

THE LIMITS OF VENERATION

Public Support for a New Constitutional Convention

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ABSTRACT

At the conclusion of *Our Undemocratic Constitution*, Sanford Levinson asks the American people to call a new constitutional convention. Levinson's critics dismissed this call as fanciful, not least because of the assumption that the populace unthinkingly venerates the Constitution too much to countenance the idea of a convention. We challenge the conventional wisdom on conventions by analyzing a 2011 *Time* magazine poll indicating one in three Americans would support such a call. While constitutional support remains high, we contend the cultural power of law allows citizens to have meaningful and sometimes critical constitutional attitudes. Logistic regression analysis indicates various personal attributes shape these attitudes, including ideology, race, age, income, and constitutional knowledge. Approval of Congress and preferred method of constitutional interpretation also structure convention support.

KEYWORDS: *Constitutional Convention, Constitutional Veneration, Legal Consciousness, Public Opinion*

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INTRODUCTION

Sanford Levinson (2006; 2012; see also Mann and Ornstein 2013) has argued that the Constitution is fundamentally undemocratic and a contributing factor to the widespread impression that contemporary American politics, especially on the national stage, is seriously dysfunctional. Thus, he asserts that the American people should demand a new constitutional convention to consider major structural changes that might alleviate both its undemocratic and dysfunctional aspects. Some of Levinson's critics believe that it is pointless to contemplate a new convention because it would never garner sufficient public support. In this article, we challenge the strength of the assumption that the Constitution enjoys such overwhelming public support that major constitutional change is impossible.

Consider only that in the summer of 2016, the National Constitution Center hosted a meeting of the Assembly of State Legislatures, an organization of more than 100 state lawmakers from 30 states who favor calling a new constitutional convention. At present, twenty-eight state legislatures have passed resolutions calling for an Article V convention to propose constitutional amendments (Johnson 2016). Article V itself appears to mandate that Congress call a new constitutional convention upon the petition of two-thirds (34) of the states. Many of these states have passed these resolutions at the behest of the American Legislative Exchange Council, a conservative interest group seeking a balanced budget amendment to the Constitution (Natelson 2013). Ten more states had approved convention resolutions in recent years and have subsequently repealed them out of a fear of a “runaway convention.”³

Across the country, state constitutional development has occurred with much more frequent and severe change than at the federal level. As John Dinan has noted in his authoritative book *The American State Constitutional Tradition* (2006, 7; see also Tarr 2015), there have been more than 230 such conventions since 1776, and many of them also supplanted existing constitutions with new ones. Even though the frequency of state conventions is lower than in the 19th century, several states have revised or replaced their constitutions through conventions since World War II (Grad and Williams 2006). Louisiana held the most recent convention in 1992. At the very least, these trends demonstrate that once one includes *state* constitutions within the

3. Indeed, a central question, beyond the scope of this paper, is whether the petitions of the states must be identical in form or, at least, substance and, additionally, whether any convention called at the behest of the states could be limited to considering only the topics of the petitions or, instead, would have the same near-plenary power to propose any and all amendments asserted by the original constitutional convention that took place in Philadelphia in 1787.

broad “American constitutional tradition,” one cannot possibly argue that there is a general disposition to “venerate” all constitutions or believe they are impervious to change, including change through conventions. Still, one cannot deny that Americans’ attitudes differ, depending on whether one is referring to the national or state constitutions.

What can we learn about levels of veneration from close analysis of the available data concerning public support for a new national convention? What if the magic number of 34 states is achieved? How might Americans in general respond to the possibility of a new convention? A recent *Time* magazine poll (see Stengel and Ford 2011) found one in three Americans favor calling a new constitutional convention. We begin by drawing upon the legal consciousness literature to conceptualize constitutional attitudes. We then generate a series of hypotheses concerning constitutional attitudes by connecting personal attributes to major themes in American political development and constitutional theory. Our quantitative analysis of the *Time* survey reveals that respondents’ attitudes towards constitutional change are a predictable reflection of group identities, levels of constitutional knowledge, congressional approval, and ideological considerations. We conclude by reflecting on the implications of these findings for constitutional change and political polarization.

CONCEPTUALIZING CONSTITUTIONAL ATTITUDES

The 2011 *Time* survey is not the first data collected on support for a new constitutional convention. On at least three occasions in the 1930s and 1940s, Roper and *Fortune* magazine asked whether the Constitution “should be thoroughly revised to make it fit present day needs.”⁴ Five percent of respondents answering this question in December 1939 believed “[t]he systems of private capitalism and democracy are breaking down and we might as well accept the fact that sooner or later we will have to have a new form of government.”⁵ Turning to somewhat more modern times, in the run-up to the Constitution’s Bicentennial in 1987, a number of media organizations polled on support for a new constitutional convention. These questions, which varied in the amount of information given to respondents and in the framing of the issue, revealed a range of support from 24%–61%. These older questions and findings are presented in the Appendix.

4. See <http://www.ropercenter.uconn.edu/CFIDE/cf/action/ipoll/ipollResult.cfm?keyword=constitution+revised%20&organization=Roper+Organization>.

5. Notably, this survey also included the Socialist Party as an answer choice for party identification.

The concept of constitutional attitudes has received even less attention from legal scholars and political scientists than from media organizations. Larry Sabato (2008), one of the handful of academics who supports a new constitutional convention, conducted a poll measuring public opinion regarding various proposals to change the Constitution. The survey revealed strong support for congressional and judicial term limits, a mandatory retirement age for Supreme Court justices, direct election of the President, and reforms to the operation of political campaigns. Taking a somewhat different approach, Stephanopoulos and Versteeg (2016) studied public attitudes towards both the U.S. and state constitutions and found levels of specific support for American constitutions to be high overall, with support for the U.S. Constitution higher than state constitutions. These findings are similar to those of Zink and Dawes (2015), who found significantly higher levels of constitutional status quo bias at the federal level compared to state constitutions.

While Stephanopoulos and Versteeg (2016) found strong links between levels of constitutional knowledge and approval, demographic characteristics were not strongly determinative of constitutional support. Their study also revealed most Americans have very little idea of what concepts have been written into their constitutions. However, political or constitutional knowledge need not be necessary for the formation of meaningful constitutional attitudes. Defenders of direct democracy (Matsusaka 2005, 193) have noted, “Many issues [decided in ballot measures] are mainly about a community defining its values.” Compared to ballot measures on more complex and technical policy issues, voters demonstrate higher levels of awareness of value-based referenda, and turnout rates for these referenda are also significantly higher than other ballot measures (Biggers 2014).

In the absence of specific knowledge, how do voters relate to constitutions? Ordinary citizens employ interpretive frameworks to give meaning to their law-related social interactions. Sociologists Patricia Ewick and Susan Silbey (1998, 22) define legal consciousness as “the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends. In this rendering, people may invoke and enact legality in ways never approved nor acknowledged by the law.” Conceptions about fairness and respect for others that guide social interactions are frequently constructed in terms of legal discourse. Legal consciousness also provides a schema through which citizens can evaluate their place within the political order.

Kathleen Hull (2006, 159) described the most common themes in letters to the editor to Hawaii’s daily newspapers during the state’s 1998 debate over a constitutional amendment to ban same-sex marriage. Amongst letters supporting same-sex marriage, the most common themes were: 1) rights, equality, justice,

and non-discrimination; 2) tolerance and anti-bigotry; 3) criticisms of the tactics of opponents of same-sex marriage; 4) comparison of gay rights to other rights movements; 5) limits on popular rule; and 6) the separation of church and state. Amongst these competing frames, only the third item requires political knowledge and the last requires much constitutional knowledge. The most common themes amongst letters opposing same-sex marriage were: 1) majority rule and judicial overreach, 2) criticizing the tactics of same-sex marriage supporters, 3) rejection of a rights framework being applicable, 4) homosexuality is a choice, 5) morality and God's will, and 6) support for a traditional definition of marriage. Once again, only the second frame requires political knowledge and only the third frame requires much constitutional knowledge. Instead, the majority of frames on both sides of this debate are informed by cultural understandings of social values, democracy, and the rule of law.

George Lovell (2006; 2012) analyzed a sample of over 500 letters sent by ordinary citizens to the Civil Rights Section of the Justice Department between 1939 and 1941. While some letters referenced specific portions of the text of the Constitution, many more invoked arguments couched in broader concepts of fairness and justice or made attempts to connect constitutional guarantees to a conception of the “good life.” Many letter writers refused to treat judicial decisions or pronouncements from the Justice Department as authoritative, insisting instead on the legitimacy of their own constitutional understanding (Lovell 2012, 12). As Lovell (2006, 232) concludes, “The willingness of these citizens to challenge official legal pronouncements cautions against making broad generalizations about the capacity of ordinary people to respond effectively when government officials deploy legal rhetoric.”

SOURCES OF CONSTITUTIONAL ATTITUDES

In this section, we evaluate how the cultural significance of law interacts with various personal attributes to create differing attitudes towards potential constitutional change. Because constitutions are designed to define a political community, our theory is premised on the notion that individuals will evaluate how they (and others similarly situated) are faring within the American polity. If the constitutional status quo offers them full political citizenship and opportunities to pursue the American dream, we predict they will be unlikely to support a convention. If not, we predict they will be more willing to experiment with constitutional change. Similarly, constitutions establish governing structures, and a constitutional convention provides an opportunity to consider how well government is functioning. Individuals who

feel the political process is broken should be more inclined to changing underlying governing structures. Below, we make more specific hypotheses using various individual-level characteristics.

There is little reason to assume, *a priori*, that support for a constitutional convention is related to party affiliation. A convention represents an open book, a process by which delegates can adopt new commitments or abandon old ones (Elkins, Ginsburg, and Melton 2009). These changes in constitutional commitments can have implications that benefit (or harm) either political party, both parties, or neither party. In fact, the proposed amendments that received the highest levels of support in the Sabato survey are structural changes to the operation of government and the conduct of campaigns and elections that would likely impede both parties equally (Sabato 2008).

The relationship between ideology and convention support may be a different matter. The rise of the Tea Party movement has resulted in the constitutionalization of conservative politics (Goldstein 2011). The very origin of the term conservative implies a resistance to socio-political change, at least if it is presented within the framework of a progressive teleology, which is exactly the goal of some supporters of a constitutional convention. But Jack Balkin (2011) has noted that the “redemptive” narrative usually adopted by political progressives is complemented (or, perhaps, contradicted) by a “restorative” one that might appeal more to political conservatives critical of those changes that have occurred over the years, whether through formal amendment or changes in legal doctrine.

One means by which many conservatives believe restoration can take place is by adopting originalism as a theory of constitutional interpretation. While the zeal of Robert Bork’s commitment to the philosophy did not serve his confirmation well, from the vantage point of history, one could credit Bork and his supporters with a much larger victory. Not only have debates over philosophies of constitutional interpretation moved far beyond the walls of the legal academy into the Public Square, but it is also clear that many conservative pundits, columnists, and talk show hosts have publicized and lauded originalism as a bulwark against the growth of the modern, activist state (*e.g.*, Beck 2011; Levin 2010; Limbaugh 2005); in 2016 alone, originalism was a topic of discussion on 249 different Fox News Channel broadcasts.⁶ Given the conservative commitment to a fixed and limited

6. This statement is based on a Lexis Academic search of all Fox News Channel transcripts in 2016 using the following search protocol: (founder* OR founding OR founded OR framer* OR original) AND constitution.

constitutional meaning, we predict conservatives and originalists will be significantly less supportive of a new convention.

Greene, Persily, and Ansolabehere (2011) investigated whether the public has any meaningful attitudes on originalism, textualism, or the “living Constitution” approach. Originalists tend to be conservative, white, male, older and more religious. While this profile appears very similar to the base constituency of the Republican Party, the authors found originalism exerts a significant and independent force in structuring many political and constitutional attitudes. Originalists also tend to adopt a cultural orientation toward moral traditionalism and libertarianism, even though these can be in considerable tension with one another. Perhaps the central point is that both libertarians and moral traditionalists can mine the historical record for material ostensibly supporting an “originalist” perspective.

Like originalists, individuals with higher levels of education may view the Constitution as possessing useful virtues, but for very different reasons. Elkins, Ginsburg, and Melton (2009) found national constitutions that are more specific and easier to amend tend to last longer; however, the United States is a rather glaring exception to this global theory.⁷ Article V sets out an incredibly difficult process for a formal constitutional amendment. Yet the more highly educated are more likely to know that formal amendment is often unnecessary for the Constitution to “adapt to the various crises of human affairs.” As a relatively short document containing open-textured language, the Constitution avoids “the prolixity of a legal code,” allowing most constitutional disputes to be resolved through political compromise or judicial interpretation (*McCulloch v. Maryland* 1819, 17:415, 407).

Related to the aspirationalist narrative, faith in the democratic system structures support for governing institutions. David Easton’s (1965, 437, 441) legitimacy theory contrasts two different forms of political support a community may express towards its governing institutions. Specific support refers to public approval of “outputs and performance of the political authorities.” And the second, diffuse support, “consists of a reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed.”⁸ Gregory Caldeira and James

7. To contextualize this outlier, the authors analogize the U.S. Constitution to the oldest living person in the world who survived on a steady diet of two pounds of chocolate a week and did not quit smoking until after she turned 115 years old. (Elkins, Ginsburg, and Melton 2009, 65).

8. Easton used a curious example from American constitutional history as a demonstration of his theory. During Prohibition, Easton argued Americans would disobey the 18th Amendment but still support the legitimacy of the Constitution itself (Easton 1975, 454). Some historians, however, believe Prohibition failed because the willful disobedience of alcohol laws threatened the rule of law more broadly (Rose 1996).

Gibson (1992; Gibson and Caldeira 2009b) have utilized Easton’s framework to evaluate public support for the Supreme Court. These studies have consistently found that individuals with more knowledge of the Court are also significantly more likely to pledge institutional support. The link between knowledge of Congress and support for that institution, however, is precisely the opposite (Hibbing and Theiss-Morse 1995). Apparently, the more one knows about the workings of Congress, the more strongly one can detect the odor of sausage.⁹

Americans who think the government represents their point of view express higher levels of support for the Supreme Court (Hetherington and Smith 2007). This broader finding may explain why race plays such a strong role in evaluating governing institutions and the Constitution itself. African Americans are significantly less likely to support the Court than whites (Gibson and Caldeira 1992). African Americans also express lower levels of support for their state government than whites (Kelleher and Wolak 2007). Stephanopoulos and Versteeg (2016) found significantly lower levels of support for the U.S. Constitution and state constitutions amongst African Americans, while Sabato (2008) finds no significant difference in willingness to change the Constitution between whites and blacks.

We predict that women, racial and ethnic minorities will be more supportive of a new constitutional convention. When evaluating his own constitutional faith, Levinson (1988, 193) notes “[t]hat I—a white, male, well-paid law professor—would sign the Constitution surely can evoke little surprise. We (that is, persons with this collection of attributes) have done well under the Constitution.” While the Constitution has been amended and interpreted to extend rights of citizenship, the franchise, and equal access to public accommodations regardless of race and gender, these groups were originally considered political outsiders. Because legal consciousness relies on a cultural understanding of law, the effects of exclusionary laws and practices are likely to linger long after being formally removed from the statute books.

Identity politics that takes place along class lines may also inform constitutional attitudes. Charles Beard (1913) and Howard Zinn (1991) amongst others, have described American constitutional life as hegemonic struggles to preserve property interests. A more modest connection between income levels and support for a constitutional convention can be drawn from the literature on risk-aversion in behavioral

9. Though widely attributed to Otto von Bismark, the first recorded instance of this phrase comes from the American poet John Godfrey Saxe. In 1869, the *University Chronicle* at the University of Michigan quotes Saxe as saying, “Laws, like sausages, cease to inspire respect in proportion as we know how they are made.” See <https://books.google.com/books?id=cEHiAAAAMAAJ&pg=PA164>.

economics and psychology. A constitutional convention may produce major political change, which could have profound economic consequences. Wealthier people tend to be significantly more risk-averse—that is, they tend to be more protective of the assets they already possess (Arrow 1965). Studies from an evolutionary biology and social identity theory perspective have found older individuals more risk-averse than younger persons (Halek and Eisenhauer 2001, 3–4). We expect these dynamics of risk tolerance to structure constitutional attitudes as well.

ANALYZING CONSTITUTIONAL ATTITUDES

We test our theory of constitutional attitudes on a *Time* magazine survey, made available by the Roper Center for Public Opinion Research.¹⁰ Schulman, Ronca, & Bucuvalas, Inc. conducted the survey on behalf of the magazine on June 20 and 21, 2011. The survey consists of 1,003 interviews from a national adult sample, including limited interviews with cell phone respondents. The average respondent was between the ages of 45 and 54, had some college education, and earned \$35,000 to \$50,000 a year. The unweighted sample was 81% white and 51% female. The subsequent analysis, however, reflects the sampling weights included in the dataset. Table 1 presents the language of these questions in questionnaire order along with the corresponding response rates and summary statistics.

As this survey was not administered by public law scholars, the wording of these questions is not ideal. In particular, the originalism/living Constitution question lacks precision. First, the description of originalism includes an appeal to strict constructionism, which some originalists reject (Scalia 1998, 23–25). Second, the originalism answer prompt does not include the “framer’s intent” language included in the question wording. Nonetheless, the wording of this question is fairly similar to that on the Constitutional Attitudes Survey conducted by Greene, Persily, and Ansolabehere (2011, 362). These authors, analyzing two iterations of their survey and a series of Quinnipiac University surveys with identical language, found support for originalism between 37% and 49% between 2003 and 2010. The 2011 *Time* survey finding of 43% support for originalism is consistent with these prior results.

The dependent variable is a dichotomous indicator of support for a new constitutional convention. Nineteen respondents volunteered an answer that the Constitution has held up well, but they nonetheless favored calling a convention. These

10. See <http://www.ropercenter.uconn.edu/CFIDE/cf/action/ipoll/abstract.cfm?archno=USSRBI2011-5380&start=summary>.

TABLE 1. Summary Statistics, In Questionnaire Order

How much would you say you know about the U.S. Constitution, which was ratified more than 200 years ago? N = 1,001 of 1,003			
A great deal	14.7%	Not much/Nothing at all	18.2%
Some	67.1%		
Would you say the U.S. Constitution has held up well as the basis for our government and laws and is in little need of change, or would you say that we should hold a new constitutional convention to update the Constitution? N = 954 of 1,003			
Held up well	66.7%	Hold a new constitutional convention	33.3%
Some people say that the courts should strictly follow the original intent of the founding fathers . . . That the federal government should be permitted to do ONLY what's exactly spelled out in the Constitution or was the intent of the framers of the Constitution. Others say that times have changed and that the Court should interpret the Constitution based upon changes in society, technology, and the U.S. role in the world. Which comes closest to your view if you had to choose? N = 966 of 1,003			
Only exactly what's spelled out in the Constitution	43.3%	Interpret Constitution based on changes	56.7%

respondents were recoded as supporting a constitutional convention, but the multivariate analysis does not reach substantially different findings if these respondents were treated as missing data. We suspect that these respondents felt that offering support for the Constitution as a caveat to their desire for change would be a more socially desirable answer in a survey interview (Finkel, Guterbock, and Borg 1991).

The summary statistics, reported in Table 1, indicate that the Constitution lacks as much support as scholars might assume—one in three Americans favors holding a new convention. The popularity of the living Constitution philosophy suggests this willingness to embrace change extends to constitutional interpretation. To better understand these dynamics, we proceed to the multivariate analysis. Table 2 reports the results of four logistic regression models analyzing support for a new constitutional convention. Model 1 includes only personal attributes of the respondents. Model 2 adds constitutional knowledge and education levels while Model 3 incorporates the respondent's approval of the three branches of government. Finally, Model 4 considers the respondent's preferred theory of constitutional interpretation. This final, comprehensive model reduces the error variance by 25.2% and correctly predicts the outcome of the dependent variable for 79.6% of respondents.

TABLE 2. Logistic Regression Model of Support for a New Constitutional Convention

	Model 1	Model 2	Model 3	Model 4
Partisanship	-0.104 (0.076)	-0.106 (0.076)	-0.163 (0.095)	-0.083 (0.104)
Ideology	-0.554*** (0.197)	-0.558*** (0.201)	-0.396* (0.230)	-0.117 (0.243)
African American	1.478*** (0.343)	1.492*** (0.361)	1.390*** (0.391)	1.684*** (0.445)
Asian American	0.539 (0.523)	0.492 (0.516)	0.526 (0.624)	0.505 (0.702)
Hispanic	1.139*** (0.346)	1.016*** (0.356)	1.066*** (0.393)	1.109*** (0.373)
Female	0.018 (0.222)	-0.012 (0.228)	-0.264 (0.267)	0.026 (0.275)
Age	-0.218*** (0.071)	-0.235*** (0.074)	-0.337*** (0.091)	-0.269*** (0.094)
Income	-0.137** (0.061)	-0.058 (0.070)	-0.103 (0.085)	-0.114 (0.087)
Education		-0.197* (0.112)	-0.132 (0.122)	-0.213 (0.133)
Constitutional Knowledge		-0.438** (0.204)	-0.582** (0.227)	-0.539** (0.248)
Congress Approve			-0.811** (0.364)	-0.499 (0.357)
President Approve			-0.068 (0.318)	-0.325 (0.320)
SCOTUS Approve			-0.036 (0.244)	-0.330 (0.265)
Originalist				-1.816*** (0.351)
Constant	0.229 (0.417)	1.553** (0.671)	2.405*** (0.793)	3.222*** (0.807)
Observations	784	784	598	584
Pseudo R ²	0.148	0.162	0.178	0.252

Robust standard errors in parentheses

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$

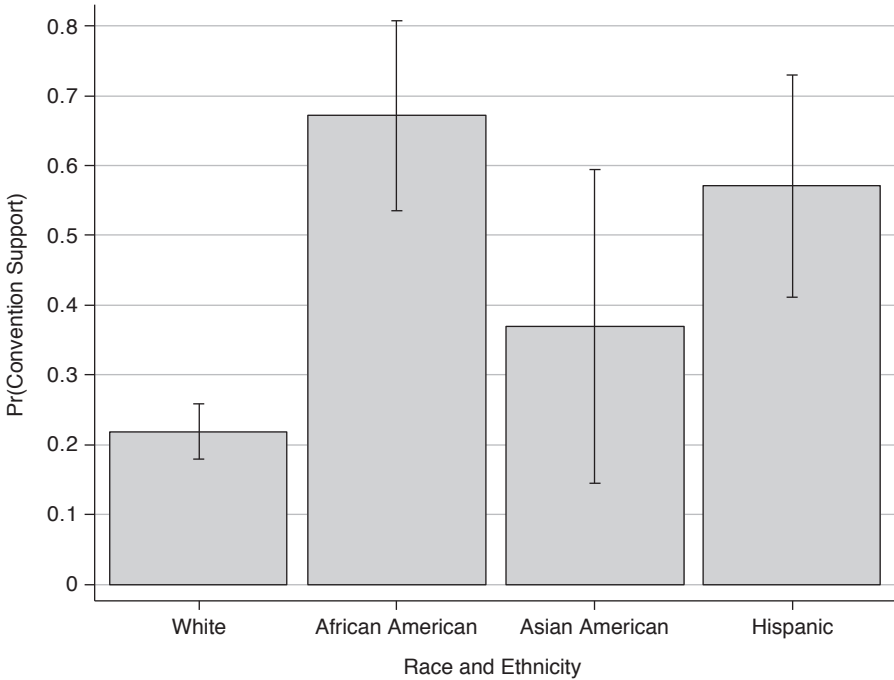


FIGURE 1. Race, Ethnicity and Constitutional Attitudes (from Model 1)

Several demographic factors significantly influence constitutional attitudes. Across all four models, African Americans and Hispanics express significantly more support for a constitutional convention than whites. Asian Americans are also more likely to favor constitutional change than whites, but none of these coefficients achieves statistical significance. Gender is not significantly related to convention support in any of the models. While women have struggled to achieve full citizenship over the course of American political history, this finding may be a product of the higher levels of risk-aversion among women (Halek and Eisenhauer 2001).

Figure 1 displays the predicted probability of supporting a convention call across racial and ethnic lines, based on predictions from Model 1. While the probability of whites favoring a convention is 0.22, the probability of convention support surges to 0.57 amongst Hispanics, and 0.67 amongst African Americans. These findings provide strong support for our hypothesis that segments of society who have often been viewed as outside “the true meaning of *Americanism*” are much less likely to support America’s civic creed, the Constitution (Smith 1993, 549, emphasis original). Whites, on the other hand, have more generally benefitted from the American political system to a much higher degree, and constitutional change

threatens to undermine this tradition. One might recall Justice Thurgood Marshall's (1987) famous critique of the Bicentennial in 1987 and his suggestion that for him the only Constitution that he in fact was willing to celebrate was that created in 1865–1870 with the addition of the Reconstruction Amendments.

Support for constitutional change also diminishes over the course of a lifetime. The age cohort variable achieves statistical significance in each of the four models. Based on predictions from Model 1, young Americans, between the ages of 18 and 24, are 56% likely to favor a convention, and this rate of support sinks to 20% amongst Americans aged 65 or older. Because a new constitutional convention could pose a threat to the status quo, older Americans exhibit more risk-averse behavior. Also consistent with our prediction, respondent income affects convention attitudes. Based on Model 1 projections, Americans earning less than \$20,000 a year are 41% likely to support a convention, while only 21% of those who earn more than \$150,000 a year hold the same view. The largest change in constitutional attitudes occurs between individuals just below and just above national median household income—\$35,000–\$49,000 bracket and the \$50,000–\$75,000 bracket.¹¹ If the Constitution represents the American creed, economic success represents the American dream. The data suggest Americans who have not achieved the latter are more likely to favor changing the former.

Income fails to achieve statistical significance in Models 2–4 when education is included as a predictor. Of course, income is strongly correlated with formal education ($r = 0.515$). The variable for formal education achieves statistical significance in the predicted direction only in Model 2 and only at the $p < 0.10$ level. The constitutional knowledge measure performs better, achieving statistical significance in the predicted direction in each model in which it is included. As Figure 2 demonstrates, respondents with higher levels of constitutional knowledge are significantly less likely to favor a new convention, which suggests that civics education is successful in fostering stronger constitutional attachment.

In light of the constitutionalization of politics occurring on the American right, self-reported levels of constitutional knowledge may be biased towards Republicans or conservatives. An ordered logistic regression model of constitutional knowledge finds no statistically significant relationship with partisanship or ideology when education and income are included as controls. Self-reported levels of constitutional knowledge, thus, do not appear to be confounding effects of partisan or ideological considerations. The results of Model 2, visualized in Figure 2, are similar to Gibson

11. Median household income in the United States was \$50,054 in 2011, the year in which this poll was conducted (U.S. Census Bureau 2011).

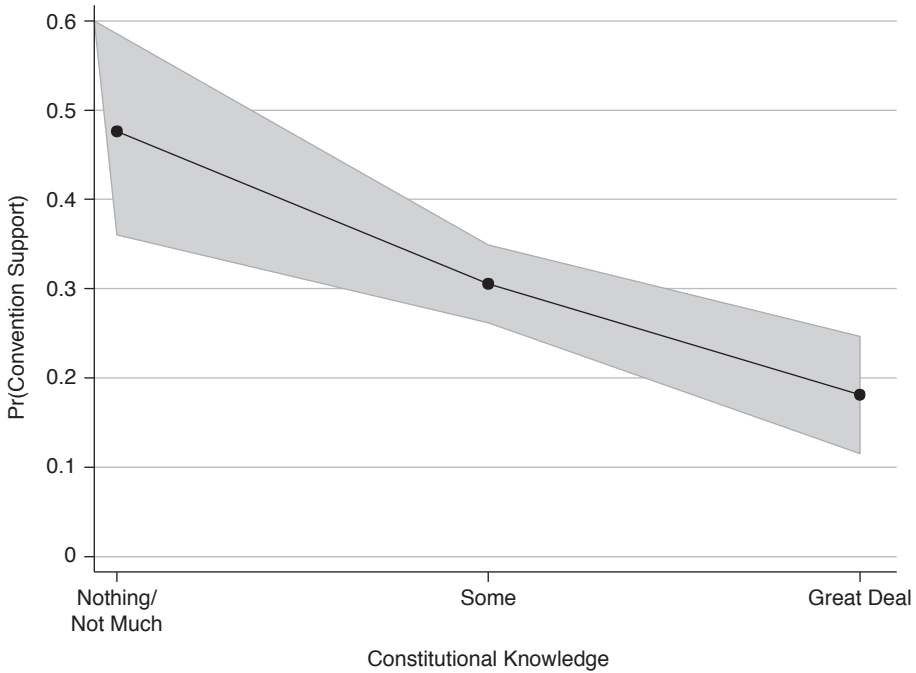


FIGURE 2. Constitutional Knowledge and Attitudes (from Model 2)

and Caldeira’s (2009a, 437) findings about support for the Supreme Court—when it comes to the Constitution, “To know it is to love it.”

Model 3 considers the relationship between specific support for the institutions of government established by the Constitution and diffuse support for the Constitution itself. Each of the three approval variables included in this model is a dichotomous measure. One may notice the N of this model falls considerably, as many respondents chose not to answer one of these questions, mainly approval of the Supreme Court. While approval of President Obama and the Supreme Court is not significantly related to support for a convention, respondents who approve of the way Congress was handling its job in June 2011 were 4% less supportive of calling a new constitutional convention.

The non-finding for Presidential approval is likely a result of the strongly polarized view of President Obama (Hetherington and Weiler 2009), while the non-finding for Supreme Court approval likely reflects the high level of diffuse support enjoyed by that institution. The relationship between specific support for Congress and support for the Constitution, however, is a different story. Congress is near

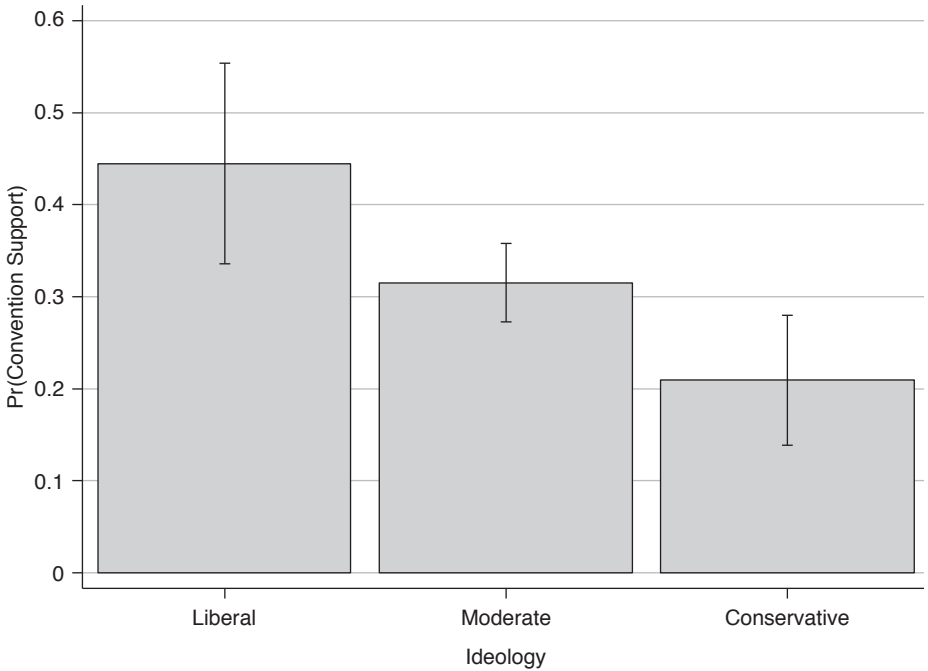


FIGURE 3. Political Ideology and Constitutional Attitudes (from Model 1)

universally disliked in this survey, receiving only 17% approval overall. Except for strong Democrats, who approve of Congress at a 25% rate, there is no meaningful difference in approval amongst respondents of other party affiliations. Although it is difficult to surmise based on the available data, one plausible interpretation of this finding is that frustration with the legislative process has reached a tipping point that only structural reforms through a constitutional convention could fix.

Finally, the connection between partisanship, ideology, and constitutional attitudes is a nuanced one. Party affiliation does not achieve statistical significance in any of the four models. Political ideology performs somewhat better, achieving statistical significance in the predicted direction in Models 1–3. Based on the results of Model 1, liberals are 45% likely to support a convention, while support amongst self-identified moderates and conservatives falls to 32% and 21%, respectively. These results are displayed graphically in Figure 3.

Model 4 includes the interpretive philosophy measure, which appears to trump the influence of both party affiliation and political ideology. While support for originalism is higher amongst Republicans and conservatives, the correlations with

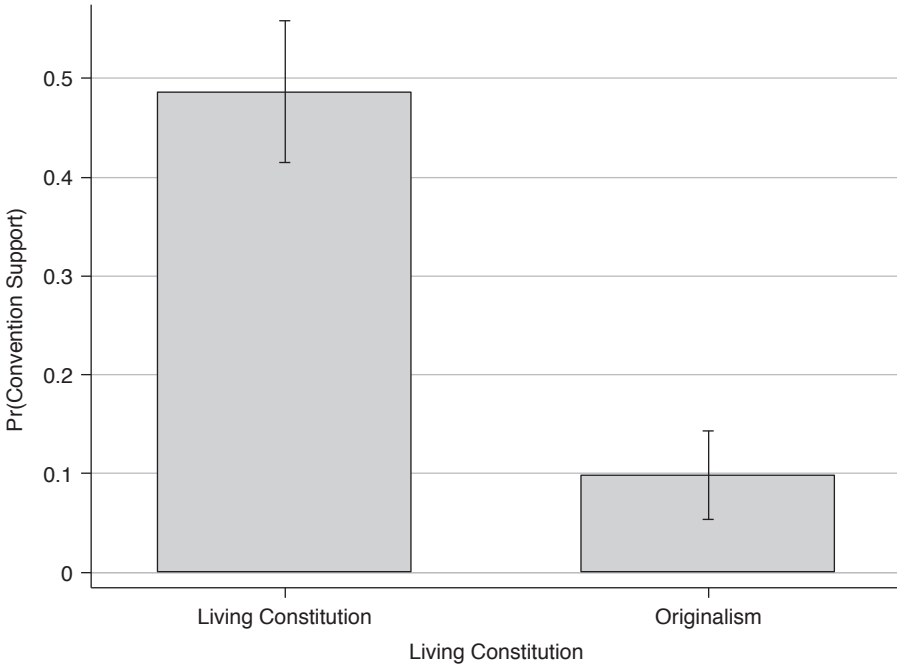


FIGURE 4. Interpretive Philosophies and Constitutional Attitudes (from Model 4)

party identification ($r = 0.341$) and political ideology ($r = 0.392$) are small enough to suggest that interpretive philosophy is a distinct concept. These correlations are somewhat smaller than those presented by Greene, Persily, and Ansolabehere (2011, 408), who found originalism to correlate with partisanship and ideology at $r = 0.48$ and 0.50 , respectively. The contrast between interpretive philosophies is stark. As indicated in Figure 4, self-identified “living constitutionalists” are 49% likely to support a convention, while convention support amongst self-identified originalists falls to 10%. These results suggest that the academic debate over constitutional interpretation is hardly academic. Our findings echo those of Greene, Persily, and Ansolabehere (2011): the efforts of conservative newspaper columnists and talk show hosts to promote the virtues of originalism have been successful. A generation after the Bork confirmation hearings, the debate over originalism is one that is taking place in the Public Square with meaningful attitudinal consequences.

The interpretive philosophy finding is, at one level, somewhat perplexing. Originalists who lament the growth of federal power could use an Article V convention as a legitimate means of restoring their conception of the founding vision.

Sixteen states have amended their constitutions forbidding judges from considering foreign, international or religious law into account in their decisions (Farmer 2014). Many foreign constitutions include language instructing judges under what conditions judicial review is appropriate. For example, the rights in the Canadian Charter of Rights and Freedoms (1983, sec. 1) are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Living constitutionalists, who favor informal constitutional change, are also more supportive of formal constitutional change through a convention. There is no guarantee, however, that a new convention will preserve the flexibility of the current document that makes living constitutionalism possible.

CONCLUSION

These findings suggest ordinary Americans have meaningful attitudes towards the U.S. Constitution. Political sophistication and civic knowledge do not appear to be necessary conditions for individuals to evaluate the Constitution, although they are effective in increasing support for the current document. Rather, these attitudes stem from the cultural significance of law. Legal consciousness invites citizens to consider their place within the polity through the lens of their personal attributes and evaluate the effectiveness of governing institutions. Individuals presumably frustrated with the *status quo* tend to support a constitutional convention. Moreover, the data indicate ordinary citizens are capable of tracing the symptoms of political dysfunction to root causes in the Constitution.

While the overall level of support for a constitutional convention (33%) may appear too low to create a public mandate, our findings nonetheless provide a strong rejoinder to those who consider a convention fanciful. The process of constitutional veneration enshrines the constitutional status quo with a veneer of legitimacy. In a series of survey experiments, Zink and Dawes (2015) found resistance to policy changes increases when the proposed change requires a constitutional amendment. As Madison (as cited in Hamilton et al. 2003, 286) observed in *Federalist* 50, “long standing” constitutional defects are not easily fixed because they have taken “deep root.”

Considering the unifying role the Constitution is supposed to play in American politics, it is somewhat surprising not to find uniformly-distributed and overpoweringly-high levels of resistance to constitutional change. Veneration of the Constitution begins in elementary school civics classes and continues every four years on the Presidential campaign trail. A vote of confidence in the Constitution from two-thirds of the people seems low, especially in comparison to other institutions

traditionally receiving a great deal of public support. A 2011 Gallup poll found 63% of Americans that same year expressed either a great deal or fair amount of trust and confidence in the federal judiciary and 57% of Americans held the same amount of trust in their state government.¹²

As noted earlier, those who take the possibility of a new constitutional convention seriously must address a variety of questions left unanswered by the text of Article V, including mechanisms by which delegates would be selected, the voting rules at any convention, and, perhaps most importantly, at least with regard to much public debate, the degree to which a convention can be “limited” or “sovereign” with regard to proposing new amendments. It is this latter concern that sparks fear by many of a “runaway convention” dominated by one’s political opponents who will use their power to strip the Constitution of cherished protections. It may be that one perhaps ironic consequence of the increased polarization of American politics that could, under some circumstances, trigger more support for a new convention that might cut the Gordian knot of gridlock is the increased level of fear of “the Other,” whose power may well be overestimated. In any event, the more one fears capture by demonized Others, the more that risk aversion would lead to rejection of calling a new constitutional convention.

Further research is also needed to illuminate what type of constitutional change convention supporters hope to achieve. Levinson’s (2006; 2012) critique of the Constitution targets the political structures that provide a multitude of veto points serving to preserve the status quo against those seeking change. Presumably, individuals who disapprove of Congress are seeking structural reforms to the Constitution. The constitutional priorities of younger people, racial minorities, and living constitutionalists are less clear. Whatever the grounds for dissatisfaction, it is clear that veneration for the Constitution is limited.

12. See <http://www.gallup.com/poll/5392/trust-government.aspx>.

APPENDIX

Newsweek/Gallup, May 1987, N = 812

Do you believe that after 200 years the Constitution is still basically sound and meets the needs of our country, or do you think the Constitution is in need of some basic changes or amendments?

Basically sound	54%	Don't know	3%
Need changes or amendments	47%		

ABC News/Washington Post, April 1987, N = 1,509

On another subject, this year is the 200th anniversary of the signing of the U.S. Constitution. A number of states have proposed having a Constitutional convention to change the U.S. Constitution. Do you think that is a good idea or a bad idea?

Good idea	24%	Don't know	5%
Bad idea	71%		

Hearst Corporation, November 1986, N = 1,004

The U.S. Constitution states that a special constitutional convention may be called to consider amending that document when two-thirds of the states request it. Do you think a constitutional convention should be assembled in 1987, the bicentennial anniversary of the Constitution, to consider amendments dealing with contemporary issues such as prayer in public schools, abortion, freedom of the press, and other matters?

Yes	61%	Don't know	5%
No	34%		

Roper Report, October, 1985 N = 1,998

Twenty-eight states have passed legislation calling for a constitutional convention so that changes can be made in the United States Constitution. Some people favor a constitutional convention because they say it is the only way Congress can be forced to act on some important issues. Others are opposed to a constitutional convention because they say there might be a runaway convention which could fundamentally change the Constitution. How do you feel—that there should or should not be a constitutional convention in the next year or two?

Should	33%	Don't know	30%
Should not be	37%		

Roper/Fortune Survey, December 1939, N =5,214

Which one of the following most nearly represents your opinion of the American form of government?

A. Our form of government based on the Constitution is as near perfect as it can be and no important changes should be made in it.

B. The Constitution has served its purpose well, but it has not kept up with the times and should be thoroughly revised to make it fit present day needs.

C. The systems of private capitalism and democracy are breaking down and we might as well accept the fact that sooner or later we will have to have a new form of government.

A. No important changes	64%	C. Will have to have a new form of government	5%
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B. Constitution should be thoroughly revised	19%	D. Don't know	11%
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REFERENCES

- Arrow, Kenneth Joseph. 1965. *Aspects of the Theory of Risk-Bearing*. Helsinki: Yrjö Jahnssonin Säätiö.
- Balkin, Jack M. 2011. *Constitutional Redemption*. Cambridge, MA: Harvard University Press.
- Beard, Charles Austin. 1913. *An Economic Interpretation of the Constitution of the United States*. 1st ed. New York: Macmillan.
- Beck, Glenn. 2011. *The Original Argument: The Federalists' Case for the Constitution, Adapted for the 21st Century*. Original edition. New York: Threshold Editions.
- Biggers, Daniel R. 2014. *Morality at the Ballot*. New York: Cambridge University Press.
- Caldeira, Gregory A., and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36 (3): 635–64.
- "Canadian Charter of Rights and Freedoms." 1983. <http://laws-lois.justice.gc.ca/eng/const/page-15.html>.
- Dinan, John J. 2006. *The American State Constitutional Tradition*. Lawrence, KS: University Press of Kansas.
- Easton, David. 1965. *A System Analysis of Political Life*. 1st ed. New York: Wiley.
- . 1975. "A Re-Assessment of the Concept of Political Support." *British Journal of Political Science* 5 (4): 435–57.
- Elkins, Zachary, Tom Ginsburg, and James Melton. 2009. *The Endurance of National Constitutions*. Cambridge, UK: Cambridge University Press.

- Ewick, Patricia, and Susan S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. 1st edition. Chicago: University Of Chicago Press.
- Farmer, Liz. 2014. "Alabama Is the Latest State to Try to Ban Foreign Law in Courts." *Governing*, August 29. <http://www.governing.com/topics/politics/gov-is-alabamas-proposed-foreign-law-ban-anti-muslim.html>.
- Finkel, Steven E., Thomas M. Guterbock, and Marian J. Borg. 1991. "Race-of-Interviewer Effects in a Preelection Poll: Virginia 1989." *The Public Opinion Quarterly* 55 (3): 313–30.
- Gibson, James L., and Gregory A. Caldeira. 1992. "Blacks and the United States Supreme Court: Models of Diffuse Support." *The Journal of Politics* 54 (4): 1120–45.
- . 2009a. "Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court." *The Journal of Politics* 71 (2): 429–441. doi:10.1017/S0022381609090379.
- . 2009b. *Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People*. Princeton: Princeton University Press.
- Goldstein, Jared A. 2011. "The Tea Party Movement and the Perils of Popular Originalism." *Arizona Law Review* 53 (3): 827–66.
- Grad, Frank P., and Robert F. Williams. 2006. *State Constitutions for the Twenty-First Century, Volume 2: Drafting State Constitutions, Revisions, and Amendments*. New York: SUNY Press.
- Greene, Jamal, Nathaniel Persily, and Stephen Ansolabehere. 2011. "Profiling Originalism." *Columbia Law Review* 111 (2): 356–418.
- Halek, Martin, and Joseph G. Eisenhauer. 2001. "Demography of Risk Aversion." *The Journal of Risk and Insurance* 68 (1): 1–24. doi:10.2307/2678130.
- Hamilton, Alexander, James Madison, John Jay, and Clinton Rossiter. 2003. *The Federalist Papers*. New York: Signet Classics.
- Hetherington, Marc J., and Joseph L. Smith. 2007. "Issue Preferences and Evaluations of the U.S. Supreme Court." *Public Opinion Quarterly* 71 (1): 40–66. doi:10.1093/poq/nfl044.
- Hetherington, Marc J., and Jonathan D. Weiler. 2009. *Authoritarianism and Polarization in American Politics*. New York: Cambridge University Press.
- Hibbing, John R., and Elizabeth Theiss-Morse. 1995. *Congress as Public Enemy: Public Attitudes Toward American Political Institutions*. Cambridge University Press.
- Hull, Kathleen E. 2006. *Same-Sex Marriage: The Cultural Politics of Love and Law*. New York: Cambridge University Press.
- Johnson, Shauna. 2016. "House Article V Convention Resolution Adopted Friday Night." West Virginia MetroNews. <http://wvmetronews.com/2016/0/11/house-article-v-convention-resolution-is-more-limited-than-senates-version/> (January 5, 2017).
- Kelleher, Christine A., and Jennifer Wolak. 2007. "Explaining Public Confidence in the Branches of State Government." *Political Research Quarterly* 60 (4): 707–21. doi:10.1177/1065912907304496.
- Levin, Mark R. 2010. *Liberty and Tyranny: A Conservative Manifesto*. New York: Threshold Editions.

- Levinson, Sanford. 1988. *Constitutional Faith*. Princeton, NJ: Princeton University Press.
- . 2006. *Our Undemocratic Constitution: Where the Constitution Goes Wrong*. New York: Oxford University Press, USA.
- . 2012. *Framed: America's 51 Constitutions and the Crisis of Governance*. New York: Oxford University Press, USA.
- Limbaugh, Rush. 2005. "What Is Originalism." *The Limbaugh Letter*.
- Lovell, George I. 2006. "Justice Excused: The Deployment of Law in Everyday Political Encounters." *Law & Society Review* 40 (2): 283–324. doi:10.1111/j.1540-5893.2006.00265.x.
- . 2012. *This Is Not Civil Rights: Discovering Rights Talk in 1939 America*. Chicago: University of Chicago Press.
- Mann, Thomas E., and Norman J. Ornstein. 2013. *It's Even Worse Than It Looks: How the American Constitutional System Collided With the New Politics of Extremism*. New York: Basic Books.
- Marshall, Thurgood. 1987. "Reflections on the Bicentennial of the United States Constitution." *Harvard Law Review* 101 (1): 1-5.
- Matsusaka, John G. 2005. "Direct Democracy Works." *The Journal of Economic Perspectives* 19 (2): 185–206.
- McCulloch v. Maryland. 1819, 17 U.S. 316.
- Natelson, Rob. 2013. "Proposing Constitutional Amendments by a Convention of the States." Washington, D.C. Washington, D.C. <http://www.alec.org/wp-content/uploads/article-five-handbook-1.pdf>.
- Rose, Kenneth D. 1996. *American Women and the Repeal of Prohibition*. New York: New York University Press.
- Sabato, Larry J. 2008. *A More Perfect Constitution: Why the Constitution Must Be Revised: Ideas to Inspire a New Generation*. Reprint edition. New York: Walker & Company.
- Scalia, Antonin. 1998. *A Matter of Interpretation: Federal Courts and the Law*. Princeton: Princeton University Press.
- Smith, Rogers M. 1993. "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America." *The American Political Science Review* 87 (3): 549–66. doi:10.2307/2938735.
- Stengel, Richard, and Andrea Ford. 2011. "Does the Constitution Still Matter? One Document, Under Siege." *Time*, June 23.
- Stephanopoulos, Nicolas O., and Mila Versteeg. 2016. "The Contours of Constitutional Support." *Washington University Law Review* 94 (1): 113-90.
- Tarr, G. Alan. 2015. *The People's Constitutions*. New York: Oxford University Press.
- U.S. Census Bureau. 2011. "Income, Poverty and Health Insurance Coverage in the United States." https://www.census.gov/newsroom/releases/archives/income_wealth/cb12-172.html.
- Zink, James R., and Christopher T. Dawes. 2015. "The Dead Hand of the Past? Toward an Understanding of 'Constitutional Veneration.'" *Political Behavior* 38 (3): 535–60. doi:10.1007/s11109-015-9325-5.
- Zinn, Howard. 1991. *Declarations of Independence: Cross-Examining American Ideology*. New York: Perennial.