

## CONVENING A MORE PERFECT UNION

*An essay on the history, value, and purpose of State Leaders convening to discuss national issues*

### **A More Perfect Union**

In the last decade, American's approval of Congress has been hovering around 20% and a May 2019 Gallup poll found that 19% of American's identified that the "most important problem facing this country today" was "The government/Poor leadership." What is to be done and by whom?

We the people, in order to form a more perfect union, must endeavor to commit ourselves to the efforts of safeguarding liberty and security for all Americans. We, the people, can no longer abdicate our responsibilities of self-governance to an unchecked and unaccountable abstract governmental ideal that cannot be recognized for what it is supposed to be. We, the people, through our state governments, can and must guide us to a place where all Americans approve of the work of our federal government. Our founders pointed us in the direction we must and will go, convening the states to discuss ideas, champion new policies, and extend new guidance to our federal government.

When anxieties rise due to political and economic conflict, an inflated and encroaching federal government, and politicking in lieu of governing, solutions lay not in representative assemblies in Washington, D.C., but rather in the State Legislatures who, by Article V of the U.S. Constitution, hold the key to a more reliable process to change how government works. In today's seemingly never-ending partisan divide, a constitutionally sanctioned Convention of States is the necessary remedy to create a "more perfect union."

The year 2020 risks being remembered as an age of socialist rhetoric and nearly fascist extremes. Instead, may it be a year mindful of the words of Abraham Lincoln, "that government of the people, by the people, for the people, shall not perish from the earth."

### **A Constitution in the Rearview Mirror**

A look back to the origins of the Constitution prepares us to better understand the future of America. We must do this as any history is incomplete if the complexities of the pre-founding period are ignored. We look back because we the people, in order to form a more perfect union today than we had yesterday, need to embrace that our collective voice, our collective ideas, and our collective solutions, are preeminent within American civics and government. We, the people, have for too long allowed politicking to usurp governing as the means of creating and accomplishing our national goals. And when we citizens are silent, the opinions of the few become the mandates to the many. And so it now is, but it need no longer be.

In the late 1700s, in Philadelphia, the United States of America was formed. It was created by representatives from the numerous early colonies who, like many before them, gathered at a convention to discuss and debate and endeavor toward what was in the best interest of all of the American colonies. The work of these delegates in Philadelphia culminated on September 17, 1787 with the crafting of our United States Constitution. But when this gathering assembled four months earlier it might have been just another one of the hundreds of regular multi-state gatherings of representatives which had convened throughout the years. But this one was different as the delegates arrived with the hope they might agree upon a form of government to protect each state's efforts to govern her people in her own way. It was the age of mercantilism, the idea and practice that each state would profit from mutually beneficial trade between the

states. The question was, “When trading between states, which state laws were to be upheld?” And following a time of national unity in the fight for independence from the British government, the colonies, without a common cause, were beginning to suffer disunity. The result was a national constitution, one that would afford each colony and state with the governing structure to work together for the common good as needed.

### **The Groundwork of Self-Governance**

To many Americans, the United States magically appeared on July 4, 1776. In fact, its foundation began at least a century and a half earlier. America’s founding era (1750s - 1790s) came about as the result of an evolutionary process of citizen associations whose origins date back to the Sumerians (southern Iraq) ca 2300 BC. This self-governance process matured over millennia as associations and constitutions formed.

One of the earliest forms of a contemporary constitution was developed in Athens in 594 BC. Then, in 508 BC, the Athenian constitution was reformed toward democracy and the “rule by the people” consisting of the separation of powers. Similarly, in 1215 the British signed the *Magna Carta* at a convention called by the nobility and commoners at Runnymede, England. Each of these was a movement toward self-governance by the people.

In the 1600s, while America remained a British colony, numerous conventions were hosted and constitutions signed. In 1639, the first modern American constitution was written at a convention in Hartford, CT. It consisted of a preamble and eleven articles describing the rules for self-governance including term limits for the governor.<sup>1</sup>

Many thousands of conventions (aka councils, congresses, and committees of correspondence and safety) have occurred in towns, counties, regions, and nationally since. In the colonies, and then the states, 648 recorded events have been identified by historians.<sup>2</sup> Their administrative protocols soon evolved into a standard operating procedure for debates and voting. Early gatherings resolved local problems such as security, safety, and trade. As immigrants arrived, many fleeing government persecution, the colonist’s motives were simple: self-defense and religious freedom.

For the people to adequately satisfy their motives and in the spirit of self-governance, they met informally, outside of their routine government assemblies which were organized in accordance with the ruling authority of the British Crown. In doing so, they sought the freedom to pursue mutual benefit and consensus. They met not to legislate, as that was the authority of the Crown, but to debate and agree on recommendations that would become the foundation of movements in each of the states that would rise to the ears of the Crown. A movement’s power was then and always is in the voice of its people. Edmund Burke and Alexis de Tocqueville commented that people associating with such purpose is the basis for citizenship.<sup>3</sup>

### **A Tipping Point in America, Then and Now**

In the late 17th and early 18<sup>th</sup> centuries, international issues impacted England (i.e. the Glorious Revolution, Seven Years War). Britain needed help with its war debt and turned to the American Colonies with Acts (Stamp, Tea, Sugar, Intolerable). Colonial anxiety grew as did inflation and manufacturing regulations. In addition, political issues included a weakening English governance, random troop violence, safety with neighboring Indians, and the strain of growing boycotts of English goods.

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<sup>1</sup> Michael Kapic, *Conventions That Made America: A Brief History of Consensus Building*, Author2Market, 2018, 8

<sup>2</sup> Timothy J. Dake, *Far From*, Libertas Books, 2017, Appendix B,

<sup>3</sup> Jonathan Sacks, *The Dignity of Difference*, Continuum, 2003, 152, 158

The people, still governed by British officials, grew frustrated as they were ignored. By the mid-1770s the colonies experienced a radical shift toward independence and more difficult issues arose such as inland navigation, foreign trade, embargos, and intercolonial trade tariffs. As a result, the frequency of calling for conventions grew and the topics discussed included defense, English boycotts, inflation, and price controls.<sup>4</sup>

In the late 1700s, through a series of national meetings, representatives from many of the colonies and states convened to discuss, debate, and present ideas for approval, and finally, in September 1787 at the Philadelphia Constitutional Convention, the representatives penned the United States Constitution to be considered and approved by the leaders of those same states and colonies. The convention was timely. It was required because following the War for Independence against Britain, state leaders from New York and Massachusetts began calling for the need to Amend the Articles of Confederation, the National Congress wanted to address numerous concerns but did not have the authority to convene representatives from the states to do so, jurisdictional arguments between the colonies were growing, and heavy taxes and unpaid War wages led to regional rebellions including that of Shays Rebellion in Massachusetts. It can be imagined that the same farmers who threw British tea into the Boston harbor, that fought to win their liberty from the tyranny of a government across the pond, were beginning to turn that same ire toward the now heavy-handed ways of burgeoning local and national government policies, cronyism, and unwarranted profits in the pockets of wealthy state legislators.

So, in the summer of 1787, the people convened to discuss that which was most important, and what began unassumingly as the Philadelphia Convention soon bore the name-The Constitutional Convention. And since this is where our modern government started, the question for us today as we see a similar tipping point looming in the 21<sup>st</sup> century is, “What must we, the American people, do to ensure that a vibrant government continues to help ensure security and liberty for all?”

### **A History of American Conventions Shaping a National Unity**

The purpose of the 1774 convention, the *First Continental Congress*, was to debate solutions for responding to Parliament to end the Intolerable Acts. John Rutledge noted that conventions were for recommendations.”<sup>5</sup> The next convention, the *Second Continental Congress* was scheduled for May 10, 1775.<sup>6</sup>

The Revolutionary War began three weeks before the *Second Congress* was to convene as a convention. However, it quickly became an ad-hoc committee and then morphed into a de facto legislative government. Over the next six years it was knee-deep in the business of creating an army, finding a commander, drafting independence, writing a constitution (Article of Confederation), developing allies, financing its efforts, and sending a peace committee to Paris. Talk began for convening “a general council, or convention of faithful, honest, and discerning men...” in which a convention is “not to exercise legislative power, but only to debate freely, and agree upon particulars...”<sup>7</sup>

The *Second Continental Congress* agreed with John Adams assertion that the people must endeavor toward the “defence of this colony” against Britain and “to erect the whole building with their own hands upon the broadest foundation,” and that could only be done “by convention of representatives chosen by the people in the several colonies.”<sup>8</sup> Essentially, that the people must work together to build something new to continue to protect themselves.

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<sup>4</sup> Ibid., Kapic

<sup>5</sup> Ibid., 317

<sup>6</sup> Ibid., Kapic, 59

<sup>7</sup> Russell Caplan, *Constitutional Brinkmanship*, Oxford Univ Press, 1988, 4,

<sup>8</sup> Ibid., 9

The *First and Second Congresses* were defining moments for America. They also helped to define and elevate the prestige of a convention of the people's rights over ordinary legislative processes from which the people were absent. For the people, the convention had become the extraordinary instrument of a constitution-making body. Other conventions easily followed as conventions, in practices, had by this time a well-developed and trusted operating system.<sup>9</sup>

In the early 1780's, sentiment in Congress grew for a broad range convention, but it had no authority to call one. Under the Articles of Confederation, the U.S. lacked a strong central government while the states were individually more powerful. But broad abusive government mandates were being imposed on the people and economic instability grew. The states quarreled among themselves, individually establishing their own tariffs, currency, and regulations.<sup>10</sup> Richard Henry Lee of Virginia noted many members were suggesting "the calling upon the states to form a convention for the sole purpose of revising the Confederation...to enable Congress to execute with more energy, effect, & vigor, the powers assigned it."<sup>11</sup> George Washington, also of Virginia, protested the "want of energy in the Federal Constitution...which I wish to see given to it by a Convention of the People."<sup>12</sup> Washington insisted on power being held by the people and not a federal government.

In 1785 the Virginia and Maryland assemblies realized that a conflict was brewing related to the use of the Potomac River and the Chesapeake Bay waterways between Virginia and Maryland as there was a growing need for increased commerce and trade westward to the Shenandoah and Ohio Valleys. With this increased activity a need arose for jurisdictional agreements and travel rights for the waterways. Negotiations between the assemblies were hosted by George Washington at a 3-day conference in Mount Vernon beginning on May 25, 1785. Agreements were made and the Potomac Company was created to finance navigation improvements and oversee jurisdictions. Both Maryland and Virginia approved the compact such that the Potomac "shall be considered as a common highway..." The success of the Mount Vernon Conference paved the way to the *Annapolis convention* (1786), and later to the *Philadelphia convention* of 1787.

The *Annapolis Convention* commenced on September 4, 1786. It was intended to be a "commercial convention" to include representatives involved in trade, interstate commerce, and regulations, so that "when unanimously ratified; that will enable the United States in Congress effectively to provide for the same." However, only five of thirteen states attended. This was supposed to be a continuing effort by the states to balance the lopsided federated relationship between states and the national government as the early *Articles of Confederation* had provided for independent and powerful 'countries' within the whole of the early colonies.

Heeding the seriousness of the need to collaborate with other state leaders, those present proposed to hold another meeting of the states in Philadelphia the following year. Their purpose? To "take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the *constitution* of the Federal Government adequate to the exigencies of the Union..." The Annapolis convention contemplated a convention that could do more than merely propose changes to the Article of Confederation. "The word *constitution* in this context," Professor Natelson says, "was not limited to the Articles of Confederation. The prevailing political definition of "constitution" at the time was political structure as a whole—much as we refer today to the British "constitution." What we today call a "constitution" was more often called an "instrument," "frame," "system," or "form" of government. The Annapolis statement was recommending a convention to consider and propose alterations in the federal

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<sup>9</sup> Ibid., Kopic,

<sup>10</sup> Ibid., Dake, 131, 132,

<sup>11</sup> Ibid., Caplan, 21,

<sup>12</sup> Ibid., Caplan, 21,

political system, not merely to the Articles. Subsequent proceedings in Congress confirm that understanding.”

The *Constitutional Convention* in Philadelphia lasted for four months, convening May 25, 1787 and concluding on September 17, 1787.<sup>13</sup> With George Washington serving as president of the convention, delegates from all the states thoughtfully deliberated a new form of collaborative government put into place by the signing of the newly crafted United States Constitution that would ultimately put the power in the hands of the people, separate the powers of government into three branches with a system of checks and balances, divide power between the states and the federal government, prescribe duties, scopes, and limits of said governments, and identify rights and freedoms of the people.

### **A More Perfect Union**

In order to form a more perfect union, we the people can embrace the safe process that was used then and is still applicable today. We the citizens have the solution. We are empowered through the states, through federalism, with the necessary tools and authority to create a new era of constitutional viability and adherence.

Now, it seems, in our politically charged rhetoric, that adherents to each of our two political parties hold strongly to opinions of what the U.S. Constitution was, is, and will be. Some argue that the constitution is to be observed dogmatically, that is it is to be bound to as law, as written. Some in this group even proffer that the U.S. Constitution should no longer be changed. Others believe that this noble document drafted in the late 1700s is living: In the same way that it represented the hearts and minds of the American people then, the Constitution can and should be changed to reflect the hearts and minds of Americans today. The answer to what the Constitution is and will be lies in the truth that gratefully each viewpoint is half right. Any legal system born out of a viable constitution must be adhered to fully as it is written as this is the foundation of any society. It is that which shapes all institutions, political debates, public discourse, and identifies the legal rights of the individual. And it is also a framework for each ensuing generation insofar as it breathes life into all of our security and liberty, and is, if only allegorically, living. To be clear, The United States Constitution is a document that can be changed. But it is only to be changed by “the people” and never altered based on political whims or judicial activism.

The remedy for the missing halves is a recognition and implementation of the process of convention as outlined in Article V of the U.S. Constitution that empowers an assembly of representatives from each of the sovereign states to enact their will upon the federal government. This is how the federal government was created by the states in 1787 and this is how the federal government can be improved by the states today.

It is important for us to understand the role of the federal government within the actuality of the United States of America. We are 50 individual states each organized and governed by her own people. And collectively the people of the 50 states desire that one federal government, subject to the states and their citizens, oversee security and liberty, which are paramount in the minds of all Americans. The people have created a form of governing that exists simultaneously, with veritable tensions, at the national, state, and local levels. This was what the people of the early American colonies wanted in the late 1700s and this is what we continue to desire today. And when any one of these levels is out of balance, as it is with our federal government today, the voice of the American people is heard through ballot boxes and political polling, and 80% of us are displeased with the way things are.

For too long, we the people have neglected our collective voice, our collective ideas, our collective solutions. In this vacuum our silence has been heard as approval by those who strive to do good in a system too large,

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<sup>13</sup> James Madison, *Journal of the Federal Convention*, Vol 1, Vol 2, 1787  
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too bureaucratic, too far from home, and too far from its purpose of safeguarding liberty and security while overseeing the practices of the laws between the states. For too long our state governments have relinquished to the federal government their own powers enumerated in the U.S. Constitution and in doing so we have become a land of people who are governed by government and no longer a people who govern through government. The distinction should not be lost on current State Legislatures or Governors who can and should lead the charge in enacting the will of the people.

### **Convening an Old Process in a New Way**

The question today is, “do we live in the republic instituted by the Constitution?” Certainly, we’re in a technological and different time and society. But do we the people enjoy the same liberties identified in our founding documents and noted as coming from our Creator? Or has a more intrusive and abusive government usurped our constitutional federal republic? Are ‘we the people’ respected by this government as the defining voice in American governance or not? Who decides?

The Colonies, like the people, had individual identities and characteristics. And yet they, at the directive of the people, managed to convert themselves into states under a Union. Today, we the leaders of our state governments, can confidently stand on the shoulders of greatness and knowingly act in a legally sanctioned and purposeful way to bring a remedy to our nation’s plights. We stand on solid footing with the Mayflower Compact (1620), First & Second Continental Congress (1774 & 1775), and Constitutional Convention (1787) acting as our guides.

As for recent political leaders echoing the voice of our country’s early statesmen, President Barack Obama said, “We, the People, recognize that we have responsibilities as well as rights; that our destinies are bound together; that a freedom which only asks what’s in it for me, a freedom without a commitment to others, a freedom without love or charity or duty or patriotism, is unworthy of our founding ideals, and those who died in their defense.” And President George W. Bush proclaimed, “Our founding fathers understood that our country would survive and flourish if our Nation was committed to good character and an unyielding dedication to liberty and justice for all.”

Bold and tenacious leaders have long searched for a way to enshrine into our American Government the Declaration of Independence’s assertion that “governments are instituted among Men, deriving their just powers from the consent of the governed.” Yet since 1788 there has been a great disparity in where these bold leaders act from. While the Constitution, including Article V, grants The States equal power with the national government, the United States Congress has made nearly 12,000 amendment proposals to the Constitution with 33 of the proposals being voted on by The States with 27 of them formally passing. Meanwhile, The States have never fully embraced their authority to formally propose an amendment to the United States Constitution. Article V equally empowers the state governments and the federal government equally, but only one has been faithful in her duties, and by all accounts, the voters are pleased with neither, the federal government for doing too much and the albeit, unknowingly, The States for doing too little.

As President, Franklin D. Roosevelt understood his obligation saying, “Let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a President and senators and congressmen and government officials, but the voters of this country.” There are no leaders closer to the voters than those in The States. And we can all be assured that the voters will have great confidence in their local leaders as they work to improve the work and reputation of “the government” and its failed leadership in Washington D.C. We, the people, may not know it yet, but the leaders in our State Legislatures are our last best hope for America. And our next best step is to call for a Convention of States to discuss old and new ideas, debate current and future policies, and provide guidance to ongoing national discussions, all to enact the will of the people and improve the government that works to provide for their liberty and security.