

GOP 'Contract with America' aimed at U.S. Constitution

by Nancy and Edward Spannaus

Voices from academia and Congress have been increasingly raised in opposition to provisions of the Republican Party's "Contract with America" that reduce the constitutional powers of the federal government. Garry Wills, a historian and author, wrote in the Jan. 8 *Washington Post* that among the provisions that are unconstitutional are the line-item veto, the requirement for a three-fifths majority to pass an income tax increase, term limits, and the demand to end "unfunded mandates" (payments which the states are mandated by the federal government to meet, but for which money is not provided). Wills noted poignantly that the prohibition of unfunded mandates (which apparently exempts civil rights legislation) would make the Bill of Rights into a "bill of costs."

Some congressmen are apparently also planning to bring legal action against some of these aspects of the Contract, claiming them to be unconstitutional.

The whole discussion of "getting government off our backs" shows how far the U.S. electorate and politicians have come from the ideas and history which inspired the adoption of our Constitution. What they are proposing, would take us back, in effect, to the Articles of Confederation—a government of anarchy and impotence which prompted the framing of the Constitution to begin with.

Articles of Confederation

The second Continental Congress, charged with fighting the war of independence against Great Britain, set to work early on to fashion a form of central government for the 13 former colonies. The Articles of Confederation were devised and sent in November 1777 to the states for ratification, but the ratification was not completed until March 1781—six months before the final battle of the war.

In fact, the powers granted to the central government under the Articles of Confederation were so restricted that, once the immediate need to fight the British Army ended, the Congress became weaker and weaker. The Congress had the sole right of determining war and peace, ratifying treaties, running the Post Office, and regulating the value of coin and the standard of weights and measures. But Congress lacked the minimum threshold of sovereignty, primarily the power of taxation.

Alexander Hamilton, in a series of articles called "The Continentalist," which he circulated in 1781-82, defined this lack as the central issue:

"The great defect of the confederation is, that it gives the United States no property; or, in other words, no revenue, nor the means of acquiring it, inherent in themselves and independent on the temporary pleasure of the different members. And power without revenue, in political society, is a name." (No. IV, Aug. 30, 1781)

The Congress's lack of revenue—either through taxation, which had to be carried out by the states, or through duties on imports and exports—had potentially very serious consequences at that time. First, and especially relevant to the proposals being put forward by the Conservative Revolutionists today, was the requirement for a two-thirds majority to pass any important legislation in the Continental Congress; under this rule, any five of the states could defeat the most urgent measures. This meant that these states could, and did, sabotage the adoption of revenue measures which were required to pay the Army, for example. One result of the lack of central government funds was Valley Forge; another was a near-mutiny in 1783.

The confederation's weakness also prevented the United States from protecting itself from the free-trade deprivations of the European powers. In the effort to prevent the central government from having a revenue source, the power to tax exports and imports was retained in the states. But that meant European powers could and did flood the United States with cheap goods, creating a near-impossible situation for the manufacturing industries that had grown up during the war. Hot war was replaced by trade war.

The Articles of Confederation also prevented the Congress from enforcing obedience to any measures that might have passed the required number of states. Therefore, if a state fell behind in providing revenues it had promised, there was nothing Congress could do.

Moves to remedy the defects

No one was more eloquent in pointing out the dangers inherent in the Articles of Confederation than Hamilton. He warned Congress constantly of the danger to the United

States' ability to defend itself from the ongoing military threat, as well as the commercial war which the European powers, especially Britain, were waging.

In "Resolutions for a General Convention" presented on June 30, 1783 to the Congress, Hamilton outlined 12 of the defects of the Articles, which, he argued, jeopardized the "common welfare and defense" of the nation. Some are still quite relevant to today's debate:

"Firstly, and generally: In confining the power of the Federal Government within too narrow limits; withholding from it that efficacious authority and influence, in all matters of general concern, which are indispensable to the harmony and welfare of the whole; embarrassing general provisions by unnecessary details and inconvenient exceptions incompatible with their nature, tending only to create jealousies and disputes respecting the proper bounds of the authority of the United States, and of that of the particular States, and a mutual interference of the one with the other. . . .

"Eleventhly: In requiring the assent of *nine* States to matters of principal importance, and of seven to all others, except adjournments form day to day; a rule destructive of vigor, consistency, or expedition in the administration of affairs; tending to subject the sense of the majority to that of the minority, by putting it in the power of a small combination to retard, and even to frustrate, the most necessary measures; and to oblige the greater number, in cases which require speedy determinations, as happens in the most interesting concerns of the community, to come into the views of the smaller; the evils of which have been felt in critical conjunctures, and must always make the spirit of government a spirit of compromise and expedient rather than of system and energy."

The new Constitution

The 1787 Constitutional Convention created a new fundamental framework for the U.S. government, which was intended to permit the rapid growth of a strong and prosperous United States. This included a federal government with sovereign powers over credit, currency, and trade, and the powers to promote industrial and agricultural prosperity through tariffs, internal improvements (infrastructure), and a national bank. "Under a vigorous national government, the natural strength and resources of the country, directed to a common interest," would, in Hamilton's words, "baffle all the combinations of European jealousy to restrain our growth." (*Federalist* No. 11).

Europe had attempted to extend its domination over much of the world, Hamilton argued, and it considered "the rest of mankind as created for her benefit." Union, under the new Constitution, would mean that the 13 states would cooperate "in erecting one great American system superior to the control of all transatlantic force or influence and able to dictate the terms of the connection between the old and the new world."

One of the provisions adopted by the Constitutional Convention, apparently without debate, was the following: "The Legislature of the United States shall have the power to lay and collect Taxes, Duties, Imposts and Excises to pay the Debts and Provide for the common Defense and general Welfare." This of course echoes the "general Welfare" clause of the Preamble, one of the most noble and distinguishing characteristics of the U.S. Constitution.

In the new Constitution, although for certain specific actions, a two-thirds majority was required (such as to initiate a constitutional amendment, to override a veto, to approve a foreign treaty), it does not appear that such a provision was even proposed with respect to taxation.

It is most telling that the "general Welfare" clause was deliberately excised from the Confederate Constitution—both from its preamble, and from Article I, Section 8. Likewise, the Confederate Constitution *did* provide for the line-item veto, and it was a "free-trade" constitution which prohibited protective tariffs which would be used "to promote or foster any branch of industry," as well as federal financing of internal improvements. (It could have been written in London.)

Foreign corruption

In the *Federalist* papers, written to win popular support for the Constitution, Hamilton again expounded at length on the defects of the Articles of Confederation. Among these, he argued, was that giving each state—from the largest to the smallest—equal representation, contradicted "that fundamental maxim of republican government, which requires that the sense of the majority should prevail." The majority of states could constitute "a small minority of the people of America," and "two-thirds of the people of America could not long be persuaded . . . to submit their interests to the management and disposal of one-third." (*Federalist* No. 22.)

In an argument which is quite appropriate to those who are today demanding a "super-majority" to raise taxes or "unbalance" the budget, Hamilton wrote:

"To give a minority a negative upon the majority . . . is, in its tendency, to subject the sense of the greater number to that of the lesser number." The real effect of this sort of thing, he argued, would be "to embarrass the administration, to destroy the energy of the government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto to the regular deliberations and decisions of a respectable majority."

Furthermore, argued Hamilton, this would open the door to foreign corruption of the legislature—an exceedingly important point today, when much of the Republicans' "Contract with America" comes out of the London-connected network of institutes and think-tanks associated with Friedrich von Hayek, the Mont Pelerin Society, and of course the British-spawned Heritage Foundation.