

Downside UP

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Florida and the Electoral Crisis of 2000 and 2004: Reckless Partisanship, Racism, and the Threat to Democratic Legitimacy

You would have to have been on another planet in November and December of 2000 not to know that the outcome of the United States presidential election was controversial, disputable, and, indeed, questionable. Hanging chads, butterfly ballots, missing votes, and the Supreme Court's unprecedented intervention in a state's election process all raised serious questions about the final vote in Florida, where the election was ultimately decided. When tens of thousands of elderly Jews apparently voted for Pat Buchanan, something had to be wrong.

But, considering the fact that, on account of registration problems, marred ballots, miscounts, and a variety of other problems, millions of votes are routinely "lost" in every American election, voting irregularities are hardly unprecedented. (1) We never really know how much of this is due to partisan corruption, but I have always assumed, not much. After all, it was a Democratic election official who designed the butterfly ballot that caused so many Democratic votes to be thrown out.

This article is, thus, not about what are apparently a rather routine variety of election irregularities which stole the headlines when Florida's voting process came into the limelight. It is also not about who actually won the 2000 election. Nor is it about the constitutional questions concerning the electoral college, winner-take-all elections, and the election of a candidate with less than a plurality of the popular vote – though I will come back to these questions at the end.

Rather, the focus of this article is on the Supreme Court decision and some less well-known or understood concerns which have significant implications for the 2004 election and American democracy. The Supreme Court's intervention in the Florida vote count is one. The intervention was unprecedented, doubtfully constitutional, and, on its face, hypocritical for a Supreme Court continually espousing more and more of a so-called "states rights" interpretation of the Constitution. A second is the attempt of the governor and secretary of state to remove tens of thousands of alleged ex-felons, and likely Democratic voters, from the electoral rolls. A third is the treatment of African American voters who, in an environment reminiscent of the "Jim Crow" era, were subjected to intimidation at the polls and had a disproportionate percentage of their votes invalidated. (2)

From these concerns, this article turns to the prospect of these same issues, and related ones, coming to the fore on a larger, more national, and more threatening scale in 2004. We have reason to be concerned about an effort to "correct" the failed voting process of 2000 by installing voting machines which lend themselves to systematic fraud on an unprecedented scale. We have reason to believe that what happened in Florida could

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happen throughout the country. I foresee what could happen as striking at the foundation of an American democracy already flawed by an 18th century election system which, by 21st century standards, is really quite undemocratic.

States Rights and the Constitution: Who Decides Elections?

States rights as an issue in itself is mostly bogus. It has long been the refuge of racists and big business because, for the most part during the past century, the federal government has been the locus of people more inclined to protect the civil rights of African Americans and regulate the excesses of corporate capitalism. Yet, once in control of the federal government, the same people who previously advocated so-called "states rights" have demonstrated far less interest when it has come, for example, to laws to protect the environment, "right to die" legislation, or the casual – or medical – use of marijuana. Meanwhile, people like me talk like states rights advocates and the Supreme Court is simultaneously exempting states from federal civil rights laws and intervening in state elections.

The fact is that there is a reason why Congress did not pass a national law establishing a uniform system of elections for the whole country: the Constitution provides little basis for any branch or agency of the federal government, even Congress, regulating state elections, and the 10th Amendment reserves to the states the power to act wherever the federal government has not been specifically granted the power to act. (3) What Congress passed was the Help America Vote Act (HAVA) providing (but underfunding!) grants to induce states to change their systems to some allegedly better form of machine voting. It used the classic "carrot" that the federal government often uses to induce state behavior it cannot, or does not want to, actually force the states to do. Without enough money to fund universal conversion to a new voting method, and states and localities having to apply for the money, many have not implemented any changes.

The lack of constitutional basis for a federal mandate is why women could vote in some states well back into the 19th century but a constitutional amendment was required to guarantee all women the right to vote in the 20th. It is why a constitutional amendment was required to ensure the vote for African Americans after the Civil War – although it was soon undermined by aggressive disenfranchisement in the South and malignant neglect in the North. It is why some states abolished all or most of their property qualifications for voting before the Civil War but others not until the 20th century. It is why some localities have had paper ballots filled in by hand, some have had mechanical levers to pull after punching holes, and some have had various forms of electronic reading of votes. St. Johns County, where I live in Florida, has chosen NOT to change, as have other states and localities which think their systems work perfectly fine.

The Constitution does provide Congress a role in the election of its own members, but only its own members, not state or local officials in general. It leaves primary responsibility to the states. With regard to presidential elections, the Constitution is even more restrictive, allowing Congress to decide only the "Time of chusing [sic] the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." (4) More importantly, ours is a presidential election system not based on a popular vote by the country as a whole, but the choosing of "electors" who vote by each state separately, winner-take-all, and report to the Senate.

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The final election of the president seems clearly the province of Congress, not the Supreme Court. The president of the Senate counts the votes of electors. The House of Representatives votes when no candidate has a majority. While the Constitution does not specify a means of resolving disputed results from the states, it was Congress that decided (in the ugliest manner) the presidential election of 1876 when several states (including Florida!) sent disputed reports to the Senate president. The Supreme Court is never mentioned in regard to any question of elections and I seriously doubt that anyone at the Constitutional Convention ever imagined that anyone other than elected officials would have any role in deciding an election. (See Article II as revised by the Twelfth Amendment.)

Intimidating Voters, Purging Felons, Under-Counting Votes: Racial Politics in Florida's 2000 Election

The 2000 presidential vote in Florida never should have been so close that hanging chads and butterfly ballots, or even intimidated election officials, became issues of national attention. These issues came to the fore because the election had already been corrupted by discriminatory actions against racial minorities, particularly African Americans. African Americans were removed from voting lists before the election ever took place, were intimidated at the polls on the day of the election itself, and had their votes disproportionately invalidated after the voting was over.

After four years of careful thought and consideration of the evidence, I am convinced that the disenfranchisement of African Americans was at least in part the result of a plan in which the governor and brother of one presidential candidate, and the secretary of state and state campaign chair for the same candidate, played key roles. As governor, Jeb Bush controlled the state police. As secretary of state, Katherine Harris was the state supervisor of elections. Their actions were essential to making the vote close enough for all the other issues to make a difference.

It was the state police who were ordered to "protect" voters in African American communities by stationing themselves, their cars, and sometimes roadblocks near polling locations. They were stationed nowhere else -- only in African American communities. While this might seem to the unaware a matter of solicitous concern for African Americans -- gee, golly, what a nice gesture to protect the voting rights of African Americans -- it was in fact exactly the opposite. There is NO recent history of election day violence in African American communities. There IS a sordid past of racial intimidation against African American voters, condoned and often engaged in by police, and remembered well by many older voters. I think that Jeb Bush is far too smart not to know the history of relations between the police and African American communities in Florida and throughout the South. And if he is not, Karl Rove, Jeb's brother's close adviser on political strategy, surely is.

Purging the Rolls: of Felons, African Americans, and Democrats

The number of people who did not vote as a result of intimidation, while large enough to make the difference in an election won by 537 votes, pales in comparison with the numbers purged from the voter rolls and not allowed to vote because they were allegedly ex-felons. Ex-felons are barred from voting in many states, even after they have been paroled, completed probation, and are allegedly "free." The laws which bar them are most common in the South where they date from precisely those efforts I noted above to disenfranchise African Americans at the end of the 19th century (following that

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ugly election of 1876). In Florida, 8% of adults, 600,000 residents, are legally barred from voting because of their criminal records. Some 25% of African Americans are barred. (See Kevin Krajick, "Why Can't Ex-Felons Vote?," The Washington Post, August 18, 2004, page A19, and Gregory Palast, a reporter and columnist for the British Broadcasting Corporation and the Observer in the Nation, January 18, 2001 and May 17, 2004.) (5)

The significance of these numbers cannot be appreciated without reference to race and voting patterns. Ex-felons, like all people with low incomes, low education, or minority status, tend to vote Democratic 65 to 90% of the time. African Americans do so on the upper end of that scale. Ironically, as a result of the Voting Rights Act of 1965, voter rolls in Florida and other southern states require information on race. Many of us northerners are appalled by what we think is an example of racism when we register to vote in the South. Keeping the data was intended to help the federal government monitor enforcement of African Americans' right to vote, but the effect has sometimes been the opposite. That information makes it possible to be racially, let us say "aware," in purging voters.

The above said, what happened in Florida in 2000 goes way beyond purging actual ex-felons. I – and 80% of the American people – think that once they have served their time, all ex-felons should have their civil rights restored. Florida Governor Askew recognized this when he automatically restored the civil rights of ex-felons in the 1970's. In 2000, Governor Bush and Harris ordered local election supervisors to purge from the voter rolls, 57,700 supposed ex-felons, most of whom were not in fact ex-felons or, like Askew's, had had their right to vote restored. The computerized but unverified list compiled by ChoicePoint, a private company created out of a merger with DBT, originally included some 91,000 people who were questionably tagged. Even after the original list was reduced to 57,700, it was found that 90.2% of those were not felons according to the law and the Constitution. More than half, 54%, were African American and Hispanics. (See Krajick and Palast above. Also, Becker and Keating, "Hanging Chads Still Hanging Around" in The Washington Post National Weekly Edition, footnote (1), and an article by David Margolick, Evgenia Peretz, and Michael Shnayerson, just published in the October issue of Vanity Fair detailing at length both the creation of the list and state officials' failure to act to restore those erroneously purged.)

Executives at DBT, the original company that prepared the list and was merged into ChoicePoint, knew from the beginning that the list was not complete enough by itself to remove people from voting lists. The criteria were written loosely to tag names that were only similar, not exact, and included alleged ex-felons from other states. Because of states rights clauses in the Constitution (states rights again!), it is unconstitutional for Florida not to accept the legal status of ex-felons allowed to vote in other states. Schlenther v. Florida Department of State (June 1998) ruled that Florida could not prevent a man convicted of a felony in Connecticut, where his civil rights had not been lost, from exercising his civil rights in Florida. It is the same issue that roils states about accepting gay marriages from other states. (6)

Even the "corrected" list was grossly flawed. There were 8,000 supposed felons from Texas on the list. Not only is Texas a state that automatically restores the voting rights of ex-felons, it turns out that all these voters, now residents of Florida, were not guilty of felonies at all but only misdemeanors. Linda Howell, Madison County's elections

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supervisor, actually found her own name on the list. Another county, when it applied strict criteria requiring a five-for-five match of name, birth date, race, sex, and social security number, could only verify 33 out of 697 names. (See Vanity Fair.)

In the end, after the NAACP and other organizations sued the state over the lists, DBT itself ran the names with stricter criteria, such as relying only on Florida conviction data, and identified 20,000 people who most likely should never have been purged. (Gary Fineout, "Many voters not yet back on rolls," The Miami Herald, May 26, 2004, p. 1A) Exactly how many were actually purged, we do not know because some counties, recognizing the unreliability of the list, did not implement it, and there are no official records of voters who come to the polls but do not vote. We do know there are hundreds of stories and that Hillsborough County alone has restored 579 voters, far more than the presidential margin in 2000. More broadly, according to one study reported by Krajick, Al Gore would have won Florida by 80,000 votes if ex-felons had been allowed to vote – even assuming most did not vote and a third voted Republican. No wonder the governor has been less than energetic in restoring purged voters and granting appeals from the 600,000 adults who cannot vote as a result of their alleged felony records.

Under-Counting Votes

As bad as are the politics of racial discrimination by computer, old-style racial discrimination continues. In a new article, "What Really Happened in Florida's 2000 Presidential Election," Allan Lichtman reports on a study he was commissioned to do for the United States Commission on Civil Rights. He found that one out of ten ballots cast by African Americans in Florida was tossed out as invalid or "spoiled." Spoilage refers to ballots which are invalidated because of such things as extraneous marks or someone writing in a candidate's name instead of checking the box. In Florida, counters of paper ballots or recounted ballots used in mechanical or optical balloting, are supposed to acknowledge the intent of the voter. That was part of the controversy about hanging chads and butterfly ballots.

Lichtman reports that in some counties, more than 25% of African American ballots were set aside as invalid and overall, "11 per cent of ballots were rejected in precincts whose voters were 90% or more black, compared to just 2 per cent of ballots in 90%+ white precincts." These differences hold even when education, literacy, age, income, poverty, ballot design, voting technology, first-time voting, and the race or party of the election supervisor is taken into account. Lichtman concludes that "if black ballots had been rejected at the same minimal rate as white ballots, more than 50,000 additional black votes would have been counted," and Gore would have won by at least 40,000 votes. (History News Network, George Mason University's Center for History, <http://hnn.us>, September 28, 2004. See also Lichtman's article in the Journal of Legal Studies, January 2003.)

An earlier, preliminary take on Florida's vote by Christopher Edley, Jr., a member of the Civil Rights Commission, pointed to similar results. He found that in Gadsden County, which has the highest percentage of African American voters in the state -- 58% -- there was a 12% (1 in 8) spoilage rate in the 2000 election. In white-majority Leon County next door, there was a .2% (1 in 500) rate of "spoilage." Edley found that 14.4% of African American ballots were invalidated while only 1.6% of non-African American ballots were. Statewide, 54% of 179,855 spoiled ballots were cast by African Americans, of whom more than 90% tried to vote for Gore. He concluded that since the rest of the spoiled ballots were split about evenly, these votes, if counted, would have generated an

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87,000 vote plurality for Gore over Bush. (Greg Palast draws significantly on the work of the Civil Rights Project (CRP) at Harvard University where Edley was its director before becoming the dean of the University of California's Boalt School of Law. Edley authored "Democracy Spoiled," with Jocelyn Benson and Vesla Weaver, CRP research assistants, and Professor Philip Klinkner of Hamilton College.)

Florida and the Country: Prospects for Improvement

One might reasonably have hoped that revelation of voting abuses in the 2000 election would have led to corrections long before the 2004 election. In fact, some positive changes have occurred, but other abuses have been extended, elaborated, and compounded, while computerization, with or without HAVA, is likely to yield mixed results.

For 2004, Florida's leaders came up with a new list of 47,763 current voters ineligible to vote. Jeb Bush's office and state election officials tried to keep the list secret but were forced to publish it on orders of a Tallahassee (Florida) judge. Once out, it was immediately discovered that there were thousands of people on this list who, as in 2000, had never committed any crime, had received clemency, or were not Florida felons. Once again, it was left up to county election officials to carry out the time-consuming job of verification. So many wrongly named people were found so quickly, verification was going to be so costly, and the elections would be so tainted, that the whole thing was dropped. ("Many Floridians surprised by mistakes on felons list," Associated Press, Naples Daily News, July 4, 2004, www.naplesnews.com)

That's at least one good thing that has happened, even if because of popular outcry and local government resistance rather than state government leadership. In Gadsden County, the public outcry about ballot "spoilage" led the state to force the county to change its procedures to the same as those of white-dominated counties, and the spoilage rate dropped to near-zero in 2002. Although accurate voter rolls would be better, it is also good that the new Florida election law gives voters who think they have been inadvertently removed from the rolls the right to use a "provisional" ballot. The problems here are, first of all, the psychological intimidation for a voter publicly barred from voting and required to protest disqualification, and, secondly, the fact that Florida officials set a two-day deadline for verification. If the margin of victory next month is smaller than the number of provisional ballots, says Leon County election supervisor Ion Sancho, it "could lead to the same scenario that caused the 2000 debacle: counties pleading for more time to count, and the secretary of state saying no." (See Becker and Keating, footnote (1))

The prospect of renewed intimidation of African American voters is even more ominous. Allegedly as a result of the possible mishandling of absentee ballots in the Orlando mayoralty race, the Florida Department of Law Enforcement (FDLE) has sent state troopers to interview people who turn out to be almost all elderly African American voters. These are the people who especially remember the bad old days of intimidation and violence. It seems too much of a coincidence that many of them are also members of the Florida Voters League, a leader in getting out the African American vote. Allegations by New York Times columnist Bob Herbert against state officials and the FDLE have been vehemently denied, but since there is no evidence that the potential fraud centered in the League or African American voters, the allegations tend to stick. (Bob Herbert, "Whiff of Voter Suppression Fouls the Air," The New York Times, August 16, 2004, Section A, Page 15.)

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Now, The Miami Herald, which played a key role in pointing out the errors in the 2004 “felon” list, has found that three and one-half years after the election and two years after the NAACP suit was decided, only 33 out of 67 counties have done anything about the 20,000 voters improperly on the purge list in 2000. (See Fineout, “Many voters not yet back on rolls,” above.)

The Bush state government has put every possible barrier in the way of ex-felons receiving clemency under Florida law. He and other Republican state officials have together been responsible for purging qualified voters from the rolls, intimidating African American voters, and failing to restore the names of voters known to have been incorrectly purged. I would concede that he may not have originally understood how flawed the purge data was. Perhaps, too, he did not fully understand the impact of stationing state police in African American communities. But I am certain that he has always understood very well the likelihood that purging ex-felons would disproportionately reduce the Democratic vote. As far as I am concerned, the evidence is overwhelming: he is, at best, guilty of reckless ignorance.

And the Country

Unfortunately, the problems I have described for Florida are not peculiar to Florida. They were national in 2000 and the same is in the offing for 2004. In South Dakota’s June primary, Indians were challenged to provide photo identification not required by state law or of other voters. In Cook County, Illinois, one of the country’s largest spoilage rates primarily affects Democratic African American voters, but the manipulation is carried out by the Democratic machine not Republicans. Nationwide, 1.4 million African American men who have served their sentences, 13% of the African American male population, are disenfranchised by anti-felon laws. Last year, Alabama Republican Party Chair Marty Connors was so innocent as to tell the truth about restoring voting rights to ex-felons. Without Carl Rove to shut him up, he said, “As frank as I can be, we’re opposed to [restoring voting rights] because felons don’t tend to vote Republican.” (See Krajic, above)

The Harvard Civil Rights Project estimates that two million people who turned out to vote in the United States were disenfranchised in 2000, half of them African American. Becker and Keating indicate that half of the 4 to 6 million votes “lost” nationwide are the result of registration problems that disenfranchised qualified voters. (footnote 1) The percentage of ballots cast but not counted in 2000 ranged from less than 1% in Maryland, Alabama, Louisiana, and Minnesota to nearly 4% in Georgia and Illinois, with the worst cases in various counties of Georgia, Florida, South Carolina, and North Carolina. This is bad, but it is made worse by the fact that high spoilage rates were clearly correlated with high percentages of African Americans in the population. Two-third of the 100 counties with the highest spoilage rates nationwide had black populations above 12%. And as Gadsden County demonstrates, that difference is not about education or race but knowing manipulation. (See Lichtman above, The Baltimore Chronicle and The Sentinel, November 9, 2002, and www.civilrightsproject.harvard.edu)

Touch Screen Voting: Dangerous Technology, Controversial Ownership

HAVA does not require computerization or touch screen voting but its voting machine requirements push in that direction and the leading companies pushing their wares are selling touch screen machines. Touch screen voting, as it now stands, is as likely to make all the problems worse as to make them better. As everyone who has ever used a

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computer knows, computers have all sorts of glitches all on their own -- who hasn't been chided by his or her computer for "error 42" or an "illegal command." Freezes and unintended shut-downs are commonplace. We are pounded every day with the reality of network vulnerability, viruses, spyware, and hackers that the most sophisticated computer companies seem unable to stop.

Voter fraud is not a new thing in American history, whatever the system in use. The problem with computer systems is that they make fraud easier to do and do on a larger scale. They make it easier to identify and purge selected voters and undercount any kind of selected precincts. If networked, electronic systems are wide open to hackers. Most touch screen systems leave no paper trail and, for that, are far more dangerous.

Finally, although these issues, in and of themselves, are not partisan, the principal systems being hawked are privately owned, and two of the three major companies are closely tied to the Republican Party. In a bitterly divided political climate, this understandably feeds the concerns of Democrats, undermines the legitimacy of elections, and threatens the underpinnings of democracy.

The Machines

Just this July, I was out West on vacation and went to an ATM to restock my cash. I noted that the machine at the resort was made by Diebold, one of the three major manufacturers of touch screen voting machines. I received a receipt showing the amount I withdrew and the amount remaining in my account. That's more than most voters will get when they use touch screen voting machines in November.

There is absolutely no reason why voting machines cannot create a paper receipt which, after review by the voter, is left for a possible recount. Not even what the voter sees on the screen is proof of what the computer is counting. Yet HAVA does not require a paper trail and controversial elections, including the surprise defeat of Georgia Senator Max Cleland, have already taken place, in 2002, without paper trails. To be credible, a computer system must have a paper trail that the voter can verify and which can be used in a recount.

While deliberate partisan manipulation is a major concern, a rapidly growing list of reports about computer glitches is concern enough. These include more precincts reporting than there are precincts in the districts, and votes disappearing again and again. In five cases, three in Texas, candidates won by exactly 18,181 votes -- and I don't think it was a coincidence to report to Ripley's Believe It or Not.

There is no requirement that electronic voting systems be certified to even the lowest level of government security standards. If networked, electronic voting machines are an open invitation to hackers. In Ohio, election officials found that anyone with a security card could take control of Diebold machines with a universal password of 1111. In Maryland, consultants working for the state hacked into the state's electronic voting systems "to corrupt vote counts and delete election results." (Becker and Keating, footnote 1) Internet voting is the worst of a lot of dangerous ideas being promoted. "The computer science community has pretty much rallied against electronic voting," said Stephen Ansolabehere, a voting expert at the Massachusetts Institute of Technology." (Robert Tanner, "Worries grow over voting machines," The St. Augustine Record, October 31, 2003, p. 9A. (7)

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My county has been using optical scan forms for many years. It is a widely available technology proven in years of academic testing readers at least as old as I have experienced (e.g. the SAT test and millions of classroom multiple choice exams). It is fast. It leaves a paper trail that can be run through a computer again or hand-counted. It can count absentee ballots. Our county elections supervisor has no intention of changing, federal grant or no.

The People Behind the Machines

Electronic voting machines are principally the province of three companies: ES&S, Diebold, and Sequoia. It is unfortunate for the integrity and credibility of American democracy that the first two, and largest, have very close ties to one political party. The point is not that it is the Republican Party but that it is any party. As in Florida with ChoicePoint, which also has close ties to the Republican Party, it makes for an absolutely worst case example of the dangers of government "privatizing" and "contracting out." Halliburton or Exxon is one thing; voting machines raise a far more dangerous specter.

Chuck Hagel, senator from Nebraska, was the CEO of ES&S, the largest of the voting machine companies, up until shortly before he ran for the Senate in 1996. He is still a major stockholder of the parent company whose head has served as the treasurer of Hagel's campaigns. It is unfortunate that ES&S machines tallied his 1996 election victory in which he won by a huge upset margin, was the first Republican to win a Nebraska senatorial campaign in 24 years, and he did so with many largely African American communities apparently voting Republican for the first time. ES&S also counted his 2002 victory.

Diebold is the company that counted the Max Cleland election and, soon after the election, destroyed the memory cards for the paperless machines. Diebold is owned by avid Republican and Bush supporter, Wally O'Dell. (Critics often refer to the world of electronic voting as "WallyWorld.") O'Dell is one of George Bush's "Rangers" who raised \$200,000 or more for Bush's 2004 presidential campaign and sponsored a \$10,000-a-plate fund-raiser at O'Dell's mansion outside Columbus, Ohio.

What is the Risk?: Democracy, Racism, and the Media

It is striking to me how difficult it has been to nail down facts from standard, widely-accepted sources for this article. I receive tons of email articles and reports from non-mainstream sources, often the same story passed around under different logos, and have made it a practice not to accept information until I have verified it in some more mainstream way. I pride myself on the fact that I can write what I write almost entirely out of mainstream sources: the facts are there to put together if we only look hard enough.

This time, however, the disjuncture between out-of-the-mainstream sources and mainstream ones was striking. The above story on Chuck Hagel and Wally O'Dell was all over the place in the alternative media, but absent in the mainstream media. This while relatively mainstream left and progressive sources like Jim Hightower's The Hightower Lowdown and Mother Jones were going much further than I would go in drawing nefarious but hard-to-prove connections between ownership of voting machines and election fraud. Even as I write, the first two pages of a basic Google on "Chuck Hagel, ES&S" yields articles from "Black Box Voting," "The Hill News" (a widely-read rag among politicos in Washington, D.C.), "Democratic Underground,"

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“Disinfopedia,” “Afro-Centric News,” and “Ming the Mechanic” by Flemming Finch! But nothing from the mainstream media. Greg Palast has written many articles and is quoted constantly but, to my knowledge, has never been given any play in the mainstream, even for the purpose of reporting on him and refuting his position.

The limited availability of mainstream sources on potential corruption in electronic voting and racial discrimination first of all limited how I have said some of what I have said, but more importantly, raised my sociological antennae. When I started pulling this article together, I thought it would be a relatively straightforward (and shorter!) piece focusing on felons purged from the voter rolls and the problem of electronic voting. But I began seeing deeper and more fundamental issues of racism and democracy. I began to ask myself if the mainstream media had been shying away from a critical part of the story and, if so, why. The media like hot stories. Is there something too hot here?

The mainstream media have reported widely on the vulnerability of electronic voting. They have reported on the purging of felons from voter rolls. They have reported less on intimidation of African American voters and too often, although not entirely, left out the connection between felons and minorities. They have done almost zilch with “spoiled” ballots and undercounting of minority voters. They have apparently done equally nothing with the connection between touch screen voting machines and corporations owned by avid Republicans (the alternative press calls them “rabid” and “right wing”). With respect to intimidation and undercounting of African American voters, I found each subject in The New York Times and The Washington Post not as standard news but in columns by African American columnists. The Miami Herald did a great job on the purging of felons but missed the racial issue. Even Vanity Fair, somewhere between the mainstream and alternative presses, did little with the politics of race. (8)

These should all be big stories in the mainstream press because they strike at the credibility of American elections and therefore at the heart of American democracy. The mere possibility of their being true is horrific. I should not have to dig for the stories. So their absence makes one wonder if it is not in fact the truth which so horrifies the mainstream media that they are reluctant to report it. They don’t want to talk about the persistence, and revival, of racism in our body politic: that’s a thing of the past. They don’t want to connect the rest of the dots to draw the larger picture of American democracy: that has never been an acceptable subject.

I suggested earlier that our electoral college system, with its statewide, winner-take-all elections, leaves the United States well behind today’s standards for democratic elections by popular vote. The writers of our Constitution were not really that democratic. They did not believe in universal suffrage, even for white men. They insulated presidential elections from the popular vote by creating the electoral college system. In order to get all the states to join the union, not necessarily because they thought it was a good idea, they gave every state, large and small, two senators and translated those into two electoral votes in a system where each state has presidential electors equal to the total number of senators and representatives. Wyoming, with 3 electoral votes, gets one electoral vote for every 151,196 citizens; California, with 55 electoral votes, gets one for every 615,848. (9)

To all this created in the Constitution, political practice has added a seemingly unlimited influence of money and a system of Congressional gerrymandering resulting in all but a few dozen congressional districts locked up for one party or the other. Combined with the winner-take-all system for electing presidents, congressional gerrymandering means

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that the votes of most people really don't count at either level -- whatever our public school civics classes say. No wonder less than half of eligible voters go to the polls in this country. (10)

I think the media is afraid to talk about all this. Racism and the state of American democracy, of which racism is a part, are great taboos in American culture. Perhaps the reason is an unstated fear. If, to the structural and procedural weaknesses of our democracy, we add the perception – **regardless of reality** – that there is widespread manipulation of the vote, some of it on racial grounds, we will lose the little trust remaining in our democracy for a large majority of Americans. Perhaps the media already believe the system is corrupted. Perhaps they either like it that way and want to keep it a secret, and/or realize that talking about it would undermine the rule of the rich and powerful to which the mainstream corporate media belong.

The preservation – perhaps I should say, reestablishment -- of American democracy requires that we clean up our electoral system. We really need to reform the entire system. We must, at least, at this time and place, not allow the vote itself to be corrupted. We must take private companies out of vote-tallying and return the process to impartial “bureaucrats” who, whatever their defects, with secure jobs, don't give much of a damn about who wins an election. We must do the same with the voter rolls. (11) We must insulate electronic voting from any network access down to the precinct level. We must not adopt internet voting. We must institute a paper trail for every vote and, preferably, use optical scan machines as our basic system. We must confront the reality of continuing, endemic racism.

The alternative is a widespread assumption running like this quote from “Infernal Press” – or the corresponding version from the right-leaning press if Democrats win: “The 2004 election will be the first to use nation-wide electronic voting. With the purging of voter lists, secrecy surrounding voting machines, the lack of a verifiable paper trail combined with voting machines with strong Republican ties and funding from the radical right, a Bush victory is all but inevitable.” (12)

Footnotes

- (1) Four to six million votes were “lost” in the 2000 election! Jo Becker and Dan Keating, “Hanging Chads Still Hanging Around,” The Washington Post National Weekly Edition, September 13-19, 2004, p. 11-12.)
- (2) “Jim Crow” is a reference to the system of legal discrimination against African Americans imposed by official and unofficial use of violence and dating from the late 19th century into the 1960's.
- (3) The Tenth Amendment says: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”
- (4) Article II, section 1. Otherwise, this section says, “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.” Article 1, section 4, says: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” “Manner” might include the nature of the ballot and its counting but the clause has always been interpreted narrowly and it in any case only applies to Senators and Representatives.
- (5) African Americans represent a percentage of felons wildly disproportionate to their numbers in the population as a whole. This is not because African Americans are inherently more likely to commit crimes but primarily because the penalties for possession of “crack cocaine,” which

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- predominates in African American communities, are far more severe than for possession of pure cocaine and heroin favored by whites. Whites actually use hard drugs at a slightly higher rate but they also benefit from less of a police presence in their communities and a higher likelihood of having the influence to get off completely or be charged with a lesser crime. Most of all, whites are not black! College students are almost never arrested for dormitory use of hard drugs. Try that in the “hood”!
- (6) See Article IV. Section. 1. “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.” Section. 2: “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”
 - (7) Also see the article by Bryn Mawr Assistant Professor of Computer Science, Rebecca Mercuri, “A Better Ballot Box,” IEEE Spectrum On Line, September 1, 2004, www.spectrum.ieee.org. IEEE is the international organization of electrical engineers.
 - (8) I regret to say that I found more coming up on Google in Cuba’s Granma International than the “free” American press.
 - (9) Wyoming has three electoral votes for 453,588 people; California has only 55 for over 33 million. To put it another way, as part of California, the people of Wyoming would get one vote instead of three. Some observers have complained that if the presidential election were by popular vote, candidates would not campaign in sparsely populated states. But as things are now, they not only rarely campaign in small states, they don’t campaign in large states like Texas and New York where the result is a foregone conclusion.
 - (10) This analysis is based on certain other realities, including the fact that voters very rarely change the party they vote for – whatever your Uncle Harry did. At the local level, the situation is even worse, with often less than 20% of the population voting. In my county, Democrats might as well not vote; the Republican primary determines the winner. Around the world, including third world countries, it is common for 80-90% of the eligible population to vote.
 - (11) After the ChoicePoint debacle, the Florida legislature actually voted to make the association of court clerks responsible for the databases but state officials apparently ignored this and named Accenture, formerly Andersen Consulting, which donated \$25,000 to Republicans in Florida. (See Vanity Fair.)
 - (12) “How George W. Bush Won the 2004 Presidential Election,” 2003. Note that even this leftist source does not mention the racial issue.