

Reader #3

RELECTION
REFORM!

The Racist Origins of Felon Disenfranchisement

by Brent Staples

The New York Times

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The state laws that barred nearly six million people with felony convictions from voting in the midterm elections this month date from the late 19th and early 20th centuries, when Southern lawmakers were working feverishly to neutralize the black electorate.

Poll taxes, literacy tests, grandfather clauses and cross burnings were effective weapons in this campaign. But statutes that allowed correctional systems to arbitrarily and permanently strip large numbers of people of the right to vote were a particularly potent tool in the campaign to undercut African-American political power.

This racially freighted system has normalized disenfranchisement in the United States — at a time when our peers in the democratic world rightly see it as an aberration. It has also stripped one in every 13 black persons of the right to vote — a rate four times that of nonblacks nationally. At the same time, it has allowed disenfranchisement to move beyond that black population — which makes up 38 percent of those denied the vote — into the body politic as a whole. One lesson here is that punishments designed for one pariah group can be easily expanded to include others as well.

The history of disenfranchisement was laid out in a fascinating 2003 study by Angela Behrens, Christopher Uggen and Jeff Manza. They found that state felony bans exploded in number during the late 1860s and 1870s, particularly in the wake of the Fifteenth Amendment, which ostensibly guaranteed black Americans the right to vote.

They also found that the larger the state's black population, the more likely the state was to pass the most stringent laws that permanently denied people convicted of crimes the right to vote. These bans were subsequently strengthened as the Jim Crow era began to take hold.

The white supremacists who championed such measures were very clear on their reasons. In 1894, a white South Carolina newspaper argued that voting laws needed to be amended, lest whites be swept away at the polls by the black vote. In 1901 Alabama amended its Constitution to expand disenfranchisement to all crimes involving "moral turpitude" — a vague term that was applied to misdemeanors and even acts not punishable by law. The president of the constitutional convention argued that manipulating the ballot to exclude blacks was warranted, because they were inferior to whites and because the state needed to avert the "menace of Negro domination."

The official who introduced the new provision at the convention said, "The crime of wife-beating alone would disqualify 60 percent

of the Negroes." This did not mean that only black men committed spousal abuse; it meant that whites were less likely to be prosecuted for this and several other offenses that could lead to disenfranchisement.

Alabama today has one of the highest rates of felony disenfranchisement in the nation: An estimated 7.2 percent of its citizens -- and 15 percent of African-Americans -- have lost the right to vote.

The disenfranchisement laws flourished in both Northern and Southern states where large black populations were cast in the role of eternal outsiders, and proposals for allowing former felons to vote were often cast as heralding the end of civilization.

The debate looks a lot different in Maine and Vermont, states where there are no black populations to speak of and racial demonization does not come into the equation. Both states place no restrictions on voting rights for people convicted of even serious crimes and have steadfastly resisted efforts to revoke a system that allows inmates to vote from prison.

Maine residents vigorously debated the issue last year, when the Legislature took up -- and declined to pass -- a bill that would have stripped the vote from some inmates, whose crimes included murder and other major felonies. Families of murder victims argued that the killers had denied their loved ones the right to vote and therefore should suffer the same fate.

Those who opposed the bill made several arguments: That the franchise is enshrined in the state Constitution and too important to withdraw on a whim; that voting rights keep inmates connected to civic life and make it easier for them to rejoin society; that the notion of restricting rights for people in prison was inconsistent with the values of the state.

A former United States marshal and police chief argued that revoking inmate voting rights would strip imprisoned people of dignity and make rehabilitation that much more difficult. The editorial page of The Bangor Daily News argued against revocation on the grounds that, "Removing the right of some inmates to exercise their legal responsibility as voters in a civilized society would undermine that civilized society."

The fact that most states view people who have served time in prison as beyond the protection of the bedrock, democratic principle of the right to vote shows how terribly short this country has fallen from achieving its ideals.

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HOW TO RIG AN ELECTION

The G.O.P. aims to paint the country red

By Victoria Collier

HARPERS

November 2012 issue

It was a hot summer in 1932 when Louisiana senator Huey
"Kingfish" Long arranged to rig the vote on a number of

amendments to his state's constitution that would be advantageous to his financial interests. Long was no stranger to rigged votes. This time around, however, the x delivered by his machine was blatant and sloppy: his favored amendments won unanimously in sixteen New Orleans precincts and garnered identical vote totals in twenty-eight others.

Eugene Stanley, the incorruptible district attorney for Orleans Parish, presented evidence of fraud to a grand jury. Louisiana's attorney general, the less morally encumbered Gaston Porterie, stepped in to sabotage the case for Long. Nonetheless, two judges demanded a recount, at which point Governor O. K. Allen obliged Long by declaring martial law. Intimidated jurors found themselves sorting ballots under the supervision of National Guardsmen, who stood by to "protect" them with machine guns.

When this effort failed, another grand jury was convened. Their eventual finding of a massive conspiracy led to the indictment of 513 New Orleans election officials. Once again, Long used his famous powers of persuasion. At his behest, the Louisiana legislature modified the state's election law, giving ex post facto protection to the defendants. Election rigging, Long might have quipped, had become downright exhausting. But it worked. From the earliest days of the republic, American politicians (and much of a cynical populace) saw vote rigging as a necessary evil. Since the opposition was assumed to be playing equally dirty, how could you avoid it? Most Americans would probably have confessed to a grudging admiration for New York City's Tammany Hall

machine, which bought off judges, politicians, and ward captains, ensured the suppression of thousands of votes, and controlled Democratic Party nominations for more than a century.

By the beginning of the last century, however, sentiment had begun to shift. In 1915, the Supreme Court ruled that vote suppression could be federally prosecuted. In Terre Haute, Indiana, more than a hundred men had already been indicted for conspiring to fix the 1914 elections for mayor, sheriff, and circuit judge. The incumbent sheriff and judge went to jail for years, and Mayor Donn M. Roberts spent six years in Leavenworth.

Roberts and his gang, declared the New York Times, had failed to grasp that "what is safe and even commendable one year may be dangerous and reprehensible the next." Almost overnight, commonplace corruption had become unacceptable, and vote rigging a serious crime. It took a strongman like Huey Long to remain an exception to the rule. But the overall trajectory seemed to point toward reform, accountability, and security. In 1920, the Nineteenth Amendment was passed, seventy-two years after Elizabeth Cady Stanton first demanded women's suffrage—the right that would, in Stanton's words, "secure all others." By the 1960s, Northern Democrats abandoned their Southern allies and pushed to end the mass suppression of black votes below the Mason-Dixon line. With the Voting Rights Act of 1965, many Americans began to believe that the bad old days of stolen elections might soon be behind us.

But as the twentieth century came to a close, a brave new world of election rigging emerged, on a scale that might have prompted Huey Long's stunned admiration. Tracing the sea changes in our electoral process, we see that two major events have paved the way for this lethal form of election manipulation: the mass adoption of computerized voting technology, and the outsourcing of our elections to a handful of corporations that operate in the shadows, with little oversight or accountability.

This privatization of our elections has occurred without public knowledge or consent, leading to one of the most dangerous and least understood crises in the history of American democracy. We have actually lost the ability to verify election results.

The use of computers in elections began around the time of the Voting Rights Act. Throughout the 1980s and 1990s, the use of optical scanners to process paper ballots became widespread, usurping local hand counting. The media, anxious to get on the air with vote totals, hailed the faster and more efficient computerized count. In the twenty first century, a new technology became ubiquitous: Direct Recording Electronic (DRE) voting, which permits touchscreen machines and does not require a paper trail. Old-school ballot-box fraud at its most egregious was localized and limited in scope. But new electronic voting systems allow insiders to rig elections on a statewide or even national scale. And whereas once you could catch the guilty parties in the act, and even dredge the ballot boxes out of the bayou, the virtual vote count can be manipulated in total secrecy. By means of proprietary, corporate-owned software, just one programmer could steal hundreds,

thousands, potentially even millions of votes with the stroke of a key. It's the electoral equivalent of a drone strike. Symbolically speaking, this era was inaugurated by Chuck Hagel, an unknown millionaire who ran for one of Nebraska's U.S. Senate seats in 1996. Initially Hagel trailed the popular Democratic governor, Ben Nelson, who had been elected in a landslide two years earlier. Three days before the election, however, a poll conducted by the Omaha World-Herald showed a dead heat, with 47 percent of respondents favoring each candidate. David Moore, who was then managing editor of the Gallup Poll, told the paper, "We can't predict the outcome."

Hagel's victory in the general election, invariably referred to as an "up-set," handed the seat to the G.O.P. for the first time in eighteen years. Hagel trounced Nelson by fifteen points. Even for those who had factored in the governor's deteriorating numbers and a last-minute barrage of negative ads, this divergence from pre-election polling was enough to raise eyebrows across the nation. Few Americans knew that until shortly before the election, Hagel had been chairman of the company whose computerized voting machines would soon count his own votes: Election Systems & Software (then called American Information Systems). Hagel stepped down from his post just two weeks before announcing his candidacy. Yet he retained millions of dollars in stock in the McCarthy Group, which owned ES&S. And Michael McCarthy, the parent company's founder, was Hagel's campaign treasurer. Whether Hagel's relationship to ES&S ensured his victory is open to speculation. But the surprising scale of his win awakened a new

fear among voting-rights activists and raised a disturbing question: Who controls the new technology of Election Night?

"Why would someone who owns a voting-machine company want to run for office?" asked Charlie Matulka, a Democrat who contested Hagel's Senate seat in 2002. Speaking at a press conference shortly before the election, he added: "Is this the fox guarding the henhouse?" A construction worker with limited funding and name recognition, Matulka was obviously a less formidable competitor than Nelson. Still, Hagel won an astonishing 83 percent of the vote—among the largest margins of victory in any state-wide race in Nebraska's history. And with nearly 400,000 registered Democrats on the rolls, Matulka managed to scrape up only 70,290 votes.

Hagel had never actually disclosed his financial ties to ES&S, and Matulka requested an investigation by the Senate Ethics Committee. His request was rejected. Equally futile was his call for a hand count of the ballots, since a state law specified that recounts had to be conducted using the very same "votecounting device" that was used to begin with—in this case, the ES&S optical scanners.

Meanwhile, the new millennium, far from delivering a democratic promised land, presented Americans with the debacle of the 2000 presidential election, whose fate hung absurdly on "hanging chads"—the little pieces of punched-out ballot so contentiously examined during the monthlong re-count. Few Americans knew (and many still do not know) that a faulty computer memory card

triggered this fiasco. Late on Election Night, Al Gore's total in Volusia County, Florida, suddenly dropped when one precinct reported 16,000 negative votes. Fox News was immediately prompted by Florida governor Jeb Bush to call the election for his brother. On his way to a 3 a.m. public concession, Gore changed course when a campaign staffer discovered that he was actually ahead in Volusia County by 13,000 votes.

But the damage was done. Gore was cast as a sore loser in a hostile media environment. His effort to obtain a recount was described by Sean Hannity on Fox News as an attempt to "steal the election." Meanwhile, George W. Bush invoked his duty to get on with the business of running the country. The rest, as they say, is history. We are now in the midst of yet another election season. And as November 6 approaches, only one thing is certain: American voters will have no ability to know with certainty who wins any given race, from dogcatcher to president. Nor will we know the true results of ballot initiatives and referenda affecting some of the most vital issues of our day, including fracking, abortion, gay marriage, GMO-food labeling, and electoral reform itself. Our faith-based elections are the result of a new Dark Age in American democracy, brought on, paradoxically, by technological progress.

The spread of computerized voting has carried with it an enormous potential for electronic skulduggery. In 2003, Bev Harris, a citizen sleuth and the author of *Black Box Voting: Ballot Tampering in the 21st-Century*, made a shocking and game-changing discovery: Diebold, then one of the primary manufacturers of voting

machines, had left the 40,000 files that made up its Global Election Management System (GEMS) on a publicly accessible website, entirely unprotected. Diebold was never able to explain how its proprietary tabulation program ended up in such an exposed position. Harris downloaded the files, and programmers worldwide pounced, probing the code for weaknesses. "The wall of secrecy," said Harris, "began to crumble."

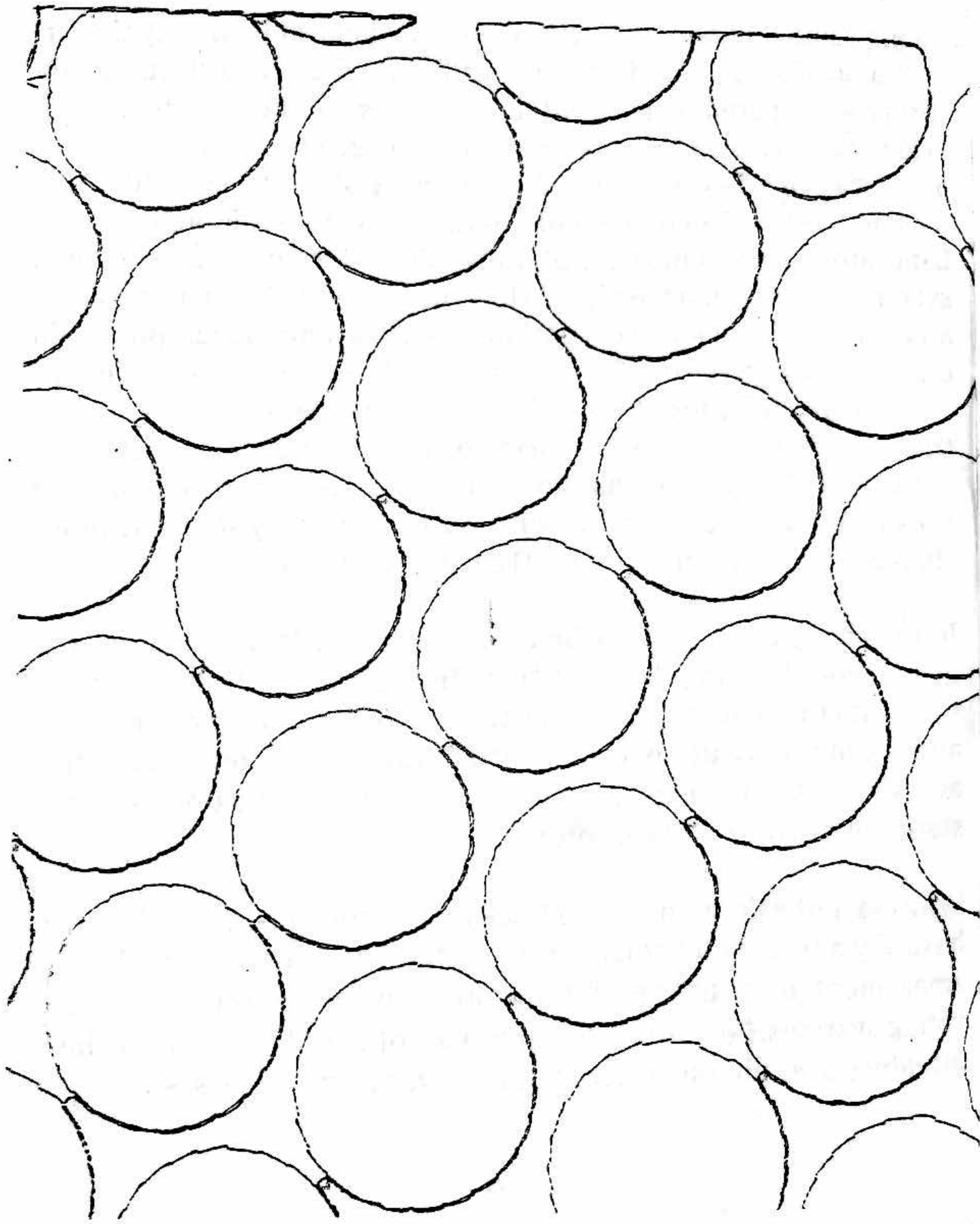
GEMS turned out to be a vote rigger's dream. According to Harris's analysis, it could be hacked, remotely or on-site, using any off-the-shelf version of Microsoft Access, and password protection was missing for supervisor functions. Not only could multiple users gain access to the system after only one had logged in, but unencrypted audit logs allowed any trace of vote rigging to be wiped from the record.

The public unmasking of GEMS by an average citizen (who was not a programmer herself) served as a belated wake-up call to the world's leading computer-security experts, who finally turned their attention to America's most widely used voting systems. Damning reports have since been issued by researchers from Johns Hopkins, Princeton, Rice, and Stanford Universities, the Brennan Center for Justice, and the Government Accountability Office (none of them institutions hospitable to "tin foil hat" conspiracy theorists). Experts describe appalling security flaws, from the potential for system-wide vote-rigging viruses to the use of cheap, easily replicated keys—the same kind used on jukeboxes and hotel mini-bars—to open the machines themselves. In 2005, the nonpartisan

Commission on Federal Election Reform, chaired by Jimmy Carter and James Baker, stated unequivocally that the greatest threats to secure voting are insiders with direct access to the machines: "There is no reason to trust insiders in the election industry any more than in other industries." As recently as September 2011, a team at the U.S. Department of Energy's Argonne National Laboratory hacked into one of Diebold's old Accuvote touchscreen systems. Their report asserted that anyone with \$26 in parts and an eighth-grade science education would be able to manipulate the outcome of an election. "This is a national security issue" wrote the Argonne team leader, Roger Johnston, using the sort of language that would normally set off alarm bells in our security-obsessed culture. Yet his warning has gone unheeded, and the Accuvote-TSX, now manufactured by ES&S, will be used in twenty states by more than 26 million voters in the 2012 general election.

Johnston's group also breached a system made by another industry giant, Sequoia, using the same "man in the middle" hack — a tiny wireless component that is inserted between the display screen and the main circuit board— which requires no knowledge of the actual voting software. The Sequoia machine will be used in four states by nearly 9 million voters in 2012.

Why did a physicist choose to hack into voting machines? "This was basically a weekend project," Johnston told me, expressing his amazement at the meager funding available to examine America's voting systems. "We did it because a lot of people looking at the machines are cybersecurity experts and programmers—and when



you have a hammer, everything looks like a nail. They were largely looking at sophisticated, cyber-based attacks. But there are simple physical attacks, as we proved, that are easier to do and harder to prevent."

The voting-machine companies never responded to the Argonne reports. "That's not unusual," says Johnston. "The manufacturers seem to be in denial on some of these issues."

Why the denial? There are at least 3.9 billion good reasons. In 2002, George W. Bush signed the Help America Vote Act (HAVA), offering states \$3.9 billion in subsidies to modernize their election administration and equipment, purportedly in response to Florida's hanging-chad fiasco of 2000. HAVA mandated that every polling place provide at least one voting system that allowed disabled people to vote with the same "privacy and independence" accorded to nondisabled voters. Thanks to confusing language in HAVA itself, and even a misleading report issued by the Congressional Research Service, one might easily assume that the mandate called for the purchase of DRE machines. In this way, the blind and visually impaired were unwittingly used as pawns to advance the agenda of the voting-machine industry. One election supervisor claims that Diebold went so far as to send him threatening letters after he sought out less expensive alternatives to service the disabled, even when these machines were compatible with Diebold's systems.

This was not the only deception surrounding the rollout of these electoral Trojan horses. In a 2007 Dan Rather exposé, *The Trouble with Touch Screens*, seven whistle-blowers at Sequoia charged that company executives had forced them to use inferior paper stock for ballots during the 2000 election. What's more, said the whistle-blowers, they had been instructed to misalign the chads on punch cards destined for the Democratic stronghold of Palm Beach County. "My own personal opinion was the touchscreen-voting system wasn't getting off the ground like they would hope," said Greg Smith, a thirty two year Sequoia employee. "So, I feel like they deliberately did all this to have problems with the paper ballots." Such blockbuster allegations are perhaps unsurprising given the group of Beltway insiders who helped to pass HAVA. One central player was former Republican representative Bob Ney of Ohio, sentenced in 2006 to thirty months in prison for crimes connected with disgraced lobbyist Jack Abramoff—whose firm was paid at least \$275,000 by Diebold.

HAVA's impact has been huge, accelerating a deterioration of our electoral system that most Americans have yet to recognize, let alone understand. We are literally losing our ballot—the key physical proof of our power as citizens.

Even a former major elections official has heaped scorn upon HAVA's mission. DeForest Soaries was appointed by George W. Bush to head the Election Assistance Commission (EAC), which HAVA created to oversee security standards for new voting devices. Soaries stepped down in 2005, calling his office a "charade" and

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claiming that he had been deceived by both the White House and Congress. Washington politicians, Soaries declared in a 2006 radio interview, have apparently concluded that our voting system can't be all that bad—after all, it got them elected. "But there's an erosion of voting rights implicit in our inability to trust the technology that we use," he added. "And if we were another country being analyzed by America, we would conclude that this country is ripe for stealing elections and for fraud."

The sheer unreliability of this new technology is only half the problem. The other half is a series of mergers and acquisitions that have further centralized the voting-machine industry over the past decade or so. Election Day is now dominated by a handful of secretive corporations with interlocking ownership, strong partisan ties to the far right, and executives who revolve among them like beans in a shell game.

Bob and Todd Urosevich are hardly household names. Yet the two brothers have succeeded in monopolizing American election technology for decades through a pair of supposedly competing corporations: the Ohio-based Diebold and the Nebraska-based ES&S. The latter was founded by the Urosevich brothers in 1979 and is headquartered in Omaha, where it has an Ayn Rand flavored corporate address on John Galt Boulevard. It is also, let us recall, the same company that may have won Chuck Hagel his Senate seat. Diebold became the most infamous name in the industry in 2003, when its CEO, Walden O'Dell, a top fund-raiser for George W. Bush, made a jaw-dropping public promise to "deliver" Ohio's electoral votes to Bush. The following year, California banned Diebold's

touchscreen system, and Secretary of State Kevin Shelley blasted the company as "fraudulent," "despicable," and "deceitful." O'Dell stepped down in 2005, right before the filing of a class-action suit that accused Diebold of fraud, insider trading, and slipshod quality control.

Concerned about its tarnished brand, the company removed its label from the front of voting machines. Then Diebold went one step further and changed the name of its voting-machine division to Premier Election Solutions.

In 2009, Diebold, which makes ATMs and other security systems, got out of the elections business altogether, selling Premier to ES&S. Here was a windfall for the Urosevich brothers in more than one sense: Bob had decamped to Diebold in 2002, when the company bought Global Election Systems, where he then served as president. Todd, meanwhile, remained at ES&S. This cozy arrangement was disrupted by a Justice Department antitrust intervention, which forced ES&S to split ownership of Premier with Dominion, the next big name in election technology. A month later, the deck was shuffled once again with Dominion's purchase of Sequoia.¹

¹ *At the time of the purchase, Dominion absorbed some key staffers from Sequoia, among them Edwin B. Smith, who now serves as Dominion's vice president of certification and compliance. In 2008, Smith threatened legal action against two computer scientists hired by*

Between them, Dominion and ES&S now count the majority of American ballots. There are, of course, newer technologies in development, including Web-based voting. This latest innovation is being peddled by the Spanish-owned Scytl, which named Bob Urosevich managing director of its Americas division in 2006. One would think (or hope) that a private industry entrusted with America's votes would require the highest degree of personal integrity from its employees. As it happens, many of the key staffers behind our major voting machine companies have been accused or convicted of a dizzying array of white-collar crimes, including conspiracy, bribery, bid rigging, computer fraud, tax fraud, stock fraud, mail fraud, extortion, and drug trafficking.

In 2001, for example, a grand jury indicted Philip Foster, Sequoia's southern regional sales manager, for malfeasance and conspiring to launder money. During the previous decade, he had facilitated a kickback scheme that funneled payments to a Louisiana elections official, who purchased Sequoia equipment while winking at

an association of New Jersey election clerks to examine malfunctioning Sequoia touchscreen machines. The following year, in a farcical conflict of interest, he was appointed to the EAC's Technical Guidelines Development Committee, which helps determine which specific voting machines should be certified for use.

millions of dollars in overcharges. The scheme, which also involved Foster's brother-in-law and fellow Sequoia employee David Philpot, was hardly an advertisement for the company. Yet Foster, who gained immunity for his testimony against the elections official, not only avoided jail time but was promoted to vice president of sales administration and strategies at Sequoia. One high achiever actually got his start in prison. Jeffrey Dean's vote-by-mail software — developed while Dean was serving a sentence for twenty-three counts of embezzlement—came to dominate the U.S. absentee-voting market. Once out of prison, Dean launched his own ballot-printing company with narcotics trafficker John Elder. They later sold it to Global Election Systems, where, readers will recall, Bob Urosevich served as president and COO, before the company was sold to Diebold.

This leads us to a crazy-making realization. Although many felons (and prior felons) can't cast a ballot in America—an estimated 6 million citizens will be disenfranchised in 2012 due to felony convictions—these particular felons are apparently free to design and manage our entire elections industry.

Since the American Revolution, election fraud has been attempted by every major political party, with frequent intraparty allegations, such as the claim of Ron Paul delegates that the rules were rigged against them at this year's Republican National Convention. To say that Democrats haven't committed their fair share of what were once quaintly called "shenanigans" would be disingenuous. Huey Long was a Democrat, as was virtually every candidate ever floated by Tammany Hall, not to mention Lyndon Johnson— whose

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election to the U.S. Senate in 1948, according to Robert Caro's *Means of Ascent*, relied on flagrant vote tampering. Still, the main beneficiary of recent trends in election stealing seems to be the American right.

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This is no accident. As the twenty first century unfolds, American politics continues to veer precipitously to the right, even as the demographic base for such a shift—older white conservative males—keeps shrinking. The engine of this seismic movement is a strategic alliance of corporate interests promoted by Rupert Murdoch's News Corp. empire and orchestrated by Karl Rove and the Koch-funded American Legislative Exchange Council. And meanwhile, the American right has in recent years been empowered by a slew of upset victories that range from unexpected to implausible, and that have frequently been accompanied by technical failures and anomalies, which are swept under the rug as rapidly as possible.

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In 2002, the G.O.P. regained control of the Senate with such victories. In Georgia, for example, Diebold's voting machines reported the defeat of Democratic senator Max Cleland. Early polls had given the highly popular Cleland a solid lead over his Republican opponent, Saxby Chambliss, a favorite of the Christian right, the NRA, and George W. Bush (who made several campaign appearances on his behalf). As Election Day drew near, the contest narrowed. Chambliss, who had avoided military service, ran attack ads denouncing Cleland—a Silver Star recipient who lost three limbs in Vietnam—as a traitor for voting against the creation of t

Department of Homeland Security. Two days before the election, a Zogby poll gave Chambliss a one-point lead among likely voters, while the Atlanta Journal-Constitution reported that Cleland maintained a three-point advantage with the same group.

Cleland lost by seven points. In his 2009 autobiography, he accused computerized voting machines of being "ripe for fraud." Patched for fraud might have been more apt. In the month leading up to the election, Diebold employees, led by Bob Urosevich, applied a mysterious, uncertified software patch to 5,000 voting machines that Georgia had purchased in May.

"We were told that it was intended to fix the clock in the system, which it didn't do," Diebold consultant and whistle-blower Chris Hood recounted in a 2006 Rolling Stone article. "The curious thing is the very swift, covert way this was done. . . . It was an unauthorized patch, and they were trying to keep it secret from the state. . . . We were told not to talk to county personnel about it. I received instructions directly from [Bob] Urosevich. It was very unusual that a president of the company would give an order like that and be involved at that level."

Two years later, of course, John Kerry lost the presidency in Ohio. In this key swing state, election monitors were besieged by complaints of G.O.P.-orchestrated voter suppression, intimidation, and fraud. Myriad voting-machine anomalies were reported, including "glitches" that skipped votes from Kerry to Bush. A phony terror alert in Republican Warren County (the FBI later

denied issuing any such warning) allowed officials to move ballots illegally to an auxiliary building and count them out of public view. Presiding over the election was the Republican secretary of state, J. Kenneth Blackwell, a fiercely partisan fundamentalist Christian who also served as co-chair of Ohio's Committee to Re-Elect George W. Bush.

The exhaustive evidence of voting irregularities in Ohio was documented in a 2005 report commissioned by Representative John Conyers, "Preserving Democracy: What Went Wrong in Ohio. At the time of that report, however, a major piece of the puzzle was still missing: the role of G.O.P. computer guru Michael Connell. Connell was the Bush campaign's chief IT strategist. He was also a zealous anti-abortion activist whose two Ohio-based companies built websites and email systems for the Republican National Committee, Swift Boat Veterans for Truth, and many of the most powerful figures in the G.O.P., including Karl Rove, Jeb Bush, and Jack Abramoff. It was one of Connell's websites that reported the surprising (many say unbelievable) surge of votes in Ohio that handed George W. Bush the White House for the second time. In 2004, Connell was hired by Blackwell to design a website that would post Ohio election results to the public. Connell's contract also required that he create a "mirror site" that would kick in to display the vote totals if the official Ohio servers were overwhelmed by Election Day traffic. For the latter portion of the job, he turned to SmarTech, a little-known company headquartered in Chattanooga, Tennessee. SmarTech was as partisan as Connell himself, and the company's servers hosted hundreds of high-profil

Republican websites (and, later on, an assortment of anti- Obama websites).

Four years later, Ohio attorney (and former Republican) Cliff Arnebeck began gathering evidence to file a racketeering claim against Karl Rove, which included the charge that Rove had masterminded the theft of the 2004 election. "We detected a pattern of criminal activity," Arnebeck told the British journalist Simon Worrall. "We identified Connell as a key witness, as the implementer for Rove." On November 3, 2008, he took a sworn deposition from Connell, who had repeatedly tried to quash Arnebeck's subpoena.

Initially Connell denied any role in choosing SmarTech to host the mirror site. Questioned further, he admitted that he "may have" made use of the Tennessee servers, but denied any knowledge of whether the mirror site had even been activated in 2004. His job, he insisted, was simply to display vote counts, "taking the public results as they are currently being reported and aggregating them into totals."

In fact, the SmarTech site went into action at 11:14 p.m. on Election Day. At this point, Arnebeck believes, the data being routed to Tennessee was used by G.O.P. partisans to target Ohio counties that were ripe for vote tampering. "The SmarTech people may have been guiding the manipulation of paper ballots in places like Warren County," Arnebeck told me.

Others argue that SmarTech's role was far more insidious and involved partisan control of the total vote count. Stephen Spoonamore, an IT specialist (and Republican) who has consulted on cybersecurity for Boeing, MasterCard, the Navy, and the State Department, has studied the electronic "architecture map" used by Ohio during the 2004 election. He speculates that SmarTech might have been able to use Connell's interface to gain access to and modify vote totals. In a sworn affidavit, Spoonamore said that the "variable nature of the story" and "lack of documentation available" would, for any of his banking clients, provoke "an immediate fraud investigation."

Arnebeck hoped to have Connell testify in open court against Rove. But the prospective witness died on December 19, 2008, at age forty-seven, when his single-engine Piper Saratoga, which he was piloting alone, crashed en route from Washington, D.C., to Ohio. The circumstances of his death were viewed with suspicion by his family and close friends and sparked a firestorm of conspiracy chatter on the Internet, but no criminal investigation was launched. Whether Rove and his collaborators orchestrated the electronic theft of the 2004 election will likely never be known. Still, Election Day exit polls make a compelling case that somebody may have been tampering with the presidential vote count, in Ohio and elsewhere.

Late on Election Day, John Kerry showed an insurmountable lead in exit polling, and many considered his victory all but certified. Yet the final vote tallies in thirty states deviated widely from exit polls,

with discrepancies favoring George W. Bush in all but nine. The greatest disparities were concentrated in battle-ground states—particularly Ohio. In one Ohio precinct, exit polls indicated that Kerry should have received 67 percent of the vote, but the certified tally gave him only 38 percent. The odds of such an unexpected outcome occurring only as a result of sampling error are 1 in 867,205,553. To quote Lou Harris, who has long been regarded as the father of modern political polling: “Ohio was as dirty an election as America has ever seen.”

The statistically anomalous shifting of votes to the conservative right has become so pervasive in post-HAVA America that it now has a name of its own. Experts call it the “red shift.”

The Election Defense Alliance (EDA) is a nonprofit organization specializing in election forensics—a kind of dusting for the fingerprints of electronic theft. It is joined in this work by a coalition of independent statisticians, who have compared decades of computer-vote results to exit polls, tracking polls, and hand counts. Their findings show that when disparities occur, they benefit Republicans and right-wing issues far beyond the bounds of probability. “We approach electoral integrity with a nonpartisan goal of transparency,” says EDA executive director Jonathan Simon. “But there is nothing nonpartisan about the patterns we keep finding.” Simon’s verdict is confirmed by David Moore, a former vice president and managing editor of Gallup: “What the exit polls have consistently shown is stronger Democratic support than the election results.”

Wouldn't American voters eventually note the constant disparity between poll numbers and election outcomes, and cry foul? They might—except that polling numbers, too, are being quietly shifted. Exit-poll data is provided by the National Election Pool, a corporate-media consortium consisting of the three major television networks plus CNN, Fox News, and the Associated Press. The NEP relies in turn on two companies, Edison Research and Mitofsky International, to conduct and analyze the actual polling. However, few Americans realize that the final exit polls on Election Day are adjusted by the pollsters—in other words, weighted according to the computerized voting machine totals.²

When challenged on these disparities, pollsters often point to methodological flaws. Within days of the 2004 election, Warren Mitofsky (who invented exit polls in 1967) appeared on television to unveil what became known as the “reluctant Bush responder” theory: “We suspect that the main reason was that the Kerry voters were more anxious to participate in our exit polls than the Bush voters.” But some analysts and pollsters insist this theory is

² *Exit polls, of course, are designed to analyze demographic patterns as well as to predict outcomes. It makes sense to adjust for demographic data, but this process troublingly obscures the raw numbers, masking the often wide distance between exit-poll results and final vote tallies.*

entirely unproven. "I don't think the pollsters have really made a convincing case that it's solely methodological," Moore told me. In Moore's opinion, the NEP could resolve the whole issue by making raw, unadjusted, precinct-level data available to the public. "Our great, free, and open media are concealing data so that it cannot be analyzed," Moore charges. Their argument that such data is proprietary and would allow analysts to deduce which votes were cast by specific individuals is, Moore insists, "specious at best." He adds: "They have a communal responsibility to clarify whether there is a vote miscount going on. But so far there's been no pressure on them to do so."

Some argue that the Democratic victories in 2006 and 2008 disprove the existence of the red shift. However, this may be a misinterpretation of complex political upheavals that occurred in each of those election years.

While Democrats won a majority in the House of Representatives in 2006, and the White House in 2008, post-election analyses did in fact suggest extensive red-shift rigging. But in both election cycles, these efforts simply failed to overcome eleventh-hour events so negative that they drastically under-cut the projected wins for the G.O.P.

In 2006, it was the exposure of Republican representative Mark Foley's sexual advances toward male congressional pages, and the long-standing cover-up of his behavior by G.O.P. leadership. The scandal swirling around the outwardly homophobic Foley broke in a very ugly and public way, engulfing the entire party and causing a

free fall in its polling numbers. The Democratic margin in the Cook Generic Congressional Ballot poll, which had been at 9 percent in early October, jumped to 26 percent by the week of the election. The collapse of Lehman Brothers months before the 2008 elections had a similar effect on John McCain's numbers. Pre-election polls showed that the American public blamed the Republicans for the imploding financial markets. "These political sea changes swamped a red shift that turned out to be under-calibrated," argues Jonathan Simon, who speculates that Barack Obama actually won by a historic land-slide, driven by an overwhelming backlash against the policies of the Bush Administration.

By 2010, the electoral map was once again littered with upset victories that tipped the balance of power in America back toward the right. In Massachusetts, it was Tea Party candidate Scott Brown who achieved what the New York Times called an "extraordinary upset" in his race for the late Ted Kennedy's seat—and thereby erased the Democrats' filibusterproof supermajority in the Senate. A little more than an hour after the polls closed on January 19, the Associated Press declared that Brown had defeated Attorney General Martha Coakley, becoming the state's first Republican senator in thirty years.

By most accounts, Coakley, who was initially favored to win, ran a lackluster campaign. And her opponent was riding a wave of populist discontent with the Obama Administration. Yet even Brown's victory, widely predicted by January 19, raised some questions about voting technology. According to the EDA, in all

seventy-one locations where ballots were counted by hand under public observation—more than 65,000 ballots in all—Coakley beat her opponent by 2.8 percent. Their analysis also showed that computer counted communities were more Democratic by registration and historically less likely to support Republican candidates.

In Florida, Rick Scott was elected governor in November after an historically close race with his opponent, Alex Sink. Scott, a millionaire and Tea Party favorite, squeaked through with a 1.15 percent margin of victory, representing just 61,550 votes, after a number of Dominion machines in Hillsborough County failed to upload results. In the wake of what was described as a memory card glitch, election workers manually rescanned about 38,000 early voting ballots, without any supervision by the public or the press. Sink, who needed only 35,000 more votes to trigger a mandatory recount, conceded the following day.

Further darkening Florida's electoral atmosphere was Scott's record of legal travails. He had narrowly avoided indictment in the late 1990s for his role as CEO of Columbia/HCA, a private health-care company. HCA eventually admitted to substantial criminal conduct and paid a record \$1.7 billion to the federal government. Whistle-blower lawsuits alleged that HCA engaged in a series of schemes to defraud Medicare, Medicaid, and TRICARE, the military's health- insurance program.

Scott left the company unscathed, with a reported \$300 million parachute, then spent \$73 million of his own money running for office. Two years later, he targeted 180,000 registered voters in an attempt to purge noncitizens from Florida's voter rolls. Many of the state's sixty-seven county election supervisors refused to carry out the purge. Leon County supervisor Ion Sancho called it un-American behavior. "This is an example of partisan manipulation of the process to try to affect the outcome," he told me. "It's sad but true."

In Wisconsin in 2010, the new Tea Party governor elect, Scott Walker, unveiled a violently corporatist agenda destined for legal challenge—ensuring that the 2011 race for a seat on the Wisconsin Supreme Court would be of crucial importance. The election was ultimately decided by Waukesha county clerk Kathy Nickolaus, who "discovered" 14,300 votes on her computer late on Election Night. This windfall handed the victory to the conservative incumbent, Justice David Prosser, for whom Nickolaus had worked for seven years. Prosser later joined the court's majority in upholding Walker's union busting legislation, stripping workers of their collective bargaining rights in the birthplace of the Progressive movement.

There is, finally, South Carolina's 2010 race for U.S. Senate, which Republican Jim DeMint won with 78 percent of the vote. What is mysterious is not the ultimate outcome, but the Democratic primary that preceded it, which tossed up a fairly fortuitous

opponent for DeMint: Alvin Greene, an unemployed thirty-two year old accused sex offender living in his father's basement. Greene, often described as "incoherent," ran no campaign: no website, no appearances at Democratic events, not even a yard sign. Yet he miraculously beat his opponent in the Democratic primary, former judge and four term state legislator Vic Rawl, by an 18 per cent margin. Voters and campaign workers reported that the ES&S touchscreen machines "flipped" votes to Greene all day long. Meanwhile, the absentee ballots—which were counted by hand—told a different story. In half of the state's forty-six counties, there was a 10 percent disparity between absentee ballots and those counted by machine; in Lancaster County, Rawl won 84 percent of the absentee vote.

Greene denied accusations (or, some would say, observations) that he was a G.O.P. plant, while declining to explain where he got the \$10,400 needed to file as a candidate. Rawl lodged a formal protest and requested a new primary. That was quickly knocked down by the executive committee of the South Carolina Democratic Party and DeMint sailed to a rout in November.

In the weeks following the South Carolina spectacle, the press engaged in round after round of analytic Twister, avoiding the most obvious question: Had another extremist just gained federal office on the basis of a rigged election? Their silence, however, was nothing unusual.

In his 2011 paper "To the American Media: Time to Face the Reality of Election Rigging," Jonathan Simon accuses the press of

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maintaining a Mafia-style omertà on the subject. "The gruesome truth," he writes, "is that American elections can be rigged, and are being rigged, because the American media treats election rigging as something that—all evidence notwithstanding—could never happen here."

Few people know this better than NYU professor Mark Crispin Miller, whose books *Fooled Again* and *Loser Take All* document a wide assortment of G.O.P. vote-stealing tricks in every major election from 2000 to 2006. When the books were published, he told me, "I got no interviews and almost no reviews, despite the wealth of evidence I'd gathered. The corporate media was silent. But the left-wing press was hostile."

Indeed, his colleagues on the left seem most reluctant of anyone to grapple with the concept of large-scale election tampering. "I know Michael Moore, Noam Chomsky, Rachel Maddow," Miller says. "I've tried for years to get them to concede that possibility, but they won't do even that. There's clearly a profound unease at work. They just can't go there."

Why? No doubt the fear of being branded a conspiracy theorist inhibits many—that term having long served as a cudgel to suppress discussion of all sorts of crimes against democracy. As Miller puts it, "There is no more exquisite method of silencing dissent, or shutting down inconvenient inquiry, than to charge someone with conspiracy theory."

Like their counterparts in the media, Democrats in office today appear unwilling to defend what matters most. They stand in complicit silence as improbable results are spat from the innards of unaccountable voting machines.

“For Democratic legislators and candidates, openly questioning the integrity of American democracy feels like committing political suicide,” says Ben Ptashnik. A former Vermont state senator, Ptashnik ran for office in 1996 specifically to spearhead the state’s Clean Elections Act—whose provisions were largely struck down by the U.S. Supreme Court nearly a decade after its passage. Ptashnik believes that election rigging remains an untouchable phenomenon in American politics. “Very few leaders are willing to fight it, which is probably why Kerry backed off in 2004. But the evidence is piling up. Democrats have to get their heads out of the sand and realize we’re looking at our worst nightmare: Karl Rove’s projected forty year G.O.P. dynasty.”

Ptashnik speaks with particular bluntness about the state of American democracy. “Today, Karl Rove and the Koch brothers are pushing a corporatist, anti-union agenda,” he says, “cynically allying with anti-immigrant nativists and Christian fundamentalists.” He compares the situation to that of Germany during the 1930s, when anticommunism drove industrialists and much of the working class into the arms of fascism.

It is Germany, however, that has now become the standard-bearer for clean elections. In 2009, that nation’s constitutional court

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The November elections will be a watershed for American democracy. A handful of contested Senate seats stand between a right-wing juggernaut and a moderate-progressive counterforce. A few battleground states— notably Florida, Ohio, Virginia, and Wisconsin—hold the key to the presidential election, which may determine the ideological balance of the Supreme Court for decades to come.

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Mitt Romney is regarded tepidly by the right wing of his own party. His Mormon faith and the moderate positions he took as governor of Massachusetts have limited his ability to rally the activist base. Consequently, even a weakened Obama may prove too powerful an incumbent to rig out of the White House.

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But if the Republicans gain complete control of Congress, they can probably render Obama toothless for his second term and blame him for the economic upheavals that are sure to come in the next

four years. Their focus, then, will probably be on the Senate, where Democrats still hold a precarious edge.

No matter how cynical we may have become about our elections, doing nothing to secure an accurate vote count is not an option. It may be too late to completely prevent vote rigging in the 2012 election. But the spotlight of increased public scrutiny may deter the most brazen acts of fraud and perhaps dissuade those who believe that shifting votes by minuscule percentages in the electronic dark will go unseen.

Where paper ballots still exist, we can demand that local election clerks allow them to be counted by hand before they leave the precinct. Organizing citizen volunteer groups to count them may be necessary. Sheila Parks, who founded the Center for Hand-Counted Paper Ballots, has also urged citizens with legal standing to file injunctions to impound ballots, memory cards, and even voting machines after the polls close. "This prevents tampering with any of these items after an election," she told me, "and gives us access to them with a secure chain of custody."

Staring at the outside of a black box voting system and attempting to detect fraud, however, will not ultimately produce clean elections. It is an exercise in futility if we do not take the next steps now. In preparation for the 2014 election, we must demand that our representatives pass comprehensive election reform, including publicly financed races and a secure, transparent vote count. A privatized, secret ballot count must be viewed as a violation of our

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civil rights. Once that principle is clear, as it is now in Germany and Ireland, the rest will naturally follow. If we the people do not feel the outrage, or lack the courage to fight for this most basic right of American self-governance, who will?

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HOW TO STEAL AN ELECTION

The Crazy History of Nominating Conventions.

By Jill Lepore

The New Yorker July 4th, 2016 issue

At sunrise on the day before the Republican National Convention begins, in Cleveland, a hundred women will take off their clothes and pose for the photographer Spencer Tunick outside the convention hall. Naked, they'll be holding up big, round mirrors to the sky, to catch the light. "Women will decide the outcome of this election," Tunick says. He insists that his installation is not a political protest. "This is a work Republican women can participate in," he says, bipartisanly.

This year's Conventions will be held back to back, like a doubleheader, or two root canals in a row. The week after the Republicans meet in Cleveland, the Democrats will meet in Philadelphia. First Trump, then Clinton. But, what with the anti-Trumpers and the pro-Sandersers, some people are worried that a hell might break loose, which is unusual, since people more commonly worry that the Conventions will be boring. "At first blush, the Republican National Convention at Cleveland next week promises to be a very dull show," H. L. Mencken wrote in 1924, when the incumbent, Calvin Coolidge, was the all but assured nominee. "Some dreadful mountebank in a long-tailed coat will open . . . with a windy speech; then another mountebank will repeat the same rubbish in other words." And, while that really is what happens, lately more than ever (since 1952, no Convention has gone past the first ballot) the Conventions are never boring, if only because of the high jinks, not to mention the low jinks. In Chicago in 1864, the Democrats installed a giant sign made of coiled gas pipe. It was supposed to read "McClellan, Our Only Hope," but the gas jets broke and the thing just flickered and died, hopelessly. Roscoe Conkling was so sure he'd get the nod in 1876 that he picked his Vice-President and a motto—"Conkling and Hayes / Is the ticket that pays"—only to be defeated by his erstwhile running mate, ever after known as Rutherford B. Hayes.

Until 1932, when F.D.R. decided to show up to accept his nomination, the candidates themselves skipped the Conventions, citing modesty, a precedent set a century before by Henry Clay.

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Asked by letter if he would be willing to be nominated by the short lived National Republicans, at their one and only Convention, Clay wrote back to say yes but that it was impossible for him to attend the Convention "without incurring the imputation of presumptuousness or indelicacy." When Grover Cleveland received a telegram at the White House informing him that he had been renominated by a Democratic Convention meeting in St. Louis, he said, "Heavens, I had forgotten all about it." Many a journalist might not have minded if the candidates had maintained the tradition of keeping away. "Interviewing a candidate is about as intimate as catching him on television," Norman Mailer wrote from the Republican Convention in Miami in 1968, to which some G.O.P. genius had flown in a pachyderm. "Therefore the reporter went to cover the elephant."

It's not all a bamboozle, especially not this election. The White House is at stake, and more, too: the state of the union. The worry, this time around, isn't that the Conventions will be boring; it's that they'll be interesting, frightfully.

The Presidential-nominating Convention is an American invention. It is the product of a failure of the Constitution. Kings are born; Presidents are elected. How? This is a math problem and it's a political problem, and it's been solved but never resolved. The first nominating Convention was held in 1831. It was an attempt to wrest power away from something known as the legislative caucus which was itself an attempt to wrest power away from the Electoral College. The first primary was held in 1901. It was an

attempt to wrest power away from the nominating Convention. This year, there's been a lot of talk about how the system is "rigged" by "the establishment." It was exactly that kind of talk that got us the caucus, the Convention, and the primary, institutions built in the name of making American democracy more representative and more deliberative. But the more representative the body the less well it is able to deliberate: more democracy is very often less.

How to elect a President was vexed from the start. At the constitutional convention in Philadelphia in 1787, the men who framed the federal government made a great many compromises, but "the Convention were perplexed with no part of this plan so much as with the mode of choosing the President," as the Pennsylvania delegate James Wilson later explained. Some delegates believed that Congress should elect the President. This allowed for popular participation in government while avoiding what Hamilton called the "excess of democracy." But having Congress elect the President violated the principle of the separation of powers. Wilson proposed that the people elect the President directly, but Madison pointed out that the Southern states "could have no influence in the election on the score of the Negroes." That is, the South had a lot of people, but a third of them were slaves; in a direct election, the North, which had a lot of people but very few slaves, would have had more votes. Wilson therefore suggested the Electoral College, a proposal that built on a mathematical compromise that had taken the delegates most of the summer to devise. Under the terms of the three-fifths compromise,

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each state was granted one representative in Congress for every thirty thousand people, except that slaves, who could not vote, counted as three-fifths of a person. Wilson's proposal applied this formula to the election of the President: the number of each state's electors in the Electoral College is the sum of its congressional delegation, its two senators plus its number of representatives. Substituting electors for voters conferred on the slave states a huge electoral advantage, once the first census was taken, in 1790. Virginia and Pennsylvania had roughly equivalent free populations, for instance, but Virginia, because of its slave population, had six more seats in the House than did Pennsylvania, and therefore six more electors in the Electoral College. This bargain helps to explain why the office of the President of the United States was, for thirty-two of the first thirty-six years of its existence, occupied by a slave-owning Virginian.

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In the first two Presidential elections, George Washington ran unopposed. But by 1796, when Washington announced that he would not run for a third term, the polity had divided into parties, a development that the Electoral College was not designed to accommodate. One Federalist complained that he hadn't chosen his elector "to determine for me whether John Adams or Thomas Jefferson is the fittest man for President. . . . No, I choose him to act, not to think." To better delegate their electors, Federalists and Republicans in Congress began meeting in a caucus where they decided their party's Presidential nominee.

Early American presidential elections were not popular elections, not only because the vote was mainly restricted to white male property owners but also because delegates to the Electoral College were elected by state legislatures. The legislative caucus worked only as long as voters didn't mind that they had virtually no role in electing the President, a situation that lasted for a while since, after all, most people living in the United States at the time were used to having a king. But a new generation of Americans objected to this arrangement, dubbing it "King Caucus." "Under what authority did these men pretend to dictate their nominations?" one citizen asked in 1803. "Do we send members of Congress to cabal once every four years for president?" New states entering the union held conventions to draft state constitutions, in which they adopted more democratic arrangements. This put pressure on old states to revise their own constitutions. By 1824, eighteen out of twenty-four states were holding popular elections for delegates to the Electoral College. Between 1824 and 1828, the electorate grew from fewer than four hundred thousand people to 1.1 million. Men who had attended the constitutional convention in 1787 shook their gray-haired heads and warned that Americans had crowned a new monarch: "King Numbers."

That king still sits on his throne. "The first principle of our system," Andrew Jackson, of Tennessee, insisted, is "that the majority is to govern." The Electoral College couldn't be undone except by a constitutional amendment. But the legislative caucus could be. The first call for the beheading of King Caucus came in 1822, in the pages of the New York American. Two years later, after the press

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learned about a caucus meeting to be held in the House, only sixty-six out of two hundred and forty legislators were willing to appear before a disgruntled public, which flooded the galleries shouting, "Adjourn! Adjourn!" And so it did.

The Anti-Masonic Party, formed to end the reign of secret cabals, held the first Presidential-nominating Convention, in September, 1831. Unfortunately, the man chosen as the Party's nominee turned out to be . . . a Mason. The Anti-Masons left two legacies: the practice of granting to each state delegation a number of votes equal to the size of its delegation in the Electoral College, and the rule by which a nomination requires a three-quarters vote. Other practices have not endured. Two months after the Anti-Masons met, the National Republican Party held a Convention of its own, in which it called on the states not in alphabetical order but in "geographical order," beginning with Maine, and working down the coast, causing no small amount of consternation among the gentlemen from Alabama. The practice of holding a national Convention might not have endured if Jackson hadn't decided that the Democratic Party ought to hold one, too. Jackson wanted to boot out his Vice-President, John C. Calhoun, who believed that states had a right to nullify federal laws, a position that Jackson opposed. Jackson and his advisers realized that if they left the nomination to the state legislatures, where Calhoun had a lot of support, they'd be stuck with him again. Jackson contrived to have the New Hampshire legislature call for a national Convention. In 1835, Jackson issued the call for a nominating Convention himself, in an extraordinary letter to the American people:

I consider the true policy of the friends of republican principles to send delegates, fresh from the people, to a general convention, for the purpose of selecting candidates for the presidency and vice-presidency; and, that to impeach that selection before it is made, or to resist it when it is fairly made, as an emanation of executive power, is to assail the virtue of the people, and, in effect, to oppose their right to govern.

The point of this Convention was to assure the nomination of Jackson's handpicked successor, Martin Van Buren, and to allow Van Buren to contrive for his choice, Richard Johnson, to win the Vice-Presidential nomination. But Tennessee, whose support for Jackson had begun to waver, refused to send a delegation to the Convention, held in Baltimore. With fifteen electors, Tennessee had fifteen votes at the Convention. Unwilling to lose those votes, Van Buren's convention manager went to a tavern, found a Tennessean named Edward Rucker, who just happened to be in Baltimore, and made him a one-man, fifteen-vote delegation. "Rucker" became a verb.

Populism is very often a very clever swindle. But since 1831, with only one exception—the Whigs in 1836—every major party has nominated its Presidential candidate at a Convention.

There is no end to the ruckery in the annals of American history. "Absolutely rigged," Trump said about the nomination process in April. "I wouldn't use the word 'rigged,'" Bernie Sanders said in May. "I think it's just a dumb process."

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The first party "platform" was adopted at a Convention in 1840, during an election that also introduced more rough-hewn lumber in the form of log cabins. (Whigs paraded them around the country, on wheels.) Platform-committee meetings are chest-thumping contests between warring clans within the parties; in exchange for conceding, defeated candidates tend to have a lot of influence over the platform. Even without having conceded, Sanders won from the D.N.C. additional seats on the platform committee; he then named as his delegates celebrity progressives like Cornel West and Bill McKibben. R.N.C. platform-committee delegates include the conservatives Tony Perkins, the head of the Family Research Council, and David Barton, a Texas evangelical and amateur historian who has lectured for Glenn Beck's online university; both were supporters of Ted Cruz. This year, the G.O.P. is also crowd-sourcing the committee's work at platform.gop, asking anyone who visits the site to rank issues about, for instance, the Constitution: Which is more important to you, human life or the Second Amendment?

In 1844, when the incumbent President, John Tyler, found himself without a party, he called for a third-party Convention to nominate him, in order to persuade the Democrats to nominate him at their own Convention. (These and other escapades are recounted by Stan Haynes, the most exhaustive chronicler of the Conventions, in a series of invaluable books.) Tyler campaigned on a promise to annex Texas. Two weeks before the Democratic Convention was to begin, in Baltimore, Jackson called a meeting. Jackson said he

wanted "an annexation man, and from the Southwest." James K. Polk, who was unknown outside Tennessee, became that man. ("I wish I could slay a Mexican," Henry Clay said four years later, when the names on the ballot were mainly those of generals who had fought in the Mexican-American War.)

One lesson of American Presidential history: You can't beat somebody with nobody. Desperate, late-in-the-day attempts to draft into the race, say, Mitt Romney are unusual at this point in American history. But running a dark horse was a minor American art form well into the twentieth century. George Bancroft finagled Polk's nomination by making sure that Polk's name wasn't mentioned until the third day of the Convention. "My name must in no event be used until all efforts to harmonize upon one of the candidates already before the public shall have failed," Franklin Pierce warned when he was the dark horse of the Democratic Convention in 1852. James Garfield, a Republican delegate, made such a good speech, nominating his fellow-Ohioan the uninspiring John Sherman, that Conkling, a New York delegate, handed Garfield a note that read, "New York requests that Ohio's real candidate and dark horse come forward." Garfield's nomination was masterminded by a Philadelphia banker, who seated Garfield supporters at strategic sites around the hall so that, from his seat on the stage, he could cue them to greet Garfield with perfectly timed ovations.

"Every attempt to abridge the privilege of becoming citizens... ought to be resisted," the Democratic Party pledged, in 1856,

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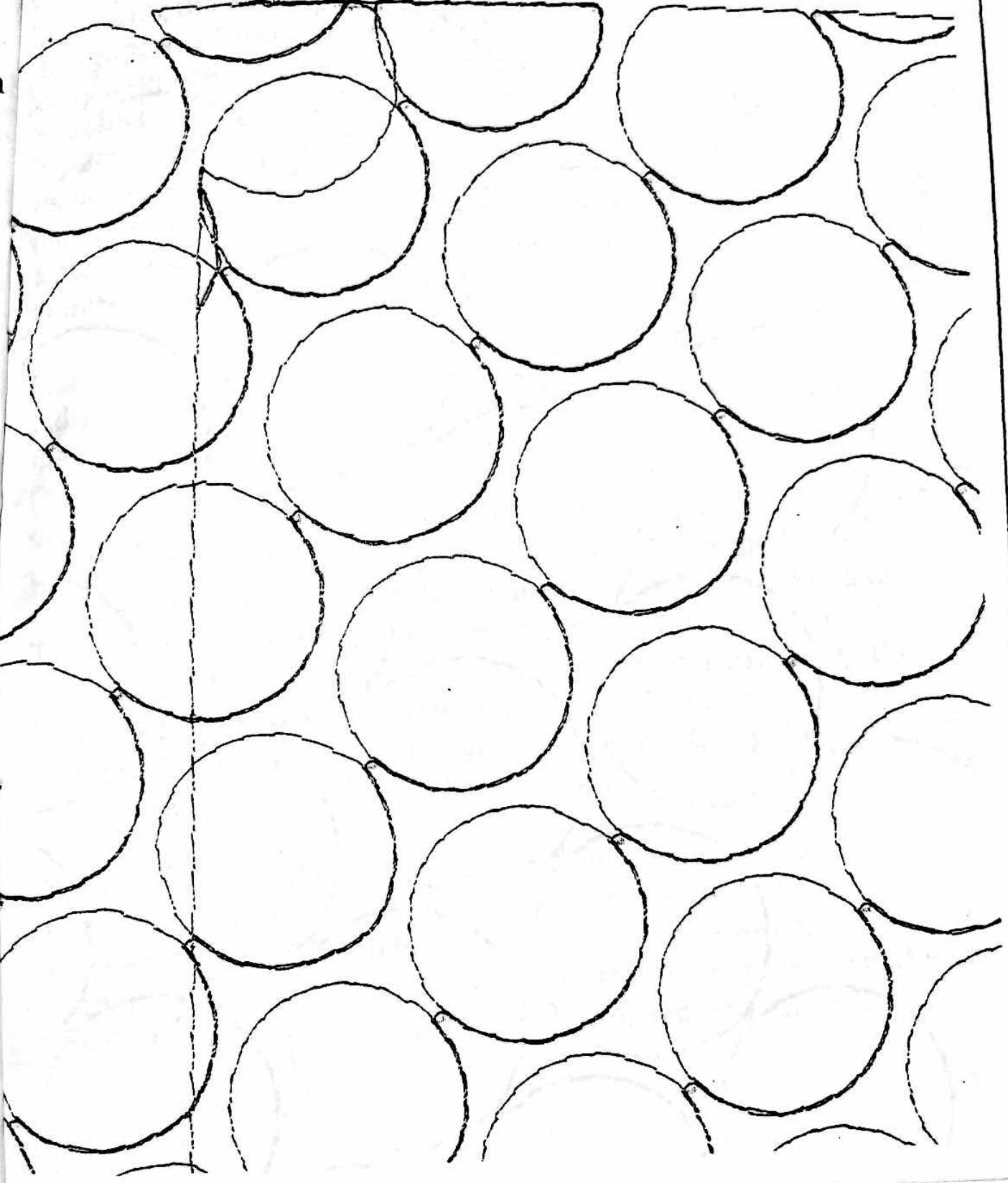
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countering the Know-Nothings, whose motto was "Americans Must Rule America," and whose platform consisted of a resolution discouraging the election of anyone not born in the United States to any office, of any kind. That wave of nativism passed, only to be replaced by efforts to prohibit Chinese immigration. "It is the immediate duty of congress fully to investigate the effects of the immigration and importation of Mongolians on the moral and material interests of the country," the Republican National Convention resolved in 1876.

Much skulduggery concerns the credentials of delegates. "Why didn't you nominate Rufus Choate?" began a joke told about the old men who'd been rounded up to serve as delegates at a Convention. (Yes, Choate was dead, but so recently!) Then there's more ordinary betrayal. In 1876, when the Democrats met in St. Louis—the first time that a Convention was held west of the Mississippi—a delegation opposed to the nomination of the New Yorker Samuel Tilden hung a giant banner from the balcony of the Lindell Hotel. It read "The City of New York, the Largest Democratic City in the Union, Uncompromisingly Opposed to the Nomination of Samuel J. Tilden for the Presidency Because He Cannot Carry the State of New York." So much for the favorite son.

"We are united," Henry Clay said, halfheartedly, at one of the Conventions in which he failed to win the nomination. In 1860, at a Democratic Convention held in Baltimore—the second Democratic gathering held that year, since the Southern delegates bolted from the first one—an American flag was adorned with the motto "We

Will Support the Nominee." That Convention required delegates to take a loyalty pledge: "Every person occupying a seat in this convention is bound in good honor and good faith to abide by the action of this convention, and support its nominee." This happened again in 1948, when Southerners bolted from the Democratic Convention over civil rights, and held their own Convention, as the Dixiecrat Party, whose platform included this statement: "We stand for the segregation of the races and the racial integrity of each race." After that, Democrats called for delegates to take a loyalty pledge. The Dixiecrat defection also contributed to the Democrats' adoption, in 1956, of a bonus system, awarding extra votes to delegates from states that had voted for the Party nominee in the previous election.

These traditions are why Trump was asked, at the first G.O.P. debate of this primary season, whether he would support the eventual Republican nominee. They're also why so many Democrats lost patience with Sanders for remaining in the race. (Trump says that Sanders is waiting for "the F.B.I. Convention," which is Trump's way of suggesting that Clinton will be indicted before the Democrats meet in Philadelphia.) Second-placers often hanker for an old-fashioned, contested Convention. For a while, Trump wanted one, too, but, when Cruz stepped down, Trump changed his mind: no one wants to contest what's already won. At that point, the Indiana attorney Joshua Claybourn gave up his seat as a G.O.P. delegate. "Party rules would require I vote for Donald Trump," Claybourn explained. "I choose not to let that happen."

The rise of the primary was a triumph for Progressive reformers, who believed that primaries would make elections more accountable to the will of the people. That didn't quite come to pass. Instead, primaries became part of the Jim Crow-era disenfranchisement of newer members of the electorate. Frederick Douglass addressed Republicans at a Convention in Cincinnati in 1876, asking, "The question now is, Do you mean to make good to us the promises in your constitution?" Sarah Spencer, of the National Woman Suffrage Association, was less well received at that Convention, which marked the centennial of the Declaration of Independence. "In this bright new century, let me ask you to win to your side the women of the United States," Spencer said. She was hissed. In 1880, Blanche K. Bruce—a former slave, a delegate from Mississippi, and a U.S. senator—served as an honorary vice-president of the Republican Convention, and wielded the gavel.

The end of Reconstruction saw the rise of the secret ballot, which, by effectively introducing a literacy requirement, disenfranchised black men. If the Emancipation Proclamation ended the electoral advantage granted to Southern whites by the three-fifths clause, the secret ballot restored it. In Louisiana, black-voter registration dropped from 130,000 in 1898 to 5,300 in 1908 to 730 in 1910. But the real racial recount came with the rise of the primaries; the reform began to gain strength in 1905. The election of 1912 was the first in which a significant number of delegates to the nominating Conventions were elected in state primaries, as Geoffrey Cowan writes in "Let the People Rule," a book that takes its title from Theodore Roosevelt's campaign slogan. Roosevelt

wanted to wrest the Republican nomination from the incumbent President, William Taft, and saw the primaries as his only chance. "The great fundamental issue now before the Republican Party and before our people can be stated briefly," he said. "It is: Are the American people fit to govern themselves, to rule themselves, to control themselves? I believe they are. My opponents do not."

Thirteen states held primaries; Roosevelt won nine. Still, winning the Convention was another matter, since the primaries weren't binding. By 1912, blacks had been so wholly disenfranchised in the South, and the South was so wholly Democratic, that most of the Southern delegates to the Republican Convention were black men who had been appointed to Party offices by the Taft Administration. Roosevelt needed their votes and tried to court them. "I like the Negro race," he said in a speech at an A.M.E. church, the day before the Convention. But the next day the New York Times reported on affidavits alleging that Roosevelt's campaign had attempted to bribe black delegates. Roosevelt lost the nomination to Taft. He then formed the Progressive Party, whose Convention refused to seat black delegates. "This is strictly a white man's party," said one of Roosevelt's supporters, a leader of what became known as the Lily Whites. In the general election, Roosevelt and Taft split the Republican vote, allowing Woodrow Wilson to gain the Oval Office, where, as W. E. B. Du Bois remarked, he introduced "the greatest flood of bills proposing discriminatory legislation against Negroes that has ever been introduced into an American Congress."

Party leaders ignored primaries for as long as they could. Beginning in the nineteen-thirties, they instead used public-opinion polls to gauge the prospects of their candidates. Candidates who sought out primaries tended to be weak ones. In 1952, Estes Kefauver entered and won twelve of fifteen primaries; it didn't matter. At the Democratic Convention, he lost on the third ballot, to Adlai Stevenson, who hadn't run in a single primary. That same year, Robert Taft won six primaries to Dwight Eisenhower's five. It didn't matter; at the Republican Convention, the Party went for Eisenhower, who was leading in the polls. John F. Kennedy needed to win primaries to demonstrate to the Party that voters didn't mind that he was Catholic. Barry Goldwater bypassed the primaries but won the nomination because the delegates to the 1964 Convention fell for him. "This Nation and its people are freedom's model in a searching world," he said, accepting the nomination. Another lesson of American Presidential history: Beware of candidates who flatter the people.

Nominating Conventions are extra-legal, and attempted reforms have often been deemed unconstitutional. The rules set by each Convention are essentially peace treaties negotiated between the parties and the voters. It falls to both sides to accept the terms of the peace.

"The invitation to violence arises because partisanship in its most intense forms contests the very basis of a political community," the political scientist Russell Muirhead has observed. The basis of that community, he argues, is a trio of political settlements, each

achieved by violence: the rejection of monarchic rule through the acceptance of the idea of the consent of the governed; the rejection of religious intolerance through the acceptance of freedom of conscience; and the rejection of slavery through the acceptance of political equality. This election season, all three of those fundamental settlements have become, to varying degrees, unsettled. "The will of the people is crap," the influential conservative Erick Erickson wrote, about Trump's primary victories. Trump has called for a religious test for immigrants, in order to ban Muslims. And the argument of the Black Lives Matter movement is that political equality was never settled in the first place.

The protests at the Democratic Convention in Chicago in 1968 resulted in a change in the balance of power between the primaries and the Conventions: before 1968, primaries hardly mattered; since 1968, the Conventions have hardly mattered. A report issued in 1968 predicted that "instantaneous polls of the entire electorate" conducted by "central computers from every home" would make nominating Conventions obsolete, which has, in fact, happened. That's the de-facto change, but the de-jure change is that the primaries became binding.

After the chaos of 1968, political reformers called for the abolition of the nominating Convention, to be replaced by a national primary, and the American Bar Association called for the abolition of the Electoral College, to be replaced by direct, popular election. These proposals, which had been made before and have been made since,

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have a ready appeal. The nominating Convention is a messy and often ugly accident of history. "No American political institution is more visible than the convention, or more often visibly shoddy," the constitutional scholar Alexander Bickel admitted. But changing the structure of government carries its own dangers, Bickel insisted: "The sudden abandonment of institutions is an act that reverberates in ways no one can predict, and many come to regret. There may be a time when societies can digest radical structural change, when they are young and pliant, relatively small, containable, and readily understandable; when men can watch the scenery shift without losing their sense of direction. We are not such a society."

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The loss of direction that Bickel warned of has come to pass, even without radical change. Instead, there's been incremental change. The rules have changed, and changed, and changed. The parties change the rules when they lose, with an eye toward winning the next time around. There's no grand plan; there's a plan to win in four years' time. The rule changes since 1968 have made the primaries more binding, notwithstanding the argument that they violate the 1965 Voting Rights Act (since the course of events is disproportionately determined by the very nearly all-white states of New Hampshire and Iowa). The system, as it stands, rewards political extremism, exacerbates the influence of money in elections, amplifies the distorting effects of polls, and contributes to political polarization. Debatable, but often asserted, is that it also produces poor candidates and ineffective Presidents.

Since 1968, no one in either party has successfully defeated at the Convention the candidate who won a plurality of the primaries and the caucuses. In 1972, George McGovern, who'd chaired the Democratic commission that rewrote the Party's delegate-selection rules, won its nomination despite an "Anybody but McGovern" challenge at the Convention, in Miami. McGovern lost to Nixon in a landslide: he carried just one state. In 1976, at the G.O.P. Convention, in Kansas City, Ronald Reagan challenged Gerald Ford and, very narrowly, lost. Jimmy Carter, who'd won a lot of primaries, won the Democratic nomination and even the election, but after his failed Presidency many Democrats regretted binding their delegates to the primaries. In 1980, at the Democratic National Convention, in New York City, Ted Kennedy tried to challenge Carter but was defeated by the rules. That's why, in 1984, the D.N.C. invented superdelegates, high-status Party officials who are pledged to no one candidate. This year, a lot of Republicans are regretting binding their delegates to the primaries. The rules committee meets the week before the Convention. Hundreds of anti-Trump Republicans have formed an organization called Free the Delegates and begun plotting a strategy to block his nomination by adding a "conscience clause" to the rules, unbinding the delegates. Paul Ryan said that he wouldn't object: "It's not my job to tell delegates what to do." This tactic has been tried before. A savvy souvenir collector could even hawk on the streets of Cleveland the buttons that Kennedy supporters wore in 1980, which read "free the delegates."

Mencken said that going to a Convention was something between attending a revival and watching a hanging. Going to this year's Conventions could feel more like getting trapped in a forest fire. The Cleveland Police Department has stocked up on riot gear. Protesters are expected at both Conventions, in droves, if, generally, in clothes. Much of the sense of foreboding is a production of the press, and especially of Twitter, each Tweet another match lit on the pyre of the republic. But part of the foreboding is founded. Trump renounced violence only after inciting it. "It goes without saying that I condemn any and all forms of violence," Sanders said in a statement that included a lot of "but"s.

No nomination is ever entirely uncontested; the only question is what form the contest will take—sound or fury. The gavel used at the 1880 Republican Convention had a handle made of cane grown at Mount Vernon and a head made of wood taken from the doorway of Abraham Lincoln's house in Springfield. American elections are makeshift. Another gavel will rap in Cleveland, on July 18th, calling the Convention to order. The people remain as unruly as ever.

More information

Felon disenfranchisement

<http://www.sentencingproject.org/issues/felony-disenfranchisement/>

Ballot Fraud

<http://electiondefensealliance.org>

<https://www.verifiedvoting.org>

<http://www.handcountedpaperballots.org>

The Electoral College

<http://www.fairvote.org>

<http://www.nationalpopularvote.com>

www.electionreform.website

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