

Dear colleagues:

In lieu of writing a “ticket,” I am distributing two musings about elections in the contemporary US. One is a section from *Framed* touting the benefits of sortition as an alternative to elections. (Why would anyone think that the contemporary Congress is more “representative” than an equal group of 535 people chosen to participate in one of Jim Fishkin’s “deliberative polls”?) The other is a column published by Al Jazeera online (for whom I’ve begun writing somewhat regularly) specifically on how we might best elect members of the House of Representatives at least in states with more than six representatives. I look forward to seeing all of you next week.

Sandy

# To end government shutdowns, end partisan gerrymandering

by [Sanford Levinson @ajam](#) October 13, 2013 7:00AM ET

Commentary: The current impasse is exactly how our system is expected to function. We need to change it

The U.S. government shutdown — not to mention the fear of a debt-default crisis — has caused analysts to work overtime offering reasons to explain the dysfunction. Blame is regularly placed on the increasing polarization of the two parties; the roles played in setting the conversational agenda by talk radio and cable news; and, of course, the truly “American exceptional” way that we finance our election campaigns.

All these explanations have some weight, but far more important are basic structural features of the American political system established by the U.S. Constitution in 1787. In fact, the current impasse is exactly how a system of representation based on partisan gerrymandering functions.

We are now seeing an especially vivid example of the costs that can emerge in a system of bicameralism in which each house — one of them (the Senate) distorted by a system that gives grotesquely excessive power to small states, the other (the House) equally distorted by the degree to which partisan gerrymandering has served to render general elections near-irrelevant because only the primaries really matter in most districts — possesses a veto over the other. Although it is sometimes said, falsely, that Americans in general prefer divided

government, one look at the current approval rates of Congress —recent polls range from 5 to 11 percent— suggest that nearly all Americans today regard with contempt how such a government governs, or actually shuts itself down.

Partisan gerrymandering is not an ingenious aspect of the American system, meriting pride. It undermines democracy. It creates a situation in which political officials choose their electorates; only the naive can really believe it is the other way around. The most fundamental consequence of the 2010 elections may have been the opportunity they gave Republican state legislatures, which were really the biggest winners overall, to redraw the political districts that would elect representatives to Congress (and state legislatures) in 2012. To be sure, Democrats in Illinois, for example, took advantage of the same opportunity, but there were far fewer Democratic "one-party" states, with the concomitant ability to control the redistricting process, than Republican ones. The upshot for voters in these gerrymandered districts is that the general election effectively takes place in the Republican (or, in far fewer districts, the Democratic) primary. Thus Texas Sen. Ted Cruz, among many others, can credibly threaten to "primary" Republican opponents: Maintain tea party orthodoxy or face a rabidly right-wing primary challenger.

Partisan gerrymandering makes the distribution of voters more consequential than their raw number. It explains why Republicans were able to win a 34-seat majority in the U.S. House of Representatives in 2012 despite trailing Democrats by approximately 1.4 million votes overall. Similarly, President Barack Obama carried Pennsylvania with 52 percent of the vote, and Democratic Sen. Bob Casey Jr. won more than 53 percent, but due to partisan gerrymandering, Republicans won 13 of the 18 congressional seats. Going into the 2014 elections, according to the independent political analyst Charlie Cook, Republicans are said to have more than 180 "safe" seats nationally (compared with approximately 135 such seats for the Democrats), which is obviously a huge advantage.

Almost every long-term analysis shows that the GOP today is in dire straits, given that its base is increasingly confined to older whites with conservative Christian inclinations. Thus, the emphasis by contemporary Republicans on a dangerous combination of ruthless gerrymandering — thanks to the action of the U.S. Supreme Court in such decisions as

Crawford v. Marion County Election Board (2008), which validated "voter I.D" laws, and Shelby County v. Holder (2013), which gutted the heart of the 1965 Voting Rights Act — and seemingly constitutional attempts at voter suppression. As a political scientist of the 1960s, John P. Roche, memorably put it, "Power corrupts, and the prospect of losing power corrupts absolutely."

So one should not think that appeals to democratic values will lead those who currently hold power, however tenuously, to mend their ways. Changing our method of selecting members of the House — with all its attached pathologies — will require a constitutional convention, as, indeed, is likely to be true if we wish to recapture control of the political process from billionaires with open checkbooks. It is not that desirable legislation would be unconstitutional. Rather, one must recognize the near impossibility, captured by Roche's dictum, of passing much clearly constitutional (and desirable) legislation in the present American political order with its creaky 18th-century structures. Many other countries, including, for starters, Germany and New Zealand, have far better electoral systems that make gerrymandering of almost no consequence and produce fairer distributions of voting power in their legislatures.

Given that the origin of this central pathology of the House of Representatives is an 1842 congressional statute, why shouldn't we simply request that Congress repeal it? In its place, Congress could require that every state with, say, six or more representatives elect them in multimember districts of at least three each, with the winners elected by a proportional-representation system such as that used in Ireland. This means that in a three-member district, a candidate with substantial (but not majority) support would still be guaranteed election. If California, with its more than 50 representatives, were split into 10 districts of five (or six) representatives each, it would take only about 17 percent of the vote, in a standard-model proportional representation system, to ensure that a minority party would get at least one of the five representatives. Even if not perfect—there is no such thing as a *perfect* political system—it would still be far better than our present political system which provides so many incentives for political parties to capture control of the electoral machinery and thus, by design, leave millions of Americans feeling "unrepresented" and without any real say in their government

The good news is that there are better, more democratic ways, proven and available, for the pathologies of single-member districts and partisan gerrymandering. The bad news is that there is no reason to believe that those benefiting from the present system — those elected to the House under it, including Democrats — will consent to changing it. Necessary reform must come from outside the ordinary political process. Unless one advocates a genuine revolution (which I do not), we are stuck within what may be the iron cage of the United States Constitution.

But there is one last bit of potentially good news, which is that Article 5 of the Constitution allows the proposal of constitutional amendments not only by two-thirds of each house of Congress — fat chance with regard to curing single-member districting — but also by a constitutional convention that must be called by Congress upon petition of two-thirds (34) of the states. It would be wonderful if America had a constitutional movement to get behind the call for a new constitutional convention that would address the various ways our democracy is in fact at stake and what kinds of changes are necessary. We could easily begin with the mode of selecting our representatives and presidents — public opinion polls, for example, have shown consistent opposition to the Electoral College from the 1940s onward — and then move on to address the way we finance elections. Perhaps we could begin escaping from the truly dangerous malaise in which more and more Americans, across partisan political lines, feel increasingly alienated from their government and bereft about the possibility of necessary change.

Every four years, especially, we are told how important it is to vote. But the reality of the way we elect members of the House of Representatives in particular belies that. As someone who lives in Austin, Texas, I can say all too truthfully that I see no reason even to know the name of my "representative" in the House because conservative Republicans purposely designed the districts to make Austin the largest city in the country without its own representative. Instead, the city was carved up and placed in pie-shaped districts (beginning with wedges of Austin) designed to elect Republicans — as one can gather, Austin is a basically Democratic city. It is no better, I hasten to say, when Democrats attempt to deprive Republicans of a fair opportunity to elect a proportionate share of their own champions.

Fixing a system of nakedly partisan gerrymandering does nothing to cure the problem of disproportionate representation in the Senate, but it would at least be a move toward regaining confidence in our own capacities to engage with our fellow citizens in building a more democratic society and even, who knows, returning the United States system of government to serving as a positive, instead of a cautionary, model to the rest of the world.