

## A Second Look

In his review of Mark R. Levin's *The Liberty Amendments* ("Impractical Solutions, February), William J. Quirk emphasizes the novelty of an Article V convention, calling it "a constitutional-amendment process that has never been used before" and criticizing Mr. Levin for proposing that, "for the first time," we use an Article V convention to amend the constitution. Although there has never been an Article V convention, it is not for lack of trying. Hundreds of applications for such a convention have been filed over the course of our country's history. That the threat of an Article V convention pushed Congress to adopt the 17th Amendment (before the states could do so without Congress) suggests Professor Quirk's fears about progressive influence on such a convention are justified.

Nevertheless, the original intent of an Article V convention was to enable the states to bypass the powerful federal Congress. Alexander Hamilton's first draft of a proposed constitution did not include an option for states to amend the document; when a more state-friendly clause was added, Madison, then a nationalist, struck it, much to the protest of others at the Philadelphia Convention. George Mason, for instance, complained that the "plan of amending the Constitution" was "exceptional & dangerous" because "no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive." At the behest of Gouverneur Morris and Elbridge Gerry, language about amending the constitu-

tion by way of state legislatures was added as a check on, not an enhancement to, federal power.

Constitutional-law expert Robert G. Natelson has written a flurry of law-review articles on Article V conventions in which he concludes that the Founding Fathers intended the convention to be between state representatives to circumvent the federal Congress. Mr. Natelson has also written that the convention was meant to be limited—*i.e.*, not for overhauling the entire Constitution but for considering specific amendments that appear in the applications submitted by the states. In keeping with this understanding, my boss, Chief Justice Roy S. Moore of the Supreme Court of Alabama, has sent letters to all 50 governors, encouraging them to push their state legislatures to call for an Article V convention to amend the Constitution so that no state or federal law could define marriage as anything other than the union of a man and a woman.

Professor Quirk suggests that, instead of holding an Article V convention, Congress could repeal the Judiciary Act of 1791, abolish the lower federal courts, and strip the Supreme Court of appellate jurisdiction over state and federal courts. But even more than an Article V convention, this remedy demands faith in, and action by, the federal Congress. It seems to me that an Article V convention is more plausible because it gives the federal Congress a limited role.

We have reached a terrifying moment when the Department of Defense seeks to brainwash our troops into believing that

Catholics and evangelical Christians are, like those who revere the Founding Fathers, potential terrorists; when the Federal Communications Commission seeks to control which stories newsrooms may run; when the Transportation Security Administration daily collects nude photographs of American citizens; when the Internal Revenue Service targets certain groups because of their political beliefs; when the National Security Agency gathers untold amounts of data on Americans through mass surveillance programs; when the president declares his supremacy over the other branches of government; and when the Supreme Court issues opinions that no longer have anything to do with the Constitution it allegedly upholds. What other practical, constitutional remedies are we left with besides an Article V convention? True, an Article V convention may not work, but I've heard no better options, except, perhaps, secession and nullification, both of which seem equally unlikely to succeed in the current climate.

It is also true, as Professor Quirk indicates, that "Article V of the Constitution is flawed because it gives Congress a gatekeeper role before amendments can be sent to the states," but any proposed amendment coming out of an Article V convention would still have to be ratified by the states. On the most important issue, I agree with Professor Quirk: The essential problem isn't structural but cultural. No government, constitution, or law can save a country that isn't virtuous.

—Allen Mendenhall  
Auburn, AL

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