

Jackie McDermott: [00:00:00] Welcome to live at the National Constitution Center. I'm Jackie McDermott, the show's producer. Last week experts joined National Constitution Center President Jeffrey Rosen to consider how we can foster compromise in American political life today. They also explored prominent issues in the news, including whether or not to end the filibuster. The panel included political scientists, Steven Teles and Sarah Bender, director of the US democracy program at the Hewlett Foundation, Daniel Stid, and president of the Manhattan Institute, Reihan Salam. Here's Jeff, to get the conversation started.

Jeffrey Rosen: [00:00:37] Daniel, let's begin with you. If I may, you were a member of the National Constitution Center's Madisonian constitution for all commission and you've written so deeply and thoughtfully about Madison's vision of deliberation, how it was deeply embedded in the framers view of a successful republic. And you've contrasted it with other competing visions, including Woodrow Wilson's vision of a more parliamentary system. Tell us why Madison and the framers thought that deliberation was important and whether or not it actually has succeeded as an ideal throughout American history.

Daniel Stid: [00:01:16] Sure, Jeffrey, and thanks to you and the Constitution Center for hosting this discussion today. Glad to be here. The Madison and the founders did something we're endeavoring to do something which has never been appreciated, and it may be their most kind of singular achievement, which is to establish a republican government intentionally on a continental scale. At that point in time, people thought that republican forms of government could only exist in a much, in a small homogenous culturally homogenous society. And they kind of flip that logic on its head and, and, and their words extended this sphere to take in a diverse array of regions and interest and values and creeds with the idea being that the, the, the broader the sphere and the more diversity interests within it, would be harder for any one majority that was seeking to do something it shouldn't be doing in a free society to gain the upper hand.

But that also presumed that there would need to be some institutional setting in which that sheer diversity of, of perspectives and interests could be fully represented, and if not reconciled, at least traded off and balanced. And so the deliberation that Madison and his colleagues saw, especially as something that would be seeded within Congress and the House and the Senate that was that's kind of the higher logic of the Federalist papers. I think when Madison had the practices theory and turned up in the first Congress, he quickly discovered that there was deliberation, but there was also as, as probably you too negotiation and compromise, and often the, involve the horse trading and log rolling that is necessary to kind of get to agreement when you have such a different interest.

And that, that perspective on how our system works, I think has come down through to us today. It remains the case that the vast majority of laws that are enacted into law, majority of bills that are enacted in law are supported by large bipartisan majorities in both Houses. And we also, you know, generally see the most effective legislature, legislators at getting their own agenda through as being the ones that are most adept in the deliberation, negotiation and compromise. So that's the, the, the, the one part of the story, but there's another part of the story, which has always rejected that kind of many different interest, you

know, in coalition, shifting from issue to issue. It has held up the idea that really politics should be a class between two competing visions.

And that was articulated most firstly by Woodrow Wilson in particular who was a great admirer of the British parliamentary system, where you have a government and an opposition party, the, the governing party is granted a mandate during an election and thereafter is expected to kind of carry out that mandate systematically. This really elevates the role of, of disciplined and principled political parties. And more and more certainly over the most past few decades, that conception of what our politics should look like has come to the fore among party leaders in Washington. The media tends to like this view because it is a clash of Titans that makes for better TV and kind of prosaic compromise behind the scenes to get things done is, is, is less of an interesting story. So we actually have these two competing conceptions of how our government should work.

Jeffrey Rosen: [00:04:30] Many thanks for that. Steven, Daniel very helpfully sets up two competing visions, the Madisonian vision of deliberation among people of different points of view in order to avoid the problem of faction, which Madison defined as a majority or a minority devoted to self-interest rather than the public good. And then the Souther Wilsonian vision of a clash of factions or parties which is also prevailed. You just wrote a really interesting piece about the future of, the future is faction in which you describe the possibility of durable, organized factions, such as existed during the progressive era that might cut across party lines, but e- established for a workable frame of government. Tell us more about that vision and why you think that compromise is not always desirable.

Steven Teles: [00:05:21] So the background, and again, I think in a lot of this, I'm in violent agreement with with Dan. And a lot of my question is about how do you get that kind of Madisonian deliberation as well as log rolling? And you know, what I think of is the legislative arts and that those are all fundamentally inconsistent with a basically parliamentary conception of what Congress is. So we agree on that and the question is, well, how do we get it? And right now the problem of course, is that we have effectively increasingly parliamentary parties, but without parliamentary institutions. We have a Congress that's designed, a larger constitutional system that's not designed for unified parties like that. And one of the things that I think is worth thinking about, especially when you think about the American constitutional system in the context of other liberal democracies, is that we only have two parties, right?

And compare that, for example, I always use the example of Holland, which is not a very big country, but it has a more or less standard issue right of center party, a standard issue left at center party. And as a center party, it has a populist party, a socialist party, a green party, a socially conservative party, a socially liberal party, and of course, the party for animals, which is an actual party in the Dutch parliament. And that does not even exhaust the parties that have representation in the Dutch political system. And it's hard to believe that the United States has fundamentally less political diversity than Holland does. Now the way we've dealt with that in the past is not through having multiple parties, but by having parties that were essentially factional coalitions, right that had an enormous amount of internal

diversity, and that had to do lots of negotiation in log rolling internally before they could actually participate in the legislature.

And because they were so internally heterogeneous, they would often have demands to keep party leaders from being as strong as the parliamentary conception of parties would imagine, right, because many of those cases, those internal party factions would want to make deals with people in the other party. Right? You mentioned the progressive era in which there was a progressive faction in both the Democrat and the Republican party. What both of those factions wanted was leaders that were so weak that they could not keep progressives from cooperating across party lines. And for me, that's how you get deliberation, and that's how you get compromised. Not because anybody particularly wants it as a matter of principle, you get it as a matter of power, right?

When you act- when there's actually so many factions inside parties that party leaders can not have the power to treat their members in a parliamentary way, right, it's simply sort of legislative roll call, fodder, right, but where you actually have to have negotiation and compromise and log rolling to put together coalitions, that's how compromise happens. It doesn't happen because anyone particularly has a principled desire for it or interest in it. It happens as a by-product of the fact that you actually have pluralistic parties, creating rules that allow for lots of different kinds of coalitions, and that's how you eventually get to a Madisonian outcome under concurrent conditions.

Jeffrey Rosen: [00:08:47] Thank you very much for that. Sarah Bender already we have a bunch of questions about what Senate rules need to be changed and how do you change them to get legislation passed? You wrote a piece in the Washington Post just this morning called Biden says, bring back the talking filibuster, would that really let Senate Democrats pass their bills? So I'll ask you to answer the question, which you posed so well in the piece, what is the talking filibuster? Would it let Senate Democrats pass, for example, the voting rights legislation pending in the House? And w- what, what are the chances do you think of the talking filibuster are actually being resurrected?

Sarah Bender: [00:09:24] Sure. So when we say talking filibuster, I think all of us, at least over age, 40 or 50, we'll think of the Jimmy Stewart, role and Mr. Smith goes to Washington in the famous 1930s movie. And we have this image even for no one whose seen the, [laughs] the film of this one man, sweaty, delirious on the floor, stacks of papers, trying to block the Senate from doing something nefarious in, in a bill. And so that in essence is what we refer to as a talking filibuster, the idea that opponents of a bill would actually have to stand on the floor and not necessarily give 24 hour speeches or so, but that could be part of it, offering motions to adjourn offering amendments, procedural things, whatever it is to keep keep the Senate from coming to a vote. And so the issue here always in the Senate is how does the majority get to a vote?

In the talking filibuster version, senators are on the floor and the majority is "forcing" that to hold the floor. It's a war, what we call war of attrition. Who's the last team standing, right? Does the minority care so much about that bill they're just gonna keep holding the floor, or does the majority say, "Whoa, they're really intense to care about this. We have other things

on our agenda. So we're gonna let them win and move on to other issues." That is what Joe Biden said yesterday what Senator Manchin has said, what many senators have said. Well, why don't we just let stop letting senators phone it in? Why don't we just make them go to the floor? Because we don't have those talking filibusters anymore. We can come back to if you want, why those talking filibusters went away.

But the reality is, today, senators, senate leaders use what we call cloture. It's a super majority motion, it requires 60 votes to cut off debate. And if you can't get 60, if you can't get unanimous consent of every senator to cut off debate, then you never get to the vote. So here are the reformers, let's make them talk. Now I think the issue here is twofold, whether or not it would actually work particularly in say an issue, even a top priority issue for the Democrats, like voting rights in the Senate. O- one issue here and granted the devil's in the details, when we say talking filibuster, there are lots of different versions, some require rule changes, some don't. But generally when we say talking filibuster, the idea here is that we want to shift the burden to the minority, to the opposition.

In reality, the burden does not leave the majority because the majority is the one that intensely wants to get on to have the bill upped for a vote. You can imagine, it's 2:00 in the morning, it's 3:00 in the morning a Republican member in this particular Congress maybe reading green eggs and ham as it were, what does he do when he gets tired? Well, he doesn't necessarily just hand off the filibuster to another weary senator, he calls, he says, looks around and says, "Hey, there's nobody here." He calls, he notes the absence of a quorum. And then the majority is the one who has to show up at 3:00 in the morning to establish 51 senators for quorum. So the burden never leaves the majority party.

And that's the downside here of the talking filibuster that the minority in fact might enjoy the opportunity, the limelight, make a name, right? The last time this happened, we had a hashtag stand with Rand, right? The minority will use it. Opposition will use it. Not to wear everybody down to negotiate, but often just to block the bill. And so I'm a little skeptical of this particular type of reform, but again, devil's in the details, there are ways that might be constructed that in fact might give the majority a little more edge in trying to get to a vote on the Senate floor.

Jeffrey Rosen: [00:12:59] Many thanks for that. And we'll, I'll ask you about some of those other alternatives in, in the future rounds. Reihan Salam, would eliminating the filibuster or having a talking filibuster be a good idea or not? Of course the minority party tends to oppose eliminating the filibuster, and then often they switch positions once they get to the majority. But maybe y- y- you could help us understand or help me understand with this talking filibuster, could, could Republicans indefinitely block the voting rights bill just by refusing to yield the floor or not? Is there a point at which Democrats could force a vote and pass it by less than 60 votes? And then do you think it would be a good idea to curb or eliminate the filibuster or not?

Reihan Salam: [00:13:40] Honestly, there are very sound powerful arguments, both for and against the filibuster including an argument that in a sense, the filibuster was not intended to be part of the Madisonian design and in some ways undermines it. So that's what I'd like

to talk a little bit about now. You know, Daniel and, and Steven just talked about the logic of Madisonian constitutionalism, and I want to just play devil's advocate for a moment and talk about the appeal of the kind of Westminster parliamentary approach. You know, i- it's an appeal that I personally reject, but I think it's worth thinking through, because it's such an important implicit part of the conversation. The idea here is that we need decisiveness. We need clear majorities. We need to move quickly. The reason why, you know, Woodrow Wilson embraced these ideas was the idea that we live in a much more urban, modern society in which government needs to be more active and government in particular, the federal government, needs to be able to move swiftly in response to social change.

The idea that we need more centralized power to kind of meet the kind of complexity of a society like ours. This is an idea that hasn't gone away. I'd say a lot of serious thoughtful people embrace it, but I think there's another way to look at it, which is that our system, it's complex, there are many layers to it, there are many obstacles to passing legislation. But the core idea here is that we want to foster deliberation and conversation. That what we want is a sufficient, broad, deep, and durable public consensus. The actual entire point is that we want barriers to moving swiftly, to moving precipitously, to moving in response to what might be temporary or fleeting majorities. So, you know, if you think about the fact that we have House elections, every two years, senators are elected for six year terms, they're elected in different classes, these are very big barriers to the idea that you have a majority of the moment in response to this or that discreet crisis.

The whole idea is that there are so many layers here for a very real reason that in a society, as sprawling, as diverse as ours, that actually we want to set barriers, we want to create room for deliberation. So if you're thinking about something like the filibuster, you know, let's consider, is this actually facilitating deliberation in a meaningful way? Is this kind of surfacing that sufficient public consensus? Is it actually advancing the underlying purpose of having a government with our particular structure or not? And honestly I can see arguments both ways. One argument is that having a Senate majority is something that you tend not to do and unified government, it's not something you do in one fell swoop, that typically takes a couple of bites at the Apple. And in our system, you know, in the modern era, certainly, unified government is quite, quite rare.

So you could say that, "Aha, this is a reflection" It really is a reflection of a kinda deep consensus, and there ought to be some opportunity to kind of move meaningful legislation through both Houses of Congress. Another view is that, well, are there ways we can reform the filibuster and Professor Benders had much more about this than I have, but are there meaningful ways to reform that so that it actually advances deliberation, it advances that project of kind of reflecting a deep, durable, sufficient public consensus. A- and again, there's been a lot of debate about that and, [laughs] and I'm kind of wary of weighing in on it. But I do think that when you think about this model that we want to kind of foster sufficient public consensus before doing things that are kind of gonna have a sweeping large effect on the character of our society, there's another piece of it, which is that the taste for a kind of a Westminster approach, the taste for decisiveness also comes from, I would argue that decay of other institutions.

You could imagine a scenario in which we say, "Okay, you know, we want Congress, we want the federal government to move in ways that reflect these kinds of broad majorities." But we have other institutions that are able to move in a more responsive, quick way. So state governments are a good example of this. Are there ways that we can strengthen state governments, make them more democratically responsive? Because right now state governments do an incredibly poor job of being democratically responsive. If you look at the nature of our system, and actually even beyond the system, other aspects of the system media climate that is very nationalized, people don't know who their state lawmakers are, People do know who their governors are.

So to me, we're putting a lot of pressure on the federal government, and then there are other potentially complementary institutions besides that we'd want to think about. So I want to say that to those who say, "We want speed, we want responsiveness in our system of government," ask yourself whether we should be putting that burden entirely on Congress and the federal government. Should we be looking to other complementary institutions as well? And then when we're looking to democratic reform, do we want to reform our system in ways that unlock the potential of the Madisonian system or in ways where we basically create what Professor Teles would call a kludge, you know, where we're basically advancing reforms that are not moving in some coherent direction of kind of bringing out what's best in Madisonian democracy, but rather trying to graft different systems with different internal logics onto what we have.

Jeffrey Rosen: [00:19:05] Thank you for that very thoughtful intervention. And for reminding us, first, that if deliberation is our goal, filibuster reform might not achieve it. And second, that if deliberation is our goals C- Congress is not the only institution to focus on, we have to think holistically about constitutional legislative, technological and other institutional changes to achieve that. So for this next round D- Daniel Stid I'd like to ask you for concrete suggestions about reform that might increase deliberation? Hew- the Hewlett Foundation have led an extensive study of this question. You were also part of the Constitution Center's project. I- the, it's a, it's such a broad question, but in, in a recent piece, you noted that one example of the non-legislative reform are algorithmic interventions by the tech companies that might recommend less polarizing related content, which could increase deliberation. So, and I'll f- finish this set up to say the Constitution Center has a new initiative called the guardrails of democracy initiatives that's trying to identify guardrails that might be resurrected to promote deliberation. So Daniel Stid, if you had to pick a few reforms of any kind to promote deliberation-

Daniel Stid: [00:20:17] Yes.

Jeffrey Rosen: [00:20:17] ... what would it be?

Daniel Stid: [00:20:17] Well, lemme, lemme pick one that has the good news attached to it that is actually, it seems to be progressing, which is the return of earmarked spending. That is where members of Congress designate a particular amount of spending for a project typically in their state or district. And this would under the current proposal, which is coming out of the House and the Senate, may or may not follow suit is designed to really spur

deliberation, not just so much in Congress, but between members of Congress and the people in the States and localities that they represent. I want to pick up on something that Reihan said that there, one of the things that has made it harder to compromise has been the nationalization of our politics, which kind of lifts things up to this polarized national debate. And one of the things that's been lost in that is the idea that individual members of Congress represent particular places with distinct interests, going back to that earlier discussion we were having around the, the Madisonian system.

And for the past 10 years or so, Congress has banned the practice of members designating spending for particular projects in part because of some abuses and some corruption that really were a problem that emerged in the, in the, in the odds. But recently a select committee on the modernization of Congress in the House of representatives of bipartisan committee unanimously reported out a proposal for restoring earmark with a few provisions, extended transparency, end-to-end online visibility into what was what was being proposed by whom and who will benefit. But they also propose something which chair DeLauro and the House Appropriations Committee has picked up on, which is the project should emerge from deliberation and dialogue between members and their communities and civic leaders, government leaders, nonprofit leaders and the places that they represent.

This would have a couple of benefits. One is, it would help the, the margins, it's not alone gonna do it. It would reset the link between senators and, and representatives and their constituencies. It would start dialogue between them that has, I think, went a little bit dormant in part because of the ban on earmarks. And it would provide members with institutional incentives to wheel what is perhaps Congress's most formidable power, which is the power of the purse, the power of appropriation, and the ability to deny appropriation as a power vested in the legislature, going back to the, to the conflicts between parliament and King in England.

And that's a power that Congress has steadily seeded to the executive branch in part, because it's, it's increasingly difficult for them to kind of figure out what kind of appropriations bills and to build up a majority behind that earmarks. A member may not be quite disposed to go for a spending bill, but if there's something that in that bill that he or she could go back to their constituents and say, "Here's a project I'm bringing back for you that could get Congress back in the business of passing the appropriations bills that it's meant to in a timely way."

Jeffrey Rosen: [00:23:25] Wonderful. The return of earmark spending. Thank you for that very concrete suggestion for reform and telling us how it might work. Steven, tell us the same question to you. And friends and those who are watching, thanks for your great questions. And if you have some suggestions for reforms to promote deliberation, you can put those in the Q&A box too, because we'd like to collect all of them. Steven, tell us if, if you had to pick some reforms to promote deliberation, what would they be?

Steven Teles: [00:23:51] Yeah. So I, I'll give you one and then I'll tell you that we shouldn't be thinking about reform. So I'll do both. So the first one I would say is, I actually think there's a

good argument for getting rid of the filibuster, but pairing that, and again, this is just to really, to trigger Jeff, given what I know is his his beliefs about the role of the court combining that with a much stronger non-delegation doctrine, right? Because one of the ways to go back to compromise, one of the ways that Congress in the last 30, 40 years has gotten compromises on is that it simply punted the substance of legislation over to the executive, right? That's what we usually mean by delegation. So it can get to an agreement by basically having non-legislation, having legislation that doesn't actually settle the underlying normative or economic trade-off kinds of questions.

And so there's an argument, I think for saying, Congress should be able to work it's will in a majoritarian way to, to the degree, to which you know, majorities are actually established right there in the constitution itself, but then they should be held responsible for actually legislating, actually making the underlying normative or economic trade-off decisions in courts should enforce that. Right? Nobody else can enforce that, or at least that there, there should be stronger internal congressional rules about delegation. And this would ensure that a Congress that could actually legislate would actually be held responsible for the substance of what they had done. On the other hand, I guess what I would say is, I think we think too much about the rules. We think too much about reforms and the rules and not enough about, thinking about many of these are problems of differential mobilization, right?

A lot of the problems we have with the absence of it with the absence of having parties that are as factionalized and diverse as the American people are, are result of the fact that on we generally don't organize people closer to the center and we have lots of ways to organize people closer to the polls and we get institutional rules that more or less match what the people who are at institutions want. Right? And so in these meetings we often say, "Oh, well, th- th- this would be a great institutional change," and that would change things, but in general, political scientist, and I if Sarah will correct me at the margins on this, right, we often think about institutions as indogenous, right, as being generated by the preferences of the people who are in the institution itself, right? And so long as we have institutions whose members are closer to the ideological polls, they will ask for institutional rules that match what they want, right?

And the only way to get different kinds of institutional rules that are better for compromise, that are better for deliberation is to actually have more heterogeneity in the parties and the only way to get that I think is for people to actually go out and organize people, right? Not even just to, you know, come up with other institutional changes, like rank choice voting, somebody actually needs to get people up off their couch and actually participating in the political process. And unless we can figure out a way to do that from people closer to the center, we're never gonna get institutional rules that facilitate deliberation.

Jeffrey Rosen: [00:27:01] Thanks very much for that powerful point that unless we can figure out ways to mobilize citizens, then institutional reforms will not be decisive. Sarah Bender, would, would love your suggested reform for increasing the guardrails of deliberation. But we have a bunch of specific questions to you in our chat, including just a clarification about whether a talking filibuster would in fact prevent cloture or not. So if that passed, eventually could the majority achieve closure by majority vote and eventually have

its way or not. And then our very first question from Ralph Hendrickson is, what Senate rules need to be changed and how do you change them in order to get legislation passed? So some reflection on those questions and then the broader reform would be wonderful.

Sarah Bender: [00:27:46] Sure. So on the, on the question about how exactly the talking filibuster would work and whether eventually there would be a cloture motion, right, a motion to cut off debate, that's where the imprecision of all these proposals is a little, well, a little personally frustrating, but generally difficult to kind of latch on to. The devil here is really in the details. I would say Senator Merkley almost 10 years ago proposed the most, the most detailed of these. And at the end of his talking filibuster procedures when the minority essentially folds, there would be a majority cloture motion. That is, it would just take a simple majority to vote, to cut off debate.

So that would be a change in the current cloture rule that requires 60 votes to cut off debate. Other proposals are quite a bit less clear. And so I think the way to think about filibuster, talking filibuster here is that in order for it to work, it would probably, it would probably require a change to the cloture rule. There are other reasons why it wouldn't, but I think that gets us a little too deep i- i- in the weeds that we'd never want, want, want to go. But there is an argument that you wouldn't have to change the rules, but we'll just bracket that for, for a future day. That, that's the, the first issue here on talking filibuster. Second in terms of, was the second one, about what type of reforms might work.

Jeffrey Rosen: [00:29:08] Yes, what senate rules might quite work.

Sarah Bender: [00:29:10] [crosstalk 00:30:26].

Jeffrey Rosen: [00:29:10] Exactly.

Sarah Bender: [00:29:10] So I, I, I would, I think we need to think here about two broad questions. And we can think of it in terms of what the Democratic senators are, are talking about. And, and to keep in mind, these are age old questions for the Senate. This is not the first Senate and the first Democratic Party or any party in the Senate to discover that the rules are really frustrating to slim majorities. We can go all the way back to the 19th century, even before cloture defined Henry Clay and others pining for, and trying to implement majority cloture. There are two problems for the Senate here to keep in mind. First, what are the reforms they want to think about? And then how would they achieve them? Would they go nuclear, at which we can save for another day as well?

So when we talk about reforms, we also want to keep in the back of our mind, like, do they have the votes in fact to implement reforms? But on the question of what reforms here, I think most attention really should probably be paid to that cloture rule if we're thinking about institutional reforms, it is currently at 60 to almost 25 years ago. Steve Smith and I, when we wrote our filibuster books that considered various reforms. And the one that made the most sense to us that would both prioritize a majorities ability to get to a vote, but also try to protect the minorities ability to raise issues, debate, and amend a bill, would be what Senator w- Harkin had called basically ratcheting down a cloture.

So you might start your process requiring 60 after if they couldn't get 60, after say three or four days, a new motion could be filed that would require 57, several days later 53 and all the way down down to 51. The value there, if it were to work in some ideal way, which is that the minority would have, the opposition would have an opportunity to make their case and perhaps to change minds, even though the majority knew that probably by the time the cloture all ran out two or three weeks later, they might get to a majority vote.

So that comes the closest to me in trying to balance generating conditions where both parties have their say, but also at the end of the day, making sure that majorities can get to votes, right, which at the end of, it seems to me, it's sort of a basic accountability mechanism in the legislature, which is that lawmakers should vote. And that's what the filibuster prevents lawmakers from, from getting to.

Jeffrey Rosen: [00:31:32] Thank you for that extremely concrete and really helpful suggestion. And viewers I know will benefit from checking out your book to learn more about the details around. Salam, I'll ask for your proposal for a form, but I'll set it up by asking, my sense is that promoting deliberation is not a partisan issue. And I have that sense because the Constitution Center recently commissioned three teams to write constitutions from scratch, a conservative, libertarian, and progressive team, and the conservative team put the liberation at the core of its constitution and proposed a host of reforms, including single longer terms for the Senate and many other reforms to increase deliberation. So is it, would you agree with that characterization or not that the conservatives would favor promoting deliberation as well as some progressivism libertarians? And, and, and if so, is there a reform that you want to highlight that you think would promote Madisonian deliberation?

Reihan Salam: [00:32:25] Oh, sure. I think that there's a lot of enthusiasm about deliberation, at least in principle among people of different ideological coloration. What I appreciate about Professor Bender's thought is that we need to think about the incentives facing individual senators. When we hear about a lot of proposals you know, for example before the People Act, what I'm struck by is that you know, the debate assumes that you would automatically have a majority of US senators in favor of them. I would argue that if we did not have the filibuster in place, there are many legislative proposals that appear to enjoy broad support, that appear to enjoy majority support, that would not in fact enjoy majority support, if there were some sense they would actually pass into law. Similarly, when you're thinking about US senators, it's helpful to think about their incentives and their institutional interests. Partisanship is obviously an exceptionally powerful force.

We find ourselves in, in a moment of intense ideological polarization, et cetera, et cetera. It's also true however, that senators have certain powers and privileges that members of the House of representatives do not have and that, you know, they, they might want to jealously guard those things. So if we're thinking about reforms, we need to keep in mind those institutional incentives. There's a lot of cheap talk going on in debates about institutional reform.

A- and that's part of why there's this big disconnect. Just specifically with regard to the, for the People Act. And, and I, I know I'm just introducing that here, but it's a broad suite of reforms to campaign finance to how voting is done across states and jurisdictions. There are many good and worthwhile ideas, many that would command broad support. There are however, where I can speak with authority, having spoken with some Democratic lawmakers, there are some people who voted for that legislation in the House, who I can say with great confidence would not support that legislation, would not support every piece of that legislation if they actually believed that would make it through the Senate.

We can talk about the specifics, but you know... So I think that in some cases, what you're getting is messaging legislation, that is, you're getting bills where the idea is that I want to draw a clear partisan contrast, but if I were really thinking about the nitty gritty of these things being implemented, I would think about them very differently. And by the way, one could argue that that's an argument for some kind of filibuster reform, because it actually demands greater responsibility on the part of lawmakers you know a- a- and, you know, that's the debate you, you know, where I, I think you've heard thoughtful voices on both sides of it.

But I, I think that it's really, really important to keep in mind that in some ways the conversation that people in the democracy reform space are having, the conversation that a lot of advocates are having takes for granted that people are voting in an entirely sincere way without regard for what it might mean to dilute your power as a Senator, what it might mean to dilute your ability to block legislation in a way where you don't have to take ownership of actually blocking what might be popular legislation, not with your constituency as a whole, but with your electoral constituency with your most passionate activist supporters. In a way the kind of irresponsibility that's fostered by the status quo is something that creates a lot of rich political opportunities for actors in the system right now. And that's one very serious barrier to reform.

Jeffrey Rosen: [00:35:56] Thank you very much for helping us think through the practicalities of the barriers for reform, even reforms that both parties may in theory support. So why don't we d-

Reihan Salam: [00:36:01] Jeff forgive me. So, so you did ask me for one specific thought as to reform.

Jeffrey Rosen: [00:36:03] Yeah.

Reihan Salam: [00:36:03] And here, you know, it faces the same obstacle. You know, there is institutional isomorphism, there's a lot of inertia, there's a lot of resistance, this idea, but, you know, Steve was earlier saying, "Hey, we talk too much about institutional reform." So I'm gonna indulge in exactly the thing that he warned us against, and say that I, I'm excited to see some states adopting things like jungled primaries top four primaries, and what have you, because I do see some states that are breaking with convention. A huge problem of democracy is the lack of experimentation, I would argue, including the lack of experimentation at the state level. And I think that, you know, ideas like rank choice voting,

bringing back multi-member districts, I really think could be very helpful in dislodging some of this inertia.

And I think that, you know, there's a long way to go. There's a lot of work of persuasion to be done, to kind of make people less anxious about these reforms. A- and again, without real organizing, they're not necessarily gonna bear fruit. But I do think that there were some promising things going on where people are thinking, "Okay, we can't just rely on things happening at the level of Congress at the level of federal reform, let's think about how we can loosen things up at other levels of government." And I think that that's a healthy, very positive development.

Jeffrey Rosen: [00:37:17] That's great. I'm so glad that you emphasize the j- jungle primaries, ranked choice voting, multi-member districts and other experimentation at the state level. And also called our attention to the practical difficulties of, of, of passing reforms that might be popular at the national level. So this discussion is so productive. For this next round, I'm gonna also call out our friends in the chat box. And thank you for coming up with concrete suggestion, Katherine Bullington in the spirit of around, around the last suggestion, says, why not focus on geographic, self-determination such as primaries by county state national circuits versus trying to organize people into ideological blocks. And many of our other friends talk about practical ways of achieving filibuster reform as well. So Daniel Stid, as part of your scholarship and your Madisonian inquiries, you've examined the deep social technological and geographic and political causes of polarization that are a barrier to reforms that people might favor. So of, of, here's the question I'll ask. Now, if you, if you had to pick a, a reform or series of reforms that you think actually have a chance of passing, it might have all the barriers that you've identified, what would they be?

Daniel Stid: [00:38:29] Sure. And I guess I would pick up on maybe to try and thread the needle between what Reihan and Steve were talking about I think n- one of the challenges with democracy reform is what, what I call the if only phenomena, which is if only we had, you know, you can fill in the blank of nonpartisan redistricting or rank choice voting or campaign finance reform, or something along those lines, all our problems would be solved. And that you have advocates pushing for particular reforms, you know, across the board. And I think, you know, the, the, the practicality of it is that that, you know, our states are really different states and localities have different political cultures, orientation. So what works in Alaska or California, or Maine, may not work in Texas, probably won't work in Texas or Mississippi or Michigan.

So there, there, the, the laboratories of democracy concept that is kind of woven into our federal system, I think presumes that, you know, different reforms are more feasible in particular places. So for example, the two states that have been early adopters of, of ranked choice voting and mechanisms like that, Maine and Alaska, have pretty unique political cultures, something like that wouldn't work and, and, and, and other places. So I, I think the a decentralized approach and I, and, and having you know, organic local support and buy-in for particular reforms is the key thing. And that's, that's really important because getting a reform passed is only step one. Step two is actually defending that reform against the interests that will strike back against it and work to undermine it. So in the absence of an

organic coalition in a, in a, in a locality or state for a given reform, it's unlikely to have the, the staying power that's needed.

So I'm, I'm kind of dodging the specific thrust of your question Jeff by saying, it really depends on what's happening in particular places, but I think there is a real need for experimentation. I think we saw one of the, you know, one of the you know, a, a clear example of that this past fall Alaska passed a series of reforms that basically freed up Lisa Murkowski, you know, if, and when she runs again for Senate, from having to when a winner takes all Republican Party primary, the way that they've adjusted their system. And so that left her, I think, free, freer than she otherwise would have been to decide to support the impeachment of, of President Trump and and left her, you know, free to follow her own counsel. Now that's a specific example of that sort of thing occurring likewise, you know.

So anyway, so I think there are, you know, margins at the margins in particular places, reforms that could help here. There's no one that's gonna solve all of our problems. And the reform approach shouldn't also get in the way of what Steve, I think had spoken earlier eloquently to, which is the need to have more robust and open factional competition within our parties, which will have a moderating effect on our politics the more that occurs too.

Jeffrey Rosen: [00:41:26] Thank you for that. Thank you for emphasizing the purchase of state level and local performance, and for giving us that specific example in Alaska Kathy Malaney asks a good question. What are multi-member districts? Multi-member districts are electoral districts that have two or more representatives r- rather than one. And they, they may maximize minority votes as a result because they may be elected through a ranked choice voting methods where you don't have to get a civil majority in order to win. S- Sarah so sorry, Steve. Steve, tell us we're, we're back to this question of reforms that could pass and recognizing that you're a skeptical, in some cases that reforms are needed, because you think voter mobilization is more important, maybe ways of achieving that mobilization or other constructive reforms that you think in this climate have a chance of actually being adopted.

Steven Teles: [00:42:17] Well, I guess I... Yeah, so, I'm, I'm gonna beg the question again 'cause that's my, that's what I decided to do in this panel and that's what I'm gonna do.

Jeffrey Rosen: [00:42:24] [laughs]

Steven Teles: [00:42:24] So you know, I think the best thing that you can do across party lines is to actually legislate, right, on that is you know, so for example you know, Mitt Romney has a big child tax credit ch- ch- child tax child benefit program that he's put out that looks like actual legislating, right? The kind of legislating you would actually do if you were really trying to create cross party coalitions, right, that is part of it looks good for liberals, right, there's more redistribution. On the other hand, it's kind of a way to to stop, you know, the proposals for subsidized child t- care that Republicans don't like, and it's funded partially by sticking a finger in the eye of California, New York by cutting in the salt deduction.

That is the kind of thing that's actual legislating, right? Congress can do that now. And part of my argument is the more Congress does that, actually legislate, actually put together some coalition on a basis other than a purely partisan coalition, that will create more incentives for members to do more of that, right? They're gonna see that, you know, Mitt Romney got a lot of nice attention. He actually was able to legislate, he was able to create one of those, you know, career making legislative accomplishments. I think all things being considered members will do more of that the more they see of other members doing it. Even with the composition of members that we have now, and there are opportunities to do that now, and that I think to a large degree citizens themselves may actually evaluate their potential members of Congress differently if they see them actually legislating as opposed to just messaging, right?

If you only want your member to legis- to message, do you think that's all that's going on in Congress is party line votes and then messaging, then that's the kind of members of Congress who will actually run and whose citizens will want to run, right? If they see their legislators doing more actual hard ball, legislating, trade-offs, log rolling, all that other things, right, that's gonna also send a signal that that's the kind of person that they want in Congress and people who have those kinds of skills or attributes will actually run. So again, I think there's a lot of room, even within the structures and rules we have now to change member behavior, as a result of examples of actually doing the kind of legislating we want them to do.

Jeffrey Rosen: [00:44:51] Many thanks for that, and for that very concrete example of how Congress could legislate by creating those multi p- partisan coalitions that you described. Sarah Bender, in addition to the cloture reform that you advocated and described so well, I'll first ask, do you think that your version of cloture reform has a chance of passing? And then I'll ask, for other reforms in Congress or elsewhere that you think have a chance of passing that you would recommend?

Sarah Bender: [00:45:19] So currently, no, I, there are neither 50 votes for going to 51 vote cloture, nor are there 50 votes for e- deploying the "nuclear option" to change the rules, to reinterpret the rules by a simple majority vote. So, and those are two obstacles, what should their form be and how, how are we gonna get it? So until there's an agreement on either a reform that can attract a minor or a form that attracts some Republican support, then we're in a world where we need, Democrats would need 50 votes to impose it by themselves. And, and they're not, they're not there yet for something as radical from Joe Manchin and Senator Sinema's views as lowering the I- what we call the legislative cloture fulfill those dreams.

So that's, I, I think is not currently in, in the cards. The one type of reform that, and I've seen the, a lot of questions about it in the chat that might work is the question of when there is a cloture vote, six under the current rules requiring 60 votes, perhaps the burden should be placed on the minority to generate those 41 votes that it takes to block, to block cloture, right, to keep debate going, because under the current rule, it's j- the onus is just really on on the majority.

So if the majority can only get to 55, the minority doesn't actually even have to muscle all that many members to show up, right, because the onus is on getting to 60, flip it, and then the onus is, is turned to the minority to actually show up and combine that perhaps with the talking filibuster or not. And then you may have a system where you have pushed the majority, the opposition, to really sh- put, put the effort in the blocking measures that they might, that they might otherwise let the majority share all the take all the burden. The downside there is that if you look at cloture votes over one year, over 40 years in the last decade, when cloture fails the minority is mustering over 40 votes. So we are already in a system where the minority chose up to deliver those votes.

So conceptually, I think there's some value to that reform. And conceptually, you could get a Joe Manchin to agree to it, whether he would do that by nuclear option, we don't know, but there is some wiggle room here in which that type of shift to the minority potentially would have fewer, fewer downsides, although all rules have unintended consequences. So we want to be a little careful in making my nod to Steve making making prescriptions. Is there a sort of broader change that might generate more deliberation to foster or more compromise? This is less a rule change and more, I would put this in a behavior or, or a norm change. And I, I don't, I mean, I hate to be the, the anti-sunshine, anti-transparency person in, in our Hollywood Squares here, but there is some [laughs] value to lawmakers and party leaders in particular finding the space to close the [laughs] doors.

W- why? Because when we think about compromise it, I think our, we often have a notion that it's a zero-sum, my team wins your, your team loses, or we divide the pie, I got five pieces, you get, you get two pieces. But that's not often, or not always the way compromise works in Congress. It is far more likely to be what we might think of as enlarge the pie or a win-win, or positive sum. My team gets my most preferred outcome, your team gets your top priority. So immigration forms several years ago in the Senate, right, it died in the House, but in the Senate, they produced a landmark immigration bill with bipartisan compromise. Democrats in, in essence, got a path to citizenship. Republicans got \$30 billion for border security. California and agriculture interests got a guest visa program. Everybody got their top option [laughs] and everybody stepped back a little bit.

Why was that possible? Because they weren't for months a small group behind closed doors. Now, they had to defend it in committee and on the floor, but the idea here is to create spaces where those compromises can be knit, such that nothing is agreed to until everything is agreed to because otherwise your party base, when they hear and they see you've agreed to give up X, they don't know you're gonna get Y and suddenly they torpedo the whole, the whole deal. So it's it's a little uncomfortable advertising and promoting something that would reduce transparency but so long as those types of closing the doors can generate conditions under which there may be compromise, I think it's always worth, at least worth of a stronger try.

Jeffrey Rosen: [00:50:13] Reihan in three minutes because Constitution Center panels always end on time. Please share the reform that you recommend that you think has a chance of passing.

Reihan Salam: [00:50:23] Well I am an unabashed enthusiasts for multi-member districts. I do not believe that they're especially likely to pass, but I do think that what Steve had observed earlier on about the importance of legislative deal-making, building coalitions i- it's worth recalling that when you have members of different partisan allegiance, but from the same place, there's oftentimes some reason for them to cooperate beyond partisan and ideological considerations. And that's something that's become exceedingly rare in our system. Multi-member districts, proportional representation, that's one way in which you could surface political minorities, including large political minorities from a given geographical area and giving them some voice, give them some power. There are however, other ways we might be able to do that too. One idea that's been advanced is the idea of four larger states with more representatives, providing them with one at large member. Also, the idea of expanding the size of the House.

All sorts of ideas why members of the House don't want to see their influence diminished fair enough, but a modest expansion in the size of the House is something that I really do believe could breathe some new life into the system and also see to it that you could draw more urban districts that would represent a right of center constituency and perhaps more rural districts representing a left of center constituency. It would create some new possibilities that would help facilitate that kind of deal-making. So again, not something that I think is necessarily likely to pass, but something that does not seem entirely intractable, there are other reasons why there might be, you know, for states that are gonna see their congressional delegation shrink, there might be some reasonable ones make some modest move in that direction. And I think that that would be a very positive constructive step forward.

Jeffrey Rosen: [00:52:07] Thank you so much for that beautifully expressed. And you brought us home right on time. Thank you so much, Daniel Stid, Steven Teles, Sarah Bender, Reihan Salam, for an extremely illuminating discussion of the future of Madisonian deliberation. Thank you friends for your great comments. We've noted them of course, anonymously, and we'll take them on board. And one of our friends expresses very well the sentiments of the whole group, "Thank you so much. These programs help r- me remain focused in what matters for us all. Thank you again," she says, and I will repeat that to all of you. Thank you friends, and hope to see you soon. Bye.

Jackie McDermott: [00:52:50] This episode was produced by me, Jackie McDermott, along with Lana Ulrich, John Guerra and Tanaya Tauber. This program was presented in partnership with the SNF Agora Institute at Johns Hopkins University. Please rate, review, and subscribe to live at the National Constitution Center on Apple Podcasts, or follow us on Spotify, and join us back here next week. On behalf of the National Constitution Center, I'm Jackie McDermott.