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THE CURRENT: Election 2024 and the health of American democracy

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PITA: You're listening to The Current, part of the Brookings Podcast Network. I'm your host, Adrianna Pita. As the country heads into the final days of the 2024 elections, it seems appropriate to close out our Election '24 series with an episode of talking about the role, quality and processes of U.S. elections in preserving American democracy and hopefully building a stronger one.

Kathryn Tenpas, visiting fellow in Governance Studies and director of the Katzman Initiative on Improving Interbranch Relations in Government, is the host of another Brookings podcast, Democracy in Question. And she's spent the last few months talking with other Brookings fellows and external experts about the state of American democracy and what's at stake in this year's elections. Katie, thanks very much for being with us today.

TENPAS: Yeah, I'm happy to join you. Thanks for inviting me.

PITA: In 2020, it seemed like one of the few bright spots of the COVID pandemic was the expansion of voting opportunities, with most states either adopting or expanding mail-in voting options, early voting options. But in the years since, we've seen some states roll that back. There have been some large-scale purges of voter rolls in some states. There's a lot of hysteria about immigrants voting and voter fraud. And just recently, there have been incidents of ballot boxes in three states being set on fire, destroying many of the submitted ballots. You talked with Vanessa Williamson, who's been studying democratic erosion, Elaine Kamarck, who's one of our great experts on U.S. election administration. What's your big-picture view about the current state of voting access this year? What are we seeing in terms of rights versus restriction? Increased vulnerabilities, increased safeguards?

TENPAS: Yeah, well, as you mentioned, there's a lot of variation across states. And I think one of the points that Elaine Kamarck made, which was really relevant, is that the incidence of voter fraud is extremely low. And she even cites Heritage Foundation data to show how low it is. And so there is this perception that's being perpetrated out there that voter fraud is everywhere. And I think once that gets into voters' minds, it raises lots of suspicion about everything else, like voter registration. Like if you mail in your ballot, will it actually be received and counted? So I think it only really takes one set of rumors to really derail the democracy train, so to speak, and make people more leery about their vote, and just a little bit more on edge.

I know there's variation across states. I don't really know state by state specifically kind of what they've done to roll it back. But Vanessa Williamson also made a really interesting point, which is that she never anticipated the degree of opposition to expanding the voter franchise. And her example was that she was working on tax policy, and one of

the ideas that was being promoted at the time was that when you file your taxes, you could also register to vote at the same time. And she thought, wow, that's just such a terrific idea. And in a way, you're doing your civic duty by paying your taxes and you're also doing your civic duty by participating in elections, and so you could do both in one stop. And she said she was in awe at the amount of opposition towards simplifying the voting process.

In the episode with E.J. Dionne, he talks a lot about Australia and the idea of making voting day a holiday and also having automatic registration. And they actually have required voting as well. And if you don't vote, I think there is some sort of fine that you have to pay, but it's minimal. And if there is something that happened, apparently, he said they're very forgiving, so if you had to take a family member to the hospital and missed your chance to vote. But he says creating that kind of environment where voting is something that should be fun, he talked about how there would be surfers coming in from the ocean and they'd have their surfboards off to the side and they'd go into the polling place to vote. And if you make it a festive atmosphere, in a way, what you're really doing is celebrating democracy and the freedoms. And for whatever reason, over time, I think it's probably our history because generally speaking, there's been this trajectory of expanding the voter franchise, but I think that there obviously have been periods in our history where we have limited that to property owners or to whites, what have you. And so we have a spotty history, But it would be nice to get to a point where this is something that everybody celebrates and thinks that the more voters participating, the healthier our democracy is.

PITA: Elections are such a core part of democracy, but people more well versed in these issues than me have frequently observed that elections are necessary but not sufficient for democracy. There's lots of examples of popular elections ushering in authoritarian governments. And Ben Wittes mentioned this. You were talking to him about the role of courts in democracy, and he was saying he was a little less worried about courts specifically, but he was more concerned about "the broader lack of guardrails against authoritarian populist movements." One of those guardrails has traditionally been the Fourth Estate. Of course, last week we saw both the L.A. Times and The Washington Post decline to issue presidential endorsements as they have historically done, which shocked a lot of people. What are some of these other guardrails that that are out there that we should be concerned about?

TENPAS: Yeah, I think generally speaking, there had been a set of norms that, before the Trump administration, I think in particular, had just been accepted as kind of rules, even though they weren't statutory, and that people followed. And I think one that's recent that -- I study transitions, presidential transitions a great deal -- and one thing that happens between the point at which the candidate is declared the victor and will become the president, that sort of 75 period interregnum, one of the things that's most important is that the new appointees get background checks from the FBI. And this Sunday, the New York Times reported that the Trump administration is no longer going to abide by that, that instead what they would like to do is hire outside private investigators to do background checks on their appointees. And so, as I mentioned, that was a norm. And it was mostly started around World War II and into the Cold War-era where we we started to get background checks on appointees, but it's just been commonly accepted that this is what you need to do. And so I think there still will be some roadblocks, I think, with some agencies like CIA and ODNI and things like that, you will absolutely have to have some other higher check. But this notion that you can just disregard what has been commonly accepted and what is a critical component for appointees. I mean, if you want to serve in our government, you should have to prove that your background is clean enough, that you will not be somebody who will be drawn into some sort of temptations or that you don't

have something in your background that poses a huge conflict of interest for your future government role. And so I cite that example only because that's one of many where previous things that we had accepted as norms are no longer these guardrails that helped keep our government functioning on as ethical a pathway as possible.

PITA: Are there any of those guardrails specifically in regards to, like, mis- and disinformation? That's obviously been a rising concern over the last several election cycles. Anything out there that we know that have gotten better maybe since 2020, or are we are we more vulnerable than ever?

TENPAS: Yeah, I mean, based on my conversations with Nicol and with Darrell and with Norm, it seems to me that we are more vulnerable. They mentioned that what has happened in 2016 and actually mostly in 2020, some of these social media platforms agreed to certain guidelines and would take down certain posts, but now they're not. So now it's like the Wild West. So at one moment you did have these major social media platforms sort of agreeing to this idea that this is good for democracy and good for the country, if we take down these kinds of posts that that push mis- and disinformation. But the fact that they have changed their mind and no longer do that, that makes it worse. And my guests that discussed the impact of disinformation and misinformation all seem to think that that this particular election is the worst possible. In part, it's been aided by AI and that generative technology. And so, you know, what would have taken somebody a very long time or would have required a great deal of technological knowledge is pretty easy for somebody to do. So they can put up a picture of Kamala Harris. I think that it was Darrell West told me about a picture of Kamala Harris in a bikini kissing Jeff Epstein. I mean, completely false. But it's easy for these actors to do those kinds of things now because the technology is there for them to use. It's at the ready. So, sadly, I think that those guests primarily focused on the negative.

PITA: You mentioned this a little bit already, and it was a theme running through all of your episodes was about the question of public trust. Public trust in American democracy, public trust in elections has been decreasing. What else can you tell us a little bit about that, that state of the public trust? And what did any of your guests say about ways that there are to restore that?

TENPAS: Actually, the most common answer for restoring a lot of these sort of situations that we're in right now is for increased voter awareness, increased education at the youth level, and making sure that at a young age, people understand the treasure that democracy is and understand how it works so that they're not so easily taken by these misinformation and disinformation efforts, that they have enough understanding and enough background to understand that what somebody is saying is completely false or could never be true. So mostly education and awareness seem to be the two themes that almost every guest seemed to say might save us from sort of this brink of tipping to a more authoritarian system.

PITA: One thing you asked all of your guests was about how worried they were about the state of American democracy. So I want to turn that back around on you. On your scale of 1 to 10, how worried are you? And do you think your answer would have changed if I had asked you back in June versus now that you've had all these conversations?

TENPAS: Yeah, that's an interesting question. I probably have gotten a little bit more concerned after interviewing all these experts whose knowledge is so deep. And I

mean, they've spent, you know, hours and hours and hours studying these specific features of democracy. And if they're saying that they're -- you know, the low was four, the high was sort of eight and a half slash nine, I'd probably put myself at an eight. And then there was one guest, it was Quinta who also spoke really well about disinformation and misinformation and what the DOJ is doing in response to it and things like that. I asked her and I sort of put her on the spot, but I didn't mean to, what she would have been in 2016. And that was almost more revealing because if you asked me what I was in 2016, I might have said if I was worried about democracy on a scale of 1 to 10, maybe like a three. But I've really jumped up since then, and I suspect that my guests might have had a similar trajectory just because a lot has happened in those years. And I think the pandemic and the state of the economy, the wars abroad, national security issues, all of those things have really tested the system. And I mean, there are some of my guests talked a lot about the resilience of American democracy. And it does have remarkable resilience. But I also think that we can't take it for granted.

PITA: As you said, there were all these norms, all these guides that we thought were, it's always been that way. We've always done background checks. Wait, no one actually wrote that down. It's not really a law.

TENPAS: Right, it's not statutory. Yeah, it was just assumed, both sides played by the rules. And I think you can't make that assumption anymore. There was this excellent book that I'd recommend. It was called "After Trump," and it was written by two lawyers, Jack Goldsmith, who's at Harvard, and Bob Bauer, who was President Obama's White House counsel. And they wrote it during the Trump administration towards the end. But they basically said all of these things need to be fixed. These are all norms that are incredibly important, like the role, the amount of communication that should occur between the White House Counsel's Office and DOJ. Like DOJ really needs to be independent. And most presidents really kept DOJ at bay and limited their contact so as not to be seen as trying to influence the direction in a way that would benefit them. But that's a norm that also was eroded during the Trump administration. So unfortunately, I think that they did a great job by putting, I mean, I think it was some 50-some ideas they had about things that needed to be reformed and more formalized.

I'm not sure how many -- there were some good things that happened in the past couple of years, like the Electoral Count Act. There was a Transition Improvement Act to help with ascertainment in the event that there is a delay. What they'll do now is five days after the election, if there is no determination as to who has won the election, both candidates get the resources for the transition and they can start to get background checks for their appointees, they can start to meet with agencies. The idea is the 75-day period is so short, you don't want to do anything to limit their ability to plan for their administration. And so there were some good reforms that occurred to try to help things, but I feel like there's a lot more that needs to be done.

PITA: Looking further ahead after the election itself, looking at potential transitions, if Kamala Harris wins in November, she is going to be the first vice president to succeed the sitting president of the same party since George H.W. Bush in '88. You know, we've gotten kind of used to a new president meaning a complete turnover of all the staff and the Cabinet and all like that. So, this interregnum period you talk about and then even into the first hundred days, a lot of that time is spent in the hiring and the confirmations and organizing the new government. As someone who studies transitions, what are you maybe expecting to see if a Harris-Walz administration succeeds the Biden-Harris administration?

TENPAS: Yeah, it's a really good question because the only precedent we have in the 20th century is George H.W. Bush becoming president after Ronald Reagan and before that, you have to go all the way back to Van Buren. And then before that, you have to go to Jefferson and then Adams. So there's four examples, but of course, the one that's most relevant and it's worth noting that there was actually a fair amount of frustration on behalf of the Reagan people in 1988 because they many of them assumed that they would be carried on and it would be continuity. And I think James Baker, John Sununu and other people were like, no, no, this is a Bush administration. We are putting our own stamp on this new administration, so we want letters of resignation.

What has changed dramatically since President Bush took office in January 20th, 1989, is that the Senate confirmation process has gotten slower and slower and slower. I believe it was when George W. Bush was president in 2001, I think it took on average something like 91 days to get from nomination to confirmation. Now it's 181. Those numbers are slightly off, but it's more than double the time. And I also did a study for Brookings where I looked at the first 300 days of President Biden's confirmations. I kind of wanted to see what positions were prioritized, what kinds of positions got through more quickly. And then I also did a side study of looking at demographically, you know, how many men and how many women, ethnicity, things of that nature. And after 300 days in office -- and you think the first year is the year when you're going to have the most political capital to get your nominees through -- there were only 140 out of the roughly 1340 Senate confirmed positions that had gotten through. And so mathematically, you can't even appoint all of those individuals.

And I'm a strong believer in that, if you win the presidential election, you have the right to staff the government. So one of my sort of side projects is thinking about how the Senate confirmation process can be improved so that these nominees aren't languishing. There's a group called the Partnership for Public Service who has done some great work thinking about reducing the overall number of Senate-confirmed positions so that instead of having roughly 1300 people to confirm, you have a much lower number. And maybe that way it would be something that, where presidents really would, having won the election, they would have the right to staff the government and it could actually fill all those positions. But as it stands now, many of them go unfilled within an administration. And if you look back, the partnership also did a study looking at chronically unfilled positions, which means Senate-confirmed positions that seem to never get filled with a nominee. So that sort of tells you something. Maybe those positions don't need confirmation, and so maybe we should rethink that whole process.

PITA: Okay. Well, listeners who would like to go more in-depth on any of these issues on American democracy can find Democracy in Question on Apple Podcasts, Spotify, YouTube and wherever else they listen to their podcasts. And they should stay tuned, I think for one more final episode to come? It's going to be the week after the election.

TENPAS: Yes, we're going to have Sarah Binder, Molly Reynolds and Bill Galston on to talk about the aftermath of the election.

PITA: Wonderful. Well, Katie, thank you very much for being with us today and talking about this.

TENPAS: It was my pleasure. Thank you.