



## Should the Constitution Be Amended?

by Richard W. Rahn

MARK LEVIN'S BEST-SELLER COULD REVERSE THE RISE OF  
'SOFT TYRANNY'

What amendments to the U.S. Constitution, if any, would you like to see? The widespread belief is that the American constitutional republic, if not actually broken, is in a state of disrepair. In his new, best-selling book, "The Liberty Amendments: Restoring the American Republic," Mark R. Levin, president of the Landmark Legal Foundation and nationally syndicated talk-show host, proposes a number of amendments to the Constitution as a fix. Mr. Levin argues that amendments are needed because the nation has entered an age of "post-constitutional soft tyranny" — as defined by the great 19th-century French historian and philosopher, Alexis de Tocqueville, who wrote in "Democracy in America":

"It covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate, to rise above the crowd. The will of man is not shattered, but softened, bent and guided; men are seldom forced by it to act, but they are constantly restrained from acting. Such a power does not destroy, but it prevents existence; it does not

tyrannize, but it compresses, enervates, extinguishes and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd."

Has America become what de Tocqueville feared 170 years ago?

It is hard to deny that America, along with most of the other major democracies, has become a bureaucratic state, where degrees of individual freedom have been reduced, and fear of the government has grown. Journalist-commentator Peggy Noonan asserts that we are in danger of becoming "a nation of sullen paranoids" as a result of the excesses of many individuals in the Internal Revenue Service, the National Security Agency, the Justice Department and other government agencies, unless we choose to "stop it."

Mr. Levin and many other commentators have correctly noted that most of the present-day problems exist because successive administrations, Congress and the courts have ignored or been less than faithful to the Constitution. The open question is: Can amendments to the Constitution, which has only partially been adhered to, fix the problem?

Having been in the forefront of the battle to protect liberty for decades, Mr. Levin has the depth and breadth of knowledge to properly describe how our liberties are being lost. In sum, Mr. Levin's approach is to describe pieces of the overall problem (with the necessary supporting evidence), and then lay out his solution for correcting each particular piece. If I were teaching an advanced course in government, political science or economic policy, "The Liberty Amendments" would be a perfect textbook. I would require the students to first evaluate whether Mr. Levin has described the problem correctly (e.g., property rights have been eroded), and then debate the pros and cons of the particular constitutional amendment that he proposes to correct the problem. If you choose to read the book, you might mentally do the same thing and debate the proposals with friends and family.

Mr. Levin does not claim that his proposals should be the last word, but rather serve as a basis for discussion as to

proper corrective action. For instance, he properly decries the breakdown in the federal budgeting process and the excessive growth of spending and deficits. He then proposes an amendment to limit spending. Section 4 of his spending amendment reads as follows: "Total outlays of the United States Government for each fiscal year shall not exceed 17.5 percent of the nation's gross domestic product for the previous year." As an economist — Mr. Levin is a lawyer — I have major problems with this section. First, gross domestic product (GDP) has many calculation imperfections, and is subject to periodic definitional changes (as was just done last month), and thus, ought not to be part of the Constitution. Second, Mr. Levin's number of 17.5 percent is totally subjective. It is substantially lower than the current year's number (22 percent of GDP), but much higher than what I and many other economists think the long-run, general-welfare-maximizing level of federal spending should be, based on empirical evidence from many countries. I do, however, agree with a number of other amendment proposals that Mr. Levin makes, such as placing term limits on the members of Congress.

Mr. Levin is correct that Congress finds it too easy to spend money on things it ought not to, but a better corrective amendment might be one that requires a substantial supermajority of Congress to pass any spending. This avoids the GDP definitional problem and does not set an arbitrary level, but should foster more debate about spending priorities and proper levels.

If "The Liberty Amendments" can help foster a national debate about which corrective actions, including constitutional amendments, are needed to increase liberty and prosperity, Mr. Levin will have performed a great national service. The good news is that there is still a little time left to reverse course.

*Richard W. Rahn is a senior fellow at the Cato Institute and chairman of the Institute for Global Economic Growth.*

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