

**Jackie McDermott:** [00:00:00] Welcome to Live at the National Constitution Center. I'm Jackie McDermott, the show's producer. Last week, we hosted a program called Do We Need a Third Reconstruction? Our panelists explored the first Reconstruction following the Civil War, the civil rights movement, a kind of second Reconstruction and then considered whether we need a third era of Reconstruction in America today. Here's Jeff to get the conversation started.

**Jeffrey Rosen:** [00:00:28] Ladies and gentlemen, welcome to the National Constitution Center and to today's convening of America's Town Hall. I'm Jeffrey Rosen, the president and CEO of this wonderful institution and let us inspire ourselves for the learning and conversation ahead by reciting together the National Constitution Center's mission statement. Here we go.

The National Constitution Center is the only institution in America chartered by Congress to increase awareness and understanding of the U.S. Constitution among the American people on a nonpartisan basis. We'll be taking your questions throughout the program today, so please put them in the Q&A box and I'll introduce them as I can and I would like to thank Don McCree and Dan Fitzpatrick of Citizens, our friends and long long-time corporate partners for their support of this program and their continued investment in constitutional education and generous support. I will now introduce our remarkable group of panelists. I'm so honored to convene these scholars and thought leaders and then we'll get right into our very important discussion, do we need a third Reconstruction?

William Allen is emeritus professor of political philosophy at Michigan State University and emeritus dean at MSU's James Madison College. He is the author of many books including *Rethinking Uncle Tom: The Political Philosophy of Harriett Beecher Stowe*, *George Washington: America's First Progressive* and *Let the Advice Be Good: Defense of Madison's Democratic Nationalism*, among others.

Wilfred Codrington III is an assistant professor of law at Brooklyn Law School and a Brennan Center fellow. He is the author of the article in The Atlantic National Constitution Center's joint website *The Battle for the Constitution* that inspired today's panel *Why We Need a Third Reconstruction?* And he's also the co-author of a forthcoming book, *The People's Constitution: 200 Years, 27 Amendments, and the Promise of a More Perfect Union*, which I'm excited to share with you in the fall, because I've just been hearing about it and it sounds great.

Sherrilyn Ifill is the president and director-counsel of the NAACP Legal Defense and Education Fund. I'm honored that she's also a former board member of the National Constitution Center. She is the author of a highly acclaimed book, *On the Courthouse Lawn: Confronting the Legacy of Lynching in the Twenty-first Century*. She is one of America's most distinguished advocates for equal rights and began her career as a fellow at the American Civil Liberties Union before joining the staff of the LDF as assistant council in 1988.

And Kurt Lash is the E. Claiborne Robins Distinguished Chair in Law and the founder and director of the Richmond Program on the American Constitution at the University of Richmond School of Law. He's published widely on the 14th Amendment and is the author of

the new volume, *The Reconstruction Amendments: Essential Documents* and Professor Lash worked with the Constitution Center to put some of those essential documents online on the interactive constitution.

It is a great honor to welcome all of you and I'm going to jump right in with you, Professor Codrington. Your important article in *The Atlantic*, *Why We Need a Third Reconstruction*, has provoked and inspired a national conversation on the topic. In that piece, you argue clearly that you believe that both the first and second reconstructions failed in different ways to achieve their promise and we need a, and we need a third. Tell us more about the thesis of your article and what a third Reconstruction would look like.

**Wilfred Codrington:** [00:04:07] Sure. Yeah, so thank you for having me. It's a great pleasure to be here. So the idea of the Reconstruction started in the wake of the Civil War, right? So, we have this period in the 1860s through the late 1870s where you have this new promise of equality and liberty for all where you have the abolition of slavery in the 13th Amendment the promise of equal citizenship, protection of due right, due process rights and, and all the things we kind of think of as the incidents of citizenship. And, of course, the 15th Amendment with the anti-discrimination provision enfranchising Black men in voting.

And then you have, with it, a, a range of other legislation. Your civil rights acts of those eras, the enforcement acts of those eras to make sure that these, these actual new protections and freedoms are actually guaranteed and enforced. And this lasted about a dozen years but then you just have this convergence of events. You have economic downturn. You have political scandal and you basically have white America sort of just exhausted, racial exhaustion, as one scholar calls it. Just the weariness that, you know, in this dozen years, Black people aren't doing enough to actually show that they earned and deserve citizenship. And, and that leads to this period of Jim Crow America's racial apartheid that lasts for decades into the middle of the next century.

In the middle of the next century, you have another period, the civil rights era where just movements, again, sort of following in the same way that the abolitionist movement pushed the first era of reconstruction, you have movements pushing for the second era of Reconstruction. So, you get some critical constitutional amendments, but even more important legislation in Congress. So, you get the Civil Rights Act of '64. You get the Voting Rights Act of '65. You get the Fair Housing Acts of '68 and you have these ground-breaking Supreme Court decisions.

So, you have *Brown v. Board* in 1954, of course, but then a bunch of cases where the Supreme Court is protecting criminal defendant's rights and getting rid of vote dilution, where urban and cities are basically afforded way less a vote than rural areas in your one-person, one-vote cases. And you also have the Great Society adding an economic heft to this and, and so you basically get this second era where you have this vision, this promise of equality and you see substantial gains in Black America and America generally.

And, and just like the first Reconstruction, you see that area, that era also spiral. So, you have white flight occurring in the cities. You, you have the courts being packed with conservatives. Nixon gets a 0.4 in a matter of five years. You have this movement in

conservatism, which is really a backlash to all the progress made in the civil rights era and this just lasts decades. And, and some might say that this is still occurring right now.

And so, what I'm arguing for is we need a third period of Reconstruction. We need something that parallels the first two in terms of its vision and its promise, but we really need to take the baton over the finish line this time, because what we see right now and particularly in this era of COVID is that Black people, brown people, indigenous communities have suffered the bulk of all the, the burdens we're seeing. We're seeing it in the economy. We've seen it in, in health care, so COVID has just followed the path that has existed structurally over the past 50 years and we see it unfortunately in the spate of violence against Black and brown people both vigilante [inaudible 00:08:55], violence by extrajudicial killings and police violence and, and, and so, at this time, where we are having this real moment of racial reckoning, it is the time that we actually fulfill the promise of those prior two Reconstructions that weren't able to get the job done.

**Jeffrey Rosen:** [00:08:37] Thank you very much for that powerful summary of your important article. Professor Allen, Professor Codrington just told us that both, both of the first two reconstructions combined constitutional amendments with landmark federal statutes and he thinks a third Reconstruction is necessary and in his article, as he just said, he said a third Reconstruction begins with sweeping criminal justice and voting reforms. It might also entail direct investments in Black communities to guarantee stable housing, universal health care, high quality education, and greater wealth parity. And it also would require truth, reconciliation, and recompense and, and he concludes by saying, "And finally," on color blindness, "Acknowledging race is necessary, identifying its impact is necessary." do you agree or disagree with Professor Codrington's argument?

**William Allen:** [00:09:24] Well, let me say that whether there's a third or a 37th or 377th Reconstruction, seems to me to be not a subject of debate one way or the other, because it's the original Reconstruction that ought to be framing our understanding. And typically, in the academic tradition, we have referred to Reconstruction in a, in an inverted image of what actually transpired. We, it was a point of policy intervention rather than itself an expression of social or political dynamics. And therefore, it's not surprising that there are twists and turns to the whole conversation about reconstruction, because it's taking place in a greater context of political and social dynamics going all the way back, in fact, to the beginning of the republic.

The latest work by Kate Masur on America's forgotten civil rights movement makes it very clear to us that there is a broader context in which we ought to be seeing this, a context that begins with Prince Hall, for example, or Benjamin Banneker, or Richard Allen. That, that was a civil rights movement properly understood, as it was a civil rights movement that ought to be understood as occurring prior to the Civil War and which actually frames the issues that Reconstruction was meant to address, which means that Reconstruction doesn't emerge out of the conclusion of the war.

It emerges in reaction to processes that were in play before the war even began and those processes were triggered in 1842 in *Prigg v. Pennsylvania*, when Justice Taney dissented from a case he otherwise agreed with, but he descended to make one powerful argument,

which is the entire story ever after of struggles over Reconstruction or not, and that is that there should be no federal control over the state decisions about the presence of people of differing races within the states. That's why he descended from the decision he agreed with and it was the carrying out of his principle in that that we saw realized in Dred Scott versus Taney, and more importantly, it was the carrying out of that principle that led people in the period leading up to the Civil War as in Oregon, where they petitioned to become a state to write into their constitutions provisions barring the entry of free Black people.

Now, there was, at that time, a powerful civil rights movement that overcame that and overcame it in the post-Civil War period with the Amendments, to be sure, but even prior to that was expressed in the new Republican Party, which was animated by a privileges and immunities claim that it extended to Black people in general and fought for.

So, what we're actually seeing is not a succession of reconstructions but the continuation of the battle for equal privileges and immunities. And that doesn't have a number to attach to it because it can't end until it ends in comprehensive success and it will always be the first and only privileges and equal privileges and immunities revolution. Everything else is just a stopping point along the way to that accomplishment.

**Jeffrey Rosen:** [00:12:28] Thank you very much for that. Sherrilyn Ifill, what do you make of Professor Allen's powerful suggestion that rather than thinking about separate reconstructions, we should think about fulfilling the promise of the first one, which is, he, he just argued, began not after the Civil War, but as early as Prince Hall's petition to the Massachusetts Legislature and after sharing your thoughts on, on that, tell us that if we were to have another Reconstruction, whether we consider it a third one or a continuation of the first, what would it look like? You, you've been writing very powerfully recently about the need for police reform, among other things, which would involve a combination of federal and state reforms as well as rethinking a color-blind approach to criminal justice enforcement. If there were to be another Reconstruction, what would it look like?

**Sherrilyn Ifill:** [00:13:17] Thanks so much Jeffrey and thank you for having me as part of this, of this session and for the great work that the National Constitution Center does. I, I haven't heard it put quite like Professor Allen did but it, it actually resonates quite powerfully for me because you know, I, I was actually thinking about and trying to think through how to talk about the seeds that are planted that lead to what we think of as these moments, right, even if we think about the civil rights movement, which we think of as being kind of, you know, bounded by, by several events, maybe beginning with Brown v. Board of Education in 1954 and ending with the Fair Housing Act of 1968 and the assassination of, of Martin Luther King. That's a very bounded period, but what is happening in the 10 years before 1954 are actually part of the civil rights movement or at least have to be regarded as part of the civil rights movement in the same way that Professor Allen talks about reconstruction and what those seeds are.

So, even if I'm willing to accept the Reconstruction framing, I agree that we have to think more expansively about what actually constitutes a Reconstruction because there's a part of it that is about the documents, that's about the Constitution itself, about the actual amendments, but there also is a part of it that is about the people and the activism and the

demand that actually creates the context in which the documents change. We can see that most readily in the second Reconstruction, right, in the civil rights movement in which there is, it's essentially the people's reconstruction and it is, it is a force of, of people speaking about what they believe citizenship must mean that compels the change in, in, in so many of our laws, that compels Congress, after a hundred year dormancy of failing to use the enforcement power that the framers of the 14th and 15th Amendments expressly put in the amendments for Congress to use and Congress basically sat on the power it, it forcing them to use that power.

But what comes before that? What comes before that is a lot of events, but I want to just note one because I think it's relevant for this third Reconstruction, which I agree is upon us and I think we're actually in it. And I think it's important for us to recognize these events because they're not all events that involve people making a petition or government officials thinking about how they want to reshape government. There are other intangible events that most of us are not in control of that powerfully set the stage for transformation in a democracy, and I share this with our attorneys all the time.

World War 2 was one of those. World War 2 was a powerful event that changed the narrative about our country, that reshaped a narrative about who we are, that suggested a narrative to Black people, particularly those Black men who served in World War 2 about who they needed to be as citizens when they returned. It weakened a set of arguments about, about Black second-class citizenship. It created confrontations in the South between returning Black soldiers and those who were devoted to white supremacy, and it essentially turned over the soil in a way that set the stage. It also had a powerful effect on the president of the country, President Truman who not the, a perfect president, but had one particular quality that was powerfully important to, to undergirding the beginnings of the civil rights movement and that was that he had a real problem with racial discrimination against service people. We know what he did in the executive order in integrating the military, but there are o- other things he did as well. One of them is described in the new book by Judge Gergel, *Unexampled Courage*, was his outrage at the blinding of Isaac Woodard, a sergeant who returned home from the war blinded by a Southern sheriff in Aiken, South Carolina, and Truman's absolute outrage and speaking out about that case.

He also compelled the FBI to investigate a quadruple lynching in Georgia because one of the people who were lynched was a former service person. And then he did one other thing, which I'm actually writing about, which is that he insisted and intervened in a case in Iowa, Sioux City, Iowa in which a returning service person was not allowed to be buried in the Sioux City Memorial Park because he was Native American and Truman intervened and insisted that they come to Arlington National Cemetery and that he be buried there and he was outraged by that.

So, you had a president who had a sense that something about service and service in the war meant something very particular about who Black people were, you had Black people's own sense of what it meant to have served, you had a narrative about fighting Nazism abroad and this idea of equality that also then was refurbished. And so, the soil was tilled. I say that's important because those are the events that cabin the other events that are

happening. Obviously, there is a strategic plan to quote, unquote, "Break the back of Jim Crow," which Charles Hamilton Houston and Thurgood Marshall are working on. Their first success is in 1935 in their case successfully challenging segregation at University of Maryland Law School. It culminates in Brown but that's 20 years, 35 to 54-ish, is 20 years of them working that strategy.

And I raise all of that because it allows us to reflect on the moment that we're in right now where, as, as, as William appropriately says, we do need this third Reconstruction. It's not even a question for me. It's just how we're going to do it. So, we need, we need boldness. We need the documentary change, but let's be clear about what has been happening. I think it begins very much with, with the unrest in Ferguson. I think it begins, again, with people having a conversation themselves about what citizenship and equality means and forcing that conversation on the broader body politic and we've been in that conversation since 2014. We also have had a catastrophic event similar to World War 2 and that's COVID-19. And the pandemic has had a powerful effect on how many people and particularly Black people and other people of color think about themselves as citizens, think about their rights in this republic, think about the relationship between the federal government and the state.

And while we are in this retrenched period and, and I should add so we've had the COVID-19 pandemic, but we've also had, what I am unashamed to say, despite being in a non-partisan environment because I don't think this is partisan, a catastrophic threat to our democracy over the last four years, culminating in January 6th, which demonstrated that there are powerful anti-democratic forces in our country that threaten the core of the republic regardless of our disagreements with each other along various partisan lines, that the core of our republic is threatened and that we had a narrow miss from going over the cliff. Those two catastrophic events are pushing and compelling a set of conversations and a, and a boldness about engaging with our found- foundational documents, about engaging with our laws that suggest to people the need for radical transformation in a way that we have not seen in some time.

And so, I think, yes, we are ready for that third Reconstruction, and when we embark on it, Jeff, I think we're going to have to begin to take up some of the issues that we have left to decide. Some of them are about voting inequality, some of them are about the physical landscape of this country, which itself was created based on policies and practices deeply steeped in racial discrimination and segregation. It accounts for why we are physically separated from one another and it is time for us to confront that physical separation and think about how we can implement government policies that were as powerful as the interstate highway system and the GI Bill in creating the white suburbs of the 1950s and 1960s that became so much a part of our thinking because of all the television programs that showed them to us. We need a similar imaginative investment that will dismantle that physical infrastructure that keeps us separated from one another. So, that's just one aspect of it but I think we have our work cut out for us, but the forces that have been raging around us have forced us to a moment of radical reimagining.

**Jeffrey Rosen:** [00:21:25] Thank you very much for that. Professor Lash, you just heard Sherrilyn Ifill say, "Give, give us a powerful definition of what a third Reconstruction would

look like." She said it would involve a bold conversation about equality, citizenship, and the relationship between federal and state government, and the nature of our democratic institutions leading to a radical transformation of laws and government practices about voting inequality as well as dismantling physical separation of white and Black citizens. I thought it was helpful to restate because it's such a clear definition. Do you agree that that is a definition of what a reconstruction would look like, whether we consider it a third or a continuation of the first, and what has your study of the primary sources of the first Reconstruction, which you so generously allowed the National Constitution Center to put online, in which you collected in your new book, taught you about what a reconstruction looks like and when we can say that it occurred?

**Kurt Lash:** [00:22:22] It's a pleasure to be here, Jeff. Thank you for bringing me on and, and such a pleasure to listen to these wonderful, wonderful comments and analyses of, of the situation we're in. Sherrilyn's account of how events drive extraordinary moments of advances in, in individual rights and freedoms. I think that's, that's exactly correct and sworn out in history.

You know, William's talk about how there's a continuity, how nothing springs from nowhere. It all, it's rooted in debates and sacrifices that came before the moment of change and, and, and Wilfred's comment about how a lot of those moments have changed during the second Reconstruction, civil, the civil rights era, how so much of that involved statutes, right? Statutes and Supreme Court cases that drove the conversation and drove a lot of, a lot of the developments. This is all wonderful and I think it, it, it fits together.

I suppose what I'd like to do is, is say a little bit and, and this is what you've invited me to do, say a little bit about the first Reconstruction, because it's a little different from the from the second Reconstruction during the civil rights era, and also a little different from what Sherrilyn I think is has just recommended.

The first, the first Reconstruction was a constitutional reconstruction, not a statutory or political realignment. It was a constitutional reconstruction and, and William's exactly right. It didn't come, it didn't come out of nowhere. It was ... In, in a lot of ways, it kind of represented the country's answer to Frederick Douglass's question is the constitution pro-slavery or anti-slavery?

That was the, the question that had torn the nation apart in the decades prior to the Civil War and you had slaveholding states insisting that Northern states were denying them their constitutional right to hold men as property. You had Northern abolitionists, on the other hand, insisting that slaveholding states were denying the enslaved their constitutional rights and their fundamental rights to life, liberty, and property. And you had some, you actually had some abolitionists in the North like William Lloyd Garrison who were far more radical and they condemned the constitution as irredeemably pro-slavery and a covenant with death, an agreement with hell that he would burn publicly. But other abolitionists like Frederick Douglass disagreed. Douglass believed that the original Constitution, if read properly tilted, towards freedom, not towards slavery and he rejected the Supreme Court's opinion in Dred Scott that denied citizenship to Black Americans.



And the Republican Party of Abraham Lincoln agreed with Douglass and, following the Civil War, they drafted three amendments that enforced the fundamental principles of American citizenship and individual freedom which we know as the 13th Amendment, which abolishes slavery, 14th Amendment, which defines the rights of national citizenship, and the 15th Amendment that declares that no citizen can be denied the right to vote on account of race, color, or, or previous condition of servitude. And the Republicans who drafted and presented those to the people who ratified them believed that these amendments were not revolutionary. They actually strengthened and they furthered the original principles of the Declaration of Independence and the original Bill of Rights. To them, reconstruction was a, it, it was a restoration actually, a restoration of constitutional government and constitutional freedom which the seceding states had actually, actually betrayed.

And as, as, as Wilfred and as Sherrilyn has talked about these, you know, are not enforced in any strengthened way until you get to the, to the 20th century, but notice that when you get to that second Reconstruction during the civil rights era, it does not involve ... I mean there are some important Amendments. A poll tax amendment extending the right to vote. There are important amendments there, but what we think of the civil rights era and the key moments and events and texts of the civil rights era are not cut-, new constitutional texts, but they are Supreme Court opinions like *Brown v. Board of Education*, *Loving* against Virginia and the '64 Civil Rights Act and the '65 Voting Rights Act and the '68 Fair Housing Act. These are the texts, but all of those texts and all of those cases are based on the powers given to the federal government and the rights enshrined in the Constitution at the first Reconstruction. So, even these later reconstructions themselves echo back, echo back to earlier moments and earlier assertions of who we are as an American people and we are still finding better ways to enforce them to this day.

**Jeffrey Rosen:** [00:26:42] Thank you very much for that. Professor Codrington, in the wonderful conversation that your article just inspired among your colleagues, many fascinating themes emerged including the idea that a reconstruction is not a binary thing. It's not just a series of constitutional amendments and subsequent Reconstructions involved a series of activities including executive orders landmark Supreme Court decisions, as well as statutes that were designed to fulfill the promise of the first Reconstruction.

So, I'd like to ask you, in light to, reflect on all you've heard and to tell us, in light of all this, what would a third Reconstruction look like and, to be concrete there's a bill pending before the House the voting rights bill that would represent a the most meaningful federal voting rights bill since the Voting Rights Act of 1965, if it passed. If that were to pass would that count as a third Reconstruction and what e- what else, what other sort of landmark federal legislation or judicial opinions or executive orders do you think and do you recommend to constitute a third Reconstruction?

**Wilfred Codrington:** [00:27:46] Sure. So I love listen to this panel of scholars. They're so engaging. Dr. Allen so correct to say that it is about continuity and nothing springs from nothing, right? Like this was a, a decades-long movement occurring and there were, there were movements and counter movements that sort of resulted in this spark that could occur during the recon- what we have come to call the Reconstruction era and professor,



Professor Ifill, who I think has stated we could be, we very well be in that third Reconstruction era right now, right? Like, we, we very well may be seeing, we've seen the seeds sowed, but we may be sort of cultivating them right now. And, and thank you Professor Lash for talking about the parallels and, and the sort of non-parallels between the two.

And, and so I do think, yeah, you know, there's some important legislation before Congress right now that's languishing. We have a range of legislation that could be just called pro-democracy legislation. There's the For the People Act, right? And this would do a range of things to expand access to voting. It would also get rid of partisan manipulation in drawing the lines that we are importantly doing pretty soon now that the census numbers are out. There is the John Lewis restoration of the Voting Rights Act which was, you know, doing the work to, to fix what the court actually broke in 2013 in the Shelby County decision. There's statehood for DC that is pending right now and I think that that is one of the unstated injustices, where you have over 700,000 people in a federal, what do we call it, colony where they don't have representation in the very institutions of democracy in their backyard.

So, there are a range of pieces of legislation that are in Congress right now and could propel us further into the Reconstruction if we actually are there right now, but it's not only about these pieces of legislation. It is also about the reforms that needs to take place at the state and local level, too, right? So, most policing. We, we, we talk about the, the George Floyd Justice Act, that the president has mentioned that, the vice president has introduced. She's been a co-sponsor on that important piece. Most of policing occurs at the state and local level, though, right? So and, and we're seeing these movements that, again, Professor Ifill mentioned. You know, this was starting back in 2012 with the slaying of Trayvon Martin and continuing onward. We're seeing this sort of groundswell of activity and those are important elements that were there in the previous reconstruction. Obviously, we had the civil rights movement, which was the second Reconstruction era, and then we had the abolitionist movement and it continued into other movements, right?

Frederick Douglass cautioned Garrison about closing down the anti-slavery society too early because, even though the 13th Amendment had been adopted, the work, the important work to make people full citizens was not done, right? So this, this, this important movement going on to push government at all levels, not just at the federal level, because so much is done at other levels, it is, is going to be an important part of this reconstruction. And I think what we're seeing now too is with this president pushing a big, bold economic agenda which is the sort of unspoken part of reconstructions, right?

Like, we have seen before where there was an investment to make sure that these rights aren't hollow rights, that it is not worth having the, the, the idea or the label of, of equality if you can't actually pay, get something equally. If you can't pay for your rent, if you can't pay for food, if you're, if you're struggling to think about how you're going to pay for your kid's education. Those sorts of things are really fundamental to, to ensure that the promise and, and the progress that we want to see in reconstruction actually becomes a reality. So, there are very a number of facets that we need to be looking at. I think all the stuff at the federal

level is very important, but we need to be looking from top to bottom and all the way across.

**Jeffrey Rosen:** [00:32:16] Thank you very much for that. Professor Allen, you've just heard Professor Codrington give a series of examples of federal, state, and judicial actions that he think might qualify for another Reconstruction ranging from the voting rights legislation, the For the People Act, the John Lewis Act state and local police reform and judicial opinions as well as President Biden's economic proposals. Without expressing an opinion about all those, do you agree broadly that those kinds of federal, state and economic legislation are desirable to fulfill the promise of the first Reconstruction and if not, are there any other laws, policies, or changes and practices that you think would better achieve that promise?

**William Allen:** [00:32:59] Well, to add to you specifically, Jeff, I'd rather agree that that's desirable, but it's not a question of whether the goals and vision are desirable. It's a question of whether we have a fit understanding of what it is we're proposing and how we propose to accomplish it. Extending over broadly the implications of call it reconstruction to speak loosely, only invites pipe dreams about social coordination and pipe dreams about social coordination missed the whole point of this historical movement because it doesn't solve the problem of how you direct the coordinating authority. This movement begins with the concern of what is the coordinating authority and how can it be brought under control? Remember, we have always interpreted reconstruction as aimed at the South. Our conversation makes clear that that was a mistake from the beginning and it certainly is no longer aimed just at the South, but it's really important for him to understand why it was thought to be something aimed at the South. That was a misconstruction that evaded the reality that the whole series of efforts that undermined the status of Black people in the United States were taking place in the North.

Yes, after the war, with the counter-reaction from the former slave masters, there was a period certainly that became ugly, terroristic, and otherwise, but long before that, it was Ohio, Illinois, it was Missouri, it was Oregon. It was places throughout the North that were multiplying Black codes.

And so, the real question was the question Stephen A. Douglas raised in 1854. Is popular sovereignty good enough to solve this problem? He answered yes. Very important people said, "No. There must be rights beyond the reach of popular sovereignty." But what are we witnessing now when we go through the litany of possibilities that Professor Codrington is talking about? We're merging back into a pop solve defense. We might as well be adopting Stephen A. Douglas, say as long as we can mature the dynamic political forces so that we can drive a majority, then it doesn't really matter what the coordinating social authority is or what its powers are or whether they can be limited.

Well, our real danger, our real game here is to figure out how to arrive at national standards of performance while nevertheless yielding to the local authority to perform and that's a specific accomplishment in statecraft, in judicial craft, in constitution making that's beyond policy implications or this or that particular, particular form of relief. And so, the real thinking that's necessary is how to achieve that constitutional balance. That's what's

important. Now, whether that will fulfill the dreams of Reconstruction is a secondary question from my perspective.

So, I don't rule out people wanting to get to a new place with regard to various social dynamics. I think that's very important. I happen to think it's more important how you get there. I think that's the critical question. Otherwise, you're actually wandering aimlessly, as I see it.

**Jeffrey Rosen:** [00:36:20] Fascinating. Thank you so much for that. Sherrilyn Ifill, what do you think of Professor Allen's provocative suggestion that what is needed is a process or a dynamic for agreeing on national standards that would allow coordination and implementation to be, to take place at the state level? And then tell us what you, what road not you would suggest for the Reconstruction. You have endorsed a series of federal, state, local, and normative changes. Map out for us what the Reconstruction would look like in your view.

**Sherrilyn Ifill:** [00:36:52] Yeah. Well, first in response to Professor Allen, I, I sincerely hope that he and I can continue this conversation offline, because I think the project that he has suggested is powerful, ambitious, and important, and one I think this country is not up to at this moment. And I am and I fear, right, that we are very near the abyss of losing what would be the elements that would allow us to even have that rational engagement and conversation that he correctly identifies is actually desperately needed.

And so, perhaps I'm in a more emergency mode and in a, and in a more short-term vision of what that Reconstruction looks like to get us to a place where we have the stability to engage what I think are the very, very important and really illuminating questions and the analysis that Professor Allen is providing. What is interesting to me about this moment and it was true in the second Reconstruction as well, but I think can be powerfully seen right now is the crossing of the streams between two fundamental issues in the construction of the American body politic. One of them, of course, is about race and about racial exclusion. The other is about power and the relationship between power in rural areas and urban areas. And we are now at a moment where the streams are so effectively crossed that the solutions that the fundamental reordering will actually be relevant to both of those questions.

And so while obviously, as you know, I am a big supporter of the George Floyd Justice in Policing Act and the For the People Act and the John Lewis Voting Rights Advancement Act each of those builds on what Professor Lash currently, you know, correctly identifies as existing constitutional provisions. The For the People Act is, is more an elections, based on the elections clause, but if we think about some of the civil rights statutory framework that I think needs to be reinvigorated, it's just really once again asking Congress or demanding that Congress respond to the architecture that the framers of the Civil War Amendments created, which was that they propped open the door with the enforcement clauses, which is to say, "We don't know what else is going to happen, but we suspect things may happen. And so, we are going to give you this power to enforce the, the guarantees that are articulated in these amendments."

And so, when we talk about civil rights statutes either during the civil rights movement or even now, we're actually not asking Congress to create something new out of whole cloth. We're asking them to walk firmly in the center of the enforcement power that they were given for reason by the, the framers of the Civil War Amendments and one could include almost all of the ... We think about policing and the origins of policing with slave patrols and we think about the role that it played in the post-reconstruction period. If we think about the role that policing and control played throughout the 20th century, we recognize it as a core civil rights issue. Most of the urban unrest in the 1960s came out of some encounters between law enforcement officers and Black people in our cities. 150 incidents of urban unrest in the 1960s and yet we emerged from that decade with three core civil rights statutes, none of which responded to the issue of policing.

So, it's a core civil rights issue that has to be addressed within the context of the enforcement power of those amendments. But to layer over the other piece about power gets us to the Electoral College, gets us to the designation of, of senators, you know, by state regardless of population. It gets us to these other issues about power designation that actually do cross these two elements, the issue of race exclusion and power, the issue of rural urban power and articulation and expression based upon where you live in the country.

And I actually think what's been exciting at this moment is people beginning to see the relationship between those two things, beginning to see that we are still struggling with the in- in- inequities around the rural/urban divide. We did some of that during the civil rights movement too, the whole one person, one vote striking down the county unit system, right? All of these systems that were in place particularly in the South to give more power to the rural areas. This is a conversation we actually need to engage more vigorously as well because it is also about the ordering of power and it has deep implications for race and the stability of this country going forward. So, I'd love to see those streams cross in our dialogue and in some way the For the People Act tries to do that but I think we haven't had rich enough conversations about the relationships between those two and the need to find solutions that are responsive to the ways in which both of those elements implicate stability and power in this country.

**Jeffrey Rosen:** [00:41:37] Thank you so much for that. And Professor Lash, at this point in this fascinating discussion Sherrilyn Ifill has just expressed interest and respect in, in Professor Allen's suggestion that we have a sort of thoughtful dialogue about the balance between national and state power but is more skeptical that that sort of thoughtful conversation is possible without constitutional-level reform, given structures like the Electoral College and other forms of distribution of power between urban and rural areas that make coordination difficult. What does history teach us about the conversation that Sherrilyn Ifill and Professor Allen are having and how successful were the first and second Reconstructions, if you want to call them that, in achieving the coordination that everyone seems to agree is, is helpful.

**Kurt Lash:** [00:42:22] It's ... Thank you, yeah. The, the idea of, of where to center the power to effectuate the reforms or the, or the reconstruction is always a part, always a part of debates. And the, the arguments over federalism, of course, were a, a major part of

antebellum debates. Interestingly enough, it was the slaveholding states in the South that wanted to use national power to take slavery north into the, into the free states. And it was the abolitionist states, whether it's Wisconsin or, or Massachusetts who stressed the founding ideal of federalism that protected their right to oppose slavery and protected their right to protect their Black citizens from any abuses of power coming from, from the federal government.

So, it's, and then once you get into, into reconstruction itself, you had, you had Radical Republicans who wanted to do away with general notions of dual federalism but you had mainstream Republicans who actually continued to believe that that type of dispersion of power was extremely important and they insisted on following the dual federalist approach to constitutional reform.

So, but, it's always ... So, it's debated of course that federalism today is debated whether we should still have this type of dual system, whether we should still have a Senate made up of states with equal representation in the Senate regardless, regardless of population. We're still arguing over whether centralization or decentralization or some type of balance between the two is the most appropriate way to effectuate the principles of the founding upon which we all agree.

And, and that is what I find really remarkable about our conversation today is so much so much of it is based upon principles which are in the Constitution, which are already declared in our fundamental documents, already declared whether in the Declaration of Independence and the, the principles of equality there or whether how those principles became instantiated through the 13th, 14th, and 15th, 15th Amendments.

There's this aspect to American Reconstructions that is always backwards looking, backwards looking in the sense of calling us to first principles. This is Dr. King, right, in his I Have a Dream speech, which he, which he gives in front of Abraham Lincoln, right there at the Lincoln Memorial and he invokes the visions of the architects of our republic who wrote the magnificent words of the Constitution and the Declaration of Independence. It's this calling back, it's this calling back to find new ways to further principles upon which we all agree and that's the difficulty, it seems to me, in facing anyone trying to structure a third Reconstruction right now, because we're a nation divided obviously. We're deeply divided along, along political and ideological lines and, and that divide focuses on very different ideas. You have one side that tends to focus on, on, on principles of, of equality and political participation and, and federal investment inequality and, and political participation. You have another side that is focused on the abuses of government power and concerns about coerced ideological conformity and excessive government power and concerns about liberty as opposed to equality. And so, those two, these are both deeply rooted in the Reconstruction amendments themselves, principles of equality and principles of liberty, but in many ways their intention, their intention with each other.

And Jeff, I'd, you have often referred to constitutional guardrails. I think I've heard you talk about that in the past. Rather than thinking in terms of a third Reconstruction, I have found myself more and more thinking about your insight into constitutional guardrails and maintaining attention between equality and, and liberty because those two held in balance, I

think present a possibility for forward movement that, that can include the broad body, broad body politic. Whether we need a third reconstruction or simply a furthering of what we have, that's, that's the debate we're having.

**Jeffrey Rosen:** [00:46:22] Thank you very much for that, Kurt. The guardrails idea is certainly not mine but the Constitution Center does have an exciting initiative exploring how to resurrect the guardrails of democracy and convening scholars and thought leaders have different perspectives to propose reforms to resurrect those guardrails. So, at the end of our conversation, which will happen by 1:45, just so everyone expects it, I'm going to ask each of you to propose one guardrail for equality or democracy that you would propose.

But before we do that, we have one, we have time for one last round and just this wonderful substantive discussion. And Professor Codrington, I'm going to ask you to pick up on Professor Lash's suggestion that there's a tension in this country between an emphasis on liberty and equality and as you reflect, how is that playing out on the, on the courts? And just to put the question this way, the first Reconstruction many agree was thwarted by the Supreme Court as well as by Southern redemption, which struck down the Civil Rights Act of 1875, which upheld segregation and which thwarted the promise of the Amendment. This, the second Reconstruction you have argued was, for a time, fulfilled by the convergence of the Warren Court and landmark decisions, the cooperation of the presidency and the active participation of Congress.

Now, as Professor Lash says, we have a division on the current Supreme Court between the meaning of equal protection clause itself, is, is it color-blind and focused more on individual equal liberty or is it devoted more toward equity and equal opportunity and remedying past discrimination? Talk about that division. What role, in your view, would the courts have to play if the third Reconstruction that you're arguing is to come to pass and how do you see the relationship between the courts, Congress, and the presidency moving forward?

**Wilfred Codrington:** [00:48:13] Sure and I just want to quickly pick up on what Professor Ifill said. She talked about this convergence of race and power, which I just think is so profound and so accurate. And she mentioned the Electoral College, which I've also written an article for The Atlantic and National Constitution Center. I think that the Electoral College is and always just has been one of these repudiations of actual democracy and, and the will of the people, right?

And, and so even what occurred in Jan- at January 6th, you know, like, that would not have been able to occur without the whole processes that the Electoral College sets into pace to occur, right? You had to have this normal counting and all this other stuff. So that working in concert with the Senate gives us a Supreme Court that actually is less reflective of what the American people want and look like. And, and so that brings me to your point, what, what we should expect from the Supreme Court.

You know, after the first, after the first Reconstruction, we had a series of cases, your Slaughter-House Case that gutted the Privileges or Immunities Clause. We had the civil rights cases which created the state action doctrine and, and gutted the Civil Rights Act. We had Plessy, which sanctioned racial apartheid in America for, for the foreseeable future. We saw

something similar to that. And so, while we had a liberal Warren Court working in concert with Congress and the president during the 50s and the 60s. We saw, shortly after that, a series of cases that showed that the Warren Court was gone. We quickly had *Washington v. Davis*, which basically said, you know, your disparate impact is not enough to show that there is discrimination going on. You had the *Regents of California v. Bakke*, which put out this idea of a color-blind Constitution in the higher education and admissions, this idea of color blindness, which went back to Harlan's dissent in *Plessy*, but his was more a different take on it, right, like saying that, "You know, we have this ideal of color blindness." And here in *Regents*, we, we saw Justice Powell saying, "The Constitution is inherently color-blind and that's how we'll continue this this progeny of cases." And then we saw the *City of Mobile v. Bolden*, which basically put those two ideas into the democratic system, right?

So, this idea that you need to show intent and, and disproportionate impact in election discrimination wasn't enough and, and this idea that we have this color blindness that is going to rule the day. So, what we see now is we have the, the convergence of the Electoral College and the Senate giving us an extremely [inaudible 00:54:03] Supreme Court right now that seeks to prioritize certain values that they think the American people should be embracing and one of those values I, I fear is just not equality, right? Maybe it's liberty, certain types of liberty. There's corporate liberty that they seem to embrace, which is a, a bizarre twist on the 14th Amendment's liberty of due process clause. There's religious liberties of some religions seem to get priority over others, but I don't think that the ideas of certainly racial or liberty for other people to prosper, the sort of liberties that you need to be able to have to actually have a prosperous life. And certainly, as I said, equality is, is sort of just not even in the picture anymore. We see that in racial equality. We don't see it in our policing. We don't see it in education. Wealth was off the table during the 70s as a protected class.

So, I do think we are seeing certain things prioritized by the Supreme Court. It is unlike what we've seen in some time and I, I fear that if we don't see actual constitutional reforms, actual constitutional guardrails, as Professor Lash said, it gets worse before it can get better.

**Jeffrey Rosen:** [00:52:20] Thank you very much for that. Professor Allen, you have written powerfully about the color blindness ideal as a constitutional ideal and, and expressed sympathy for it. If the Supreme Court were to continue to embrace color blindness as an ideal in cases ranging from voting rights cases to affirmative action cases, would that, in your view, represent a fulfillment or a thwarting of the promise of the third or continuation of the first Reconstruction and given the, the strong division of opinion about what the Constitution means when it comes to color blindness and equality do- does that make you optimistic or pessimistic about hopes for the kind of reasoned federal/state dialogue that you suggested?

**William Allen:** [00:53:01] Well, I must say that your, your question provides the answer immediately, namely that today's opinion does not forecast tomorrow's opinion. [laughs] So, even if one embraced the robust notion of color blindness today, it doesn't indicate how one would interpret it tomorrow even if what embraces a robust notion of democracy today, it doesn't forecast how one will interpret it tomorrow. And you see this operative in this



discussion of the Electoral College. To dismiss the Electoral College as a static expression of racist or undemocratic intention is to fail, as I see it, to understand how it came to be and the role it had played. It has had a historical significance quite apart from its origination and to interpret it properly, one has to be able to distinguish those things and ask, okay, let's assume for a moment that whatever was intended when the Electoral College was drafted in the Constitution must we not ask the question what were the outcomes and consequences of it? And scholarship has shown for a very long time, of course, that many of those outcomes and consequences had no relationship to the intention of the people who drafted that provision, as for example the necessity of the two-party system.

So, so, that we have a tendency to glibness. We, all of us, that's an academic liability that misleads us often. We forget, for example, just to go back to our broader conversation, that in 1783, the original three-fifths clause had specific notice of the existence of other free citizens in the United States, excluding Indians not taxed. Those were Black people. So, the original three-fifths clause recognized Black people as fully human and free and therefore also indicated the nature of the problem for the next 250 to 300 years. What are we going to do with them? How are we going to absorb them? That has been our dilemma from the beginning and it is a continuing dilemma and that dilemma is not resolved unless we can say to ourselves, "We know not only what spare structural, institutional, or legal provisions we can dream up, but we also know what's actually happening to people."

Now, let me illustrate that for you, because that seems to be is more important than anything else we've discussed. Between 1860 and 1890, the Black population of the United States doubled. In that 30 years following the end of slavery, the population doubled. Had it continued to increase at that rate, it would be three and a half to five times its present size in the United States.

So, what is the concrete reality that that portrays for us? It portrays that those systemic or structural features that people so often talk about had their impact at a very early stage on diminishing the political significance of the population in the country. It wasn't so much the health concerns or the environmental concerns. It was that there, there was a trajectory there that was simply incredible in human history and was not characteristic of any other element of the population that would have assured, for example, that Black people would remain of a long time to come the largest minority in the country, but for the onrush of immigration, and even then maybe still so.

So we've seen dynamic changes take place on the ground and we see, first of all, the resilience and the resourcefulness of that immediate population that exited slavery. They didn't double by just sitting around doing nothing. They, they, they doubled because there was energy, intelligence, and exertion among them, a coping under difficult circumstances. And unless we have the ability to understand how people can cope and survive, no matter their circumstances, we cannot help them, period. There is no legal provision. There is no structural provision. There is nothing that doesn't begin with recognizing the intrinsic resourcefulness of people, that sense of agency which will take control of their lives and also drive the larger framework as long as they are not being oppressed by abstract interventions

that undercut, and those abstract interventions are both benign and malign. It's Jim Crow and I suppose Jimmy Eagle, if I'm to quote the president. [laughing]

**Jeffrey Rosen:** [00:57:22] Thank you, thank you, thank you for that. Sherrilyn Ifill, your response to another very powerful comment of Professor Allen that democracy and agency is as important as law and policy in fulfilling the promise of equality and then your reflections about given the strong division of constitutional divisions on the Supreme Court is it possible in practice that the third Reconstruction that you envision might come to pass or might, might the kind of laws that you're arguing be for be, be struck down or narrowed by the, by the U.S. Supreme Court?

**Sherrilyn Ifill:** [00:57:54] So, I first want to say how taken aback I was first by William's recitation of precisely what, what happened to the, to the Civil War Amendments since he walked through the, you know, civil rights cases and Slaughter-House and so on and so forth which I try not to get think, think about all at once, just so I won't be depressed and can continue to do my job. But, but it was important for him to set that forth because I do think and I've been talking about this a lot lately. It's kind of it and I suppose we don't do it because it's so hard for us to get our hands around it.

The project of pushback, again- against full citizenship and dignity for Black people is a powerful, heavy, decades-long, centuries-long project. There's a lot of resources that are brought to bear to fulfill that project. And we at our peril, we underestimate. It's not just a bunch of haphazard things happening and when William describes the march, you know, how, how we end up not, you know, with privilege and immunities. No, you know, all of a sudden there's state action. Like, all of these elements are brought to bear to diminish what is this infrastructure or this architecture of the Civil War Amendments that suggests that full citizenship is possible for Black people living in this country. So, I just want to first say that because that's really important.

The second thing is about what William Allen just said about resilience. And I just want to ... I'm not gonna spend a bunch of time on it. I'll just say that you, you confirmed for me my own, my own curriculum because beginning, I guess four years ago when I had a conversation with Isabel Wilkerson right after the 2016 election about a week later, we were doing an event at the University of Maryland along with Taylor Branch, the great civil rights historian. And she told me then and I was trying to sound very helpful because that's my job and she told me then that she thought we were entering the nadir or the nadir and I believed her, but I pretended like I didn't because I just couldn't, I couldn't accept it.

But what I did do to hedge against the possibility that she was right is that I began a kind of curriculum for myself studying the nadir to understand what did Black people do in this period of tremendous oppression and pushback, this is post-slavery, this is, you know, early, early 20th century, you know, 1890s to 1920s or 30s, what did we do during the nadir? That's the course of study I've been on actually for the past few years. And so, I read all kinds of books and all kinds of accounts and I, that's a different conversation that we could have about what I learned about what I think and it guides some of what I'm doing now around how do you ensure the resilience of people to be able to withstand that, that the bets that you're making on constitutional and statutory and civil rights change don't come to pass

because the people still have to be able to survive and be resilient. And so, that's always part of my mind too and one of the projects we have at LDF is called strengthening African American communities. And we devote litigation work to housing and to education and to employment and to transportation, all thinking about how do we shore up and ensure the integrity and the ability of Black communities to sustain themselves whatever the headwinds that are happening around. So, that's part of our work.

But to really answer your question Jeff, you know, do I think it's possible? I actually don't think we have a choice. The one thing that gets both feet on the floor every morning is that I think we are at such a broken place, at such a space of potential devastation as a democracy. We are so vulnerable that we have no choice. The, the only question is whether it will be as robust as it needs to be. You know, it's like a stimulus package right? Is it skinny stimulus or is it, you know, the stimulus you really need?

The only question is, to me, the scope of it because it actually must happen. And if it doesn't happen, the alternative is that we end up in a place where it cannot happen for some time to come and where democracy itself is in peril. So, I actually believe that we actually must make the elements of this new engaged period Reconstruction happen because we have our backs literally against the wall and I just want to add in, Jeff, that we can't forget two elements that are the, the, the poison pills, one of which existed in both the first Reconstruction and the second Reconstruction and that is violence. That is violence against those trying to make that change happen, violence in resistance to the, to the principles of equality, violence in response to the principles of democracy and so forth. And that exists again today.

But the new poison pill, the new poison pill is what the online platforms have provided. And so, I say this as a way of also kind of just an- answering your constitutional guardrails question, which is the unchecked and untrammled introduction of an entirely different world, a constructed reality without regulation capable of, of spreading misinformation, capable of sowing violence, capable of sowing discord, capable of constructing a world that feels real to the people who are in it is something that we obviously didn't have in the first or second Reconstruction and that we haven't confronted as a democracy yet. And yet, it is a poison pill that can undermine any project that any of us have suggested might be before us in this coming period.

And so, I think this is something we must grapple with. As I have said directly to Mark Zuckerberg and to Sheryl Sandberg and to others in this space, every public space in this country has been contested and you cannot create a virtual public space and think it will not be contested in the same ways, contested around race, can- contested around belonging, pre- contested around safety contested around women. All of that and we see it playing out on these platforms. And so, we, it's time for us to bring that public space into the dialogue, into the discord, into the discourse, into the infrastructure that we created to address the reality of inequality in the public, in the physical public space. And so I just think that's something a project that's before us and we cannot pretend that it is unrelated to these vital questions of democracy.

**Jeffrey Rosen:** [01:04:28] Thank you so much for that rich answer. Thanks for sharing your reading and your, your learnings and I will ask you to maybe share some of those with our friends so we can add some of those primary sources to our new founders and second founders library. And thanks also for suggesting a guardrail and you did indeed in 2019 in The Washington Post write a piece saying that Mark Zuckerberg doesn't know his civil rights history and that some willingness to address the question of online speech was necessary for achieving the promise of equality.

All right. We have five minutes left and Constitution Center programs, like Supreme Court arguments, always end on time. So, I'm going to ask each of you now to just in a sentence or two if you had to offer a single guardrail for democracy to fulfill the promise of the Constitution, of liberty, equality, and deliberation, what would it be? Professor Lash, I know you didn't have a chance for a full response like everyone else. So, you could have maybe another beat if you would like but let's try to keep to our five minutes and after a quick response to the very rich comments you've just heard, please give us your guardrail of democracy.

**Kurt Lash:** [01:05:38] Thank you. This has been wonderful. A great, a great conversation. I, I think I can answer that fairly, fairly briefly, if I can push the metaphor just a little bit and repeat what I said before. I would just pluralize guardrail into guardrails. We believe in separation of powers. That's one of the constitutional innovations that you get under the American Constitution where you divide power between the three national branches of government and between the national and state governments and you do that the better to secure liberty. The innovation to prevent any one institution from becoming too powerful and creating a form of tyranny. I think we should also think about balance of rights and, and preserve and pursue and advance both equality and liberty and refuse to give up either one. I think it is out of that maintained balance of those guardrails that, that liberty and equality will both best flourish.

**Jeffrey Rosen:** [01:06:33] Thank you so much for that concise and eloquent proposal. Professor Codrington, please share with our friends your proposed guardrail of democracy.

**Wilfred Codrington:** [01:06:42] Sure. So, I think just the guardrail democracy is actually investing in democracy and I think all too often, we've seen that there, that just doesn't happen, right? So, where you see long lines of people standing to actually exercise their right to vote. Where you see machine breakdowns, where you see this sort of backlash of voter suppression laws, right? The organization I'm affiliated with counted over 340 just in the, the beginning of this year, right, related to restricting the right to vote through whether absentee ballots or drop boxes that became so essential during the pandemic.

So, I think we need to invest in democracy. I'd like to just add to that. I'd like to see something done about the Electoral College and potentially an affirmative right to vote in our Constitution. We only protect the right to vote through anti-discrimination provisions and there is no actual positive right to vote in the Constitution.

**Jeffrey Rosen:** [01:07:43] Thank you very much for that. Professor Allen, your guardrail for democracy.

**William Allen:** [01:07:46] I should return us to color blindness. I will define it however in a way that you may not be accustomed to. I would call it the ability to see color without seeing a problem in color, which I illustrate by referring you to Harlan's dissent in *Plessy v. Ferguson*. He introduced the term color blindness but went on to write opinion in which he used frequently the term Black to describe Black people rather than the colloquial colored as a, an illustration of what he meant by color blindness, which has not been sufficiently observed in most commentaries since that time.

**Jeffrey Rosen:** [01:08:21] Thank you very much for that. And Sherrilyn Ifill, last word to you. You've given us one guardrail. Please suggest another and some final thoughts for our audience.

**Sherrilyn Ifill:** [01:08:29] Yeah. I just have to return again to, you know, the two things. The system of voting that allows people to have a voice and you know, those who, who control their lives. The entire civil rights movement around voting was premised on the belief by those activists that through voting, they could change the material condition of their lives. It was not just supposed to be ceremonial, a ceremonial expression of citizenship.

And so when we allow voter suppression to run rampant, we are removing from people the belief that they can change the material condition of their lives. And then lastly, there is nothing more reflective of your lack of citizenship than the fact that you can be vulnerable to the violence of the state without recourse and that means that the issue of police violence against unarmed African Americans has to be addressed and the George Floyd Justice in Policing Act is just the first step, just one step. It's a multi-layered approach that has to happen at the national and at the state level. I've been very encouraged to see the reinvigorated Department of Justice deciding that it's going to re-engage around the issues of not unconstitutional policing, but it's simply not possible to regard yourself as a citizen if the state can commit violence against you with impunity.

**Jeffrey Rosen:** [01:09:43] Thank you so much. Wilfred Codrington, William Allen, Sherrilyn Ifill, and Kurt Lash for an extraordinarily illuminating, thoughtful, deep, and productive conversation about whether we should have a third Reconstruction. You have given us hope that these kind of civil constitutional conversations can indeed spread light and we will do our part at the Constitution Center by continuing to convene them. Thanks to you, friends, for tuning in and devoting more than an hour of your day to educating yourself about the Constitution and look forward to seeing all of you again soon for another America's Town Hall. Thanks everyone. Bye.

**Jackie McDermott:** [01:10:26] This program was presented with support from Citizens. This episode was produced by me, Jackie McDermott, along with Tanaya Tauber, Lana Ulrich, and John Guerra. It was engineered by the National Constitution Center's AV team. Please rate, review, and subscribe to the show 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.