

A Flagrant Violation of the Constitution

By: Richard Backus

The U.S. Constitution was the first written agreement in history guaranteeing the citizens government protection of basic human rights as reflected in its Bill of Rights. It was the realization of the fundamental human rights espoused by philosophers such as Voltaire, Rousseau, and Locke, but which had never before been granted by any previous government to its citizens. By virtue of the sacrifices of life and fortune by our ancestors, citizens of the U.S. had inherited those rights as stipulated in our Constitution. Now, the rightful admiration and acclaim of the world for this monumental accomplishment has been destroyed by our current government. By invalidating the last protection of the people from government abuse, that offered by Article V of the Constitution, the people no longer have any remaining protection from possible abuse. The sole other protection of the people's rights provided in the Constitution was via the ballot box, which has been "neutered" by the influence of money in the election process, and is one of the very abuses necessitating an Article V Convention.

By refusing to grant the legitimate requests of the states for an Article V Convention (to propose amendments to the Constitution), all three branches of the U.S. government are now operating as a "rogue" government outside the law. Under Article V of the Constitution, the states may request the Congress to establish a Convention to propose amendments to the Constitution. The states have done this by submitting over 500 requests to the federal government.

Congress has refused to convene a convention, the President has failed to initiate action against Congress for this violation, and the Supreme Court has refused to force them to do so. I will, in the process of explaining the Constitutional duties of each body, make clear the basis of the laws that have been broken, and the remedies open to the public if the government continues in its violation of these laws.

The "sovereignty" of the people was first established during the Continental Congress when, under instructions from John Adams, the states established themselves as separate sovereign states under state constitutions (established in conventions by their own citizens). This occurred prior to the Declaration of Independence, and as a necessary precursor to the federal Constitution. The Constitution was a contract between these newly-sovereign states (the previous colonies) to establish a federal government under a federal Constitution and delineated the rights and responsibilities of this new entity with respect to the citizens of these states.

As these constitutions were being created by the independent states, the Declaration of Independence was promulgated to formally declare the colonies no longer under British rule, and to enumerate the grievances which had led to this event. It was drafted by Jefferson and contained the natural "rights of man" which George III had violated and which served as a pretext for the legality of the colonies to secede.

The United States Constitution was drafted by James Madison but failed to include these natural "rights of man". It was a document designed primarily to establish the form of the new government and entirely excluded reference to the rights violated by the king and the supposed cause of secession. In the process of ratification of the Constitution, the states demanded an explicit statement of the rights of man, which many had included in their own constitutions. This resulted in the Bill of Rights, the first ten amendments to the constitution. The Preamble to the Constitution was created after the Constitution had been drafted, and was meant to define the principles underlying it. The final phraseology contained only generalities such as "secure the blessings of liberty" and "promote the general welfare" which were so broad that they could be construed to encompass almost anything. Unfortunately, the only substantive and explicit protections for the people, in fact, were those established by the Bill of Rights, which consisted in freedoms which were not to be contravened by statutory law (freedom of speech, assembly, the press, etc.)

But there was no underlying philosophy regarding the intent and nature of the statutory laws allowed under the Constitution or the principles which were to underlie them. Thomas Jefferson was convinced that the government so established was one of a democracy in which the government and its laws had been created for the benefit of "the people". Lincoln was among later presidents who likewise believed the Constitution had established a democratic government when he used the phrase 'of the people, by the people, for the people' in his Gettysburg Address. Other delegates to the Convention thought otherwise. They maintained that the government established was simply a Republic consisting of a bicameral legislature, an independent judiciary, and an elected president. In their opinion, in establishing these three bodies the Convention had not, at least by the strict wording of the Constitution, established a democracy (the word "democracy" did not appear anywhere in it). The (male) landowning classes were the only citizens allowed to vote. The selection of the president was further controlled by an Electoral College which precluded the choosing of the President by popular vote. The Senators were appointed by the state legislatures (not elected by "the people"), and the Supreme Court was not subject to selection by the voting public but appointment by the president (with the "advice and consent" of this same "appointed" Senate). The right of filibuster resided in both the House and Senate as a further means to prevent the passage of any law contrary to any interest represented by either body. It still resides in the Senate.

The principles and philosophy under which successive governments were to operate depended entirely upon the philosophy of the party in power. John Adams (a Federalist) presided over a governing party interested in a strong federal government administered by an oligarchy of landowners whereas Thomas Jefferson (a Republican) believed in federal powers strictly limited by rights reserved to the states and in a popular democracy. Since then, the Federalists have disappeared and the current Republicans believe in a limited role of the central government and rule by an oligarchy (the Aristocracy of the Rich). Currently both parties of Congress as well as the President have indicated by the nature of recent legislation that an oligarchy of the well-connected is the form of government they want. They all have been seduced by the money which assures their continuation in power. The Democrats still pretend to believe in extensive control by the government and a popular democracy but have in fact supported a government catering to the wealthy and displaying little interest or effort in serving the public at large. Both parties dance to the same tune, played by the same band.

The public (through their respective state governments) have requested the establishment of a convention under Article V of the Constitution in order to reestablish a more democratic government in which the laws passed and enforced will be in the interests of the general public, and not that of our current oligarchy. The Congress has refused to grant these requests and the President and Supreme Court have not forced them to do so. This has occasioned a realization that there is a serious flaw in the Constitution. That is, who can prevent the three federal government bodies so established to collude in a violation of the Constitution?

The Constitution established a republican form of government consisting of the President, Congress and Supreme Court. These three bodies were designed to "check and balance" each other so that there could not be an assumption of absolute power by any one party or political group. The judiciary was to pass judgment on the constitutionality of the laws passed by the Congress and could void these laws as "unconstitutional." The President administered the Constitution and statutory laws created by the legislature. If the President failed to properly perform these duties he was subject to impeachment by the Congress. The Supreme Court, once appointed, is under the control of no one. No one can force them to perform their duties under the Constitution (short of impeachment), and they are allowed to remain in office for life. The Congress has ignored the requests by the states for this Article V Convention. The President has not performed his executive responsibilities as administrator of the laws. The Supreme Court has denied a writ of certiorari petitioned for by a private citizen, Bill Walker, to force Congress to comply with their Constitutional duty of granting this Convention. All have violated their oaths of office in doing so.

What has lead up to the present crisis has been the ever-increasing role of money in the selection and election our legislators. This began back in the sixties when Richard Nixon and John Kennedy ran for President and was commemorated in the book "The Making of the President" by T. H. White. In the past, prior to extensive use of television advertising, the candidates typically had to appear before their constituents in public forums, and the electorate had a better chance of determining their political positions and principles firsthand. All candidates were limited by their ability to be in only one place at a time to present their messages. Now, with the widespread use of TV advertising and PAC documentaries, the candidate can virtually sit at home and have unlimited exposure to the public. The candidate can present his best image using make-up artists, style coordinators, and poll-tested slogans and policy platforms (which he has no intention of following). If he has enough money, he can deluge the viewing audience (the voters) in a way that his opponent, if lacking an equivalent amount of cash, has no way of contesting. The candidates are marketed in the same way as Coke and Pepsi. The advertising execs know that whoever has the most extensive public exposure (Coke or Pepsi) will be purchased by the public.

Likewise with a political candidate. It all depends on who is willing and able to spend the most money. Unfortunately, both political parties understand this and have had to promote their candidates in the same way. Money has bought the candidature and election of members of both parties. So the U.S. government now is simply an oligarchy of the rich and well connected. What is now needed is equal access to the TV for all candidates, paid for by the government, with no other means of moneyed interests to control the outcome of the elections. The present Congress is contented with the current arrangement and the only way to effect change is by means of a Constitutional Convention under Article V. The oligarchy of the rich is well aware of this and has apparently "encouraged" all branches of government to prevent it.

The reason I have taken care in explaining this history is that the country could be facing the first major Constitutional crisis in its history and the public should be well aware of the laws that are being violated. First of all, the President of the U.S. has failed to do his sworn duty to "support and defend" the Constitution by demanding that the Congress bow to the legitimate requests of the states to hold this convention. The Supreme Court and the Congress have likewise violated their respective duties under the Constitution as well as their oaths of office. The President knows full well that Article V is not being complied with by Congress and that this is an illegal act. The Supreme Court should know that it is guilty of misfeasance of office in denying the writ of certiorari.

These actions have broken the contract between the individual states and the Federal government known as the U.S. Constitution. The usual remedies of law pertaining to broken contracts are not operative. Damages are not appropriate, and the courts have made it clear that they will not force "specific performance" (the establishment of a convention under Article V). What we now have in the U.S. is a "rogue" government operating outside the law. Under these circumstances, the only valid laws still operative and enforceable are the state laws. By actions contrary to the explicit Constitutional rights of the states, our current government has nullified the Federal government's right to rule.

But first, perhaps it is necessary to try to understand the reasons these government bodies may have chosen to ignore their duties.

The Supreme Court could possibly (but not plausibly) use the excuse that time spent on this issue could detract from their efforts in deciding truly "important cases". They needn't worry about this. This issue could be settled in the cloakroom. The law is crystal clear. It does not "conform to" principles in the Constitution. It is explicit in the Constitution itself. The facts are equally clear and irrefutable. The states are of record of having made these requests. What's to arbitrate?

It is claimed that people are afraid of changing the Constitution because it has proved to be perfect as it has evolved, and should not be changed. If it is such a perfect document, then the Supreme Court should have no fear in forcing Congress to do its duty and establish this Convention. If it is

not perfect, then there is a legal remedy available under the Constitution, that of amendment. But good luck with that one because an amendment must be approved by the very legislative bodies (the state legislatures) that have requested the Convention. The court must take one position or the other. Either the Constitution is perfect and unalterable, or it is flawed and must be changed. It faces a Hobson's Choice in this case because either would lead to a convention under Article V. That is, as long as the courts are interested in complying with the law.

In the process of ignoring their Constitutional duties, the court has made a mockery of the two most fundamental and sacred legal concepts of a capitalist economy under a republic. In ignoring contract law, they violated the most fundamental law underlying a capitalistic economy. In ignoring their oaths of office they have violated the foundation of all jurisprudence within the U.S. legal system. If members of the courts flagrantly violate their own oaths, how can they expect any ordinary citizen to take his oath-taking seriously in any court of law?

Any person reading this article should be offended by these illegal actions by its representatives. So I am encouraging you all to inform your representative that you are aware of your rights under the Constitution and depend on him or her to enforce them. If he refuses, lacking the capability to remove him from office (as explained in this document), citizens must work diligently to force the establishment of an Article V convention. An organization has been established to do just this, and I encourage all of you to support it. Their website is at <http://FOAVC.ORG>.

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