

(Brennan, 2014)

The Article V Amendatory Constitutional Convention

Keeping the Republic in the Twenty-First Century

By

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Impression: A chatty, off-the-cuff, inconsistent, but informative, opinionated, and thought provoking book. Judge Brennan (Former Chief Justice of the Michigan Supreme Court and founder of the Thomas M. Cooley Law School) early on offers his opinion that the U.S. Congress will never call an Article V amendment convention. He sprinkles suggested amendments throughout the book and reviews the various Article V efforts currently active. Mark Levin is mentioned with respect, as is COS and its leadership. There is a tabulation of grievances not dissimilar to Jefferson's list in the Declaration of Independence (I have made my own, also, juxtapositioned with Jefferson's). He has a website www.conventionusa.org which has as its purpose the recruitment of delegates to a Constitutional Convention. He is trying to recruit his replacement. Bill Walker of FOAVC is a delegate on his site.

The judge is inconsistent in that he criticizes Levin's suggested amendment on the bureaucracy for constitutionalizing the Congressional Committees (Brennan, 2014, p. 121) while advocating constitutionalizing 14 cabinet departments (Brennan, 2014, p. 119).

His view of what constitutes an Article V Convention seems to be any Convention convened by the people, with or without the cooperation of Congress; limitless, deliberative and unanswerable to any body (state or federal). Once assembled, they are empowered to examine all issues. His protection against the undesirable (i.e. amendments destructive of liberty and freedom) is the size of the assembly (he advocates thousands), a requirement for 2/3rds of the states to form a quorum, and the ratification process (suggesting that amendments be ratified by both modes; state legislatures and state conventions) to comply with the Article V Constitutional requirement.

His most out-side-the-box suggestion is for a permanent "Article V" Constitutional Convention composed of 6,166 delegates representing nominally 50,000 citizens from every county in the country (Brennan, 2014, p. 69) .

COS has its own section (Brennan, 2014, p. 70). Also Levin (Brennan, 2014, p. 71). Other voices include Lessig, Levinson, Movetoamend.org, Libertytreefoundation.org, and Wolf-Pac (Brennan, 2014, p. 76). He was at, and comments on, the meeting at Harvard Sept. 25/26, 2011 that Meckler attended¹.

Brennan includes a long quote from Thomas McIntyre Cooley (after whom Brennan named his Law School) regarding the Constitution. A very powerful set of guidelines regarding constitutional

¹ www.conconcon.org

interpretation (Brennan, 2014, p. 126) footnote 6 Thomas McIntyre Cooley, A Treaties on the Constitutional Limitations, 1868, reprint 1972.

He describes the Erwin-Clark debate re: Supreme Court – adjudicator vs. policy maker (Brennan, 2014, p. 134)

In the Solutions section, under the Federalism head, the Judge refers to an article he wrote in 1982. He reached the conclusion that our problems are structural. “They relate to the balance of power within the federal government and relationship between the federal government and the States (Brennan, 2014, p. 148).” He asserts the same is true today. He did not explicitly identify which of his suggested amendments will address structural issues. (An exercise for the student?)

He describes his call for a convention that 2/3rds of the states are represented by delegates by county (not clear how many delegates from each form a representation). He says, “If dual Sovereignty means anything in the United States any more, if there is any irreducible minimum beyond which the lawful authority and inherent power of the states cannot be diminished, it must lie in the clear mandate of Article V. By the plain words of Article V, the people of three-fourths of the states can amend the constitution of the nation. Speaking either through their state legislatures or through state ratification conventions, the people of the fifty states, counted state-by-state, are the ultimate Sovereign authority by which the federal Constitution is amended.” (Brennan, 2014, pp. 149,150) He goes on to discuss the convention and to reject the run-away myths. The section is very effective writing.

He again asserts the Article V Convention he envisions need not be temporary. He agrees with the COS position that fiscal limits (a balanced budget amendment) is necessary but not sufficient. (Brennan, 2014, p. 153) He returns to discussion of the convention proper using the Article V threshold for calling a convention (2/3rds of the states) would constitute a quorum for conducting business. Thus 17-states could leave a convention and terminate it. If only 2/3rds attend, then every state would have the equivalent of veto power.

He opines that political parties will not support an Article V convention.

He describes elections within districts for delegates to the 6,166-person convention. Each person elector gets one vote. The delegates with the most votes get the seats. A district (county or City?) may have multiple delegates of a single delegate depending on the population (1 delegate per 50,000 people). (Brennan, 2014, p. 171)

Brennan provides a recital of a list of grievances against the Congress (Brennan, 2014, p. 38). (He does not provide a similar list for the Executive or the Judiciary)

List of Grievances

1. They have gerrymandered elective districts to deny citizens of local communities the right to be represented.

2. They have neglected and refused for more than one hundred years to obey the mandate of Article 1 Section 2 of the Constitution which requires that members of the House of Representatives be apportioned among the several States to their respective numbers.
3. They have failed and refused to adopt budgets year-after-year
4. They have repeatedly appropriated more money than held in the treasure.
5. They have authorized borrowing incomprehensible amounts of money with neither the ways nor the means to repay.
6. They have suffered the credit of the United States to be downgraded in the marketplace
7. They have abdicated their responsibility to decide when the nation shall go to war, against whom and for what purpose.
8. They have permitted the Executive to make laws, suspend laws and ignore laws.
9. They have adopted legislation without reading it or knowing what it contained.
10. They have repeatedly adopted omnibus legislation filled with special appropriations, tax breaks, and incentives favoring particular interests.
11. They have used power and prerogatives of their offices to placate corporate interests.
12. They have consorted with lobbyist and granted special favors of every stripe.
13. They have voted annual raises for themselves, for the avowed purpose of circumventing the Twenty-Seventh Amendment.
14. They have suffered the government of the United States to be shut down denying needed services and opportunities to the people.
15. They have created a nominal debit ceiling and repeatedly raised it.
16. They have repeatedly failed and refused to act collegially, making no effort to compromise for the common good, but have instead indulged in partisan invective and opprobrium.
17. They have demeaned the federal judiciary by injecting banal partisanship into the process of nominating and confirming judges.
18. They have appointed and confirmed judges who have presumed to make laws ex cathedra without controversy pending before them.
19. They have permitted federal judges to invade the domestic sovereignty of the several states and to exercise powers reserved to the states.
20. They have abdicated the office of legislators by permitting members of the executive departments to promulgate copious, tutelary administrative regulations with which to harass our people.
21. They have encroached upon the domestic sovereignty of the several states by adopting laws concerning matters properly and historically reserved to the jurisdiction of the states.
22. They have, after more than two centuries of honored tradition, abolished the accepted parliamentary rule requiring a super majority vote to terminate debate, thus silencing minority voices in the United States Senate.

Suggested Amendments

In the Agenda Section, Judge Brennan discusses various suggested amendments. He examines, unevenly, the pros and cons of different proposals on the same topic.

Suggested Amendments List:

1. Legislative
 - a. Term Limits
 - b. Size of the House
 - c. Single Subject Legislation
 - d. Senate
 - i. Address State Disenfranchisement by the two party system
 1. 3 senators each; vote by state, not by senator
 - ii. Repeal 17th amendment
 - e. Fiscal Responsibility (Brennan, 2014, p. 159)
 - i. Congress shall not have the power to borrow money
 - ii. Congress shall have the power to issue currency up to a total of \$100,000 times the total population (of citizens?) according to the latest census.
 - iii. Violating ii by a public official is a felony subject to impeachment
 - iv. Congress may levy a one-time tax on all bank accounts in the event of Emergency (to be described by Congress)
 - f. Federal Government is not sovereign of land it owns in the several states except as described in Article I Section 8 regarding District of Columbia, forts, magazines, arsenals, dock yards and other needful building. (Brennan, 2014, p. 161) State laws apply to U.S. owned lands within their borders.
2. Executive Reform
 - a. Popular Election of President (eliminate electoral college) (minority candidates) (Brennan, 2014, p. 105)
 - b. National Primary (Brennan, 2014, p. 107)
 - c. Imperial Presidency (Brennan, 2014, p. 115)
 - i. Trappings of office
 - ii. War powers
 1. Declared vs. undeclared; force abroad 5-to->100 (Brennan, 2014, p. 113)
 2. Post-facto
 - iii. Emolument limitation?
 - iv. Presidential "Right-to-Kill" (Brennan, 2014, p. 116)
 1. Except in duly-declared war, Pres shall not order nor authorize the killing ... without advice and consent of the Senate (Brennan, 2014, p. 117).
 - d. Bureaucracy (2.8 million employees) (Brennan, 2014, p. 118)
 - i. Prohibit bonuses
 - ii. Constitutionalize 14 cabinet departments (more than 525 federal agencies) (Brennan, 2014, p. 119), (Brennan, 2014, p. 123)

- iii. Bureaucracy Reform Amendments
 - 1. Disband admin entity created by Act of congress
 - 2. Inhibit admin regulation
 - 3. Prohibit congressional chartered private corporations and subsidies except for the Post Office & post roads. (Sell Post Office)
 - 4. Sell all 17-federally Chartered Corporations
 - e. Modify the 16th amendment (half goes to the State, half to the federal government and the States do the collecting) (Brennan, 2014, p. 154)
 - f. Return the District of Columbia to the State of Maryland; distribute the departments of the government across the country. (Brennan, 2014, p. 155)
 - g. Repeal the 23rd amendment (representation for Wash. D.C.) (Brennan, 2014, p. 156)
3. Judicial Reform
- a. Non-partisan Supreme Court (President Appoint from five person nominee list created by State Supreme Court Chief Justices)
 - b. 18-year terms
 - c. Prohibited from rendering any decision that enlarges or diminishes the power of the Government or the rights of the people.