

Long Read: How the constitution warps American politics and undermines democracy



As one of the US' founding documents, the constitution is venerated by politicians and members of the public alike. In this Long Read, [Hudson Meadwell](#) writes that the growing originalist interpretations of the constitution and the republican form of government it sets out are conservative and may be in fact be incompatible with, or a rival to, the notion of America's democratic ideals.

There is a recurring motif in American political discourse, ever present, sometimes visible in bold relief: the status in political rhetoric of the 'constitution' and the 'republic', and when joined, the 'constitutional republic', as the basis for political claims and the justification of political stances. The problems evident in American politics are not simply a consequence of what divides Americans, they rest also on what Americans *share* and have in common. Most notably, Americans share an archaic founding document – the constitution – that has over time warped their politics.

This puts a different twist on the meaning of American exceptionalism. The idea of the constitution is a near constant background in American politics. Everyone, apparently, is in the business of defending or protecting or interpreting the constitution. In comparative terms, this seems unusual: It is not a question of merely invoking the nation, or defending the (in this case, American) people. This kind of language surely does appear in American politics as political justification, but it does not seem to carry the rhetorical heft of other peculiarly American justifications, rooted ultimately in the American founding and the veneration of its basic features – its constitution and its republican form of government.

America's distinctive constitution and republic

One does not have to know the literature on American civil religion to suspect that the typical American worships (perhaps casually until pressed or cued) the constitution they share. The comparative contrast is evident: the 'people', 'country', 'nation' (or variations on these common nouns) are much more central to political discourse in other places in Europe, the Americas and Asia, including those countries with formal, written constitutions, than the 'constitutional' reflex as we observe the latter in the United States. Moreover, the emergence and longevity of a school of American political thought that devotes itself to the interpretation of the original meaning of the words of the constitution ('originalism') both illustrates the power attributed to the constitution and is redolent of literalist practices in monotheistic religions in relation to their sacred texts. Treating the constitution as 'the supreme law of the land', considering originalism, too easily calls to mind comparisons with some Islamic interpretations of the Koran or the historical treatment of heresy in Christianity.

The second part of this archaic motif is the political uses of the 'republic'. This even more directly reminds us of American distinctiveness and of the founding, since American republicanism as a form of government during the founding was contrasted with European models, the latter argued by the founders to be rooted in monarchism, corruption, standing armies and other political vices. Alongside 'protecting the constitution', then, we see the language of defending the 'republic'.

Clearly, America is not the only republic, even leaving aside those systems where republic means little more than no monarchical head of state. The most appropriate comparison with regard to republican political culture and discourse might be France. 'The Republic' clearly has political meaning in France; it has a political origin in the Revolution – thus a kind of 'founding' – but its weight is less directly linked to the French constitution, given that France's constitutional stability is relatively recent. By contrast, the American constitution appears as, and is treated as, fixed in time, if not stone, and its connection to the republic is durable and deep. The American constitution is also comparatively rigid. It is very difficult to change. The French, on the other hand, are living under their fifth republican constitution, even if constitutional change proved difficult to lawfully accomplish in moments of challenge.

Moreover, notoriously, American republican government proved compatible with slavery right from the start, from the founding on. This was a passive compatibility or relationship between republicanism and slavery. But, in extremis, when slavery was challenged, [republicanism was actively used to justify slavery](#) in the ante-bellum south in the run-up to the civil war as secessionists sought to hoist northerners, especially their politicians, and privileged whites in the south by their shared republican commitments. This was perhaps most evident in the ‘mudsill theory of democracy’, articulated by Southern planters and their intellectuals, notably in the Charleston vanguard of Southern secessionism, under which domestic slavery was argued to be indispensable to a well-ordered constitutional republic because it freed the plantation class of the Southern low country, especially in South Carolina, to play their natural roles as leisured gentlemen.

Not to mention that the American constitution was the model for the constitution of the Confederacy: Take a piece of paper, pencil a vertical line down the middle. On the left side of your pencil line, write out the clauses of the American constitution; on the other side write the clauses of the new Confederate constitution, drawing on what you see on the left side and penciling in language that fully justifies the constitutional slave republic. It’s not a great leap.

A constitutional republic with an unchanging constitution

These two rhetorical tropes are easily joined in America, in the form of the ‘constitutional republic’. The political uses to which this term can be put were illustrated by a Republican candidate for Congress (Mike Lee, Utah) in the recent 2020 elections, [when he denied that America was a democracy](#), but they have a much wider provenance and longer history. His use of ‘constitutional republic’ in this electoral moment revealed much about its political meaning. This description was invoked to deny (or at least to sharply qualify) the extension of the term ‘democracy’ to the United States and hence the legitimating power of democratic ideals in America.

This is clearly conservative in two senses of that word. In a partisan sense, this was meant to advance the broadly conservative goals of the Republican Party (as rejoinders from, to use the common nomenclature, ‘liberals’ and ‘liberal’ or ‘progressive’ media would suggest). In a deeper sense, not entirely non-partisan, it suggests that conserving constitutional first principles in America implies limits on how much and what kind of constitutional change can be permitted and restricts what kinds of public policies can be tolerated within those limits. This is not unusual. Constitutions are meant to be separated from public policy; while the latter may be fungible or relatively easy to change, constitutions are meant to establish rules of the political game (rather than to be a move in a political game) that are more difficult to change than the policies they enable. Constitutional change worldwide, as political scientists have long noted, typically requires some kind of supermajority.

The American constitution is 250 years old; its presumed resilience, however, is perhaps better recognized as rigidity, and it is inherently conservative in both senses above. That an influential home-grown school of thought, [originalism](#), emerged, which seeks to privilege as its first principles the words of a document prepared almost three centuries ago is prima facie evidence of one kind of conservatism. Further, the substance of that republican constitution may well be anti-democratic, and thus conservative in another sense, given the egalitarianism we associate with democracy.

A democracy or republic?

The reference to the constitutional republic in the electoral campaigns of 2020 was not invented on the spot out of whole cloth. We might consider the words of a document prepared for public distribution by the Bureau of Education and Culture in the Department of State in 2004 (revised in 2013), which is available online, and which apparently was circulated to [some of its embassies](#). Its [preamble/summary](#) reads: “While often categorized as a democracy, the United States is more accurately defined as a constitutional federal republic. What does this mean? ‘Constitutional’ refers to the fact that government in the United States is based on a Constitution that is the supreme law of the United States... A ‘Republic’ is a form of government in which the people hold power, but elect representatives to exercise that power”. This is boilerplate civics, but that is precisely the reason not to dismiss it. This is the collective self-understanding that constitutional republicanism promotes in America, according to a central government agency. It thus would perhaps be too easy to dismiss the language of constitutional republicanism as merely narrow partisan rhetoric, or not to recognize its deep historical roots.

The notion that America is (self-evidently to many) a democracy in form, and hence a polity that, even if imperfect, strives to live up to its democratic ideals therefore may not (or cannot) be legitimated by constitutional republicanism. That said, invoking the constitution or the republic to support or justify a political position may in some instances be counter-productive, even if it is widespread as a kind of American political reflex, given the central place in American political self-understandings of both 'constitution' and 'republic'.



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Invoking the republican constitution denies the relevance and legitimacy of democratic ideals in America altogether. Ironically, then, the widespread use of the 'constitution' or the 'republic' to justify democratic political positions may in formal terms be incoherent and as a practical matter may play into the hands of opponents, for whom the constitutional republic is already weighted in their favor, and for whom the republic is not essentially democratic. The larger strategic dilemma for such political actors seeking to invoke democratic norms is the ubiquity of these terms – 'constitution' and 'republic' — as important devices in American political culture and discourse, and the privileged place they occupy in the political lexicon.

Because of the meaning these terms have acquired, constitutional republicanism, for example, is incompatible with *democratic* republicanism as a legitimating ideal. America is shot through with instances and practices of domination, but the American constitution endorses a republican form of government without providing recognition or recourse against domination, and without weighing the compatibility of non-domination and inequality. And that's incompatible with democratic republicanism, at least as the latter is currently understood and used by some contemporary political theorists. (And the question remains: What work does 'democratic' do in the complex concept of democratic republicanism? It should do some work; otherwise it is simply redundant. If it does do work, then republicanism is not intrinsically democratic).

How invoking the constitution can limit democratic norms

We can play out some of the implications in a kind of thought experiment. Coded in the constitution is a theory of government that is not democratic, and which easily can be taken one step further and interpreted as anti-democratic, since democratic norms and institutions are alternatives or challenges to constitutional republicanism. Suppose the American partisan universe is divided roughly between conservatives and liberals, drawing on these terms (not without hesitation) because they are used in both informal (popular discourse outside formal institutions) and formal settings (discourse inside political institutions).

Every time a ‘liberal’ invokes the constitution or the republic to support her or his political position, she is endorsing a theory of government that is not democratic. In de facto supporting the constitution through recognizing its supremacy, she actually limits the kinds of democratic norms she can rely on because the latter are not embedded in the constitution. On the other hand, if she explicitly invokes democratic norms and ideals, thinking they are constitutionally embedded, she stands in danger of being said to be in violation of the constitution.

Leaving aside the question of when one invokes the rules of the political game (in this case those rules implied by the constitutional republic) to advance or justify one’s interests, the actor is taking for granted the constitution in order to draw on its legitimating power. She has accepted the power of the constitution and republic and is trying to deploy that power to defend her partisan position, not recognizing the performative contradiction that this exercise implies when one’s partisan position is organized around democratic values. She is unaware that the constitution is in fact coded. Yet, by hypothesis in our thought experiment, once learning the hard way that democratic norms and ideals are not compatible with the supreme law of the United States, she is more likely at some point to recognize the coded constitution for what it is. But this can take time and, to have long-lasting effects, also has to be passed on intergenerationally, and in a political world in which she will not be writing on a blank slate. Belief in the supremacy and sanctity of the constitutional republic is non-partisan, widespread, and has been robustly transmitted intergenerationally. It is habitual, part of being American, ingrained, or as some social theorists might say, correctly in my view, a constitutive element of American norms and behaviors (or “habitus”).

How to overcome the constitution’s limits

Once the coded constitution is recognized for what it is, there are loosely three options; I have set them out separately, although of course they might be combined in various ways. One is to rewrite the constitution altogether, a tall order since this implies something like a constitutional convention. Another, in light of the difficulty of the first, is to attempt to subvert the constitution from within, which implies a belief that the formal shell of the constitution can be maintained, its code erased or overridden, and new normative standards introduced. This, too, is difficult, both because of the challenges that it will provoke from those who support the constitutional status-quo, the genuine, deep gap between constitutional republicanism and democratic norms and ideals, and the formal limits to change imposed by the amendment process. A third option recognizes the difficulties of the first two and looks in the first instance to undermine the popular roots of the constitutional republic in the American mind before entering the formal political arena.

These are admittedly set out schematically, but they rest on a substantive claim: namely, that ‘constitution’ and ‘republic’ are widely venerated in American political culture and impose limits on the availability and legitimacy of democratic norms and ideals. America is not a formal democracy that has failed in practice to live up to democratic ideals, rather it is not a democracy. ‘Democracy’ is not short hand for the constitutional republic, instead it embodies a rival set of standards.

The further difficulty to note is those actors who do invoke democracy perhaps do recognize the rhetorical power of democracy but betray either their ignorance of American history or their willingness to gloss that history for political purposes. A revealing example is the recurring tendency until very recently to invoke the continuity of American democracy – ‘the world’s oldest continuous democracy’, implied, for example, in the [speech that President-elect Biden gave](#) after the Electoral College did its work on December 14, 2020, and then stated explicitly in his [Memorial Day 2021 address](#) at Arlington National Cemetery.

In a political culture in which ‘the constitution’ looms so large, and the republican notion is so embedded historically from the founding on as the antithesis of 18th century old world tyranny and corruption, claims to be the democratic exception in the world expose how the very notion of democracy in America has been shaped by the rhetoric and practice of ‘constitutional republicanism’. Forget democracy, a more credible claim would be that America is the oldest continuous constitutional republic. That’s a very different claim. American exceptionalism isn’t all that it’s cracked up to be.

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