond that, state power to regulate alcohol is subject to the Commerce Clause, the Necessary and Proper Clause, the Spending Clause, and the Supremacy Clause.



Check Understanding

Ask: What is the Commerce Clause? (The Commerce Clause of Article I gives Congress the power to regulate and promote commerce among the states.)

Ask: What is the Import–Export Clause? (The Import–Export Clause is a qualified prohibition on the states. It forbids the states from imposing duties on imports or exports unless Congress consents to the tax or the duties are necessary for states’ inspection laws. The clause states that the proceeds resulting from duties and imposts go to the United States Treasury.)

The Bill of Rights and the Purpose of the Constitution

The Bill of Rights was not part of the original 1787 Constitution. The lack of a bill of rights was a rallying cry for the Anti-Federalists, who were opposed to the creation of a national government. The Federalists argued that the Constitution did not need a bill of rights because Congress could exercise only a limited number of powers. Bills of rights were common in state constitutions because states exercised general legislative power. Creating a list of specifically protected rights in the federal Constitution could lead to the presumption that Congress had certain powers that it was never intended to hold.

James Wilson warned, “if we attempt an enumeration, everything that is not enumerated is presumed to be given” to the national government. Additionally, as Alexander Hamilton pointed out in *The Federalist* No. 84, historical bills of right, such as the Magna Carta, had been grants of rights from a sovereign or king; but in the United States, the people are sovereign, and the branches of government have no powers except those specifically delegated to them.

The Federalists agreed to include a bill of rights at the First Congress in April 1789. The phrase “Bill of Rights,” which is never mentioned in the Constitution, refers to the first 10 amendments to the Constitution. The Framers intended the first 10 amendments to be separate declaratory and restrictive clauses, not an exhaustive enumeration of rights. Thus, instead of limiting the natural rights of Americans to those rights specifically listed, the 10 amendments harken back to the Declaration of Independence and set forth certain inalienable natural rights of man.

To this end, the Founders included what we now know as the Ninth and Tenth Amendments. The Ninth and Tenth Amendments briefly encapsulate the twofold theory of the Constitution: The purpose of the Constitution is to protect *rights* that stem not from the government, but from the people themselves and to limit the *powers* of the national government to those that are delegated to it by the people in the Constitution. The Ninth Amendment clarifies that the Bill of Rights did not exhaustively list every right held by the American people. Instead, the American people always retain the right to self-governance, and the government has only those powers that the people have chosen to delegate to it. The Tenth Amendment states explicitly that all powers not specifically granted by the Constitution to the federal government belong to the states or to the people.

Rights Retained by the People – Amendment IX

Essay by Thomas McAfee (pp. 366–371)

The Ninth Amendment clarifies that the Bill of Rights is not an exhaustive list of individual rights. Guaranteeing specific rights in Amendments I–VIII does not mean that the people do not retain other rights that are not listed. There are three different originalist theories about the purpose of the Ninth Amendment.

Traditionalists argue that the Ninth Amendment accomplishes three objectives. First, the amendment is intended to guard against the principle of statutory interpretation known as *inclusio unius est exclusio alterius* (“the inclusion of one thing necessarily excludes all others”). Second, it acknowledges in effect that the Federalists were correct to argue that a bill of rights was unnecessary. Third, it affirms republican principles including the principle of self-government.

The principle of *inclusio unius est exclusio alterius* applied to rights would be dangerous to liberty. Listing certain rights as immune from congressional regulation would imply a grant of general legislative power in Congress to legislate over all other rights not listed. For this reason, Federalists labeled a federal bill of rights unnecessary and dangerous.

Though the Federalists eventually agreed to include a bill of rights in the Constitution, they crafted the Ninth Amendment to buttress their position that Congress is not automatically granted general legislative power.

The Ninth Amendment affirms the republican nature of the Constitution and the federal government. The phrase “rights retained by the people” refers to the inalienable and natural rights as articulated in 18th century America, chief among them the right to self-government. The amendment therefore reinforces the constitutional structure and reaffirms the sovereignty of the people, although it does not provide an independent basis for judicial enforcement.

Other scholars, such as libertarian originalist Randy Barnett, argue that the Ninth Amendment provides a set of judicially enforceable unenumerated rights. These rights do not consist in anything a judge decides or some product of an evolving Constitution. Rather, the Framers designed the amendment to protect natural rights—individual rights that no government may deny.

The Constitution grants Congress a limited set of enumerated powers, but as these scholars argue, the Necessary and Proper Clause could permit Congress to encroach on the people’s liberty. Madison in particular saw the necessity of a bill of rights and included the Ninth Amendment after the list of specific enumerated rights to clarify that the foregoing list was partial. Barnett further argues that Madison distinguishes between mechanisms that limit powers and those that secure rights, with the Ninth Amendment being an example of the latter.

A third interpretation of the Ninth Amendment is that Madison drafted it in response to specific allegations from several state ratifying conventions about the extent of the powers granted to the federal government. In particular, some argued that the Necessary and Proper Clause would allow Congress to invade areas of state power and that the Supreme Court would construe federal power too broadly. The Ninth Amendment would guard against the Supreme Court interpreting Congress's powers so broadly as to encroach on states' authority. Madison maintained that the purpose of the Ninth Amendment was to restrict the ability of the Court to expand Congress's power, not to enable the Court to find new rights. (Madison drafted the Tenth Amendment to affirm that states held powers not explicitly granted to Congress.)

Courts have had little opportunity to interpret the Ninth Amendment. Between ratification and the New Deal, the courts understood it to limit federal power. The amendment was ignored and ultimately dismissed in the *Legal Tender Cases* (1871), for the Court argued that the limited nature of the Bill of Rights meant that Congress had other unenumerated powers. After 1937, the Supreme Court no longer served as a check on the scope of Congress's power. In 1965, however, the Court embraced the amendment—though not its original meaning—as the source of an unenumerated rights doctrine. With this doctrine, the Court argues that the Constitution protects rights to privacy, abortion, and other non-economic rights. This doctrine remains controversial.



Check Understanding

Read James Madison's commentary regarding the Bill of Rights on page 367 (begin with "It has been objected" and end with "it may be guarded against") aloud to students. **Ask:** Can you summarize Madison's argument in your own words in three sentences or less? Ask students to share their ideas with the class. (Answers will vary. Sample answer: Some people think that because a bill of rights would contain certain rights, those not identified would be presumed to be given to the government. This is a valid concern, but we can avoid this problem.)



Active Reading

Have students summarize the three interpretations of the Ninth Amendment. (Under the traditional originalist view, the Ninth Amendment ensures that the statutory rule of interpretation, *inclusio unius est exclusio alterius*, is not employed; acknowledges in effect that the Federalists were correct to argue that a bill of rights was unnecessary; and affirms republican principles including the principle of self-government. The libertarian originalist interpretation holds that the Ninth Amendment guarantees a set of unenumerated individual natural rights. The third interpretation holds that the Ninth Amendment addresses concerns about the scope of the federal government's delegated powers in light of the Necessary and Proper Clause. The Ninth Amendment would prevent the Supreme Court from expanding Congress's power.)



Research It

In *The Federalist* 84, Alexander Hamilton argues that a bill of rights is unnecessary and dangerous. James Madison was a co-author of the *The Federalist* but drafted and supported the Bill of Rights. Have students research Madison's writings about the necessity of a bill of rights and assign them to write a few paragraphs explaining what Madison thought about the Bill of Rights during ratification, the extent of his involvement in determining the final text of the amendments, and whether he changed his mind about the need for a Bill of Rights.

Reserved Powers of the States — Amendment X

Essay by Charles Cooper (pp. 371–375)

The Ninth Amendment clarifies that the people retain all rights beyond those expressly listed in the Bill of Rights. The Tenth Amendment clarifies that the branches of the federal government may exercise only the powers constitutionally granted to it. Thus, any powers not constitutionally granted to the federal government (or prohibited from state exercise) are reserved to the states or the people. The Framers had two main purposes for the Tenth Amendment: It was a necessary rule of construction to explain how the Bill of Rights is to be understood, and it reaffirmed the nature of the federal system.

The Tenth Amendment explains how the Bill of Rights should be understood. Bills of rights were common in state constitutions because states exercised general legislative powers. Because the Constitution granted Congress limited powers, a bill of rights would be unnecessary and possibly dangerous. A bill of rights could imply federal legislative powers that are broader than those granted in the Constitution. Therefore, the Tenth Amendment creates a rule of construction that warns against interpreting the amendments to grant additional powers beyond those granted in the Constitution. For instance, the First Amendment directs that “Congress shall make no law...abridging freedom of speech, or of the press.” Article I never granted any power to Congress over speech or the press in the first place; the Tenth Amendment clarifies that the Bill of Rights does not grant any additional powers beyond those granted in Articles of the Constitution.

The Tenth Amendment reinforces the federal system created by the Constitution and acts as a bulwark against federal intrusion on state authority and individual liberty. The Constitution establishes a novel system of government and a unique relationship between the states and the federal government. Each government possesses direct authority over citizens. Yet, as James Madison emphasized in *The Federalist* No. 45, the powers of the federal government were limited and assigned, while the powers of state governments were quite numerous and general. The concept of enumerated powers is central to the Constitution's creation of a partly federal, partly national government. The Tenth Amendment is a concise summation of the very idea and structure of a government of limited powers.

Judicial interpretations of the Tenth Amendment were sparse in the early days of the Republic. No decision turned upon the application of the amendment. By the 19th century, the meaning of the Tenth Amendment was widely and frequently misrepresented. Some invoked it to support the states' rights doctrine and the claim that the Constitution created a system of "separate and distinct" sovereignties rather than a partly federal, partly national system. In the *Legal Tender Cases* of 1871, the Supreme Court engaged in the type of reasoning that the Tenth Amendment was designed to guard against, arguing that there are additional powers created by the Constitution "neither expressly specified nor deducible from any one specific power."

Since the New Deal Court, the Supreme Court has recognized few limits on Congress's enumerated powers. Congress regulates manufacturing, agriculture, and other areas involving activities and business conducted within individual states. In *National League of Cities v. Usery* (1976), the Court reasoned that the Tenth Amendment protects the states from federal encroachments, specifically regarding implementation of the Fair Labor Standards Act in individual states. The Court reversed itself a few years later in *Garcia v. San Antonio Metropolitan Transit Authority* (1985), prompting Court observers to think that the federal judiciary would no longer entertain federalism challenges.

Recently, the Supreme Court has used the Tenth Amendment to enforce limits on congressional powers, particularly when the federal government attempts to control state operations. Outside of this range of cases, however, it has not invoked the Tenth Amendment: The Court recognized the limits on Congress's powers in *United States v. Lopez* (1995) and *United States v. Morrison* (2000) without reference to the Tenth Amendment.

Recent decisions applying the Tenth Amendment have been controversial. Some object that the cases go far in applying non-textual theories of federalism. Others object that they do not go far enough to restrict the modern expansion of enumerated powers. Meanwhile, the Supreme Court remains unsure of how to apply the Tenth Amendment. On one level, prohibiting the federal government from controlling the states is a relatively straightforward application. The difficulty comes when evaluating whether laws actually conform to Congress's Article I powers or encroach on actual state authority. If laws are grounded in Congress's Article I powers, the Tenth Amendment is satisfied. If they are not, the Tenth Amendment is violated.



Work in Groups

The Bill of Rights was not part of the original 1787 Constitution. The lack of a bill of rights was a rallying cry for the Anti-Federalists, but the Federalists argued that the Constitution did not need a bill of rights because Congress could exercise only a limited number of powers. Divide the students into groups and present the following resolution: "Be it resolved that a Bill of Rights is unnecessary for our federal Constitution." Assign groups to argue for and against the resolution. Encourage them to use their book and the suggestions for further research as they prepare their arguments.



Discussion Question

Have students write a few paragraphs describing how the Ninth and Tenth Amendments sum up the Constitution. (The Ninth and Tenth Amendments encapsulate the twofold theory of the Constitution: that the purpose of the Constitution is to protect rights inherent in the people themselves and that the Constitution limits the powers of the government to those powers that are delegated by the people. The Ninth Amendment clarifies that the Bill of Rights is not a complete list of rights, but that the American people always retain their right to self-governance. The Tenth Amendment mandates more explicitly that the federal government holds only those powers specifically given to it by the Constitution and that all other powers are reserved to the states and the people.)



Active Reading

Read the section on page 371 regarding the Tenth Amendment as an interpretative rule to students (beginning with “That interpretative rule” and ending with “by which restrictions may be imposed”). **Ask:** *What was the Federalists’ logic for creating this interpretative rule?* (Federalists argued that a bill of rights would not be necessary or even useful, since it would prohibit Congress from using powers it did not possess in the first place. For instance, it would not be necessary to develop an amendment instructing Congress not to pass laws restricting the freedom of the press if passing such laws was never a right held by Congress.)



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 15. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

- The phrase *inclusio unius est exclusio alterius* roughly means that including one thing indicates that all others are
 - prohibited.
 - implied.
 - included.
 - excluded.**
- When arguing that a bill of rights was needed, Anti-Federalists pointed to prohibitions already in the Constitution, including the
 - Privileges and Immunities Clause.
 - writ of habeas corpus.**
 - Interstate Rendition Clause.
 - right to obtain legal counsel.

3. The Supreme Court has held that state control of liquor is subject to federal power under which Clause?
 - a. Alcoholic Beverages Clause
 - b. Usurpation Clause
 - c. Commerce Clause**
 - d. none of the above

4. The Bill of Rights consists of
 - a. the first five amendments.
 - b. all of the amendments.
 - c. the first 10 amendments.**
 - d. none of the amendments.

5. Americans have unnamed rights guaranteed by the
 - a. Second Amendment.
 - b. Sixth Amendment.
 - c. Seventh Amendment.
 - d. Ninth Amendment.**

6. The only amendment to be repealed is the
 - a. Fifteenth Amendment.
 - b. Eighteenth Amendment.**
 - c. Nineteenth Amendment.
 - d. Twentieth Amendment.

7. The Federalists eventually agreed to pass the Bill of Rights
 - a. at the Virginia Ratifying Convention.
 - b. in the House of Representatives.
 - c. in the First Congress.**
 - d. in the Supreme Court.

8. The event that convinced the Federalists that they needed to grant some authority to a national government that functioned independently of the states was the
 - a. drafting of the Articles of Confederation.
 - b. failure of the Articles of Confederation.**
 - c. ratification of the Articles of Confederation.
 - d. repeal of the Articles of Confederation.

9. With respect to the Tenth Amendment, James Madison asserted in *The Federalist* No. 45 that the powers of the states were more _____ than those of the federal government.
 - a. numerous**
 - b. narrow
 - c. subjective
 - d. definitive

Fill in the blank: Write the correct word or words in each blank.

1. James Madison drafted the _____ to affirm that the states retained all powers not delegated to the federal government.
(Tenth Amendment)
2. The Constitution created a novel system of mixed _____.
(sovereignty)
3. The Eighteenth Amendment was considered one of the _____ amendments passed and ratified in quick succession. **(Progressive)**
4. Prohibition was repealed in 1933 by the _____.
(Twenty-first Amendment)
5. When the nation repealed Prohibition in 1933, it vested primary control over alcoholic beverages in the _____. **(states)**
6. According to one interpretation, the Ninth Amendment was drafted to address concerns that the Supreme Court would interpret the _____ to increase the powers of Congress.
(Necessary and Proper Clause)

Short Answer: Write out your answer to each question.

1. From the time of its ratification until the New Deal, the Ninth Amendment was understood as a principle limiting what? **(the construction of federal power to the detriment of the states)**
2. The Tenth Amendment expresses which principle that undergirds the entire plan of the original Constitution? **(that the national government possesses only those powers that are delegated to it)**
3. During the ratifying conventions, many Anti-Federalists demanded what? **(A bill of rights)**
4. When combined with the import taxes, the income tax in the early 1900s freed the government from dependence on a tax on what? **(liquor)**
5. In which two ways can an amendment to the Constitution be proposed? **(by a two-thirds vote in both houses of Congress or by two-thirds of the state legislatures petitioning Congress, which then calls a convention for proposing amendments)**
6. In which two ways can a proposed amendment be ratified? **(by a three-fourths vote of the state legislatures or by ratifying conventions in three-fourths of the states)**

True / False: Indicate whether each statement is true or false.

1. State legislatures, rather than Congress, usually initiate the amendment process. **(False)**
2. Despite the Twenty-first Amendment, the federal government has gradually eroded states' rights of control over alcoholic beverages. **(True)**
3. The Eighteenth Amendment was considered one of the Progressive amendments, along with the Sixteenth, Seventeenth, and Nineteenth Amendments. **(True)**
4. The Tenth Amendment states that the federal government possesses only those powers specifically granted to it. **(True)**

Unit 6