

Critical Issues

Balancing the Budget

***Should the Constitution
Be Amended?***

Edited by
PHILLIP N. TRULUCK





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One of the most controversial and emotionally charged issues that the 96th Congress will be forced to address is the question of fiscal responsibility. Debate is raging currently on the questions of a balanced budget, spending limitations and whether or not a constitutional convention should be convened to deal with them. Fueled by the passage of Proposition 13 in June 1978, and kept alive by groups such as the National Taxpayers Union, the National Tax Limitation Committee and others, the momentum for bringing our federal budget under control continues to build.

The effects of these efforts are clear. Thirty states have now adopted resolutions calling for a constitutional amendment to balance the federal budget and the Congress has agreed upon a target deficit that is lower than the one the Administration submitted to the Congress. The rhetoric calling for fiscal responsibility has become deafening in both the United States House of Representatives and the Senate.

In an effort to shed some light on this debate, The Heritage Foundation sponsored a seminar on April 10, 1979, which addressed the questions of a balanced budget, spending limitation and the need for a constitutional convention. The participants in this seminar are extremely well qualified to comment on these current issues.

Dr. Alvin Rabushka, a senior fellow at the Hoover Institution on War, Revolution and Peace at Stanford University, believes that the balanced budget amendment is the proper approach to get our fiscal house in order. Although he argues in favor of the balanced budget approach, he does not believe that it is incompatible with a spending limitation approach. In fact, he believes that such a joint package would limit the size of government to its present level and permit reduction in the size of government by enacting tax cuts with the accompanying spending reductions mandated by a balanced budget.

Dr. Alan Meltzer, Professor of Economics at Carnegie-Mellon University, suggests that the spending limitation is the proper approach. In his presentation, Dr. Meltzer outlined his proposed amendment which would limit government spending to the average revenue received in the most recent three years and ties the rate of growth of budget revenues to the rate of growth of an index chosen by Congress. He believes that this amendment will limit the size of government and the growth of taxes and spending.

Charles Wiggins, formerly a member of the United States House of Representatives and now a partner in the law firm of Musick, Peeler, and Garrett, argues that the extraordinary step of convening a constitutional convention should not be undertaken if other alternatives exist—and he believes they do. He suggests that if a constitutional change is essential, the Congress itself should act by proposing a balanced budget amendment. Failing that, he suggests that the people of this country, if they are truly serious about a balanced budget, express their will at the next election.

Laurence Silberman, former United States Ambassador to Yugoslavia, and former Deputy Attorney General, suggests in his presentation that we should have an open constitutional convention. He believes that it is impossible for Congress to limit the scope of consideration and that there are related problems, not addressed by the balanced budget/spending limitation amendments, which also should be considered. Additional amendments which he would like to see discussed include, among others, amendments that prevent Congress from transferring its responsibilities to the judiciary and the regulatory agencies, a limitation on the number of terms a person could serve in Congress, and a multitude of single interest issues.

We hope that the presentations of these distinguished scholars will add to the national debate on these important issues of today.

Phillip N. Truluck
Vice President/Director of Research
The Heritage Foundation

The Balanced Budget Approach

by Alvin Rabushka

Why the Present Concern for a Balanced Budget Amendment?

I find it curious that the notion of a constitutional requirement to balance the federal budget is regarded in some quarters as a radical proposal, an unwanted limitation on the flexibility of the federal government to use fiscal policy in pursuit of economic goals. It is curious because until well into the twentieth century no one thought an unbalanced budget virtuous.

Throughout our history, and that of many Western nations, revenue estimates were invariably dealt with before expenditure estimates. It was generally believed that public expenditure should be fit to available public revenues and that revenues should not be extended to fit expenditure. Moreover, public debt was regarded as undesirable, a thing to be reduced and eliminated if possible. The guiding principle was that government should aim to be self-supporting—this implies a philosophy and practice of balanced budgets.

By the middle of the twentieth century, spending decisions have become increasingly divorced from constraints of revenue. The government now determines its spending priorities first, and then instructs the Treasury to get, by taxation or borrowing, whatever funds are necessary to cover the outlays. Since government is reluctant to increase taxes, borrowing has been the chief way to cover shortfalls. The result has been an accumulation of massive debt and rising rates of inflation induced by rapid monetary growth.

Large and accumulating budget deficits make the job of limiting monetary growth more difficult. Although federal deficits have long been characteristic of the United States, their size and persistence have expanded. In the decade 1955 to 1965, the cumulative federal deficit amounted to only \$31 billion. In the next decade the cumulative total was \$148 billion. Between 1976 and 1978, the deficits amounted to about \$175 billion.

For fiscal year 1980, the national debt in public hands is expected to reach \$690 billion. This sum is equal to \$3,100 for every man, woman and child in America. Interest on this debt alone is projected at \$57 billion, or \$260 per capita. Interest payments comprise the third largest item in the federal budget, consuming 9¢ of every budget dollar. A good deal of these budget deficits are financed the politically easy way by creating new money at the Fed, with the inevitable effect of more subsequent inflation.

Professor Allan Meltzer, in a previous contribution to the issue of balancing the federal budget (*Congressional Record*, August 16, 1978), noted "The greater the amount of money issued to finance the deficit, the higher the subsequent inflation. The principal reason deficits lead to inflation is that the deficits are often financed by printing money."

In short, it is the federal budget deficits that have, in large measure, brought about inflationary increases in the money supply. An additional consequence of deficits is that borrowing by the Treasury to finance them to some extent usurps funds from private financial markets.

So much for the history of money and debt. The history of tax revolts is also germane to this discussion. Tax revolts are not new to American history. The Stamp Act of 1765 was repealed by the English Parliament in 1766 only after great protest and opposition from the colonies. A subsequent tax on glass, paint, paper and tea imposed in 1767 met opposition and was subsequently repealed in 1770. Finally, the 1773 Tea Act produced the Boston Tea Party of December 16, 1773.

Today's assault on government owes much to the landslide passage of Proposition 13, accomplished wholly outside the state legislature and outside the established party system—indeed, over their opposition. Congressional reluctance to eliminate deficits and reduce spending (thus reducing inflationary pressures) is, in my opinion, the reason that many state legislatures have called upon Congress to implement Article V of the Constitution for the purpose of an amendment to require a balanced budget.

Some say that Proposition 13 is an imperfect meat-axe approach to limiting government taxing and spending, but it is the reason we are here today. A 51 to 49 percent vote on Proposition 13 would not have had the same impact.

Nor is Proposition 13 the end—it is just the beginning. Paul Gann and the "Spirit of 13" Initiative movement have collected 900,000 signatures to place a spending limitation measure on the California ballot. If it passes, this amendment would mean that California would conduct its public finances under the requirement both for a balanced budget and a spending limitation. Moreover, in March Howard Jarvis announced a campaign to place on the ballot a measure to eliminate California's personal-income tax and an inventory tax on business. And

still another group has begun an initiative campaign to eliminate the sales tax over a period of three years. Interest in limiting government will not die easily, at least not in California.

Consequences of a Balanced Budget Amendment

I would like to examine the consequences of a balanced budget under four rubrics: philosophical, economic, political, and practical.

Philosophical. The moral benefits of a balanced budget are not to be overlooked. A balance between taxing and spending means that you pay for what you get, and that society must live within its collective means. A balanced budget is analogous to the financial circumstances of the individual household or firm, which must live within firm budgetary limits. The balanced budget thus conceptually relates governmental finance to that of the typical family's budgetary practice.

By restoring the link between spending and revenue, a balanced budget would reestablish the historically proven norm in which public officials first determined what resources were available to government and, against that constraint, chose among the many competing claims on public spending. Finally, it would insure that the people know exactly how much it will cost in terms of taxes to finance federal programs.

Economics. What about the economic consequences of a balanced budget? First, a balanced budget requirement forces Congress to weigh the costs of expenditure programs at the same time Congress takes credit for the benefits these programs provide.

Second, and even more important, getting rid of the deficits gets rid of some of the fuel for inflation. A prohibition on deficits will contribute to price stability, to increased consumption and investment spending by the private sector, to increased employment—again by the private sector—and hence to higher real growth in the economy which, in turn, will painlessly generate greater tax revenues.

Thus if politicians voted new spending programs, they would have to eliminate old programs, or raise additional taxes. Resistance to the elimination of existing programs or to tax increases would discourage many new spending proposals, thereby eliminating the current bias towards overspending. It would end future deficits and eliminate the inflationary effect of new money creation which has in past years financed these deficits.

Critics of mandatory balance in the federal budget stress the loss of flexibility in the application of fiscal policy to economic goals. However, these same critics often overlook the very real costs to current and previously accumulated deficits, which have often been used to finance transfer payments rather than capital outlays, that must be paid to sustain the flexibility they desire. I believe that the balanced budget would

encourage efficient and responsible government and thus greatly outweigh any alleged loss of benefits from a reduction in fiscal flexibility.

Political. Political values and political perceptions are important determinants of government action. On this criterion, a balanced budget amendment is especially attractive—far more, I think, than some of the more complicated spending limitation measures now pending.

Most important, it is easy to understand. Every housewife and consumer understands the need for living within one's means. Not only is the balanced budget concept widely understood, it is also widely supported. The most recent Gallup Poll shows that the public favors a balanced budget by a margin of six-to-one.

In the quest for greater control on government deficit spending and concomitant inflationary pressures, the simple idea of the balanced budget appears to be a more saleable package than the more complicated spending limitation measures. I, for one, do not want the perfect to be the enemy of the good.

California illustrates this point. Proposition 13 was a simple measure. Voters could look at past assessment notices and immediately calculate their tax savings. By contrast, Governor Reagan's ill-fated Proposition 1 of 1973—a spending limitation measure—was more complicated, more difficult to understand and support. Proposition 1 lost by a 54-46 margin. Proposition 13 won by landslide 65-35 proportions.

Practical. What about the workability of a balanced budget amendment. A sensible amendment might allow some budget surpluses to be retained as financial reserves, up to some authorized share of annual spending. These reserves could be drawn down to make up revenue shortfalls in any one year due to a recession.

Any sensible amendment would also contain an emergency escape hatch. In case of a serious recession, a two-thirds vote of Congress could be marshalled to declare an emergency and thus suspend the provision of balance for that year.

Critics note that a balanced budget need not prevent future increases in federal spending. However, the need to raise more taxes to finance more spending makes it difficult to sustain the recent high rates of growth in new spending. A balanced budget requires that tax increases be explicitly voted, rather than implicitly imposed by deficit spending and inflation. In the era of tax revolts, few politicians went to campaign on a platform of higher taxes.

Balanced Budget Versus Spending Limitation

At this point I would like to compare the balanced budget approach with the spending limitation measure. Consider first the balanced budget requirement, which requires that revenues and expenditures be in rough balance on a year-to-year basis. New spending must be matched

by new taxing or terminating old spending. In the current climate of opinion, it is very difficult to raise new taxes: thus a balanced budget implies some limitation on spending. For sure, the requirement of balance means that the federal budget deficits will no longer be the inflationary force they have been since the mid-1960s. In short, a balanced budget eliminates deficits, lowers inflationary pressures, and in all likelihood cramps new taxing and spending proposals as well.

Now turn to a spending limitation measure, however conceived. Even with a constitutional amendment to limit spending, the federal budget can sustain future deficits. Projections which show that, given a spending limitation amendment, inflation or economic growth will produce a balanced budget (because under our progressive tax structure, tax revenues increase faster than the gross national product) will prove false if Congress votes tax reductions. Thus a spending limitation does not preclude successive tax reductions, with continuing and even more extensive deficits.

There is yet one other drawback with many of the spending limitation measures thus far proposed, namely, they are cumbersome or complex. Scholarly research shows that complex proposals lose support as an election approaches in direct proportion to the complexity of the proposal. I am saying, then, that a balanced budget proposal is more likely to obtain the necessary congressional and public support than a purely spending limitation measure.

Residual fear remains that a balanced budget requirement will lead the Congress to raise taxes. One can, I think, restrain this tendency by specifying an upper limit on government spending as a share of Gross National Product (or some other suitable measure) and thus prevent a rise in new taxes.

A Balanced Budget and A Limit to Spending

Although I have contrasted the balanced budget approach with the spending limitation method of controlling government, I do not believe the two are inherently contradictory. It is possible to merge a limit on government spending into a balanced budget requirement. Senate Joint Resolution 5 does precisely that and others have tried their hands at drafting a proposed amendment to limit spending and balance the federal budget (including myself). Such a joint package would limit the size of government to its present level, permit reductions in the size of government by enacting tax cuts (with the accompanying spending reductions mandated by a balanced budget), and through the operation of an escape clause, suspend these provisions in the face of a true emergency. In the process the inflationary pressures of federal deficits would dissolve. Political life would be different from what we know it to be today, but, I believe, much healthier.

The Spending Limitation Approach

by Allan H. Meltzer

Proposals to balance the government budget or to limit taxes and government spending have appeared since the very earliest days of the republic. Thomas Jefferson's strictures about government debt, and Alexander Hamilton's principles of government finance are, or were, part of the familiar stuff of everyone's first course in U.S. history or civics.

The fact that both Hamilton and Jefferson held compatible views about deficit finance tells us much about dominant opinion of the time. Perhaps because these views were shared widely, the real value of government debt per capita was about the same in 1891 as in 1791. Increases in debt to finance major wars raised real per capita debt temporarily, but budgeted surpluses and rising population lowered real per capita debt in peacetime years. The price level was about the same at the beginning as at the end of the period.

The history of the twentieth century is very different. From 1899 to 1977, prices increased more than sevenfold, and population increased threefold, but the outstanding nominal stock of government and agency debt, as measured in the budget, increased 500 fold. Real debt per capita was 23 times greater in 1977 than at the start of the century. Peaks in real debt per capita occur, as in the 19th century, following wars. But, despite postwar declines in real debt per capita resulting from population growth and high inflation, real per capita debt is now close to the levels reached in the 1950s.

Continued deficits are believed to contribute to our current malaise in three ways. To the extent that deficit finance raises real rates of interest and reduces investment in plant and equipment, we have fewer tools or machines in our old age and leave fewer tools for our children. We consume more today, but we are poorer and have fewer goods available tomorrow. To the extent that government spending financed by sales of debt raises prices, private spending is "crowded out." We have more government services but fewer private goods and services. We pay

for redistribution that we may not want in ways that, often, are difficult to trace. To the extent that the deficits are financed by printing money, we have inflation. Inflation redistributes wealth and income and, in our system, raises effective tax rates on capital and income.

During the seventies, we have observed all of the symptoms just described. Investment in new plants and equipment has been well below the postwar trend. The capital stock has grown slowly during a period in which the labor force increased rapidly. If capital per worker had grown in the seventies at the average rate of the postwar years, real income would now be as much as 5 or 6 percent higher; we would have an additional \$70 to \$80 billion, more than \$350 per capita. After-tax returns to investment in real capital and in claims to real capital have been far below the rates of return realized in the previous quarter century. Real, after-tax incomes have grown slowly. Inflation has become the rule, not the exception.

A layman who has read or heard any of the often-repeated forecasts of the ominous consequences of repeated budget deficits should not be censured for concluding that most of these consequences have occurred. Economists are less certain. Many of the undesirable consequences popularly attributed to deficits would have occurred if government spending and money creation had followed their historic path of the past twenty years with the budget balanced. The burden of taxation on current and future generations would have been quantitatively different. Government debt would be lower, tax rates higher and inflation about the same. The disincentive effects of taxes on investment and employment would not have been avoided.

In designing a constitutional amendment to balance the budget, I believe it is desirable to recognize that the effects of the amendment on the economy will depend on the level at which the budget is balanced and the frequency with which balance is achieved. A rule that mandates reductions in spending or increases in taxes to achieve budget balance in a deep recession imposes a more stringent standard than the standards of the nineteenth or early twentieth centuries.

The critics of counter-cyclical fiscal policy correctly conclude that discretionary fiscal policy has not produced budget balance on average. They infer, correctly I believe, that there is a bias in favor of deficits and against surpluses. The problem is to recognize the bias and avoid its consequences while retaining some of the stabilizing properties of fiscal policy.

The Proposed Amendment

The amendment I propose is relatively short and concise. The current version has five sections but only seven sentences, and it is shorter

than the twelfth, fourteenth, twenty-fifth and several other amendments. I have avoided terms like GNP, inflation or national income, which are subject to change or recomputation.

Section 1 limits government spending to the average revenues received in the most recent three years. Section 3 ties the rate of growth of budget revenues to the rate of growth of an index chosen by Congress. Congress not only chooses the index but may change the index by 2/3 vote if more appropriate measures become available in the future. To illustrate the way in which the amendment works, I assume that GNP, as currently measured, is used as the index.

Taken together, sections 1 and 3 produce a budget surplus equal to the average rate of growth of GNP. If, on average, real GNP grows at a steady 3 percent rate and there is no inflation, there would be a surplus equal to 3 percent of the budget each year. At higher average rates of inflation, the budget surplus increases. This works to slow the rate of inflation. If a new depression were to occur, falling real GNP and falling prices would cause the budget to shift toward a deficit, thereby slowing the rate of decline in output. These properties, known as built-in stabilizers, are automatic and, therefore, predictable. They are also, I believe, desirable properties of a budget rule.

The proposed amendment could be written to produce a balanced budget instead of a surplus in an economy with real growth and no inflation. The change is easily incorporated. I have provided for a surplus that can be used to pay currently unfunded liabilities as they come due. Unfunded liabilities include payments for social security benefits and for various guarantees on loans and commitments that were made in the past.

Section 2 defines government outlays to include all budget and off-budget expenditure plus the present value of commitments for future outlays. This section prevents Congress and the President from circumventing the amendment by making promises that must be paid from future revenues without recognizing that the promises commit future revenues. For example, when government guarantees loans, private risks of default are unchanged. Current budgets do not recognize the payments that will be made in the future. Many of the problems in the social security program arose in this way.

The proposed definition of spending restricts the growth of future commitments but requires that currently unfunded liabilities be paid from future revenues as they fall due. To spread the cost of funding the liabilities over time, I have written a budget rule that produces a surplus except when GNP falls. Congress could not use the surplus to increase spending but could choose to retire outstanding debt or to fund unfunded liabilities.

The fourth section provides for emergencies. No one can hope to

define an emergency now in a manner as applicable in the present as in all future contingencies. I have left to the President and 2/3 of the Congress to decide when the spending limit should be breached. Spending in excess of the limit is temporary. The limit is unaffected and the rate of increase of future spending is not raised. Further, the President and Congress cannot have a permanent emergency; the emergency can be renewed, but a 2/3 vote is required at each renewal.

The last section leaves to the Congress responsibility for enacting legislation to implement the amendment. The Congress should decide who would have standing to sue, how a budget surplus would be used, how the transition from current to future procedures would be accomplished and many other details and procedures. I see few advantages in placing these details in the Constitution.

The proposed amendment reads as follows:

1. Total government outlays in any fiscal year shall not exceed the spending limit. The spending limit is equal to the average of total budget receipts in the three most recent fiscal years.
2. Total government outlays include all budget and off-budget expenditure plus the present value of commitments for future outlays.
3. The rate of growth of total budget receipts in any fiscal year shall not exceed the average rate of growth of an appropriate index in the most recently completed calendar year. The index shall be chosen by Congress and may be changed by 2/3 vote of each house.
4. In the event that an emergency is declared by the President, the Congress may by 2/3 vote of each house authorize outlays for that fiscal year in excess of the spending limit.
5. Congress shall enact all necessary legislation to implement the amendment.

Some Practical Consequences

The proposed amendment is provisional and subject to revision. The practical consequences of the amendment are of considerable importance for assessing its qualities and the desired type of revisions. I have discussed the implications for the budget surplus in the previous section. This section gives some indication of how the amendment would have worked if it had been in effect during the past twenty-five years.

Estimates of this kind can never be firm. A quarter century of different budget policies and different budget rules would have produced less inflation and more real growth. Anticipations of future inflation would now be lower and tax rates would be lower. I believe the after-tax returns to capital and labor would have been higher. With lower inflation and higher real growth the dollar would not have depreciated to the

same extent and perhaps not at all. Would there have been a quadrupling of the price of oil if inflation had not reduced oil prices relative to other prices? We cannot expect to give final answers to questions of this kind and I have not attempted to simulate the effects of the amendment on prices and output. I am content to accept the broad consensus that the budget explosion beginning in fiscal year 1966 marks the start of a period of sustained inflation at rates much higher than in any previous peacetime era. The fact that the inflation could have been prevented, or ended, by less inflationary monetary policies after 1966 is not germane. The facts tell us that inflation increased, and that there was another surge of government spending beginning in fiscal years 1971 and 1972 and continuing throughout the seventies.

The proposed budget amendment would have prevented both out-breaks of spending. The financing of the Vietnam War and the expanded program of income transfers in fiscal years 1966 to 1968 would have required the President to declare, and the Congress by 2/3 vote to approve, an emergency in each of three years. It seems likely, in retrospect, that if a choice between guns and butter had been forced on the President and the Congress, we would have avoided at least some of the consequences of the mistaken fiscal policies of that period. The history of the next decade would surely have been different and almost certainly less inflationary. Perhaps, too, the war would have been shorter.

Comparisons between actual spending and the spending permitted under the amendment are more reliable before 1965 than after 1968. The reason is that tax revenues rise with inflation. Rising tax revenues permit spending to rise with a lag. Since the amendment was not in effect, each new surge of inflation that raised tax collections in the late 1960s and 1970s permitted a new surge of spending a few years later. Actual and permitted budget totals would have been much lower if the inflation had not occurred, and the subsequent changes in permitted spending would have been much smaller.

We can, of course, reduce the spending changes to constant dollars to take out the effect of inflation, but the proper correction of permitted spending requires an estimate of what tax collections would have been in each fiscal year if inflation had been lower. Estimates can be made using one of the many available econometric models, but reliable estimates cannot be made. I have computed, instead, permitted and actual changes in spending in current dollars for the 24 fiscal years 1956 to 1979 and in constant 1972 dollars for 9 fiscal years, 1971 to 1979.

In 7 of the 24 years, actual changes in spending were below permitted changes. No reductions would have been required in these years. In most of the remaining 17 years, the differences between the actual and permitted change was less than 6 percent.

The amendment would not have required massive budget cuts every year. Despite the fact that the rule generates surpluses when GNP rises, the net total of all the required budget reductions in the ten fiscal years 1956 to 1965 is about \$1.2 billion per year on average. During the same period, the budget rule would have produced an aggregate surplus of almost \$40 billion, nearly \$4 billion per year.

During the seventies, the budget rule would have prevented the explosive growth of government outlays from 1975 to 1979. The rule would have permitted spending, in constant 1972 dollars, to increase during the 1969-70 recession and at the start of the 1974 recession. The rule would have required reductions in real spending of less than \$1 billion dollars of constant 1972 purchasing power, in only two fiscal years—1972 and 1975. Permitted spending in current dollars would have increased every year with the growth of the economy; but the relatively large increases in some of the fiscal years during which there was a presidential election would have been avoided.

The budget deficits in most of the past twenty-five years would have been replaced by surpluses. For fiscal years 1970 to 1979 the cumulative surplus, in constant 1972 dollars, would have been \$73.5, an average of \$8 billion per year. But deficits would not have been avoided entirely. During the recession and recovery, in fiscal years 1975 to 1977, the built-in stabilizing qualities of the budget rule would have shifted the budget in constant dollars, from a \$12 billion surplus to a \$7 billion deficit. In fiscal year, 1978, there is, again, a budget surplus.

These calculations are illustrative only. They tell us much more about what would have been prevented than about what would have happened. And they suggest that a budget rule of this kind would not be extraordinarily difficult to follow.

Long-Term Benefits

The budget problems we face are not unique to our time or our country. Taxes have increased faster than income for the past twenty-five years in all countries with democratic institutions. In the United States, and in several other countries, a similar pattern has been observed for a century or more.

The amendment I have proposed reduces the rate of increase of tax revenues and government spending to the rate of growth of some broad measure of economic activity.

The short-term benefits are well-known. We move toward budget balances and lower inflation and realize higher after-tax returns to capital and labor. We replace the prospect of high and variable inflation with a low-average rate of inflation or a price level that remains stable, on average. These benefits would not be distributed uniformly.

Some would gain; others would lose. Voters as a group would, I believe, currently welcome these changes.

Any amendment that reduces the growth of government forces the Congress to make choices about the allocation of a smaller amount of tax receipts. Congress cannot decide on the amount of funding for each program separately, add up the total and present the bill to the taxpayers. The total would be limited by the rate of growth of GNP, or some other index of economic activity. The parts would be cut to conform to the total.

Public spending can increase as economic growth rises. There is, therefore, some incentive for government to be concerned about efficiency. There are, also incentives that work in the opposite direction, as critics of budget amendments have recognized.

Limiting the range of choices made by governments is not the only reason for the amendment. Each of us must plan to save over his lifetime to provide for emergencies and for retirement. No one in private or public life can make a rational plan if he does not have any way of knowing how much he will pay in taxes in future years of work and in retirement.

An amendment that fixes the share of income received by government provides information about the future. There is less uncertainty and, therefore, more opportunity to plan for the future and more saving.

Government performs best, I believe, when it provides rules or principles that are as clear and definite as men can make them. This is the high purpose of an amendment that limits the size of government and the growth of taxes and spending, and it is the purpose I have tried to serve with my proposal.

Against A Constitutional Convention

by Charles E. Wiggins

On February 21, 1787, the Continental Congress resolved that “experience hath evinced that there are defects in the present Confederation,” and that, in its opinion, it was “expedient, that . . . a convention . . . be held at Philadelphia” to remedy such defects and to “render the Federal Constitution adequate to the exigencies of Government & the preservation of the Union.”

Thus, the first convention to review the State of the Union was called. When it adjourned in September of that year, it had written a new Constitution proposing fundamental changes in the structure and power of the federal government.

Some now believe that the time has come once again to assemble a convention to consider a remedy for a perceived defect in the present Constitution: The power of Congress, with the concurrence of the President, to spend in excess of federal revenues.

To be sure, the power exists under the Constitution and the President and the Congress have exercised it with disturbing regularity since the early 1930s. Notwithstanding sincere promises for a balanced budget at some time in the future, neither Congress nor the President appears able to produce a budget balance in any current year. The growing popular despair that they *ever* will do so is surely justified by the recent historical record.

The need for such an amendment I shall leave to others (although I confess some strong views on the subject). My primary focus here is upon the vehicle for change: The calling of a convention to propose this, or any, amendment to the Constitution.

Article V of the Constitution sets forth two methods of proposing amendments to it, viz: the Congress may do so, whenever two thirds of both houses shall deem it necessary; or upon the application of the legislatures of two thirds of the states, the Congress “shall call a Convention for proposing Amendments.” In either case, proposed amendments require ratification by three-fourths of the states.

The extraordinary step of convening a Constitutional Convention should not be undertaken, even if constitutional change is warranted, if other, less perilous, alternatives exist. It surely can be argued that if there ever was an appropriate case for the convention alternative, it is in the present circumstance since the problem for correction has been created by Congress itself. It is idle, some argue, to expect Congress to propose a limitation on its own power by a two-thirds vote when it has ample present authority to balance the budget by a simple majority vote if it possesses the will to do so. This argument has some surface validity. As a practical matter, however, history has shown that Congress has indulged itself in political gestures in the past by proposing unnecessary amendments. The most recent example is the Equal Rights Amendment, which addresses itself to matters well within the existing authority of Congress to remedy. And, politicians being what they are, Congress may well engage in political posturing in the future by proposing an unnecessary balanced budget amendment. Hence it cannot be maintained with certainty that a convention is absolutely necessary if such an amendment is to be proposed at all.

However, the power of Congress to act, either by balancing the budget and defusing the issue, or by proposing an amendment requiring it, is obviously no assurance that it will do so. There is a growing national impatience with Congress that it will do neither; and hence the call for a Constitutional Convention by traditional fiscal conservatives and a few other uncomfortable bedfellows is increasing.

Thirty states have formally made application for such a convention. Thirty four is the magic number which, if reached, will mandate the calling of a convention. Although we have experienced only one similar convention in our history, that in 1787, we have come within a whisker of such a procedure on three other occasions. The 17th Amendment, providing for the direct election of senators, was proposed by the Congress when only one state was lacking in applying for a convention to be called for that purpose; two states were lacking in a petition drive for a constitutional limitation on income tax rates; and Senator Dirksen and others fell only one state short in a drive for a convention to limit the Supreme Court's reapportionment decisions.

That the convention mode of proposing amendments has come so close to being implemented on prior occasions is compelling evidence that this alternative will one day be thrust upon us—if not in the balanced budget context, then in some other—unless people can be alerted to the ticking time bombs inbedded deep in this constitutional procedure.

The first and most fundamental problem is the agenda of the convention. Must it confine itself to the narrow subject which inspired its convocation, e.g., a balanced budget, or may it consider a number of constitutional changes and even propose a re-structuring of the govern-

ment itself, as did the convention in 1787? Respected constitutional scholars cannot agree on the answer to this important question.

The Attorney General, and others, have assured us that Congress can attach conditions to its call for a convention which could limit the scope of its deliberations. The Attorney General's views are entitled to weight, but his speculations lack firm historical support. Our only federal precedent is the 1787 convention. At least one state, responding to the call in 1787, purported to bind its delegates to consider only limited constitutional change. But upon arrival in Philadelphia, the delegates adopted their own rules of procedure and promptly undertook a consideration of a sweeping agenda for a new Constitution proposed by Governor Edmund Randolph of Virginia. It is to be expected, however, that a modern Congress would attempt to define the authority of a new convention.

Such legislation is now pending in Congress and I fully support its concept. It is to be hoped that a convention would choose to limit itself to the subject matter of the call. But what if it did not? If the delegates elected to disregard congressionally-imposed limits upon their authority and proposed such amendments as the convention deemed appropriate, it is my view that such amendments would not be void and would be properly considered by the states for ratification. This conclusion follows from the text and intent of Article V. That Article specifies the *manner* of proposing and ratifying amendments. With but a single exception having current application (that relating to equal state representation in the Senate), the Article does not refer to the *substance* of any amendment proposed. The duty of Congress to call for a convention is mandatory. Having exercised that duty, its power is exhausted. Any restrictions on the substance of amendments proposed must transgress upon the authority of the convention. This is so because, as the record of the debates makes quite clear, the alternative modes of proposing amendments are intended to be independent. Congress could dictate the substance of any amendment it chose by proposing its own. It cannot control the independent deliberations of the convention any more than the states, acting singly, in concert or through a rump national convention, could control the independent deliberations of Congress in proposing amendments. Nor could Congress with propriety refuse to submit the unexpected amendments of a run-away convention to the States for ratification. The power of Congress is confined to selecting one of two modes of ratification and certain ancillary matters of detail. It is powerless to reject either mode of ratification because of disagreement over the substance of proposed amendments. Its refusal to act would appear to be as clearly subject to judicial correction as its refusal to seat a duly elected Member of Congress contrary to explicit constitutional mandate.

Of course, no one can be absolutely sure on these critical questions

until the Supreme Court is asked to declare with finality what the law is. To be in doubt on such a basic, threshold issue is sufficient, standing alone, to cause this interested observer to condemn the idea. The risks are simply too great, in my view, especially when weighed against other political alternatives.

There are other problems, to be sure, but the uncontrollability of a Constitutional Convention is a singular risk of overriding magnitude.

But, it is argued, the Convention cannot act alone: The concurrence of three-fourths of the states is necessary to ratify its proposals and surely the sober judgment of a super-majority of the states would temper the radicalism of a runaway convention.

Perhaps this is so. The risks are high, however, that the same transient political forces which may seize a convention may also grip the nation. Such a risk may well be exacerbated by the Congress designating state conventions as the mode of ratifying amendments proposed by a National Convention, a not altogether unlikely eventuality.

None of the risks is necessary, it is said, if only wise men and women are chosen as delegates to the convention. This is of course true, just as it is equally true that we would not be in this fix in the first place if only wise men and women were elected to national office.

The number, the manner of selecting, and the vote (individually or by state) of delegates would appear to be matters of detail within the authority of Congress to regulate by statute, and it should do so. Pending congressional proposals in this regard favor the election from each congressional district within a state of one delegate, plus two state-wide delegates at large. It is proposed that each delegate have one vote. Aside from the manageability of a 535 person body and the opportunities for calm deliberation and thoughtful debate by such an assemblage, I remain troubled by the suggested procedure. It is elitist, perhaps, to wish that the Constitution be subject to revision only by persons with a sense of history and a broad national vision. The risk that such persons may be passed over in favor of narrow, single-issue candidates who mount emotional campaigns for election in many congressional districts must be acknowledged, but better alternatives do not come readily to mind. At a minimum, serious consideration should be given to reducing the number of delegates by 100 (as proposed by the American Bar Association) and requiring bloc voting by states or the state-wide election of all delegates in order to reduce the political risk of mindless domination by single-issue delegates.

I have recommended less risky political alternatives to the convention. What are they? Of course, Congress itself could act by proposing a Balanced Budget Amendment, if constitutional change is essential. But the zeal of some for constitutional change misreads the forces which inspire it. The people are evidently tired of the chronic im-

balance in the federal budget and attribute many of their personal economic problems to it. The problem for solution, then, is to balance the federal budget. Obviously, a Constitutional Amendment is not the only way to solve that problem. The level of federal revenues and expenditures is the joint responsibility of the President and the Congress. Together they have created the problem, and together they can solve it. If they fail to act to balance the budget during the term of the 96th Congress, I suggest that the people, if they are truly serious about a balanced budget, express their will by throwing the big spending rascals out at the next election. If the President and the Congress do act to balance the budget by increasing tax revenues and/or reducing expenditures in accordance with the apparent popular will, the people will experience the inevitably painful consequences of their national government living within its means. If, collectively, we possess the discipline to endure that pain, the problem is solved; if not, we retain the flexibility for modest and selective future budget deficits.

All of this is possible, far quicker, and I believe far preferable to a Constitutional Amendment which would limit our future options.

This precious document which we revere as our Constitution is worth protecting notwithstanding the imperfections which even its framers acknowledged. Among its many virtues, it tends to protect us from ourselves. It leaves a loophole, however, as it must, for popular initiation of constitutional change and popular consent to any change initiated. This necessary loophole places a burden of self-restraint upon the people. In this instance, only we can protect ourselves.

It would be an act of restraint and good common sense to eschew the call for a Constitutional Convention in favor of more traditional, less risky, political alternatives.

Toward An Open Constitutional Convention

by Laurence H. Silberman

The very first argument that must be addressed if one seriously proposes a constitutional convention is the proposition that in order to support such one must conclude that there are significant amendments to be proposed to the states. I believe that to be true. I further believe that it is impossible for Congress to limit the scope of consideration of the convention. Article V of the Constitution is quite clear that such a convention is charged with proposing amendments. It is not a governing body; it is a body contemplated by the Constitution to get around the Congress. It is a safety valve, and I think it is time for the safety valve to be used.

The fundamental purpose of our Constitution at the time that it was adopted was to protect Americans against governmental power. Indeed, the tripartite structure unique to American democracy was specifically designed to cause competition within governmental organs, and thereby to protect people against governmental power. The fundamental point that we have lost sight of is that the exertion of governmental power was deliberately made difficult in the Constitution. Amongst all the world's democracies, it is constitutionally most difficult to get an act through the American system of government.

Why not limit a constitutional convention to budget balancing, expenditure limits, or some variation of the two? First of all, I do not believe that it can be so limited. But more importantly, I believe there are related problems not touched by the budget balancing/spending limitation questions which should be considered as part of a whole.

The United States has been moving in recent years from a welfare society to a redistribution society. That is a fundamental change. There are two ways for government to grow in pursuit of the redistribution of wealth and income. One is to direct spending and the other is through regulations. It is just as easy to redistribute income by ordering A to pay B as by taxing A to pay B, and most regulations have at their heart a redistribution of income and wealth. I do not mean to suggest that no

regulation is legitimate; I am suggesting simply that there are two ways to accomplish the same purpose. If we adopt a constitutional amendment dealing with the spending side or the budget side, would we then have restrained the Congress in one way and induced its movement in another way which may well be more dangerous? As we have seen, even this Administration has had a devilish time trying to get hold of the economic impact of regulations. I think there are fundamental reasons for that. It is what I call the growth of the regulatory-judicial complex. This is another important change of the last thirty or forty years that should be considered along with the macroeconomic issues of a constitutional convention.

We have seen over this time an almost total abandonment of the notion of judicial self restraint. This is enormously important. No longer is the doctrine taught in our law schools that the judiciary, particularly the federal judiciary, is fundamentally undemocratic. Because of its lifetime tenure, in the past it has been very careful of the policy issues it considered. Today, however, the accepted doctrine is that it is absolutely appropriate for the judiciary to reach out and grab any policy issue and deal with it in its own way.

At the same time we have experienced the growth of the regulatory agencies—which Charles Schultz once called the command and control modules—one after the other. The men that wrote the Constitution thought that they were setting up only three branches of government—a carefully wrought plan to prevent the accretion of governmental power. The independent regulatory agency is a constitutional anomaly, developed precisely for the purpose of circumventing the restraints which the founders felt that they put into the Constitution.

I would suggest that it is time, perhaps past time, to seriously consider the question of whether the independent regulatory agencies make any sense in a democracy. Have they not become so unresponsive—not just to the people but to the political institutions, to the Congress and the Presidency—as to have created something which is fundamentally at odds with that which the Founders sought to accomplish?

I suggest that these two developments have happened congruent with the change in the nature of Congress. Last year, the Yale University Press published a magnificent book by Morris Fiorina, a political scientist in California. *Congress—Keystone of the Washington Establishment* has caused great consternation because it describes how congressmen are becoming primarily ombudsman rather than policy-makers; the last thing they want to do is vote on issues. It is a chilling picture of a Congress unresponsive to the political will.

Fiorina suggests that Congress is now in the business of delegating its policy-making authority to independent agencies and to the courts. Yet

the Supreme Court once recognized that inherent in the Constitution was a limitation on the extent to which Congress would delegate policy formulation outside itself. I would like to see an amendment which specifies that and prevents Congress from transferring its responsibilities to the command and control modules or the judiciary. Also, a constitutional convention should seriously consider limiting the number of terms a person could serve in Congress. The Presidency, of course, has already been so limited.

A multitude of so-called single issues, each one dealing with the abuse of federal power could be addressed by a constitutional convention. Busing, for example is an attack on the basic notion of individualism inherent in the Constitution, launched by independent and executive branch agencies along with the judiciary. On the issue of abortion, I agreed with the determination of the Supreme Court, but I am horrified that the Court would usurp the proper role of the legislature in the guise of a constitutional interpretation. What this reveals is that we have a constitutional convention continuously in this country. It is the federal judiciary. Nobody ratifies it and they come out with their decisions every Monday and Thursday.

Finally, the notion of a runaway constitutional convention seems not to be a serious threat. There is no political-intellectual body of thought that suggests we should change the fundamental nature of American democracy. Insofar as there is an agenda for constitutional reform, it is a conservative agenda. The liberal agenda comes down through the Congress and the courts, but I believe that it is not the agenda of the American people.

If one reads the *Federalist Papers*, it is clear that the founders of our Constitution were most afraid of the popular will. They were wrong. Although it was hard to contemplate it at the time, the great threat to American democracy has been the growth of the bureaucracy and the activism of the judiciary. They, rather than the people, fundamentally threaten the viability of American democracy.

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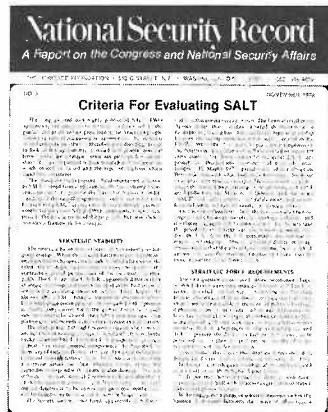
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