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## Reflections on the Election Fiasco in the United States\*

*Donley T. Studlar*

Two prominent Canberra-area academics, Mackerras and McAllister<sup>1</sup>, have said that ‘Australia probably is the most voter-friendly country in the world’ in terms of making it easy for voters to cast their ballots. The United States, of course—as we discovered in the presidential election of 2000—has one of the most voter-*unfriendly* systems in the world.

Over the years, of course, the US has taken from Australia one major innovation, the secret ballot—sometimes still called the ‘Australian ballot’. But we have not paid much attention to or adopted other practices such as preferential voting, the single transferable vote, or mandatory voting—despite the pretensions we have in the US about instructing others in democracy, and sending missions abroad to see that elections are conducted fairly. It was therefore particularly embarrassing in the year 2000 that, in an election for the most powerful office in the world, we had what I describe as a ‘fiasco’. How else could you describe a system where it was hard to determine the winner, there were a lot of contentious positions—and the problem went on for *37 days*? Some people compared it to a third world election, and in fact the following list comes off the Internet; the message here is that what went on in Florida is very similar to what you might expect in an underdeveloped country—

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<sup>1</sup> M. Mackerras and I. McAllister, ‘Compulsory voting, party stability and electoral advantage in Australia’, *Electoral Studies*, vol. 18, no. 2, June 1999, p. 223.

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***The Strange Third World Election***

1. Imagine that we read of an election occurring anywhere in the Third World, in which the self-declared winner was the son of the former prime minister and that former prime minister was himself the former head of that nation's secret police (CIA).
2. Imagine that the self-declared winner lost the popular vote but won based on some old colonial holdover (the electoral college) from the nation's pre-democracy past.
3. Imagine that the self-declared winner's 'victory' turned on disputed votes cast in a province governed by his brother!
4. Imagine that the poorly drafted ballots of one district—a district heavily favouring the self-declared winner's opponent—led thousands of voters to vote for the wrong candidate.
5. Imagine that members of that nation's most despised caste, fearing for their lives/livelihoods, turned out in record numbers to vote in near-universal opposition to the self-declared winner's candidacy.
6. Imagine that hundreds of members of that most despised caste were intercepted on their way to the polls by state police operating under the authority of the self-declared winner's brother.
7. Imagine that six million people voted in the disputed province and the self-declared winner's 'lead' was only 327 votes—fewer, certainly, than the vote counting machines' margin of error.
8. Imagine that the self-declared winner and his political party opposed a more careful by-hand inspection and re-count of the ballots in the disputed province or in its most hotly disputed district.

None of us would deem such an election to be representative of anything other than the self-declared winner's will-to-power. All of us, I imagine, would wearily turn the page, thinking that it was another sad tale of pitiful pre- or anti-democracy peoples in some strange elsewhere.

This was something to which the US might object, if it went on elsewhere in the world.

*The Economist*, in its satirical and pithy way, had a front cover called 'In the Mire'. It depicted the Statue of Liberty, in the mire, surrounded by alligators (this is Florida, after all). This was after two weeks of post-election wrangling. How could you describe the election as anything other than an international embarrassment and a fiasco?

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Some Australian friends of mine have made comparisons with what went on in Australia in 1975, when the Governor-General dismissed the Prime Minister and the government. There was a lot of debate in the US in 2000 as to whether the election imbroglio constituted a real ‘constitutional crisis’. Certainly if it was not a constitutional crisis, at a minimum it was a fiasco.

To refresh your memory, I shall quickly review the basic facts of the election. The turnout of voting age population was relatively low. The real problem for voters was getting onto the electoral roll. Eighty percent of the people who are registered in the US actually turn out to vote, but a lot of people are not registered. Thus there was a little over 50 percent voting turnout. There were huge gaps in candidate choice among some sectors of the population—there was a gender gap, there was certainly an ethnic gap, but not so much of an age gap in the electorate. Their votes determined the electoral votes apportioned to each of the states, usually on the basis of winner-take-all—that is, a plurality of the popular vote. A plurality of the vote in a state results in one candidate receiving all of that state’s electoral votes.

There were 105 million people who voted in the election of 2000. Al Gore received 49.9 million—the most ever for any presidential candidate because of population growth. George W. Bush received 49.4 million, some 500 000 votes less. But, in terms of *electoral* votes, Bush received 271 and Gore 266, out of a grand total of 538 (one elector chosen for Gore refused to cast her ballot as a protest). Of course, whoever won the plurality in Florida—and it was a plurality, because of third party candidates—would win all of that state’s 25 electoral votes, and that would make the difference. The two Supreme Court decisions in *Bush v Gore* effectively ended the recounting in Florida and made Bush the President.

I do not propose to talk about Supreme Court decisions here, although I’ll try to answer any questions you may have. Even those who supported the decision have had a hard time explaining the logic behind it. The kindest thing that one can say—and this is from *The Economist*—is that the decision was ‘incoherent at best’.

The developments surprised not only foreign observers, but also many in the US. Polls show that about 70 percent of the population in the US recognise that the Electoral College, not direct popular vote, chooses the president. But only about 40 percent of the population can explain how the Electoral College works. I daresay that percentage will be higher in the next few years.

It is over 100 years, namely the election of 1888, since the Electoral College has been a determining factor in the outcome. This was the last time that the popular vote winner was not also the victor in the Electoral College. The results of the 2000 election perplexed many foreigners, as it confused many Americans. We also discovered other things that relatively few people know about—for instance the very decentralised system of registration, ballot formation, and vote counting that goes on in the US. After all, the presidency is the most powerful office in the world, and yet it depends on county commissioners and election boards in various places, all of whom do things somewhat differently. This election was so close that everything was

important, as will always be the case when the results are less than the margin of error in any public opinion survey.

One of the features that got a lot of attention was the infamous ‘butterfly ballot’ in Palm Beach County, Florida. There was a lot of confusion caused by the design of the ballot paper. Florida law specifies that the ballot paper is supposed to list the parties in order of the vote they received in the last gubernatorial race. On the ballot paper, the Republicans were listed first and Democrats were listed *second*—but to vote for them, one had to go to the *third* hole on the punch card ballot paper. This led to a lot of what were called ‘over votes’—people voting for more than one candidate—and people mistakenly voting for the Reform candidate, Pat Buchanan.

OFFICIAL BALLOT, GENERAL ELECTION PALM BEACH COUNTY, FLORIDA NOVEMBER 7, 2000		OFFICIAL BALLOT, GENERAL ELECTION PALM BEACH COUNTY, FLORIDA NOVEMBER 7, 2000	
ELECTORS FOR PRESIDENT AND VICE PRESIDENT  (A VOTE FOR THE CANDIDATES WILL ACTUALLY BE A VOTE FOR THEIR ELECTORS.)  (VOTE FOR GROUP)	(REPUBLICAN) GEORGE W. BUSH PRESIDENT DICK CHENEY VICE PRESIDENT	1 →	← 2 ← 4 ← 6 ← 8
	(DEMOCRATIC) AL GORE PRESIDENT JOE LIEBERMAN VICE PRESIDENT	3 →	
	(LIBERTARIAN) HARRY BROWNE PRESIDENT ART OLIVIER VICE PRESIDENT	5 →	
	(GREEN) RALPH NADER PRESIDENT WINONA LaDUKE VICE PRESIDENT	7 →	
	(SOCIALIST WORKERS) JAMES HARRIS PRESIDENT MARGARET TROWE VICE PRESIDENT	9 →	
	(NATURAL LAW) JOHN HAGELIN PRESIDENT NAT GOLDBABER VICE PRESIDENT	10 →	
	(REFORM) PAT BUCHANAN PRESIDENT EZOLA FOSTER VICE PRESIDENT		
	(SOCIALIST) DAVID McREYNOLDS PRESIDENT MARY CAL HOLLIS VICE PRESIDENT		
	(CONSTITUTION) HOWARD PHILLIPS PRESIDENT J. CURTIS FRAZIER VICE PRESIDENT		
	(WORKERS WORLD) MONICA MOOREHEAD PRESIDENT GLORIA La RIVA VICE PRESIDENT		
WRITE-IN CANDIDATE To vote for a write-in candidate, follow the directions on the long stub of your ballot card.			

*The Palm Beach County ‘butterfly’ ballot paper, November 2000 (reconstruction)*

The irony here was that this butterfly ballot was in a county where the electoral commissioner was a Democrat. In reality it was an administrative error, rather than something that was intentional—but that, among other things, probably cost Al Gore the election.

Some political scientists over the years had called attention to the fact that there were problems with the US balloting system. In fact, the first outstanding scholar of what is called ‘electoral administration’, J.P. Harris, said in 1929:

Little progress has been made in the technology of election in this century. Probably no other phase of public administration is so badly managed. Our elections have been marked by irregularities, slipshod work, antiquated procedures, obsolete records, inaccuracies and many instances of downright fraud.<sup>2</sup>

Harris, ironically enough, later helped popularise the punch card as a voting mechanism.

<sup>2</sup> J.P. Harris, *Registration of Voters in the United States*, Washington, Brookings Institution, 1929, p. 3.

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The prominent political scientist V.O. Key in 1964 said essentially that, despite improvements in many jurisdictions, Harris' conclusions of 1929 would still be true. He went on to argue that election administration should be simple, but party politics interferes.<sup>3</sup>

Another prominent political scientist, Walter Dean Burnham, had argued that in the US liberal-individualist political culture, registration and voting are not held in high regard. 'American election law has not placed facilitation of voting high in its scale of values.'<sup>4</sup>

Finally, political scientists Darcy and Schneider in 1989 wrote:

New technology has brought about constraints on ballot organisation unanticipated in state legislation directed at paper ballots and lever machines. In an environment of neglect by both political scientists and state legislation, election officials have begun using ballot organisations that save money, are easily and quickly counted, and are convenient to administer. These are not necessarily the most effective ballots for expressing voter intentions, however.<sup>5</sup>

In other words, I could have entitled this lecture 'Fast, Cheap and Out of Control'.

Most political scientists did not realise these problems existed because electoral administration is not a topic on which US political scientists have concentrated recently. There is more focus on it in places like Australia. In fact, the head of my program at the Australian National University, Marian Sawer, has a new book on electoral administration in Australia.<sup>6</sup>

But there were other warnings. The National Bureau of Standards in 1988 documented the problems with punch cards, and recommended that they be replaced.<sup>7</sup> Voting machines are still popular, however, particularly in the northeastern part of the US; once they were thought to be 'state of the art' technology. In fact, parts for voting machines have not been manufactured since 1987. So whenever a voting machine fails—and they do—then that particular county has to move to a different method of voting. Perhaps the most important popular recognition of the problem was a *New Yorker* article in 1988, which foreshadowed many of the problems that occurred in Florida in 2000.<sup>8</sup>

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<sup>3</sup> V.O. Key, *Politics, Parties, and Pressure Groups*, 5<sup>th</sup> edition, New York, Thomas Y. Crowell Company, 1964, p. 624.

<sup>4</sup> Walter Dean Burnham, 'The United States: the Politics of Heterogeneity', in Richard Rose, ed., *Electoral Behavior: a Comparative Handbook*, New York, The Free Press, 1974, p. 684.

<sup>5</sup> R. Darcy and Anne Schneider, 'Confusing ballots, roll-off, and the Black vote,' *Western Political Quarterly*, vol. 42, no. 3, September 1989, p. 362.

<sup>6</sup> Marian Sawer, *Elections: Full, Free and Fair*, Leichhardt, NSW, The Federation Press, 2001.

<sup>7</sup> Roy G. Saltman. *Accuracy, Integrity, and Security in Computerized Vote-tallying*. Technical report, National Bureau of Standards (now NIST) special publication, Gaithersburg, Maryland, 1988.

<sup>8</sup> Ronnie Dugger, 'Annals of Democracy: Voting by Computer', *New Yorker*, 7 November, 1988.

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Thus there were a few political scientists, journalists and technical specialists who had warned that problems could arise. In fact problems occur all the time, but they are normally at the local level and do not reach the level of national consciousness.

I want to focus now on three things that come between a citizen casting his vote and how that vote is counted or not in the US, and particularly what happened in 2000—first, the general voter registration and electoral administration procedures; second, the Electoral College; and third, the ballot design and its consequences.

## **1. General voter registration and electoral administration procedures**

In a recent article in *Electoral Studies*, Blais, Massicotte and Yoshinaka<sup>9</sup> survey the basic rules of who is allowed to vote in 63 democratic countries. The article indicated that there were two countries which could not be included in the analysis because their rules were too decentralised—Switzerland the US. Thus the US has an unusually decentralised electoral administration.

There is no general constitutional right to vote in the US, either in the original document or in the amendments, particularly the first ten amendments, also known as the Bill of Rights, to the Constitution. Most of the rules for electoral administration are established at the state level, and in fact—as we found out in Florida—often states only lightly supervise what goes on at the lower levels, the counties and the precincts. There is, however, broad scope for federal intervention, if the federal government would chose to do so. Relevant US constitutional provisions are:

- *Article I, Section 2*—which essentially says that the basic suffrage rules for what was the only popularly elected branch at the time (over two centuries ago), the House of Representatives, would be set by the states.
- *Article I, Section 4*—which discusses the broad scope for federal intervention.
- *Article II, Section 1*—this article talks about presidential electors and how they are to be appointed. The states appoint the presidential electors and Congress choses the time that these electors will be appointed.

It is only since 1860 that all the states have used direct popular elections to choose electors.

Although it was rendered superfluous by the Supreme Court decision, in early December, 2000, the Florida legislature was meeting—and was prepared to choose the electors themselves—if the election impasse had continued. That certainly would have been taken to court, but there is some constitutional reason for believing that that was entirely legal.

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<sup>9</sup> Andre Blais, Louis Massicotte and Antoine Yoshinaka, 'Deciding who has the right to vote: a comparative analysis of electoral laws', *Electoral Studies*, vol. 20, no. 1, March 2001, pp. 41–62.

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There is a factor, often overlooked in discussions of US election administration, which makes it unusual and helps account for some of the problems. Although there are many elections in the US—various special districts, primary elections within parties, referendums within the states (although never a national referendum)—every two years the US has a countrywide election to choose the House of Representatives. This election occurs on the first Tuesday after the first Monday in November. But the states have chosen—and I emphasise *chosen*—to make this a general election day not only for the House of Representatives and the President (every fourth year), but also for many state and local offices. The exact dimensions vary by state in terms of which legislative and executive offices are involved.

There are five states in the US that have what are called ‘off-year elections’; that is, they have made a deliberate attempt to insulate their elections for either governor or state legislature by holding them in a year when there is no congressional election. But this is obviously unusual.

Thus the US has all these of elections coinciding on one day, often resulting in very long ballots. This is one of the problems leading to voter confusion and the problem of what political scientists call ‘roll off’, or what was called in Florida ‘under votes’. In Australia, this is similar to ‘informal voting’. In the US, people do not vote for certain offices, either because they do not know anything about these offices and candidates, or they may just get tired. This is more likely to occur with the long ballot.

There is no federal constitutional rule that says that the House of Representatives elections have to occur at the same time as the presidential election. It wasn’t until the 1870s that this happened in the US. This could be changed. Certainly the states could change the dates for the elections for their own offices. The US has all of these elections coinciding, unlike a lot of other federal systems—Germany, Canada and Australia, to name three—where the states or provinces deliberately choose to have their elections at a time other than at the date of federal elections.

There have been some federal changes to voting rights—mainly extending suffrage to women, to blacks and to 18-year-olds by constitutional amendments. There have also been various non-discrimination laws (particularly in the 1960s). And in 1993 there was even what was called the ‘National Voter Registration Act’—popularly known as the ‘motor-voter’ law, because when citizens went to renew a driver’s licence they would be presented with a voter registration form. Problems were subsequently discovered with this system—sometimes the driver’s licence bureau did not forward the forms to the voter registration board, and it could also lead to people having multiple registrations. Thus the impact of ‘motor voter’ has been much less than intended.

There are also no uniform voter registration standards across the states. A person who may be eligible in one state may not necessarily be eligible in another. The rules differ in terms of waiting periods, for instance—the period of residence in the state prior to the election. Also, as made famous by the Florida episode, the rules that apply to felons or former felons differ. There are 14 states—and Florida is one of them—in which people with felonious criminal records receive lifetime bans from voting. At the other end of the scale, there are four states that have no laws about this

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whatsoever. And in between there are various gradations—for example, once someone is on parole or probation or after a certain number of years, felons can reclaim their voting rights in some states. In Florida, there was also the problem that the state of Florida had contracted with a private organisation to purge the voting roll of felons. There were so many errors made that some election officials in Florida found that they themselves were listed as felons, and were therefore ineligible to vote!

This situation is of significance particularly because of the high rate of incarceration of black males in the US, many on drug offences. The US has one of the highest percentages of prison populations in the world, particularly in the last 20 years, because of tough drug laws. It is estimated that one in eight black men in the US is disqualified from voting because of felony convictions and residence in one of the states in which this is grounds for disqualification from voting.

Not only are there no uniform rules of electoral administration across the states, even within states, the rules often differ. There are only seven states in the US that have a uniform statewide ballot form. Florida, embarrassed as it was, is one of the few states that have made major changes since the election, and it will be the eighth state with a uniform ballot form. Otherwise it is mix and match. There are, of course, different standards even concerning what constitutes a vote, hence the pregnant, hanging, and dimpled chads famously held up to the world's view last fall. There also are different rules across the states for the treatment of absentee ballots, with considerable local variation. Even when states have rules about the order of candidates there may be differences in how that is implemented, as with the Palm Beach ballot.

The general point is that electoral administration varies tremendously, depending on where one resides in the US. In fact, although the focus was on Florida in 2000, under slightly different circumstances it could have been another state in the dock. It could have been any of those states where there was a close result and questionable voting practices, even in one locality. For example in New Mexico, where less than 500 votes separated Gore and Bush, at one point a ballot box was reported missing. New Mexico could easily have been in Florida's position. The presidential election was so close that any state with three electoral votes would have made a difference—and all of them have at least three electoral votes.

## **2. The Electoral College**

We ignore the Electoral College for the most part, because it usually magnifies differences. A plurality vote winner in a state normally gets all of that state's electoral votes. Thus elections that are fairly close in terms of popular vote, like Kennedy and Nixon in 1960, in terms of electoral votes are much larger. What happened in 2000 was that the Electoral College took a close result and shrank it even further, so that those few hundred votes in Florida certified by the Supreme Court made Bush the victor, out of over a hundred million votes cast.

Presidential electors are not legally bound even to vote for the candidate to whom they are pledged, except in a few states. Over the past two centuries there have been dozens of cases of what are called 'faithless electors'—although this has never decided a presidential election—where people have cast their ballots for a candidate in the Electoral College, even though they were chosen to vote for somebody else.



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Although most Americans recognise that there is not direct popular election for president, they do not understand how the Electoral College functions. For the last 50 years there have been surveys conducted sporadically on what Americans think of the Electoral College, and they show that about 60 percent of the population of the US pretty consistently would like to switch to direct popular vote. As with many surveys, however, if one changes the question, one gets somewhat different results. For instance, adding ‘what if we switched to direct popular vote but it harmed small states?’ reduces the support level for abolition to about 40 percent. Small states do get a tiny advantage in terms of the Electoral College versus what they would have in a direct popular vote.

One of the curious things about the whole US electoral system is that most Americans have never seen the electors for whom they are literally voting when they go to the ballot box. In the 1992 ballot in the state of Oklahoma, where I was residing at the time, the electors for Democratic, Republican, Libertarian and Independent were listed underneath the candidates. There are only ten states in the US in which the electors are identified on the ballot. They are normally small states that do not have many offices at stake during a presidential election year. Thus there is room to list the presidential electors.

### **3. Ballot design and its consequences**

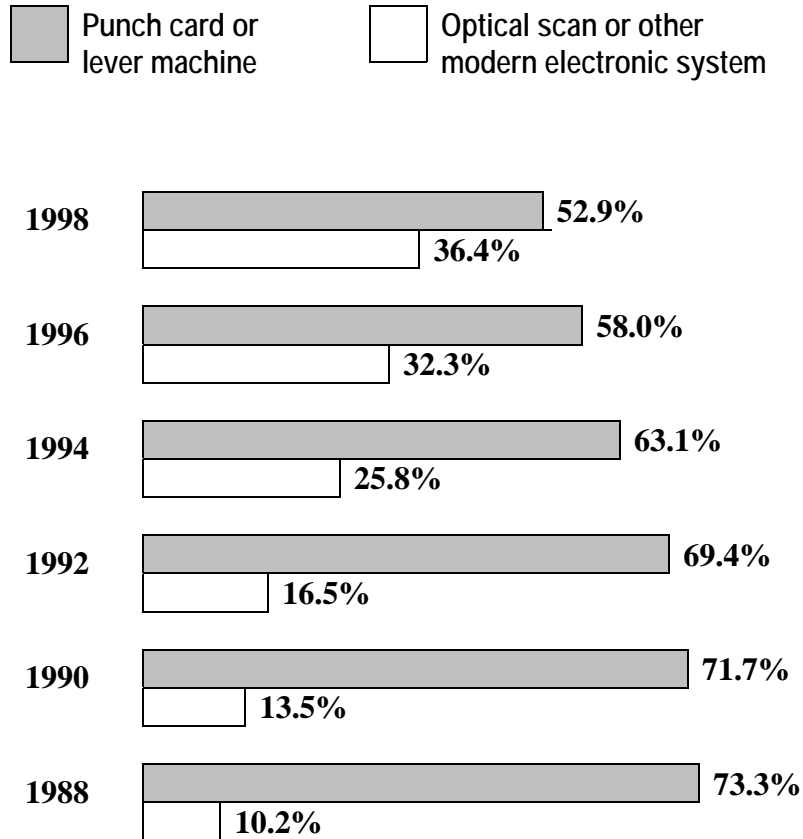
In 1975 the United States established a Federal Election Commission, which is mainly concerned with campaign finance regulations and ballot forms. The FEC periodically issues findings and pronouncements concerning voting technology and procedures. These admonitions are only voluntary, however; it remains for the states to choose to adopt them. Even states claiming to adhere to FEC guidelines often normally keep their old voting machines under ‘grandfather’ clauses. For instance, the website of the Federal Election Commission indicates that Florida in 2000 was one of the states claiming to abide by Federal Election Commission standards for their voting procedures.

Over the long term, the older ballot forms using punch cards or lever machines are declining, and the more modern forms—the optical scan, which is like a multiple choice test, and other modern systems—are increasing. However, it was estimated that in 2000, one-third of the population of the US was still using punch cards. The decision to change to more modern systems remains with the states, and sometimes even with the individual districts or counties within those states.

A majority of states are still using punch card ballots. Although that is not necessarily the only form they use, punch cards are quickly processed in larger population areas. An analysis based on the election districts in the US shows that 40 percent of the counties used optical scan, 20 percent used punch cards, 15 percent used levers, 12 percent used paper ballots, nine percent used electronic touch screen, and four percent were mixed. The US likes to think of itself as a high technology country, but in voting it is less technologically up-to-date than the grocery store counter, the bank cash machine, or voting in some other countries.

## How every vote is counted

Only slowly is new voting technology being deployed.  
Percentage of registered voters using :



What are the consequences of these practices? For decades, nationally, the roll-off (informal or under-vote) for president was about 2.3 percent. This could be because people chose not to vote for president—in effect saying ‘none of the above’—or they deface their ballot. In the state of Maryland in 2000, 0.52 percent didn’t vote for president. In Florida, the figure was higher than average, at almost three percent. This does not even include the over-votes. And in 21 of the 67 counties in Florida, the under-votes were more than six percent. These were mainly black and Democratic counties. But at least four states had greater roll-offs than Florida did. To repeat, what happened in Florida could have happened elsewhere as well.

Does ballot form make a difference? In Florida there were 24 punch card counties, with a roll-off of almost four percent, whereas in 24 optical scan counties, the roll-off was only 1.5 percent. So it would seem that ballot form does make a difference.

Under-votes are more common than over-votes (voting for more than one candidate). The problem in Palm Beach was the high rate of over-votes. Did this cost Democrat

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Al Gore a substantial amount of votes? There is substantial evidence that it did. For instance, Palm Beach County was the only county that used that butterfly ballot, and over-votes in that county were four percent. Over-votes for president in the rest of Florida were one percent. Furthermore, Palm Beach County used the butterfly ballot only for the presidential contest. There were so many presidential candidates it was decided to spread them over two pages. In the other races in Palm Beach County over-voting was no more prevalent than in races for the same offices in other counties in Florida. In other words, it is clear that the butterfly ballot in Palm Beach County cost Al Gore thousands of votes, and probably the presidency itself. Ballot forms *do* make a difference.

Since the election, upwards of 60 percent of the public are in favour of federal standards for voting, depending on the exact question asked. There have been lots of studies, a National Commission on Electoral Reform (co-chaired by former presidents Jimmy Carter and Gerald Ford), 1 500 legislative bills introduced in states, 60 bills in Congress--but relatively little action. Only three states have undertaken major reform efforts: Georgia, Maryland and Florida. Florida has put an end to punch cards. It has provided for state aid to counties. Supposedly by 2002 they are all going to have optical scan machines, improved training of local officials, and improved voter education. If anybody wants a relic of the 2000 election, the Florida punch card machines are on sale on e-bay.

Expense is a discouraging factor, because most costs are borne by state and even local jurisdictions. While local jurisdictions are waiting for the states to aid them, the states are waiting for Congress to aid *them*. Congress shows no inclination toward such aid.

#### **4. Proposals for reform**

There is no shortage of proposals for reform, and there is broad scope for federal intervention, if the government chooses to act. There could even be a constitutional amendment to abolish or change the Electoral College. Although many proposals are potentially feasible, the problem is getting agreement.

What are the problems in generating political support for reform? Why has reform been frustrated?

There are three broad problems. First, there is the question of partisan political advantage—sometimes even bipartisan political advantage, because the two major parties in the US do not want to enact legislation which might facilitate minor party voting. One example is election-day registration. There are six states in the US that have election-day registration, and one state—North Dakota—does not have registration at all. One of the states with election-day registration is Minnesota, which in 1998 elected Independent (originally Reform) candidate Jesse Ventura, former professional wrestler and sometime movie actor. The analysis of that election indicated that, without election-day registration, Ventura probably wouldn't have won. He mobilised a lot of people to vote, and in Minnesota they could register on election day. Thus parties have a vested interest in trying to get as many of their people registered and to the polls as possible while discouraging others.

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The Republicans are not interested in improving voter access; they claim this will simply lead to more fraud. They complain that the Democrats mobilise uninformed voters, some of whom may not even be eligible to vote. In 1996 there were accusations that the Democratic administration had allowed foreigners to vote or made them US citizens in an expedited manner in order to get on the voting rolls and cast their ballots for Democrats.

The US is becoming a more ethnically diverse society, as is Australia, and surveys indicate that the Republican Party is the bastion of the white, married male. But becoming more ethnically diverse is an advantage for the Democratic Party only if it can get them registered and to the polls. President George W. Bush presented a budget with no federal aid to the states to improve their voting technology. Most Republicans do not want to deal with ballot reform at all because it raises questions about Bush's legitimacy. The Democrats have pursued it more vigorously. Nevertheless, in the US there is always the question of whether parties pursue issues in the hope of electoral gain, or whether they genuinely are trying to solve problems.

The second problem is bureaucratic inertia and fear of change. This is the system to which people are accustomed. This also impinges on the third problem, of local discretion and jobs. Local officials like the system because it gives them authority and positions. What local officials have almost uniformly said to Congress is, 'Give us some money, and we will fix it.' They do not want federal rules, because that will limit their discretion. As with most issues concerning electoral systems, for instance re-apportionment of districts in the US (largely a partisan process through state legislatures), the people who benefit from the current system are reluctant to change.

What changes are likely to occur by the next presidential election of 2004? Some states will make changes to improve their voting systems, but this will be slow and incremental. Potential difficulties will remain. As long as there is no repetition of the national impact of Florida's problems in the presidential election, by and large these 'little local difficulties' will be ignored. Nevertheless, the chances of some of these problems becoming major in the presidential election are probably increased simply by the fact that the US has been so divided in partisan terms in recent years. This is true of the balance of power in Congress, as well as in the presidential election of 2000.

Before the US institutes major change at the federal level or more sweepingly across the states, it may have to experience a second instance where the popular vote winner for president and the Electoral College winner were not the same. The US, in terms of electoral administration, is basically a very conservative and partisan country. What is clear from the analysis of the election of 2000 is that a plurality of voters in Florida went to the polls to vote for Al Gore, but, as it turned out, a plurality was counted for George Bush. It all brings to mind the cry of a veteran electoral official on the eve of election day: 'Please God, whatever happens tomorrow, let somebody win big.'



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**Question** — Americans often talk about being a registered Democrat voter or a registered Republican voter. What action do the political parties have to take to get these people on the roll? Have they enlisted these people? Why do you let the political parties have anything to do with enrolling the voters?

**Donley Studlar** — Well actually they don't. As for being identified as a registered Democrat or Republican or Independent—first of all, it's not up to the parties. And secondly, it means very little, because even in these primary elections in the US you sometimes can't keep people who are registered in the other party from voting in them, or you may only have to have been registered in that party for a month or so. People change their registration all the time. The registration is normally done by the states, and you go down and declare yourself. You don't have to pay any fee, and what it supposedly entitles you to is the right to vote in that party's primary. Parties are very weak in the US, and in some states they have what are called 'open primaries'. You can actually be a registered voter in one party and go vote in the other party's primary.

**Question** — Do American voters often walk into the ballot box with a fistful of ballot papers from all the different candidates, for instance dog catchers, sheriffs and so on? What form is the ballot? Is it on separate sheets of paper, or all on one sheet, or what?

**Donley Studlar** — Well, again, it varies. As much as it takes. In most places you are not allowed to bring anything in. Certainly parties have sample ballots and in the newspapers they prepare sample ballots. But it's a formidable and intimidating process to go into an American voting booth. I've lived in several states, I have an advanced degree, and yet I still get intimidated when I go into a new state and go to a voting booth.

**Question** — Is it constitutionally possible for Congress to pass a uniform election law for federal elections?

**Donley Studlar** — I would think it would be, yes. Again, the provisions are essentially deferred to the states, but the constitutional provisions would not seem to prohibit the federal Congress from doing this. As with most things in the US, as soon as it's done, it might be challenged in a federal court, but it's not obvious that Congress would be kept from doing this. The one thing that is obvious is that they couldn't change the Electoral College without a constitutional amendment, which takes a two-thirds vote of both houses of Congress, plus three-quarters of the states. Therefore, the blocking power of a minority of small states is considerable.

**Question** — Do you have to register for each election, or is it a case of once you're on the electoral roll, you stay on it? Also, I have heard stories of there being huge queues and a shortage of voting places. Is this the case?

**Donley Studlar** — In terms of only registering once and then staying on the register—well, it will not surprise you, after my remarks, to say that it depends on the state. In most states you have to cast a ballot at least once within three or five years or you may get purged, and then have to take action to get yourself back on the roll. One

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of the complaints the Republicans have about ‘motor-voter’—and they claim this has the potential to lead to fraud—is that it makes it harder to purge the roll, because you have registrations coming from various places and people can be on the roll multiple times. I have heard the claim (though I can’t validate this) from a *Los Angeles Times* story on voter practice in the US, in which they claim there are more people on the voter registration list in Alaska than there are residents of Alaska.

There are different voting places. But, again, you have voting machine breakdowns. Part of the problem in the US is that you often have poll workers who are inadequately trained, and when you have a larger than expected voter turnout, this can lead to long queues and attempts to rush people through the polls, which only leads to more confusion. This was apparently one of the problems in Florida.

**Question** — Do employers allow their staff time off to vote? And what are the hours of voting?

**Donley Studlar** — Will it surprise you if I say ‘it depends’? The hours of voting vary tremendously from state to state. Those of you who follow US elections may recall that two of the earliest reporting states are Kentucky and Indiana. They are not on the eastern seaboard, and the early reporting has to do with when the polls close. It’s up to the employers essentially. Ninety percent of US elections, including primary elections, are held on Tuesdays. That’s one of these customs, just as in Britain they hold a general election on Thursdays, in Canada—just to be different—they shifted towards Mondays. Many countries hold their elections on the weekends. There is nothing to prevent the US moving to weekend elections, and there is some data to show that you get a better turnout if you have elections on weekends, particularly on Sundays. But normally, if they want to vote, people can find time before or after work or during their lunch hour.

One of the issues that I didn’t have time to mention is that the Republicans would like to see a uniform poll-closing time across the US. We’ve had situations, because we’re across four time zones (or six, if you include Hawaii), where results are announced before the polls have closed. That only seems to have affected anything in 1980, when President Carter, for reasons best known to himself, went on television and conceded the election early, before the polls closed on the West Coast. While obviously it didn’t change the presidential election, it is claimed that the Democrats suffered disproportionately from their voters not showing up. But in Florida for instance—and, again, this is a Republican complaint—they are actually in two time zones, and some of the networks were projecting Al Gore as the winner in Florida, before the polls had closed in western Florida. The Republicans claim that this may have discouraged some of their voters. There could be federal legislation mandating simultaneous opening and closing of booths across the US, as there has been, for instance, in Canada, which is across the same time zones as the US. So, that’s under discussion.

**Question** — Would there be any merit—unlikely though it is to happen—in making the Electoral College electors allocated in proportion to the voting, rather than ‘winner takes all’?

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**Donley Studlar** — Again, there have been proposals for that in the federal Congress, that essentially the plurality winner of the state gets a bonus, whereas the rest of the electoral votes are allocated by whoever wins that particular congressional district. In fact, there are two states in the US—Maine and Nebraska—that don't allocate their electors on a statewide basis. It depends on the electoral district. These are both small states—Nebraska has five electoral votes and Maine has four—and so far in about three elections it hasn't happened that a person has won one district and someone else has won a different district, but it is possible. The states have the electors, and it's up to the states to determine how these electors are going to be allocated. And Maine and Nebraska have quite legally chosen to allocate them differently. Although it hasn't *practically* made a result, after 2000, who knows what will happen?

**Question** — Have you analysed it to see whether that would give a fairer indication by Electoral College votes of who won?

**Donley Studlar** — I can only repeat something that I saw on the Internet the other day, where somebody claimed that they had done an analysis which showed that, if the allocation had been by who won the congressional district, the electoral vote would have turned out exactly the same—271 to 266.

**Question** — In 1960, in the Kennedy-Nixon contest, participation rates were quite a bit higher than they have been recently, I thought about 60 percent. Has the trend—perhaps because of the registration process and all the problems you mentioned—to non-participation been worsening in the last 40 years? If it has, why do you think that is so?

**Donley Studlar** — You're correct. Since 1960 it's been going down. There's been a more mobile population, people move around more, and we've had the introduction of the 18-year-old vote. In fact there's a dispute among scholars now. In general, except for countries that have mandatory voting, we've seen a general decline in voting turnout. Some people claim it simply relates to the fact that we enfranchised all these younger people who tend not to vote as frequently, and others suggest there's a more systemic problem. Let's just say there hasn't been a huge effort—'motor-voter' to the contrary notwithstanding—to try to get people to the polls.

Of course, what happened in the Nineteenth and early Twentieth Century was that the political parties in the US acted as mobilising forces. There was more party loyalty. Of course, some of that had to do with what in Canada they call 'treating' on election day. So you had much higher voter turnout on those occasions, but we've generally had progressively declining voter turnout of voting age population. But when we say the US is a voter-unfriendly system, part of that has to do with the ballot, but a lot of the problem is caused by the self-registration of voters—they have to take the initiative to get themselves on the voting registers.

**Question** — If a person is living in a state where they have been convicted as a felon, and they cast a vote in a presidential election, then move to a state where they lose that right, could you envisage that they'd have some scope to launch a legal challenge against the effective withdrawal of their democratic rights?

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**Donley Studlar** — I never underestimate the creativity of the American legal system. I don't know of any, but I commend an article in *The Economist* to you (I think it appeared in March 2001) on proposals for reform, in terms of legal challenges. The American Civil Liberties Union has filed legal challenges in four states, that the states do not have uniform voting rules. And *The Economist* article says that the wildcard in this whole discussion on voting system reform is the Supreme Court's decision in *Bush v Gore*, which was based somehow on equal protection of the laws, and they took pains to say 'one shouldn't generalise from this.' But again, we are the most litigious society in the world, and *The Economist* suggests that the Supreme Court may have essentially put out a ticking bomb, metaphorically speaking, and that *Bush v Gore* can be cited as a precedent and *will* be cited. Whether courts will accept it remains to be seen, in terms of challenging some of these practices.

What really isn't challengeable, unless Congress attempts to change it, is the notion that it's up to the states to set the voting rules within that state. It would take federal legislation to change that. So, on the face of it, I don't think the felon who crosses state borders would have much of a case, but I'm not a specialist in the law.