

“The Third Founding: The Rise of Multiracial Democracy and the Authoritarian Reaction Against It”

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STEVEN LEVITSKY:

Many, many thanks to the Brennan Center and to Berkeley Law for the invitation to speak at this event.¹ It’s really an honor to be here as part of the series, and also with this really distinguished group of commentators. I regret that we can’t be in person in Berkeley.

It’s pretty clear American democracy is at a crossroads. On the one hand, we stand at the brink of multiracial democracy, which is an unparalleled achievement. On the other hand, we stand on the brink of democratic breakdown. One of our major parties is no longer committed to playing by the democratic rules of the game. I’m going to argue that these two streams, these two developments, are closely interrelated, that our current crisis is very much rooted in a reaction against multiracial democracy. I’m also going to argue, maybe more out on a limb, that our Constitution has become part of the problem and that it may be trapping us into minority rule.

My first point is an important and I think often underappreciated one: the United States is undergoing an extraordinary transition to multiracial democracy. Our definition of multiracial democracy is minimalist. Modern democracy, at least for comparative political scientists, is a system of regular free and fair elections in which all adults possess the right to vote as well as basic civil liberties like freedom of speech, press, association, and protest. A multiracial democracy is simply a democracy in a diverse society in which those basic rights are universally protected across ethnic groups; in other words, where the rights of individuals of all ethnic groups are protected equally.

The U.S. became a multiracial democracy on paper in the 1960s, but even today there’s plenty of evidence that we fall short of that in practice. Black

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1. Professor Steven Levitsky delivered this lecture for The Brennan Center’s annual Jorde Symposium on November 4, 2021. Berkeley Law co-hosted the event, and it was presented online.

citizens, on average, live further from polling places, wait longer to vote than do White citizens. A recent study found that residents of predominantly Black neighborhoods were 74 percent more likely to have to wait more than thirty minutes to vote than residents of predominantly White neighborhoods in 2018. African-Americans are more likely to be victims of police violence, more likely to be incarcerated, and to be incarcerated for longer periods of time. So individuals of all ethnic groups clearly still do not enjoy equal rights and equal protection under the law in the United States.

But multiracial democracy has become much more real and much more consequential over the last half-century. It's become more real because the enforcement of civil and voting rights has improved considerably since the 1960s, at least it had until very recently. And it's more consequential because the United States has become so much more diverse. Whites were 84 percent of the U.S. population in 1970, but by 2020 they were down to 58 percent, and soon roughly half the U.S. population will be non-White.

Movement towards multiracial democracy over the last forty or fifty years can be seen in several dimensions. I just want to point to two.

One is political representation. Take the composition of Congress. Between 1980 and 2020, the number of African Americans in the U.S. Congress increased from nineteen to sixty-four; the number of Hispanic and Latino members of Congress increased from nine to fifty-one; the number of Asian American members of Congress increased from six to eight. Since the 1990s, since I began graduate school thirty years ago, the number of non-White members of Congress has nearly tripled. And importantly, Black, Latino, and Asian American politicians are increasingly getting elected in majority-White districts. Senators like Tim Scott, Cory Booker, Raphael Warnock, congresspeople like Ted Lieu, Lucy McBath, Lauren Underwood, Ilhan Omar, Antonio Delgado were all elected in heavily White districts.

Moving towards multiracial democracy can also be seen in public opinion. For the first time, a solid majority of Americans embraces racial diversity and supports policies that enforce racial equality. In 1980, most Americans still opposed laws to ban discrimination in home sales. Today, 80 percent of Americans support those laws. In the 1990s, a consistent majority of Americans opposed affirmative action. Today, Gallup finds that more than 60 percent of Americans support affirmative action. Today, more than 60 percent of Americans say the growing diversity of our society makes America a better place to live.

Now, these numbers reflect two trends. One is the growing presence of non-Whites in the population and the other is the increasing racial liberalism among part of the White population. That coalition, non-Whites and rich and liberal Whites, has given rise to what is in fact a new multiracial democratic majority. This is the majority that elected Barack Obama president and that has given every Democratic presidential candidate since Obama a popular vote victory. It's a

majority that made Raphael Warnock and Jon Ossoff the first Black and Jewish senators elected from the state of Georgia on January 5th of 2021.

But if that January 5th election gave us sort of a glimpse into a possible multiracial democratic future, the events of the following day – the events of January 6th, 2021 – suggested a much darker future: a violent, undemocratic future that had been almost unimaginable, at least to political scientists, a few years earlier. That undemocratic future was unimaginable to many of us for a couple of reasons. It was unimaginable because we underestimated the depth of the reaction against multiracial democracy. Second, we overestimated the capacity of our institutions to withstand that reaction. These two phenomena – an intense authoritarian reaction and the vulnerability of our institutions – now threaten the very survival of American democracy. I want to take each of these issues – authoritarian reaction, vulnerability of our institutions – in turn.

The first threat is the Republican Party’s authoritarian turn. This is something that we really failed to anticipate just four years ago. We blamed the Republican Party for enabling the rise of Trump, but we did not characterize it as an authoritarian party because most Republican leaders five years ago seemed committed to playing by democratic rules of the game. That is arguably no longer the case today.

Back in the 1970s, the great political scientist Juan Linz developed a set of guidelines for what he called “loyal democrat” politicians who were committed to democracy. It was sort of a long, unwieldy list, but we can condense his guidelines into three basic principles.

The first principle is that democratic politicians must seek and retain power exclusively by democratic means. That means playing by democratic rules, it means accepting defeat, and it means leaving power unconditionally after losing elections or completing your mandate. Democracy cannot survive if losers do not accept defeat.

The second principle is that democratic politicians must unambiguously reject the use of violence or violent rhetoric in pursuit of political goals.

Third, democratic politicians must break completely and unambiguously with anti-democratic extremists. That means publicly denouncing anti-democratic behavior even among your supporters and your allies, and it means expelling anti-democratic extremists from your party’s ranks. It also means joining forces when necessary with ideological rivals in order to isolate and defeat anti-democratic extremists.

Between November 2020 and January 2021, Republican Party leaders violated all three of those principles.

For the first time in U.S. history, a sitting president refused to accept defeat and attempted to overturn an election. But rather than oppose what was in effect a presidential coup attempt, Republican leaders enabled that coup attempt by refusing to publicly acknowledge Trump’s defeat. As of December 16th, 2021, six weeks after the election, only twenty-five Republican members of Congress

had acknowledged Biden's victory. 200 had not. And on January 6th, nearly two-thirds of House Republicans voted against certification of Biden's victory.

Leading Republicans also refused to break with the extremist forces behind the January 6th assault on the Capitol. The January 6th insurrection was organized by extremist militia groups, and many Republican politicians, including the president, helped to incite the attack. And yet, Republican leaders refused to break with Trump or any other figure implicated in the violence. They refused to impeach Trump; they blocked creation of an independent commission to investigate the insurrection; and, crucially, they punished Republicans who defended democracy in the wake of the January 6th assault. So Republicans who resisted Trump's effort to steal the election or who voted for Trump's impeachment were purged from the party leadership or censored by their local Republican parties.

At the same time, pretty extraordinarily, Republicans who endorsed the violence were rewarded. Marjorie Taylor Greene, who backed calls for the execution of Democratic leaders on social media, raised record-breaking sums in the three months following the attack. And Donald Trump has not only been protected by the Republican Party, but he's been embraced by it. Nearly all Republican leaders, including Senate Majority Leader Mitch McConnell and House Minority Leader Kevin McCarthy, say they will support Trump in 2024.

So between November 2020 and January 2021, the bulk of the Republican Party refused to accept defeat, refused to denounce violence, refused to break with openly anti-democratic extremism. From top to bottom, the Republican Party has ceased to be a loyal democratic party.

And in fact, I think there's now a pretty good chance that the Republicans will try to steal the 2024 election. In "How Democracies Die," Dan Ziblatt and I argued that our constitutional system relies quite a bit on forbearance; that our system of checks and balances only works when presidents deploy their institutional prerogatives with some restraint. In other words, democracy only works when they refrain from what Mark Tushnet calls "constitutional hardball." We made a big deal of Republicans' theft of a Supreme Court seat in 2016, but we did not seriously consider the possibility that constitutional hardball would be used to steal a national election. Clearly, we should have.

U.S. elections, it turns out, require a fair amount of forbearance. In most democracies, elections are administered by independent election officials, but U.S. elections are run by partisan officials. Partisan officials are more prone to hardball, especially in the context of intense polarization.

And it turns out it is really easy to use the letter of the law to violate the spirit of democratic elections. Think, for example, about the vote-counting process. Election officials can disqualify ballots based on really minor technicalities like getting the date wrong or not having a perfect signature match on your absentee ballot form. Petty ballot disqualification may conform to the letter of the law, but they can be profoundly anti-democratic. They annul

people's vote. And electoral hardball criteria can turn an election if they are used unevenly, so that many ballots are disqualified in one party's stronghold but not in another party's stronghold.

Republican officials across the United States are laying the legal and administrative groundwork to engage in electoral hardball. Republican state legislatures have passed more than two dozen bills aimed at facilitating this sort of behavior, including in battleground states like Arizona, Georgia, Florida, and Texas. These measures, among other things, will allow Republican state legislatures or election boards to sideline or override local election administrations in Democratic strongholds. That would allow them to, for example, purge voter rolls and manipulate the number and location of polling places in Democratic strongholds. It would allow Republican officials to throw out ballots in Democratic strongholds. And crucially, new laws impose criminal penalties for local election officials deemed to violate election procedure.

So these laws basically criminalize the kind of routine forbearance that is necessary to administer any election. They enable Republican state officials to pressure local officials to engage in petty ballot disqualification via threats of criminal prosecution. Again, throwing out thousands of ballots in rivals' strongholds is profoundly anti-democratic, but it's technically legal, and Republicans in several states now have the legal tools to enforce such practices.

Even more perilously, hardball tactics may be used under the Electoral Count Act which allows state legislatures to send alternate slates of electors to the Electoral College in the event of a so-called "failed election." Now, that clause was intended to cover natural disasters, but it could be interpreted by state legislatures to mean any sort of contested election, including those marked by baseless accusations of fraud. So we could see an election in which Republican legislatures dispute statewide results and send rival slates of electors to the Electoral College. That could throw the election into the House, where state delegations, rather than individual representatives, elect the president. The Republicans will almost certainly control the majority of state delegations, and we have every reason to think that they will back their candidate no matter who actually wins the election.

Republican politicians learned several things in the aftermath of the 2020 election. First of all, they learned that the electoral system creates a plethora of opportunities for hardball means of legally overturning election results. Trump failed at that in 2020, but his effort to overturn the results revealed how it can be done. It essentially exposed the soft underbelly of American elections.

Secondly, maybe more importantly, Republicans learned in 2020 that they would not be punished by voters for attempting to overturn an election. In fact, they learned that such efforts would probably be rewarded by Republican voters, by Republican activists, by local and state parties, and by many donors.

But just as it was possible for Senate Republicans to legally steal a Supreme Court seat in 2016, it is possible to legally overturn a close election result. And

I see no evidence that Republicans would engage in forbearance should the opportunity to do that arise.

So why is this happening? Democracy requires that parties know how to leave. If a party that is big enough to win elections cannot accept defeat, democracy is in trouble. Now, the Republican Party has been routinely accepting defeat nationally for well over a century. Why would a mainstream party like that suddenly lose the ability to lose? Arguably, for parties to accept defeat two conditions must hold. First of all, parties have to believe that they stand a chance of winning again in the future. Second, the stakes have to be reasonably low. In other words, parties must believe that losing will not bring ruinous consequences. When politicians fear that they won't be able to win future elections or when they or their constituents believe that defeat will bring catastrophe, the stakes rise, sometimes dramatically. Politicians' time horizons narrow, and they throw tomorrow to the wind to win at any cost today. In other words, it is an outsized fear of losing and of the consequences of losing that leads parties to play dirty.

Daniel found this dynamic in his research on 19th-century German conservatives. German conservatives were terrified at the prospect of expanding the suffrage. For them, giving workers the right to vote meant not only their electoral defeat but the demise of the entire aristocratic order. Unable to win free elections and unwilling to lose them, the conservatives played dirty. They used fraud and repression to cling to power all the way through World War I.

Closer to home, think about the Southern Democrats after the Civil War. For a couple of decades, reconstruction brought widespread Black enfranchisement. African Americans constituted a majority or a near-majority in most Southern states, so their enfranchisement terrified Southern Democrats and their supporters. Not only did Black suffrage threaten Southern Democrats' electoral dominance, but it threatened the entire racial order. Facing what they perceived to be an existential threat, the Democrats played dirty. First they used violence and fraud to win back power, and then they used constitutional hardball to consolidate it. So, between 1885 and 1908, all eleven post-Confederate states passed laws that used poll taxes, literacy tests, and property and residency requirements to eliminate African American voting. Black turnout in the South fell from 61 percent in 1880 to just 2 percent in 1912. Unwilling to lose, Southern Democrats stripped the right to vote from nearly half of the population, ushering in nearly a century of authoritarian rule.

We think something similar is happening to the Republican Party today. The Republicans are a party of White Christians, but White Christians are a fairly rapidly declining share of the electorate. Just thirty years ago, 1992, White Christians were more than 70 percent of the American electorate. They were an overwhelming majority. Today, they're about 50 percent and declining. And that decline has triggered a fear among some Republicans that they're about to lose electoral viability.

As former Congresswoman Michele Bachmann put it during the 2016 presidential election :

This is the last election . . . [i]t's a math problem of demographics and a changing United States. If you look at the numbers of people who vote and who lives in the country and who Barack Obama and Hillary Clinton want to bring in the country, this is the last election that we even have a chance to vote for somebody who will stand up for godly moral principles. This is it.²

But the problem is not just that Republicans potentially face a bleak electoral future; it's that their base has come to view defeat as catastrophic. White Christians are not just any group. A few decades ago, they occupied the top rung in our country's social, economic, political, and cultural hierarchy. They filled the presidency, Congress, Supreme Court, and governorships. They were the CEOs, the newscasters, the TV stars, the college professors. Those days, obviously, are long gone. But losing one's dominant social status can be deeply threatening. Many Republican voters fear that they're on the brink not just of losing elections, but of losing their country. They feel like the country they grew up in is being taken away from them. The very idea of a White, Christian America seems to be slipping away.

That sense of loss has pushed many rank-and-file Republicans towards extremism. A poll from early 2021 found that 56 percent of Republicans agree with the statement that the traditional American way of life is disappearing so fast that we may have to use force to save it. So, like the old Southern Democrats, fear of losing – an outsized fear of losing – is driving Republicans to simply win at any costs. That helps to explain Republican voter suppression efforts, it explains rank-and-file Republican support for Trump's coup attempt, and it explains why Republicans may try to steal the 2024 election.

Now, the Republicans' authoritarian turn would pose much less of a threat if the United States were like other democracies, where electoral majorities generally govern. A pretty solid majority of Americans favors the key components of multiracial democracy. Most Americans embrace immigration. They embrace diversity. They embrace the cause of Black Lives Matter. They support legislation to expand voting rights. And they voted for Democrats in seven of the last eight presidential elections. And yet, America's new multiracial democratic majority has hurled itself against some of the world's most powerful counter-majoritarian institutions.

Counter-majoritarian institutions dilute the power of electoral majorities. They may prevent electoral majorities from translating into governing majorities. That's the case in some indirect elections with unelected legislators or

2. David Brody, *Exclusive: Michele Bachmann: This Will Be 'Last Election' If Hillary Wins Presidency*, CBN NEWS (Sept. 1, 2019), <https://www1.cbn.com/thebrodyfile/archive/2016/09/01/only-on-the-brody-file-michele-bachmann-says-this-will-be-last-election-if-hillary-wins-presidency> [<https://perma.cc/DYL7-FVWX>].

malapportioned legislatures. Or they may limit the ability of governing majorities to exercise power. The Bill of Rights, supermajority parliamentary rules, judiciaries with strong review powers, and federalism all limit the power of governing majorities.

Now, some counter-majoritarian institutions are essential to democracy. Modern democracy cannot exist without them. In a liberal democracy, majorities must be constrained in at least two ways. First of all, basic civil rights and civil liberties must be protected, must be roped off from the will of the majority. And second, parties must be prevented from using temporary majorities to entrench themselves in power, for example by passing laws that undermine opposition. These are essential minority rights: individual civil and political rights and the minority party's right to compete on a level playing field. Democracy cannot live without those minority rights.

Now, institutions that protect those basic democratic rights include the U.S. Bill of Rights, they include independent judiciaries with some review power, they include supermajority rules for constitutional reform, and they include certain constitutional constraints on the executive – things like term limits or limits on the executive use of emergency power.

But many counter-majoritarian institutions do not protect basic minority rights. They protect minority *interests* or they protect minority policy *preferences*. These non-essential counter-majoritarian institutions I think can be divided into two camps, those that encourage consensus-building without establishing a minority veto and those that establish a minority veto. Let me briefly mention each one.

Consensus-oriented institutions are those that disperse power – things like bicameralism; federalism; proportional-representation electoral systems which fragment party systems and induce coalition formation, especially in parliamentary democracy. Those institutions – the institutions that disperse power – may be desirable in that they encourage multiparty negotiation, they encourage coalition-building, but they are not necessary for democracy. Arend Lijphart has shown throughout his career some democracies have these elements, while others do not.

Institutions of minority veto empower partisan minorities at the expense of the majority. They may allow partisan minorities to win power in the face of opposition electoral majorities, as is the case of the U.S. Electoral College, appointed senators in post-Pinochet Chile, and malapportioned legislatures like the U.S. Senate. Or they may allow partisan minorities to permanently veto policy initiatives that are backed by the majority. Examples of that would be supermajority rules like the Senate filibuster and a range of unelected bodies that restrict the authority of elected governments – things like monarchies, militaries, or supreme courts with extensive review power and lifetime appointment.

Not only are minority veto institutions not essential to democracy, but they're arguably antithetical to democracy. They empower minority parties at the expense of electoral majorities.

Now, on what grounds might such anti-democratic institutions be adopted? Historically, they often emerge out of a political pact that accompanies a really difficult transition, one in which some powerful minority actor incredibly threatens to undermine the transition if not given special protections. Examples include small and slaveholding states in the United States. They include Pinochet and the military in Chile in the 1980s. They include the communists in Poland in 1989. They include the Afrikaners in South Africa in the early '90s.

Now, in most democratizing cases, including the ones I just listed, those undemocratic measures are temporary. They're either temporary by design, as in the case of South Africa, or in practice as in the case of Poland and Chile. They are basically transitional mechanisms, a brief leg up for existing power holders to induce them to play the democratic game.

But in the United States, minority veto institutions were permanent. These include indirect presidential elections, which permit losers of the popular vote to win power. They include a severely malapportioned Senate, which provides equal representation to all states regardless of population. They include the Senate filibuster, which came later but now allows forty-one senators to permanently block legislation backed by a majority. Obviously, it includes the strong Supreme Court with judicial review and bolstered by lifetime tenure. And highly super-majoritarian rules for constitutional change.

Now, Americans tend to think of these institutions—these sort of Madisonian institutions—as essential to democracy. But they're not; they're products of a pre-democratic era when ideas like universal suffrage were still widely rejected.

Now, by 18th and early 19th century standards, the U.S. Constitution was pretty democratic. It certainly was more democratic than virtually all other countries in the West. But over time, other countries shed their pre-democratic institutions.

Britain weakened the House of Lords, stripping it of veto power. Denmark, Sweden, New Zealand, Portugal, Greece, Taiwan got rid of their upper houses. Germany, Austria, and Belgium democratized their upper houses by making them more proportional to the population. Germany, Portugal, Switzerland, France imposed term limits on supreme court justices. The U.K., Canada, Sweden, Denmark, Japan, New Zealand, Australia, Belgium, and Spain established a retirement age for supreme court justices.

Every other presidential democracy on the face of the Earth got rid of its electoral college. France eliminated its electoral college – which it only had briefly – in 1962. Brazil got rid of the electoral college in 1988. And Argentina was the last one, getting rid of its electoral college in 1994.

So other democracies have grown more majoritarian over the course of the last century, eliminating pre-democratic institutions that allowed electoral minorities to thwart the majority. They did this primarily through constitutional change. Most of the world's democracies wrote new constitutions in the 20th century. Austria, France, Germany, Italy, Japan, Denmark, Finland, Sweden, Portugal, Spain, Finland, Switzerland all wrote new constitutions or rewrote their constitutions after World War II, sometime in the last seventy or eighty years.

Here, of course, the United States is an outlier. Most of our pre-democratic institutions remain intact. We're the only presidential democracy on Earth without direct election. We have the most malapportioned Senate in the world, except for Argentina and Brazil. To my knowledge, no other democracy allows a parliamentary minority to permanently veto regular legislation that's backed by a majority. We're one of the only democracies in the world with lifetime appointments to the Supreme Court. And of course, our Constitution is the world's hardest to change. So, among democracies, the United States is uniquely counter-majoritarian.

A few years ago, political scientists Steven L. Taylor, Bernard Grofman, Arend Lijphart, and Matthew S. Shugart compared thirty-one established democracies with respect to the number of what they called veto gates, which captures the number of checks and balances. All thirty-one democracies had either one, two, or three veto gates. Six of the democracies had three veto gates, which is the most counter-majoritarian. That's the United States, Argentina, Brazil, Colombia, Mexico, and Chile. Among the democracies with two veto gates were Australia, Canada, Germany, the Netherlands, U.K., Switzerland, and Poland. And among the democracies with one veto gate – meaning they're the most majoritarian – were Austria, Belgium, Finland, New Zealand, Denmark, Sweden, Portugal, Israel, and Hungary; there are others. According to Taylor et al., the two most majoritarian democracies in the world are New Zealand and Finland because they are parliamentary, unicameral, and have no serious power of judicial review.

The U.S. is less majoritarian than every other established democracy. Now, maybe that's a good thing. Maybe our institutions do a better job of protecting individual rights or preventing majority tyranny.

So I looked at how Taylor et al.'s democracies fared on V-Dem's Liberal Democracy Index, which ranges from a low of zero to a high of one. Among democracies with three veto gates – again, the most counter-majoritarian – the average V-Dem Liberal Democracy score is 0.59. Among democracies with two veto gates – the medium category – the average V-Dem score is 0.72. Among democracies with one veto gate – the most majoritarian – the average V-Dem score is 0.76. And among the two most majoritarian democracies, New Zealand and Finland, the average V-Dem score is 0.85.

I also looked at how Taylor et al.'s democracies fared on Freedom House's civil liberties index, another measure of individual rights. Again, a higher score

means better protection of civil liberty. Among democracies with three veto gates, the average score was 44.5. Among democracies with two veto gates, the average score was 52. Among democracies with one veto gate, the average score was 54. And among the two most majoritarian democracies, New Zealand and Finland, the average Freedom House civil liberties score is 59.5. So more majoritarian democracies protect civil liberties better than counter-majoritarian democracies.

Now, I am not suggesting a causal relationship here. A bunch of confounding factors prevent us from drawing any serious conclusion from these data. But the data provide pretty clear evidence that the style of counter-majoritarianism we have in the U.S. is not necessary for a stable, thriving liberal democracy. The most successful liberal democracies on Earth are quite majoritarian: Finland, Denmark, Sweden, and New Zealand.

None of this is new. The United States has always been highly counter-majoritarian. That has limited democracy to a degree, but it has generally not threatened the republic. But I want to suggest that two developments in the early 21st century have transformed America's counter-majoritarian institutions into a direct threat to democracy.

The first is a transformation of the party system. The U.S. electoral system favors sparsely populated territory. The Electoral College is somewhat biased towards sparsely populated states. The U.S. Senate is heavily biased towards sparsely populated states. And because the Senate approves Supreme Court nominees, the Supreme Court is also somewhat biased towards sparsely populated states.

Now, that rural bias has always existed, but it never historically had a partisan effect because for most of U.S. history both major parties had urban and rural wings so the system's rural bias never seriously advantaged one party over another. It is only in the last couple of decades that our parties have split decisively along urban-rural lines. Today, the Democrats are overwhelmingly based in big metropolitan centers while Republicans are overwhelmingly based in more sparsely populated territory. That means, through no fault of their own, the Republicans have a systematic advantage in the Electoral College, in the Senate, and on the Supreme Court. That institutional bias allows the Republicans, in effect, to hold power without winning a national majority. In other words, our counter-majoritarian institutions are beginning to undermine electoral competition. They are skewing elections in favor of one party over another.

The data is pretty familiar. Republicans won the popular vote for president once in the last twenty years, yet they controlled the presidency for twelve of those twenty years. An electoral majority was not enough for Democrats to win the presidency this year; Biden had to win by at least four points to capture the presidency. It looks like he'll probably need to win by about four points to be reelected in 2024.

The Senate is similarly skewed. In 2020, the median state was four percentage points more Republican than the nation as a whole, which means that the Democrats need to consistently win the popular vote by about four points to retain control of the Senate. So if the Democrats consistently win, say, 51.5 percent of the popular vote for the Senate, Republicans will consistently control the Senate. It takes three election cycles to fully renovate the Senate. The Democrats have won the overall popular vote in every three-year cycle since the year 2000, and yet Republicans controlled the Senate from 2001 to 2005 and from 2015 to 2021.

In fact, in 2016 the Democrats won the popular vote for president, won the popular vote in the Senate, and yet Republicans won the presidency and both houses of Congress. This is minority rule.

Minority rule has also skewed the composition of the Supreme Court. Four of nine Supreme Court justices – Thomas, Gorsuch, Kavanaugh, and Coney Barrett – were confirmed by senators who represented less than half of the U.S. population. And three of them – Gorsuch, Kavanaugh, and Coney Barrett – were nominated by a president who lost the popular vote and were confirmed by senators representing less than half the population.

Now, minority rule is bad enough, but it's made much worse by a second twenty-first-century development, and that is the Republican Party's transformation into an extremist and anti-democratic party. Our counter-majoritarian institutions aren't just empowering a minority party; they are empowering an authoritarian minority party. Counter-majoritarianism and Republican authoritarianism have begun to interact in fairly pernicious ways, ways that I think could potentially accelerate democratic breakdown.

For example, the counter-majoritarian Senate protected Trump from removal despite his effort to steal an election. It blocked efforts to create an independent commission to investigate the January 6th insurrection. It has blocked legislation to shore up voter rights and protect the integrity of elections. Likewise, the Supreme Court has upheld most Republican gerrymandering and most Republican voter-suppression measures, and it may uphold Republican efforts to overturn future elections.

So the rise of multiracial democracy has triggered an authoritarian reaction among a partisan minority. And our Constitution is empowering that partisan minority, and that has magnified rather than checked the authoritarian reaction. We are trapped by our institutions.

Now, one lesson from all of this is that Thomas Jefferson was right that constitutions need to change. The idea that institutions drawn up in the 18th century are somehow by definition the best practice over time and across all historical contexts is not only silly, but dangerous. Institutions that work well in one context may become dangerously dysfunctional in another.

Our constitutional system was designed for a world without political parties, and it worked reasonably well in a context of decentralized,

undisciplined, non-ideological parties. It does not work well in a context of disciplined parties and extreme polarization, and it may be fatal where parties are polarized along urban-rural lines.

Other democracies change their constitutions with much greater frequency: France, the Netherlands, Switzerland, Sweden, Denmark, Finland, Austria, Germany. The average lifespan of constitutions is somewhere between fifteen and ninety-nine years. In other words, constitutions endure for one, two, maybe three generations before they're reformed or rewritten.

The United States desperately needs institutional reform. We need to entrench voting rights. We need to replace the Electoral College with direct elections. We need to democratize the Senate. We need to eliminate the filibuster. We need to reform the Supreme Court.

But our Constitution is exceedingly difficult to change. And in fact, our most significant constitutional reforms, the founding in the 1780s and the so-called second founding in the 1860s and early 1870s, occurred at moments when the constitutional order had at least partially broken down. A similar break in the constitutional order seems unlikely today, yet I think we must get constitutional reform into the public debate. We must get it on the public agenda.

As I noted at the outset, our democracy stands at a crossroads. America will either be a multiracial democracy going into the 21st century or it will not be a democracy.