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Amendments for Liberty

Mark Levin's new book shows how to restore the Founders' original vision of government.

By Hans A. von Spakovsky

Mark Levin's new book ([*The Liberty Amendments: Restoring the American Republic*](#), published by Simon & Schuster) should be required reading for conservative bloggers, reporters, radio talk-show hosts, state legislators, members of Congress, and grassroots activists all over America. It provides a coherent plan to restore our constitutional republic, reversing the damage inflicted by the Progressive movement over the past 100 years, and preventing us from sliding into financial and economic ruin because of a profligate political class unable to curb its spending.

Levin sounds the warning about the “necessity and urgency of *restoring* constitutional republicanism and preserving the civil society from the growing authoritarianism of a federal Leviathan.” Using original sources, such as James Madison's notes from the Constitutional Convention, as well as the extensive discussions in the *Federalist Papers*, Levin explains the intent of the Framers to establish a federal system with a central government of limited powers balanced by sovereign state governments.

Levin reviews the history of constitutional changes, such as the 16th and 17th Amendments, which greatly increased the power of the federal government. The 16th Amendment's legalization of a national income tax gave the federal government the financial capacity to vastly expand its size and spending, leading to the dire fiscal mess that so perplexes Washington today. And the 17th Amendment's requirement of popular election of senators eliminated an important check the Framers had placed on the federal government — the representation of state governments in the U.S. Senate. While basic civics classes teach about the horizontal checks and balances of the legislative, executive, and judicial branches, they ignore the fact that state control of the U.S. Senate was seen as an essential, second *vertical* check on the power of the federal government.

It is unlikely that the Constitution would have been ratified without this essential feature preserving the “balance of power” between the states and the federal government. Levin eloquently describes the “critical blow” the 17th Amendment struck to our federalist structure:

The long silence of the states had begun. The states no longer had a legislative venue, or any venue, to influence directly the course of the federal government. This contributed significantly to the dismantlement of the states' traditional and exclusive areas of governing responsibility. As a result, today the federal government fills whatever areas of governance and even society it chooses. State sovereignty exists mostly at the will of the federal government. The federal government's limited nature under the Constitution was transmuted into the kind of decentralized power structure the Framers worked so diligently to thwart.

Levin also describes the effects of key Supreme Court decisions, including *Wickard v. Filburn* (1942) and the recent approval of Obamacare in *NFIB v. Sebelius* (2012), outlining how the Court has vastly expanded the power of both the judiciary and Congress far beyond what was intended. His account of how the Supreme Court surrendered to President Roosevelt's threats in the 1930s and relaxed its strict adherence to the Commerce Clause, destroying the limits on the power of the federal government in the Constitution, is depressing. But it makes a key point undergirding Levin's argument that we need structural changes to restore constitutional governance: People are fallible; hence we cannot depend on judges, politicians, or government bureaucrats to always act in a principled manner.

Levin also explains how Congress has fueled the massive increase in power of the executive branch by delegating "unconstitutionally lawmaking power to a gigantic yet ever-growing administrative state." Levin's description of a constantly expanding bureaucracy staffed by unaccountable federal civil servants is chilling. In 2011 alone, bureaucrats issued 3,807 new regulations when Congress passed only 81 laws signed by the president. In 2012, the Obama administration imposed \$236 billion in new regulatory costs on our economy.

Having worked in two different federal agencies, I know from personal experience that Levin's warnings about the dangers "unleashe[d] on society" by all these rules and regulations promulgated by faceless bureaucrats are right on target. The incontestable result of this aggregation of power in the central government is the imposition of "social engineering and central planning . . . in search of the ever-elusive utopian paradise."

Levin proposes a series of constitutional amendments designed to curb the almost unlimited power of the federal government and return us to a federal system in which state governments have an actual voice in the governance of our country as originally intended; where nine "imperfect" lawyers in black robes cannot make "political and public policy decisions and impos[e] them on every corner of the nation and every part of society" with no accountability; and the power and authority of the legislative and executive branches are restrained in a way that curbs their ability to limit our liberty.

The key to Levin's plan is Article V, which sets out the two ways in which the Constitution can be amended. The only method ever used in our history is the first: passage of an amendment by two thirds of both houses of Congress and approval by three quarters of the states. Levin proposes employing the second method: having Congress call a constitutional convention upon application of the legislatures of two thirds of the states.

Levin admits that he "was originally skeptical" because he feared "it could turn into a runaway caucus" and "would play disastrously into the hands of the Statists." But he changed his mind when he realized that the language of Article V does not allow a constitutional convention whose delegates can directly change the Constitution. It says specifically that two thirds of the states can call for "a Convention for *proposing* Amendments" that shall only become "Part of this Constitution, when ratified by the Legislatures of three fourths of the several States." Thus it would be a "limited-purpose convention" that could not be used to draw up an "entirely new constitution or a new form of government."

Levin proposes eleven amendments that would:

- Establish twelve-year term limits for members of Congress and the Supreme Court;
- Repeal the 17th Amendment;
- Allow either Congress or the states to overturn a Supreme Court decision within 24 months with a three fifths vote of the members of both houses or the states;
- Require a federal budget to be enacted by May or impose an automatic across-the-board 5 percent cut, and the budget may not exceed total tax receipts or 17.5 percent of GDP;
- Place a 15 percent limit on the amount of income taxes collected from natural and legal persons, change the tax-return filing date to the day before federal elections, and ban federal estate, value-added, or sales taxes;
- Require every federal agency to be reauthorized every three years in a stand-alone bill or else expire, and require a seven-member House committee to approve all regulations with an economic burden greater than \$100 million within six months or cancel implementation of the regulation;
- Limit the Commerce Clause to preventing states from impeding commerce and trade *between* the states, and specify that it does not extend to activity *within* states (whether or not it affects interstate commerce) or to compelling an individual to participate in commerce;
- Extend the protection against seizure of private property to require compensation for regulations that reduce market value or interfere with the use of property in an amount exceeding \$10,000;
- Change Article V so that any constitutional amendment, proposed by anyone, will be adopted if it is ratified by two thirds of the states;
- Require a 30-day waiting period between agreement upon the final version of any congressional bill (engrossment) and the final vote to approve it, and allow three fifths of the states to override any federal statute or any federal regulation with a cost exceeding \$100 million within 24 months of passage or approval; and
- Require valid photo ID and proof of citizenship to register and vote in all federal elections, in person or by mail, and limit early voting to 30 days before the election (except for active-duty military personnel).

These amendments all deserve serious consideration by policymakers and the American people. None of Levin's proposed amendments will put what he calls the "post-constitutional soft tyranny" genie completely back in the bottle, but they are designed to substantially curb the abuse of power and taxpayer funds that has become routine in Washington. They could also restore the role of the states in our federal system — a key ingredient in any such repair.

Over more than a decade in Washington, I have at times despaired at the dangerous accumulation of power here, the downhill financial spiral we are on, and the inability, unwillingness, and lack of political will to do anything about it. Levin's proposals give me hope that there might actually be a way out of the morass in which we find ourselves.

Levin recognizes the "daunting task before us," but as he passionately argues, "there is no reason to be passive witnesses to societal dissolution, at the command of governing masterminds in the federal government and their disciples." I couldn't agree more.

— *Hans A. von Spakovsky is a senior legal fellow at the Heritage Foundation and a former member of the Federal Election Commission and Justice Department lawyer. He is the co-author, with John Fund, of [Who's Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk](#) (Encounter Books 2012).*