
THE REPUBLICAN PARTY’S FIRST 100 DAYS

*Joshua Braver**

Joe Biden’s first 100 days may be the beginning of a new constitutional order or a “realignment.” Recent realignments have been inaugurated through an overwhelming electoral victory that seems to almost wipe out the opposition. But in an era of negative polarization and Republican entrenchment in the Senate and Electoral College, such wave elections for Democrats are very difficult. The path to realignment for Democrats is through the crackup of the Republican party, a possibility created by an electoral system that forces Republican leadership to cater to its radical and zealous base at the expense of its broader coalition. The best precedents then to help think through the present is not the realignments of the twentieth century, but the one that was accompanied by the crackup of the Democratic party in the election of 1860 and that led to the Civil War. Given the strong fit of this analogy and that history never quite repeats itself, the path ahead is filled with both great promise and great peril.

After a period of democratic decay prolonged by a dying political party’s entrenchment in the electoral system, a realignment shifts power to a new or radically transformed political party with a new ideology. With its newfound dominance in the system, it uses that power to implement institutional change to dismantle the old party’s unfair advantage in the electoral system. The traditional examples of presidents leading such alignments are Andrew Jackson, Abraham Lincoln, Franklin Roosevelt, and Ronald Reagan. Joe Biden, according to many, is next in line.

If the phenomenon we are undergoing is an old one, why does today’s realignment all feel so extraordinary, so painful, and so much more fraught with danger? The problem is that in the months before the 2020 election, political scientists and constitutional theorists all had centered on the wrong means for realignment, the mean that held for most of the twentieth century: a blowout election in which the candidate receives a striking majority of the vote. This is a clean, easy victory: the new dominant party gives a knock-down blow to the opposition. As much as many Republicans dislike Donald Trump, they hate those socialist democrats even more, which has given giving a firm ceiling to Joe Biden’s victory. And given the Republican skew of the Electoral College, the

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Senate, and gerrymandered house districts, Democrats have to win striking victories to just achieve bare majorities in any of these institutions.

That means the common historical analogies fail to illuminate our current predicament. Pining for a new "New Deal," progressives most often compare Biden to Franklin D. Roosevelt. The comparison obscures as much as it clarifies. In the 1932 election, Roosevelt only lost six states, and his popularity in the first 100 days soared. In his first 100 days, while evasive and inconsistent about his exact ideology and policy content of the New Deal, Roosevelt boldly celebrated his own experimentation and daring. Indeed, the idea of the first 100 days as a category in which the president imprints his stamp on the future direction of the country is a Roosevelt-era invention. By contrast, Biden lost significant and concentrated portions of the vote, and his popularity is well-below average for a president early in this term. Perhaps his agenda has been as bold as Roosevelt, but he declines to call attention to that novelty because polarization means politicizing an issue makes its passage more difficult. As striking as Biden's policies may be, they are only a half-step towards a realignment because they do not signal or beckon for a new language of legitimation but instead avoid much self-characterization altogether.

Even more misleading are the reigning comparisons of the state of the Republican party to other losing parties in realigning elections. Commentators have repeatedly compared the state of the Republican party to the dissolution of the Federalists or the Whigs after crushing electoral defeats or the huge setback for the Republican party in the wake of Roosevelt's victory in 1932. No doubt, the Republican party is undergoing a large transformation, but it is a liberal pipe dream to think that this change is the equivalent of a semi-permanent defeat.

Given the Republican party's entrenchment and given polarization, how will Democrats ever gain enough power to transform the political system? How can Democrats ever enough votes to admit D.C. and Puerto Rico as States, pack the Supreme Court, abolish the electoral college, and replace gerrymandering with independent commissions? The Democratic party's best bet is the wrenching and chaotic fracturing of the Republican party in response to the provocations of its most radical wing.

This would not be unprecedented: The Republican party's dominance in the late nineteenth century began when a Democratic party that had dominated elections for decades lost the 1860 election because its northern and southern wings badly split over how to manage the tension between black slavery and white republicanism. The Democratic party was a coalition between southern aristocratic slaveowners on the one hand and northerners devoted to Jacksonian ideals of white man democracy on the other. The degree of support for slavery in the northern wing varied, but the vast majority certainly did not oppose slavery prospering in the South or it even spreading to new territories if majorities in those territories approved it. For the most part, Northern democrats' only concern was whether slavery would impinge on the white man's rights.

The Democratic party dominated the political system, and the election of 1860 should have been a cakewalk. With the three-fifths clause giving the South

an extra boost, the Democratic party had a systematic edge that helped it win six of the last eight presidential elections since the party's first historic victory in 1828.¹ Stephen Douglass, from the swing state of Illinois and the favored candidate of the northern wing of the party, would skate to victory by easily holding onto the Southern states and then winning some combination of deeply catholic and democratic Pennsylvania, and either the lower north states of Illinois or Indiana. Douglass knew that the issue of slavery's extension into the territories could tear the party apart and attempted to forge a compromise called popular sovereignty in which each territory would decide for itself whether it would allow slavery. A more pro-slavery position would have made it more difficult to hold onto enough northern states to win the 1860 election.

But the "fire-eaters" and other radical members of the pro-southern wing tore the Democratic party in half. They would not let the slavery issue rest, pushing it to the forefront of the National agenda, inflaming tensions as much as possible to try and achieve their maximalist goals. They refused to let the territories of Kansas and Nebraska decide for themselves whether they would be a slave or free state through democratic means, alienating their northern counterparts who were repulsed by the fire-eater's fraud and violence. In response to this crisis, called "bleeding Kansas," Senator and abolitionist Charles Sumner took to the House to condemn southerners and besmirched their honor by insinuating that they slept with their slaves.² Most Democrats considered Sumner a reckless loud-mouth who deserved punishment. But by brutalizing Sumner with a cane rather than challenging him in a duel, southern congressman Preston Brooks sent the message that Sumner had no more right to be free from a beating than did a slave.³ For northern democrats, it was a signal that the South's quest to protect slavery would come at the expense of white men's freedom.

The straw that finally broke the camel's back was a fight over the Democratic party's platform in the 1860 election. Rather than ride Douglass' popular sovereignty platform to electoral victory, delegates from deep southern states insisted that the platform include a call for Congress to pass legislation, if necessary, protecting the right of individuals to have slaves in all parts of the United States. When the South was outvoted, their delegates left the Convention, held a new one, and nominated their candidate whose appeal never extended beyond the South. Meanwhile, Republicans chose Lincoln because, as a moderate from the swing state of Illinois, he was the electable or, as they would say at the time, "available" candidate.⁴ With the Democratic party fractured, Lincoln won the election of 1860 with only a plurality of the vote.

1. Cf. AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* 158 (2005).

2. For the classic overview of these events and the lead-up to the Civil War, see DAVID M. POTTER, *THE IMPENDING CRISIS, 1848-1861*, at 199-225 (2011).

3. Manisha Sinha, *The Caning of Charles Sumner: Slavery, Race, and Ideology in the Age of the Civil War*, 23 J. EARLY REPUBLIC 233, 245 (2003).

4. For the split within the Democratic party, see MICHAEL F. HOLT, *THE ELECTION OF 1860: A CAMPAIGN FRAUGHT WITH CONSEQUENCES* 51, 55-64, 115-33 (2017). On the "argot" of availability, see *id.* at 88.

In the 2020 election, the Democratic party settled on Joe Biden too because he was the “available” or electable candidate. Just as with Stephen Douglass, it was Donald Trump’s election to lose, and lost he did. Douglass lost the election because southern radicals alienated northern moderates, and Trump lost the election because he was emblematic of the anti-democratic wing of the party that alienated suburban moderates. After Donald Trump’s loss, the loss of two special elections in Georgia, and the January 6th insurrection, there was hope that the excesses of the party were so horrible and the costs so high that it would surely moderate itself.

But polarization, the primary system, and electoral entrenchment protect Republican radicals from the consequences of their own actions. So instead of distancing themselves from the past, a majority of the party continues to stridently defend January 6th insurrectionists, push anti-democratic electoral administration measures, and compete for the approval of Donald Trump, including by defending him in impeachment hearings. In so doing, they continue to alienate moderates the business and suburban wings of the party, as highlighted by the record-setting number of Republican Senators who voted for impeachment and the increasingly fractious relationship between House Leader Kevin McCarthy and GOP conference chair Liz Cheney.⁵

History rarely repeats itself. Thank god for that; few want another Civil War. The realistic hope for progressives is that unlike in the 1860s, in this polarized of the twenty-first century, the new dominant party can have the cake and eat it too. The hope is that the Republican party will fracture, but this time due to a different geographic mapping of the parties, no Civil War will break out. After resetting the political system on a more democratic and just basis and in order to compete in this majoritarian system, a new and more moderate Republican will arise. But darker possibilities loom. The Republican party may not fracture; its Trump wing is far more powerful and numerous than its 1860 southern counterpart. Trump may have already conquered the party. In that case, the success of Biden’s future 100 days may seem an aberration as we return to and intensify the new norm of ever heightening culture wars amidst even more crippling policy deadlock and stagnation. A historical analogy can help narrow the range of possibilities, but it cannot tell us whether these 100 days are the inauguration of a new political era or just a pause before the return to the old unbearable grind.

Joe Biden’s first 100 days were a smashing success. But the increasing radicalism and infighting in the Republican party in these initial months is far more telling of what the future may have in store. Unlike in 1860, that future is unlikely to be a civil war. It may inaugurate a reset of the political system or just give us more of the same intolerable stalemate.

5. Melanie Zanona, *McCarthy and Cheney Worlds Apart After Florida Retreat*, POLITICO (Apr. 27, 2021, 2:19 PM), <https://www.politico.com/news/2021/04/26/mccarthy-cheney-gop-484756> [https://perma.cc/E7Y5-6SZQ].