continued to be the focus of the Bank's work in South Africa during the past year. In that country, the Bank's informal work has dealt with the entire political spectrum, including nongovernmental organizations, the private sector, teachers, and trade unions. Dozens of South Africans have been trained in economics, and relationships have been built up with many of the country's economic and political actors. In April 1994, the Bank opened up a resident mission, following a request from the multiparty South African transitional council.

FOOTNOTES

[1]The SPA for low-income, debt-distressed sub-Saharan African countries provides quick-disbursing balance-of-payments assistance to twenty-nine eligible countries (as of the end of June 1994) in support of reform programs developed in conjunction with the Bank and the International Monetary Fund (IMF).

[2]The countries are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Gabon, Mali, Mauritania, Niger, Senegal, and Togo.

[3]The parity of Comoros' currency was changed to 75 per French franc.

BOX 5–2. TOWARD BETTER HEALTH IN AFRICA

Health issues are assuming an increasingly important place in the Bank's assistance strategy in Africa. Reflecting this trend, a major sector study was completed in 1993 in close cooperation with the World Health Organization, the United Nations Children's Fund, and other partners. The study, ''Better Health In Africa,'' aimed at building consensus on future health strategies in Africa among the many stakeholders.[1] It found that while dramatic improvements had taken place since independence, most African countries lagged well behind other developing countries in health status. At fifty-one years in 1991, life expectancy at birth in Africa is eleven years less than in the low-income countries as a group, and Africa's infant mortality rate, at over 100 deaths per 1,000 live births, is about one third higher on average than for the universe of low-income countries. New health problems, such as AIDS, and new strains of well-known diseases such as malaria, threaten the important health gains made in Africa over the past generation.

The report discussed ''best practices'' for health improvement by African governments and their external partners in three areas. First, as did ''World Development Report 1993—Investing in Health,'' the report emphasized the importance of strengthening the capacity of households and communities to recognize and respond to health problems. This requires health and development strategies that increase the access of the poor to income and opportunity, pay special attention to female education and literacy, provide for community monitoring and management of health services, and furnish information to the public and health-care providers on health conditions and services. Second, the report called for reform of African health-care systems, and especially for making a basic package of cost-effective health services available to Africans near where they live and work through health centers and first-referral hospitals. Third, the report underscored the need for more efficient allocation and management of public financial and human resources devoted to health improvement, and for their progressive reallocation away from less cost-effective interventions (largely provided through tertiary facilities) to a basic package. It found substantial room for increases in technical efficiency.[2]

The report concluded that substantial health improvement in Africa is feasible, despite the severe financial constraints facing most African countries. The will to reform and to provide a limited package of quality, low-cost, and highly cost-effective health services to the vast majority of the population is central to success. The study found that higher-income and middle-income African countries, in due course, should be able to finance a basic package of health services for their people from public and nongovernmental resources, without substantial external support. However, the low-income countries are likely to need donor assistance in support of health for an extended period. These countries now spend about $8 per capita annually on health from all sources—public, nongovernmental, and external—compared with the indicative estimate for the basic package in the study of about $13. The transition from the current to the indicative level of spending will have to be implemented flexibly, on a country-by-country basis, with provisions put in place of interim targets to be met along the way.

FOOTNOTES

[1]World Bank. 1994. ''Better Health in Africa.'' Washington, D.C.

[2]For example, poor drug selection, procurement, distribution, and prescription practices are responsible, together with other factors, for an effective consumption of only about $12 on drugs for every $100 in public spending on pharmaceuticals in many African countries.

Footnotes at end of article.

AMENDMENT TIME

● Mr. SIMON. Mr. President, recently, I came across an article by John G. Kester, a Washington attorney. It is a commonsense article about our Constitution and amending the Constitution.

I have great reverence for the Constitution, but I also know that the Constitution was written to meet problems that existed more than two centuries ago.

On the matter of a balanced budget amendment, the author writes:

Congress, for instance, has demonstrated for decades that institutionally it cannot muster the discipline to restrain excessive spending. Lately, ashamed to speak the name, it even pretends that most expenditures are something else, labeling them entitlements. Presidents no longer refuse to spend excessive appropriations. A balanced-budget amendment may be a challenge to express in words, but it is not impossible, and it is certainly not, as Senator Chris Dodd asserts, very irresponsible. It imposes a new constitutional obligation on Congress without micromanaging the policy choices for achieving it. It is not likely to make the situation worse, even if courts will be invited to construe it. And if experience suggests improvements, those can be added.

John Kester brings both scholarship and common sense to this discussion.

At this point, I ask that his article be printed in the RECORD.

The article follows:

[From the Washingtonian, March 1995]

AMENDMENT TIME

(By John G. Kester)

If the people really are serious about taking back their government, they can start by amending the Constitution. There have been a few lurches in that direction—like the balanced-budget amendment that was part of the Republicans' Contract With America, and some talk about amendments that would ban unfunded federal mandates or set uniform term limits for Congress.

That's a beginning, but a modest one. The current state legislatures are in a receptive mood. If Speaker Gingrich and the new tribunes of the people really want permanent change in the way Washington and its federal judges run the country, then this spring constitutional amendments ought to be blossoming like azaleas.

But don't count on it. The op-ed pages already have begun to darken with warnings from learned scholars, politicians, and columnists that to lay hands on the Constitution would be impractical, even dangerous, downright unpatriotic. The Constitution, they suggest, is so nearly perfect that to revise it would be like altering the formula of mother's milk—nothing else could be healthful, and any variation might make you sick.

Is the Constitution too flawless and sacred a document to violate with alterations? Most of the Cassandras stop short of suggesting it was divinely inspired, but even that has been claimed. The less devout shake their heads and say that adding amendments just isn't practical—that it can never work, that even figuring out the right words is too hard, that the only way to fit the Constitution to the times is to leave all corrections to the courts.

Even aesthetics is invoked. To add amendments, it has been said, would make our classically crisp federal Constitution resemble those ungainly creations of the 50 states. State constitutions are longer, often loaded with dozens of amendments, and deal with such mundane affairs as off-street parking in Baltimore (Maryland Constitution Article XI–C) or preserving natural oyster beds (Virginia Constitution Article XI, section 3).

But no one has shown that state constitutions do not work—or, indeed, that lengthy and detailed constitutions don't work better because they leave less room for doubt. Automobile engines, reliably move your car without being engineered to win beauty contests. If the purpose of the Constitution is to model 18th-century elegance, perhaps the parchment should be moved from the Archives to the National Gallery.

The Constitution exists to be applied, not adored. A politically rare opportunity will be lost if the hand-wringing about constitutional purity succeeds in scaring off reformers. Of course not every popular idea belongs in the Constitution, and not every proposed policy change would be a good one. But (dare one say if?) there is room for improvement.

No one should take all the warnings against amendments seriously. The authors of the Constitution certainly wouldn't have.

The men who spent the summer of 1787 holding secret meetings in a room in Philadelphia did not think they were Moses, chiseling stones with dictation from a Higher Source. Their un-air-conditioned days passed in disagreements, endless compromises, and perspiration. The product was simply a well-organized document that most could accept, although with varying degrees of reluctance.

The 13-state ratification process that followed was even more contentious, and nearly failed. To obtain agreement from the minimum nine states took nine months, and the votes in key ratifying conventions were too close for comfort: Virginia 89 to 79, Massachusetts 187 to 168, New York 30 to 27. No one arguing for ratification ever gave a speech claiming the document was perfect; the authors more humbly expressed hope and said they had done the best they could.

All recognized that, as Virginia's George Mason observed at the beginning, ''The plan now to be formed will certainly be defective.'' (So defective he finally concluded, particularly in its treatment of slavery, that in the end he refused to sign it.) For that reason, the Constitution was written with one article of its seven devoted entirely to

the subject of how to amend it. This was done, acknowledged Charles Pickney of South Carolina, because ''it is difficult to form a Government so perfect as to render alterations unnecessary.'' Amendments, James Iredall told the reluctant North Carolina ratifying convention, would provide its own fallibility.'' Even James Madison, called the Father of the Constitution, anticipated that his offspring would need to grow. ''[U]seful alterations,'' he predicted, ''will be suggested by experience.''

Alterations did come, but mostly not in the way Madison anticipated. They have come usually by courts announcing, and sometimes revising, their conclusions about what words of the Constitution mean.

Anyone who says that amending the Constitution is in principle a bad idea is really selling a notion about where to assign power. For a long time now the only players in the constitution-altering game have been judges. They have secured their position by taking open-ended phrases like ''due process of law'' or ''the freedom of speech'' or ''Commerce . . . among the several States'' and announcing that these mean one thing, and then another, and then another. Many of their pronouncements, which take the form of decisions in lawsuits, seem logical correct. Others occasionally appear daffy. The secret was spilled when Charles Evans Hughes, before he became Chief Justice, explained in a speech: ''The Constitution is what the judges say it is.''

That is true, however, only if the Supreme Court's view is not superseded by a higher authority—the amending process. It makes no sense to cut off debate on any subject by saying, ''The Supreme Court has spoken.'' The Supreme Court speaks all the time. But this is a government, not the army. The Supreme Court may speak—but the Constitution intends that if the people care enough, the option of amendments gives them the last word.

Adding a new provision to the Constitution to reject a court decision—as the Eleventh Amendment did in 1798—can at least slow a Supreme Court down. Because the Constitution came from ''We the People,'' why should not the people through their elected representatives participate more often in the process of constitutional change? Especially when the document itself—which does not even mention interpretation by judges, much less give judges the last word—spells out a precise and simple amending procedure for the people to use? Why shouldn't there be amendments to make corrections when the Supreme Court gets it wrong—or, no less appropriately, when the Court's reading of an old provision may seem accurate, but the people on reflection decide that they no longer want such a rule? It is amazing that every time the Supreme Court issues some new constitutional interpretation, provoking a storm of public outrage—then nothing happens.

Correcting the Supreme Court is not even the most crucial issue. New needs develop that don't show up in Supreme Court decisions. Why shouldn't the people adopt constitutional solutions for perennial problems—for instance, uncontrollable extravagance by Congress, or federal power-creep, or war powers of the president—that seldom, if ever, come before the courts? Even for those who believe that the Supreme Court's job is to ''keep the Constitution in tune with the times,'' it expects too much of the Court to act as the only corrective balance wheel of the government.

Power lies with whoever can change the Constitution. Court decisions can be overruled by amendments, and when there is contrary consensus, they ought to be. More important, constitutional updating is not the assignment of the Supreme Court, but rather the duty of Congress and the states. Constant abdication of the amending power was never expected, and in a representative government makes no sense.

The Constitution does not come to us, as foes of amendments imply, in an undefiled condition. True, there have been few formal amendments over 200 years, but there has been plenty of change in the Constitution. In fact, although custom speaks of ''the Constitution'' as if there is only one, the reality is that this country has had several. We live in 1995 under the fourth constitution of the United States.

The first constitution, adopted in 1778 by 11 sovereign governments, resembled a treaty, and appropriately was called Articles of Confederation. It created a loose alliance of independent states—that is, countries—designed mainly to pursue a united front in a war. The national organization's few activities operated by unanimous consent, which meant it operated very little. Each of the 13 governments remained independent to set its own tariffs, raise its own taxes and armies, print its own money, and govern its internal affairs. Still, the Articles of Confederation were not a total failure. After the British decided to cut their losses and quit, the main complaint about life under the Articles was that state tariffs and trade barriers in independent economies were strangling each other. A NAFTA of its time was needed.

The congress created by the Articles authorized delegates to meet in Philadelphia in 1787 to propose amendments to the Articles of Confederation. The first thing the delegates did was exceed their authority. They began by junking the Articles and starting over to design a national government that would exist in addition to those of the states.

The result was the constitution of 1787, which became operational in 1789. The purpose of the document was not to provide a code of laws, secure human rights, or solve all problems, but rather to set up—''constitute''—a new government. It contained a handful of specific prohibitions on Congress (like taxing exports) and the states (like levying tariffs). But mostly it outlined an organization chart and allocated powers between the national government and states, and among the three branches of the national government.

Two subjects consume most of the Constitution. The first was, what powers would the national government have? All agreed that, quite unlike the states. It should not have general legislative powers, but instead would be allowed to act only on topics the Constitution assigned to it. Just to nail that down, 10 amendments were promptly proposed and adopted, called the Bill of Rights. These were not really a list of rights of individuals (they left the power of state governments unrestrained), but rather they were some important specific examples of what the federal government had *not* been empowered to do—like abridge the freedom of the press, or quarter soldiers in people's houses. The enumeration ended up with two directions on interpretation. The Ninth Amendment reminded that just because the federal government could not do these things did not imply that it was authorized to do others. The Tenth Amendment then reiterated that unless powers were delegated by the Constitution to the federal government, or prohibited to the states, they all remained with the States or the people.

The other focus at Philadelphia was the internal arrangements of the national government itself—such issues as how Congress would be formed and chosen (a Senate chosen by states and a House by people), the addition of a national executive, and how the limited national powers would be divided among the Congress, the President, and the judiciary—which Hamilton called ''the least dangerous branch.''

The Constitution of 1787, typical of many hard-negotiated agreements, swept under the rug two potentially contentious issues that everyone hoped might go away; first, whether states that entered the new union could withdraw if they did not like it; and second, slavery, which the framers chose not to mention by name and not to deal with except to give a 20-year protection to the slave trade and require the return of fugitives slaves.

Unfortunately, over time each of those unresolved issues played into the other, and finally with the election by a minority of an extremist president in 1860, the 1787 structure dissolved into a contest of arms. Whether states legally could withdraw—some like Massachusetts and South Carolina had claimed the right for years—was a question incapable of any sure answer from logic, history, or reading the text of the Constitution. And it was never submitted to the Supreme Court. Instead, disproving once again the canard that wars never settle anything, it was decisively resolved by soldiers killing each other.

The Civil War led to the third constitution of the United States. Although this constitution wears the more modest label of the Fourteenth Amendment, it turned out to be a whole new arrangement of government. Adopted in 1868 with the forced consent of defeated Southern states, the Fourteenth Amendment in ringing and undefined words forbade any state to deny equal protection of the laws, or to deprive anyone of life, liberty, or property without due process of law. In the end those ringing and undefined words drastically revised the roles of the states and the federal courts.

For the rest of the 19th century and into the next, this new provision was transformed by the Supreme Court into a shield for businesses from state regulation. With each decade the sweep of the Fourteenth Amendment got bigger and bigger. It was read to forbid states from, for example, requiring attendance at public schools, or limiting maximum hours of work. It became a charter for judges, citing only the Constitution's phrase ''due process,'' to invalidate whatever laws they believed unwise.

Still, the limited scope of activities for the national Congress that had been enumerated and confined in 1787 tended to remain. A few controversies had arisen early—such as establishing the Bank of the United States (opposed on constitutional grounds by Madison), whether the Constitution authorized purchasing Louisiana, and Monroe's plans for federal road-building. But in spite of occasional pushing of the envelope of Congress's spending power, the government in Washington generally left it to the states to regulate most matters affecting people's daily lives, and did not find reason to read too expansively its powers listed in the 1787 Constitution.

In the 1930s, the country was hit by the Depression and the national government became much more radical and active. The Supreme Court promptly reminded Congress of its limited legislative role, holding that one New Deal law after another exceeded its powers to tax, spend, or regulate commerce.

Then all of that changed. The Roosevelt administration decided to deal with the Constitution's restrictions not by amendment, but as a personnel matter. Franklin Roosevelt first threatened to expand the Supreme Court from nine judges to as many as fifteen, then found he did not need to. From 1937 to 1941 he appointed seven new justices, all of them devoted New Dealers. Their opinions held that, for example. Congress's power

to regulate interstate commerce was so far-reaching that it could prohibit a farmer from growing a patch of wheat for his own bread. The limitations on the powers of the federal government suddenly seemed to evaporate.

A fourth constitution thus emerged when the Supreme Court by the end of the 1930s brushed aside the doctrine of enumerated powers, which had limited Congress by requiring reasonably clear grants of authority in the Constitution. The Court about the same time also renounced ''due process'' as a restriction on state or federal legislation. Then, having demolished all those barriers to regulation, the Court for the rest of the 20th century began erecting hurdles of a different kind by interpreting the Bill of Rights more expansively and reading the Fourteenth Amendment to limit the states in novel ways. It announced that the 1868 Fourteenth Amendment without saying so had stripped the states of virtually all the powers that the 1791 Bill of Rights had said were outside the charter of the federal government. It also held suddenly in 1964 that the Fourteenth Amendment had made unconstitutional all houses of state legislatures that, like the U.S. Senate, were not based on equal population. By the end of the century the Supreme Court had begun invoking ''due process'' again, but this time to invalidate laws it concluded unduly limited personal liberty.

* * * * *

Most real political revolutions have left their lasting traces on the Constitution. The Republicans after the Civil War secured the three amendments that ultimately ended racial inequality under law, and turned out to do far more. The pre-World-War-I Progressives, while they were democratizing state governments, also switched control of the Senate to the people, gave the federal government the tax base to grow, and soon afterward helped secure the vote for women. The New Deal even brought new access to liquor while rewriting the Constitution by restaffing the Supreme Court.

The time will never be better to update a marvelous and rightly cherished document, perhaps to correct some mistakes in how it has been interpreted, but most important to readjust its balances to fit the needs of a new century. Its authors would have expected no less.●

AFFIRMATIVE ACTION

● Mr. SIMON. Mr. President, there is more and more discussion on affirmative action these days.

Most of those who question affirmative action are the same people who opposed the civil rights legislation.

But there is no question that, like any good thing, affirmative action can be abused.

I ask that an excellent Los Angeles Times editorial titled, ''Glass Ceiling? It's More Like a Steel Cage'' be printed in the RECORD, as well as a tongue-in-cheek column by Robert Scheer, ''Who Needs Affirmative Action?'' and a column that I wrote for the newspapers in Illinois discussing this subject.

The material follows:

[From the Los Angeles Times, Mar. 20, 1995]

GLASS CEILING? IT'S MORE LIKE A STEEL CAGE—BUSH PANEL FINDS LITTLE ROOM AT TOP FOR WOMEN OR NONWHITES

In the heated debate over affirmative action, some who want to abolish all such programs suggest that lots of white males are being unfairly shunted aside in favor of lots of African Americans, Latinos, Asians and white women. However, there simply are no facts to support this. Indeed, according to a bipartisan commission appointed by then-President George Bush, the senior ranks are still populated almost exclusively by white males.

The findings by the Glass Ceiling Commission, a panel of business executives and legislators, are important and especially timely. It is expected that an initiative calling for a blanket rejection of policies that allow race, ethnicity and gender to be taken into account in hiring, promotion and college admissions will make it onto the California state ballot.

In Washington, President Clinton, mindful of the evident exodus of angry white men from the Democratic Party, for starters has ordered an evaluation of federal affirmative-action programs. That's defensible and could prove useful. But too many in Congress are rushing to jump on the anti-affirmative-action bandwagon, including Senate Majority Leader Bob Dole. Ironically, long before Dole made his presidential ambitions public, he sponsored the very bill that created the federal panel to study the situation of minority men and all women in American industry. And it is that panel, in reporting its findings last week, that turned up so little evidence of progress.

The facts are simple. White male managers dominate the senior levels at the top 1,000 U.S. industrial firms. They also dominate the top 500 business firms. In the top echelon of U.S. commerce, no less than 97% of the positions at the level of vice president and above are held by whites, the panel found. Between 95% and 97% of these senior executives are male. They have a lock on most of the top jobs, while most minority men and women and most white women struggle to crash the glass ceiling.

The commission said that one case of the paucity of promotions was the fear and prejudice of white men. Of course that is only part of the problem. More minorities and women must be given access early on to educational and social opportunities that lead to business success. But even education does not always level the playing field. Asian Americans are nearly twice as likely to hold college degrees as the general population, yet they remain much less likely to become executives and managers. Do racial stereotypes block their promotion?

Black men with professional degrees earn 79% of the pay of their white male counterparts. Black women with professional degrees earn even less; they earn, on average, only 60% of what white males do. Latinos, who are less likely to have the advanced degrees that foster advancement in companies, are ''relatively invisible in corporate decision-making positions,'' the report says. Their visibility should increase as their qualifications and numbers increase. Latinos are also hampered by pernicious stereotypes, including the misperception that most Latino workers are foreign-born, the panel maintains.

The Glass Ceiling Commission based its findings on hard information, not unsubstantiated fears. Facts, and nothing but, should inform the intense debate over affirmative action—and the decisions that will determine how this nation can fairly handle the moral obligation of opening the doors of opportunity to all who knock.

[From the Los Angeles Times, Mar. 20, 1995]

WHO NEEDS AFFIRMATIVE ACTION?

(By Robert Scheer)

Forget affirmative action. Maybe it once was a necessary tactic but its time is clearly gone. True, there used to be slavery and segregation and women didn't have the vote but that's all ancient history. C'mon, blacks and women have all the power now. Just look at the O.J. trial.

Try getting a decent job if you're a white man. You don't see my name on the masthead of this paper. What kind of meritocracy is this if my merit isn't rewarded the way I think it ought to be?

I'm not making this up, folks. The census stats back me up. Minorities and women now hold 5% of senior management positions, and those used to be white-guy jobs. Even among Fortune 1,000 companies, women now have 3% of the top slots, according to last week's report by the bipartisan federal Glass Ceiling Commission. So far, black men don't have any of the top jobs, but if affirmative action isn't stopped, who knows what could happen?

Don't try to paint me like some kind of racist for saying this, like I've got something against black men. Our beef is more with women than with black men, who are going nowhere fast. Even though almost 800,000 black students a year graduate from college, many of them business majors, they don't have what it takes to get to the top. Most of them still don't play golf. That's what a lot of white executives told the federal commission, which, incidentally, was created by the Bush Administration, so its results are reliable. One white manager told the truth: that, in hiring, ''What's important is comfort, chemistry, relationships and collaborations.'' That's why black, college-educated professional men earn only 71% of their white counterparts on the bell curve: The comfort level is too low.

The real threat is from women, with whom white men have a longer history of relationships. I hesitate to bring it up because they vote and it's better to have white women believe that affirmative action is a black thing. But take what's called ''middle management.'' Black men account for only 4% of those positions, but almost 40% of middle managers are women. Unless you marry one of them, you're out of luck, and what does that tell you about who wears the pants?

The big problem up the road is that you'll have to get along with those women, what they call networking, just to get a job. What does that say about traditional values when a man has to worry about what a woman thinks of his performance? Meritocracy, in the wrong hands, can be a killer. No wonder the federal commission concluded that ''Many middle- and upper-level managers view the inclusion of minorities and women in management as a direct threat to their own chances for advancement.'' They'd be stupid not to.

But we don't have a chance a turning back the tide unless we eliminate the discrimination against white males in the universities. On the nine campuses of the University of California, white men were 40% of the student body in 1980, and now they're a miserable 24%, less than half the number of women. Girls were always better at the school stuff but you could count on them to drop out along the way. Another threat is the 12% who are Latino, but Proposition 187 should scare them off. Same for the Asians, who outnumber white males at UC. I know that Asians are not covered by affirmative action, but even with round-the-clock tutoring, we can't keep up with them. And none of this would have happened if the blacks hadn't stated all this. You don't see blacks endangered at UC—they went up a full two-tenths of a percent in the past 15 years, from 3.8% to 4%. They're taking over.

Don't get me wrong, I'm not against a level playing field, and I know that a lot of blacks come from disadvantaged backgrounds due to poverty. After all, census data show that almost half of black children