

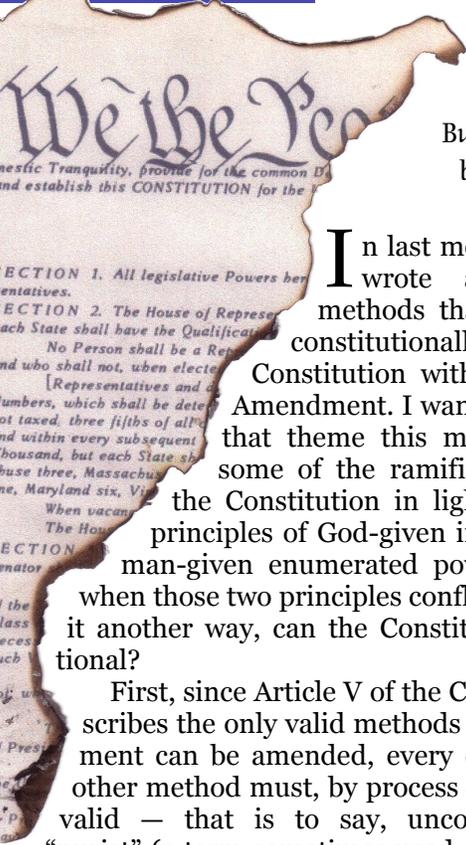
# LIBERTY TREE

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## HOUSE DIVIDED

Editorial by Dick Greb

But Jesus knew their thoughts, and said to them, Every kingdom divided against itself, is brought to naught, and every city or house divided against itself shall not stand.<sup>1</sup>



In last month's Liberty Tree, I wrote about the corrupt methods that were used to unconstitutionally amend the U.S. Constitution with respect to the 14<sup>th</sup> Amendment. I want to continue on with that theme this month by considering some of the ramifications of amending the Constitution in light of the underlying principles of God-given inalienable rights and man-given enumerated powers. What happens when those two principles conflict? Or, maybe to put it another way, can the Constitution be unconstitutional?

First, since Article V of the Constitution itself prescribes the only valid methods by which that instrument can be amended, every change made by any other method must, by process of elimination, be invalid — that is to say, unconstitutional. Now a “purist” (a term sometimes used of me by friends who perhaps just don't want to have to say that I'm an unrealistic nit-picker) may say that in such cases, the Constitution

hasn't really been changed at all, and therefore, is not unconstitutional, and, in theory of course, I would agree. However, being a purist doesn't prevent me from seeing the reality of the situation, which is that the Constitution, for all intents and purposes, *has* often been modified, whether validly or otherwise.

### 'POLITICAL QUESTION' DODGE

As far as the Supreme Court is concerned, the remedy for this situation is a political one, by which they mean the people will have to use the cumbersome amendment process in order to remove changes made by legislators who themselves refused to follow that process. This is really just a less condemning way of saying that they're unwilling to honor their oaths to preserve, protect and defend the Constitution, and will instead uphold the criminal acts of

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1. Matthew 12:25 (1599 Geneva Bible)



## Save Our Station!

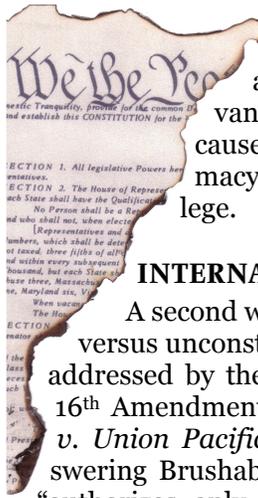
**Liberty Works Radio Network is currently under attack. Without your immediate help, we may well not survive another month.**

This attack is being carried out against our flagship radio station WOGF (formerly WIFL) in central Florida. In our next edition of the Liberty Tree, we will get into the specifics of our present problems, and what we are doing, and must do, to defend ourselves. But in the meantime, our defense, like everything else, costs money.

Unfortunately, the level of support that we currently receive barely covers the normal operating expenses of LWRN. Therefore, these additional ex-

penses are a serious threat to the continued existence of Liberty Works. We understand that times are tough for everybody and that many of you are already doing all you can to support our efforts.

But if you recognize the importance of what we are trying to accomplish with Liberty Works Radio Network, and are financially able to help, **NOW is the time.** Please send whatever you can afford to help us through this perilous time, so we can keep the dream of Liberty Works alive!



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the government of which they are an integral part. What a decisive advantage it is to be the judge of your own cause! Such an impressive façade of legitimacy you can create with this unique privilege.

### INTERNAL CONSISTENCY

A second way in which this idea of constitutional versus unconstitutional changes has manifested was addressed by the Supreme Court with respect to the 16<sup>th</sup> Amendment in the well-known case, *Brushaber v. Union Pacific Railroad* 240 U.S. 1 (1916). In answering Brushaber's contention that the amendment "authorizes only a particular character of direct tax without apportionment," Chief Justice White said:

But it clearly results that the proposition and the contentions under it, if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result, instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion. *Id.*, p. 11 (emphasis added)

Justice White, recognizing the conflict between the original taxing clauses of the Constitution and a construction of the 16<sup>th</sup> Amendment as authority for a direct income tax, construed the amendment so as to preclude the conflict. Now, it just so happens that that construction was the one contemplated by Congress, which, relying on Supreme Court pronouncements since the time of *Hylton*<sup>1</sup> in 1796, had always considered an income tax to be indirect. It therefore considered the *Pollock*<sup>2</sup> decision, which struck down the 1894 income tax as a direct tax without apportionment, to be an aberrant departure from that longstanding precedent, and intended the amendment to remedy that deviant decision. Thus, *Brushaber* restored the *status quo* of an indirect income tax that had been disturbed by *Pollock*.

That being said, it may be instructive to contemplate a hypothetical situation in which Congress *did* intend to create a direct income tax not subject to apportionment. Notice that in White's statement above, the constitutional conflict would arise only because the original provision

With a mix of straight talk and folk song, retired Baltimore City police officer Pete Richter brings the "story from the other side of the badge" to Liberty Works Radio Network every Saturday evening at 6 PM EST.

The self-described "old-timer" — still married to high school sweetheart Barbara — hit the bricks of Baltimore on foot in 1965 in the tough Eastern District ghetto. After retiring from the police force, he went on to establish two businesses — a carpet cleaning company and a security property management business. Along the way, he began entertaining folks with his singing and guitar playing.

In 2010, Pete ran as a Constitution party candidate for Sheriff of Queen Anne's County, Maryland. He vowed to expose any and all corruption that would come to his attention. He said his deputies would be taught to respect the Constitutionally secured rights of all legal citizens. He promised the citizens that if elected, his deputies would only stop citizens if they observed a traffic or a criminal violation first. All searches would have to be conducted in accordance with the law.

God didn't call the law he gave Moses the "Ten Suggestions," says Richter, and the same goes for the Constitution of the United States — it's the law.

Pete's show is informative, discussing current problems we all face from the misuse of both the State and Federal governments. But he also entertains by sharing his musical talents. This show is a must; listen to it once, and you're sure to tune in again.

## Saturday nights heat up with the wit and wisdom of Pete Richter.



required *all* direct taxes to be apportioned, and the term 'all' doesn't allow for exceptions. Unless, of course, those exceptions are specifically and explicitly laid out in the same constitution. In other words, if the amendment explicitly amended the original taxing provisions so as to allow for a direct income tax without apportionment, then no conflict would exist. This would be so even if the result of such an amendment was exactly as White foresaw — that is, the authorization of "a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states."

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1. *Hylton v. U.S.*, 3 U.S. 171 (1796).

2. *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895).

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After all, if the power existed to delegate any taxing power to the federal government, the conditions under which it would be allowed to operate would depend solely on what could be agreed upon. So, while the fact that it might “create radical and destructive changes in our constitutional system” should be a factor in whether or not the amendment was *prudent*, it would not be a factor in whether or not the amendment was *valid*.

It makes me wonder how the Supremes would handle a situation in which a conflict did actually exist. If, in the above example, the amendment was worded such as to specifically call for a direct income tax without apportionment, but without explicitly stating the necessary exception to the general rule for direct taxes (that they must be apportioned), would the Supremes invalidate the *amendment* on that basis, or would they merely accommodate an *implied* change in the general rule? However interesting that might be, if we’re going to contemplate hypothetical situations, it would behoove us to concentrate on ones with a higher probability of coming to pass.

## BUT WHAT CAN SAVE-A-PATRIOT

# DO?

In 2008, the U.S. District Court in Baltimore permanently enjoined Save A Patriot Fellowship from assisting Fellowship members in writing letters to the IRS, writing letters to third parties with respect to certain IRS matters, and even from disseminating information regarding the income tax laws or maintaining a program in which members can financially assist one another.

So it isn’t surprising when members and people who find the Fellowship’s website or hear about the Fellowship ask us: What can Save-A-Patriot DO for me? **And the answer is — more than you might imagine.**

In fact, Save A Patriot Fellowship stands ready to assist with any state or local taxing problems, citations, tickets, licensing issues — any area where state or local government bureaucrats are interfering with patriots’ freedoms or misapplying the law, and where legal research could help clarify the situation. SAPF is also willing to assist with federal matters other than IRS income tax issues, and can help with Freedom of Information Act requests and Privacy Act Requests for information (even from the IRS disclosure office).

Finally, SAPF has years of experience with IRS policies and procedures, and can help you *understand* the methods of the IRS. So please call with your questions and problems. *We are still here* to help save patriots.

## STILL BAD

This brings us to the third category of invalid amendments — those that are invalid despite having been properly adopted, and without apparent conflict with existing provisions of the Constitution.

An amendment of this type is one which tries to do something for which no power exists in the first place, such as one which directly violates our God-given rights. Maybe the simplest example of this type would be a constitutional amendment that repeals the 2<sup>nd</sup> Amendment. As much animosity as our various levels of government show for our right to keep and bear arms now, just imagine how it would be if only they could remove that provision. Certainly, the state governments could not be relied upon to prevent passage of such an amendment. On the contrary, many state legislatures would likely be quite eager to do away with that pesky 2<sup>nd</sup> Amendment, perhaps even making it one of those rare occasions that illegal methods weren’t necessary to secure passage. Yet, even if they managed to do so, would such an amendment be constitutional?

## THE NATURE OF RIGHTS

To answer that question, first we must consider the nature of the Bill of Rights, of which the 2<sup>nd</sup> Amendment is a part. The Bill of Rights is unique in that, in a narrow sense, it is an unnecessary part of the Constitution. The federal government is one of delegated powers, and the Constitution is the instrument by which those powers are delegated to it. Therefore, any power not specifically granted to the federal government in the Constitution is, by that omission, prohibited to it. Since it delegates no powers, and the prohibitions it enumerates are already manifested by the lack of a positive grant of power to do such things in the first place, then some may view the Bill of Rights as superfluous.

But in a broader sense, the Bill of Rights does indeed perform a necessary function, in that it restricts the *means* by which the enumerated powers are exercised. In other words, even the legitimately granted powers must be exercised in a manner that doesn’t violate the prohibitions of the Bill of Rights. Using the 2<sup>nd</sup> Amendment as an example, not only is the government prohibited from directly infringing our right to keep and bear arms, it is also prohibited from indirect infringements, such as might result from an overzealous regulation of interstate commerce.

It’s important to remember, though, that the 2<sup>nd</sup> Amendment doesn’t *grant* us the right to keep and bear arms; it merely enumerates it as one that must be protected. Rather, that right is a corollary to our God-given right to life — the inalienable right to protect and preserve the precious gift of life bestowed on each of us by our Creator.

Technically speaking, since that right doesn’t flow from the 2<sup>nd</sup> Amendment, simply repealing said amendment would have no legal effect on our right to defend our lives

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# Patriot movement loses a hero

**O**n December 28th, 2010, a great hero died in prison. Dick Simkanin, who spent seven years in a filthy government cage because he had the integrity to actually pay the people who worked for him 100 percent of what he promised them, went to his reward with that integrity intact.



Patriot Dick Simkanin as he appeared in June 2010, speaking during his all-too-brief release from prison.

Simkanin, former owner of Arrow Plastics in Bedford, Texas, refused to withhold federal income taxes from his workers. Found guilty by a federal jury in 2004 on multiple tax-related counts, he had been released from prison earlier this year in June, but was arrested and jailed again a few short days later for refusing to meet with the probation officer after his release.<sup>1</sup> The unrepentant, dishonorable Judge McBryde<sup>2</sup> sentenced him to an additional seven years for violating probation.

Like Vivian Kellum many years before him, Dick Simkanin stood up for all American workers and business owners in 2000 when he stopped participating in the withholding racket, convinced that he had no busi-

ness being an unpaid bookkeeper for the federal government.

We thank God for Dick's courage even as we see what it cost him. Even with the ignorance of juries today, the Department of Injustice had to violate the principle of double jeopardy three times in order to indict him. Not one, but *two*, grand juries who heard him speak refused to indict. Finally, when the prosecutor was able to prevent Simkanin from appearing before a *third* grand jury, the government got its indictment.<sup>3</sup> Similarly, when his first trial resulted in a hung jury, the federal government proceeded with a second trial, this time denying him most of the defense allowed at the first trial, in order to achieve a guilty verdict.

"Dick was well spoken, not arrogant, very friendly ... He was one of the very good guys in this fight for the truth ... [he] chose to fight for the truth as he knew it to the end," wrote Ralph Winterrowd in an email to patriots.

A commenter on [dailypaul.com](http://dailypaul.com) noted on December 30: "I didn't know about this man; how many more are there about whom I have no knowledge?! This makes me angry." Indeed, the mass media deliberately avoids exposing such government corruption, as does much of the alternative media. How will they hear unless there is a medium like LWRN? For all those like Dick Simkanin, LWRN is here to make known their courage and struggle for the truth.

So rest in peace, Dick Simkanin. And may your fighting spirit continue on in us.



To learn more about Dick Simkanin, and to hear him speak for himself, visit these links:

[www.independentamerican.org/2010/07/09/dick-simkanin-speaks-out](http://www.independentamerican.org/2010/07/09/dick-simkanin-speaks-out)  
[www.givemeliberty.org/rtplawsuit/Update04-Jan-10.htm](http://www.givemeliberty.org/rtplawsuit/Update04-Jan-10.htm)  
[dicksimkanin.com](http://dicksimkanin.com); [www.schinz.wordpress.com](http://www.schinz.wordpress.com)

1. Not really a good move.
2. To understand McBryde's corruption, visit the link to [givemeliberty.org](http://givemeliberty.org), see left column.
3. Ironically, prosecutor David Jarvis condemned *himself* at the trial when he told jurors Simkanin should be found guilty for playing "fun and games with the laws of the land." ([www.wnd.com](http://www.wnd.com), 1/08/04)

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with firearms (or any other means). In reality, however, such a repeal would make it harder to prevail against gun control legislation when litigants must argue from a standpoint of inherent rights, rather than constitutionally protected rights. Especially since it's a pretty safe bet that the Supremes would stick to their "political question" dodge, with that question being deemed to have been answered by passage of the amendment itself.

## RADICAL AND DESTRUCTIVE CHANGES

Taking this scenario one step further, imagine the consequences of an amendment that not only repealed the 2<sup>nd</sup> Amendment, but explicitly prohibited the ownership of firearms. This type of amendment would do exactly what Justice White warned of — "create radical and destructive changes in our constitutional system." The Constitution, established to "secure the Blessings of Liberty," if ever

changed so as to attack our Liberty instead, would become a house divided against itself. And as Christ said, a house divided against itself shall not stand, but is brought to naught.

The overt nature of the Constitutional amendment process may in itself be enough to prevent attacks on our rights being made in that way. Such attacks are more likely to continue to be piecemeal, by way of normal legislative acts, which can be more easily kept out of the public eye, and which are willingly upheld by corrupt courts. After all, small steps in the wrong direction are less likely to raise an outcry, and so are an effective means for steering good towards evil. That's why we must educate ourselves and others to recognize each small step against our liberties, so that we can turn around before we get too far off course. You can help us do just that by listening to and supporting Liberty Works Radio Network, and encouraging others to do the same.

