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WILLIAM E. SCHEUERMAN

Constitutional Democracy and the Imperial Presidency in the United States

ABSTRACT - This paper seeks to relate some of the events surrounding the 2020 US elections – and the Trump presidency more generally – to what are viewed as congenital problems of the US American version of constitutional democracy, which is thus described as a system of limited democracy with extensive minority rule. The US constitutional system, it is further argued, potentially offers the basis for transforming US limited democracy into a much more unambiguously authoritarian system.

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WILLIAM E. SCHEUERMAN*
**Constitutional Democracy and the Imperial Presidency
in the United States****

My plan for this talk is pretty simple: I would like to offer a *post-mortem* on the US elections. I realize everybody on the planet has been talking about these elections and I suspect, like me, you are sick of doing so. I understand that fully, but what I want to try to do is relate some of the things that we've seen since November to what I would view as congenital problems of the US American version of constitutional democracy, which I'm going to describe as a system of *limited democracy* with extensive minority rule. And I'm loosely taking this term, *limited democracy*, from Friedrich Hayek's *Law, Legislation and Liberty*, where he advocates severe limitations on popular rule. I'm going to suggest that in the US we have something that increasingly has come to look like Hayekian limited democracy.

I will need to focus on the bad news, despite the fact that this is Inauguration Day, and we have a new government in the US. But first some good news. The US presidential election last November was characterized by massive turnout, 66.7%, despite all the difficulties of voting in the United States. One should not underestimate those difficulties: given COVID, given voter suppression, people sometimes had to file complicated paperwork to vote by mail, etc. It was often very difficult to vote. They had to wait, as I did with my wife, for over an hour in a long line, with COVID raging out of control. You might say that 66.7% is mediocre by global standards. That's true. But as you'll hear in a few moments, there are structural aspects of the US system which discourage voting. It's not just that we're somehow naturally apathetic: there are institutional sources for our low turnout rates.

Biden's victory turns out to be very solid by historical standards, 51.3% to 46.8%. As you know, there was also this very important race in Georgia, a US Senate race, also historically unprecedented. The core of the old Confederacy elected a progressive African-American and a young progressive Jewish candidate, with massive African-American turnout. So, there's some good news, of course, and also, of course, good news that today in the US we'll have a new government.

* Professor of Political Science at Indiana University.

** Contributo sottoposto a valutazione anonima

But there's also bad news, as I said. Obviously, Donald Trump's historically unprecedented failure to concede, his refusal to cooperate with his successor in the least—indeed: to impede the new government—his reliance on falsehoods to delegitimize the election results, his alliance with right wing media and social media to foment conspiracy theories. I just saw that even today 70% of Republican voters think the election was rigged in favor of the Democrats. And then, last but not least, Trump's crucial role in egging on Republicans to reject the election outcome and foment uncivil disobedience. Quite rightly, the media is calling the January 6th events an «insurrection». But even after he incited mob violence, over 100 Republican House members still voted to overturn a free election; a handful in the Senate did as well.

Unfortunately, I don't think Trump or Trumpism will disappear. Trumpism is the US variant of *authoritarian populism*. And like other variants of authoritarian populism—and of course, you're familiar with this in Europe, in Italy and elsewhere—it has many social-economic, social-psychological and political roots. None of these roots are likely to vanish in the near future. The term that I really have come to like is from an Italian historian who teaches in the US, Enzo Traverso. He speaks of *post-fascism*. I don't think he does a very good job developing the term theoretically, but I think it's useful because the point he's making is that these are movements of the far right which occupy very similar, if not the same, space as mid-century fascist movements. But, of course, they're different, just as contemporary leftist parties are very different from mid-20th century versions of socialism and social democracy. They've had to adapt; they've had to update, and I think this is what we're seeing. And again, Trumpism is a variant of this.

One interesting question for which the US will serve as a real-life experiment is this: to what extent do these movements rely on specific charismatic leaders and figureheads? There's some really interesting literature on this: political scientists and sociologists suggest you need to have this kind of leader as a kind of embodiment of these movements. When, of course, the leader's charisma is challenged, when it's not corroborated—this is an old theme you can find Max Weber talking about—this poses a problem not just for the leaders, but for the movements. This is something we'll be able to learn more about in the US context. Can Trumpism survive, in other words, Trump's electoral defeat? If Trump opts not to run again for the presidency, can somebody else successfully pick up Trumpism's torch?

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However, that's not really what I'm mostly interested in today. The main question I want to put on the table is this: how has the US constitutional system allowed for and perhaps invited Trumpism? How has it opened the door to authoritarian populism? It is not a mere accident, just to start with a simple fact, that an authoritarian populist was able to take power in the US without having won the popular vote. (As you know, he got 46.1% in 2016, and he got a little bit more this time.) The main thesis that I want to try to defend today is that Trump, Trumpism, and the specter of authoritarian populism which he has come to represent in the US, all highlight the structural vulnerabilities of the specifically US version of constitutional democracy, which I describe as a system of limited democracy, with far reaching possibilities for minority rule.

The fundamental problem is that the US constitutional order includes too many deeply anti-popular and anti-democratic elements. This fact is crucial for understanding what's going on. The US system is actually less democratic, less popular than it was at the time of the US founding, which is truly astounding, since, of course, the US founding happened in 1789. The US represents a kind of *Model T*—you all know what the Model T is, this wonderful Ford model that was universally sold all over the place—it's the Model T version of liberal democracy. We are an old democracy, of course. This Model T version has undergone some updates. We have a kind of Mercedes Benz muffler, let's say, attached to it. We've had all kinds of fancy repairs over the years. Nonetheless, the system as a whole is increasingly incongruent with any defensible ideas of modern democracy. Like the Model T, our democracy was innovative at one historical juncture, but it now lags badly behind democratic developments elsewhere.

More recent democracies, including your own, have been able to learn and adapt from recent political experience. There are historical learning experiences which have been institutionalized in your systems. The built-in constitutional rigidity of the US system—I'll say more about this, we have perhaps the most rigid system of constitutional amendment on the planet—makes this kind of learning and adaptation extraordinarily difficult; this is a huge problem. So, let me address what I will call the constitutional basis of authoritarian populism—in other words, how the US constitutional system potentially invites authoritarian populism.

Just to clarify—again, an obvious point, but I think I should make it nonetheless—every liberal democracy (this is partly why we call them *liberal* democracies) contains anti-majoritarian features. There are checks and balances and anti-majoritarian decision-making mechanisms, of

course. However, these elements in the US system increasingly outweigh the system's more democratic elements. This imbalance is now so great that we effectively have a system of limited or narrowly circumscribed democracy, in other words: minority rule.

Now, of course, there are robust basic rights protections in the US, a thriving civil society, a strong system of free speech. There are many flourishing liberal elements and of course, there are still some democratic elements. But the system's anti-majoritarian elements seem ascendant.

So, where then can we see how the system invites authoritarian populism? This is my main claim: Trumpism illustrates the system's flaws and its possible perils. Indeed, as I'll note in just a moment, what's frightening about all of this is that it's not far-fetched to suggest that some smarter version of Trump might have been much more dangerous. He or she might have succeeded in destroying some of the democratic fundamentals of the US political system.

Let me start by talking about gerrymandering, our ridiculously partisan system by means of which electoral districts are created. They're created by state legislatures, and there are very few restrictions on them, which basically means that the state legislatures can game the system to suit their immediate political preferences. I'm living in the very conservative state of Indiana. It's considered a solidly *red state*, as we say. Nonetheless, the Democrats in most elections—state, federal elections—end up with between 42 and 48% of the votes. Nonetheless, our congressional representation is now seven Republicans and two Democrats, because our Republican state legislatures have set up these districts in such a way as to neutralize the votes of the opposition. So, this is a problem and, again, an old-fashioned Model T aspect of our system that needs to be changed.

Let's turn to the US Senate. As you all know, each state gets two senators. This came out of compromises at the US founding. In order to gain the consent of small, less populous states, the large, more populous states had to agree to this. If you go back and look at the *Federalist Papers*, the founders were not happy with this compromise; they saw it as a pretty lousy compromise. Nonetheless, they decided, perhaps correctly, that it was essential at the time. And as a result, this is an unamendable feature of the US Constitution. If you look at Article 5, we cannot change this. In Schmittian language—which I hate to use, but I'll use it here—this is sort of a *fundamental existential decision* that was made.

Here's the problem: the population differences between the most and least populous states are greater than they were in 1789. Wyoming, with

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550.000 people—the size of a decent-sized Italian city—has the same number of senators as California with 40 million—the size of a European nation-state. At this point, about 25% of the US Senate is now elected by 5% of the US population. What this means is that the less populous States can and regularly do obstruct popular legislative proposals. There's no question this skews public policy towards those residing in the less populous states, i.e., disproportionately white rural voters, so this means quite a bit in terms of public policy.

Of course, there are also internal Senate rules, most infamously: the *filibuster rule*. It allows for a minority of senators (41) to stop legislation on many crucial issues. The filibuster obviously augments the US Senate's anti-popular elements. And, of course, this is all highly consequential for another one of our institutions, which I would see as a fundamental to our system of limited democracy and emerging system of minority rule, namely the US Supreme Court, another historical oddity in many ways. We Americans have a sort of Model T constitutional court, and that fact has far-reaching ramifications.

The newest Supreme Court justice, Amy Coney Barrett, was elected on the basis of a 52 to 48 vote in the Senate. The 52 Republican senators who voted for her, in fact, represent 18 million fewer voters than the 48 Democratic senators. That's a flagrant example of minority rule and limited democracy. Indeed, the US Supreme Court now has three of its nine members selected by Trump—who never received a popular vote majority; he won the electoral college vote, of course—who then gamed the system with GOP Senators who do not represent a majority of US voters. Each of Trump's three justices was ratified by a very narrow Senate vote. Not surprisingly, our increasingly extreme Supreme Court and its extreme right-wing views—and all the surveys show this—are out of sync with the vast majority of American citizens. So, for example, 77%—this is a reliable poll—of US citizens favor some version of legalized abortion, though some want stricter regulations than others, obviously. Yet we now have a Supreme Court that's clearly anti-choice. There's no question the next year or so there are going to be consequential Supreme Court decisions that undermine a woman's right to have an abortion. Most US citizens also favor what we call in the US *active government*—what Europeans would call the social state of the welfare state. The Supreme Court is clearly hostile, in many key ways, to the administrative state. Indeed, this is why Brett Kavanaugh, not just because of his conservative views on moral issues, but

also his hostility to the administrative state, was selected by Trump and his Republican allies.

The US Supreme Court justices have lifetime tenure; this is also an institutional oddity. I don't think any other system has this. The consequences, of course, are that the justices can resign whenever politically opportune for them to do so, which is hugely problematic. We have plenty of examples of this. So most recently, Justice Kennedy—we now know—retired under the Trump Administration because he had been informally guaranteed who his successor would be—he was amenable to Justice Kavanaugh. Even more outrageously, back in 2000 during the contested election between Bush and Gore, Gore won the popular vote, but the Supreme Court ruled 5 to 4 in *Bush v. Gore* in favor of Bush. There's no question that the swing vote was Sandra Day O'Connor. There were suspicions about this at the time, but it's all become pretty clear now through journalism since then that, yes, she had decided she wanted a successor who was going to be a Republican. She was unwilling to tolerate a Democratic president; she wanted to retire, and this likely had quite a bit to do with her swing vote in the 5-4 decision.

Let's talk about the presidency. There's no question that authoritarian populism seems to require strong, supposedly charismatic figureheads able to exercise executive power in far-reaching and not always lawful ways. If there's anything fundamental to authoritarian populism, it's an executive who at least claims to represent or embody the will of the followers and allegedly the will of the people.

There are a lot of things we could talk about. There's a piece I wrote in 2005 for the journal *Polity* where I tried to argue that the preoccupation in presidential democracies with charisma constitutes a sort of secular replacement for the divine sanction that was once typically associated with powerful premodern monarchs. So, if you go back and look at the history of political thinking about monarchy, one had to justify the extraordinary power that monarchs had, and that was typically done by means of some sort of notion that the monarch was superhuman, or at least had some sort of special connection to divinity. I think this is something which really needs to be explored in more depth: why the present-day fascination with charisma, the obsessive search for these charismatic leaders? This is not just something we're seeing in authoritarian populism, obviously, although it's perhaps most striking there.

The US presidency, as it presently operates, offers a fertile institutional basis for authoritarian populist executives, even when they lack a clear

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popular mandate. We see this, once again, in lots of ways. Let me address those features of the presidency which make our system prone to what we have seen the last couple of years and, specifically, during the last few months. Look at our crazy system of presidential selection, the electoral college. Sandy Levinson, in a wonderful book I would recommend—*Our Undemocratic Constitution*—refers to the Electoral College as undemocratic and he says *perverse*. I think this is right. So, as you know, there's no direct popular election of the president. Instead, there's the election of these electors who then select the president. Now, one thing most people do not know, except for scholarly experts, is that this system was born and was shaped by American slavery. And I'll just give you, very quickly, the history here. In the original constitution, slaves counted as 3/5 of persons, so the southern states, the slave states had a problem, right? They didn't want the direct election of the president because it made more sense for them, strategically, to have slaves counted as 3/5 persons and then to have representation based on this indirect mechanism. If you had direct election, since three fifths of their population was not going to be voting, that might have worked to their disadvantage.

There are many further problems with the Electoral College. In 2016, the popular vote winner lost the electoral vote. Here's another way in which the system is rigged increasingly towards white rural voters: each state's electoral votes are based on its number of House and Senate representatives. Which means, of course, that these less populous, mostly rural and whiter states get, in a sense, a *surplus*. They get a bump, because they all have two senators, even if they're like Wyoming with 550.000 people. Last, and certainly not least, of course, the system is *winner-take-all*, though there are two exceptions, Maine and Nebraska.

Finally, and this is something we've recently talked quite a bit about in the US—previously, the experts did, but it only became hugely significant the last couple of months—electors are not really constitutionally obliged to follow the popular vote. As we just saw with former President Trump, this invites all sorts of political shenanigans. Here's an interesting counterfactual: if Trump had more successfully convinced Republicans to get electors in the states to resist the popular vote, my hunch is that the Courts would have ruled that facticity has become normativity. In other words, that the longstanding practice of electors following the popular vote overrides everything else. But we really don't know for sure.

What then are the political consequences of this crazy system of presidential selection? Well, most obviously, as we saw in 2016 and 2000, and I'm sure we'll see again in the future, there's a clear path to victory for candidates with a strong base of support among the least diverse, least urban parts of the US population. This is our version of what the British called *rotten boroughs*. That's what we have: a system with plenty of rotten boroughs. It also means—and some astute political commentators in November were saying this—if the Democrats want to win the election, they really need to have a *surplus*, a supermajority, given the way the system seems to be rigged against them. They really need to have a 5% advantage in the popular vote, as James Carville (one of President Clinton's political advisors who's now a political commentator) noted, in order to avoid a possible electoral college tie and Republicans challenging the results.

Here are some of the long-term consequences of the system—and why I believe that our electoral turnout was impressive, even if it looks mediocre for Europeans. One obvious consequence is that the most important political campaign in the US, the presidential campaign, only takes place every four years and then effectively only in so-called *battleground states*, a small collection of states. So, the most important element of political competition essentially does not occur in large swaths of the country. Think about that. I'm living in a state that's one of these non-battleground States, I've gotten a real sense of this. I mean, I had a colleague who tried to get a Hillary Clinton bumper sticker four years ago, and she was told by the Clinton campaign that there were none for our state—it's just not a priority. In effect, the parties and key political players neglect much of the country.

We can argue about how much competition democracy needs, but even on some minimalist Schumpeterian conception there has to be *some* measure of elite competition. Otherwise, there are no incentives for people to act as citizens in the first place, if they believe elections are essentially predetermined, or their input just does not seem to matter. This is what I think we can clearly see in the US, and it does closely relate to authoritarian populism. This is a sort of naive, old fashioned argument, but I agree with it: political activity and participation are crucial to political self-education. If those things do not happen, you're going to see political apathy and low levels of political knowledge. And guess what? That's going to become a breeding ground for demagoguery. And that's exactly what we're seeing in the US, in part because of our disincentives for ordinary people to care about politics: a breeding ground for people susceptible to conspiracy theories.

Another crazy aspect of our system of presidential selection is the way in which the transition of power works. If I understand correctly, it's the longest in the world. Clearly, this is a problem for democracy: Trump lost last November and was still president months later. And again, it invites, as we have seen more clearly than ever before, shenanigans, political game playing, and even an attempted insurrection. Now, we've always had norms and customs and *mores*—Tocqueville understood this about the US—that counteracted this danger. But it's turning out that they may be more fragile than we thought. Last but not least—and this is something we see again, most shockingly, with Trump—the outgoing government has plenty of time to plant political landmines for the incoming government in a way that's not possible in most modern democracies. This is exactly what Trump has been up to, if you look at the news.

Let me talk about presidential powers. If you look at the US Constitution, Article 2, the executive power clause, it is one of the simplest and shortest: «The executive power shall be vested in a president». Executive power is never defined; the term is very ambiguous, and there are reasons for this, historically. The framers feared an overpowering Congress more than they feared the executive. They had a pretty minimalist notion of the executive, so this is probably why it's never really defined.

At any rate, the short, ambiguous formulation has almost nothing to do with the realities of the modern US executive who now possesses enormous powers. We can talk about the sources of this shift. It appears to be global in character: in many liberal democracies, executives have gained extraordinary power. As an anti-Schmittian interested in Schmitt, one of the things I found fascinating reading Schmitt was that he's on to this: he accurately chronicles a worldwide trend towards the augmentation of executive power. However, and I think Schmitt understood this as well, this trend is most striking and most radical in *presidential democracies*, where the president is elected separately from the legislature. Of course, there are many sources for the growth of presidential power: war, social and economic crises, the US becoming a global power, an imperial power, incessant crises and emergencies, real or otherwise. The result is what Arthur Schlesinger called an *imperial presidency*. Herman Finer, writing many decades ago, nicely captured the problem (I paraphrase): «Presidents combine the roles of chief legislator or prime minister, party leader, honorary king or queen; he or she oversees the administrative apparatus, is responsible for dealing with emergencies, oversees the budget, conducts foreign policy, serves as military commander in chief and also is the symbol

of national unity and strength». This is an awesome and unachievable expectation, and if you're looking for the *Achilles' heel*, there are many weaknesses of the system, but if you're worried—as I think we should be—about the possibility of authoritarian populism reemerging in the US and being more successful next time, obviously, the presidency would have to be a candidate.

Let's talk about some of these presidential powers, e.g., the pardon powers, again something unusual about the US system—and I'd say unusual about the federal US system versus what happens in the individual states. So, Article 2: «The president [...] shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment». Of course, Trump has been trying to figure out what that means, there's been debates about that, but the bottom line is we have an extremely broad presidential pardon. It has royalist roots; this was just a mistake that the framers made. It is also, I believe, unmatched today, even within the US system. Individual US state governors also have pardon powers, but they're often hemmed in by various mechanisms, e.g., boards that have to review the pardons. There are ways in which you can check what governors do, in other words. The president doesn't really face such checks.

There are obvious dangers here, as we saw with Trump, who has made massive use of the pardon to benefit corrupt people he happens to like, but also to the advantage of political allies, including some who arguably were involved in an anti-democratic political conspiracy, potentially involving the Russians, to steal an election. There's clearly a danger here.

There is no reference to formal emergency powers in the US Constitution. However, on the books today, there are at least 100 special emergency provisions that are available to the president, many offering substantial discretionary power with little oversight from Congress—there's a wonderful 2019 piece in *The Atlantic* by Elizabeth Goitein summarizing these. These are truly awesome powers, and there's unfortunately a long and relatively unsuccessful history in the US of checking them. Deploying executive emergency power in the US system is a long-standing practice, but there's no question it was radicalized under Trump. I'll just mention one example: his so-called border emergency, which justified construction of Trump's infamous border wall. At the end of 2018, Congress had actually worked out a compromise which allowed for some funding for the wall, Trump then signed the legislation, but then

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shortly thereafter he announced, essentially, «I don't care about the legislation. I'm going to go ahead and build this thing and I'm going to use emergency powers to do so». The only justification he actually offered is this: «I'm going to get it done faster this way».

Unfortunately, there's a long history in the US of judicial caution in the face of many of these executive claims, particularly when the policy at hand has some sort of foreign or international aspect to it. This is related to longstanding judicial deference towards the president in foreign affairs. Subsequently, the Supreme Court essentially allowed the so-called border emergency to go unchecked.

There are some distinctive traits to Trump's use of presidential powers. There's a very useful book about Trump by Susan Hennessey and Benjamin Wittes, it's entitled *Unmaking the Presidency*, and what they say is, I think, quite smart. They note that he has basically dismantled many of the internal institutional checks on the presidency which have developed over the course of the last century. He's basically vandalized those; the result has been processless decision-making. The executive branch has developed many complicated mechanisms of self-restraint; Trump has discarded them, whenever possible.

Executive power is always personalized; this is related to the widespread preoccupation with executive charisma. But personalization has clearly gone further with Trump. There's no division in his mind between the formal office of the presidency and his personality. Finally, we should mention his disdain for the traditional view of the Department of Justice as a site for independent legal enforcement: he clearly saw Attorney General William Barr as a sort of a personal lawyer. Even though Barr was shockingly docile to the president, it did not suffice, and he was pushed out. Trump's implicit theory of executive power is authoritarian, monarchical, and thus his enthusiastic embrace of its most royalist features, e.g., pardon power.

Trump has clearly seen the president's job as akin to a kind of CEO, the ultimate decider, a winner who should not be restrained by losers. And there's no question that he has exacerbated the trends that we have seen previously, dramatically exacerbated towards not just presidentialism, but I think what we could call *hyper-presidentialism* with extreme personalistic traits. One disturbing lesson of the Trump presidency is that we can begin to discern how presidential power of this type potentially offers the most likely institutional basis for transforming US limited democracy into a much more unambiguously authoritarian system.

Of course, one might respond to my remarks so far by saying, «wait a minute, he lost, he's gone». Isn't there a more optimistic story that we can tell ourselves? The more conventional story we're hearing—already from pundits and I think we'll hear it from academics very quickly—is, basically: «the US system of checks and balances worked, our separation of powers worked, elections mattered». Elections do matter, there's no question about that. The 2018 election mattered, the 2020 election obviously has mattered, so this, of course, is true. But I fear this optimistic assessment obscures some truly disturbing things that we've seen. So let me just push back a little bit against what I think basically is an accurate claim, but one that is overstated.

First, on many key issues Trump did not simply circumvent but actively opposed Congress and still got his way, with relatively limited political and legal pushback. I mentioned the border wall, but this trend is even more striking if you look at regulatory agencies, which he filled with cronies who have done all kinds of really shocking damage—the Environmental Protection Agency under Trump became the Environmental Pollution Agency for all effective purposes; Food and Drug Administration dominated by agribusiness, etc. He has had plenty of leeway to do some pretty atrocious things.

Second, when serving the Republican Party's agenda—which, like Trump's, unfortunately and ominously, increasingly seems sympathetic towards voter suppression and stacking the federal courts with right-wing judges, pillaging regulatory agencies, etc.—the US Senate worked together quite enthusiastically with Trump. So, we have seen an alliance between an autocratic president and a political party that itself increasingly seems skeptical about universal suffrage. This is a disturbing trend, and it doesn't fit neatly with the nice story we'd like to tell ourselves about checks and balances. The Republican Party seems to be benefiting from limited democracy and minority rule. It wants to obstruct any challenges to that system, and this is a key reason for the alliance with Trump.

Third, Trump has worked effectively to undermine many long-standing institutional customs, mores, and norms. I mentioned Tocqueville, who thought these things were, and he was right, crucial to American democracy—more recently, Levitsky and Ziblatt talk about *guardrails* in their little book, *How Democracies Die*. Well, Trump has dismantled, or at least paralyzed, many of these guardrails.

Another reason why I think we have to push back against this overly optimistic story: we now have the most right-wing US Supreme Court in US history with an extremely expansive view of executive power. There

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have been some cases, but it has not pushed back against him as aggressively as many of us hoped. And again, since many of the most extreme of the judges are also relatively young, they're going to be on the political scene awhile. So, if you're worried about another version, a smarter version of Trump, this should be a reason to worry you.

You might say: «Why not change the US system? Why not amend it?». Well, again, this is Sandy Levinson, *Our Undemocratic Constitution*: «The US Constitution is the most difficult to amend of any constitutions currently existing in the world today». I think that's right: if you look at the changes to our system, when did they occur? In the context of a terrible civil war. The 1930's were another moment of constitutional change, but not by means of formal constitutional mechanisms. Article 5 has been irrelevant for the real constitutional changes. This is something Bruce Ackerman, as you know, has written a lot about.

So, here is my final point. I don't think we should be sanguine about the US system and its supposedly self-correcting tendencies, the checks and balances that partly worked to check our emerging authoritarian populist president. Unfortunately, they have not in fact worked very well. Fortunately, the voters weighed in and there was enough civic virtue; and, yes, still enough crucial Republicans ready to stand up for these institutional mechanisms and longstanding practices to keep things from getting worse. Yet, things could have been very different.

What then about Trump's impeachment? As you know, Trump is now facing a second impeachment trial. This has not been a very effective mechanism to check him. I don't want to sound too dreary, but it seems to me it is likely that the second impeachment trial against him will also fail. And what does that mean? It seems to me it means that impeachment as a way to control a lawless president will have been defanged in the US.

I just heard a smart commentator on NPR, National Public Radio: «You might as well take a black marker and cross that part of the Constitution out, because if inciting an insurrection does not suffice, what does?». If inciting insurrection is not impeachable, what is? What do you have to do? Think about that. So, his legacy, potentially the worst aspect of his legacy, would be to demonstrate the irrelevance of impeachment as a check on presidential power, which really is worrisome.

So, Americans, fortunately, did the right thing in November, let's not forget that. But we've also been very lucky. Trump has not been a very clever politician able to fully exploit the constitutional order's anti-democratic elements. Let's not kid ourselves: future wannabe authoritarian

populists or authoritarians will be more clever than Trump. Given the right conditions, they might succeed. He has vividly brought to our attention all of the weaknesses of our system.

US democracy needs major political institutional changes, unfortunately. So, I am going to end on a somewhat pessimistic note: it seems very unlikely that we will get such an overhaul for many reasons (e.g., Article 5's rigidity, political polarization, etc.). For the foreseeable future, we will have to continue traveling in our old beaten-up Model T. Let's just hope our old jalopy doesn't break down altogether.