

AMERICAN INTEREST

April 24, 2020

*Backsliding*

## **Will America Remain a Democracy in 2020?**

Larry Diamond

*In the wake of the coronavirus, it's an open question.*

At the start of each academic year, I ask my freshman class, “When did the U.S. become a democracy?” The question exposes important ambiguities in the meaning of democracy. Is the answer 1776, when the American states declared their independence from King George III; or 1781, when our first constitution for self-government was ratified; or 1788, when the current U.S. Constitution was ratified; or 1789, when that constitution (and later that year a Bill of Rights) came into effect; or 1865, when slavery was abolished by the 13th Amendment; or 1868, when African Americans were able finally to vote nationwide; or 1920, when the 19th Amendment to the Constitution finally gave women the right to vote?

As a scholar of democracy, I believe the only correct answer is 1965, when the U.S. enacted the Voting Rights Act, which prohibited racial barriers to voting and thus ended the sordid “Jim Crow” practices that prevented southern blacks from exercising their democratic rights. The fact that most Americans—that is, white Americans—could vote and run for office before then was not enough to call the U.S. a democracy. Strong protections for freedom of the press and basic civil liberties—again for most, but not all, Americans—were not enough. A democracy requires that the people—all the people, through universal suffrage—be able to choose their leaders and replace their leaders in free and fair elections. And a liberal democracy requires more: strong protections for basic liberties; fair treatment of all citizens, regardless of race, religion, or gender; a robust rule of law, in which all citizens are equal under the law and no one is above it; an independent judiciary to uphold that principle; independent oversight institutions to control corruption and prevent abuse of power; a vigorous civil society to defend citizen interests; and a political culture of mutual tolerance, respect, and restraint.

As I have argued in my recent book, *Ill Winds*, the liberal elements of democracy in America have been fraying and eroding for some time as political polarization has relentlessly intensified, tolerance has diminished, facts have been distorted or invented, and politics have taken on the desperate coloration of a zero-sum game. This decay was well under way when Donald Trump announced his presidential candidacy in 2015, but it is misleading to claim that Trump is more symptom than cause of our current democratic travails. Leaders (especially elected leaders) have an outsized impact on the fate of democracy, and in the long checkered line of American presidents, Trump has had no peer in demagoguery, deceit, and hostility to the norms and institutions of democracy.

In one respect after another, Trump has set new lows for presidential defection from basic democratic norms: his snarling hostility to the media as fake news and “enemies of the people,” his encouragement of partisan hatred and conspiracy theories, his disrespect for the judiciary, his contempt for critics and opponents as traitors or inferiors, his defiance of minimal ethical standards, his abuse of presidential power (and even foreign policy) for electoral benefit, and his

pervasive assaults on the professionalism and independence of crucial government institutions—the FBI, the Justice Department, the Special Counsel, the intelligence community, the military chain of command, the career civil service, the Inspectors General who monitor government wrongdoing, and now, incredibly, in his most costly set of blunders, even public health experts who question his ignorant theories on what will stem the COVID-19 pandemic.

Since his election, these patterns of rhetoric and behavior have led a wide range of political analysts and practitioners in the United States—including many Republicans and conservatives—to fear for the future of liberal democracy in America. How would our basic freedoms, our checks and balances, and the rule of law hold up under this ceaseless presidential onslaught of contempt for our founding principles?

As we now enter the fourth year of the Trump presidency amidst the worst national and global crisis since World War II, there are growing reasons to worry about these issues. What is striking about the current moment, however, is that many of the liberal elements of democracy are so far holding up under immense pressure. The press remains largely unbowed, and in this trying period in the history of American democracy it has produced some of the most vigorous and fearless reporting in generations. The judiciary has been politicized, but it has not been eviscerated. At great risk to their careers, principled civil servants and accountability agents are refusing to bend to political pressure.

Perhaps unexpectedly, it is the democratic component of liberal democracy that is now most seriously at risk, raising the prospect, as the perspicacious commentator Hussein Ibish has recently warned, that the United States could become the first liberal non-democracy in modern times.

The core issue before us is whether, in the face of a deadly pandemic that is likely to persist for some time and resurge in the fall, America can preserve a core element of democracy—universal suffrage. For the United States to continue to meet the minimum requirements for democracy this year, many conditions must be met, including the following four:

1. Every adult citizen should be able to vote.
2. No group of people should be obstructed from voting as a result of their race, ethnicity, income, or party preference.
3. All votes should be honestly counted in a secure and timely manner, and any disputes should be heard and resolved in a politically neutral fashion.
4. The vote must actually determine who takes office and exercises power.

These are not the only requirements for a free and fair election. And this is not the only time that the fairness of an election has been thrown into question. Even after 1965, we have twice had a president win the Electoral College while losing the popular vote (in 2000 and 2016); the 2000 outcome was only settled by a highly disputed Supreme Court ruling along partisan lines; and the integrity of the 2016 election was also marred by Russian interference in the campaign. But lay aside for the moment the Electoral College; it's grotesquely unfair and outmoded, but at least it's a rule we have lived with since the constitutional founding. And lay aside for now the certainty that Russia will intervene again to sow confusion and try to help Donald Trump get re-elected. What about the other four conditions?

In the face of this pandemic, we should all be able to agree on ensuring that whoever wants to vote by mail this November should be able to do so freely—with a postage-paid return envelope.

If the COVID-19 virus remains a public health threat, physical distancing will continue to be key, and vote by mail may be the only way many Americans can vote. We have already seen in Wisconsin earlier this month that the pandemic generates heavy demand for voting by mail (with the percentage doing so rising from a small fraction in the 2016 primary to over 70 percent on April 7) while also creating a critical shortage of poll workers. In Milwaukee, as a result, the number of polling stations was reduced by 97 percent, leaving 18,000 voters to wait in long lines to vote at just five remaining polling stations. Two weeks later, at least seven COVID cases in Wisconsin were attributed to the act of voting. People should not have to risk their lives to vote in America.

It is powerfully revealing of how polarized our politics are that voting by mail has become an intensely partisan issue. Although he uses it himself, President Trump has described voting by mail as “horrible” and “corrupt,” claiming that if it were implemented broadly “you’d never have another Republican elected in this country.” This is illogical, since a solid red state, Utah, has adopted a purely vote-by-mail system for 2020 and recent research shows no partisan effect of switching to this method. But Utah has been shifting gradually for some years. States with little history of vote by mail will need “to invest significant time and money into infrastructure” to track and validate mail ballots and resolve any disputes over the matching of signatures. Many states, already hard-pressed to prepare for the November election even before the COVID-19 virus threw them into fiscal distress, need federal assistance to pull this off. Yet Senate Majority Leader Mitch McConnell and other Congressional Republicans have resisted efforts to “nationalize” election administration in this voluntary way. In the end, McConnell agreed to provide the states with \$400 million in election assistance in last month’s \$2.2 trillion relief bill, but that is no more than a fifth of what election experts judge to be needed.

The hard truth is that there has been a rising tide of voter suppression in recent U.S. elections. These actions—such as overeager purging of electoral registers and reducing early voting—have the appearance of enforcing abstract principles of electoral integrity but the clear effect (and apparent intent) of disproportionately disenfranchising racial minorities. One example was the decision of Georgia’s Republican Secretary of State (now Governor) Brian Kemp to suspend 53,000 predominantly African-American voter registration applications in 2018 because the names did not produce an “exact match” with other records. This is why we still need the full force of the Voting Rights Act—the act that finally made the United States a full electoral democracy. Yet in 2013 the Supreme Court gutted a vital provision of the bill that required states with a history of racial discrimination in voting to obtain federal permission before changing their rules. In December the House voted to fully restore the 1965 Act, but the vote was almost purely along partisan lines and the bill died on its way to the Senate.

The third imperative, an honest and credible vote count, requires agreed-upon procedures for counting the large surge in mail ballots and new norms for restraint in reporting the election results on election night. Some states may also need to redesign ballots and acquire new counting equipment to accommodate large-scale voting by mail. Even then, it may be days before all the mailed ballots can be verified and counted. Competing candidates and parties and the news media must all be restrained about “calling” an election or claiming victory until mailed ballots are fully counted.

Finally, it is horrifying to even contemplate this, but there is a scenario in which the election could be stolen in a manner that the courts might let stand. Incredibly, the Constitution does not require that the popular vote in each state determine how its electoral votes will be cast, only that

each state determine the “Manner” in which its electors shall be appointed. For most of our history, for almost all of our states, that manner has been the democratic method. But in theory, states in which one party has unilateral control of both the legislature and the governorship could attempt to appoint alternative electors if the opposing party won the state. Republicans now control the legislature and governorship in two crucial battleground states in 2020—Florida and Arizona. Even one of these could determine the outcome in a close Electoral College contest. Alternatively, if the virus explodes and voting does not take place in some poorly prepared states, the election could be thrown into the House of Representatives, where the peculiar method of each state casting one vote would give Republicans the advantage.

Either of these scenarios seems so bizarre as to hardly merit serious concern. Yet if someone had postulated in 2015 that the incumbent President would have a serious chance of reelection in 2020 after such brazen and incessant assaults on truth, decency, civility, and the rule of law; after being impeached for withholding security aid to a democratic partner state in order to pressure it to discredit his likely election rival; and after mangling the response to the worst public health crisis in a century, and then firing or silencing career officials who challenged his whacky theories, even the most hardened Washington reporters would have judged it a scenario too bizarre to merit serious concern.

*Larry Diamond is senior fellow at the Hoover Institution, Stanford University. He coordinates the democracy program of the Center on Democracy, Development, and the Rule of Law (CDDRL) within the Freeman Spogli Institute for International Studies (FSI) and is a contributing editor at The American Interest.*