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'America Is a Republic, Not a Democracy' Is a Dangerous—And Wrong—Argument

Enabling sustained minority rule at the national level is not a feature of our constitutional design, but a perversion of it.

By George Thomas



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About the author: *George Thomas is the Wohlford Professor of American Political Institutions at Claremont McKenna College and the author of* The Founders and the Idea of a National University: Constituting the American Mind *and* The (Un)Written Constitution, *forthcoming from Oxford University Press.*

Dependent on a minority of the population to hold national power, Republicans such as Senator Mike Lee of Utah have taken to reminding the public that "we're not a democracy." It is quaint that so many Republicans, embracing a president who routinely tramples constitutional norms, have suddenly found their voice in pointing out that, formally, the country is a

republic. There is some truth to this insistence. But it is mostly disingenuous. The Constitution was meant to foster a complex form of majority rule, not enable minority rule.

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The founding generation was deeply skeptical of what it called "pure" democracy and defended the American experiment as "wholly republican." To take this as a rejection of democracy misses how the idea of government by the people, including both a democracy and a republic, was understood when the Constitution was drafted and ratified. It misses, too, how we understand the idea of democracy today.

George Packer: Republicans are suddenly afraid of democracy

When founding thinkers such as James Madison spoke of democracy, they were usually referring to *direct* democracy, what Madison frequently labeled "pure" democracy. Madison made the distinction between a republic and a direct democracy exquisitely clear in "Federalist No. 14": "In a democracy, the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents. A democracy, consequently, will be confined to a small spot. A republic may be extended over a large region." Both a democracy and a republic were *popular* forms of government: Each drew its legitimacy from the people and depended on rule by the people. The crucial difference was that a republic relied on representation, while in a "pure" democracy, the people represented themselves.

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At the time of the founding, a narrow vision of the people prevailed. Black people were largely excluded from the terms of citizenship, and slavery was a reality, even when frowned upon, that existed alongside an insistence on self-government. What this generation considered either a democracy or a republic is troublesome to us insofar as it largely granted only white men the full rights of citizens, albeit with some exceptions. America could not be considered a truly popular government until the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, which commanded equal citizenship for Black Americans. Yet this triumph was rooted in the founding

generation's insistence on what we would come to call democracy.

The history of democracy as grasped by the Founders, drawn largely from the ancient world, revealed that overbearing majorities could all too easily lend themselves to mob rule, dominating minorities and trampling individual rights. Democracy was also susceptible to demagogues—men of "factious tempers" and "sinister designs," as Madison put it in "Federalist No. 10"—who relied on "vicious arts" to betray the interests of the people. Madison nevertheless sought to defend popular government—the rule of the many—rather than retreat to the rule of the few.

American constitutional design can best be understood as an effort to establish a sober form of democracy. It did so by embracing representation, the separation of powers, checks and balances, and the protection of individual rights—all concepts that were unknown in the ancient world where democracy had earned its poor reputation.

In "Federalist No. 10" and "Federalist No. 51," the seminal papers, Madison argued that a large republic with a diversity of interests capped by the separation of powers and checks and balances would help provide the solution to the ills of popular government. In a large and diverse society, populist passions are likely to dissipate, as no single group can easily dominate. If such intemperate passions come from a minority of the population, the "republican principle," by which Madison meant *majority rule*, will allow the defeat of "sinister views by regular vote." More problematic are passionate groups that come together as a majority. The large republic with a diversity of interests makes this unlikely, particularly when its separation of powers works to filter and tame such passions by incentivizing the development of complex democratic majorities: "In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good." Madison had previewed this argument at the Constitutional Convention in 1787 using the term *democracy*, arguing that a diversity of interests was "the only defense against the inconveniences of democracy consistent with the democratic form of government."

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Jeffrey Rosen: America is living James Madison's nightmare

Yet while dependent on the people, the Constitution did not embrace simple majoritarian democracy. The states, with unequal populations, got equal representation in the Senate. The Electoral College also gave the states weight as states in selecting the president. But the centrality of states, a concession to political reality, was balanced by the House of Representatives, where the principle of representation by population prevailed, and which would make up the overwhelming number of electoral votes when selecting a president.

But none of this justified minority rule, which was at odds with the "republican principle." Madison's design remained one of popular government precisely because it would require the building of *political majorities* over time.

As Madison argued in "Federalist No. 63," "The cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers."

Alexander Hamilton, one of Madison's co-authors of *The Federalist Papers*, echoed this argument. Hamilton made the case for popular government and even called it democracy: "A representative democracy, where the right of election is well secured and regulated & the exercise of the legislative, executive and judiciary authorities, is vested in select persons, chosen *really* and not *nominally* by the people, will in my opinion be most likely to be happy, regular and durable."

The American experiment, as advanced by Hamilton and Madison, sought to redeem the cause of popular government against its checkered history. Given the success of the experiment by the standards of the late 18th and early 19th centuries, we would come to use the term *democracy* as a stand-in for *representative* democracy, as distinct from *direct* democracy.

Consider that President Abraham Lincoln, facing a civil war, which he termed the great test of popular government, used *constitutional republic* and *democracy* synonymously, eloquently casting the American experiment as government of the people, by the people, and for the people. And whatever the complexities of American constitutional design, Lincoln insisted, "the rule of a minority, as a permanent arrangement, is wholly inadmissible." Indeed, Lincoln offered a definition of popular government that can guide our understanding of a democracy—or a republic—today: "A majority, held in restraint by constitutional checks, and limitations, and always changing easily, with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people."

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The greatest shortcoming of the American experiment was its limited vision of the people, which excluded Black people, women, and others from meaningful citizenship, diminishing popular government's cause. According to Lincoln, extending meaningful citizenship so that "all should have an equal chance" was the basis on which the country could be "saved." The expansion of *we the people* was behind the Fourteenth and Fifteenth Amendments ratified in the wake of the Civil War. The Fourteenth recognized that all persons born in the U.S. were citizens of the country and entitled to the privileges and immunities of citizenship. The Fifteenth secured the vote for Black men. Subsequent amendments, the Nineteenth, Twenty-Fourth, and Twenty-Sixth, granted women the right to vote, prohibited poll taxes in national elections, and lowered the voting age to 18. Progress has been slow—and sometimes halted, as is evident from current efforts to limit voting rights—and the country has struggled to become the *democratic* republic first set in motion two centuries ago. At the same time, it has also sought to find the right republican constraints on the evolving body of citizens, so that majority rule—but not factious tempers—can prevail.

Adam Serwer: The Supreme Court is helping Republicans rig elections

Perhaps the most significant stumbling block has been the states themselves. In the 1790 census, taken shortly after the Constitution was ratified, America's largest state, Virginia, was roughly 13 times larger than its smallest state, Delaware. Today, California is roughly 78 times larger than Wyoming. This sort of disparity has deeply shaped the Senate, which gives a minority of the population a disproportionate influence on national policy choices. Similarly, in the Electoral College, small states get a disproportionate say on who becomes president. Each of California's electoral votes is estimated to represent 700,000-plus people, while one of Wyoming's speaks for just under 200,000 people.

Subsequent to 1988, the Republican presidential candidate has prevailed in the Electoral College in three out of seven elections, but won the popular vote only once (2004). If President Trump is reelected, it will almost certainly be because he once again prevailed in the Electoral College while losing the popular vote. If this were to occur, he would be the only two-term president to never win a plurality of the popular vote. In 2020, Trump is the first candidate in American history to campaign for the presidency without making any effort to win the popular vote, appealing only to the people who will deliver him an Electoral College win. If the polls are any indication, more Americans may vote for Vice President Biden than have ever voted for a presidential candidate, and he could still lose the presidency. In the past, losing the popular vote while winning the Electoral College was rare. Given current trends, minority rule could become routine. Many Republicans are actively embracing this position with the insistence that we are, after all, a republic, not a democracy.

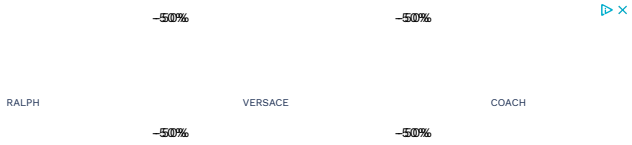
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They have also dispensed with the notion of building democratic majorities to govern, making no effort on health care, immigration, or a crucial second round of economic relief in the face of COVID-19. Instead, revealing contempt for the democratic norms they insisted on when President Barack Obama sought to fill a vacant Supreme Court seat, Republicans in the Senate have brazenly wielded their power to entrench a Republican majority on the Supreme Court by rushing to confirm Justice Amy Coney Barrett. The Senate Judiciary Committee vote to approve Barrett also illuminates the disparity in popular representation: The 12 Republican senators who voted to approve of Barrett's nomination represented 9 million *fewer* people than the 10 Democratic senators who chose not to vote. Similarly, the 52 Republican senators who voted to confirm Barrett represented 17 million *fewer* people than the 48 senators who voted against her. And the Court Barrett is joining, made up of six Republican appointees (half of whom were appointed by a president who lost the popular vote) to three Democratic appointees, has been quite skeptical of voting rights—a severe blow to the "democracy" part of a democratic republic. In 2013's *Shelby County v. Holder*, the Court struck down a section of the Voting Rights Act of 1965 that allowed the federal government to preempt changes in voting regulations from states with a history of racial discrimination.

As Adam Serwer recently wrote in these pages, "*Shelby County* ushered in a new era of experimentation among Republican politicians in restricting the

electorate, often along racial lines." Republicans are eager to shrink the electorate. Ostensibly seeking to prevent voting fraud, which studies have continually shown is a nonexistent problem, Republicans support efforts to make voting more difficult—especially for minorities, who do not tend to vote Republican. The Republican governor of Texas, in the midst of a pandemic when more people are voting by mail, limited the number of drop-off locations for absentee ballots to one per county. Loving, with a population of 169, has one drop-off location; Harris, with a population of 4.7 million (majority nonwhite), also has one drop-off location. States controlled by Republicans, such as Georgia, Louisiana, and Texas, have also closed polling places, making voters in predominantly minority communities stand in line for hours to cast their ballot.

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Who counts as a full and equal citizen—as part of *we the people*—has shrunk in the Republican vision. Arguing against statehood for the District of Columbia, which has 200,000 more people than the state of Wyoming, Senator Tom Cotton from Arkansas said Wyoming is entitled to representation because it is "a well-rounded working-class state." It is also overwhelmingly white. In contrast, D.C. is 50 percent nonwhite.

High-minded claims that we are not a democracy surreptitiously fuse *republic* with *minority rule* rather than *popular government.* Enabling sustained minority rule at the national level is not a feature of our constitutional design, but a perversion of it. Routine minority rule is neither desirable nor sustainable, and makes it difficult to characterize the country as either a democracy or a republic. We should see this as a constitutional failure demanding constitutional reform.

This story is part of the project "The Battle for the Constitution," in partnership with the National Constitution Center.

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