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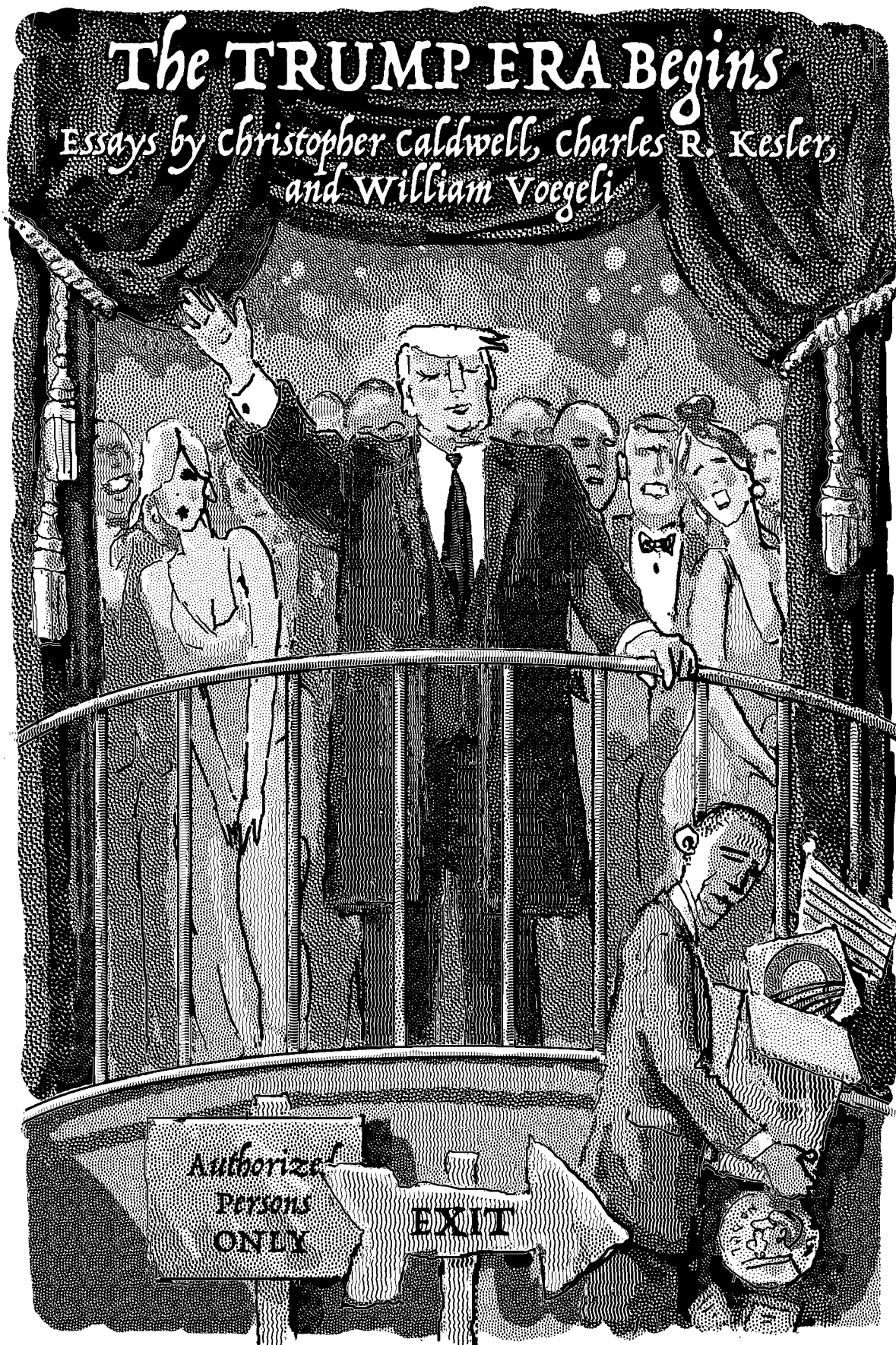
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## An Article V Convention

THE AMERICAN CONSTITUTION (AN ANCIENT DOCUMENT THAT annoyingly hobbled the genius of Barack Obama) is as abused as one might expect of something splendid that excites the envy and ire of those who willfully misunderstand the long history to which it has brought its bright and cleansing light. It prevents those who live to command from ruling like the kings and saints they think they are. It frustrates those who mistakenly attempt to govern man analogously with the physical principles that govern nature. Whether progressives, Communists, socialists, or fascists, the arrogant engineers of humanity are naturally averse to a document that, though it is more excellently reasonable than they are, is a work of art compatible with human nature rather than destructive of it.

The Constitution of 1787 is the product of the philosophical climate of the Enlightenment, a meticulous review of classical history, the evolution of the English legal system, the stress of war and revolution, the physical and political geography of the colonies, the rare brilliance of the leading figures of the time, and, in the last third of the 18th century, a widespread frenzy of constitution-making and debate that became a national pastime replaced only later by the invention of baseball.

Hardly ignorant of unforeseeable circumstance, the framers constructed a system so supple as to accommodate changes over time. In that its principles and procedures must be applied in ever-changing conditions, it is indeed a living document, but not as defined by progressives, who are expedient to the point of recklessness in the belief that varying circumstances should act upon principles rather than the other way around. Though we live in an age in which the most superficial flickers of the present are wielded as instruments with which to wreck the profundities of the past, it is still stunning to hear, for example, the argument that, because the framers didn't have to buy television time, freedom of speech may therefore be abridged.

The heart and sin of modernist political thought is that transient circumstance has license to alter proven principles. This arises not merely from opposition to such principles but from an insatiable lust for chaos, in that chaos is as much the handmaiden of change as principle is its sobering impediment.

Under Article V of the Constitution, amendments may be proposed either in Congress or by a convention of the states called by two thirds of the 50 state legislatures. (In either case, any proposed amendments would need approval of three fourths of the state legislatures to be valid.) Given that no one is entirely exempt from the pull of the present, should constitutionalists live to see an Article V convention, they must be disciplined. Not only must they take care not to lard-up the document with pet causes, making it the statutory instrument it was never meant to be, but in making appropriate changes they should balance and counter-balance the impulses of the moment. Two brief examples:

Because the executive branch has molted into a near-Prussian administrative state, and the judiciary long ago succumbed to leg-

islative temptation, two correctives have been proposed. Namely, submission of executive rules and regulations for legislative approval, and the abolition of judicial review.

As much as rebalancing the branches of government is necessary, keep in mind that the tectonic shift from a parliamentary to a written, constitutional system ended in America the British legacy of legislative supremacy. As each component of government must be able to check the other, active legislative review of executive regulation, now long overdue, should not be absolute. Perhaps it could be balanced by presidential veto reversible by something less than a super-majority.

Without judicial review, the equilibrium of courts and legislature shifts too much to the latter. As the judiciary now legislates at will, it cries out for restraint, such as the possibility of overriding judicial review not only by constitutional amendment but, for example, by a super-super-majority in Congress.

ANTICIPATION BEYOND THE PASSIONS AND PROBLEMS OF THE day would honor the framers, who looked not only back but ahead—as should we in seeking to restrain the organs of government that have leapt their confinements. Rather than merely rebalancing in the present, as difficult as that may prove to be, constitutional revision should have as its goal foresight of potential imbalances and their consequences. Impetuous reform might lead in directions such as the legislative preponderance that upon the birth of the written Constitution we chose to abandon.

In granting powers to government, the people should always err on the side of caution and restraint. Nor should the people even in this scientific age hesitate to champion artful rather than scientific governance, because man is not a substance to be engineered, and has neither the consistency nor the predictability of the rest of nature. Not science but art, with its deliberate lack of precision that by indirections finds directions out, is the way to deal with souls, collectively or otherwise. For all its clear reason, the Constitution is nonetheless a work of art, which is why it has worked. By analogy, the Old Statehouse in Boston is surrounded by immense office towers. How much more humane in scale, warmth, and beauty is the former, welcoming still after 300 years, whereas the towers will be always be blank glass.

And if it is to be touched, the Constitution must be approached with honor, which is not *amour propre* but rather the willingness to sacrifice one's interests—immediate, parochial, even essential—in favor of doing right. So it is with constitutional questions, not only in application of law even if the result is contrary to one's preferences, but in revision or amendment—with the primary concern being not ideological advantage or the politics of the day but keeping the powers of government separate, balanced, limited, and checked, so that the people may forever exercise sovereignty over their lives.



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