



Taking Back Our Constitution - Part 1 – Reclaiming Liberty

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Why amend the Constitution?

Before I propose amendments that I believe strengthen the original intent of our Constitution, let me briefly explain why.

We have 220+ years of government under the Constitution of the United States. The American experiment with the powers of government split between levels (federal, state, and local) and between branches (legislative, administrative, and judicial) has worn well. However, it has also been gradually reinterpreted in ways that do an injustice to the astute political thinking of our Founders.ⁱ

The authors of our Constitution purposely assigned the federal government a limited scope. States were expected to provide the governing structure for all other areas. Both areas now overlap a great deal, making the role of the state less important. Also the citizen is now much more dependent on a remote and less responsive federal government. Instead of looking to one level of government for services or regulation of a specific type, a citizen may look to two levels with different sets of rules that can add to his burdens.

Particularly the scope addressed by the federal legislative branch (Senate and House of Representatives) has expanded. They now pretend to treat so many areas that they have become ineffective in most. This expansion of mission has totally swamped their abilities to provide oversight. This has enabled the administrative branch to grow so it continually overwhelms Congress. Although nominally acting under the authority of laws passed by Congress, the bureaucracy regularly interprets those laws to enhance their power and convenience. Now the administration often denies Congress the information it requests, lies to Congress, and reveals its ventures only under extreme duress.

At the same time, the vast powers assumed by the federal government have raised citizens' expectations for performance. Often the expected performance does not occur. Instead, the heavy hand of a remote government suppresses the citizen's best efforts to make a living. The citizen is understandably upset. Thus the popularity of Congress is at a nearly all-time low.ⁱⁱ Congressmen cannot fall back on the excuse that it is outside their area of jurisdiction. They have over many decades grabbed these additional responsibilities from states, local governments, and citizens.

Our founding fathers fully understood the tendency in human nature to expand one's domain. So, they created built-in protections for the citizens against the expansion of the federal government's power. They tried to accomplish this while still granting the federal government sufficient power to govern effectively. They also were very clear that government could not be responsive to many citizens over a wide and diverse geographic area. Therefore, they restricted the federal government to limited and enumerated functions which absolutely could not be handled on a state or local level.

One issue that had caused conflict between the states was inter-state trade. During the Confederation,ⁱⁱⁱ trade had stagnated because states had imposed restrictions and tariffs on the products of other states. To remove these restrictions, our founders placed in their enumerated list of the U.S. Congress' powers the provision "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."^{iv} This became the famous Commerce Clause. In more recent years, it has been used to justify all manner of federal intrusion into areas that were formerly the exclusive domains of individual states. Its original meaning as a means to free up trade between states, as opposed to farming, mining, or manufacture within a state, appears to have been lost.

Many of the founders' provisions did an excellent job of protecting the states and individuals from the federal bureaucracy. The success of their efforts is witnessed by over 100 years in which the United States offered a very high and increasing degree of personal liberty, and highly successful economic liberty. The slave trade was stopped; then slavery itself was abolished. Protection of property encouraged the growth of investment providing the capital for the gradual buildup of a significant industrial base within a largely agricultural society.

In our second hundred years we still maintained and possibly increased personal liberty, but faced gradually increasing restriction in the economic realm.

The loss of economic freedom accelerated in the 1930's and again at the present time. Regulation and taxation have reduced the freedoms of ownership so severely that the entrepreneurial lifeblood of our country is steadily relocating to countries where talent can be more productively employed.

This experience has revealed that the federal government has a tendency, particularly over the last 100 years, to continually grab power and downgrade the role of the states. Much of this has been done in spite of a written Constitution that, under any plain reading, does not allocate those powers to the federal government.

This has significant effect on citizens who have become more remote from their government. Also, it has led to increasing dissatisfaction with that government and a feeling that the government exists not to serve the people, but to rule them.

It is very apparent that the federal government has so severely overstepped the restrictions the Constitution placed on its activities, that new restrictions must be created to rein-in this all-consuming monster.

What can be done?

I propose to explore some modest updates (amendments) to our Constitution to clarify its original intent and help return our government to one that is more truly “by the people and for the people.” There are a number of these amendments because I feel that there is no one “silver bullet” that will give our Constitution the provisions critical to the restoration of our republic.

Amending our Constitution so that citizens may regain some of their liberties and preserve our republic is the subject of a recent book by Mark R. Levin called *The Liberty Amendments: Restoring the American Republic*.^v His wonderful book has brought to a wide audience eleven constitutional amendments that have the potential to return power to the citizens and liberate us from a stifling and destructive federal bureaucracy.

The positive reception for Mark Levin’s book suggests the time for discussion and action on reclaiming our government may be at hand. If so, I wish to revive a series of columns that I wrote in 2010, of which only one was published (all are on my reference website).^{vi} As might be expected when two people are writing independently, but with the same goal in mind, our suggestions cover much common ground. There are, however, differences that can add depth to the discussion.

Mark Levin provides superb historical documentation tracing constitutional discussions to the original convention, its participants, contemporary and subsequent commentators and the Federalist and Anti-Federalist papers. I will not repeat his excellent historical arguments for the necessity of amendment, but will concentrate on the specific suggestions I formulated in 2010 with some recent additions.

Bringing our federal government closer to the people

In my next column, I propose a modest change that will replace the convention method for proposing amendments. Mark Levin suggests using this method for nearly all his amendments. I doubt it will work in its present form. In chapter 9, of his fine book, Mark Levin describes a new way in which amendments can be proposed and adopted.^{vii} If that amendment is adopted first, the others would have a much higher chance of adoption.

Experience has taught us that Congress will not authorize the convention under the current rules. I, therefore, have placed my amendment of Article 5 first. This can have the effect of simplifying and clarifying the Founder’s second method of amendment. Once this has been done our citizens can focus on each specific amendments details rather than beating up Congress in an effort to get the other amendments considered.

ⁱ I will use the term Founders to denote those politically active at the time when our Constitution was written (1787) and particularly those active in the actual Constitutional Convention.

ⁱⁱ Gallup’s August 2013 poll had Congresses approval at 14% and disapproval at 81%, For trends since 1974 see <http://www.gallup.com/poll/1600/congress-public.aspx>

ⁱⁱⁱ The confederation of The United States of America was adopted by delegates of 14 states on 15 November 1777 as the *Articles of Confederation*. It was ratified and in force on 01 March 1781. It failed and was superseded by the *Constitution* by

1789. The *Constitution* gave the central government certain limited powers whose absence was recognized as reasons for the *Confederation's* failure.

^{iv} Constitution of the United States, Article I, Section 8, paragraph 3.

^v Published by Threshold Editions on 13 August 2013. By 30 August 2013 it had reached the best seller ranks on Amazon and had received 470 reviews of which 422 were 5 star.

^{vi} <http://don.snalaska.net> under the topic US Constitution.

^{vii} Mark Levin does not directly modify the convention method of Article 5, but in the 9th of his proposed amendments provides a procedure for the states to directly amend the Constitution. My numbering of his amendments is:

- 1) Establish Term Limits for Members of Congress,
- 2) Restore the Senate,
- 3) Establish Term Limits for Supreme Court Justices and Super-Majority Override,
- 4) Limit Federal Spending,
- 5) Limit Federal Taxing,
- 6) Limit the Federal Bureaucracy,
- 7) Promote Free Enterprise,
- 8) Protect Private Property,
- 9) Grant the States Authority to Directly Amend the Constitution,
- 10) Grant the States Authority to Check Congress, and
- 11) Protect the Vote.