

The U.S. Constitution — Love Is Not Enough

By **WILLIAM BUCHANAN**

President Barack Obama’s amnesty, his autocratic means for proclaiming it, and his dissolution of border protections have raised new doubts about our Constitution. The ship of state has sprung a leak. Trey Gowdy, a prudent and thoughtful House member from South Carolina, described Obama’s actions as “dangerous to any country that is grounded in respect for the rule of law.”

I love the Founding Fathers and their Constitution — our Constitution. In 1887, British Prime Minister William Gladstone called our Constitution “... the most wonderful work ever struck off at a given time by the brain and purpose of man.” I believe in this primary law but it needs to be updated to reflect changes Founders could not have anticipated.

A “living Constitution” favored by the left is not an option. Law cannot change by itself. It means what it meant when framed or amended or it is useless, even dangerous.

The Founding Fathers faced many obstacles in framing their new “law of the land.” There had never been a successful republic. They dreamed of one. The initial proposal, James Madison’s Virginia Plan,¹ appeared to be modeled on the British parliament. A National Legislature, one branch of which would be elected by the people (House of Commons?). That elected branch would then appoint the second branch (House of Lords?). The two branches would jointly appoint the president (Prime Minister?). No king.

Framers voted repeatedly for an appointed president. It seems the only reason they finally agreed to give the president a separate office was their belief that the first president would be George Washington, the one man in whom they had faith. George Mason feared the president would be more powerful than a king due to his election by the people. The rest, as they say, is history.

William Buchanan is legislative director of the American Council for Immigration Reform (ANCIR), based in Washington, D.C.

The Founders suffered from, were comforted by, numerous illusions. They opposed parties, believing they would bring disaster. By 1796 party government was upon us. Framers thought presidential power would be limited by regular impeachments and removals, something that party made extremely unlikely. It eased Founders’ fears to think that many presidential elections would end up in the House of Representatives, where each state would have one vote, and the president, once duly elected, would be duly chastened, as well. It happened but once.

Congressional power waning

Framers clearly wanted Congress to be the most powerful agent of government. Three fifths of their document was lavished on Congress’s powers. However, politics is the art of getting around the law. Founders in their worst nightmare could not have imagined how a regulatory state would transfer Congress’s power to the executive. But I am sure they speculated, reasoned, and knew that laws get old, that even their constitutional handiwork, our blessed Constitution, could become ... uh, get old.

Consider what the people think of Congress today. Gallup finds that, post World War II, Congress’s approval rating never rose above 40 percent. In recent years this percentage has dipped at times to the teens, even single digits. RealClearPolitics² averaged eight polls and found 13.0 percent of Americans approved of Congress. A tongue-in-cheek article from Public Policy Polling finds Genghis Khan, traffic jams, and root canals more popular than Congress. It was only a matter of time before some president would decide he could do as he wished, Congress be damned!

Article V Convention

All 27 amendments to our Constitution have been proposed by a vote of the House and Senate as prescribed in the first part of Article V. However, when it comes to amendments of substance, Congress largely takes flight. Larry Sabato,³ Jonathan Turley, and others have urged upon us the never-used state convention method

of amendment, known as the “Article V Convention.” Article V of the U.S. Constitution reads, in part:

Congress on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which ... shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States....

According to Friends of the Article V Convention (FOAVC),⁴ 49 states have asked for an Article V Convention and state legislatures have applied for one over 700 times. Applications began immediately in 1789 but reached a peak late in the twentieth century. States have thought it necessary to state the reason why they want such a convention — balanced budget, an end to slavery, etc. — but no such purpose is required.

Mark Levin⁵ proposes ten amendments to the Constitution and the Article V Convention as the vehicle.

The Article V Convention was conceived by the Framers as an alternative measure should the federal Congress fail to act. Though state applications typically include a subject, no subject is necessary. Alexander Hamilton noted “The words of this article (V) are peremptory. The Congress ‘shall call a convention.’ Nothing in this particular is left to the discretion of that body.”⁶

The Constitution provides no rules for qualifying an application or a convention, and 227 years after the Constitution was ratified, Congress has provided none.⁷ We first need a Constitutional Convention Procedures Act (CCPA) to be passed by both houses of Congress and gain the approval of the Supreme Court. Such a bill would have to answer several questions, including: minimum application qualifications; years of life of an application; which office should receive and administer applications; election of convention delegates; votes per state; duration of a convention; and so on.

All of which brings me to the subject of this report: Barack Obama and his flouting of law and custom. Mr. Obama has many good qualities, but it’s noticeable that prior to becoming president he did not seek executive office (sheriff, mayor, governor). He does not communicate with legislators, preferring instead to denounce the low motives of his opponents. He doesn’t run a tight ship — his administration is stuffed with Gruber gaffes.

It has always been true: a president can devastate our society and finances by failing to secure our southern border and converting the Border Patrol into a diaper service. Since 1891, we’ve tried to control that border. In a most calculated manner, Mr. Obama has demolished this effort and laid us open to invasion. With a pen and a phone he has declared five million illegal aliens — will it turn out to be twenty million (?) — to be legal and

employable. Such actions are difficult to reverse, and they raise expectations of still more.

There will be no more “lame duck” presidencies. We have crossed some kind of Rubicon. We can expect all future presidents to rule by decree when they can’t get their way in Congress. In a real sense, law no longer has meaning.

Amendments that limit the president

I’d like to propose some amendments that might bring an overreaching president to heel. The Article V Convention should be the tool.

1. The terms of the President, Vice President, Senators, and Representatives shall end at noon on the 20th day of November. The President and Vice President shall take their oath of office in a recorded private ceremony. The President shall from time to time give to the Congress Information of the State of the Union, but only in writing.

The unaccountable Lame Duck session of Congress is abolished. Much of the pomp and circumstance of the inaugural evaporates, and with it the false splendor superimposed on the politician’s presidency. Have you noticed? The presidential race is not exactly Disneyland. It’s ugly, as befits the quest for power. How then does our president, once elected, become a star? Why does he deserve a “honeymoon”? Gone, too, is the State of the Union Address, that collection of glammed-up non-starters, insincere applause, and false images. There’s still plenty of time for fun, but if you didn’t come to Washington to dig into its miseries, why did you come?

2. The fourth and last sentence in Article I, Section 3, clause 6 shall be amended to read: *And no Person shall be convicted without the Concurrence of a majority of the Members present.*

I do not believe this will increase the likelihood of impeachment and removal from office. As noted above, party government has probably made removal so poisonous an action that opposition forces will shy from such an anti-collegial vote. Still, such an amendment makes removal more possible, and no president can afford to ignore that possibility.

3. A “Natural Born Citizen” shall be defined as a person born in one of the American states to parents at least one of whom is a U.S. citizen. Who else may be a citizen shall be determined by law.

Such an amendment would open the door to laws limiting citizenship for children born to illegal aliens. Currently, most of these children are dual citizens, being both American citizens and Mexican citizens or citizens

of some other country. You, dear disadvantaged American reader, are *only* an American citizen. Moreover, illegal alien families may include both citizen children and out-of-status children. Advocates make political hay — bales of it — arguing that when we deport parents of U.S. citizen children, we break up families. Presidents smell *votos*. Finally, every woman on earth is eligible to come here and bear a U.S. citizen baby, with all the rights and welfare wealth that entails. Yes, it's true! Isn't a constitution supposed to defend a nation?



Esmeralda Tepetate, 10, stands with her brother Sebastian, 2, both U.S. citizens born to Mexican parents, holding a “stop separating families” sign during a rally for comprehensive immigration reform outside the White House, November 7, 2014 (Jacquelyn Martin/AP).

4. Any 20 members of the U.S. Senate or 50 members of the U.S. House of Representatives shall have standing to petition the U.S. Supreme Court regarding the constitutionality of an action of the President of the United States. The petition shall be in writing and shall include the names and signatures of the members and particulars about the nature of the constitutional challenge.

If the president can trash 100 years of efforts to control our southern border and institute actions that contravene the clear dictates of the immigration law, then he truly is the emperor he claimed so recently he was not. Those who write, pass, and sign the laws the president is required to execute should have standing to challenge actions they believe violate the Constitution.

5. Article II is amended to add the following Section: *There shall be a Chief of State. The Chief of State shall be a man or woman of unimpeachable integrity. The Chief of State's term of office shall be 20 years and on good*

behavior. The Chief of State shall be nominated by the Speaker of the House. Appointment of the Chief of State shall depend on a majority vote of both houses of Congress and a majority vote of state governors. The Chief of State shall participate in all ceremonial events of government. The Chief of State shall not seek a political office or participate in politics. The Chief of State shall deliver an annual State of the Republic Address.

I know, I know, this is a tough sell. This would anger and frustrate the president. And that, of course, is the idea. Presidents do the heavy lifting. Their realm is grubby day-to-day politics and planning for an uncertain future. They are the object of scorn and criticism. They can still be great men or women. However, they cannot, must not, be deified. They can still live comfortably but they will have a clean-as-a-whistle rival. This will not be cheap, but integrity isn't cheap either. And competition is good.⁸

The president must somehow be brought back under the Constitution. He must once again know he is a creature of the “rule of law.” The Article V Convention may be our vehicle of choice. It is not enough to love the U.S. Constitution; it must function effectively. ■

Endnotes

1. http://avalon.law.yale.edu/18th_century/vatexta.asp
2. http://www.realclearpolitics.com/epolls/other/congressional_job_approval-903.html
3. Larry J. Sabato, *A More Perfect Constitution, Ideas to Inspire a New Generation*, Walker Publishing Company, New York, 2007.
4. Extensive information is available at “Friends of the Article V Convention” or FOAVC.org
5. Mark Levin, *The Liberty Amendments, Restoring the American Republic*, Threshold Editions, New York, 2013.
6. Federalist 85, Jacob E. Cooke, Editor, Wesleyan University Press, University Press of New England, 1961, p. 593.
7. For details on the Article V Convention, see Thomas H. Neale, *The Article V Convention for Proposing Constitutional Amendments*, Congressional Research Service, R42592, 2012.
8. For a detailed discussion of this idea, see F. H. Buckley, *The Once and Future King*, Encounter Books, New York, 2014.