

SILENT CRISIS

Tampering With the Constitution

by Don Fotheringham

The U.S. Constitution is in danger. The prospect of a constitutional convention has prompted historians and legal scholars to speak out and explain the perils of assembling such a body.

WHAT IS A CONVENTION?

A constitutional convention (often called a con-con) is unique to a free society. In our country the people are sovereign. When the people appoint delegates to represent them in a con-con, those delegates exercise their authority by virtue of powers inherent in the people. Such powers gave us our Constitution at the first Convention held in Philadelphia in 1787.

In the closing days of that historic assembly, our Founding Fathers provided two methods for future generations to add amendments to the Constitution.

Under Method #1, two-thirds of both houses of Congress propose amendments, and then three-fourths of the states ratify them.

And under Method #2, two-thirds of the states call for a federal constitutional convention, and then three-fourths of the states ratify whatever amendments are proposed by the convention.

Although both methods are established in Article V of the Constitution, the second, by federal convention, has never been used. All 26 amendments now a part of the Constitution originated in Congress and were ratified by three-fourths of the states.

Why has a convention never been used? Mainly because it places too much authority in one place. Over the years, our leaders have wisely avoided a con-con because such an assembly might follow the precedent of 1787 and exceed its mandate. Historians and scholars see the first convention as a "runaway," and they fear that a second con-con might do likewise. It was providential that our Founding Fathers did what they did. But it hardly seems wise to trust the special interests of today with powers that could be used either to rewrite the Constitution, or to erode it through a series of "limited" conventions.

A PROPITIOUS TIME FOR A CON-CON?

Before the Constitution was ratified and while a few state officials were still uneasy about certain parts of it, there



began a movement to reopen the convention. James Madison was horrified by the mere suggestion of reconvening. In a letter to George Turberville, he said:

Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention which assembled under every propitious circumstance, I should tremble for the result of a Second.

We do not presume that Madison never intended Article V's convention authorization to be used. But he wisely knew when not to use it. The year 1788 was not a good time; and today, if anything, is far worse. Anyone looking clearly at the mental and moral climate of our time must tremble at the very thought of a second convention. We must safeguard the Constitution by preventing a convention until we discover a genuine structural weakness that Congress refuses to deal with. Even then, there should be no convention until a wise and vigilant people can assemble "under every propitious circumstance."

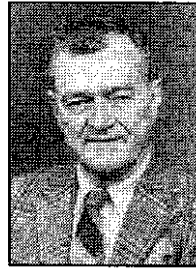
In the meantime, Americans should keep the door locked and not allow uninspired men to tamper with our greatest national legacy, the Constitution of the United States.

It is hard to imagine a modern con-con that would not fall under the influence of the national media. Most major issues are framed by the opinion molders in government, and the press. Such influence could lead to dangerous constitutional changes, even the breakdown of safeguards built into our form of government. A con-con could alter the separation of powers, expand the authority of the President, grant legislative power to the Courts, and limit representation in Congress. A convention having power to do good would also have the power to do bad. Allowing a con-con at this time in our history is not worth such a risk no matter how compelling the cause may be.



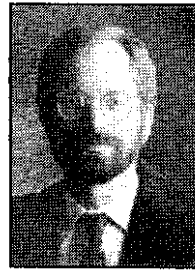
"In my view the plurality of 'amendments' opens the door to Constitutional change far beyond merely requiring a balanced federal budget."

Christopher Brown
Professor of Law
University of Maryland



"My own belief is that a constitutional convention cannot be confined to a particular subject...."

Charles Alan Wright
Professor of Law
University of Texas



"My understanding of the federal convention is that it is a general convention; that neither the congress nor the states may limit the amendments to be considered and proposed by the convention."

Neil H. Cogan
Professor of Law
Southern Methodist University



"The discretion with which Congress may discharge this duty is pregnant with danger even under the most salutary conditions."

Lawrence G. Tribe
Professor of Constitutional Law
Harvard University

COMPELLING CAUSES

Over the years, a variety of concerns have initiated calls for a constitutional convention: child labor, protective tariffs, federal taxing power, direct election of senators, abortion, balanced budget, limiting the terms of congressmen, flag burning, etc. Of course, each call resulted from a major concern. Yet the apparent need to solve the problem could lead to far more serious trouble: tampering with the U.S. Constitution. Fortunately, two-thirds of the states have never issued concerted convention calls, so none has been held since the first in 1787.

BIG SURPRISE

It comes as a news flash to most Americans to learn that 32 states have called for a con-con in the interests of adding a balanced budget amendment to the Constitution. North Dakota was the first state to do so in 1975, and Missouri was the 32nd in 1983.

According to Article V, Congress must call a convention when two-thirds of the states apply. That magic number today is 34 states. Alabama, Florida and Louisiana have now formally withdrawn their calls leaving 29 intact. In other words, our nation is only five states away from having a new con-con. Advocates of the convention are now working in 18 states to capture not five, but two more. If they get two more states to pass resolutions for a con-con, they plan to challenge the recent withdrawal actions of the three states, and to throw them into the courts while going ahead with a convention. Despite the historical precedent and the warnings about the dangers of a con-con given by an array of legal scholars, ambitious individuals are working hard to bring about such an assembly.

CONSPIRATORS AND OPPORTUNISTS

The movement to bring our Constitution into a convention is being directed by conspirators and carried out by opportunists. Unfortunately they are assisted by many sincere state legislators and naive citizens.

The opportunists are ambitious and organized. They carry conservative credentials and speak fluently about lowering taxes, balancing the budget, limiting congressional terms, and just getting government under control. The names of their groups seem innocuous enough and are disarming to the average patriotic American: the National Taxpayers Union (NTU) headed by James Davidson; the National Tax Limitation Committee (NTLC) led by Lewis Uhler; the American

Legislative Exchange Council (ALEC) directed by various state legislators; and the Republican National Committee (RNC) chaired by Lee Atwater.

These groups are funded mostly by contributions from unwary citizens who think their projects lead to a more responsible Congress. The RNC, of course, enjoys support from millions of Americans who think the Republican Party stands for God, family, and fiscal responsibility. That perception, unfortunately, cannot be reconciled by performance.

James Davidson and Lewis Uhler are probably unwitting pawns of the conspiracy. Davidson runs a successful direct-mail fundraising enterprise at the expense of naive conservatives who think the NTU is going to bring about lower taxes. Uhler also makes a good living raising funds to "limit taxes,"



James Davidson



Lewis K. Uhler

The "tax" men are pushing for a con-con.

and "balance the budget." He insists that an already "out of control Congress" can issue guidelines that will control a con-con. Both men have done great harm by assuring state legislators that a convention call will "pressure" Congress into balancing the budget and that a convention, in reality, is not likely to occur.

While there is no proof that Davidson or Uhler knowingly work for conspirators, there is reason to believe that ALEC and the RNC are tied closely to the private Council on Foreign Relations (CFR) that works for the creation of a socialistic world government. The United States Constitution, of course, is totally incompatible with world socialism. If the CFR and other like-minded groups have their way, the Constitution would have to be gradually eroded, radically altered, or entirely scrapped. Certain CFR members are clearly seen as conspirators who work for these goals.



"A Convention might propose a single amendment but it would clearly have a wider range."

Jefferson B. Fordham
Professor of Law
University of Utah



"An Article V convention would be entirely general, and a state application asking for something other than that is void."

Charles L. Black
Sterling Professor Emeritus of Law
Yale University



"It is doubtful that Congress has the power to limit the convention to the proposal of amendments only on a single subject."

Charles E. Rice
Professor of Law
Notre Dame University



"In my view, a convention cannot be effectively limited."

Gerald Gunther
Professor of Law
Stanford University

OVERT AND ELITE

There are other groups working hard to change our form of government. These differ from the usual mold of conspirators inasmuch as they advertise and publish their extensive plans to "streamline" government by radical surgery on the U.S. Constitution. Most notable of these is the Committee on the Constitutional System (CCS), co-chaired by Kansas Senator Nancy Kassebaum, former Secretary of the Treasury C. Douglas Dillon, and former Counsel to the President Lloyd N. Cutler. These highly influential individuals would like to see a con-con for the purpose of "reforming" American government. Dillon and Cutler are members of the CFR. While they may have taken their cue from CFR leadership, it is doubtful that their activities enjoy any full and open endorsement of the CFR even though Cutler's desire to alter the Constitution was published in the CFR's prestigious quarterly, *Foreign Affairs*. Plans of the CCS are too open and

no effect in the event such convention not be limited to the specific and exclusive purpose of proposing an amendment to balance the federal budget.

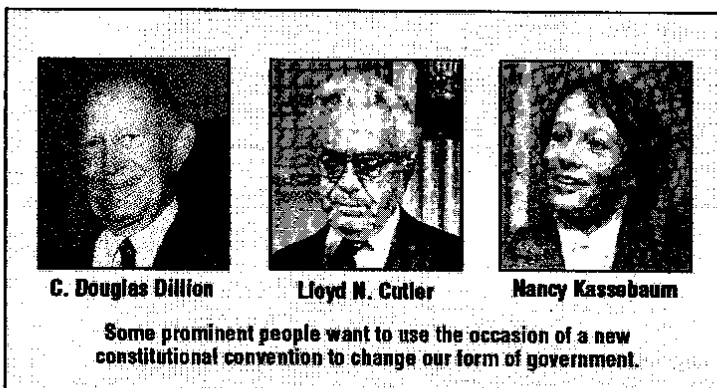
Unfortunately, this clause leads to a false sense of security. Article V of the U.S. Constitution authorizes the states only to apply for a convention. Once underway, a convention makes its own rules, and once fully assembled, it could reject any or all restrictions on its activity and assert its supreme power by virtue of its direct authority from "we the people."

STATE RATIFICATION NOT FOOLPROOF

Those who insist there is nothing to fear from a con-con maintain that even if it were to get out of control and draft a dangerous amendment, it would take three-fourths (38) of the states to ratify it. They ask, "Would 38 states ratify a bad amendment?" At first glance, it seems unlikely that the states would allow any such mischief. But two historical facts are never mentioned by con-con advocates, and these are crucially important points:

1. The convention could abolish or alter the rules of ratification as was done in 1787.

2. Article V authorizes Congress to decide on the mode of ratification: either by the state legislatures, or by special ratifying conventions set up in the states. On two occasions, special state conventions were empaneled when state legislatures were not likely to approve. The original Constitution was ratified in exactly that way. Again, in 1933, when many state legislatures were opposed to legal liquor sales, the 21st Amendment was ratified in special state conventions, thus circumventing the legislatures of the states.



obvious. Its spokesmen enthusiastically show the world their superior "intelligence" and delight in pointing to the "short-sightedness" of our Founding Fathers.

COVERT AND QUIET

On the other hand, the con-con movement in the state legislatures is being promoted at a dangerously quiet level. This movement must be exposed. Advocates of a convention offer false assurances that it can be limited to a single subject. Some state legislators feel perfectly safe with their state's call for a constitutional convention because they have added to it a "null and void" clause similar to the following taken from the Idaho resolution:

Be it further resolved that this application and request be deemed null and void, rescinded, and of

BIG STEPS FOR BIG PROBLEMS?

How then can we ever balance the budget? Is it not worth the gamble of a con-con inasmuch as our nation's financial condition is growing more worrisome each year? The "tax" men are experts in arguments of this kind. In testimony before legislative committees, the NTU, NTLC, ALEC, and other pro con-con groups paint a frightening scenario involving a crisis certain to occur if convention calls are not sustained. The answer to such nonsense is simple: Do you want a fiscal collapse or a structural collapse? If the bloated U.S. budget produces a major financial crisis, we could best



Warren E. Burger, Chief Justice (retired)
United States Supreme Court

"I have also repeatedly given my opinion that there is no effective way to limit or muzzle the actions of a Constitutional Convention. The convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or to one issue, but there is no way to assure that the Convention would obey it."



Linda Rogers Kingsbury, President
Citizens to Protect the Constitution

"Constitutional, economic and political science experts are on record and have expressed concerns that the convening of a Federal Constitutional Convention would constitute a reckless use of a constitutional device which is little understood and has never been employed in our entire history."

weather the storm on a firm constitutional foundation. Con-con advocates regularly focus on a particular problem, then dishonestly pose a federal constitutional convention as the ultimate solution. The safe and certain solution is at the ballot box where big spenders and big borrowers can be sent into retirement.

BALLOT BOX MAGIC

Congress has no fear of a convention. For that matter, our politicians really don't fear the ballot box as long as most voters remain uninformed. But an informed citizenry, armed with voting power, is the great worry of most members of Congress. The American system is designed that way. It was planned at the first Convention that citizens would refuse to vote for big spenders, traitors, and charlatans. The Constitution is not flawed, but many of our elected (and unelected) officials most certainly are.

There is no need to change the U.S. Constitution in order to balance the budget. What is needed is enforcement of its provisions which limit spending to constitutionally authorized government functions. The Constitution carefully limits the U.S. Government to specific areas of activity and prohibits it from all others. Until this principle is widely understood by wise and vigilant voters, con-con con-artists will continue to make fools of state legislators, and political opportunists will continue to tax and spend at every level of government.

WHY PROTECT THE CONSTITUTION?

Informed Americans realize that many officials in all branches of our government pay little attention to the Constitution. It is known that they do just about what they want, giving only lip service to "the constitutionality" of their actions. In view of such disregard for the Constitution, why is it so important that citizens work to keep it out of the clutches of a con-con? What difference could it make?

The answer: Truth will ultimately prevail. Many citizens work diligently to get government back to its limited role. The time will come when enough people have been awakened so that they will have the ability to force that runaway government genie back into his bottle. This can be accom-

plished, however, only if a leakproof Constitution is maintained. It must be kept intact for that day when citizens return to God, and statesmen return to government. It is imperative that we maintain those carefully drafted separations, those brilliantly conceived checks and balances, and those sparingly enumerated powers during these times of deceit and controversy.

WHAT CAN YOU DO? Every American must work to protect the Constitution by opposing convention calls emanating from their state legislatures. The following 29 states have issued standing calls for a constitutional convention, and those calls must be withdrawn.

AK Alaska	NV Nevada	AZ Arizona
NH New Hampshire	AR Arkansas	NM New Mexico
CO Colorado	NC North Carolina	DE Delaware
ND North Dakota	GA Georgia	OK Oklahoma
ID Idaho	OR Oregon	IN Indiana
PA Pennsylvania	IA Iowa	SC South Carolina
KS Kansas	SD South Dakota	TN Tennessee
MD Maryland	TX Texas	MS Mississippi
UT Utah	MO Missouri	VA Virginia
NE Nebraska	WY Wyoming	

(Alabama, Florida, and Louisiana have withdrawn their calls.)

The remaining 18 states have never called for a convention and citizens must keep a vigilant watch to block legislation, in any of these states, that calls for a convention.

CA California	MT Montana	CT Connecticut
NJ New Jersey	HI Hawaii	NY New York
IL Illinois	OH Ohio	KY Kentucky
RI Rhode Island	ME Maine	VT Vermont
MA Massachusetts	WA Washington	MI Michigan
WV West Virginia	MN Minnesota	WI Wisconsin

The author, Don Fotheringham, is a former college teacher and is manager of the national effort to Save the Constitution, a priority project of The John Birch Society. For additional copies of this article call 414-749-3783, or write — P.O. Box 8040, Appleton, WI 54913 — 10 copies for \$2.00, 100 copies for \$12.00, 1000 copies for \$100.00