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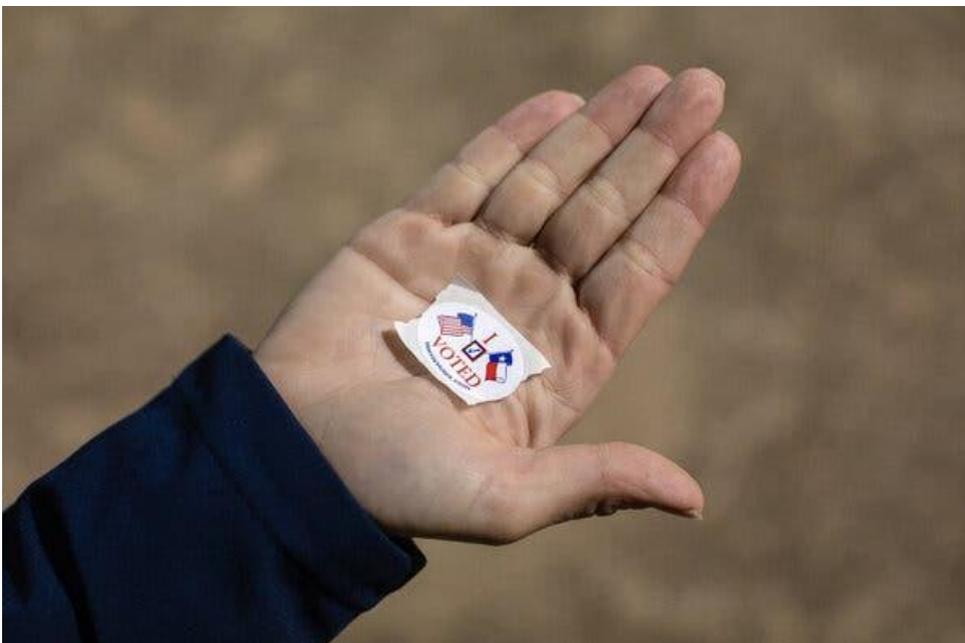
## When It Comes to Democracy, the U. S. Is Showing Its Age

Our election systems were not built for the modern era. Looking abroad might help.

**By Larry Diamond**

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The third pillar of American democracy — the one we have most taken for granted — is most at risk: free and fair elections. Credit... Tamir Kalifa for The New York Times

As this Tuesday's consequential election nears, my fellow democracy experts and I have often been asked: What is the right historical analogy to America's current crisis? The truth is, there is no precedent. We have never seen such a longstanding democracy in such a rich country break down before — never. But it could happen this year.

The vulnerability of our democracy today doesn't come in the form that many feared when Donald Trump was elected in 2016. The good news is that two of the three pillars of American democracy — liberty and the rule of law — endure, even if they have been battered. But the third pillar — free and fair elections — is under far more direct threat than my fellow democracy experts predicted.

Despite liberals' worries, the United States has not descended into fascism. The president has repeatedly called to “lock up” or arrest his political rivals, but the Justice Department — however compromised its leadership at the top — has not complied.

Mr. Trump has relentlessly denounced the news media as the “enemy of the people,” but America’s vibrant free press continues to expose one White House scandal after another. And civil society organizations remain free to advocate for civil rights, the environment and other causes. Liberty remains essentially intact.

Mr. Trump has inflicted more damage to the rule of law. He has impugned the integrity of judges who have ruled against him. He has demanded loyalty to himself — not the law or the Constitution — from F.B.I. directors, intelligence officials, military commanders and his attorneys general. He has replaced five inspectors general investigating wrongdoing in his administration, withheld his tax returns, pardoned his political allies convicted of felonies, and normalized lying and inflammatory tweets as modes of presidential communication. And recently he issued an executive order undermining the political neutrality and career protections of thousands of senior civil servants.

Yet the judiciary has retained considerable independence. In June, Mr. Trump’s first two Supreme Court nominees, Neil Gorsuch and Brett Kavanaugh, joined a 7-2 majority ruling that the president wasn’t immune from a New York state subpoena for his financial documents. So far, the F.B.I. director Christopher Wray has quietly but professionally parried Mr. Trump’s demands for “loyalty” and defended the agency’s autonomy.

As a result, Mr. Trump has not (yet) become a true autocrat. Illiberal populists such as Viktor Orbán in Hungary and Recep Tayyip Erdoğan in Turkey have gradually strangled their democracies by following an authoritarian playbook: control the courts by appointing subservient judges; conquer the independent media by corrupting or threatening its owners; intimidate business leaders into ceasing support of the political opposition; terrorize civil society groups into muffling their dissents; and assert personal political control over law enforcement and intelligence agencies.

Mr. Trump hasn’t gotten very far in implementing that playbook, though he might well have more success if he is re-elected on Tuesday.

But the third pillar of our democracy — the one we have most taken for granted — is most at risk: free and fair elections. The danger emanates from a singular combination of events, the worst pandemic in a century and the most undemocratic president in our history.

With Democrats accounting for a much larger share of mail-in ballots than Republicans, Mr. Trump has repeatedly challenged the legitimacy of these votes. If he is leading even narrowly on Tuesday night, he could claim victory based only on the votes so far counted — even though Joe Biden might well be on course to win when all valid votes are counted. Worse, he might pressure the Republican legislatures in battleground states, like Pennsylvania and Florida, to award him their state’s electors, even if the formal vote-counting machinery ultimately declares a Biden victory in the state. Then it would fall to the courts and Congress (under the terms of the inscrutable, badly written Electoral Count Act of 1887) to determine who had won in the disputed states.

Such a scenario would be far more dire and polarizing than even the Bush v. Gore nightmare of 2000, with an incumbent president threatening fire and brimstone if the election were not handed to him, while signaling violent right-wing extremists to “stand by” but perhaps no longer “stand down.” Many on the left would no longer be willing to let the presidency (in their eyes) be stolen from them again, and far-left groups might revel in the chance to worsen the crisis. The potential for violence would be alarming.

The integrity of the election is further challenged by the rising pace of voter suppression. In 2013, the Supreme Court gutted the Voting Rights Act, throwing out the formula requiring nine states (and other localities) with a history of racist voter suppression to obtain federal permission before changing their voting requirements. Since then, these and other Republican-controlled states have imposed legal and administrative changes that have made voting more difficult for Black Americans, Hispanics, young people and city dwellers — all heavily Democratic constituencies.

It would be undemocratic enough for the loser of the national popular vote to again be elected (for the third time in the past seven presidential elections) by winning the Electoral College. But if Mr. Trump were to win re-election by narrowly prevailing in two or three states through extensive disqualification of mail-in ballots or through voter suppression, the legitimacy of the 2020 election could be questioned far more intensely than those of 2000 or 2016. And if Mr. Trump failed to win the Electoral College but was nonetheless declared president thanks to partisan electors, it would signify a grave breakdown of American democracy — even if people remained free to speak, write and publish as they pleased.

The very age of American democracy is part of the problem. The United States was the first country to become a democracy, emerging over a vast, dispersed and diverse set of colonies that feared the prospect of the “tyranny of the majority.” Hence, our constitutional system lacks some immunities against an electoral debacle that are common in newer democracies.

For example, even though Mexico is a federal system like the United States, it has a strong, politically independent National Electoral Institute that administers its federal elections. The Election Commission of India has even more far-reaching and constitutionally protected authority to administer elections across that enormous country. Elections thus remain a crucial pillar of Indian democracy, even as the country’s populist prime minister, Narendra Modi, assaults press freedom, civil society and the rule of law. Other newer democracies, from South Africa to Taiwan, have strong national systems of election administration staffed and led by nonpartisan professionals.

The American system is a mishmash of state and local authorities. Most are staffed by dedicated professionals, but state legislatures and elected secretaries of state can introduce partisanship, casting doubt on its impartiality. No other advanced democracy falls so short of contemporary democratic standards of fairness, neutrality and rationality in its system of administering national elections.

More recent democratic countries have adopted constitutional provisions to strengthen checks and balances. Like many newer democracies, Latvia has established a strong independent anti-corruption bureau, which has investigative, preventive and educational functions and a substantial budget and staff. It even oversees political and campaign finance. South Africa has the independent Office of the Public Protector to perform a similar role.

The United States has no comparable standing authority to investigate national-level corruption, and Congress largely investigates and punishes itself.

Newer democracies also take measures to depoliticize the constitutional court. No other democracy gives life tenure to such a powerful position as constitutional court justice. They either face term limits (12 years in Germany and South Africa; eight in Taiwan) or age limits (70 years in Australia, Israel and South Korea; 75 in Canada), or both. Germany depoliticizes nominations to its constitutional court by requiring broad parliamentary consensus. In other

democracies, a broader committee nominates Supreme Court justices. In Israel this involves not just the executive branch but the parliament, some of the existing justices and the bar association.

Many of these ideas simply didn't occur to America's founders, who were framing a modern democracy for the first time, for a largely rural society with more limited levels of education, communication and life expectancy. The result is that American democracy lacks national checks on executive corruption and national guarantees of electoral integrity that have become routine in other democracies around the world. And nominations to our Supreme Court have become far more politicized than in many peer democracies.

Throughout most of our history, America's democratic norms have been strong enough and the outcomes have been clear enough to avoid catastrophic conflict over a national election. But several times (most notably with the Hayes vs. Tilden presidential election of 1876), we approached the precipice — and only avoided falling off through luck and painful compromises.

Today, we are far closer to a breakdown than most democracy experts, myself included, would have dared anticipate just a few years ago. Even if we are spared the worst, it is long past time to renew the mechanisms of our democracy, learn from other democracies around the world and again make our republic a shining city on a hill.

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