Partisan gerrymanders. Voter purges. Cyberattacks. Electoral College backlash. With the voting system under stress — and with crucial elections looming — we asked Columbia professors for a status report on the central mechanism of US democracy. Here are eight things they want every reader to know.

By Paul Hond
Fall 2018 issue

1. Faith in the system is fraying

“A healthy democracy is predicated on the electorate’s faith in the integrity of the voting system,” says Ester Fuchs, an expert in US elections and the director of the Urban and Social Policy program at the School of International and Public Affairs. “The losers have to accept the outcome of an election and in the period between elections have to be willing to abide by the laws and the decisions of those who are
elected. When the system is threatened — which is to say, when large numbers of people feel alienated or think that the system is rigged or that it’s not legitimate — you’re really threatening the foundation of democratic governance.”

For Fuchs, one of the major flaws in the voting system can be found in the Constitution itself: the Electoral College. In this much-maligned process, each state gets a share of 538 electoral votes, according to its number of senators and representatives in Congress. New York, for instance, has twenty-seven congressional districts, plus two senators, for a total of twenty-nine electoral votes. (Washington, DC, thanks to the Twenty-third Amendment, gets three.) The electors, handpicked by their state’s parties, pledge to cast their ballots for their party’s candidate. In most states, the winner of the popular vote gets all the state’s electoral votes. The candidate who nets a 270-vote majority becomes president.

“Interestingly, the founders put the Electoral College in place to take power away from the populace,” says Fuchs, who sits on the faculty steering committee of the Eric H. Holder Jr. Initiative for Civil and Political Rights, an undergraduate program that recently held events on the state of voting in the US. “In the early version of the Electoral College, electors were supposed to be independent — they didn’t have to follow the popular vote.” Alexander Hamilton, in Federalist No. 68, wrote that this flexibility “affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications.”

“But over time,” Fuchs says, “it became an accepted view that the Electoral College electors would be bound by the popular vote in each state, and would reflect it. So while in theory you might have a situation in which the popular vote does not reflect the electoral-vote victory, it would be like a hundred-year storm.

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“Except that we just had Gore vs. Bush in 2000 and Clinton vs. Trump in 2016. Bush lost the popular vote, and Trump lost the popular vote. Once you win a state by 51 percent, that’s as good as winning by 98 percent, and the difference between the 98 and the 51 is lost in the national calculation. Votes are diluted in the presidential election because all those people beyond the 51 percent in each state are not counted.”

Until the 2000 election, the public never paid much attention to the Electoral College, Fuchs says, because the numbers usually worked out: not since the
nineteenth century — in 1876 and 1888 — had the popular-vote winner not prevailed. “But now that we’ve had these recent discrepancies, it’s just another area where people see the system as rigged against them. If you keep having elections where the popular vote is not consistent with the Electoral College vote, from a democratic-governance point of view, it’s a problem, and it’s dire.”

To abolish the Electoral College would take a constitutional amendment — a dim prospect, Fuchs says. “Because our politics is now so rabidly partisan and divided, and because each party is looking for leverage within legal and institutional arrangements, it will be more and more difficult to fix this. The small states and the rural states benefit from the status quo — why would they give up this system, when doing so would help more-populous places like California and New York be more fairly represented?”
SCOTUS opened a Pandora's box

The 2020 census needs our full attention

The 1965 Voting Rights Act was a watershed in US history, outlawing repressive tactics, such as literacy tests, long used to suppress voting. The act gives the states with a history of discrimination a duty to ensure that “eligible citizens are able to exercise their right to vote in any election for public office...” It requires these states to seek federal approval before altering their voting and registration laws. Under the Voting Rights Act, states were bound to show that any changes they proposed would not “result in a retrogression” in the voting rights of racial minorities.

While racial gerrymandering is prohibited by the Fourteenth and Fifteenth Amendments and by the Voting Rights Act, it remains a problem in the politics of the South. The state of Arizona is one example. In 2009, the Federalist party ran a highly successful campaign that won a seat in Congress by a 17 percent margin — a result much larger than anticipated.

Fuchs believes that the fundamental fairness of the voting process has been eroded. “You have these legal barriers being used as election tools,” he says. “It’s not a fair system in a democracy. You don’t have to stop at the top — it’s the people who are really bad actors who are the ones who are winning.”

While the threat of this data-bombing is evident, the actual fallout is nearly impossible to assess. “Surveys have shown that the effect of these different messages on people’s behavior is fairly low,” Briffault says. “But surveys are not the best way to figure these things out. And we don’t have a lot of other sources to turn to.”

It’s hard enough to do a census in a big country,” Prewitt says. “But at this point in preparing for the 2020 census, it is getting much harder.”

But Prewitt’s biggest concern is the addition of a controversial question.

In March, the US Department of Commerce, which administers the census, announced that it would be introducing a new question: “Are you an American citizen? Please circle ‘yes’ or ‘no.’” This question was designed to ask whether the respondent is a US citizen, so that the count of a country’s population will be more accurate. But it also raises the prospect of a federal government asking a potentially illegal question, in violation of the Constitution.

To be sure, the US has a long history of federal government questions that are intrusive or legally suspect. And a government survey is only as good as its sample size. In the 2016 presidential election, there were 12 million fewer voters than expected, an undercount that was detectable but not easily explained. “If you look at the evidence from the last several elections, you see that the discrepancy is not small,” Briffault says.

The numbers might be wrong, but they are important. “They have consequences,” Briffault says. “There are issues of the distribution of resources. And in the process of voting itself — creating the perception that your vote doesn’t matter, that the system is rigged.”

Who's on the Ballot

Gill v. Whitford

There’s nothing in our Constitution that says it should be hard for people to vote. “The claim in Gill v. Whitford is that there is a problem of gerrymandering that’s occurring in Wisconsin,” Briffault says. “The question is, do we have tools to deal with it? What are the ways we can try to make sure that the last word in politics is the people?”

But according to SIPA professor Kenneth Prewitt, who directed the US Census Bureau from 1998 to 2001, this essential tool of American democracy is in serious trouble.

“In order for a democracy to work, you want to create a system that is as fair as possible, that the public views as fair. Without that, a democracy cannot sustain itself. I think that democratic governance in the US is really on the edge of crisis.”

In Ohio, lawmakers came up with a method to purge the rolls. “If you don’t vote during a two-year period, you receive a postcard,” Briffault says. “And if you don’t return the postcard, then you’re purged.” This led to an outcry from African Americans, who are more likely to use mail-in ballots and are more likely to not return postcards. But the early-voting restrictions took a toll. “Black Turnout Down in North Carolina After Cuts to Early Voting,” NBC News reported in 2016. “People are not voting in the numbers they used to due to the day before the presidential election. In the end, Donald Trump won the state that Barack Obama ’83CC carried in 2008.

Wisconsin is evenly divided politically between Republicans and Democrats, but because of packing, Democrats win fewer districts and Republicans win more districts by narrower margins,” Briffault says. “There are no 90 percent Republican districts.

While social-media companies have taken steps to filter out the fake from the real — an exceedingly demanding task — Albright believes that what needs to be understood and addressed most are the “weaker barriers” that are often in place online. “They are easy to get around,” he says. “For the moment, they are not being dealt with as effectively as other barriers.”

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Arts & Humanities

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