

CONSTITUTIONAL DEMOCRACY AND SCHOLARLY FASHIONS

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ABSTRACT

This Article is a commentary on Sanford Levinson and Jack M. Balkin's book, Democracy and Dysfunction, written for a symposium on the book that was held to celebrate Constitution Day at Drake University Law School. The book is a superb discussion of the problems facing our republic. My goal in this Article is to place the book within two, distinct scholarly fashion trends. The first is global. Scholars are concerned that long-established, wealthy democracies are facing unprecedented headwinds. The issue is whether that global pessimism is warranted. The second trend is local. We have been disagreeing since the founding over the virtues and vices of formal constitutional change versus evolutionary or incremental change. Professor Levinson argues we need formal constitutional change; Professor Balkin is skeptical of this argument and argues we need evolutionary and incremental reforms. This Article argues Professor Levinson has the better argument but for different reasons than he advances.

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I. INTRODUCTION

This Article is a commentary on Sanford Levinson and Jack M. Balkin's book, *Democracy and Dysfunction*,¹ written for a symposium on the book that was held to celebrate Constitution Day at Drake University Law School. The book is a superb discussion of the problems facing our republic. Although the authors agree we face serious problems, they disagree over how best to fix our constitutional democracy.² The phrase *constitutional democracy* is shorthand for the most

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1. SANFORD LEVINSON & JACK M. BALKIN, *DEMOCRACY AND DYSFUNCTION* (2019).

2. *Id.* at 2–3.

important political idea in the world. In a constitutional democracy, the people govern through their representatives, but there are limits as to what a popular government may do.³ It is an idea that the British first put into practice and that we formalized by writing the Constitution.⁴ Today it is virtually unthinkable that a nation would lack a written constitution. My goal in this Article is to place *Democracy and Dysfunction* within two distinct scholarly fashion trends.

The first is global. Scholars are concerned that long-established, wealthy democracies are facing unprecedented headwinds.⁵ They face challenges due to climate change, illegal immigration, income inequality, and political polarization. Scholars are becoming increasingly pessimistic over the state of constitutional democracy around the globe.⁶ Sanford Levinson and Jack Balkin's *Democracy and Dysfunction* focuses on the United States but fits nicely into this global trend.⁷ The authors believe the U.S. democratic patient has a serious malady but disagree as to the cure.⁸ The issue is whether that global pessimism is warranted.

The second trend is local. We have been disagreeing since the founding over the virtues and vices of formal constitutional change versus evolutionary or incremental change. The disagreement between originalists—who largely reject the legitimacy of incremental constitutional change—and living constitutionalists—who favor such changes—provides one example of this long running debate.⁹ Alexander Hamilton summed up this idea in the very first of the *Federalist Papers*:

It has been frequently remarked that it seems to have been reserved to the

3. See Giovanni Sartori, *Constitutionalism: A Preliminary Discussion*, 56 AM. POL. SCI. REV. 853, 853–54 (1962).

4. See *id.* at 859–60.

5. The literature on the travails facing contemporary democracies is vast and growing. See TOM GINSBURG & AZIZ Z. HUQ, *HOW TO SAVE A CONSTITUTIONAL DEMOCRACY* 2 (2018); STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* (2018); YASCHA MOUNK, *THE PEOPLE VS. DEMOCRACY: WHY OUR FREEDOM IS IN DANGER AND HOW TO SAVE IT* 1–3 (2018); PIPPA NORRIS & RONALD INGLEHART, *CULTURAL BACKLASH: TRUMP, BREXIT, AND AUTHORITARIAN POPULISM* 3 (2019); DAVID RUNCIMAN, *HOW DEMOCRACY ENDS* 1–7 (2018); Tom Ginsburg & Aziz Huq, *How We Lost Constitutional Democracy*, in *CAN IT HAPPEN HERE?* 135, 140–41 (Cass R. Sunstein ed., 2018); Mark A. Graber, Sanford Levinson & Mark Tushnet, *Constitutional Democracy in Crisis?: Introduction*, in *CONSTITUTIONAL DEMOCRACY IN CRISIS* 2 (Mark A. Graber, Sanford Levinson & Mark Tushnet eds., 2018); Stephen Holmes, *How Democracies Perish*, in *CAN IT HAPPEN HERE?*, *supra*, at 387, 388.

6. E.g., Graber, Levinson & Tushnet, *supra* note 5, at 2.

7. See LEVINSON & BALKIN, *supra* note 1, at 2–4.

8. See *id.* at 1–2.

9. See THE FEDERALIST NO. 5 (John Jay).

people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.¹⁰

Professor Levinson argues we need formal constitutional change; Professor Balkin is skeptical of this argument and argues we need evolutionary and incremental reforms.¹¹ This Article argues Professor Levinson has the better argument but for different reasons than he advances.

II. GLOBAL FASHION TRENDS

The contemporary scholarly fashion trend is one of democratic pessimism.¹² The Drake University Constitution Day Symposium was held September 21, 2019.¹³ If Drake University had held a conference on the state of constitutional democracy 30 years ago, the fashion trend would have been very different.¹⁴ Last year marked the 30th anniversary of the fall of the Berlin Wall in 1989.¹⁵ It was widely thought at the time that authoritarianism was on the losing end of history and that nations around the globe would eventually become democratic.¹⁶ Consequently, scholars became busy writing books and articles, holding conferences about why democracy was the future of mankind, and disagreeing over how best to achieve that goal.¹⁷ Scholars, in short, were optimistic about democracy.¹⁸

Today, the scholarly fashion trend is very different. Scholars have become

10. THE FEDERALIST NO. 1, at 1 (Alexander Hamilton) (Am. Bar Ass'n ed., 2009).

11. See LEVINSON & BALKIN, *supra* note 1, at 21–23.

12. See *id.* at 4–5; Graber, Levinson & Tushnet, *supra* note 5, at 2–4.

13. *Current Constitutional Issues and the Functioning of American Democracy: A Debate*, DRAKE U. (Aug. 30, 2019), <https://news.drake.edu/2019/08/30/current-constitutional-issues-and-american-democracy/> [<https://perma.cc/4GBJ-2VYL>].

14. See FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* 3–4 (1992); SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* 27 (1991).

15. *Berlin Wall*, HIST. (Dec. 15, 2009), <https://www.history.com/topics/cold-war/berlin-wall> [<https://perma.cc/VW9V-LYRP>].

16. See FUKUYAMA, *supra* note 14, at 3–4; HUNTINGTON, *supra* note 14, at 27.

17. See FUKUYAMA, *supra* note 14, at xi.

18. The two most important statements of this scholarly optimism are *The End of History and the Last Man* and *The Third Wave: Democratization in the Late Twentieth Century*.

pessimistic about constitutional democracy.¹⁹ They are busy writing books and articles and holding conferences asking whether constitutional democracy is on life support.²⁰ The reason for this scholarly anxiety can be found in the experiences of two nations with very different constitutional traditions: the United Kingdom and the United States.²¹ There are no two more important nations in the history of constitutional democracy. Today, both are facing serious democratic headwinds. Brexit has roiled British politics since the 2016 referendum. Every day in the United Kingdom has effectively become *Groundhog Day*, as citizens and politicians disagree over Brexit.²² The United Kingdom is currently undergoing a separation-of-powers struggle between the Prime Minister—who favors Brexit—and Parliament, which wishes to constrain the Prime Minister’s discretion in negotiating the terms of Brexit.²³ The election of Donald Trump in 2016 has similarly roiled U.S. politics. Every day in the United States has also become *Groundhog Day* as we fight over what President Trump says and does.²⁴ The United States also faces separation-of-powers problems that boil down to how to best make executive authority accountable.²⁵

19. See LEVINSON & BALKIN, *supra* note 1, at 4–5; Graber, Levinson & Tushnet, *supra* note 5, at 2–4.

20. See, e.g., LEVINSON & BALKIN, *supra* note 1, at 85–90.

21. Compare U.S. CONST., with Robert Hazell & James Melton, *Magna Carta . . . Holy Grail?*, in MAGNA CARTA AND ITS MODERN LEGACY 3, 18–19 (Robert Hazell & James Melton eds., 2015).

22. NORRIS & INGLEHART, *supra* note 5, at 368–77.

23. See Karla Adam & William Booth, *U.K. Supreme Court Rules Prime Minister Boris Johnson Suspended Parliament Illegally*, WASH. POST (Sept. 24, 2019), https://www.washingtonpost.com/world/europe/britains-supreme-court-set-to-rule-on-boris-johnsons-decision-to-suspend-parliament/2019/09/24/af719d70-dd9e-11e9-be7f-4cc85017c36f_story.html; Benjamin Mueller, *Boris Johnson Has a Trust Problem in Parliament*, N.Y. TIMES (Oct. 19, 2019), <https://www.nytimes.com/2019/10/19/world/europe/boris-johnson-parliament.html>.

24. DARRELL M. WEST, *DIVIDED POLITICS, DIVIDED NATION: HYPERCONFLICT IN THE TRUMP ERA* 34–37 (2019).

25. See Brianne Gorod, *The Need for Congressional Oversight Goes Far Beyond Impeachment*, ATLANTIC (Sept. 30, 2019), <https://www.theatlantic.com/ideas/archive/2019/09/future-congressional-oversight-risk/598996/>. The Trump Administration has made it clear, moreover, that it will not cooperate with the impeachment inquiry on the grounds that it is an illegitimate attempt to overturn the 2016 election. To view the extraordinary letter written by White House counsel Pat Cipollone addressed to House Democrats, see Letter from Pat A. Cipollone, Counsel to the President, to Nancy Pelosi, Speaker, House of Representatives, Eliot L. Engel, Chairman, House Foreign Affairs Comm., Adam B. Schiff, Chairman, House Permanent Select Comm. on Intelligence, Elijah E. Cummings, Chairman, House Comm. on Oversight and Reform (Oct. 8, 2019), <https://games-cdn.washingtonpost.com/notes/prod/default/documents/7cb26618-e770-45ef-9c45-bdd5554ce201/note/9608d380-f0df-4e07-8b08-8f326b723626.pdf#page=1> [<https://perma.cc/7CG2-AMNM>].

Although the global scholarly fashion trend is pessimistic, we should first take stock of why scholars were optimistic just 30 short years ago. There were two very good reasons. The first is that constitutional democracy is normatively superior to other forms of government.²⁶ One need only look at the protesters in Hong Kong to see how unattractive authoritarianism is to people who know it firsthand.²⁷ The second is that democracies, at least in the past, functioned better than dictatorships.²⁸ Democracies differ from dictatorships in that they are better able to muddle through crises. Democracies occasionally elect crummy leaders but they can and do throw them out of office as well.²⁹ Democracies are good at muddling through because they hold elections and free speech allows citizens to criticize the government.³⁰

It turns out that free speech is critical to all democracies.³¹ But for speech to play this positive role in a democracy, a rough marketplace of ideas must be functioning.³² In a well-functioning marketplace, bad ideas are like vampires. They are not easy to kill, but they can be permanently eliminated.³³ In a badly functioning marketplace, on the other hand, bad ideas operate like zombies.³⁴ They keep coming back to life. Due to technological changes, the zombies may be taking

26. See HUNTINGTON, *supra* note 14, at 42.

27. See Vanessa Lide, *Why Are There Massive Protests in Hong Kong?*, WASH. POST (June 11, 2019), <https://www.washingtonpost.com/politics/2019/06/11/why-are-there-massive-protests-hong-kong/>.

28. See DAVID RUNCIMAN, *THE CONFIDENCE TRAP: A HISTORY OF DEMOCRACY IN CRISIS FROM WORLD WAR I TO THE PRESENT 20–21* (2013) [hereinafter RUNCIMAN, *THE CONFIDENCE TRAP*].

29. See *id.* at 21.

30. See Michael Gonchar, *Why Is Freedom of Speech an Important Right? When, If Ever, Can It Be Limited?*, N.Y. TIMES (Sept. 12, 2018), <https://www.nytimes.com/2018/09/12/learning/why-is-freedom-of-speech-an-important-right-when-if-ever-can-it-be-limited.html>.

31. Tom Ginsburg, *Freedom of Expression Abroad: The State of Play*, in *THE FREE SPEECH CENTURY* 193, 193 (Lee C. Bollinger & Geoffrey R. Stone eds., 2019).

32. See *id.*

33. See *id.*

34. The most famous example of this idea, of course, is the phrase *The Big Lie*, coined by Adolf Hitler and operationalized by his minister of propaganda, Joseph Goebbels. See Zachary Jonathan Jacobson, *Many Are Worried About the Return of the 'Big Lie.' They're Worried About the Wrong Thing.*, WASH. POST (May 21, 2018), <https://www.washingtonpost.com/news/made-by-history/wp/2018/05/21/many-are-worried-about-the-return-of-the-big-lie-theyre-worried-about-the-wrong-thing/>; see also Timothy Snyder, *How Hitler Pioneered 'Fake News'*, N.Y. TIMES (Oct. 16, 2019), <https://nytimes.com/2019/10/16/opinion/hitler-speech-1919.html>.

over the marketplace of ideas.³⁵ Speech may be becoming a sword, pointed at democracy, rather than its shield.³⁶

Technology may be undermining the ability of speech to protect democracy for three reasons. First, technology facilitates the spread of false information.³⁷ Falsity spreads more rapidly on social media than the truth.³⁸ We are all entertained by false and shocking statements about those we disagree with and are quick to spread it to our friends.³⁹ Second, we have a deep-rooted tendency to split into opposing teams and think very poorly of our opponents.⁴⁰ When we do this in sports, it is fun. When we do this in politics, it becomes deadly serious. Social media makes it easy for us to become divided into opposing teams as we can choose to consume only the information with which we agree.⁴¹ This tendency becomes

deadly when it afflicts political elites.⁴² Democratic breakdown around the globe occurs when elites become polarized.⁴³ The sharp and divisive rhetoric employed by politicians is facilitated by information bubbles.⁴⁴

The third reason is the slow death of the news.⁴⁵ It was not that long ago that print media was the dominant means by which ideas were exchanged.⁴⁶ Small

35. See Tim Wu, *Is the First Amendment Obsolete?*, in *THE FREE SPEECH CENTURY*, *supra* note 31, at 272, 291.

36. On the challenges that changes in communication technology pose to the First Amendment, see *id.*

37. Soroush Vosoughi, Deb Roy & Sinan Aral, *The Spread of True and False News Online*, 359 *SCI.* 1146, 1147 (2018).

38. *Id.*

39. See, e.g., Drew Harwell & Tony Romm, *Violent Spoof Video of Trump Killing His Critics Shows How Memes Have Reshaped Politics*, *WASH. POST* (Oct. 14, 2019), <https://www.washingtonpost.com/technology/2019/10/14/violent-spoof-video-trump-killing-his-critics-shows-how-memes-have-reshaped-politics/>.

40. LILLIANA MASON, *UNCIVIL AGREEMENT: HOW POLITICS BECAME OUR IDENTITY* 1–3, 45 (2018).

41. CASS R. SUNSTEIN, *#REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA* 71–72 (2017).

42. See NANCY BERMEO, *ORDINARY PEOPLE IN EXTRAORDINARY TIMES: THE CITIZENRY AND THE BREAKDOWN OF DEMOCRACY* 21–22 (2003).

43. *Id.* at 22. On elite polarization, see JAMES E. CAMPBELL, *POLARIZED: MAKING SENSE OF A DIVIDED AMERICA* 21–23 (2016).

44. See CAMPBELL, *supra* note 43, at 21; SUNSTEIN, *supra* note 41, at 70–72.

45. Paul Starr, *Goodbye to the Age of Newspapers (Hello to a New Era of Corruption)*, *NEW REPUBLIC* (Mar. 3, 2009), <https://newrepublic.com/article/64252/goodbye-the-age-newspapers-hello-new-era-corruption>.

46. *Id.*

towns had thriving newspapers. They were a sort of public forum that printed competing ideas. They also hired reporters who provided a check on private and public corruption.⁴⁷ Since these papers were local, they provided a breakwater for our natural tendency to divide into two opposing, national teams.⁴⁸ The Internet destroyed the economic model of newspapers.⁴⁹ Businesses do not need to advertise in newspapers. With the death of reporting, private and public corruption will flourish.⁵⁰

To sum up, there are good constitutional reasons to be concerned about the state of constitutional democracy. Free speech, which had been the shield of democracy, now appears to act as a sword pointed at self-government. Nonetheless, the case for democratic pessimism may be oversold. Scholars were wrong to be optimistic about constitutional democracy 30 years ago, and they may be wrong by being pessimistic today.⁵¹ Democracies have a fine track record in muddling through crises and may figure out a way to muddle through this one.⁵²

III. U.S. FASHION TRENDS

Although Sanford Levinson and Jack Balkin agree with the global fashion trend of democratic pessimism, they disagree as to the cure.⁵³ That disagreement is rooted in a long running dispute that Americans have had over formal versus informal constitutional change.⁵⁴ Before addressing how *Democracy and Dysfunction* fits into this U.S. scholarly fashion trend, a recapitulation of the disagreement between the two authors is in order.

Our Constitution divides power to prevent a dictatorship.⁵⁵ Our Constitution is exceptional among the world's democracies in the degree in which it separates

47. *Id.*

48. *Id.*

49. Matt Stoller, *Tech Companies Are Destroying Democracy and the Free Press*, N.Y. TIMES (Oct. 17, 2019), <https://www.nytimes.com/2019/10/17/opinion/tech-monopoly-democracy-journalism.html>.

50. Starr, *supra* note 45.

51. Compare FUKUYAMA, *supra* note 14, at 12, and HUNTINGTON, *supra* note 14, at 27, with LEVINSON & BALKIN, *supra* note 1, at 89, 92–95.

52. See RUNCIMAN, THE CONFIDENCE TRAP, *supra* note 28, at 21.

53. LEVINSON & BALKIN, *supra* note 1, at 1–2.

54. JONATHAN GIENAPP, THE SECOND CREATION: FIXING THE AMERICAN CONSTITUTION IN THE FOUNDING ERA 3–4 (2018).

55. THE FEDERALIST NO. 47, at 271 (James Madison) (Am. Bar Ass'n ed., 2009). In *The Federalist No. 47*, James Madison writes the “accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.” *Id.*

power.⁵⁶ Professor Balkin argues this design has by and large worked, and we should therefore not tinker with it.⁵⁷ The problem, he argues, is that our elected representatives are doing a poor job of representing the citizens.⁵⁸ The solution is evolutionary and incremental, as we can change electoral rules by statute or engage in political battles over the meaning of the Constitution.⁵⁹ Professor Levinson, on the other hand, turns the argument about separation of powers on its head. He argues that divided authority has made our government so ineffectual that it invites presidential candidates who promise to fix everything by relying on executive authority.⁶⁰ The solution is to amend the Constitution.⁶¹

Their disagreement is over the virtues and vices of formal change versus incremental or evolutionary change.⁶² We have been arguing over this issue sporadically since the founding of the republic.⁶³ The British have an unwritten, common law constitution that changes by the means of new statutes and court cases, as well as by changed understandings of old principles.⁶⁴ The Framers believed a written constitution was superior to an unwritten one.⁶⁵ We can think of the transition between the older British constitution and the newer U.S. one⁶⁶ as a means of formalizing a role for ordinary people to play in the process of constitutional change.

The difficult issue is the extent to which the power of the people to amend the Constitution displaces incremental or evolutionary changes. The progressives in the late nineteenth century reasoned that our Constitution was, in some respects, similar to that of the British and that our understanding of constitutional provisions

56. See ROBERT A. DAHL, *HOW DEMOCRATIC IS THE AMERICAN CONSTITUTION?* 62 (2d ed. 2003).

57. LEVINSON & BALKIN, *supra* note 1, at 22.

58. *Id.*

59. *Id.*

60. Sanford Levinson, *The Constitution Is the Crisis*, ATLANTIC (Oct. 1, 2019), <https://www.theatlantic.com/ideas/archive/2019/10/the-constitution-is-the-crisis/598435/>.

61. *See id.*

62. See LEVINSON & BALKIN, *supra* note 1, at 2.

63. For the debate over this issue at the time of the founding, see GIENAPP, *supra* note 54, at 57–70.

64. See generally ERIC BARENDT, *AN INTRODUCTION TO CONSTITUTIONAL LAW* (1998).

65. Justice John Marshall in *Marbury v. Madison*, for example, notes that “written constitutions” were the “greatest improvement on political institutions” ever made. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178 (1803).

66. CHARLES HOWARD MCILWAIN, *CONSTITUTIONALISM: ANCIENT AND MODERN* 99–101 (1940).

could evolve over time.⁶⁷ Justice Oliver Holmes, in *Missouri v. Holland*, summarized this view when he argued the Constitution “called into life a being the development of which could not have been foreseen” by the Framers.⁶⁸ Originalists began to make the argument in the late twentieth century that it was illegitimate to change the meaning of the Constitution incrementally when it changes how the text was understood at the time of the framing.⁶⁹ Justice Antonin Scalia, perhaps the most famous of all of the originalists, said that, on balance, he preferred a dead Constitution.⁷⁰

Professor Balkin makes an argument for incremental change that echoes the arguments of progressives.⁷¹ On this account, our form of government works well in preventing tyranny.⁷² What we need is incremental change to clean up the electoral system by means of new statutes and social movements that seek to challenge the Supreme Court, to the extent that it blocks reform. Professor Levinson, on the other hand, is more original than any originalist. He takes seriously the premise of the Constitution found in the Preamble, which is that “We the People” can assess whether our government is working poorly and amend the structure if necessary.⁷³

This Article argues Professor Levinson has the better argument but for different reasons than he advances. Professor Levinson argues we need different rules to change the behavior of political actors.⁷⁴ A constitution, after all, provides a set of ground rules for politics. The problem, however, that technological change and speech presents to democracy is much deeper than simply the behavior of elected officials; it is a deeply rooted societal problem.⁷⁵ The process of constitutional change provides an avenue for dealing with deeply rooted problems. The American Revolution provides the best example of how constitutional change may transform society. The Revolution had bigger goals than simply replacing a monarch with a republican government. It was a broad social movement that was

67. MICHAEL KAMMEN, *A MACHINE THAT WOULD GO OF ITSELF: THE CONSTITUTION IN AMERICAN CULTURE* 156 (1986).

68. *Missouri v. Holland*, 252 U.S. 416, 433 (1920).

69. *See, e.g., Nat'l Labor Relations Bd. v. Canning*, 573 U.S. 513, 590–91 (2014) (Scalia, J., concurring).

70. *Scalia Vigorously Defends a 'Dead' Constitution*, NPR (Apr. 28, 2008), <https://www.npr.org/templates/story/story.php?storyId=90011526> [<https://perma.cc/6V A7-46WF>].

71. *See* LEVINSON & BALKIN, *supra* note 1, at 35–39.

72. *See id.*

73. *See* Levinson, *supra* note 60.

74. LEVINSON & BALKIN, *supra* note 1, at 176.

75. *See* MASON, *supra* note 40, at 61–62; SUNSTEIN, *supra* note 41, at 71–72.

aimed at fundamentally transforming society from a deeply inegalitarian monarchy to a more egalitarian republic where talent, not birth, determined how well or how poorly one would do in life.⁷⁶ That transformation was obviously imperfect, and we still struggle over what equality means. The point is that constitutional amendment is a peculiar form of lawmaking that involves ordinary people.⁷⁷ It can be deeply unsettling, as was true of the Revolution and is true in the United Kingdom today as we watch Brexit unfold.⁷⁸ But given how deeply divided Americans are,⁷⁹ the process of formal constitutional change offers the possibility of reconstituting and knitting our nation together.

IV. CONCLUSION

The global scholarly trend of democratic pessimism is well-founded.⁸⁰ Any republic is in trouble if false speech becomes common coinage. There is obviously no easy legal or constitutional fix for this problem. That said, democracies have muddled through difficult crises in the past and may do so again.⁸¹ One possible path forward can be found in the U.S. constitutional tradition. Although we have largely given up on the idea that we can amend our Constitution, there are important sociological payoffs to the process of amendment. The very process of engaging in formal constitutional change will require that citizens who disagree with each other engage in a conversation. It is how we “fix” deep societal disagreements.

Americans woke up after the 2016 elections and realized something that citizens in the developing world have long known, which is that democracy is hard. It requires citizen engagement and citizen attachment to institutions. There is no guarantee that we will be able to reconstitute our nation. The Danish physicist, Niels Bohr, is reputed to have said predictions, especially about the future, are hard.⁸² If we are going to escape our *Groundhog Day* politics where every day is about President Trump, we will have to do what the protagonist in *Groundhog Day*

76. GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* 230 (Vintage Books 1993) (1992).

77. See LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* 108–09 (2004).

78. See Mueller, *supra* note 23.

79. Philip Bump, *The Partisan Divide Keeps Growing*, WASH. POST (Oct. 11, 2019), <https://www.washingtonpost.com/politics/2019/10/11/partisan-divide-keeps-growing/>.

80. See *supra* Part II.

81. RUNCIMAN, *THE CONFIDENCE TRAP*, *supra* note 28, at 21.

82. *The Perils of Prediction, June 2nd*, ECONOMIST (July 15, 2007), <https://www.economist.com/letters-to-the-editor-the-inbox/2007/07/15/the-perils-of-prediction-june-2nd>.

did, which is to engage in self-reflection and undertake the difficult process of change.⁸³ Americans are capable of doing great things as a nation if we can find common ground once again.

83. See *Groundhog Day Synopsis*, IMDB, https://www.imdb.com/title/tt0107048/plotsummary?ref_=tt_stry_pl#synopsis [<https://perma.cc/K5YR-JQVV>].