From FDR to Biden: The Creation of the Modern Presidency

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[00:00:00] Tanaya Tauber: Welcome to live at The National Constitution Center, the podcast sharing live, constitutional conversations and debates hosted by the Center in person and online. I'm Tanaya Tauber, the Senior Director of Channel Programs. In this episode, we explore how the institution of the modern presidency has evolved by examining the constitutional visions and approaches to executive power of some of America's past presidents. Presidency experts, Sidney Milkis and Barbara Perry of the University of Virginia's Miller Center, and Stephen Knott of Ashland University joined for this conversation moderated by National Constitution Center President and CEO Jeffrey Rosen. This program is presented in partnership with the Center for Constitutional Design at Arizona State University's Sandra Day O'Connor College of Law. It was streamed live on October 11th, 2023. Here's Jeff to get the conversation started.

[00:01:00] Jeffery Rosen: Friends, I'm so excited to convene this evening's panel. We have three of America's greatest presidential historians and also historians of the constitutional history of the presidency to illuminate us. They all have incredibly wonderful new books that can cast light both on our current vexations and also on their historical roots. And I'm so honored to convene them to, to share their light and wisdom with you. Stephen Knott is Thomas & Mabel Guy, professor of American History and Government at Ashland University, and an emeritus professor of National Security at the United States War College. He's author of 10 books on the American presidency, including most recently Coming to Terms with John F. Kennedy, and the, a book we'll be focusing on this evening, this superb, the Lost Soul of the American Presidency, The Decline into Demagoguery, and the Prospects for Renewal.

[00:01:56] Jeffery Rosen: Sidney Milkis is White Burkett Miller, professor of Governance and Foreign Affairs, and Professor of Politics at the University of Virginia's Miller Center one of America's leading presidential historians. He's the author of pathbreaking books, including the textbook, the American Presidency, Origins and Development. And most recently, the invaluable What Happened to the Vital Center, Presidential Populist Revolt and the Fracturing of America. And Barbara Perry is Gerald L. Baliles professor in Presidential studies at the University of Virginia's Miller Center, where she co-directs the Presidential Oral History program. She's written or edited seven teen books on president's, first ladies, the Kennedy family, the Supreme Court's Civil Rights, and Civil Liberties. They have cast so much light, and they're just check them out. And her most recent book, which is also just so timely and so helpful, is the Presidency Facing Constitutional Crossroads.

[00:02:58] Jeffery Rosen: Thank you so much for joining us, Stephen Knott, Sidney Milkis, and Barbara Perry. Stephen Knott, your new book, the Lost Soul of the American Presidency, the Decline into Demagoguery, and the Prospects of Renewal poses a thesis that I'd love to begin with. And you argue that the conception of the presidency embraced by George Washington and Alexandra Hamilton was a constitutional residency, vigorous, but constrained and designed to resist majoritarian and populous pressors to avoid the dangers of demagogues. And you argued that constitutionalist presidency was challenged during the founding by Jefferson, who had a far more majoritarian conception of the presidency. And that Jeffersonian conception was extended by Andrew Jackson, and then used to transform the presidency by Woodrow Wilson and has led to the populism and demagoguery that we see today. Tell us more about your magnificent thesis.

[00:03:56] Stephen Knott: Well, thank you, Jeff. It's great to be here. Yeah. I've argued that the constitutional presidency, as I've called it, that was put forward by Washington, by Hamilton, and even James Madison. Madison had disagreements with Washington and Hamilton, but I don't think over the nature of the presidency. All of those men were deeply concerned about the dangers of the tyranny of the majority. And they viewed the President as a potential check on that majoritarian tyranny. And it, they put significant emphasis on the President's responsibility to take care that the laws be faithfully executed. And that may mean that the president has to resist majoritarian impulse targeted at various unpopular minorities, whether those minorities be political, racial, economic, whatever.

[00:04:49] Stephen Knott: That all changes, Jeff, as you mentioned with Thomas Jefferson, who begins to sort of, I would argue, refound the American presidency and argue that the President is in a sense a spokesman for the majority, and that he derives his powers from the electoral mandate that he receives. And that Andrew Jackson, as you mentioned, sort of blows the doors wide open by explicitly arguing that the president is the tribune of the people, and that the majority is to govern as Jackson put it in one of his State of the Union messages.

[00:05:27] Stephen Knott: Now, those two are kind of the exceptions for 19th century presidents, but they do serve as role models for some of the later progressives, beginning with T.R and Woodrow Wilson, who share a more activist view of the federal government than either Jackson or Jefferson. But they do believe that the Jackson and Jeffersonian conception of the President as a spokesman for the majority, as the one nationally elected figure who can see the entirety of the American political order, they embrace that with vigor. And that's the presidency that you and I are living with today.

[00:06:08] Jeffery Rosen: Thank you so much for setting out the thesis so what, well. Sidney Milkis in your book, the Vital Center in your, in your essay in the, the recent collection on the presidency, you've noted of course, that some degree of popular mandate has been necessary for the most successful presidents, including including Abraham Lincoln, and that a complete insulation from public opinion was not realistic. Are there any thoughts you'd like to share about Stephen Knott's thesis as, as it relates to 19th century presidency? And, and how did Lincoln both channel and revise the presidency imagined by Washington and Hamilton?

[00:06:48] Sidney Milkis: Great to be here, Jeff, and great to be here with Steve and Barbara two of my great friends. I do think the original Constitution, the idea that Steve just laid out so well, where the president sort of stands above the conflicts of democracy and moderates them almost like an elected almost like a constitutional monarch in a way. It's interesting the original electoral college, each elector cast two votes for president. And so you couldn't have a party ticket the kind of ticket that might connect and appeal to public opinion. The first, the one who, the candidate who got the most votes would become president candidate, got the second most votes would become vice president. And so that's what happened with Washington and Adams.

[00:07:31] Sidney Milkis: Deliciously in 1896 when parties began to develop John Adams was elected president, and Thomas Jefferson, who was developing as his political opponent was selected as the, was elected as vice president. And it must have been fun to behold the executive mansion during that time in the conversations that took place. So I think what really changes things, and this kind of develops with the Jacksonian and the Jeffersonian Jacksonian presidencies is the development of a mass party system that it's impossible to understand the accomplishments, I think of Jefferson and Jackson without the development of that. That did sort of connect the presidency to public opinion.

[00:08:12] Sidney Milkis: But the party organizations also imposed some constraints on this popularized presidency that Steve says develops over in the 19th century with Jefferson and Jackson, because the party system that develops is highly decentralized, and it's based, rooted in the patronage of spoil system. And so both parties sort of develop as a buttress local and state governments and they given that they're interested in patronage there's a kind of pragmatism to the party system.

[00:08:46] Sidney Milkis: Particularly with Jackson, the party system is developed in a way to constrain him, because, as Steve said, he's potentially the, the Napoleon of America. And the Democratic Party as it's develops, is highly decentralized and it's root, and its power is really rooted in state and local party leaders and they kind of impose a kind of collective responsibility on the presidency. As Van, Martin Van Buren, who's one of the great architects of that Democratic Party, puts it the party system helps transform personal preferences into party principle. And the party principles of the Democratic Party, which develops over Jefferson and Jackson, are dedicated to limited government, natural rights which proceed politics and therefore constrain politics.

[00:09:37] Sidney Milkis: So that takes us to Lincoln. I'll just be brief on Lincoln 'cause I don't wanna let my colleague Barbara in. With Lincoln, this incredible crisis that almost ended the union. This tremendous this domestic rebellion, full scale domestic rebellion and civil war and the battle for emancipation Lincoln challenges the notion of limited government and argues the government has to make a more play a more positive role. And particularly with respect to the problem of slavery, which he argues is a denigration of the Declaration of Independence and the real end of the real founding of Americas in 1776 with the Declaration, not in 1787 when we found this constitution.

[00:10:32] Sidney Milkis: The Constitution must be adopted to practically as possible bring the country more towards the fulfillment promised by the Declaration of Independence. Every individual has the right of life liberty and the pursuit of happiness.That idea that the founding is the declaration, and those rights must be pursued in a transcendent fashion leads to Lincoln's argument that the government has the responsibility to provide for what he calls a fair race of life. And the first thing the government has to do is get rid of this institution of slavery, which is a black mark on the Declaration of Independence.

[00:11:22] Sidney Milkis: And I think that's a really important part of Steve's story in the development of a, of a Democratic president, because it's true that turning the presidency on, the constitutional presidency on its head and making it the tribune of the people adds to its, infuses its power. But when Lincoln transforms the idea of limited government into this notion that the government has a more affirmative responsibility, I think that's an important bridge to the progressive presidents that Steve mentions.

[00:11:54] Jeffery Rosen: That is such an interesting way of putting it, showing the mix of Hamiltonian means for Jeffersonian ends as Herbert Crowley talked about, the progressive transformation to remind us of the centrality of the, of the rise of the party system in transforming the presidency, and to help us understand our current course. Barbara Perry, in your great essay in the volume that you've published recently. The Personal Presidency, that constitutional crossroads, you begin by noting that Jeffrey Tulis has argued there are two constitutional presidency. First the founder's formal office, and then the informal modern presidency created by Woodrow Wilson, which some have called the personal and rhetorical presidency.

[00:12:39] Jeffery Rosen: And then you wonder whether it's evolved into a third constitutional presidency today to give us a preview of the Trump era. Is there a third era or would you say that those two presidency, the founders and the personal presidency, describe our history?

[00:12:58] Barbara Perry: Well before jumping into that? First of all, thank you, Jeff, for having us this evening. And if ever the country needed a nonpartisan national Constitution center, it is now when I do think our very constitution is under fire. And that will help you to know how I'm gonna answer this question. And I also just wanna have this little shout out to our friends in Arizona. I always like to hear Sandra Day O'Connor's name invoked because she used to say to teacher institutes when I was teaching with the Supreme Court Historical Society at the court, she'd say to each of the teachers, "Democracy is not genetic. You must teach every generation about our democratic republic and about our constitution." And so that's not only what we're doing this evening, but what you do every day, Jeff.

[00:13:45] Barbara Perry: And I also love your book on Brandeis, as a native Louis Pavilion. I've always felt that I was very much attuned with him. So let me start this way. I just wanna throw this out for our viewers and our listeners, that whenever CSPAN or others conduct a poll of scholars about who are the greatest presidents, who are great, who are near great, average, below average, failures, and I'm sure everyone can name off the three who come out at the top, George Washington, Lincoln, and FDR.

[00:14:16] Barbara Perry: And I do think it's interesting that when we talk about the power of the President, how it grew and certainly stepped away from some of the founders use of the presidency as an office that Aaron David Miller, the scholar and practitioner says that great presidents are those who saved the country at time of great crisis, and particularly existential crisis, or at the founding when it wasn't sure that we'd even last beyond the founding. So George Washington falls into that category, Lincoln, obviously, for the Civil War, and FDR for the Great Depression and World War II.

[00:14:49] Barbara Perry: But I would also say and to Steve's new book on, on the Kennedy administration and President Kennedy in particular, that in 2010 when Gallup Poll polled Americans, not scholars, but real Americans, and ask them of the last, at that time, nine presidents leaving out Bush 43, who had just left office which presidents did they approve of, John F. Kennedy came out on top to the tune of 85% of people approved of him. Now, Steve and I could have a whole conversation over an hour about why that is, but I refer folks to his, his book on, as I say, the Kennedy presidency.

[00:15:26] Barbara Perry: But I do think that that relates specifically then to your question posed to me, Jeff, about Jeff Tulis's approach to the new presidency that I think is first the constitutional segment that we've just talked about at the founding, coming up to obviously changes that are happening from the founding onward. But then I think Sid might agree that Teddy Roosevelt starts really into this concept of a personal president and a rhetorical president, one who reaches the people directly, in part because technology is changing, travel is changing, presidents can get on trains and go throughout the expanding country. And so I think, for example of Roosevelt's speech after, Teddy Roosevelt's speech after he left office in Kansas, and Sid has a whole book on Teddy Roosevelt, so I know he can hold forth on that.

[00:16:14] Barbara Perry: But just the fact that that is where Teddy Roosevelt, in a way, right, kicks off his run for the presidency as a third party candidate in 2012. And then that really comes on strong, this personal presidency or rhetorical presidency with Woodrow Wilson, as you say, he is our only political scientist, PhD president up to this time. And he had this view that he could reach the people directly through his speeches that would be published in newspapers, and he would go out in person and speak. And we know that that ended almost his presidency through the ruin nature of his health as he went around in '29 in 1919, trying to get people to support the League of Nations and the Versailles Treaty, and trying to put pressure on the Senate to approve that and to ratify it.

[00:17:00] Barbara Perry: He was unsuccessful and therefore ended up stroke ridden for the last year or so of his presidency. And we can someday talk about his second wife, the second Mrs. Wilson, and whether she became our first female president. But I also just wanted to say, I totally agree with Steve and his book on the presidency, and that we have, unfortunately, slid over from this personal presidency and rhetorical presidency to a demagogic presidency. And so maybe it's a misnomer to call it the third form of a constitutional presidency, because I think it's unconstitutional. I think having a demagogue is a president is in essence unconstitutional.

[00:17:39] Barbara Perry: But we have come to that in part because of the personal presidency, the rhetorical presidency plus universal suffrage sort of running now to maybe it's illogical and sad ending, but also to Sid's point, what are the reasons that demagogues come on the scene? Part of it is the collapse of mediating institutions, the media, the traditional media, thus their name were mediating institutions. Now with social media, everyone is a journalist. Everyone's reporting, everyone's commenting on the president or communicating with the president and vice versa. We saw that that's how Trump came to power. I will just end this part of the answer with a really good definition of demagogue so that our viewers and those who are listening can think in terms of how they might apply this to any particular candidate or person running for office.

[00:18:35] Barbara Perry: This comes from the American political dictionary. A demagogue is an unscrupulous politician who seeks to win and hold office through emotional appeals to mass prejudices and passions. Half-truths outright lies may be used in attempts to dupe the voters. Typically, a demagogue may try to win support from one group by blaming another for its misfortunes. And that dictionary was published in 1989. Finally, I would just add, circling back to Hamilton, this is what Hamilton said about demagogues in Federalist Paper, number one in 1787, "Of those men who have overturned the liberties of republics, the greatest number, have begun their career by paying an obsequious court to the people commencing demagogues and ending tyrants."

[00:19:22] Jeffery Rosen: Thank you so much for putting on the table that invaluable definition of demagogues is appealing to the emotions of the people, and also citing Jefferson. Stephen Knott your two colleagues have endorsed your thesis, no surprise 'cause of its persuasion, because we're already up to the current era, let's get to it. You talk about the founder's fears of demagogues as appealing to passion rather than reason. It's that antithesis between passion and reason that is raised repeatedly in the convention through history.

[00:19:58] Jeffery Rosen: I guess although we may go back to see how we got here, you see president Trump not as a discontinuity, but a continuation of the trends that you identify. You say that Jackson and Johnson are the closest analogs to President Trump, and that all of the other presidents, including Jefferson and Wilson, would've been appalled by his demagoguery. What is distinctive and what is historically continuous about the Trump phenomenon, and what does history teach us about it?

[00:20:35] Stephen Knott: I do see a golden thread of sorts from the progressive conception of the presidency, which essentially rooted the power of the presidency, not so much in the Constitution, but on the ability of the American president develop, to develop some type of a bond with the American public to pay attention to public opinion, but also to shape public opinion. I think the progressives, I would include Wilson and T.R. in this category, had an unwarranted faith in public opinion. And I think the American founders had what I believe to be a more, a deeper understanding of the dangers of the tyranny of the majority, of the dangers that demagoguery presents to any Republican form of government. And so, Woodrow Wilson and T.R. Teddy Roosevelt, or miles removed from a Donald Trump, but I do think they had this kind of unbridled faith in the ability of the American public to sort of be a partner with the President.

[00:21:41] Stephen Knott: And they were somewhat, I think, dismissive of the dangers of demagogue, demagoguery. So I see a direct line, a direct thread from those progressive presidents. They had a different conception of the role of the federal government than Donald Trump, but they all believe that it was the president's perhaps primary responsibility to take the bully pulpit and to lead the American people into the promised land. Unfortunately, I think that opened us up to abuse. I see Donald Trump as the personification of a demagogue of precisely the type of person that a Hamilton or a Madison or Washington would've classified as a demagogue. So again, I see this continuity going back from Trump all the way back to Teddy Roosevelt and Woodrow Wilson, acknowledging the policy differences between them. But that presidency that Wilson and T.R. created that I think leads directly to the Trump presidency, which I see as something of a disaster for Republican government.

[00:22:51] Jeffery Rosen: Thank you for that. Sidney Milkis, in your new book, the Vital Center, you talk about institutional changes that have created the Trump presidency, including the decline of institutional constraints like the party system and the rise of presidents as crusaders for social justice movements, would you say preceded President Trump and can be identified in the Obama presidency and elsewhere. Tell us about what happened between Wilson and T.R and President Trump institutionally and in the conception of the office that brought us to where we are today.

[00:23:27] Sidney Milkis: I think one thing you have talk about the new deal. We haven't talked about the new deal and Franklin Roosevelt, which is sort of important in the development. As Barbara said, Franklin Roosevelt is the third, considered in the top three, along with Washington and Lincoln. And facing the two greatest crises of the 20th century, the Great Depression and World War II he leveraged those crises to consolidate the power of the modern presidency, which begins during the progressive era. But remember, there's a great reversal during the 1920s, I think Warren Harding called it a return to normalcy. The word was normality. But he used the word normalcy, and it stuck.

[00:24:06] Sidney Milkis: But Roosevelt consolidated what Theodore Roosevelt and Wilson had begun and extends the importance of the rhetorical presidency through the technical invention of the radio, which he uses masterfully. His fireside chats were a revolution, I think, in the president's ability to present himself or herself as a democratic leader, because Franklin Roosevelt was having friendly conversations with the American people. Rather than giving an exalted rehearsed speech to the American people. So I think that was a really important development. But something that has to be talked about Jeff, that adds to the modern presidency is it's administrative power.

[00:24:49] Sidney Milkis: And one of the things that happens as a result of the new, the new deal in World War II is you get the development of a much greater federal government, which a lot, with a lot more responsibilities. You get the development of the welfare state and the national security state, and a full-blown executive centered administrative state. And that creates prerogatives for the presidency, the addition of this administrative power that goes beyond the importance of the rhetorical presidency. So the new deal is really critical in creating a powerful presidency at home and abroad.

[00:25:27] Sidney Milkis: The other key development, Jeff, and you suggested this when you said, I argue, the President has become the leader of crusades. Surely that begins with the new deal. But it's really accentuated during the 1960s. Here Barbara's discussion of Kennedy, but we'd also have to talk about Lyndon Johnson and the explosion of cultural conflicts during during the 1960s. After the Civil War there was, there was some serious backsliding. We got the installation of Jim Crow which put our battles over race to the side for a while. But that reemerges in the 1960s during Kennedy's presidency with a vengeance.

[00:26:13] Sidney Milkis: And so there's this explosion of cultural issues, which leads to a demand for more direct participation in the political process. The most important thing that comes out of this, and I'm gonna connect this to Trump, is the McGovern Frazier reforms, which grow out of the anti-war and civil rights movements. And they replaced the national convention center, the institution of the National Convention where presidential candidates were nominated by state and local party leaders sometimes called the gatekeepers of presidential politics by this media churning a primary and caucus system which I think really expands the kind of dangers that Steve is speaking about. So let's, let's imagine, let's just do a counterfactual for a second.

[00:27:02] Sidney Milkis: Let's imagine if that convention system was still strong, there is just no way Donald Trump would've gotten the nomination for the presidency. He got the nomination by appealing to the base of the Republican Party directly which had kind of been teed up to take a more populous direction with the proper charismatic, charismatic leader. But if the gatekeepers were still in place, most of the establishment Republican leaders of the Republican Party were against Trump. And finally they kind of caved seeing the primordial demagogic relationship he had formed with the Republican base.

[00:27:42] Sidney Milkis: So I think the new deal and the 1960s are really important steps towards the kind of third constitutional presidency and the fourth 'cause the parties in the beginning of 19th century, kind of the second, then the modern presidency is the third. But I think the kind of concerns that Barbara elaborate so well really come out of the new deal in the '60s. And the combination of those two developments, which reach a culmination with the election and presidency of Donald Trump.

[00:28:15] Jeffery Rosen: Sid, thank you so much for identifying the, those McGovern Frazier reforms. I'll repeat them for our listeners, which you said really created the modern primary system, took the control away from party leaders and ended that gate-keeping. I'll also put on the table Rick Pildes and one of our recent commentary and programs has identified voting reform of the first pass, the post system, including the possibility of rank choice voting as one way of choosing more moderate candidates. And we're trying to collect reforms that might create a more deliberative America. And you've identified two of them.

[00:28:55] Jeffery Rosen: Barbara, your thoughts and help us understand the relevance of the new deal and the decline of the party system after the 1960s and the rise of new technology and the new modes of visual communication that you talk about in your essay that arose during Reagan. One obvious question is, why did it take until 2016 to have a Trump victory? And why not earlier?

[00:29:23] Barbara Perry: Right. Really great question, and, and that you're right, there's a bridge that, that I'll fill in momentarily. First of all, to give a plug to Sid's newest essay with our colleague Rachel Potter, also from the politics department here, that has been produced for an upcoming conference at the Miller Center that will be online so people can tune in online. And that will be next Thursday and Friday. So October 18th, 19th, 20th, I think 19th and 20th, particularly with panels discussing this very issue. And you get a really good sense of it in Sid's and Rachel's explanation of, of sort of elongating Sid's discussion here. But is a quick study if one needs it and doesn't want to do something in book form.

[00:30:09] Barbara Perry: I would also say that the first day of that will be to identify the problems with the current presidency and the modern presidency. And day two, to your point, Jeff, about people beginning to write in about what, what could we do to reform this system right now that obviously seems to be broken. Our entire second day will be devoted to thoughts about reforms of the presidency and the constitutional system. Just a really quick note about the importance in days gone by of conventions. I happened to be representing the Miller Center at the 2016 Republican Convention in Cleveland, Ohio. And I happened to run into, at an offsite luncheon that the Miller Center had sponsored for a stage production that included the great-grandson of Theodore Roosevelt, Tweed Roosevelt, who is still with us.

[00:30:58] Barbara Perry: He is based at the University of Long Island, and I just ran into him again in Washington at the Presidential Site Summit. And he is quite the embodiment, the current embodiment of Theodore Roosevelt. And he was on stage with David Eisenhower, the son-in-law of Richard Nixon, as well as the grandson of Dwight David Eisenhower. And as I went to go to that event that the Miller Center was sponsoring, I saw at the table Mitch McConnell, who is from my hometown of Louisville, and he was with his wife Elaine Chao. And it was sort of the, the old guard of the Republican Party, Orrin Hatch, Bob Dole, all seated at the lunch table.

[00:31:37] Barbara Perry: So I went up to Mitch and I always say who I am, and he says, "Oh, hello, how are you doing?" And I didn't say anything about the fact that Trump was going to be nominated. Mitch was to speak that night, that Tuesday night to the convention. Mrs. Trump had spoken the night before, and there was quite a controversy because she seemed to plagiarize from Michelle Obama, but with a hangdog expression that Mitch often has. He looked at me, and again, without my prompting, he said, "This guy referring to Trump, this guy could win, but I don't see how." And he was referring to the general election.

[00:32:12] Barbara Perry: To Sid's point about how, if this had been up, left up to the convention, no, he would not have been nominee in 2016 and forever after then Trump he would never be mentioned by Mitch McConnell by name. If someone said, "Are you supporting him?" He'd say, "I'm supporting the nominee of my party." And Mitch still says that about 2024. So let's go back to the bridge. So if we have the rhetorical presidency beginning in earnest with Woodrow Wilson out on the stump, going out around the country speaking directly to people then we have FRD as Sid mentioned I'll call him the mass electronic media president with his use of the newer technology of radio.

[00:32:54] Barbara Perry: And then John F. Kennedy, of course, embraces television as the newer form of communicating with the people and his primetime press conferences that were on average twice a month. Imagine that a president speaking to the press twice a month on primetime TV was the greatest entertainment going in Washington. And I have a friend here who was in the, a very junior officer in the Foreign Service who said, "Oh, we would always go to the, to the state Department. We were, we were working there. We'd go to the auditorium and we'd sit in the back and we'd listen to Kennedy. He was a quick study, he was informed, and his wit was incomparable, and he was now coming in to people's living rooms."

[00:33:34] Barbara Perry: I then would put Reagan into the mix as what I call the celebrity president. It wasn't as though we didn't have other celebrities who had been president, but they typically were military heroes starting with Washington. And then so many of the, obviously Jackson, but so many of the presidents after the Civil War had, Grant had been a general and a leader, and we also had very high ranking officers. So they often were celebrities in terms of being heroic military men. But in terms of a Hollywood celebrity, that that first goes to Reagan. And I think that is the direct step into the Trumpian presidency that really in part comes about through his use of social media, the newest media at that time, as well as his starring role in his reality TV show.

[00:34:20] Jeffery Rosen: Such a powerful and important suggestion, Reagan's use of the media and his role as the first celebrity presidency was a crucial piece of the puzzle. Stephen Knott very eager to hear your thoughts on JFK, 'cause you have your new book out, and I also wanna ask you this question. FDR used Hamiltonian means for the Jeffersonian ends of economic equality and expanded the administrative state. Reagan came in and explicitly invoking Jefferson pledged to appoint Supreme Court justices who would roll back the administrative state. And indeed, our current court could be called Jeffersonian in its more limited view of federal power. At the same time, Reagan and every president since has embraced a broad view of executive power and increased use of media in a kind of celebrity way. What are you're thoughts about the Hamilton Jefferson Clash? What's the relation between the ongoing debate about the scope of congressional and federal power and the ever expanding and evermore populist presidency?

[00:35:18] Stephen Knott: Yeah. That's a terrific and tough question, Jeff. I've often thought of Ronald Reagan, I, when I was at the Miller Center with Sid and Barbara, I ran the Reagan oral history project. And Reagan in many ways adopted a kind of Hamiltonian conception of the presidency, at least in terms of, he dismissed sort of the populist presidency of Jimmy Carter. Carter had gotten rid of the Sequoia, he'd gotten rid of hail to the chief. He was wearing cardigans in the Oval Office. He was staying in people's homes when he would travel around the country. Reagan restores a kind of imperial trapping to, trappings to the presidency very much in a Hamiltonian style.

[00:36:00] Stephen Knott: Now, in terms of their in terms of the impact of the Jeffersonian tradition and the Hamiltonian tradition in terms of their the views of these modern presidents regarding the Supreme Court, let's say clearly the Republican Party has accepted or adopted the sort of Jeffersonian notion that the court is the least democratic branch, and therefore should be

restrained in the way it conducts itself and should not get too far out ahead of, or out in front of the public or public opinion. That's a classic Jeffersonian position.

[00:36:41] Stephen Knott: There's no doubt Jefferson's war with John Marshall, Jackson's war with John Marshall and some of the modern Republicans, presidents conflicts with the so-called activist courts, the Warren Court, for instance. Now that's very much in the Jeffersonian mold. Hamilton obviously was a champion of judicial independence, his essays in the Federalist Papers. I think '78 is kind of a classic in terms of laying out the power of the court and the power of judicial review. I think Hamilton would be far more comfortable, not so much with an activist court, but with a court that is willing to check public opinion, that is willing to serve as a check on that majoritarianism that we've been discussing. You could say to some extent, the modern Democratic Party and modern democratic presidents embraced the kind of Hamiltonian conception of the role of the judiciary as something of a protector of minority rights and a bulwark against majority tyranny.

[00:37:50] Jeffery Rosen: Beautifully answered. That is exactly what I was hoping for. Thank you for clarifying. Sidney Milkis, as we think about the broad trends, we're talking about the decline of the party system, the rise of the media, and the polarization of our country, the reforms that you and your colleagues have identified so far, in particular, reinvigorating the party system, insulating the presidency, maybe from some of the more extreme forms of social media, seem unrealistic to say the least. These trends won't easily go away. Is there anything constructive that might actually be attainable given the range of the structural and technological challenges we're talking about?

[00:38:37] Sidney Milkis: Yeah, I have to say, Jeff, that I think I'm much better at diagnosing diseases than coming up with remedies. Maybe that's a political science disease, but you think-

[00:38:48] Jeffery Rosen: I shouldn't ask you. It's the hardest question and no one's got. So please continue to diagnose the disease too.

[00:38:54] Sidney Milkis: I think my biggest concern is that we've developed this presidency centered democracy, and we're now facing the perils of presidentialism, which we've all been grappling with here tonight. It's really dangerous to expect so much from the president. Can a large diverse nation of 300 million people invest so much in one person, one office and still say it's doing anything that deserves to be called self-government? And I think what one of the developments that have has accentuated the pearls of presidentialism is the Republican parties conservatism brace of a powerful presidency.

[00:39:44] Sidney Milkis: And that really starts with Nixon, who begins to conceive of the modern presidency as a double-edged sword, which could cut in a liberal as well as a conservative, can cut in a conservative and liberal direction. And this view departs from your hero, Liam Howard task view that the presidency should be strictly bounded by the text of the Constitution. With Nixon, and then Reagan kind of makes this more politically popular because he gives real ideological voice to what Nixon called the silent majority.

[00:40:19] Sidney Milkis: With I think with Reagan conservatives embraced this powerful presidency. And rather than what rolling back the state, I think what Reagan envisions, and I think this really comes out more during Bush 43 and Trump's presidency the Reagan wants the to develop a more conservative presidency and change the bureaucracy so it'll serve conservative causes. Defense is of course, a huge, a huge issue for him. He had a messianic view of, of, of the Cold War, but also he fears that traditional values and the abortion issue are in decline. And the state has some responsibility to restore the importance of middle class or traditional values.

[00:41:03] Sidney Milkis: And I think that change where both parties embrace, the presidential power takes away the debate between Jefferson and Hamilton a way that's very dangerous. So I think Hamiltonianism of the popular Hamiltonianism that Steve describes has completely displaced Jeffersonianism. The voices defending limited government out there, Jeff, are very few and frail by fear. And we see this in the immigration battle. The battles over immigration conservatives have no desired roll back the state with respect to immigration. They wanna impose a much more draconian position in strengthening our borders than Democrats do. So this doesn't really answer your question about a remedy, but I think we have to think of a way that Americans have to enthrall themselves, with the presidency and reacquaint themselves with institutions like state and local government. And that may be unrealistic. But I think that's what's gotta happen if we're gonna move away from the kind of very perilous situation we're in right now in American democracy.

[00:42:09] Jeffery Rosen: A superb suggestion of reacquainting ourselves with state and local government, which invokes another hero of mine, Louis Brandeis. And you're surely right that liberals and conservatives, Republicans and Democrats have embraced a broad Hamiltonian conception of the presidency and state power. And to the degree there's any pushback there, it would be from Jefferson on the Supreme Court. But in that sense, we can't expect to find our salvation from the office itself.

[00:42:37] Jeffery Rosen: But Barbara Perry, we take very seriously at the Constitution Center, our nonpartisan mandate, and by focusing on Trump as a unique threat to the Constitution. Each of you is making a historically informed argument that his brand of demagoguery is exactly what the founders feared. Hamilton feared it, and I just found the most amazing quotation from Jefferson.

[00:43:05] Jeffery Rosen: In the letter to Madison on the Constitution, he says that he most fears that imagine someday a demagogic president may lose reelection by just a few votes and refuse to leave office and seek the support of the states that had voted against him to entrench himself. He’s kind of envisioning minority support demagoguery. Help us understand, what does your study of history convince you of the unique dangers of the Trump presidency to the constitutional system, to our institutions and to the republic?

[00:43:43] Barbara Perry: Well, you're right to say that we've had demagogues before. It's not as though Trump was the only demagogue ever to appear in American politics. And Steve pointed out, I think, quite correctly, that you could point to Jackson as one and probably Andrew Johnson. We had Huey Long, we had Father Coughlin, the radio priest. We had Joe McCarthy in

the 1950s. But I would point out that none of those three ever became President of the United States. And so a question that's been fluttering around in my mind over this hour is it an irony, I ask all of you, is it an irony then that really a tyranny of minority helped to put Trump in office? That is the very institution of our constitution, that the founders hope would check the possibility of a demagogue becoming president, because as Steve pointed out, they had real concerns about the people.

[00:44:44] Barbara Perry: And I always say, isn't it interesting that they had concerns about the people when the only people who could vote at the federal level during the time of their lives would be white male property owners? And yet they still put in the check of the electoral college. I do wonder if they ever had a conceptualization that we would end up with universal suffrage. I can't imagine that they would in, have imagined it the way we know it now. So isn't it a tyranny an irony that a tyranny of the minority that is, that Hillary Clinton in 2016 got 3 million more votes, almost more than Trump, but that because of the oddity of the electoral college and the shift of about 70,000 votes over three states caused Trump to win the presidency.

[00:45:32] Barbara Perry: So I do think that we need to think about that. If we're talking about reforms, I realize how difficult it would be to abolish the electoral college. And I recognize that people who talk about it and, and, and abstain are against reforming it and against abolishing it, say, "Oh, well then you would just have California and New York and Texas choosing the President." I don't know the answer to that, but I would just say this, that our constitutional system, as the founders hoped it would function, did not work in 2016. And it was about not to work in 2020 on January the 6th of 2021.

[00:46:11] Barbara Perry: And when I look back at, let's just take Al Gore in 2000. First of all, Bush v Gore, that gets all the way to the Supreme Court in two different cases and two different oral arguments, and is decided depending on how one reads the final opinion, seven to two or five to four in favor of George W. Bush winning in effect by what two electoral votes and about, we think about 300 votes in Florida. Yet, as soon as the court revealed its decision in mid-December at late at night, Al Gore, by the next day, was on television saying to the American people, "I would've liked this to work out another way, but it didn't. And so, of course, George W. Bush will be our next president."

[00:46:57] Barbara Perry: And then as Vice President of the United States, Al Gore had to suffer the indignity of counting the electoral votes and proclaiming George W. Bush's opponent as the winner. So by having a celebrity president in Donald Trump who had never been in government, who had really not been in politics even, who had never served in the military, you get someone who does not appreciate the constitutional guardrails of our system. And that, to me is the real danger that I think people hoped that if Biden would win, that he would not only right the ship of state that was listing so badly after January 6th, 2021 but that the demagoguery of, of at least Donald Trump as a candidate would perhaps disappear. And we see that the opposite is happening.

[00:47:46] Jeffery Rosen: Such an important reminder of the dangers of minority tyranny and demagogues produced by minorities. Stephen Knott, what about that danger? I'll just read the

Jefferson quote 'cause it really struck me. I'm sure familiar to many of you, "If one's elected, and in a second or third election, outvoted by one or two votes, he will pretend false votes, foul play, hold possession of the reins of government, and be supported by the states voting for him. The only preventive against an unscrupulous minority demagogues," said Jefferson, "Is to limit the president to a single term. So he can't try to run again and entrench himself." What is a minority demagogue, and does that change your definition? And what are the defenses against it?

[00:48:33] Stephen Knott: It's a very interesting point and one that I've had to wrestle with 'cause as Barbara and you have pointed out, president Trump lost the popular vote. We've had a number of popular vote losers who've won the presidency due to the electoral college. Now, my argument, and by the way, there's probably three people in the United States who would agree with me on this, is that the original electoral college had some merit to it. You and I would go and vote for the state level, and those representatives that you and I chose would in turn, select electors every four years. And hopefully the founders weren't naive about this. They knew enlightened statesmen would not always be at the helm, but hopefully those electors would pick somebody of a stature and somebody with the experience needed to be the nation's chief executive.

[00:49:24] Stephen Knott: We gutted that with the 12th Amendment. And basically what we've got today is the worst of both worlds. We have the remnants of this old electoral college, but it's basically, for the most part, a rubber stamp of the popular vote in each state. So to some extent, I don't think we can necessarily blame the architects of the original electoral college for some of the failures that occurred most recently, arguably in 2016. If I could just go back, you asked Sid a question about a potential cure. And I think something that Sid said earlier offers at least a partial a glimmer of hope. That would restore some of the power given to the political parties they possessed in the 19th century to select presidential nominees. Those people served as the gatekeepers. As Sid mentioned, we don't have any gatekeepers anymore.

[00:50:28] Stephen Knott: If you have enough money and enough public visibility, you can throw your hat in the ring and run for president, that would not have happened in the 19th century. Now, I grant you the old system where the party leaders in the smoke-filled room had a tendency at times to pick certain mediocrities. There's not a lot of people out there saying, Rutherford B. Hayes or Chester Arthur should be on Mount Rushmore. But the fact is that those mediocrities so-called mediocrities did not do harm. They did not damage the office of the presidency. They were not threats to the Constitution. And I would take a Benjamin Harrison over Donald Trump any day. So I do think one answer is to go back to that old system, elements of that older system where people who know who the talented individuals are, who the individuals that might have psychological problems or drinking problems or whatever, character issues, they would be able to exclude these folks from being nominated by a major political party. There are no guardrails left. And that's a dangerous situation.

[00:51:42] Jeffery Rosen: It is indeed. That's a powerful suggestion of the need for resurrecting gatekeepers, like restoring power to the parties. Sidney Milkis, this will be last thoughts 'cause we always end on time. No need to propose more solutions 'cause they may not be at all obvious. But given your deep knowledge of the history of the presidency, are we at an inflection point in

American history akin to the election of 1800 or the Civil War or not? And what does the history of the presidency teach you about our current challenges?

[00:52:18] Sidney Milkis: Hmm. That's a tough last question.

[00:52:24] Sidney Milkis: You sure we can't go over time?

[00:52:26] Jeffery Rosen: Well, we can.

[00:52:27] Sidney Milkis: When I give lectures on the carrot situation, I lay out the dangers that we're facing, seemingly intractable, as you say, to propose solutions almost seems, seems, seems naive. While I do agree with Steve that if we could put an ingredient of peer review back into our presidential selection process, which the electoral college did not provide that kind of filter, but parties did, that would help. That's not perhaps out of the question. But when I give the lecture about how dangerous things are, I point out that all of our major transformations, that every major development in American democracy occurred during periods of tremendous conflict and partisan polarization.

[00:53:12] Sidney Milkis: And during these periods, the American political system is disrupted. But we embrace a redefinition of the social contract which connects a new generation of Americans in in, for their time to the declaration and the Constitution. I think the last time that so clearly happened was the new deal, with the new deal. It hasn't happened since and since the 1960s, Jeff, we've been an intractable in intractably divided, I think in part because the fundamental question emerges is what does it mean to be an American with civil rights questions and, and, and, and immigration? And that requires a reckoning with some very difficult issues that we only faced previously in our history in the Civil War. And that led to a civil war. And a lot of people refer to our current situation as the cold civil war.

[00:54:02] Sidney Milkis: I think if we're gonna do something about this intractable divide I think one of the things that distinguishes contemporary politics from these previous great transformations in American politics is we had some intermediary institutions, that really provided a structure for the rebuilding of consensus in American politics. And a lot of those have been greatly weakened. We've talked about the parties, we haven't talked about Congress and what's happening with Congress. What you know the rule of law is really, I don't have to tell you this, Jeff. The rule of law is central to Republican government, and we do things administratively now. We don't really pass laws in the way we did in previous periods of American history.

[00:54:48] Sidney Milkis: So think about the Civil War with the Civil War Amendments. You think about the New deal with the enactment of major pieces of legislation like social security, how are we gonna move in that direction under the current conditions of American politics? So I really think we have to think about strengthening the intermediary institutions that in our past have allowed us to kind of confront these crises in a way that led to some kind of restored consensus. Presently, our politics is unfiltered. And the conflict between the tribes in America is direct confrontation.

[00:55:24] Sidney Milkis: We don't have time to talk about rebuilding all our intermediary institutions. But I think for all the controversy of the abortion decision, restoring, restoring that decision back to the states has led to some really interesting developments that are worth talking about. So something like that a return to appreciation of some of these intermediary institutions. I think it's necessary to move us from our current crisis to a new consensus in American politics, a new understanding of American democracy.

[00:55:59] Jeffery Rosen: That's so interesting, that your proposal to strengthen intermediary institutions connects with your earlier suggestion to restore power to the states and local government, that's federalism and the two can go hand-in-hand. Barbara Perry, last word in this superb discussion is to you, what lessons can our We the People friends, learn from history about our current fixations?

[00:56:26] Barbara Perry: So in addition to the rhetorical presidency and the constitutional presidency, and what we have said is perhaps the demagogy presidency, I like Steve's idea. I think we could perhaps develop a hippocratic presidency. First do no harm. So that would be my one last thought. And as the only woman on the panel, I do have to say that the gatekeepers before the '60s reforms at the conventions tended to be white men. And so if we're going to go back to the gatekeeper system, we have to figure out a way for the gatekeepers to be diverse across the board in all the meetings of that board.

[00:57:00] Jeffery Rosen: Hear, hear. Wonderfully said. Thank you so much. Stephen Knott, Sidney Milkis, and Barbara Perry for a magnificent discussion of the crucial question of the President and the Constitution. And thank you National Constitution Center friends for taking an hour out of your evenings to learn from these three great scholars Barbara, Stephen and Sidney. Thank you so much.

[00:57:23] Barbara Perry: Thank you, Jeff.

[00:57:23] Stephen Knott: Thanks, Jeff.

[00:58:06] Tanaya Tauber: This episode was produced by Lana Ulrich, Bill Pollock, and me, Tanaya Tauber. It was engineered by Greg Scheckler and Bill Pollock. Research was provided by Samson Mostashari, Cooper Smith, Derek Shavell, and Yara Daraiseh. Check out our full lineup of exciting programs and register to join us virtually at constitutioncenter.org. As always, we'll publish those programs on the podcast, so stay tuned here as well, or watch the videos. They're available in our media library at constitutioncenter.org/medialibrary. Please rate, review, and subscribe to Live at the National Constitution Center on Apple Podcasts, or follow us on Spotify. On behalf of the National Constitution Center, I'm Tanaya Tauber.