

AGAINST AMENDMENTS

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Public-minded people might usefully be lumped into two categories: those who seek ways to make things better, and those who mostly worry that things could get worse. Professor Jason Mazzone, whose paper proposes that the American people should vote every two decades on whether to have a constitutional convention,¹ is plainly one of the first kind of people—it’s one of the many things that make him so likeable and engaging. It will quickly become apparent that I’m the other kind, which is why one of my teachers memorably called me a grumpy, old man when I was just nineteen years old.

These two temperamental dispositions track two ways of thinking about constitutions. One is as a spur to social improvement. Especially in the modern era, constitutions serve as a repository for a society’s basic values and commitments,² and as such they may inspire social movements to press for reform of institutions and practices that may be inconsistent with those values. And because constitutions “constitute” a government by creating institutions and procedures for transmitting the popular will into law,³ they provide the mechanisms through which necessary reforms can be identified, agreed upon, and implemented.

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1. Jason Mazzone, *Amending the Amendment Procedures of Article V*, 13 DUKE J. CONST. L. & PUB. POL’Y 115, 115 (2018).

2. See, e.g., Joseph Raz, *On the Authority and Interpretation of Constitutions: Some Preliminaries*, in CONSTITUTIONALISM: PHILOSOPHICAL FOUNDATIONS 152, 153–54 (Larry Alexander ed., 1998).

3. See *id.*; see also Ernest A. Young, *The Constitution Outside the Constitution*, 177 YALE L.J. 408, 417–22 (2007).

The other way of thinking sees a constitution as a shield against undesirable change—as a bulwark against chaos. This vision focuses on an additional function of constitutions, which is the entrenchment of certain rights, institutions, and principles against change through ordinary legal processes.⁴ The postwar German constitution, for example, purports to make its commitment to democracy *unamendable* in case that nation is ever tempted to bring back fascism.⁵ Likewise, the core function of our First Amendment is to make sure that even in a period of great suspicion of dissent—like the Red Scare in the late 1940s and early 1950s, for example—we don’t round up people of different views and lock them away.⁶ Constitutions are *conservative* documents in this sense: They protect our foundational institutions and commitments from change.

This conservative perspective on constitutionalism is importantly distinct from the usual understanding of “conservative” in contemporary political debates.⁷ The Republican party, for example, played a conservative role in the sense I mean it here by resisting sweeping attempts to overhaul the healthcare system, but there would be little conservatism in abolishing well-established government agencies, privatizing Social Security, or amending the Constitution to allow punishment of flag-burners. Conservatism as resistance to change is often associated with the British statesman Edmund Burke. Because Burkean conservatism focuses on the pace of change, it need not—and often does not—correlate with ideologies based on a particular conception of the good life.⁸ The old guard communists who resisted Mikhail Gorbachev’s radical reforms were conservative in this sense because they sought to maintain an established political and economic

4. This is not a *necessary* function of constitutions. The British Constitution has, with only the most modest (and controversial) qualifications, been thought to be subject to Parliament’s sovereign power to make or unmake any law. *See, e.g.,* A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 3 (Liberty Classics 1982) (1885).

5. *See generally* Ulrich K. Preuss, *The Implications of “Eternity Clauses”: The German Experience*, 44 *ISR. L. REV.* 429 (2011) (discussing the validity of an unamendable clause in the German Constitution).

6. *See generally* Vincent Blasi, *The Pathological Perspective and the First Amendment*, 85 *COLUM. L. REV.* 449 (1985) (“[T]he overriding objective . . . should be to equip the first amendment to do maximum service in those historical periods when intolerance of unorthodox ideas is most prevalent . . .”).

7. *See generally* Samuel P. Huntington, *Conservatism as an Ideology*, 51 *AM. POL. SCI. REV.* 454 (1957); Ernest A. Young, *Judicial Activism and Conservative Politics*, 73 *U. COLO. L. REV.* 1139, 1182–1203 (2002).

8. *See* Huntington, *supra* note 7, at 467–68 (distinguishing “situational” from “ideational” forms of conservatism).

order, even though communism is generally associated with radical change.

Burkean conservatism arises out of the view that human reason is inherently limited.⁹ No statesman, no matter how brilliant, can fully anticipate the results of even the best-intentioned reforms, and so we are well-advised to proceed incrementally and with great caution.¹⁰ Here is Burke on the foolhardiness of monkeying around with the basic structure of a political constitution:

An ignorant man, who is not fool enough to meddle with his clock, is however sufficiently confident to think he can safely take to pieces, and put together at his pleasure, a moral machine of another guise importance and complexity, composed of far other wheels, and springs, and balances, and counteracting and co-operating powers.¹¹

This is not to say that Burkeans would never support political or social change. Burke himself was one of the great reformers of his age. He was a Whig, not a Tory, and he fought in Parliament for reform in Ireland, India, and the American colonies.¹² Such reform must be careful to build on tradition and prescriptive wisdom, however. Above all, present-day reformers have no right to re-shape the state in their own image—to act, as Burke put it, as if they were the entire masters” of the State,

unmindful of what they have received from their ancestors or of what is due to their posterity By this unprincipled facility of changing the state as often, and as much, and in as many ways as there are floating fancies or fashions, the whole chain and continuity of the commonwealth would be broken.¹³

Sometimes conservatives like the late, great Justice Antonin Scalia, talk as if holding onto fundamental principles until they’re pried from

9. See generally Ernest A. Young, *Rediscovering Conservatism: Burkean Political Theory and Constitutional Interpretation*, 72 N.C. L. REV. 619, 644–47 (1994); see also J.G.A. Pocock, *Burke and the Ancient Constitution—A Problem in the History of Ideas*, in *POLITICS, LANGUAGE AND TIME: ESSAYS ON POLITICAL THOUGHT AND HISTORY* 202, 203 (1971) (observing that “Burke’s thought can . . . properly be set in opposition to any rationalist system of politics”).

10. See, e.g., Edmund Burke, *Reflections on the Revolution in France*, in 8 *THE WRITINGS AND SPEECHES OF EDMUND BURKE* 112, 217 (Paul Langford ed., 1989) (1791); Young, *supra* note 9, at 654–56.

11. Edmund Burke, *An Appeal from the New to the Old Whigs*, in 4 *THE WRITINGS AND SPEECHES OF EDMUND BURKE* 365, 472 (P.J. Marshall & Donald C. Bryant eds., 2015) (1791).

12. See generally CONOR CRUISE O’BRIEN, *THE GREAT MELODY: A THEMATIC BIOGRAPHY OF EDMUND BURKE* (1994); see also Young, *supra* note 9, at 653–54.

13. Edmund Burke, *Reflections on the Revolution in France*, in 2 *THE WRITINGS AND SPEECHES OF EDMUND BURKE* 1, 112 (E.J. Payne ed., 1888) (1791).

our cold, dead fingers is the *only* thing constitutions do.¹⁴ That’s not true. As I’ve already suggested, constitutions may spur and facilitate change by holding up aspirational values and providing institutional frameworks for reform. But Scalia was right to suggest that when the content of the Constitution *itself* becomes open to change, that may undermine the Constitution’s ability to preserve our most foundational commitments when circumstances arise that make those commitments unpopular.¹⁵ That is true whether we are talking about modes of constitutional interpretation—such as the debate between originalism and living constitutionalism—or altering the process of amendment.

Now one possible answer to all this is that Professor Mazzone is not necessarily advocating more frequent amendments to the Constitution. His proposal is simply that the sovereign People should be *asked*, every so often, whether they would like to have a constitutional convention to consider amendments. Mazzone does not necessarily think that we should actually have many such conventions, much less that they should adopt a great many amendments. The point is simply to prompt democratic deliberation about the desirability of amendment, rather than unthinking attachment to the current version. It is regrettable, to Mazzone, that “[l]arge portions of the American public (and their leaders) view the Constitution in sacred terms such that amending it is akin to sacrilege and even talk of amendment raises suspicions of treachery.”¹⁶ “By asking citizens to consider periodically whether the Constitution currently serves them well or should be reformed,” Mazzone writes, “the proposed amendment encourages the spread of information about the Constitution and provides an occasion for conversation and debate around its provisions.”¹⁷

Fair enough. But it is nonetheless fair to construe Professor Mazzone’s proposal as joining issue on the desirability of amendment in general for two reasons.¹⁸ The first is that the proposal may well lead to considerably more amendments than are likely under the current version of Article V. One of the principal obstacles to any potential amendment—much less to a constitutional convention—is getting it on the national agenda. When Texas Governor Greg Abbott proposed a

14. See, e.g., *Scalia Vigorously Defends a ‘Dead’ Constitution*, NAT’L PUB. RADIO, Apr. 28, 2008, <https://www.npr.org/templates/story/story.php?storyId=90011526>.

15. See *id.*

16. Mazzone, *supra* note 1, at 118.

17. *Id.* at 125.

18. Moreover, the desirability of amendment is an implicit premise of this entire conference, which tasked each invitee to offer a proposal for amendment.

constitutional convention of the states in 2016, few took the proposal as anything more than political grandstanding.¹⁹ The institutional barriers to a convention posed by Article V, which requires at least thirty-four states to call for a convention, are so daunting that we have never had one. Mazzone's proposal would guarantee a constitutional convention a spot on the agenda every twenty years, and a majority vote would be sufficient to hold one.²⁰ The proposal would thus profoundly shift the burden of overcoming inertia in favor of holding constitutional conventions.

Second, and equally important, the very idea that a national "conversation" about the desirability of the Constitution would be a good and salutary thing is antithetical to the sort of conservative constitutionalism I am espousing here. To be honest, Professor Mazzone's suggestion that Americans should get together every twenty years ago and deliberate about whether our existing institutional arrangements are good and worthy of continuance makes me wish that this conference's organizers had provided something considerably stronger than bottled water to drink. I tend to agree with James Madison that relatively unreflective loyalty to the Constitution is a feature, not a bug in our system. And I share his worry that "as every appeal to the people would carry an implication of some defect in the government, frequent appeals would in great measure deprive the government of that veneration, which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability."²¹

We live, moreover, in a time of extreme political polarization, in which both sides have strong incentives to pander to their bases and avoid compromise even on issues on which they might, in other circumstances, readily agree.²² The notion of a "loyal opposition," so vital to a well-functioning democracy, has virtually evaporated under

19. See GREG ABBOTT, RESTORING THE RULE OF LAW WITH STATES LEADING THE WAY 4 (2016), <https://www.documentcloud.org/documents/2680556-Abbott-Constitutional-Proposals.html>.

20. Professor Mazzone's proposal actually requires a double majority: a convention would have to be approved by majority vote in a majority of the states, and by a majority of the national vote as a whole. See Mazzone, *supra* note 1, at 121–22. Whether the latter addition would make much difference in practice is an open question.

21. THE FEDERALIST NO. 49 (James Madison).

22. See generally RONALD BROWNSTEIN, THE SECOND CIVIL WAR: HOW EXTREME PARTISANSHIP HAS PARALYZED WASHINGTON AND POLARIZED AMERICA (2007); MARC J. HETHERINGTON & THOMAS J. RUDOLPH, WHY WASHINGTON WON'T WORK: POLARIZATION, POLITICAL TRUST, AND THE GOVERNING CRISIS (2015).

both the Trump and Obama administrations. California has placed secession on the ballot and imposed a travel ban on publicly-funded travel to other states that it finds morally unsound. “Unthinking attachment” to the Constitution may be the last of the common ground that we have left. And encouraging highly partisan Americans to think hard about whether they really like the Constitution seems likely to undermine that last redoubt of common commitment. In this environment, my own impulse is to cling to the established Constitution as the only rock likely to last us through the storm. It is a singularly odd time to contemplate throwing open the doors to far-reaching institutional change.

In this regard, the most troubling line in Professor Mazzone’s paper is his suggestion that “[g]iving citizens an opportunity to affirm the Constitution in its existing form or proceed to a convention will mean also the Constitution is no longer the product of past generations: it becomes instead the work of the living.”²³ To be honest, I’m not at all sure I want the living anywhere near my Constitution. After all, the living gave us Donald Trump, Bernie Sanders, and Justin Bieber. More seriously, it’s not clear how much respect the living have for many of the constitutional values that I hold dear. For instance, survey data suggests that the millennial generation is far more willing than prior generations to limit offensive speech in ways that would plainly violate the First Amendment.²⁴ Much of the point of a constitution is to ensure that the vitality of principles like free speech do not fluctuate with the ebb and flow of popular opinion. I much prefer sticking with the opinions of the dead, as enshrined in our founding document.

Professor Mazzone does have one very fair rejoinder to all this, which is to suggest that the real choice is not between constitutional change and constitutional stasis, but rather between different *modes* of change. He observes, with much justification, that “while Article V’s procedures have been shut off, the Constitution has not stagnated. Instead, with textual amendments foreclosed, courts have gained power to adopt, in the name of constitutional interpretation, reforms they themselves view to be desirable.”²⁵ It seems likely that political

23. Mazzone, *supra* note 1, at 125.

24. Compare Jacob Poushter, *40% of Millennials OK with Limiting Speech Offensive to Minorities*, PEW RESEARCH CTR. (Nov. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/11/20/40-of-millennials-ok-with-limiting-speech-offensive-to-minorities/>, with *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (striking down St. Paul’s ordinance prohibiting certain forms of hate speech).

25. Mazzone, *supra* note 1, at 118–19. Professor Mazzone’s priors are evident in his use of

systems do inevitably give rise to a certain amount of pressure for change and reform, and that if efforts to amend the founding charter are stymied, pressures for change will, in hydraulic fashion, find some other outlet. And Mazzone is also right that this outlet has often been the courts.

It is hardly obvious, however, that at least some degree of judge-driven change is undesirable. Judicial change is generally—if not always—incremental, being limited by the norm that courts should only decide those issues necessary to resolve the dispute before them. And it is both retrospective and grounded in the particular factual circumstances of individual cases. Courts do not decide the meaning of individual rights, for example, in the abstract, but rather in concrete factual settings where the impact of those rights on competing values can be more readily gauged.²⁶ And as Barry Friedman has shown, the courts are hardly unresponsive to democratic opinion over time²⁷—albeit usually with a lag that may, from a conservative perspective, be salutary.

One can exaggerate, moreover, the extent to which the alternative to textual amendment is simply judicial activism. Many, if not most, of the most fundamental changes in our institutional arrangements over the past two and a quarter centuries have been effected *neither* by textual amendments nor judicial pronouncements. Consider, for example:

- the acquisition of the vast majority of U.S. territory;
- the development of the administrative and regulatory state;
- the creation of an important range of financial institutions designed to solidify the government's finances and regulate the economy, beginning with the Bank of the United States and leading up to the FDIC, the FSLC, and the Federal Reserve;
- the establishment of broad rights to income security in old age, access to healthcare, and a clean environment; and

the term “stagnated” as a synonym for “remained unchanged.” Whether the absence of change is “stagnation” or something rather more attractive, like “endurance,” of course depends on whether the initial conditions were good or bad—and on whether changes in those conditions are more likely to make them better or worse.

26. See, e.g., ALEXANDER BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* 25–26 (1982); Young, *supra* note 9, at 680–81.

27. See generally BARRY FRIEDMAN, *THE WILL OF THE PEOPLE: HOW PUBLIC OPINION HAS INFLUENCED THE SUPREME COURT AND SHAPED THE MEANING OF THE CONSTITUTION* (2009).

- in foreign affairs, the negotiation of broad treaties creating powerful alliances, recognizing human rights, and imposing regulatory standards, and the development of extensive institutional bodies to implement, interpret, and enforce these provisions.

In each of these instances, the changes were not clearly provided for or contemplated in the Constitution. And neither were these changes effected by courts. In some cases, the courts issued decisions—either right away or belatedly—declining to get in the way, but that is hardly the same thing as saying that the change was effected by judicial decision. In *McCulloch v. Maryland*,²⁸ for example, the Court approved the creation of the Bank of the United States and set a precedent for creating powerful successor institutions like the Federal Reserve that profoundly shape our current life. But *McCulloch* neither mandated the Bank nor removed some obvious constitutional impediment that, prior to the Court’s action, would have foreclosed it. The Court simply confirmed that whether to take this step was up to Congress.

All of the changes noted above are “constitutional” in the sense that they are important changes to our basic institutional arrangements. As such they implicate the “constitutive” function of constitutions.²⁹ But our constitutional document takes no position on whether there should be a Bank of the United States, a Federal Reserve, or similar institutions. It neither explicitly authorizes nor forbids the acquisition of new territory. As I have argued in much greater detail elsewhere, the great majority of institutional change over our history has not occurred through textual amendment or through judicial interpretation; rather, it is made possible by the sheer number of questions on which the Constitution entrenches no particular answer.³⁰ One can thus recognize that some change in our basic institutional arrangements is both necessary and inevitable without embracing either judicial activism or easier textual amendment.

If anything, the problem we’re having is not that it’s too hard to amend the Constitution; it’s that under circumstances of partisan gridlock, we can’t manage to amend *statutes*. We can’t amend Social Security or any of the other entitlement programs in order to put them on a sound financial footing. We can’t amend the immigration laws to either toughen them up or grant a path to citizenship for people who

28. 17 U.S. (4 Wheat.) 316 (1819).

29. See Raz, *supra* note 2, at 153–54; Young, *supra* note 3, at 417–22.

30. See Young, *supra* note 3, at 455–59.

came here illegally. And because we can't pass or amend statutes, we have massive fights about executive power because the President tries to do everything unilaterally with his pen and his phone.³¹

Professor Mazzone might respond that that's why we need to make it easier to amend the Constitution: so that we can amend the national lawmaking process and make it easier to change federal laws. But the roots of our governance crisis are in pathologies of American politics—the polarization of national politics and its elimination of incentives for compromise—not in the unamendable Constitution. Even where politicians take shortcuts to lawmaking, such as President Obama's executive actions on climate and immigration, the swings in control of the executive branch that characterize a 50-50 nation mean that those actions will often be reversed from one administration to the next. In any event, I want to address a more fundamental point, which is that even if Mazzone *did* succeed in establishing a more fluid process of political change, he is entirely too sanguine in thinking that this would most likely be a good thing.

Opponents of constitutional conventions have long warned about “runaway” conventions that might threaten our basic liberties.³² Professor Mazzone's doesn't say much to calm these fears; mostly, he stresses that any amendment coming out of a convention—runaway or otherwise—would still have to overcome the super-majority requirements for adoption of resulting amendments.³³ That is certainly true, and it's why I doubt that even if a convention were called it could overcome the pathologies of American politics that produce gridlock in our other institutions. But in that case the proposed amendment to Article V wouldn't achieve any of its proponents' aims.

If we are to adopt an amendment making it easier to call conventions, however, it seems fair to ask whether such conventions would produce good amendments or bad. And so a real answer to the runaway convention point requires some confidence in the convention

31. See generally Margaret H. Lemos & Ernest A. Young, *State Public Law Litigation in an Age of Polarization*, __ TEX. L. REV. __, (forthcoming 2018) (describing how executive unilateralism tends to result from legislative gridlock under conditions of partisan polarization).

32. See, e.g., Wash. Post Editorial Bd., *We're Surprisingly Close to Our First Constitutional Convention Since 1787. Bad Idea.*, WASH. POST (Apr. 6, 2017), https://www.washingtonpost.com/opinions/were-surprisingly-close-to-a-new-constitutional-convention-bad-idea/2017/04/06/f6d5b76a-197d-11e7-855e-4824bbb5d748_story.html?utm_term=.f906fff477cc; David A. Super, *A Constitutional Convention is the Last Thing America Needs*, L.A. TIMES (Mar. 15, 2017), <http://www.latimes.com/opinion/op-ed/la-oe-super-constitutional-convention-20170315-story.html>; see also Mazzone, *supra* note 1, at 135 (noting this concern).

33. See Mazzone, *supra* note 1, at 124.

participants' ability to distinguish between them. Professor Mazzone's proposal only makes sense if he thinks that the really valuable aspects of our constitutional tradition—such as its protection of our basic liberties—have sufficient popular support that they have little to fear from a convention.

Maybe that's right—I hope it is. But the primary office of this response to Professor Mazzone is to offer reasons to worry, and on this point I want to suggest two. First, many of our present political discontents involve conflicts *among* basic liberties. Increasing numbers of young people now think that free speech rights should give way to rights of racial (and perhaps other forms of) equality.³⁴ Many progressives seem to think that religious free exercise rights should be limited in favor of claims to reproductive choice or sexual autonomy.³⁵ Partisans these days seem to have little trouble limiting constitutional liberties when it is in service of other liberties that they hold more dear. Under current conditions, there is no reason for confidence that a convention would not propose limitations on important civil liberties.

The second worry is that even if amendments largely avoided direct monkeying with individual rights, they might well still pose a threat to liberty. It is probably true that the most likely amendments to come out of a convention would focus on the structure of government, rather than diluting or repealing individual rights. Amendment hawks tend to think that our government processes are dysfunctional, so they often want to water down aspects of federalism or separation of powers in order to grease the wheels of governance.³⁶ This sort of change worries me far more than alterations to particular individual rights provisions. That is because our Founders envisioned the constitutional *structure* as providing the primary safeguard for liberty; to framers like Madison and Hamilton, the Bill of Rights was a constitutional afterthought.³⁷ And although our history has proven the benefits of separate and explicit protections for particular individual rights, there is no good

34. See Poushter, *supra* note 24.

35. See, e.g., *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2799–801 (2014) (Ginsburg, J., dissenting) (preferring interests in reproductive health to religious free exercise); Doug Laycock, *The Wedding-Vendor Cases*, 41 HARV. J.L. & PUB. POL'Y 49, 50–52 (2018) (describing the progressive view that no exceptions for religious dissenters should be made to public accommodations protections for same-sex couples).

36. See, e.g., SANFORD LEVINSON, *FRAMED: AMERICA'S 51 CONSTITUTIONS AND THE CRISIS OF GOVERNANCE* 1–15 (2012) (blaming the structural features of the existing Constitution for America's present governmental dysfunction).

37. See, e.g., Ernest A. Young, *Federalism as a Constitutional Principle*, 83 U. CIN. L. REV. 1057, 1059–61 (2015).

evidence to suggest that these protections have been as important—much less that they could substitute for—the structural constraints hardwired into the frame of government. The constitution of the Soviet Union, after all, had admirable individual rights provisions too.³⁸ And because structural provisions in constitutions are so interdependent,³⁹ it is difficult to predict the systemic effects of seemingly benign changes. Our system of federalism and separation of powers is Burke’s clock on a vast scale.

When Governor Abbott made his proposal for a constitutional convention, my dear friend Sandy Levinson was unable to resist offering his own variant on Burke’s cautions about constitutional clock repair. He cautioned that constitutional amendment is like tampering with a sweater: “You see a thread loose, and you pull at it, then you discover that the whole arm is falling off because things are connected to one another.”⁴⁰ This was an extraordinary statement from Professor Levinson, who is possibly the most anti-Burkean sort that I know,⁴¹ and it underscores the risks inherent in constitutional conventions regardless of one’s political predispositions. I can imagine other circumstances—a different set of founders, a more circumspect contemporary generation—in which one might turn over the constitutional structure to the living with more confidence. And I can imagine a set of institutional arrangements—the persistence of slavery, perhaps, or widespread restrictions on the suffrage—in which radical change might be called for. But these are not our circumstances. And while I am grateful for the opportunity for thought afforded by Professor Mazzone’s stimulating proposal, I hope that it will remain academic.

38. See, e.g., 1936 CONSTITUTION OF THE U.S.S.R. (Dec. 5, 1936), ch. X, art. 124 (guaranteeing “[f]reedom of religious worship”); art. 125 (guaranteeing “freedom of speech” and “freedom of the press”); art. 128 (guaranteeing “inviolability of the homes of citizens and privacy of correspondence”), <https://www.departments.bucknell.edu/russian/const/36cons04.html#chap10>.

39. Cf. Vicki C. Jackson, *Narratives of Federalism: Of Continuities and Comparative Constitutional Experience*, 51 *Duke L.J.* 223, 273–74 (2001) (noting that the federalism provisions of different constitutional orders often exist as parts of “packages,” and that it can be hard to tease out the significance of individual provisions in this context).

40. Quoted in Edgar Walters, *In 90-Page Proposal, Abbott Asks States to Amend U.S. Constitution*, *TEX. TRIB.* (Jan. 8, 2016), <https://www.texastribune.org/2016/01/08/abbott-calls-states-amend-us-constitution/>.

41. Indeed, Professor Levinson has repeatedly called for a constitutional convention himself. See, e.g., Levinson, *supra* note 36, at 391. But even dangerous radicals sometimes come to their senses.