[00:00:00] **Jackie McDermott:** Welcome to live at the National Constitution Center, the podcast sharing live constitutional conversations and debates hosted by the National Constitution Center. I'm Jackie McDermott, the show's producer. The National Constitution Center and the SNF Agora Institute at Johns Hopkins University recently presented a conversation exploring what we the people's role in governing should be.

The panel debated the question should more power be returned to the American people. NCC, president Jeffrey Rosen was joined by Daniel McLaughlin, senior writer at National Review Online and Hahrie Han. Professor Han is the inaugural director of the SNF Agora Institute, which is dedicated to strengthening global democracy. And she's the coauthor of Prisms of The People: Power and Organizing in Twenty-First-Century America. This panel was streamed live on June 23rd, 2021. Here's Jeff's to get the conversation started.

[00:01:02] **Jeffrey Rosen:** Our topic today is, should more power be returned to the people. And it's an important question as part of our guardrails of democracy initiative, because before deciding how to restore the guardrails of democracy that have been eroded by polarization and technology, we have to define what democracy is and what it seeks to do. Democracy is ruled by the people, but how should the people rule? In what capacities? And should more power be returned to them?

That's the subject of your important new book, Hahrie. So why don't you start us off by giving us a sense of the thesis of your new book, which argues that we need to focus not only on, who has power, but, we have to invest in institutions of civil society through which people develop the capacities of democratic life.

And you also say that reformers have to strengthen organizations through which people can exercise their power to act as a countervailing force to corporations in the state. Tell us more about the importance arguments of Prisms of The People.

[00:02:07] **Hahrie Han:** Well, thank you, Jeff. And thank you so much for inviting, me to be a part of this conversation. I'm really looking forward to talking about these really important ideas with you, and with Dan today. So, to start the book, I'll give you a little bit background on how we got into the book.

my coauthors and I really started working on the book several years ago when we began to observe this pattern that's true across, a lot of domains in American politics, which is that essentially the link between people's participation and political influence was broken and especially for people at lower income levels.

And so whether you are sort of working class, lower class or middle-class, we saw that the link between participation and power was broken. And that's a pretty robust pattern across lots of different issue areas across American politics. And the first question to ask in a sense might be, well, why is that problematic? Why would we care?

and I think there are a couple ways to think about this question. the first is, you know, there are some who might argue that democracy itself, the legitimacy of democracy itself depends on consent of the governed, that for a project of self-government to, be successful, that

government has to secure consent of the governed and that people have to feel like there are mechanisms through which their views or their preferences get translated into political influence over the outcomes they care about the most.

And we were saying that, that that pattern was becoming increasingly less likely for more and more people, as patterns of inequality began to rise in American politics. And so that's one, one view that we might take. Another view that we might take is that, whether or not, you know, some people might argue that democracy as, the sort of legitimacy argument isn't necessarily the most important one.

That instead we might think about any project of self-government is really being about trying to protect people's liberties and trying to protect people's willingness and ability to engage in both the rights and the responsibilities, of self-government. And I think that as we were coming into this project, we felt like one of the things that we've learned from a lot of, research, not only our own but other people's is that the ability of government to be the safeguard against liberty depends critically on people's ability to sort of negotiate equal spheres of influence.

 in which they can accept the liberty, not only of themselves, but also of other people. And in any kind of pluralistic heterogeneous society, you have to have this ability for people to sort of negotiate, that sphere of influence. And without that ability, then people's commitment to the project begins to decline.

And if one of the things that we were seeing in these patterns is that, people's notions of, our notions of representation in general where the link between people and their government had become so thin that people, a lot of people felt like they didn't really have voice in, over the outcomes they cared most about.

And so what we wanna set out to do in this book is really try to understand, well, where are the outliers? even if we look at the aggregate data and we see that this pattern is a pattern that we see, across lots of different areas in American politics, what if we were studying the outliers, the places where there were organizations that were able to break through, that were able to sort of create a situation where it felt like people could be architects of their own future.

 and that's where we came to the argument about prisms. And we use the metaphor of a prism, because a prism, as you all know, takes white light in and based on the design at the heart of the prism it sort of transforms that white light into a vector of colorful light that comes out the other side.

And part of what we argue is that the organization, the kinds of organizations that we need to invest in that repair this representative Lincoln American democracy act like prisms in the sense that they take people on their actions in and through the work of what goes on in the organization, they're able to translate that into influence and power over the outcomes that people care most about.

And I think one of the more counterintuitive findings that we found in the book is that often it feels like there's, there, there's some well-founded I think concern about activists in American politics in the ways in which they might actually be, harming some of the, the project of American democracy, because they pull people to further extremes by trying to advocate for specific views that they want to advocate.

And I think part of what we found is that in these organizations that were acting like prisms, where people were developing the capacities and the skills and the motivations they needed to engage in the political process themselves, that people were more likely to commit to the project of democracy itself.

Which meant that they were more likely to commit to the kind of outcomes of pluralism, the recognition that there's both victory and loss for, for any side that, that gets involved in the process. And so the irony in a way is that what we found is that by engaging people in action in ways that allow them to feel like they have more agency, that they can put their own hands on the levers of change, that people become more committed to the system itself.

 even if that means they're not always gonna win because the system, it makes people feel like the system is working and it gives them an opportunity to shape whatever outcomes might, might come their way. And so a lot of what we try to unpack in the book is then how do you construct the kind of organizations that allow people to feel like they're putting their hands on the levers of change.

And we're hoping that by renewing more of those kinds of organizations, that you begin to see a profil- proliferation of more people in society that feel like they can have that capacity.

[00:07:33] **Jeffrey Rosen:** Fascinating. Thank you so much for explaining the arguments so clearly. And for arguing that to repair the broken link in American democracy we need to cultivate organizations that act like prisms so that people are more committed to the outcome of democracy, which includes the recognition that there's victory in loss.

Dan McLaughlin, in your article, what is democracy for anyway, you argue that the founding fathers had seen enough of the assemblies and mobs to know the difference between thoughtful deliberation and the protection of fundamental rights. You say our system of government was designed by the founders not to stop the majority, but to slow it down so it is time to think things through.

We trust nobody to overrule the majority except for a larger prior majority. And you say the Framers created a series of speed bumps and sobriety checkpoints. Here the people rule, all we ask is that they act as if they do. Tell us more about your argument, about why you think the founders were trying to slow down deliberation to promote thoughtful democracy and to protect liberty.

[00:08:40] **Daniel McLaughlin:** Yeah, so I, I mean, I go back to the founding. I mean, when you think about it, the United States at its founding was democratic in the sense that, you know, the people who were at the time really a subset of the people chose the government,

and the government was accountable to them. it was Republican in the sense that there was no king, no hereditary nobility exercising hereditary powers.

liberal in the classical sense of, of guarding individuals, liberties, and constitutional in a sense that the government was constrained by a written document. and very few of the world's governments up to that point in time, had been any of those things. they often had failed.

the founders were well aware that democracy had failed in ancient Greece, that the Republic had failed in ancient Rome, that, you know, contemporaries like the Polish, state were, were being pulled apart at the time that they were writing. and so, you know, they launched this incredible experiment to do all four of those things at once.

And for the first, roughly 75 years of American history, they were still essentially the only country on the planet that was simultaneously democratic, Republican, liberal and constitutional. and yet, you know, today we have the oldest constitution in the world, you know, the, the great majority of the world's people live under governments that at least make some pretense, to being all four of those things.

and even in places like Russia and China, that, that really kind of don't, they've at least experimented with them at some point in their history. and so how did that work? how did we overcome... how did this great experiment overcome history? Well, one way, of course, the one element that the founders added to the mix was separation of powers.

And that was not just horizontal separation of executive legislative judicial, but vertical separation between federal state and local. So essentially when you, when you cross those two things you have nine different centers of power. and the advantage for the people wanting change of course is that you could go to any one of those centers of power and move the ball a bit.

but the, safeguard was that you, you know, any one of them, perhaps depending on the issue, could slow things down. But the other element that the frame, the Framers added was deliberation. They understood that, I mean, deliberation, if you think about it, is, is the difference between a lynch mob and a jury, they may be the same people.

They may be assembled for the same purpose to locate the offender and punish a crime. and yet the process that we have in a courtroom, is a process of deliberation that forces people to slow down, to work by under certain rules, to think things over before they act.

And so, you know, many of the things that we find frustrating in our democratic system today, you know, such as the way in which the Senate in particular, moves slowly, were designed in order to say to the people... I mean, if you look at the system, right, the, the president, the Senate and the House are all elected by different electorates on different schedules.

And so in order to build a true governing majority at the federal level, and this is to some extent true, at individual state levels, you need a sustained majority, a majority that lasts over a certain period of time. And, and, you know, and, and inevitably that involves unwieldy

coalitions of people who are, you know, trading different favors, people who are compromising their most extreme stances.

and in order to pass laws, you need to have, you know, you need to have 60 senators for example today, you know, that, that means two-thirds of the states that are at a minimum or 60% of the states at a minimum. and so, you know, there were a lot of things that were built into the system with the recognition that, you know, you don't want necessarily everything that the people want at a particular moment, a particular fraction of the people to happen.

You want them to have, you know, you want people, people to have to work together over time. And frankly, you know, one of the things that, that our system does is that people who are in the majority, even in a large majority, as to one part of the system may be in the minority in another.

you know, I mean, if you are, for example, if you live in, Bennie Thompson's district in Mississippi, right, which is a majority black district. and so you now are a, and you're a democratic voter. you are very much in the minority in your state government, in your senators, in the electoral college, or your, the way your state votes.

But at the same time, you're represented by a member of the house majority, you are represented by a president you voted for. And so, you know, even when we have unified partisan government, at the federal level, you have an awful lot of people who are in a minor- minority in one part of the government and a majority in another. and so that does impose a moderating influence.

[00:13:48] **Jeffrey Rosen:** Thank you very much for that. Hahrie, Dan has a clearly stated, a classical understanding of Madisonian constitutionalism. it contains, as he says, republicanism, democracy, liberalism, and constitutionalism, and the founding fathers relied on separation of powers and deliberation to slow down popular democratic majority, not to prevent the majority from rule, ruling, but refining popular opinion through a series of different institutions so that reason rather than passion could prevail.

Do you disagree with the Madisonian framework as Dan has outlined it or do you believe that focusing on institutions as prisons can help refine and slow down deliberation while at the same time empowering people and making them feel like their voices are being heard?

[00:14:43] **Hahrie Han:** Yeah, no. I think Dan makes a really important point about the way in which separation of powers and deliberation was originally built into our Madisonian system. And, you know, in fact often when I teach, you know, introduction to American politics or something like that to my students, one of the things that I say is that it's, it's intentionally was not built for efficiency, right.

The system is not set up to allow for the quickest, most efficient outcomes with the idea of being that you want to have lots of opportunities along the way for a variety of different majority or minority groups to be able to object and slow down the process to ensure that we get the best outcome, that we can have. So I certainly, agree with that interpretation.

I think that the part of the challenge that, you know, I'd like for us to think about is this challenge of, you know, what do we need to compliment the structure of institutions to make them operate in the ways that we want them to operate? And, one of the, you know, kind of quotes I like to say sometimes is that I think sometimes people have this assumption that, you know, just because we build it, people will come.

And I think a lot of the, things that we've learned in American history is that's not necessarily true that often people don't use the institutions the way that they were necessarily originally designed. you know, one example of that for example, is, the, opening of the pre- the presidential primary system, you know, was really created in the, in the late 1960s, early 1970s in both the Republican and the democratic party as a reaction to wanting to allow for a broader range of voices to be involved in the nomination process for the presidential candidate of each party.

And what ended up happening is that the way that, that, those sets of reforms have been used is that actually it's almost as effectively narrowed the kind of voices that are involved in selecting the candidate for each political party. And that's just one of many, many, many examples that we can give where institutional reforms don't necessarily end up having the effects that we necessarily want to see.

And so, you know, the, one of the quotes that I love to quote from the founding fathers is, you know, is also from Madison, this idea that, you know, what is government but the greatest of all reflections of humankind, if men, if men were angels, no government would be necessary.

You know, with this idea that, part of what government, the structures of government, structures of our political system are supposed to do is be able to help people call in their better angels, to sort of figure out how they can work with each other in this project of self-government.

And I think that's where civil society institutions become really important in helping to equip people who are not naturally inclined to work towards common purpose, to look beyond their self-interest, to engage in the kind of deliberation that, that Dan is talking about.

That if we assume that we need that deliberation to occur, not only at the level of elected officials and the governments that we have, but also amongst the people themselves, then where are the places and the opportunities that people have to do that work. And I, one of the things I worry about is I think that increasingly we've lost more and more of a kind of opportunities that people have in civil society to engage in that, that kind of deliberation.

And so a lot of the scripts that people have for how they should behave I think tend more towards a kind of extremist activism, as opposed to a kind of deliberative process through which people learn to engage with their fellow citizens, in the work of actually solving public problems together.

[00:18:04] **Jeffrey Rosen:** Thank you very much, indeed for that. Dan, as you, you just heard Hahrie's thoughtful response, it sounds that you both are agreed, that, founders wanted to

create a system that promoted, slow and thoughtful deliberation. But Harry argues that today, many of our democratic institutions have become polarized and no longer allow for that kind of citizen participation that the founders envisioned.

Do you agree with that? And when you contrast the deliberative institutions at the times of the founding from state constitutional conventions, to the committees of correspondence, to the slow deliberation in newspapers that Madison thought would spread the commerce of ideas slowly across the land.

When you look at our institutions today, do you agree with Hahrie that many of them are, broken? And what would you do Dan, to increase the deliberation that Madison thought was necessary today?

[00:18:58] **Daniel McLaughlin:** Well, I think there's, there's two answers to that. And I do agree with, with a good deal of the diagnosis. I mean, I think on the one hand, one answer is something that the founders took for granted that is, that we have lost some of now, which is probably best described by Tocqueville, right.

Which is the idea of Americans as people who were kind of, you know, part of self-starting community institutions that were organic, that were not governmental, that would get together and do things. Americans were great joiners.

and so, you know, I think the more that we have kind of atomized into individuals who, you know, I mean today, even sort of shop at home, you know, that, that people aren't aren't, you know, that, that people were, were traditionally much more involved in community organizations and churches, you know, and, and, and other things that, that got them out and, and engaged in preexisting institutions that could then, you know, sometimes engage in political activism, but that weren't created and didn't exist solely to do political activism.

That, you know, that even, you know, that your church, your labor union, you know, all these different organizations, you know, your chamber of commerce, that these things existed for reasons that were independent of politics.

And, and certainly you've seen some of those organizations that, that used to be like that, that just became purely political. The National Rifle Association, was designed, you know, politics was sort of an afterthought, although it was designed really to teach marksmanship to, northerners, after the civil war. and, and became much more aggressively political.

now partly that was defensive just as many of these organizations have done so in a defensive mindset. but I think you need to get some of that back. The other problem, I think that we do have, I mean, look, I, I still say that the, the greatest single cause of polarization, in this country has been the massive increase over the past, century and, and half century, in the number of issues in America, particularly social issues that are decided nationally by the federal courts, rather than by the elected bodies.

and often done so without ever having gotten the consent of the people, right. They're not, they're not upholding a statute passed by the people, but they're also not doing so on the

basis of some understanding of the constitutional texts that was originally authorized by the people.

And so, you know, you have a diminution of both state power at the expense of, you know, the federal government growing at the expense of the states and the unelected part of the federal government growing at the expense of the elected part. and then I think does pull, does force people into, you know, judicial decisions are always a yes, no thing.

and so, you know, that raises the stakes enormously. I think if you look at the federal government, you know, there's a number of ways in which it has diminished the role of, the ability of the individual voter to make a difference, right? I mean, we've seen a great growth in the bureaucracy, federal bureaucracy.

And I mean, I think actually the, the Trump administration was a, a very, provided many very vivid examples of, the bureaucracy simply refusing to listen to the elected president. and, you know, even if you think that those were sort of righteous decisions in the individual case, in the aggregate, they, you know, that's what leads to further kind of populist explosions of rage, is a sense that if you win an election and you can't even have the, the executive govern the executive branch.

and then the third way in which at the federal level, we've seen a real diminution of, of what the Framers designed, is the budget. I mean, you know, it used to be that you need, you know, filibuster or no filibuster, you needed the affirmative... every penny that the federal government spent every year was authorized by a budget that was passed through the house of representatives that was elected every two years, right.

And so traditionally, if, if the, if the executive wanted to do anything at all, they needed a budget to pass Con- you know, they needed appropriations to pass Congress. They needed the affirmative consent of a majority of the house of representatives, right. And today we have, I mean, first of all, we have an enormous amount of our federal budget devoted to debt service, right.

So that's money that's right off the table. So, you know, whether you wanna build, you know, bombs or schools, you can't spend that because it's already paying for interest payments. But on top of that, the growth of entitlement programs, the enormous growth of entitlement programs, right. Look at what happened to Obamacare.

You had from 2011 to 2018, you had a majority of the house of representatives that looked at a major federal program and said, we don't wanna, you know, we don't wanna do this. We don't wanna spend the money. and yet the money got spent. The money spent itself, essentially because the, you know, the people who elected that house majority were told, no, you need 60 senators and the president simply to not spend money.

The whole system was designed so that the people's house could immediately say, let's not spend the money. And so, you know, you have a bunch of these ways in which we have drifted from having the federal government directly accountable to the voters. and at the same time, while the federal government is crowding out, state and local governments.

And so I think that, that deters people from the kind of community organization that they would, would otherwise engage in.

[00:24:32] **Jeffrey Rosen:** Many thanks for that. Hahrie, you just heard Dan say that things ranging from the federalization of politics, the transfer from the local level, the budget process taking place through the bureaucracy and the transfer of issues to the courts can make people feel, disempowered at the local level. Tell us now about the case studies in your important new book.

You focus on grassroots organizations in Arizona, Minnesota, Ohio, and Virginia that have been able to build capacity by engaging constituents in democracy and translating those actions into effective political influence. Give, give us a case study or two.

You talk, you talk about the effort for the minimum wage in Arizona and other examples, so that we have a concrete example of how people actually can feel both empowered and deliberative in a well-functioning democratic organization.

[00:25:22] **Hahrie Han:** Sure. Yeah. I can definitely give you an example. Just one thing I wanted to, touch on before getting to that is, you know, I think part of what Dan is pointing to, which is really important is that, you know, political actors are always gonna use the institutions that they have strategically.

And, and part of what we're seeing is that, you know, different partisan actors, within government are, are manipulating the institutions for their own goals, you know. And that happens on, on all sides of the, of the political aisle.

And I think those are part of the distortions that, that we began to think about when we were, that were motivating the book itself, which is that, you know, I think at least, you know, my interpretation would be that the original read of how government was, how democracy in America was set up is that not only do you want the political actors who are in government to be able to use those institutions strategically, but the people should be able to also.

You know, that people should also be able to have voice in the political process themselves. And part of what we wanted to understand is how can we renew the ability of people to do that. And so one example to your point is, one of the cases we looked at for example, was an effort in Cincinnati, that was trying to develop a universal preschool program for the city.

And so this project actually began way back in 2000 when, there was a, a police shooting of an unarmed black man in Cincinnati that sparked three days of urban unrest. it was the largest unrest since the LA Rodney King riots in the 1990s.

And it sparked a city-wide discussion among elected officials, among business leaders, philanthropists, policymakers in the city to try to figure out how can we address not only the immediate cause of the situation but the long-term situation that led to this kind of, you know, anger erupting for three days in our city.

And one of the things they pointed to is that, Cincinnati is a city that has really high rates of racialized poverty, really high rates of inequality. you know, Cincinnati, along with having really high rates of racialized poverty, also has more fortune 500 companies per capita than New York, Boston, DC, San Francisco, you know, any of the other major cities in the United States.

And so you had this city that had very unequal outcomes. And so some of the city leaders came together and they said, well, what the research shows is that if you wanna combat persistent intergenerational poverty, one of the most effective things you can do is invest in early childhood education.

And so they tried for years to try to get early childhood education passed in the city, and they weren't, you know, able to do that. They started with trying to have a private initiative for early childhood education, and realized they wouldn't be able to reach enough children, tried to get a public initiative passed, but couldn't get, city council to support the funding that it would take to, to build this program.

And eventually what you had was an organization called AMOS, that was a grassroots organization that was organizing through communities in the poorest communities in Cincinnati who built a real base among the people who needed universal preschool than most. And this is the poorest communities that really would benefit from having a public preschool program.

And they entered into the conversation around 2013, 2014, something like that. And they developed a, they built a constituency of people that was really engaged in what it meant to have universal preschool. And so these are, you know, black leaders from the community, home care, home health, daycare delivery, leaders, you know, church leaders, faith leaders, all these different kinds of people.

And they basically entered into coalition with the policy makers, with the, business leaders, you know, all these different people who are trying to advocate for universal preschool. And they had a debate over what did they want that bill to look like, you know, what did they really want universal preschool to look like.

And one of the key incidents I'll point to is there's a big debate, I think, within the coalition about how should universal preschool be funded. the business lead- so AMOS, which is the grassroots organization, they want it to be funded by a wealth tax. the business leaders absolutely refuse to allow it to be funded by a wealth tax.

 the Cincinnati public school system, who was also involved, they wanted to decouple funding for universal preschool from funding for the school system. So you can see that each group kind of had its own interests that were, were playing out. And this is one of those moments where the whole coalition could have fallen apart.

You know, this is, it came to a head around, a certain set of decisions they were making about how they should, think about structuring the funding mechanism for what was going

to become a ballot initiative, for universal preschool. And the whole coalition could have fallen apart about this because they had such deep disagreements.

And what AMOS ended up doing is saying, you know what, like let's call a meeting where we're gonna have the business leaders, the policy makers, the school officials come to one of the big churches in our community, and they're gonna sit down and they're gonna have a conversation with our leaders, which are, you know, these are kind of, you know, a lot of the leaders, in the poor black community in Cincinnati that don't normally get an audience with the CEO of the Cincinnati Reds and the CEO of Cincinnati Children's Hospital.

And we're gonna have a conversation about how we're gonna figure this out. And so they were able to pull together a meeting where 300 people from the community came, the leaders from all the biggest institutions in Cincinnati came, they sat on stage in the church and they answered questions from the constituency. And by the end of it, they were able to reach a compromise agreement for, a funding mechanism for this bill that allowed it to go forward.

And so then what ended up happening is that in the 2016 election, the ballot initiative was, was on the ballot. And, you know, even in this very contested presidential election that we saw, the ballot initiative passed by a 24 percentage point margin, which is the largest margin for any new education levy and Cincinnati history.

And I think that happened in large part because all these different groups were able to come together, even in these moments where, the whole project itself was about to fall apart. And part of what we highlight in the book is that, that meeting was only able to happen because of all the work that AMOS had done in 2014 and 2015 to really educate and build a kind of constituency that was able to engage in a toe-to-toe conversation with people like the CEO of the Cincinnati Reds, about how they should fund a bill like universal preschool.

[00:31:29] **Jeffrey Rosen:** Dan, what do you think of, of Hahrie's example of, of AMOS this faith based grassroots organizing, organization in Cincinnati that through organizing a coalition among people of faith and people of color managed to get support for this, tax, initiative. Is this an example of Madisonian deliberation of the kind you support? And then maybe put on the table some of your own, proposed reforms for resurrecting guardrails of democracy that would promote Madisonian deliberation in the way you think best.

[00:32:00] **Daniel McLaughlin:** Yeah, I mean, I, I mean, I think to some extent it is an example, although I confess that I remain skeptical of using the referendum process for budgeting. I think if you look at like say the state of California, you see how, how, how that, how taking budgeting decisions away from the legislature, for example, through series of referenda, can, can have a real downside.

So, I mean, certainly this is a success story in terms of organizing. but, and, and, and it is something that obviously took a fair amount of, of kind of popular deliberation. But I think it is also something that, that can be a double-edged sword when you start using the referendum process to create projects and, and, you know, and sort of remove them from

the purview of elected officials rather than persuading your elected officials to take responsibility and ownership for them.

 I think actually there's a fascinating case study building right now in the intersection between, you know, popular organizing and deliberation. And that is the, the grassroots campaign against, critical race theory being taught in schools.

 because you have, first of all I think you have, I think there is a lot of preexisting frustration and anger out there, some of which I think was accelerated over the past year, as parents got more, you know, direct exposure to what their kids were being taught in schools.

 and I think some of that was unformed. and I think first of all, just giving people a name and a rallying point to understand that, look, this is something that's happening in a bunch of places and you have a vocabulary to discuss it, and you can get involved with other people who are concerned about it, I think that's the beginnings of a process.

 and it's a process that maybe has evaded popular scrutiny. I mean, school board elections for example, are notoriously often scheduled in very odd times of the year and, and poorly publicized, you know, so that the interests of the teachers, you know, get, get high turnout and, and maybe the, you know, the, the, the parents don't really even know much about the candidates and that sort of thing.

 and at the same time, I think there's a deliberative function that has to go on here, right. You have state, state legislatures rushing to pass bills. some of those bills are not terribly well thought out. Some of them are better thought out, right. They're struggling with those questions, right. Like should we really take this issue away from, from local governments?

 if we're going to try to prohibit something, you know, how do we do that without trampling free speech liberties? How do we do that in a way that, that isn't either overboard to where we're, you know, banning people from teaching all sorts of simple things, or under inclusive, where you pass a ban and then, you know, two years later everybody says, well, they just ran right around that, right.

So you have that, that process. And of course there are people who wanna talk about this stuff at the federal level, and is it really appropriate to get the federal government involved in, in local curriculum. So I actually think it's actually a, it's a wonderful case study in, in, you know, that bubbling up of popular frustration against institutions that have maybe evaded popular scrutiny, and yet trying to grasp their way towards how do we organize people together.

Some of whom maybe are people who haven't really been political before, but people get political in a hurry when their children are involved. and you know, and then how do you, how do you do that in a way that, that works through the deliberative system that doesn't get quashed by the courts, that doesn't get gummed up in some administrative bureaucracy, but actually proves, you know, sustainable.

And, and that brings out the people who, you know, who actually, are gonna attempt to develop, an organized grassroots pushback on the other side if they want particular things

taught in the schools. and so I think the, you know, I think it's actually a, a great object example.

I mean, in terms of, you know, reforms, I mean, I, I really think that we do need to reform the federal budget process and, and, you know, and return more, elected official control over the bureaucracy. you know, I think, I think reaching a more measured approach to the judiciary at both the state and federal level is mostly a personnel matter more than something we could do through systemic reforms.

but, you know, that's, that's certainly been a long time, conservative project to try to get courts to be more, you know, originalists and textualists in terms of saying, wait a minute, where do we really have the authority to, make decisions in the first place. Maybe this is something that, that the people, either decided already or have, you know, are allowed to decide.

[00:36:38] **Jeffrey Rosen:** Hahrie, Dan, raises an interesting question in the critical race theory example. And of course, without, taking a position on the substance, do you agree that this, grassroots effort, which, struggles about whether it should be decided at the school board, local government, state government, or federal level, you know, is an example of, of mobilization.

And, and more broadly help us think, institutionally how do we identify when a particular sets of institutions are functioning properly in ways that, empower people, and, can that take place at all levels of government or doesn't have to be at the, at the local level?

[00:37:22] **Hahrie Han:** Yeah. It's a great question. It's a really good, interesting example. you know, I think that, I mean, so certainly we see, on the, debate around critical race theory that's going on right now, we see mobilization on both sides, you know, both advocates and opponents of it, are, are getting mobilized, and that's weighing into it.

And to me, that's a classic example of one of the big challenges in how we think about activism around these kinds of social issues that Dan raised before, which is that, how do we enable the kind of mobilization that we want where people avoid, reflexive reactions to a very politicized topic without thoughtful consideration about what the questions are that are really at stake.

And I think critical race theory is one of those questions that I have become so politicized right now in our political sphere, that, that you see people reacting on, on both sides of the debate in a kind of knee jerk way I think that is really contrary to some of the points that Dan made earlier on about the deliberation that we really, desire, in American, in American government.

And for me, you know, I think it's hard to, and I think part of why we see that an issue is like critical race theory is that, at the core of that debate I think is this question about inclusion and belonging and this debate that's going on in America right now about who is the community that we want to construct, as, as a nation.

And, and how do we think about both the history that we teach and also the community that we wanna construct together. And so they are all sorts of complex questions about people's, own identity, their beliefs around this, and, and then the ways in which they're getting mobilized into it.

But in terms of the question, the question of how we think about how institutions function in, in that domain is, one of the things that I think has been, is really interesting to consider is a difference between what we think of as institution based mobilization and self-selecting mobilization.

And I think, you know, historically actually it's the, it's been the right, it's been a lot more effective in doing institution based mobilization and the left has done more self-selecting mobilization. I think institution based mobilization kind of tends to lend itself more to the kind of deliberation in some ways that, that we're thinking about.

And so what is the difference between those things? So self-selecting mobilization is the idea that, you know, if I'm an org- if I'm an environmental organization, then what I wanna do is go out and recruit other environmentalist to my cause, right? So people self-select based on agreement with a certain set of issue positions into the mobilization.

Institution based mobilization would be more this idea that, I'm gonna go in to this church community, and I'm gonna try to organize this church community around, a thing that I wanna do. And it could, it doesn't have to be a church community, it could be, it can be a school board, it can be, a workplace like unions do, it can be, a gun club like the NRA has done.

You know, sort of things, places where people are drawn into the community, not necessarily because they agree with a particular issue position, but because of some other affinity. And then that becomes a basis through which, organizing happens. And one of the patterns that we've seen throughout American history in the 20th century particularly is the decline in institution based mobilizing, and an increase in self selecting mobilizing.

And that is part of, I think, where we've gotten to the situation where a lot of the mobilization on really complex issues like critical race theory sort of lends itself to the kind of self-selecting situation where you don't get the nuance in the discussion that you really want.

So I think that's one of the challenging dynamics that we see around not only that debate but lots of other debates that are going on. on the question of institutions and, and, you know, there's really good question, you know, I think the, the question of how do we know if institutions are working, in a way that really does empower people that we want?

 to me, I think this gets back to the question of what is the kind of representation that we really feel like is both necessary and important to make American democracy work. And, and, you know, one of the real challenges, I think that right now, the notions of representation that most people have and that through which our system operates are really thin, right?

So for a lot of people, government is very remote and the only mechanism of representation or accountability that they have is a vote every four years, you know, at the national level. And that ignores all the many other elections and, and, levels of government that existed in, in, in other people's lives. And I think that often doesn't feel, robust enough for most people to feel like they have a say in the system.

And so part of the challenge, I think in answering Dan's question to me would be this question of how do we begin to repair and rebuild people's sense that they actually can have voice not only every four years, but in lots of other ways throughout the year, and at all other levels of government. And that would, inherently make government itself operate more the way it was intended.

[00:38:25] **Jeffrey Rosen:** Very interesting. Dan, Hahrie puts on the table this question of representation. one of our friends, in the chat, [inaudible 00:42:17] says hasn't the internet and news programs, especially on cable influence the public's views that they feel they deserve to be able to take a bigger part in government?

Dan, the Framers notion of representation was quite filtered. They thought that thoughtful representatives and enlightened journalists who they called the literati would slowly mediate for the people, but not allow the people to express themselves directly at any particular time. Is [inaudible 00:42:45] correct that the internet has changed people's conception of, you know, how frequently they want their popular voices to be expressed?

And what do you think of Hahrie's suggestion that rather than constantly weighing in only at elections, there are a whole host of local opportunities, for people to participate directly and to be represented in ways perhaps the Framers might've approved?

[00:38:25] **Daniel McLaughlin:** Well, I, I mean, I think the, the internet speeches... look, it's a double edged sword, but then in some ways it always has been. I mean, the Framers had some, some wonderful, you know, yeah. They had some wonderful quotes about, you know, the literati, but then look at what the newspapers in the 1790s actually did. And they were very, very different.

 so, you know, I mean the, the, the dissent to, you know, vicious partisanship almost immediately after the start of the, you know, Washington's presidency is a bit of a case study on that. but, you know, I think, I think the internet has, it has definitely made people feel more entitled to have their voices heard.

But at the same time, I think it has led to more self selection and more of a sense that, you know, I can sit in my apartment and tweet and connect to people thousands of miles away. and, and, and we can all agree to agree together. but that doesn't actually change anything in my local school. it doesn't change anything in my community.

It makes me feel more at home with other people who don't like the community that I live in. you know, and so, so I think, I think in that sense, it has, you know, I mean, it has nationalized and internationalized a lot of discourse, and that's not always the greatest thing, because it does pull people away from, from getting involved closer to home.

you know, and, and, on the other hand it does, you know, it certainly does have the benefit of making people feel that they're not alone. you know, and particularly if you are, very much outnumbered in your own community, you know, there is that sense that, that there's people out there who share your views.

But even that, even that can be a problem because, you know, I think there's a lot of forms of extremism, that had, you know, that you had to spread through like mimeographed newsletters handed out on street corners in the 1980s, and that are much easier to aggregate into, you know, if you, if you have like three neo-Nazis in your town, that's not much of a problem, right?

I mean, occasionally it can be, but, you know, if they can connect to the neo-Nazis in every town in the country and, you know, and, and, and like guys in Russia and stuff, suddenly you have a bigger problem out of a much smaller number of people. and, and, you know, that replicates itself all over the right and the left, in terms of extremism.

So I think the, I think internet, the internet provides some wonderful tools. and, and of course we've seen, you know, increasingly just in the last several years how the internet can also provide greater tools for government censorship and government control and government orthodoxy, more so abroad, but, you know, even at home. and so, so I, you know, I don't think that it is, it has been a perfect solution by any means.

[00:38:25] **Jeffrey Rosen:** Hahrie, Dan makes a powerful point that the internet can give people an illusion of feeling connected. I guess this is what some called slacktivism, supporting a political or social cause through social media with little effort, just, activism by likes and tweets, but, not actually be engaged or represented and in fact, have that be a mechanism for frustration against their lack of representation.

So, what, in what ways do you think that the internet can both be a source of the solution, the, the problem of polarization and online radicalization? do you, do you think it can be part of the solution as well? And since we just have 10 minutes left, I'm very eager for both of you to start giving us homework of specific guardrail reforms that you would, put on the table to increase the sense of democratic participation. So let, let me ask you about the internet.

[00:38:25] **Hahrie Han:** Sure. Yeah. So the, I think the internet is very much a double-edged sword, so there is a way in which, it absolutely has made it more possible for more people than ever before to get involved. And, from where I sit, that's a good thing [laughs]. We want more people to, to be involved, to feel like they want to participate in the process.

But, as many have pointed out, sometimes they get involved in ways that we actually don't like [laughs], you know, that actually lead to some of the distortions that we're seeing nowadays. And so to me, the real challenge is not, but sorry, and one more thing I should add as Dan points out, you know, disinformation, propaganda, the use of, of, of, you know, a bullhorn that people have to, spread these kinds of things.

That's been around for centuries now. The internet doesn't spread the sort of scale and speed at which that information, spreads. And so I think the challenge for us is to think about how do we want to create, moderate those kinds of public spheres so that it doesn't become this unfiltered place in which people basically [inaudible 00:47:54], you know, with the most extreme views on, on both sides.

And, you know, the currency of value in on the internet is attention, but the currency of value in making democracy work is not attention. It's probably something like commitment, you know, or deliberation or, or some of these other values. And so the question in my mind really is how do we begin to construct the kind of places on the internet that allow for, the kind of values that we actually want to promote.

and so, and I don't think that, I think some of the concern that people have about doing that is how do we do put those, you know, how do you put those structures in place without impinging on things like free speech. And I think that there's a lot of examples that we see throughout history in non-digital spaces, where we have been able to do that successfully in the past.

And so the question is how we then import some of those strategies and learnings for how we think about creating moderated public spaces, within the internet. So part of that is, questions or regulation, but part of it also is how we think about the, spaces themselves, that we all are a part of and, and how we create them.

And there's some really interesting experimentation, I think, going on by people like [inaudible 00:49:00] at Cornell and, and other places where they're experimenting with different ideas to do this kind of work itself.

[00:38:25] **Jeffrey Rosen:** Thanks so much for that. Just a few minutes left, and this has been so illuminating that I, I'd love some, some more concrete suggestions 'cause you both had a lot of them. Dan, just some more guard rails for resurrecting Madisonian deliberation.

[00:38:25] **Daniel McLaughlin:** Honestly, one of the, I mean I talked a little bit about the budget process and I talked a little bit about, the bureaucracy. you know, I think, for example, I think we should probably set more sunset provisions in, in, in both federal and state laws, so that things require more re-authorizations.

I actually think that we, that one of the things that has really eroded, a sense of popular accountability and control, is the proliferation of federal spending that filters down through the states, right, the federal government giving money to the states and localities. because I think when the federal government taxes and spends on federal things, the state government taxes and spends on state things and the local government taxes and spends on local things, people know who to blame, people know who to change.

and when, you know, when you have these, these various programs that, that sort of tie all the, all of the branch, you know, the levels of government together without clear lines of accountability. I think that that makes people more frustrated that they don't know what to

change. and I guess my, my other, my other guardrail would be to, you know, amend the constitution, you know, with, with one simple line and we mean it.

[00:38:25] **Jeffrey Rosen:** [laughs] That is a wonderful, proposal and, and, the Constitution Center recently ran a constitutional drafting project where we commissioned libertarian progressive and conservative teams. And the libertarians came up with precisely the same proposal. So I can maybe bet which camp you'll fall into there.

[00:38:25] **Daniel McLaughlin:** Yeah, that line is not originally mine. I confess that for you.

[00:38:25] **Jeffrey Rosen:** No, no, it's a, it's a fine one and appreciate putting it on the, on the table. The project was interesting, incidentally in, it surprised us because both the conservative and progressive teams agreed on two amendments, a, eliminating the electoral college and replacing it with the national popular vote and term limits for Supreme Court justices.

 no one expected that agreement, but, but there, we have it. Hahrie, are there any constitutional level reforms that you would suggest? And if or if not, please give us some other proposed reforms for guardrails of democracy so that more institutions can func- can function like the successful, state based and local based organizations that you have studied.

[00:38:25] **Hahrie Han:** Yeah. So, I mean, I think the reform of the electoral college and, the, term limits of Supreme Court justices are, are, are two great ones. I also, you know, I think there've been different proposals that, have been on the table like expanding the size of the house to allow for, you know, greater representation, among more people like the house is supposed to be the people's house in a sense.

And right now, so many congressional districts have gotten so big that I think people often feel really removed from their elected officials. And so we have, there are reforms like that that I think would begin to repair that representational relationship, that we began to talk about. I also think that there are reforms that should be considered.

I'm not sure, exactly which ones I would necessarily advocate for quite yet, but things like ranked choice voting that would enable a greater proliferation of more parties to have say, within the political process, the first, past the post system that we have right now, I think, there's a lot of evidence that it lends itself to the kind of polarized outcomes that we're seeing, and leads to greater gridlock than, than we might otherwise want.

So, I think there are sort of things like that that we should also be considering on the electoral side, even if they not, may not necessarily always be constitutional amendments themselves. the last thing that I'll just say is that, you know, a lot of what we focus on in the book and I strongly believe in is that, you know, civil society does play an important role because even if we were to repair the constitution again, if we just, because we build it, people will not come.

And so what we need to do is also think about how do we incentivize the kind of organizations that we want that promote, a process of pulling people into the political

system in ways that, that we might think of as normatively good for democracy. And there, I think actually Congress has a really important role.

And one example that I'll give is, in addition to the National Constitution Center, Congress also has chartered organizations like the National Conference on Citizenship that used to, in the mid 20th century be a national organization that had local chapters throughout the United States.

And that really was promoting a kind of, citizenship and engagement of like what we find in some of the prisms examples that we see. And it used to be that the NCoC was quite active at the local level and has really become less so over time. And I think there are ways in which Congress can use its role in being able to charter these kinds of organizations to renew that, original mission.

[00:38:25] **Jeffrey Rosen:** Well, we, just have two minutes left and I always end on time. So, Dan, I think the last word is to you. I'll ask you as our first question, [inaudible 00:54:08] did, could you, respond to what you think of ranked choice voting, which of course took place yesterday in New York city? is, is that a reform that you support or not? And then, please leave our great audience with your final thoughts about how to resurrect Madisonian deliberation in America today.

[00:38:25] **Daniel McLaughlin:** Yeah, well, I'm, I'm, I will note I'm not, I'm not in favor of abolishing, the electoral college. And I'm, I'm, I'm a skeptic of ranked choice voting, because, precisely because well, for a couple of reasons, but one is precisely because it's so greatly complicates the process of counting the votes.

I think New York city is, is, it may have dodged a bullet if, if the outcome is clear enough but, you know, when, when you have a system that already has a lot of trouble counting all the votes on time, adding this much complexity, I think it's a real problem.

But, I do, I do favor, increasing the size of the house, by the way. I think that's a, a reform that brings us back closer to the original design of the system. you know, I mean, final thoughts I, I, I really think that, that we just, we just need to get back in the habit of, of seeing direct accountability.

and, you know, I would echo the, the, I guess the plug for this institution and, and, and others like it. And, you know, I think the, the debates over things like critical race theory and, and people, you know, talking about, you know, 1619 and 1776. And, and, you know, I think, I think getting people back into, I mean, Ronald Reagan in his farewell speech talked about the importance of, informed patriotism.

And he was serious about the informed part, you know, that, 'cause this was, I guess, two years after the whole national celebration of the bicentennial of the constitution. I do think that that taking seriously, you know, having a real discussion in the country about what our history really is and what our institutions and values really are about, and, and having that done both publicly and privately, having it done in schools.

you know, I think that is very important because I think if we think through what exactly we have as our American heritage, I think it may be will inspire more people to get involved, and, and do something if they can, if they can see results.

And unfortunately, I think when they, when they get frustrated, when they get alienated, uh that's when you see kind of these explosions of, of populist rage, you know, on both sides of the political spectr because people don't feel like working within the system works, and it should.

[00:38:25] **Jeffrey Rosen:** Thank you so much Hahrie Han and Daniel McLaughlin for a wonderful discussion of how to resurrect Madisonian guardrails, ending by the plug for civics, seems exactly right. And not only Ronald Reagan, but George Washington called for education of our youth and the science of government. And that's just what we're trying to do here at the Constitution Center.

And although agreement is not the goal of these discussions, we have had meaningful, agreement and thoughtful disagreement about the importance of Madisonian deliberation and the ways to resurrect it. Hahrie, thank you for this great partnership. Can't wait for our next panel to continue to shed light as you put it in your beautiful prisms metaphor on these crucial questions involving democracy.

So grateful to you for your book and to Dan for joining. And thanks to our great listeners for taking an hour out of their day to educate themselves about democracy and the constitution. Thanks to all and look forward to reconvening soon.

[00:38:25] **Hahrie Han:** Thank you very much. Bye-bye.

[00:38:25] **Daniel McLaughlin:** Thanks.

[00:38:25] **Jackie McDermott:** This episode was produced by me, Jackie McDermott along with Tanaya Tauber, John Guerra, and Lana Ulrich. It was engineered by the National Constitution Center's AV team. This program was presented in partnership with the SNF Agora Institute at Johns Hopkins University, and made possible with support from the Stavros Niarchos Foundation.

It's part of the National Constitution Center's restoring the guardrails of democracy initiative, but the initiative is a series of public programs asking leading thinkers to consider ways to strengthen American constitutional and democratic institutions against current and future threats.

We've hosted several programs so far as part of this ongoing initiative. We'll link to those in the show notes so please check them out. As always, please rate, review and subscribe to Live at the National Constitution Center on Apple Podcast or follow us on Spotify, and join us back here next week. On behalf of the National Constitution Center, I'm Jackie McDermott.