text of amending the Constitution, may be what Chief Justice Hughes was deciding for the plurality of the Court in *Coleman*.[54]

Article V may be read to contain a governing constitutional principle, however. Thus, it can be argued that, as written, the provision contains only language respecting ratification and that, inexorably, once a state acts favorably on a resolution of ratification it has exhausted its jurisdiction over the subject and cannot rescind,[55] nor can Congress even authorize a state to rescind.[56] This conclusion is premised on Madison's argument that a state may not ratify conditionally, that it must adopt "*in toto* and *for ever*." [57] Although the Madison principle may be unexceptionable in the context in which it was stated, one may doubt that it transfers readily to the significantly different issue of rescission.

A more pertinent principle seems to be that expressed in *Dillon v. Gloss*.[58] In that case, the action of Congress in fixing a seven-year period within which ratification was to occur or the proposal would expire was attacked as vitiating the amendment. The Court, finding no express provision in Article V, nonetheless concluded that the fair implication of Article V is "that the ratification must be

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[54] Coleman v. Miller, 307 U.S. 433, 450, 453 (1939) (plurality opinion). Thus, considering the question of ratification after rejection, the Chief Justice found "no basis in either Constitution or statute" to warrant the judiciary in restraining state officers from notifying Congress of a state's ratification, so that it could decide to accept or reject. "Article 5, speaking solely of ratification, contains no provision as to rejection." And in considering whether the Court could specify a reasonable time for an amendment to be before the state before it lost its validity as a proposal, Chief Justice Hughes asked: "Where are to be found the criteria for such a judicial determination? None are to be found in Constitution or statute." His discussion of what Congress could look to in fixing a reasonable time, id. at 453–54, is overwhelmingly policy-oriented. On this approach generally, *see* Henkin, *Is There a 'Political Question' Doctrine?*, 85 YALE L.J. 597 (1976).

[55] *See, e.g.*, the debate between Senator Conkling and Senator Davis on this point in 89 CONG. GLOBE 1477–1481 (1870).

[56] *Constitutionality of Extending the Time Period for Ratification of the Proposed Equal Rights Amendment*, Memorandum of the Assistant Attorney General, Office of Legal Counsel, Department of Justice, in *Equal Rights Amendment Extension: Hearings Before the Senate Judiciary Subcommittee on the Constitution*, 95th Congress, 2d sess. (1978), 80, 91–99.

[57] During the debate in New York on ratification of the Constitution, it was suggested that the state approve the document on condition that certain amendments the delegates thought necessary be adopted. Madison wrote: "The Constitution requires an adoption in toto and for ever. It has been so adopted by the other states. An adoption for a limited time would be as defective as an adoption of some of the articles only. In short any condition whatever must vitiate the ratification." 5 THE PAPERS OF ALEXANDER HAMILTON 184 (H. Syrett ed., 1962).

[58] 256 U.S. 368 (1921). Of course, we recognize, as indicated at various points above, that *Dillon*, and *Coleman* as well, insofar as they discuss points relied on here, express dictum and are not binding precedent. They are discussed solely for the persuasiveness of the views set out.