

Book Review by John M. Cogswell

***LIBERTY AMENDMENTS*** by MARK LEVIN

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Mark Levin's book, *Liberty Amendments*, proposes ten amendments to the Constitution expressed in terms of 50 different sections. Like me, he is troubled by the direction our country is going, has acknowledged the difficulty of changing the Constitution by its Article V and has provided a rich history of early thoughts and case law to illustrate the need for his proposals. He is to be complimented for his contribution of time and energy on the subject and his effort to educate Americans. However, the end result of the book is to validate the opinions of its conservative readers and generate sales for the author. It does very little to achieve the constitutional convention he advocates.

More significantly, *Liberty Amendments* is symptomatic of a growing concern by many Americans that the country they live in is not being governed the way they want. The challenge is to discern whether this concern is related to the Constitution and, if so, what is it about the Constitution that needs changing. The people's discontent is illustrated by their purchases of Levin's book which was the number one non-fiction best seller on the *New York Times* list for three weeks and continues on the list at this time.

Levin's ten amendments provide for (1) term limits of 12 years on members of Congress and Supreme Court justices, (2) the repeal of the Seventeenth Amendment thereby allowing state legislatures to elect U.S. Senators and the power to also remove them, (3) restrictions on spending and taxing by defined limits, (4) reauthorization of federal departments and agencies every three years, (5) establishing a committee of

Congress to approve \$100 million impact regulations, (6) promoting free enterprise by limiting Congress' power to regulate commerce, (7) protecting private property by providing for compensation for regulatory takings in excess of \$10,000 in lost value, (8) allowing two-thirds of the states to amend the Constitution and three-fifths of the states to repeal a federal statute or high-impact regulation, (9) to require bills to sit without change before a vote for at least thirty days absent a 60% override vote, and (10) to protect the integrity of voting by requiring photo IDs and reliable registration and election laws.

I have been asked how Levin's proposals compare with mine as set forth in *Fix the System: Reform the Constitution* (2012). First, I need to say that I do not criticize what Levin has to say. His book, as a stimulator of thinking on the subject and as a proposal for a constitutional convention, is commendable and certainly supported by me. However, my approach is bi-partisan, not as rigid as Levin's proposals and, in my opinion, will receive broader support and encourage better leaders.

Second, unlike Levin, I have set forth a plan which allows the states to study the proposals and make changes before asking for a convention. The purpose is to eliminate undesirable provisions, limit the subject matter of the eventual convention to proposals already approved by the states and avoid any risk that the convention would tamper with the Bill of Rights or other core provisions of the Constitution.

Third, unlike Levin, the thrust of my proposals is to improve the character of our leaders based on the notion that better leaders mean better government. Levin does not address this issue which I view as the threshold problem of government today, namely that the weaknesses of human nature have overcome our leaders' duty to do the right thing for our country.

Fourth, all revenue received from my book sales will be used to execute the proposed plan and not a penny to my pocket except to reimburse me for out-of-pocket costs already expended.

Lastly, a contrast of his proposals with mine illustrates our differences in approach. Thus:

- **Term Limits.** Unlike Levin's 12-year limit, I have proposed that each state have the freedom to decide whether members of Congress from that state should be term limited rather than imposing a national rule on the subject. Also, I have not imposed any term limits on Supreme Court justices but have provided that the states, by a vote of two-thirds of them, can remove any federal judge or Supreme Court justice.

- **Repeal of Seventeenth Amendment.** I agree with Levin on this issue and that it is important to return to the procedure established by the Founding Fathers. However, neither I nor the Founding Fathers believe the states should have the right to remove a senator during the term of his office as proposed by Levin and to do so would, in my opinion, undermine the importance of that institution which is to take a longer view of public issues.

- **Restrictions on Spending and Taxing.** Levin and I agree that it is important for Congress to be fiscally responsible, one aspect of which is to adopt a budget. Upon

its failure to adopt a final fiscal budget, his remedy is a 5% reduction in expenditures from the prior year. He has also provided that total outlays of the federal government should not exceed its receipts for that fiscal year and shall not, in any case, exceed 17.5% of the nation's GDP. He proposes that Congress be empowered to suspend any spending proposals for one year by a three-fifths vote of both houses. He also provides that the debt limit shall not increase without a three-fifths vote of both houses. In contrast, I have provided that annual budgets shall be adopted, failing which none of the then acting members of Congress shall be qualified to hold office again after the expiration of their terms. A 60% vote is required in both houses to raise or spend money. Congress is not to appropriate more than 20% of GDP without a two-thirds vote of both houses.

I think Levin's answer to the country's financial crisis is too severe since I have not seen any projections showing how we could reduce our expenditures overnight as required by his amendments, notwithstanding his proposal that the amendments not take effect for 4 years. It will likely take at least 10 years and a fair amount of economic pain to get our country back on a sound financial footing. Levin's taxing restrictions are even more severe. Congress will not collect more than 15% of a person's annual income, nor impose an estate tax or value added tax. I have left Congress' taxing power unfettered believing that better leaders will have enough sense to do the right thing on this subject. Moreover, Levin's proposed changes in this area appear radical and premature where the states themselves can amend the Constitution under another amendment we have each proposed.

- **Re-Authorization of Agencies.** Levin proposes a re-authorization of all federal departments and agencies by separate bills

every three years. He requires that regulations having a \$100 million or greater impact be approved by a special committee of congressmen and senators and, if regulations are not approved within six months by the committee, they are "considered disapproved and must not be implemented" (it would be better to say they were void and no longer law). In contrast, I have required the president to number and prioritize all federal agencies, that delegated legislative authority to agencies shall be strictly construed, that there shall be no retroactive regulations, that applications for federal permits shall be made to one agency and timely ruled upon, that the number of regulations cannot exceed four times the size of federal statutes and that regulations shall automatically be void ten years after their adoption unless earlier approved by Congress for a stated term.

- **Free Enterprise.** Levin seeks to promote free enterprise by re-defining the interstate commerce clause. I think his restrictions would generate interference with many rules which have been developed by the courts on the interstate commerce clause and with which most people would agree. In contrast, I have provided no restrictions on the interstate commerce clause, trusting that good leaders will apply it according to its intended purpose. It is noteworthy that the Supreme Court did not approve Obamacare based upon the commerce clause but upon the taxing clause. A more difficult problem with congressional powers in the Constitution relates to the "general welfare" clauses in the Preamble and in Article I, Section 8 and, with respect to these, I have closed the door by requiring limited interpretations.

- **Private Property.** In order to protect private property, Levin proposes an amendment requiring compensation if the regulation constitutes a taking of more than \$10,000 in value. While the Supreme Court

already permits compensation for regulatory takings, there is understandably a bias in the courts against this and the burdens required to be satisfied are stringent. However, I believe the many provisions I have proposed seeking to encourage the election of better leaders can deal with issues like this. Further, the \$10,000 limit would likely crowd our courts with many challenges including those from the application of ordinary zoning laws.

- **Constitutional Amendments.** Levin proposes that two-thirds of the state can amend the Constitution and three-fifths of the state can repeal a federal statute or high-impact regulation. I have proposed that a majority of state legislatures shall have the right to submit amendments to the Constitution to the states for ratification by three-fourths of the states in keeping with the three-fourths requirements which is already in the Constitution but allowing the states to have as much say-so in the amendment of the Constitution as Congress currently has. I have provided that two-thirds of the states can repeal a federal law. Thus, we both agree the states should have more power in this area.

- **Legislation Rest.** Levin proposes that bills sit for at least 30 days without change in order to give people a chance to read and comment upon them absent a 60% override vote which could occur in the case of an emergency. In contrast, I have trusted our future leaders to abandon the current practice of passing laws without reading them.

- **Voting.** Levin seeks to protect the integrity of voting by requiring photo IDs and reliable registration and election laws. I support this but have added in my proposal on the subject that no person can vote in a federal election unless he fills out a tax return and pays a modest sum of approximately \$10. While poll taxes were unfair when they

were used to discriminate against voters, they are an important ingredient in insuring that those who vote care enough to fill out a government form and write a small check. I calculated the fee to represent in total half the \$4 billion cost to operate Congress.

Unmentioned by Levin are the numerous constitutional proposals I have made for the purpose of insuring better leaders. James Madison, in *Federalist Paper No. 57*, reminded us that the aim of every political constitution is to have leaders who possess wisdom and virtue and thereafter to take the most effectual precautions to keep them that way. He also remarked that Congress "can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society". Congress has shown that it is incapable of honoring these fundamental precepts.

In furtherance of my effort to obtain better leaders, I have provided (1) that Congress will not have power to determine the compensation of its members, (2) that all voting shall be public and recorded, (3) that one-third of members shall have the right to require a house vote on a bill whether in committee or not, (4) that tax changes be prospective, (5) that mandates not be imposed upon the states without their consent, (6) that every law have a preamble setting forth its purpose and a statement of the constitutional power relied on, its costs, the availability of funds and its unintended consequences, (7) that Congress not exempt itself from laws imposed upon others, (8) that Congress not have special retirement, health and other benefits, and (9) that Congress not delegate to the president the authority to

increase our debt, and others. All of these proposals are intended to discipline our Congress' passion for power and special treatment of its members.

Also not addressed by Levin are those powers which permit Congress to treat state legislatures as bureaucratic agencies. Thus, I have proposed clarification to the Tenth Amendment to give the states powers denied to them by the Supreme Court and restricted the power of Congress to impose mandates on the states without their consent. I have proposed that the states establish a board of governors to assist them in their organization with respect to the new powers conferred upon them.

Further, I have given citizens more freedoms by giving a jury the power to determine whether laws are unconstitutional because they are unreasonable as applied to a given person, by giving citizens standing in federal courts to seek the meaning of the Constitution and federal laws and by requiring that a person not be guilty of a federal crime unless the defendant knows he has done something wrong. The reader can evaluate my proposals by voting on them at [www.campaignconstitution.com](http://www.campaignconstitution.com).

While Levin and I both agree on the need for constitutional change, we disagree on what is required to achieve a better country. My view is that Levin's proposals are designed to enshrine the conservative policies he supports whereas I am seeking better leaders who will govern the country responsibly, with wisdom and virtue, the best way they can.