

A RESPONSE TO THE CONSTITUTION’S CRITICS*

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A review of DENNIS HALE AND MARC LANDY, *KEEPING THE REPUBLIC: A DEFENSE OF AMERICAN CONSTITUTIONALISM* (2024)

Keeping the Republic: A Defense of American Constitutionalism defends the Constitution against historical and recent critics who reject its constraints on simple majority rule and its alleged inability to resolve deep conflicts in American society. The co-authors are political scientists at Boston College, so their treatment of the subject is more in the realm of political theory and political culture than constitutional law as such. There is no sustained treatment of courts or jurisprudence (although the Supreme Court receives some attention).

The book’s title is taken from the famous anecdote about the question posed to Benjamin Franklin after the Philadelphia Convention: “‘What kind of government have you given us, Dr. Franklin?’ To which Franklin replied: ‘A republic, madam, if you can keep it.’”¹ Dennis Hale and Marc Landy show that a true constitutional republic is a rare and somewhat fragile thing, and most certainly not a machine that would go of itself absent citizens’ informed understanding of its purposes and limits and their own responsibilities. The American republic was designed to protect human liberty and local self-government in a diverse and far-flung federal polity—not to empower a national

* Note from the Editor: The Federalist Society takes no positions on particular legal and public policy matters. Any expressions of opinion are those of the author. To join the debate, please email us at info@fedsoc.org.

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¹ DENNIS HALE AND MARC LANDY, *KEEPING THE REPUBLIC: A DEFENSE OF AMERICAN CONSTITUTIONALISM* 21 (2024).

numerical majority to enforce whatever conception of justice or progress the zeitgeist happens to announce.

The book first lays out the positive case for the Constitution as a successful approach to governance of a large geographic area under the conditions of post-Enlightenment modernity. Next, it relates the history of attacks on the Constitution up to the present, and then it rebuts the critics via reference to the initial defense and with additional data. A final section considers the distinction between governance in accord with established constitutional norms and the typical contemporary practice of ignoring or reversing them. This review will follow the same general pattern of the book, with the preponderance of attention to the first part.

I. THE POSITIVE CASE FOR THE CONSTITUTION

The first part of the book briefly explores modern political theory and how it informed the creation of the Constitution. It argues that the more one understands the bases and boundaries of politics since the Enlightenment, the more one will see why the Constitution has endured and why it is worth keeping. To this end, in the first part, the authors focus on the social contract theory of Thomas Hobbes and John Locke as the most proximate philosophical influence on the American founders, though they show an awareness of earlier figures such as Machiavelli. The rudiments of this theory will be familiar to educated readers. What is most valuable in this treatment is the authors' sophisticated explication of how modernity presented grave, even dangerous challenges for popular, consent-based government—especially government on the massive scale of the modern state. These challenges must be understood to fully appreciate how the Constitution was a wise and measured response to them.

Philosophically, modern thought demoted both the Christian religion and the Aristotelian understanding of human beings as naturally social and political, capable of both prideful self-assertion and of virtue. Hobbes was a materialist who taught that human beings were essentially solitary and afraid for their own security and well-being. They agreed to create the Leviathan whose rules would bring order and protection, ending the “war of all against all” in the postulated “state of nature” and thereby securing the “natural right” to self-preservation. On this view, the government protected individuals and allowed them to enjoy peace and material prosperity by being “powerful enough to keep human striving out of the danger zones (religion, the love of

glory) and confined to the zones of private pleasures and enchantments.”² Building on Hobbes, Locke emphasized that property, commerce, and material accumulation would absorb the efforts of human beings and that the purpose of government by consent was to protect the individual’s rights to life, liberty, and property. Human reason thus counseled consent to a power strong enough to assure security and comfort. People were made safe and allowed to prosper, but the aims of politics were truncated and lowered, redirected away from religious disagreement, but also away from the human capacities for justice, virtue, and self-denial.

Hale and Landy argue that the American founders accepted this modern understanding of human beings and politics, but not wholly or simplistically. The founders acknowledged that the lower, self-interested, and appetitive aspects of human beings are an ineradicable part of our nature. Yet they also insisted that the premodern understanding had not been thereby refuted. By nature, human beings were social and rational and remained capable of noble ambition, virtue, self-restraint, and public-spirited action. The authors describe as “the central argument of the book” the “need that the Constitutional Framers understood to both adapt to modernity and, at the same time, to discipline modernity to make it compatible with republican government and human nature.”³ The most fundamental part of the positive case for the Constitution, then, is that it proceeds from a correct understanding of human nature, accepting both its base and better components. Contrary to later philosophical developments, the founders did not think human nature could be remade by modern science or that it was determined by historical circumstance. Critics who condemn the supposed failures of politics and constitutionalism too often fall into “the most dangerous of all modern conceits, namely, that *there is no such thing as human nature.*”⁴

Since the “constitutional framework succeeds in allowing these multivariate dimensions of human nature to coexist,” the book shows how crucial but familiar constitutional structures and attributes appear with a deeper philosophical meaning that makes them more thoroughly defensible.⁵ A prime example is federalism. Americans’ colonial experience and the inheritance of the common law schooled them in local self-government and fostered the respect for custom, tradition, and love of one’s own that is natural to human beings.

² *Id.* at 5.

³ *Id.* at 18. *See also id.* at 31.

⁴ *Id.* at 31 (emphasis in original).

⁵ *Id.* at 34.

Citizens insisted on retaining control of local affairs via the traditional police power left to them by the Constitution. From colonial times until today, Americans have remained suspicious of distant, less familiar authority—a fact about the polity that does much to explain why people do not automatically accept the latest bright idea that emanates from some bureaucracy in Washington, DC, that they have never heard of. Local officials can also be known and held accountable—be made to answer to the principle of consent—much more easily than those far away.

Only through federalism could the nation meet the challenge of governing such a large and diverse geographic area based on consent. Differences in circumstances, resources, customs, and preferences can be accounted for at the state and local levels in a way that is impossible for distant officials who lack what Friedrich Hayek called “local knowledge.” Officials who have this knowledge will have a much better sense of what policies are appropriate and tolerable and much more success in implementing them. On this point, Hale and Landy conclude that “federalism’s approach to the problem of diversity is not to try to solve it but to develop ways of living with it. Live and let live! Accept that the social fabric is made up of many different threads and that it can be kept from tearing only if the threads are loosely woven together.”⁶ As one recent example of success in this area, the authors offer states’ varying responses to the Covid-19 pandemic. A one-size-fits-all mandate from the federal government likely would have led to disaster, but states were able to respond with different approaches that comported with their own individual situations (including differing tolerances for risk). Similarly, once the Supreme Court overturned *Roe v. Wade*, the contentious issue of abortion was thrown back to the states.⁷ Whatever one thinks of abortion, large swaths of the polity could never quite comprehend the Court’s invention of the right nor accept its constitutional legitimacy. Understood in this way, *Dobbs v. Jackson Women’s Health Organization* “opens up public deliberation about abortion and ensures that this will take place in the appropriate deliberative forum: state legislatures.”⁸ And states are arriving at different and sometimes surprising regulatory regimes, as we would expect them to do in regard to a deeply controversial issue in such a diverse federal polity.

There is another aspect of the states that the founders relied on to ensure republican government on a large scale: their ability to nurture civic virtue

⁶ *Id.* at 128.

⁷ See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

⁸ HALE AND LANDY, *supra* note 1, at 136.

and morality through education and citizens' involvement in local affairs. The Constitution makes no provision for education and the First Amendment forbids any federal religious establishment, but everyone at the time of the framing understood that the duty of making responsible and ethical citizens would reside at the local level. States and localities created and funded schools, and several states had established churches well into the 19th century. People learned how to be self-governing citizens through service on juries and by taking responsibility for everyday local matters like school boards, fire departments, libraries, and roads. Citizenship was thus cultivated by learning and doing in one's own community, not by adhering to the dictates of a distant power. As the authors put it at one point, "no federal government program ever created a good father, mother, or neighbor. This is the responsibility of schools, religious congregations, extended families, voluntary associations, and other forms of civic and social life."⁹ That so many of these institutions have atrophied in contemporary America is not the fault of the Constitution. To the extent that we ask federal programs and officials to stand in for our own responsibilities as citizens, this book argues, we foist onto the Constitution a weight it was never designed to carry. The people who wrote it understood that a republican government could not survive without a virtuous citizenry, even as they realistically accounted for human self-interest.

The problem of scale also led to the necessity of representation, which similarly accounted for the high and the low in human nature. Here, the authors succinctly and insightfully recapitulate James Madison's logic in the rightly famous *Federalist* 10. Once it is understood that the days of direct democracy are long gone, we must appreciate how the institution of representation can conduce to good government. When popular views are "refined" and "enlarged" by representatives the people have chosen for their "patriotism and love of justice," the inevitable, prideful assertion of short-term "passions" will be reoriented to more reasonable consideration of common and longer-term "interests." Representatives chosen from large districts will confront others with whom they must deliberate and form coalitions in order to get anything done (including the development of a record that can get them re-elected). Again, the reality is that people are made up of pride and passion, reason and public spirit, and the goal is to account for and harness this multifaceted nature in the interests of good government. But an institution brilliantly oriented to facilitate reasonable political deliberation cannot

⁹ *Id.* at 200.

guarantee that it will occur. We know this deliberation has happened in the past, even though today it is difficult for Congress to deliberate as it should. Congress cannot create agreement where there is none; rather, it was designed to encompass the nation's myriad passions and interests and to cohere them with as much reason and comity as circumstance and human imperfection allow. If the nation is divided or unsettled, Congress will be too. This fact about democratic politics and contemporary American life cannot be blamed on the Constitution. Ultimately, the authors argue (quoting the *Federalist*), "the success of representation rests on the capacity of citizens to make 'honorable determinations' of those who will represent them."¹⁰ A running theme of this book, here as elsewhere, is that the Constitution has too often been condemned for failings that really are those of citizens and the larger political culture we have created.

The book's brief treatment of the separation of powers and checks and balances also reflects on their roots in the founder's view of human nature. These aspects of the Constitution are not manifestations of a simpleminded, "mechanistic" conception of politics, as critics have so often claimed. Rather, they are based on a "compelling argument about the *psychology of ambition*" natural to human beings and how it could be deployed both for the public good and to protect citizens from an overreaching government.¹¹ Because, as the *Federalist* observes, "men are not angels" and "enlightened statesmen will not always be at the helm," limitations on government are needed. They are best effectuated by a structure that arrays the powers of ambitious officeholders against one another so that each will jealously guard his own and monitor those of others. Powers thus separated have to interact and then recombine according to procedures that give no one official complete or ultimate control. This is an approach to power which understands that ambitious people want to have it, and that we need them to exercise it, but that we can never wholly trust them with it. Constitutional systems that do not account for human nature in this way are known frequently to devolve into tyrannies of one kind or another.

The last component of the positive case for the Constitution turns from direct consideration of human nature to a brief analysis of how the Constitution prepared America to succeed as a modern state. For example, it was crucial to secure "energy" in the executive, which was accomplished by making the president a single person continually re-electable (originally) and with

¹⁰ *Id.* at 43.

¹¹ *Id.* at 45 (emphasis in original).

vaguely defined powers (“the executive power” as opposed to Congress’s “all legislative powers herein granted”). The president was given the leeway to defend the nation and to lead it toward large and long-term goals. While the authors are sympathetic to the claim that the presidency has become too powerful in general, they are convinced that the founders were correct to establish it as an office that could contend with future dangers and unpredictable contingencies. It is necessarily the most dangerous branch because there is no guarantee that its vast power and discretion will not be misused. Yet, for a republic to survive, it must have an executive that can perform tasks that only it is able to do. One limitation of this book is the authors’ decision not to plumb this topic any further by, for example, engaging the debate surrounding the “unitary executive.” But, as they are aware, to wade into the relationship between executive power and constitutional government is to enter waters that run quite deep. So after registering their dissatisfaction with Donald Trump and noting that (at least so far) the republic has survived him, they leave off consideration of the presidency with the admonition that “we can do no better than to repeat the old wisdom that democracy requires eternal vigilance.”¹² While this might sound like a cop-out, it is not. The constitutional order can keep executive power in check, if only after the fact of its exercise. But a self-governing people that wishes to remain so must be willing to use the resources at its disposal for this purpose.

This same idea informs the authors’ brief attention to the administrative state in the book’s first part, a topic they return to toward the end. Here, the founders do not get quite as high of a grade as elsewhere. As discussed in *Federalist* 68, for example, they certainly were aware of the need for good administration, and yet they were properly leery of too much bureaucratic discretion. But they did not address the issue head-on. The president’s power of removal evolved by implication and has always been contested and limited by Congress, while Congress’s own power of the purse has not been used to discipline bureaucrats as much as it might be. The authors describe the latter as a “failure” of Congress, “but the fault does not rest with the Constitution,” they say.¹³ To keep bureaucracy answerable to the people’s representatives and the rule of law remains one of the great constitutional problems of our time, given the reality that any modern state will need experts who understand

¹² *Id.* at 56.

¹³ *Id.* at 58-59.

complicated issues to administer inevitably general laws. The authors rightly observe that keeping the republic will require ongoing attention to this issue.

Just as the issue of administration cannot be evaded in a large modern state, so too did the founders recognize that modern government must facilitate commerce and protect private property. The Constitution was created for a “commercial republic” whose “citizens would demand that the state enable them to be prosperous.”¹⁴ This goal that in earlier times might have been considered crass materialism has, in modernity, become routinely accepted, if not considered noble. Philosophers and priests were not proscribed by the Constitution, but neither did they retain the influence they once had. Drawing limits on the reach of commerce was left largely to the states via the police power. To the extent that things like Sunday closing laws or prohibitions on gambling have eroded, it is because citizens in some states have acquiesced to the change, not because the Constitution has required it. At the federal level, the Constitution can accommodate “a sensible level of regulation” of the economy and a “well-crafted safety net [that] is a necessary complement to free economy.”¹⁵ But it cannot make virtuous citizens. As noted above, that task was left to states, localities, families, and civil society. In returning to this point with some frequency, Hale and Landy gently but firmly insist that many of our contemporary problems are not the fault of the Constitution, but result from our failure to use the space it gives us for self-government to govern ourselves well.

II. ANTI-CONSTITUTIONAL CRITICS

Upon concluding the initial explanation and defense of the Constitution, the book has a long chapter that examines the history of anti-constitutional criticism from the Anti-Federalists to today’s law professors and political scientists. This chapter includes treatment of 19th century abolitionists, utopians such as Edward Bellamy, Progressives, New Deal advocates, and members of the New Left of the 1960s. These critics are presented sensitively and fairly, with the goal of explaining why they opposed the Constitution or called for its overthrow or reform. Most varieties of criticism center on the claim that the Constitution is insufficiently democratic—that it improperly impedes majority rule. Others involve what the authors call “critiques of an American ‘way of life.’” The Constitution is said to foster or allow such nasty things as

¹⁴ *Id.* at 59.

¹⁵ *Id.* at 200.

“excessive individualism, greed, inequality, and corruption.” It is also said to be “insufficiently protective of rights; it was founded in slavery and exploitation; it is excessively fixed and rigid; and it forces the present to be governed by the past.”¹⁶

The force and insight of the authors’ rebuttals to each of these attacks cannot be fully reconstructed here—one really needs the book for that. An overarching theme is the concept of constitutionalism as “mitigated popular government” (adopted from Herbert Storing). America is a democracy based on the consent of the governed, but the Constitution allows the majority to have its way only when that majority is durable enough to assert itself through established institutions and procedures. Political action and decision-making are slowed down so that policies can be deliberated and refined and so that coalitions can be formed. The majority must be sufficiently broad, and often sufficiently federally dispersed, to pass through the gamut of checks and balances. When considered in this light, “the case against the Constitution involves not a defense of democracy but a defense of *impulsive* democracy, the idea that majorities should obtain their goals in real time, no matter what those goals are, and no matter how narrow the majority.”¹⁷ Appeal to mitigated democracy is at the root of the authors’ defense of the Senate and the Electoral College, for example. Both institutions compel the creation of a governing majority that is not merely numerically superior at a given moment, but that has been cohered over time and space. This model is far more likely to result in moderate policy and relative social cohesion than the quick swings in direction that would result from unmitigated majoritarianism.

While majoritarians likely would not follow their logic so far as to suspend the Bill of Rights, their ire is often directed at capitalism and private property as the basis of the income inequality they so revile. Hale and Landy go somewhat far afield from constitutional analysis classically understood to defend capitalism and American entrepreneurialism against the social democracy and wealth redistribution that critics claim would benefit the majority. This defense is largely empirical, involving measures of such things as living standards, taxation levels, wealth creation, and employment patterns. It also makes the philosophical point that, aside from matters of good taste and just plain envy, “no objective standards exist to discriminate between the deserving and undeserving rich.”¹⁸ Likewise, government control of property and wealth, as

¹⁶ *Id.* at 106.

¹⁷ *Id.* at 107 (emphasis in original).

¹⁸ *Id.* at 116.

exemplified by any modern socialist regime, has not been notably successful in creating an egalitarian society, or indeed in feeding its own citizens at an adequate level.¹⁹

Perhaps the most fundamental criticism of the Constitution is that it failed to abolish slavery in 1787. To rebut the claim that therefore the Constitution and the nation are basically evil, Hale and Landy wisely call on the Declaration of Independence, Frederick Douglass, and Abraham Lincoln. As the authors explain, the union would not have endured if the founders had not compromised on slavery. But in the no-compromise scenario, slavery would still have continued and been positively affirmed in a separate pro-slavery republic. Instead, slavery was put on the course of ultimate extinction because it was incorporated into a regime whose founding principles condemned it—natural rights and “all men are created equal.” Moreover, nowhere did the Constitution positively authorize slavery. It simply tolerated it as a creation of state law and gave the federal government the power to prevent its expansion (as Lincoln insisted). It is telling that everywhere the document references slavery—and in each place one would expect to see the word—instead the term used is “person.” Indeed, this was a point Douglass made in his famous attack on slavery and the Fugitive Slave Act that had been secured as part of the Compromise of 1850. Americans were to be condemned for having chosen to pass this law via their representatives in Congress, he argued, but the Constitution had not made them do it. Rather, the document had

neither warrant, license, nor sanction of the hateful thing, but interpreted as it *ought* to be interpreted, the Constitution is a glorious liberty document. Read its preamble, consider its purposes. Is slavery among them? . . . Now, take the Constitution according to its plain reading, and I defy the presentation of a single pro-slavery cause in it.²⁰

The solution, short of civil war, was for Americans to understand the evil of slavery and vote into office people who would abolish it—precisely the effort Douglass was engaged in advancing.

III. GOVERNMENT “IN THE CONSTITUTIONAL GRAIN”

The book’s last part distinguishes modes of governance that are “in the constitutional grain”—meaning those that are compatible with basic

¹⁹ *Id.* at 117.

²⁰ *Id.* at 71 (emphasis in original) (quoting Frederick Douglass, What to the Slave is the Fourth of July? (1852)).

principles and structures of the Constitution—from those that are not. We need a return to this kind of governance, argue Hale and Landy, because of the current paradoxical situation wherein people want the government to do more to improve their lives but are also consistently dissatisfied with its actions. The authors describe this as a crisis in representative government. The root of the problem, they argue, is that since the New Deal government has become overambitious and overcommitted, while also becoming more opaque and incomprehensible to everyday citizens. Using a term adopted from James Q. Wilson, they say that the “legitimacy barrier” has been breached. This was a line that, for most of American history, separated the responsibilities of the states from those of the the federal government and the public from the private. Since the New Deal, “not only would the government subsidize citizens, it would now attempt to fix whatever appeared to need fixing.” As the government’s ambitions increased, so did “the chances that it would fail. Hence, the growing distrust and disenchantment with the *results* of government, even as citizens continued to enjoy the fruits of the entitlement state.”²¹ The opacity and unaccountability result from the manner in which governance now so often occurs—the “stealth government” of the administrative state, where courts, bureaucracies, and interest groups operate largely outside the reach and understanding of the citizenry.²²

The New Deal’s infrastructure building and regulation of interstate commerce are described by the authors as “in the grain” because no single state could have accomplished them and because they were plausibly related to commerce. But the fateful redefinition of rights that began at the same time was decidedly not in the grain. The traditional idea of rights as inherent in individuals and as things that must be protected *from* government (“negative rights”) was transformed. Rights came to be understood as tangible benefits that the government *provided* to individuals or groups (“positive” or “programmatically” rights). Hale and Landy are sympathetic to the argument that rights to labor union organization and Social Security, while novel, were in the grain. These new rights arose from the unique challenges of the modern industrial economy that only the federal government could address. But the authors also see that the New Deal established the precedent for rights as entitlements overseen by the administrative state, and they see that as the beginning of the breakdown of the legitimacy barrier. The authors describe how

²¹ *Id.* at 149 (emphasis in original).

²² *Id.*

this dynamic was elaborated in the Great Society of the 1960s and how it has continued into our own time, noting that the result is increasingly fiscally unsustainable and politically uncontrollable. The lesson here is that keeping the republic will require some retrenchment of the government's responsibilities and spending before insolvency descends.

To take another example, Hale and Landy describe the Civil Rights Act of 1964 as well within the constitutional grain. The product of careful and extended deliberation in Congress, it finally ended legal racial discrimination by requiring equal treatment in public accommodation, employment, and education. Together with the Voting Rights Act of 1965, the 1964 Act began to realize, in fact, the principles of the post-Civil War Reconstruction Amendments. Nevertheless, with the encouragement of President Lyndon Johnson, federal courts and bureaucracies soon instituted race-based affirmative action policies that abandoned the concept of equality before the law. The transmogrification of the plain meaning and original intent of the 1964 Act into the demand for equality of result and proportional representation is perhaps the most glaring example of how stealth government has inverted constitutional principles. Hale and Landy pull no punches in marking the costs to race relations and civic comity. They do not analyze *Students for Fair Admissions*, but that decision seemingly augurs a return to a more constitutionally sound approach.²³

The authors do analyze the rebuke to the administrative state represented by *West Virginia v. EPA*.²⁴ In that decision, the Supreme Court prohibited the Environmental Protection Agency from using its discretion to regulate carbon dioxide from coal plants in a fashion that would have decimated the industry and hence the economies of several states. Such a momentous move, said the Court, could not be undertaken without more explicit authorization from Congress. Hale and Landy describe this decision as “the most powerful blow dealt to stealth government since the New Deal.”²⁵ They applaud the Court's attempt to defend the separation of powers by directing the responsibility for governing back to Congress. Similar is their treatment of the proposed Regulations from the Executive in Need of Scrutiny (REINS) Act. It would decrease bureaucratic discretion by requiring agencies that propose regulatory rules with costs over \$100 million per year to obtain the approval of Congress before implementing those rules. They lament that Congress has abdicated its

²³ 600 U.S. 181 (2023).

²⁴ 597 U.S. 697 (2022).

²⁵ HALE AND LANDY, *supra* note 1, at 188.

duty by failing to pass the law. Here, a theme from the book's beginning reemerges with the reiteration that, because America is a modern state, it will need bureaucrats with some discretion to regulate the complexities of modern life. But in our separation of powers system, this cannot be allowed to mean the cession of all control to the executive branch (or to "independent" agencies in a supposed fourth branch). Congress must tap into the ambitions of its own members to check such aggrandizement. On this point, Hale and Landy conclude that "the future of the republic rests on the willingness of Congress to reassert that noble ambition."²⁶

Citizens can help push Congress toward its duty by returning to "thinking constitutionally" (the title of the book's last chapter). This entails a deeper appreciation of the kind of people Americans are and the kind of politics the Constitution both recognized and was designed for. America is a vast and diverse land made up of people who are generally zealous for their liberty and suspicious of authority, especially distant and impersonal authority. They are capable of and should be encouraged to actively participate in government at the state and local levels. But the size of the national territory means that people cannot participate directly in government at the national level and instead must rely on the very real power of choosing who will represent them and deliberate on their behalf. Another fact about the combination of the nation's diversity and its scale is that, in the authors' *sub silentio* quotation of the world's greatest octogenarian rock band, "you can't always get what you want." Other people have interests that are legitimate even when we dislike them. Politics is about finding some *modus vivendi* in the public interest that can be made from the ongoing clash of more particular and local interests. The willingness to win some and lose some without wrecking the entire constitutional enterprise is absolutely necessary for self-government in America. And this means that Congress must reassert its own constitutional authority to deliberate and legislate on behalf of the nation, and to reclaim ground it has too frequently ceded to other actors. The authors make this point repeatedly, though not in great detail. Their insistence about the nature of the problem and the site of its solution should cue all of us to attend to the prospects for reforming and emboldening Congress.²⁷

²⁶ *Id.* at 189.

²⁷ Deeper engagement with this issue can be found in PHILIP A. WALLACH, WHY CONGRESS (2023); IS CONGRESS BROKEN? THE VIRTUES AND DEFECTS OF PARTISANSHIP AND GRIDLOCK (William F. Connelly Jr., John J. Pitney Jr., & Gary J. Schmitt eds., 2017); CONGRESS

The Constitution has endured for so long because heretofore the American people have successfully taken up the burden of democratic self-government the document assumes we want to carry. If, instead, conflicting groups and interests come to believe that the government can solve any and all social problems as they see fit—no matter the expense and damn the opinions of their neighbors—self-government in America will be impossible. This book counsels us to see that the Constitution is best understood not so much as a recipe or rulebook that tells us what to do, “but a framework that encourages a particular way of governing, one that privileges deliberation, compromise, restraint, and respect for federalism and the separation of powers.”²⁸ Officeholders and citizens must recapture this more modest, forbearing, and limited conception of politics that the Constitution grew from and was meant to order and facilitate. *Keeping the Republic* goes a long way to show where we should put our thought and effort if American constitutionalism is to last for generations to come.

Other Views:

- ROBERT A. DAHL, *HOW DEMOCRATIC IS THE AMERICAN CONSTITUTION?* (2d ed. 2003), available at <https://yalebooks.yale.edu/book/9780300095241/how-democratic-is-the-american-constitution/>.
- SANFORD LEVINSON, *OUR UNDEMOCRATIC CONSTITUTION* (2008), available at <https://global.oup.com/academic/product/our-undemocratic-constitution-9780195365573?cc=us&lang=en&>.
- Jeffrey Toobin, *Our Broken Constitution*, *THE NEW YORKER* (Dec. 1, 2013), <https://www.newyorker.com/magazine/2013/12/09/our-broken-constitution>.
- *The 1619 Project*, *THE N.Y. TIMES MAGAZINE*, Aug. 18, 2019, available at https://pulitzercenter.org/sites/default/files/full_issue_of_the_1619_project.pdf.

OVERWHELMED: THE DECLINE IN CONGRESSIONAL CAPACITY AND THE PROSPECTS FOR REFORM (Timothy M. LaPira, Lee Drutman, & Kevin R. Kosar eds., 2020).

²⁸ HALE AND LANDY, *supra* note 1, at 194.