

America, Make It New

Gregory Brazeal

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The Supreme Court's recent [decision](#) in *Louisiana v. Callais* has gutted some of the last remnants of the Voting Rights Act through the purported application of the Fourteenth and Fifteenth Amendments. It is only the latest example of judicially interpreted constitutional rules threatening rather than protecting American democracy. The problem is far larger than one decision and deserves a commensurate response.

It is time for America to reconsider its constitutional [faith](#). As of July 4 this year, the American experiment will have endured for a quarter of a millennium. In 2037, our Constitution will also be 250 years old. The former should be celebrated. The latter should be viewed as a national embarrassment. No country today should be ruled by constitutional designs from the eighteenth century. Before our Constitution reaches its semiquincentennial, we should transform it in the name of democracy.

Older Americans may find it difficult to accept that our Constitution is undemocratic. Many of them were, like me, raised in a culture of constitutional veneration. When I attended public schools in Kansas in the 1990s, shortly after the fall of the Soviet Union, we learned to see America's Constitution as a model for the world. Popular books celebrating the founding fathers and the greatest generation sat beside heroic accounts of American economic and military supremacy. In such a climate, it would have seemed blasphemous to criticize our Constitution as undemocratic.

But it undeniably [is](#). No one designing a democratic constitution today would create our Constitution's exceptionally high hurdles to amendment, our malapportioned Senate, our life-tenured Supreme Court, or our Electoral College. Indeed, some [research](#) suggests that presidential government in general leads to greater political instability than government by parliament. A more democratic alternative to our form of government exists and has proven itself for decades in countries around the world: parliamentary democracy with proportional representation.

In New Zealand, for example, there is no codified [constitution](#). The Supreme Court can declare a statute inconsistent with the Bill of Rights Act. But ultimately power resides with the people through their proportionally representative unicameral Parliament. If the Supreme Court misinterprets a statute, Parliament can typically replace the statute through ordinary legislation. Other countries that successfully employ various forms of proportionally representative parliamentary democracy include the Netherlands, Belgium, Austria, Ireland, and the Nordic states.

Defenders of our Constitution might fear that such an arrangement would result in a "tyranny of the majority." But no tyranny has resulted, especially in the best-designed systems such as New Zealand's. To the contrary, by any plausible [measure](#), minority rights are better protected in many parliamentary democracies than in the United States. It was in the United States, and not New Zealand, that an army of masked paramilitary agents recently occupied several cities at the direction of the president, systematically stopped individuals based on their apparent ethnicity, and fatally shot citizens who were engaged in protest.

It is true that bold federal [legislation](#) could go a long way toward reconstructing American democracy. As soon as a president and a bare majority of both houses of Congress are willing to engage in democratic reconstruction, they should reform the Supreme Court; expand

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the House; admit D.C. and Puerto Rico, with their voters' consent, as states; and pass voting and campaign finance reforms.

But eventually our antiquated Constitution itself must be changed. Legislation cannot fix the inherently undemocratic structure of the Senate, the Electoral College, or the amendment process. The least contestable and most legalistic path would be to call a constitutional convention under Article V of the current Constitution. Progressives have expressed fears regarding the shape that such a convention might take. But as the legal scholar David Pozen has [argued](#), America's many state constitutional conventions provide precedents for arriving at democratically legitimate convention procedures.

In fact, a valuable first step toward freeing ourselves from the undemocratic shackles of our Constitution would be to experiment broadly with constitutional change at the [state](#) level. Defenders of democracy should support state amendments and conventions to familiarize the public with constitutional change, as well as with unfamiliar but internationally established democratic institutions and procedures such as proportional representation, parliamentary government, and the use of randomly drawn [citizens' assemblies](#) to propose laws. If it is true, as the political scientist Jonathan Rodden has [suggested](#), that proportional representation can reduce rural-urban polarization and lead to more democratically responsive social policies, these benefits should operate at the state level as well.

Democracy is the rule of the people over themselves. Through the experience of state constitutional change, the American people could rediscover their capacity for self-rule. Once this spark has been rekindled, they might recognize that they possess the innate authority to remake their government through any democratically legitimate means, such as through an appropriately staged national referendum, and not only through Article V. In doing so, they would be following in the footsteps of the framers of the Constitution, who [ignored](#) the amendment procedures laid down in the Articles of Confederation when they replaced the Articles with the Constitution that we have today.

Younger Americans do not need to be told that there is a rot in our constitutional foundations. They have spent a significant part of their lives in a world where Donald Trump is the president of the United States. Once a constitution has facilitated the election and reelection of a corrupt authoritarian demagogue, a figure whose violent, erratic, bigoted words and acts will disgrace the presidency as long as it exists, surely it is worth considering: should the presidency continue to exist? Don't we owe it to ourselves, and to the world, to try a different path?

Skeptics of constitutional change may object that our current political ills are the product of economic or cultural factors that cannot be addressed through any amount of tinkering with the rules of democracy. Such objections fail to recognize the countless ways in which our economic and cultural conditions are themselves products of our flawed democratic rules, from winner-take-all congressional districts to the malapportioned Senate. Democratic reconstruction could, to paraphrase Lincoln, not only achieve rule of the people by the people, but for the people as well.

We currently live in a vicious cycle in which flawed democratic rule produces policies that increase public insecurity and perceptions of threat, leading to increased support for authoritarian rule. A central aim of democratic reconstruction should be to create, instead, a virtuous cycle in which more democratic institutions lead to policies that provide greater security and reduced perceptions of threat, leading in turn to more support for liberal democracy.

When critics note the undemocratic aspects of American democracy, it is common to hear in response that the framers of the Constitution created "a republic, not a democracy." As a

historical claim, the response misunderstands what the term “[democracy](#)” meant to the founding generation. But history aside, if the argument intends to say that the Constitution did not create what we would today understand as a democracy, then it makes the case for the Constitution’s critics. If the state established by the Constitution is “not a democracy,” then surely we should choose democracy over the Constitution. We should choose to rule ourselves.

It can be painful to learn about flaws in an object of longstanding devotion. But in a time of unprecedented change, binding ourselves to outmoded eighteenth-century institutional designs ceases to be an act of prudential conservatism and becomes a reckless leap into the dark. The oath that many Americans have taken to support and defend the Constitution is directed toward its “enemies,” not toward democratic constitutional change. Today, the best defense of the ideals embodied in the most inspiring words of our Constitution—the preamble’s affirmation that “We the people” ordain the rules of our government—is to free ourselves from the Constitution as soon as we democratically can.

Gregory Brazeal teaches criminal law at the University of South Dakota Law School and is a former major in the Army Reserve. He has written on constitutional faith and the roots of rural authoritarianism. Views expressed are his own.