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Constitution Under Attack: Article V Convention Greater Threat Than Open Attacks

Parts of the political Left are coming right out and admitting that they want to get rid of the U.S. Constitution, in favor of pure democracy — despite the dangers — and many conservatives are helping them.



The 19th-century anarchist Lysander Spooner argued that the effort of the Founding Fathers to create a limited government through a written Constitution had failed: “But whether the Constitution really be one thing, or another, this much is certain — that it has either authorized such a government as we have had, or has been powerless to prevent it.”

Spoooner’s complaint was that the U.S. Constitution was not sufficiently restraining the power of government.

But a recent forum at New York University sponsored by *Harper’s Magazine* and reported on in its October 2019 edition attacked the Constitution from the opposite direction. In a cover story entitled “Do We Need the Constitution?” five left-wing “scholars” concluded that the Constitution is what is holding back the progressive agenda, and is the source of most of our modern political problems — at least from their leftist perspective.

Some of the participating scholars argued that the Constitution needs to be abolished in its entirety, while one participant suggested that their goal of updating our system of government to what they wanted could be achieved with an Article V constitutional convention.

The moderator, Rosa Brooks, set the tone for the discussion by decrying a culture that “reveres this piece of paper as if it had been handed by God out of a burning bush, and treats the Constitution as more or less sacred.... Is it really a good thing to have a document written almost 250 years ago still be viewed as binding us in some way?” Brooks is a law professor at Georgetown.

But Brooks was not alone in expressing her disdain for the U.S. Constitution. Her fellow Georgetown law school professor Louis Michael Seidman agreed, saying that the Constitution was “illegal” from the beginning, noting that it is a “neat trick” that “people feel bound to respect the document.” Seidman has repeatedly made obvious that he has no respect for the Constitution and its role in reining in the power of government officials. During the hearings for the confirmation of Supreme Court Associate Justice Sonia Sotomayor, Seidman testified that it was impossible to just apply law to facts — meaning



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that the law is subjective and subject to the interpretation of the court. He has also defended the constitutionality of single-payer healthcare (the federal government funding every penny of the healthcare industry, paid for, of course, by the taxpayers, though the Constitution makes such involvement clearly illegal).

David Law, the Sir Y.K. Pao chair in public law at the University of Hong Kong, compared the Constitution to a “blueprint that must never be changed,” making the analogy of not being able to renovate one’s bathroom because the renovation must be “in accordance with the spirit of the blueprint.”

Not to be outdone, another law professor (Mary Anne Franks), from the University of Miami, asserted that “every word of the Constitution — starting from this premise of ‘we the people’ — is a lie.” Franks, a regular contributor to the liberal Huffington Post and a Rhodes scholar, is also the author of the book *The Cult of the Constitution: Our Deadly Devotion to Guns and Free Speech*.

This confirms that, at least in the mind of Franks, and contrary to the complaint of Spooner, the Constitution *has* restrained government, at least somewhat, because otherwise how could it be blamed by Franks for the retaining of our “deadly devotion to guns and free speech”?

Donna Edwards, a former U.S. representative from Maryland (who had a dismal 24 percent score on The New American’s Freedom Index, which measures voting fidelity to the U.S. Constitution), demonstrated her own contempt for the Constitution when she said — speaking as a lawmaker under the Constitution — “Legislators can only hope a court will bypass all this other dysfunction in the other branches.”

Constitution: Purpose Was to Limit Government

What Edwards describes as “dysfunction” is the Constitution operating as the Founders intended it to operate — as a check on individuals such as Edwards who wish to expand the power, scope, and size of government. This recalls the cynical attitude of former President Barack Obama, who said when Congress refused to adopt one of his proposals, “If Congress won’t act ... I will.” As Senator Mike Lee wrote in his book *Our Lost Constitution: The Willful Subversion of America’s Founding Document*, “Those are not the words of a president. Those are the words of a king.”

These so-called scholars hate the Constitution to the extent that it inhibits them from carrying out their agenda, an agenda that dates back at least to the “Progressive Era” of American politics of the early 20th century. The “progressives,” which included Republicans such as Theodore Roosevelt and Democrats such as Woodrow Wilson, were at odds with the philosophy of the Founders. George Washington viewed government as something like fire — “a dangerous servant, but a fearful master.” Thomas Jefferson saw the Constitution as a “chain,” restraining the men who would exercise limited powers under it.

Roosevelt, Wilson, and these modern progressives decry the restraints that Washington and Jefferson favored. In the forum, Brooks explains that she considers the Constitution outdated because it was written in the 18th century. She said that she asks her students, “How would they feel if their neurosurgeon used the world’s oldest neurosurgery guide, or if NASA used the world’s oldest astronomical chart to plan space-shuttle flights, and they all get quiet.”

This argument, comparing principles of government to neurosurgery, is non-sensical. Government is not



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neurosurgery or space-shuttle flights. The principles of government are based on something that is unchanging — human nature. As the 19th-century English political philosopher Lord Acton said, “Power tends to corrupt, and absolute power corrupts absolutely.” Because when governments are given enough power to do good, they are also given enough power to do bad — and almost assuredly will do bad eventually — the U.S. Constitution intentionally limits the scope of federal control to a few areas. History is filled with an abundance of examples that prove the accuracy of Acton’s assertion.

James Madison, the man whose contributions to the Constitution were so great that he is rightly referred to as “the father of the Constitution,” made this very point, in arguing for the Constitution’s adoption by the states. In *The Federalist Papers*, Madison wrote, “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and the next place, oblige it to control itself.”

Which is the very point as to why those on the Left favor a government without controls, just so long as they control the government. One suspects that this is the reason that it is a nearly universal position of the Left that firearms in the hands of the general population need to be strictly controlled. While few are as bold as former Texas Congressman Beto O’Rourke, saying they favor confiscating entire classes of guns, only political considerations prevent more from joining O’Rourke in making the same assertion.

Interestingly, those who argue, like Brooks, that the Constitution is somehow outdated simply because it was written in the late 1700s, often likewise argue that the Second Amendment’s obvious protection of the right to keep and bear arms should be restricted to the types of guns in use at the time of its adoption.

Would these haters of the Second Amendment use this same logic with the rest of the Bill of Rights? After all, is the First Amendment’s protection of freedom of the press only intended to protect newspapers using the archaic printing presses of the 18th century?

Left Asks: Why Do We Need a Constitution?

Actually, one of the members of the *Harper’s Magazine* forum, Seidman, rejects the idea that we should even try to determine the meaning of the text of the Constitution. He said, “The very last way we want to confront Trump is with the Constitution as a legal text,” saying that it is all “beside the point when it comes to Trump.” Instead, “The American people have to be persuaded that Trump is bad for the country, that he doesn’t represent the kind of country that we want to live in.”

In other words, what the members of the forum want is a country that thinks like they think. And the Constitution stands in the way of that happening. Forum member David Law, a Fulbright scholar and member of the globalist Council on Foreign Relations, was quite blunt: “Countries actually don’t need written constitutions.... In a functioning democracy, you don’t need one.” Seidman had similar thoughts: “We need to forget about constitutionalism entirely. Or at least forget about the constitutionalism of rules and detail — of arguing over what exactly the framers meant in this or that passage.”

Their arguments, of course, challenge centuries of tradition. For example, the reason that the Magna Carta of 1215 was important was that it put the king under the rule of law, stipulating that the role of the king was to uphold the law of the land and respect the rights of his subjects. The Bill of Rights



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would be superfluous if we are to be ruled in all matters by elections. The framers understood that liberty must trump democracy or individual freedom will die. Certain fundamental liberties should not be put up to a vote. A person has a right to free speech, or freedom to practice one's religion, and to be secure in one's own home, regardless what the majority thinks. This understanding was put into practice in the U.S. Constitution: The political philosophy enshrined in the Declaration of Independence emphasizes that government's role is to protect the rights of the people, rather than to impose some tyranny of the majority.

It is clear that the members of this forum want to overturn our founding documents. Despite decades of chipping away at the Constitution's restraints on government power, it still has too many restraints for their liking. And there exist plans to kill the Constitution.

Article V Convention Could Destroy the Constitution

The solution offered by one member of the forum, Lawrence Lessig, is probably the one that we should fear the most, because it offers an appeal not just to leftists, but to many who think the government is not following the Constitution closely enough — the call for a constitutional convention under Article V of the Constitution.

For those who want to make changes to the Constitution, the Founders provided two ways. These provisions refute the arguments of those who say that an 18th-century document is outdated, because if a *consensus* is reached that the Constitution needs to be tweaked, Article V provides the way. In fact, the Constitution has been legally changed 27 times. There are two methods of proposing a constitutional amendment, and two methods of ratifying a constitutional amendment.

All 27 amendments have used the first method — a two-thirds vote of each house of Congress. Twenty-six of 27 times, three-fourths of the state legislatures have ratified these proposals, and in one case, the 21st Amendment, which repealed the 18th Amendment (national prohibition), state conventions ratified the proposal.

One method of proposing a change to the Constitution — via a national convention — has never been used. This is the method Lessig wants to seize upon, because, he argues, it is simply too difficult to get two-thirds of each house of Congress to agree to any of the amendments he believes are needed. He believes it is time to “rewrite our Constitution,” and he suggests doing it through a constitutional convention.

According to Article V of the Constitution, upon “the application of the legislatures of two thirds of the several states, [Congress] shall call a convention for proposing amendments.” To achieve his goal, in August 2013 Lessig founded an organization to promote the calling of a national constitutional convention, known as Call a Convention. On page 293 of his 2011 book *Republic, Lost: How Money Corrupts Congress — and a Plan to Stop It*, he called for a constitutional convention as the only way to make the fundamentally transformative change he wants. “Even though it has never happened, however,” he states, “*a constitutional convention is the only final plausible strategy for forcing fundamental reform onto our Congress.*” (Emphasis added.)

Although there are many conservatives who are desirous of a convention in order to pass this or that “conservative” reform, they should understand that once the convention is seated, they might very well not have control of the agenda. And lots of liberal objectives may be on the docket. For example, Lessig



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has offered abolition of the Electoral College as one of the objectives that could be achieved at any such convention.

Lessig previously taught law at the University of Chicago, and later served as an advisor to Senator Barack Obama's 2008 presidential campaign. He was even mentioned as a possible Supreme Court nominee at one point. Certainly well-connected, Lessig was a participant at the 2013 Bilderberg Conference, where establishment insiders from Europe and North America met to discuss various topics, including their concerns about the growing anti-globalist wave, as was later demonstrated by the Brexit in the United Kingdom, and, of course, the election of Donald Trump as president of the United States.

After Trump's surprising victory over Hillary Clinton, Lessig attempted to usurp the results by persuading presidential electors to break their pledges to vote for Trump. Lessig even offered free legal counsel to any elector who might face legal consequences by switching his or her vote from Trump to Clinton or even someone else. Republican elector Patricia Allen of Tennessee was enraged at this suggestion, declaring, "That borders on bribery. Carried to this extreme, the day might come when an elector could be sold to the highest bidder."

Lessig demonstrated no embarrassment at his brazen attempt to subvert the constitutional method of electing the president of the United States. Given Lessig's lack of acceptance of the legitimate victory at the polls by Trump, it is perhaps not surprising that he believes our present Constitution needs to be junked.

Left Likes Court Decisions — if They Advance Their Agenda

After the 2010 Supreme Court ruling *Citizens United v. Federal Election Commission*, which declared that corporations, specifically 501(c)(4) public advocacy groups, as well as trade associations, have a constitutionally protected right to make financial contributions in election campaigns, Lessig emerged as a major opponent of that decision. His followers and other left-wing groups have even suggested an amendment to the Constitution through an Article V constitutional convention to gut the Citizens United decision by banning all private money for political races and requiring that elections be publicly financed. (The purpose is purely self-serving leftism, since the same leftists are all for unions giving millions each election to Democrats and having "mainstream" news media push left-wing candidates.)

In his book *Republic, Lost*, Lessig explained why a constitutional convention would be necessary to put into effect the "fundamental reform" he desires:

It's going to be easier to organize movements within the states to demand *fundamental reform* than it will be to organize Congress to vote for any particular amendment to the Constitution to effect that reform. And more important, it's going to be much easier to get a conversation about *fundamental reform* going in the context of a call for a convention than it will be through other plausible means. [Emphasis added.]

Does anyone really believe that Lessig's idea of *fundamental reform* would be anything that a constitutional conservative would favor?

"Conservative" advocates for a constitutional convention under Article V of the Constitution should understand that left-wingers such as Lessig would heavily populate any such convention, and may very well be in the majority. (For that matter, how many Republicans are constitutionalists? Their voting



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records say not many.)

In addition to abolition of the Electoral College, Lessig also mentioned the banning of political gerrymandering. Considering that both the Electoral College and gerrymandering are important tools in the arsenal of state legislatures to limit the power of the federal government, it is not difficult to see the likely result of any constitutional convention: the end of our federal system of government, with the transfer of even more power from the states to the federal government.

Despite all of these reasons that conservatives should avoid a constitutional convention at all costs, there are supporters for a constitutional convention who argue it would be good for those who favor limited government!

Some Conservatives Being Used by the Left on Article V Convention

On March 21, 2014, Lessig appeared with Mark Meckler at the Citizen University's Annual National Conference in Seattle. Meckler, a co-founder and national coordinator of the Tea Party Patriots, would like to see a Balanced Budget Amendment (BBA) passed at a national constitutional convention. Lessig is extremely open in his support of "conservatives" who favor such a convention (or as some prefer to call it, a "convention of the states"), because his goal is to get the convention called. His goal is not to get any "conservative" amendments passed at such a convention. Unfortunately, many conservatives still do not understand that they are being used to advance a decidedly left-wing political agenda.

Can any true advocate of maintaining the constitutional protection of the right to keep and bear arms really desire a constitutional convention in our present toxic anti-gun-rights environment? Do those who value religious liberty think now is the time to place that precious liberty up for grabs at such a convention?

An article written by Lessig in the May 1993 issue of the *Texas Law Review* is enlightening as to his ultimate purposes. He stated:

We live in a time when almost sixty percent of the American public cannot even identify the Bill of Rights. If the document has become so out of date that its meaning is no longer plain to all — if it has become impossible to imagine a world where ordinary people carry the Constitution in their pockets — then perhaps it is time to restore its meaning by, as Justice [John Paul] Stevens has recently suggested, amending the text to preserve its meaning. Perhaps, that is, *it is time to rewrite our Constitution.*" [Emphasis added.]

At a conference on the constitutional convention idea, Lessig was asked about the prospect of a new "con-con" and the possibility that it would become a runaway convention (in other words, a convention not limited to making minor constitutional changes). Lessig offered the usual talking point of the con-con supporters: that any "crazy amendments" proposed at such a convention would still require the ratification of 38 states. The questioner then said, "I agree, and the original convention they say was ... a runaway -convention."

Lessig smiled and replied, "Let's have some more runaway conventions."

Many favor a constitutional convention, echoing Lessig and arguing that three-fourths of the states would have to ratify any changes, anyway, protecting our rights, but it should be noted that the Articles



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of Confederation stipulated *unanimous* support before it could be changed. Yet, the framers at the constitutional convention of 1787 ditched that requirement, and replaced it with a mere nine of 13 states provision.

Are we willing to risk our future that something similar would not be tried in a modern constitutional convention today? A constitutional rewrite in an era when courts break laws with impunity and much of the country doesn't have the internal fortitude to bluntly state that there are only two sexes/genders would not turn out well. James Madison opposed a second constitutional convention, fearing that it could destroy the Republic. Certainly, we cannot count on a modern convention being filled with delegates such as Madison, George Washington, George Mason, and Alexander Hamilton. Instead the same electorate that has produced our present congressional leadership would be choosing the delegates.

Educated Electorate — Not Article V Convention — Is Needed

Besides that, the problems we are facing today do not require a constitutional convention to solve them; rather, they simply demand adherence to the Constitution we have had since 1789. Even if such a convention were to meet, pass some good amendments, and not become a “runaway convention,” what makes anyone believe that the president, the bureaucracy, the Congress, and the federal courts would follow those amendments any more than they abide by our present Constitution?

It should be noted that though the Bill of Rights, adopted in 1791, forbade Congress from passing any law abridging the freedom of speech or of the press, only seven years later Congress passed the Sedition Act that did exactly that!

The risks of a constitutional convention simply far outweigh any possible good that could come from such an event — especially when one considers that the same electorate that has created our present collection of federal public officials would also be choosing the delegates to a constitutional convention. (It is not clear exactly who would choose the delegates, since the Constitution does not address that question. Because Congress is empowered to make the rules for the calling of the convention, some suspect that Congress itself would choose the delegates, with states such as California having many times more delegates than, say, Wyoming.)

The solution is rather to educate the electorate in the principles found in our present Constitution — limited government, individual liberty, separation of powers, checks and balances, and federalism — so they will choose members of Congress who will live up to their oaths to support our present Constitution.

Speaking on this subject to the Virginia Convention that ratified the Constitution in 1788, James Madison declared,

But I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks — no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea.

It is clear that Madison believed the preservation of liberty, not democracy, was the purpose of the Constitution. Yet Lessig, on the other hand, called for electors to simply break their pledges to their party and their states and not vote for the candidate that had carried their state, Donald Trump.



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The Constitution, although often misinterpreted and ignored, has so far saved us from the progressive political system desired by the law professors brought together at New York University by *Harper's Magazine*, and we should resist any effort, overt or covert, to radically change it.

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