



Written by [Selwyn Duke](#) on August 24, 2024

Law School Dean: Time to Scrap Our “Flawed” Constitution and “Rewrite It”

The “Left hates the Constitution and constitutionalism,” I [wrote](#) in 2018. And there’s a simple reason for this: “The Constitution is a *conservative* document.”

Contrary to what most think, “conservative” above only means that the document serves to maintain a status quo. It limits the change the government can effect, and the Constitution itself is difficult to alter via the Amendment Process.

People obsessed with “change” don’t like this, however; hence their “living document” rationalization. But sometimes in recent years, just every so often, a Constitution-hater has worn his banners openly and called for the document to be sent to re-education camp.



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Out of the Woodwork

Such is the case with Erwin Chemerinsky, dean of the UC Berkeley School of Law. Writing at the *Los Angeles Times*, Chemerinsky blames much of our political dysfunction on the Founders’ vision. The solution? Begin “thinking of drafting a new Constitution to create a more effective, more democratic government,” he [writes](#).

Of course, many may suspect that by “effective” Chemerinsky means “powerful.” And this reality surely would lead to “democratic” outcomes. Two lions and one lamb voting on what to have for dinner comes to mind.

Such “democracy” certainly is a passion for the academic, though. In fact, he penned a newly published book titled, *No Democracy Lasts Forever: How the Constitution Threatens the United States*.

Who’s the Real Threat?

Chemerinsky makes the case that, as he puts it, “American democracy is in serious trouble.” (Actually, the *Republic* is in even deeper trouble.) For example, he points out that:

- the public’s trust in government has declined from a 1964 high of 77 percent to 20 percent today;
- a mere four percent of American adults believes that our political system works “extremely or very well”;
- Congress’ approval rating hovers around 16 percent; and
- a study [found](#) that 29 percent of “young Americans say that democracy is not always preferable to other political forms.”

Yet, as astute respondents to his article [wonder](#), what do these realities have to do with the Constitution? Isn’t it more likely that the historically low trust in our government is explained by its



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recent, historically egregious lies? A (very) short list: There were the Russian-collusion hoax, the Hunter Biden laptop lies, intel-agency weaponization, the Covid deceit, the claim that Joe Biden was mentally sharp, and phony Labor Department [job numbers](#).

Would you buy a used narrative from this government?

The Divided States of America

Chemerinsky also cites polarization as a sign of our dysfunction. While 87 percent of Republicans approved of Trump's presidential job performance, he states, only six percent of Democrats did. Biden's partisan gap, while not as large, is also profound.

Now, it is true: Today's America certainly is an ideologically fractured land. How, though, will rewriting a document change this?

Ours is not some artificial or frivolous polarization; we're not divided over ice cream flavors, but fundamental issues. Examples of our debates: What is proper marriage and sexuality? What's the nature of sex itself (i.e., "transgenderism")? Should we stress equality or "equity" (officially orchestrated discrimination)? When does human life begin? And is it sacred — or is man just an organic robot?

You can't legislate such differences away. All you can do is give "one side" enough power to quell the other and establish total control. This does appear to be Chemerinsky's real agenda, too.

And par for the course, the professor complains about Electoral College-related issues. The "most populous state (California) has 68 times more people than the least populous state (Wyoming)," he writes, for example. "This makes the Senate ever more egregiously undemocratic." In Congress' last session, "the 50 Democratic senators represented 42 million more people than the 50 Republican senators did."

Chemerinsky also kvetches about filibustering, partisan gerrymandering, and the Supreme Court's facilitation of the latter. In fact, in his book, he [gripes](#) about the Court's "outsized" influence. And then there's his preferred "solution": "starting fresh by passing a new Constitution."

Wrong Diagnosis — Wrong Cure

Really, though, most everything the professor cites as a problem either isn't one or isn't constitutionally dictated. For example, Chemerinsky is right about the Supreme Court's inordinate power. But the reality is that the problem, judicial supremacy, is *not granted by the Constitution*. Rather, it was declared by the courts themselves, notably in the *Marbury v. Madison* opinion (1803). The courts enjoy the power, too, only because the other two governmental branches tacitly agree to abide by it. That's *our* failure — not the Constitution's.

As for filibustering, gerrymandering, and the general division, Chemerinsky's concern apparently is that it inhibits governmental action. But is this bad?

When a business is more productive, you get more goods or services. When government is more productive, you get more freedom-squelching laws, mandates, and regulations; more wasteful programs; and more confiscatory taxes.

Furthermore, as I believe economist Walter E. Williams put it, the best thing the government can do for the economy is to "stay out of its way." So why facilitate the state's dark "productivity"?

In other words, what's pejoratively called a "do-nothing Congress" is a *good thing*.

Moreover, what possible benefit does a "productive" central government even offer? Virtually any



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“good” Chemerinsky wants done can be effected on the state level. Consider, too, that a small and largely inactive federal government is appropriate because it’s meant to be an *agent* of the states, not their master.

The Real Agenda?

So why the obsession with empowering the feds? Perhaps it’s because, as Chemerinsky also insists, only a new Constitution can help a profoundly divided America avoid secession. But this is a bit like, with a couple in which the husband beats the wife up every week, a marriage counselor warning that the only way to stop the woman from running off is for the man to assume more power and lock her in the house.

So there’s another way to avoid secession: for the feds to stop beating up on conservative states. (E.g., cease trying to impose perverse “trans” Title IX dictates on them.) Chemerinsky, though, prefers further empowering the abuser.

There is good news, though. With our being so fractured, 37 states (the ratification number) will never agree to make Chemerinsky’s dream our nightmare. We nonetheless should thank him, however. Few are so honest — about their distaste for and desire to destroy our Republic.



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