



Reflecting on the Election and Its Consequences

David Brady and Pamela S. Karlan

Introduction by John L. Hennessy

The panel discussion took place at the 1934th Stated Meeting at Stanford University on December 1, 2008.



John L. Hennessy

John L. Hennessy is President of Stanford University. He has been a Fellow of the American Academy since 1995.

Introduction

Pamela Karlan joined the Stanford Law School in 1998 after serving on the faculty at the University of Virginia and, before that, serving as a law clerk to Supreme Court Jus-

stice Harry Blackmun. Currently she is the Kenneth and Harle Montgomery Professor of Public Interest Law and the founding Director of the Stanford Law School Supreme Court Litigation Clinic. This clinic, one of the first of its kind to be established in the United States, exposes students to the workings of the Supreme Court and gives them the opportunity to work on cases currently before the Court. Professor Karlan has also distinguished herself as a teacher. In 2002, she received from the law school the John Bingham Hurlbut Award for excellence in teaching. She is known as an outstanding scholar in the area of voting and the political process and has coauthored three leading textbooks on constitutional law and related subjects, including the first law casebook on the 2000 presidential election, entitled *When Elections Go Bad: The Laws of Democracy and the Presidential Election of 2000*. When the *Stanford Report* asked her to describe the process of writing *When Elections Go Bad*, she said, "It was a blast." She has also made numerous media appearances to comment on the 2000 and 2004 elections.

Professor Karlan was elected to the American Academy of Arts and Sciences in 2007.

David Brady's research is focused on the U.S. Congress, its political history and decision-making process, as well as the U.S. party system and the history of U.S. elections. Twice, in 1995 and 2000, he was awarded the Congressional Quarterly Prize for "the best paper on a legislative topic." In the classroom, he specializes in public policy and leadership and is recognized as one of Stanford's most outstanding teachers, having received both the Lloyd W. Dinkelspiel Award for excellence in undergraduate teaching and the Phi Beta Kappa Award for the best teacher on campus. Professor Brady joined the Stanford faculty in 1987, the same year the Academy had the good sense to elect him a member. Over the past decades, he has played many roles. Currently, he is the Bowen H. and Janice Arthur McCoy Professor of Political Science and Leadership Values at the Stanford Graduate School of Business, Professor of Political Science in the School of Humanities and Sciences at the University, Deputy Di-

rector and Senior Fellow at the Hoover Institution, and Senior Fellow at the Stanford Institute for Economic Policy Research. In 2004 the Stanford alumni honored him with the Richard W. Lyman Award for exceptional volunteer service to the university in recognition of his excellence as a teacher and as a commentator on current topics in elections.



David Brady

David Brady is Deputy Director and Senior Fellow at the Hoover Institution and the Bowen H. and Janice Arthur McCoy Professor of Political Science and Leadership Values at the Stanford Graduate School of Business. He has been a Fellow of the American Academy of Arts and Sciences since 1987.

Presentation

Those of us who do political economy approach elections a bit differently than do the chattering classes and news people. We ask what would the vote be if the candidates and the issues were more-or-less equal? Such a baseline can then be used to build models to predict the outcome of elections. In establishing the baseline, the assumption that works best is that elections are retrospective events. That is, when people walk into a booth to vote, they are voting on the performance of the president and/or the president's party. "Performance" really means the economy. Has it grown over the last three or sixteen quarters? (Economists and political scien-

tists disagree over the exact length to be used in their models.) The bottom line is that these models are successful. The one I most prefer, called the Fair model – Ray Fair, an economist at Yale, developed it – predicted that the Republican candidate for president in the 2008 election, whoever it would be, would get about 47.5 percent of the vote.

These models work least well during wartime. For example, in 1968, when the economy was performing reasonably well, Hubert Humphrey, the incumbent vice president, lost his bid to replace President Lyndon Johnson because of the Vietnam War. In 1952, a time when the economy was growing at an annual rate of about 2.5 percent and the models would normally have predicted reelection of the incumbent, the Korean War brought Eisenhower to victory over Truman.

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In the recent election, a colleague and I examined the predictions of the twenty leading models used by economists and political scientists. Only one model predicted a Republican victory, and it was created by Jim Snyder, a Republican at Syracuse University. The other nineteen predicted a Democratic win, and that the Republican candidate would get about 47 percent of the vote.

Does that mean any Democrat would have won the election? The answer is, yes, that was the prediction. When I explained this at a recent talk in Australia, the audience was quite surprised because they believed there was something special about president-elect Obama (which is not to say there isn't something special about Mr. Obama). However, the facts are that 2008 was a year in which one could expect the Democratic candidate to do well. In addition to the butter and guns issues of the economy and the war, another

measure, public opinion, specifically the president's popularity, predicted the outcome of the election. Normally I don't like to use public opinion too much in these cases, because reasonable public-opinion data goes back only to 1940, whereas economic data is accurate back to 1876. But going into the last election cycle, we had a sitting president who owned the five highest disapproval ratings ever measured by Gallup. Given the public's historic dislike of President Bush, the basic economic data, and the fact that the country was at war, a Democratic win was the most likely outcome.

The models used to predict congressional outcomes are more complicated. The economy still figures in, but a second part of the equation involves making estimations about which representatives and senators are most out of step with their constituencies. For example, is the representative too conservative for his or her district or state? Despite this added level of complexity, the models for predicting the post-election composition of the House and Senate were within one or two seats in the House. The average prediction for the Senate was 58.7 seats for the Democrats, and they appear to be headed toward 58. In short, nothing was unusual about the 2008 election – at least in terms of the models we normally use.

What about the campaigns? Do they make a difference? They do, but how much of a difference is hard to figure out most of the time. In the 2008 election, John McCain's campaign, which you now hear was not very good, actually was good prior to about September 15 and the economic crisis. In spite of all I've just said about why the Democratic candidate should have been ahead, going into the economic crisis the election was still surprisingly competitive. After the Democratic National Convention, which you would expect to give Obama a bump in the polls, he in fact led by about six to seven points. Then, after the Republican Convention, McCain led by two or three points for about a week. Then the race went to dead even. Why was the election so surprisingly competitive? In my view, it was because of the very issues that Hillary Clinton had raised against Obama; that is, he was not experienced, was not a friend of blue-collar workers, and so on.

The set of voters Clinton had targeted with her message – the white, blue-collar workers; white, blue-collar women; and middle-class women who won Pennsylvania and nine of the last thirteen primaries for her – had not yet come over to Obama, thus keeping the election much closer than the guns and butter models were predicting. Then came the stock market crash, and polling

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showed that after seeing the two candidates' responses to the crisis the American public started to have less and less faith in McCain, who was saying things like, "I'm going to quit the campaign; I'm going to go back and do this; I'm not going to debate," while Obama seemed relatively steady.

What impact did Sarah Palin have on the two campaigns? She was useful for the Republican campaign for about ten days. Her nomination was announced the day after Obama gave his acceptance speech at Invesco Field in Denver. The timing shifted the news media's focus away from Obama's speech. Palin was in the headlines, and for about seven to ten days she was viewed as a reformer because of her handling of the oil industry in Alaska. She also gave an outstanding speech, but shortly thereafter things fell apart. For ten days, the Palin nomination had worked well for McCain because one of McCain's fundamental problems was how could he run as a maverick or reformer when his party had been in control for the previous eight years? Sarah Palin made the Republican base happy enough that McCain could reach out to the other side and explain the various ways he had worked to be bipartisan. In the end, however, the economy did McCain in. From the start of the economic crisis in mid-September until Election Day, Obama's lead in the polls was never less than six points.

Are Obama's victory and the Democrats' gains in the House and Senate the start of a movement or just a passing moment? On the Republican side we see a lot of gnashing

of teeth: who's to blame? Blame Palin, blame McCain, blame them all – plenty of blame to go around. But the real question is whether the 2008 election is the start of something. Or will it be like 1964, when the demise of the Republican Party was forecast after the huge Goldwater defeat? Two years later the Republicans made huge gains in Congress, and in 1968 a long trend of Republican presidents started. In 1980, when Ronald Reagan was elected president, the Democrats lost their lead over Republicans. That is, prior to about 1978 – 1980, polls consistently showed that the percentage of Americans who considered themselves Democrats was 8 – 10 percentage points higher than the number who said they were Republicans. From 1980 on, a third of the country said they were Democrat, a third said Republican, and a third said Independent.

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Did Obama convert people from the Republican Party to the Democratic Party, because all the major polls now show that the Democrats are at about 34 – 35 percent and the Republicans are at 26 – 27 percent? It's too early to tell. For these changes to become permanent, Obama and the Democrat-controlled Congress will need to enact policies that actually make things better. President Reagan was able to make the 1978 – 1980 shift toward Republicans relatively permanent by implementing policies that showed success in dealing with the economy and the Soviet Union.

The polling data I work with at Polymetrics suggest the news for Republicans is not terrible, but it's not good either. Our data show that since 2004 about 6 – 7.5 percent of the population has switched their party allegiance. Most of that movement was Republican to Independent, with a smaller percentage moving from Republican to Democrat. Those who moved from Republican to Dem-

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ocrat tended to support traditionally Democratic issues, such as universal health care, and their shift is probably permanent. But among the Republicans who became Independents, the shift was almost totally related to dislike of George W. Bush. The bottom line is that the American public has shifted toward the Democratic Party. The question is what will the Obama team do? Will their policies be successful? If they are successful, the recent party shifts will likely harden, and the Republicans could be a minority party for the long term. If Obama's policies are not so successful, many of those Republicans who switched to Independent might be votes that the Republicans could win back.



Pamela S. Karlan

Pamela S. Karlan is the Kenneth and Harle Montgomery Professor of Public Interest Law at Stanford Law School. She has been a Fellow of the American Academy of Arts and Sciences since 2007.

Presentation

I was asked to do a lot of panels in August and September by people who were hoping – betting – that the 2008 election would be a disaster like 2000. That’s not to say this election is over, though. The filibuster-proof Senate is still up for grabs: Georgia is holding a runoff election between Saxby Chambliss and Jim Martin for a Senate seat, and the recount goes on and on and on in Minnesota, where Al Franken, having taken over from Tina Fey as the most popular comic seeking national office, is also vying for a seat in the Senate. A lot of the problems of 2000 reappeared in the 2008 election. They have just gone unnoticed for the most part because Barack Obama’s margin of victory was higher than the margin of error at the polls.

After the 2000 election, we tried to do some election reform. Congress passed the Help America Vote Act (HAVA), which has roughly the same relationship to helping Americans actually vote that the USA Patriot Act has to safeguarding Americans’ patriotism. One problem with HAVA has to do with its requirement that states provide a provisional ballot to anyone who shows up at the polls and whose name is not on the official rolls. HAVA requires that states give out these ballots but says nothing about whether they

should be counted, an issue that is being litigated even as we speak. So we didn’t solve the underlying mechanical problems of the 2000 election very well. We replaced some of the election systems that were out there with ones that are more accurate, but accuracy hasn’t solved one of the key problems we experienced in Florida in 2000: as we are seeing with the recount in Minnesota, optical-scan ballots can apparently also be counted an infinite number of ways.

The 2008 election was a wide-open election in a different way than previous elections. Not since 1952 have we had an election in which neither of the major parties was running a sitting president or vice president. This was an interesting election in the sense that both sides could proclaim their maverick status or promise change in a way that had not been done in the recent past.

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We are all familiar with the red state/blue state maps and the shifts that occurred this time around. But most of the country is actually purple. That is, not many areas are pure blue or pure red at the state level. (Nonetheless, blue is probably the appropriate color for Democrats, because almost every area that votes “blue” is on a body of water. The bluest parts of the country tend to be along the East Coast, the West Coast, the Rio Grande River, the Great Lakes area, and the Mississippi River. The more parched parts of the country are red, which is also appropriate.)

The 2008 election brought about some further geographic alignment shifts, such as the defeat of the Republicans’ last representative from the Northeast, Chris Shays, who lost his House seat in Connecticut. We also saw a resurgence of the Democrats in the Upper South – Virginia and North Carolina – reversing four decades of Democratic Party declines in those areas. And we saw

some Democratic strength in the interior West – New Mexico, Colorado, and Nevada. This ties in with a broader point, which is that much of the change in voting patterns involves not how people who voted in 2004 or 2000 or 1996 voted in 2008, but rather the entry of voters who were either new to the system altogether or new to the states in which they voted. Rather than individuals drastically changing their positions, the composition of the electorate is changing.

One of the elephants in the room during the 2008 election was the role of race. Overall, Barack Obama outperformed recent Democratic presidential candidates, John Kerry in particular, among white voters. In the South, however, Obama’s performance was curiously mixed. Maybe yellow-dog Democrats are all dying, but in the Deep South – Alabama, Mississippi, and Louisiana – Obama’s share of the white vote was significantly lower than even Kerry’s share four years before. That is a shocking shift. In the Upper South, however, in places like North Carolina and Virginia, Obama significantly outperformed Kerry.

Presidential campaigns take a lot of money, and this has led to years of legal concern about influence and equality. Watergate created a regime under the Federal Election Campaign Act that is one of the most incoherent regimes anywhere in the law. The way the Act has been set up and interpreted by the Supreme Court, candidates cannot be limited in how much money they spend, but contributors can be limited in how much money they contribute. So, expenditures are unlimited and contributions tightly capped. The situation is analogous to being at an all-you-can-eat buffet where teaspoons are used to serve the food and you have to return to your table after each (teaspoon-size) helping. The system is incoherent.

Many people point to the amount of money being spent as the real problem. The 2008 election was the most expensive in American history. The Center for Responsive Politics has estimated that about \$1.3 billion was spent by the presidential candidates, which is roughly double the amount that was spent in 2004, which itself was more than double the amount spent in 2000. Like college tui-

tion, spending in presidential elections outpaces the general rate of inflation. But to me the problem is not the *amount* of money: \$1.3 billion is still less than half of what General Motors spends on advertising every year for its cars; it's less than Proctor & Gamble spends to market soaps. If about 125 million people went to the polls in 2008, the campaigns expended roughly \$10 per vote, which doesn't seem an excessive amount for getting one's message across and staffing get-out-the-vote efforts and the like. What really troubles people is the sense that the candidates either spend all of their time thinking about raising money and none of their time thinking about anything else, or that particular groups, because of their wealth, have more influence on the outcome of elections and the policies elected officials enact.

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Thus, one of the things that is most interesting and different about this election is the way some of the money was raised. To say that Obama, who opted out of the federal financing system so that he could spend more than he would have gotten from the government, raised most of his money from small contributors is an overstatement. About 80 percent of his money was raised from people who gave \$1,000 or more. But Obama did raise more money from small contributors, and had more small contributors contributing to his campaign, than all of the candidates who ran in 2004. Amazingly, the Obama campaign raised \$150 million from donors who did not even have to be identified, because the total amount they gave over the course of the campaign was less than \$200. This reflects the influence of technology: Obama raised an awful lot of this small-donor money on the Internet. In addition, the last campaign cycle saw many more repeat small donors than in the past – people

who started out giving less than \$200 but gave numerous times and eventually had to be identified as donors. Many of the people who gave more than \$1,000 likely did not give it in one shot. They gave repeatedly on the installment plan. People like me who signed up for Act Blue (or the Republican equivalent) received regular emails reminiscent of the Sally Struthers's "save the orphans" advertising campaigns – only the cause would be some wide-eyed congressional candidate from someplace you had never seen – telling us, "If only you would give a little money to this person, you could push him over the top." If you had donated before and your credit card information was in the system, you could just press a button and away the money went. The Obama campaign perfected this kind of repeat small-donor solicitation. Combined with the fact that more and more voters were getting their information from technologies other than the broadcast media, this new approach to campaign fundraising raises interesting questions about how politics will be conducted in the future.

Those of us who came to California not as newborns but somewhat later in life are often shocked by the number of initiatives on the ballot, by their range and scope. Initiatives, after all, are the means by which elections most directly make law. What do the initiatives voted on in the last election tell us about politics going forward?

California's Proposition 4 involved parental notification for minors having an abortion and was one of two closely watched ballot initiatives involving abortion this year. The other one, South Dakota's Proposition 11, was an attempt to ban all abortions within the state that were not necessary to save the life of the woman. Colorado had a related initiative, Amendment 48, which sought to define life as beginning at conception. All three of these initiatives were defeated. The South Dakota initiative lost by a margin of 55 percent to 45 percent, which is significant because the same initiative minus the exception to save the life of the woman was on the ballot in 2006 and was defeated by a similar margin, 56 percent to 44 percent. Even though supporters tried to make South Dakota Proposition 11 a more attractive initiative, the margin of defeat barely moved. California's

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Proposition 4 went down 52 percent to 48 percent, and the Colorado initiative went down overwhelmingly.

What does this mean going forward? Obama's election means that the substantive composition of the Supreme Court is not going to change dramatically over the next four years and certainly is not going to move to the right. So, conservatives' strategy of putting abortion restrictions on the ballot and hoping that by the time one of the initiatives gets to the Supreme Court the Court will have changed and will reverse *Roe v. Wade* is dead, at least for the next four years and probably beyond. The fact that these three initiatives went down to defeat suggests that, for the conservative base, abortion may not be the galvanizing, red-meat issue that it has been in the past.

That honor now goes to same-sex marriage and gay rights, which leads us to California's Proposition 8, a proposition to constitutionalize a rule that says that marriage consists only of one man and one woman. Proposition 8 passed 52 percent to 48 percent, but what was especially interesting to me was the distribution of votes. Much as the country has red states and blue states, California has red counties and blue counties. The entire coast of California, from Humboldt County down to Monterey County, voted overwhelmingly against Proposition 8. All of the inland counties, with the exception of two small counties in the Sierras and a bedroom suburb from which you might commute either to San Francisco or to Sacramento, voted in favor of the initiative.

Proposition 8 also revealed huge demographic differentials in how people voted. According to exit polls, among people eighteen to twenty-nine years of age, 61 percent voted against the initiative. Among people over the age of sixty-five, 61 percent voted in favor of the initiative. Sixty-two percent of first-time voters – that is, people just being brought into the political process, either because they have just become citizens, have just turned eighteen, or have just become interested in politics – voted against the initiative. Most racial groups were relatively evenly split, with one major exception. Thus, 51 percent of whites and 51 percent of Asians voted against Proposition 8, and 53 percent of Latinos voted in favor – although among Latinos under the age of thirty, 59 percent voted against. The major exception was African Americans, a substantial majority of whom voted in favor of the proposition. These differentials in the Proposition 8 vote paint an interesting picture of some of the demographic changes that are occurring in California.

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Arizona passed a ban on same-sex marriage by a much wider margin, 56 percent to 44 percent, but its age skew was quite similar to California's. Florida passed an amendment constitutionalizing a definition of marriage, 62 percent to 38 percent, and Arkansas passed a ban on unmarried couples adopting children or being foster parents. The Arkansas initiative did not say it was about gay couples, but it was understood that way, and it passed 57 percent to 43 percent. Over the short term, I expect same-sex marriage and gay rights will be a galvanizing issue for both conservatives and liberals.

Finally, Proposition 11 in California: Proposition 11 will change the way Californians select their state legislature by shifting from legislators to an independent commission

the responsibility of drawing legislative districts. In recent years, it was probably more accurate to say that every ten years the legislators went into a back room and picked the voters by drawing districts with clear partisan complexions than that every two years citizens went into a voting booth and picked their legislators. That process has been changed by the redistricting commission, which will be made up of randomly selected citizens with an ideological balance of five Republicans, five Democrats, and four citizens who are not members of either of the two major parties. The initiative was partly a reaction to prior initiatives, to the fact that the California state legislature is itself the product of a pathological initiative process that has led to term limits (no one in the legislature has any experience); a budgetary process that is almost completely controlled by expenditures required by other initiatives (the legislature has no money to spend and thus cannot do much); and general dislike of the legislature by a public that has noticed that legislators are more likely to be forced from office by indictment or to die in office than they are to be defeated in an actual election. (California has basically the same retention rate as the North Korean parliament.)

Whether people's hopes for Proposition 11 will actually be realized will prove interesting to watch. One of the problems I foresee is that although the citizens of California have changed who will be voting on what the legislative districts will look like, they have not said anything about what criteria the commission should use. Other states' experience with legislative redistricting commissions suggests that the criteria matter in some sense almost more than who applies them. A second potential problem relates to California's red county/blue county divide, because to ensure competitive elections in the California state legislature, districts would need to resemble thin bands drawn from the coast through the middle of the state (imagine a thin strip running from San Francisco to Fresno). This is the only way you can create districts that would be up for grabs in the general election. Unfortunately, such districts would make no sense for anything else.

One of the elephants in the room during the 2008 election was the role of race.

Discussion

John Hennessy

What is the prospect of changing our weird system for national elections, for addressing the distortions created by the Electoral College, which encourages some politicians to leave some states alone (we in California were blessed not to be getting constant robo-calls) while lavishing attention and funding on others? With so much focus placed on just a handful of states (say, Ohio and Pennsylvania), the likelihood is increased that something unusual will happen.

Pamela Karlan

The very short answer is no, we have no prospect of changing the Electoral College. The Constitution dictates that we will have one, and enough small states and swing states consider themselves beneficiaries of this system that they are not going to give up on it. The longer answer is that we could do a work-around. The so-called national popular vote movement encourages states to pledge that they will cast all of their electoral votes for whichever candidate wins a plurality of the national vote, regardless of the vote in their state. So, for example, if every state had agreed to this system prior to the last election, every state's electors, even those from states like Texas or Alaska, would have cast their electoral vote for Obama because he won the national popular vote. Will this idea get much traction? Perhaps. If we were to experience a couple of elections in a row where the Electoral College winner was not the popular vote winner, then popular pressure might build. But I actually don't think the Electoral College is the real outrage. If we really want to talk about outrages, the U.S. Senate is a much better example than is the Electoral College.

David Brady

But you only need nineteen states to agree to the work-around.

Pamela Karlan

That is true. If the nineteen states with the most electoral votes signed onto the national popular vote movement, their votes would form the majority of electoral votes needed to become president, so it would not matter how the other states voted.

David Brady

The constitutionality of such a work-around would undoubtedly be challenged. In the 1950s, two bills failed in the Senate because big states, which, like the Electoral College, draw more attention from candidates, aligned with little states like Wyoming, which would have nothing without the Electoral College. I doubt that the Senate has changed enough in the last half-century for similar legislation to have a different outcome.

Question

Professor Brady mentioned that the economy had a big effect on the election. Is the new president's popularity doomed because of the one-to-two-year period of economic misery we are about to enter?

David Brady

The economy always affects the presidential elections; it's not just that a bad economy hurts the incumbent. How long does President-Elect Obama have once he takes office? My read of history is that you get two years, and then you are held responsible. Consider that Ronald Reagan won in 1980 under a high misery index. In 1982, the Republicans did not do well in the House elections, losing twenty-six seats. Until the economy began to turn around in mid-1983, Reagan's approval ratings were 47, 46, 43 percent. Only when the economy turned around did his approval ratings go up. My best guess is that Obama has two years, although given the severity of the current economic crisis he might have a bit longer.

Question

Let's go back to 2000, when Gore was running after eight years of relative prosperity. Why didn't Gore win?

Pamela Karlan

I think absent a couple of major problems in Florida, he did win. That is, if you asked the people in Florida who had problems casting their vote, "For whom did you think you cast your vote when you went into the voting booth?" – Al Gore won. A kind of perfect storm of events in Florida explains why he did not pick up the electoral votes there.

David Brady

What Pam said is true, but the point is that the models all predicted that Gore should have won 56 – 57 percent of the Florida vote. My view is that he ran a strange campaign. He tried to run to the left, when all he really

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needed to say was, "If you liked the last eight years economically, elect me. We'll have four more years, and I'll keep my pants zipped." That's a campaign that would have won. He, of course, did win the popular vote, but his bad campaign probably cost him about four percentage points.

Question

You mentioned that the white vote in the Deep South was much less for Barack Obama than it was for John Kerry. Is this an example of the Bradley effect?

Pamela Karlan

Whether the Bradley effect is even real is unclear. For those of you who don't remember Tom Bradley's 1982 California gubernatorial race, here's what the term "Bradley effect" refers to. Pollsters asked people prior

to Election Day, "For whom do you intend to vote?" The predictions, based on those polls, were that Bradley would do much better than he did. People have since hypothesized that what happened is that respondents to polls were reluctant to say, "I'm not going to vote for him because he's black," and therefore said they were going to vote for him and then did not. John Stuart Mill made the point 150 years ago that the secret ballot comes at a cost, which is that people can go into the booth and vote for bad and ignoble reasons. But political scientists disagree on whether the Bradley effect was real. And when it comes to a presidential election, the likelihood of seeing a Bradley effect is extremely low because people who do not want to vote for a candidate have so many reasons other than race that they can give to pollsters. Where you might actually see a major effect is in what are called low-salience elections, ones where people know little about the candidate other than his or her race. I don't think we saw a Bradley effect in the Deep South. I think these are people who were just not going to vote for Barack Obama. The polls captured that fairly accurately.

David Brady

Before the election the one question I was sure to get at every talk was "What about the Bradley effect?" The Bradley effect is an interaction effect. When Bradley was running, most polls were done face-to-face, so you could have a situation in which the interviewer was African American and the respondent was white, and the respondent might be unwilling to tell the African American pollster that he or she would not vote for the African American candidate. We could have tested for a Bradley effect in the 2008 election by having African Americans ask whites whom they were voting for, but the variable of face-to-face contact is largely absent from today's polling practices. For example, the Rasmussen poll was absolutely devoid of human contact. A computer dialed random phone numbers, and when someone answered the phone it said, "If you are voting for Barack Obama, press one; if you are voting for John McCain, press two." Without an interaction bias, the largest Bradley effect we would expect to see in

such a poll would be 0.8 percent. So, I agree with Pam: despite being on everyone's mind, the Bradley effect was never a factor in the 2008 election.

Question

How can we standardize voting so that the same methodology is used throughout the country? I am a precinct worker, and I have been amazed at how many different types of ballots are used. If we had a national standard, it might make voting easier and the results more valid.

Pamela Karlan

We *could* standardize. Congress could pass a law tomorrow requiring a specified voting method to be used in any election in which a federal candidate is on the ballot. The main barriers to this type of change are political. Most elections in the United States are run at the county level, although some states have a little bit of standardization at the state level. For example, in California, the California secretary of state certifies which machines can be used but does not require that any particular one of them be used.

David Brady

The politics differ from state to state. For example, in Connecticut, which is a pretty strong party state, party-line ballots are allowed. A voter can literally pull a tab or make a mark and vote for every Democrat or Republican on the ballot. In Texas, in 1972, when it was pretty clear that George McGovern was not going to carry the state, the Democrats designed the ballot so that Richard Nixon's name was at the top. Voters would vote for Nixon and then be confronted with a gigantic space in the middle of page, as if to say, "Okay, you voted for Nixon, now let's get back to voting for Democrats. Here's Dolph Brisco's name." The Democrats' strategy worked. Nixon won the state overwhelmingly, but Brisco won the governorship.

Question

Are we beginning to do away with categorizing? In your analysis, everything is done by categories: black, white, older women, younger women, and so on. I'm old enough to remember Al Smith, who could not get anywhere in national politics because he was Catholic. Then John Kennedy dealt with that. Among the last four secretaries of state, two were women and two were black. We have now had a woman on the vice presidential ballot in both parties, and a woman almost won the Democratic presidential nomination. Now we have a black president-elect. Why can't we say, "Gee, something good is going on with the American public"? Why are we still categorizing when some of the categories are beginning to fall away?

David Brady

I don't disagree with the assessment, but I think we need to keep some categories – for example, age is becoming an important one given the generational changes in voting we have been seeing. The African American leaders and the leaders of the women's movement that we are most familiar with are all in their sixties and seventies and are fading out. For the new generation of voters, many of the categories pollsters commonly look at no longer mean what they do to people who were raised in my generation. A genuine generational change is occurring, and we should be trying to track that change in our surveys.

Pamela Karlan

We have seen tremendous change. This is not 1928, and it's not 1960. We have not reached the kumbaya moment yet – at least not according to the Southern data with which I've been working. We will soon get to see this played out in a really interesting way because some special provisions of the Voting Rights Act of 1965 that protect black and Latino voters in the South and the Southwest were renewed by Congress in the summer of 2006, and the Supreme Court is going to decide in the next two weeks whether to hear a case challenging the constitutionality of those provisions. The Supreme Court is closely divided on issues of racial justice, and Justice

Each party sees the major threat to the integrity of American elections differently. The Republicans fear fraud, votes being cast by people who should not be voting. Democrats fear exclusion, people who should be allowed to vote not being able to do so.

Kennedy, who is usually the fifth vote on these issues, may well conclude that because Barack Obama has been elected we don't have a problem anymore. While that might be true in many parts of the country, it is not yet true in Alabama or Mississippi or Louisiana. Likewise, in some counties in the country, anti-immigrant sentiment means that black/white issues are not nearly as salient as they once were. Instead, Anglo/Latino issues are more salient. A number of anti-immigration measures appeared on ballots in the 2008 election. Still, I think it is fair to say, with respect to most kinds of people in the United States, that a parent could look at his or her child today, if the child is young, and reasonably say, "You have a chance to grow up to be President." However, groups are not all voting the same way in elections, at least not yet.

Question

In 2004, exit polling on Election Day suggested irregularities in battleground states. Were similar studies done in the 2008 election?

Pamela Karlan

Everybody lawyered up early on in this campaign, which led to a huge amount of litigation. According to Ohio State's wonderful Election Law @ Moritz website (<http://moritzlaw.osu.edu/electionlaw>), forty to fifty lawsuits were brought around the country, many of them over questions of irregularities in how the registration rolls

were put together. A lot of problems occurred during the primaries. For example, in Maryland, they had changed to a smart-card system. The cards might have been smart, but the people running the system – not so much. They did not send the cards to the polls; so, many of the polling places did not open on time, which led to hugely long lines. In other places, potential voters faced challenges based on badly maintained voter rolls or failures to present adequate identification, or the like. At the national level, the election just was not that close; so, the media have not given a huge amount of attention to problems and irregularities. Local elections, however, saw tremendous problems. For example, in Indiana, which recently adopted the most draconian voter ID law in the country, votes are still being counted in one congressional district, and a serious challenge has been raised about whether a lot of the students at Purdue University, which is in the district, will have their votes thrown out because they lacked the appropriate kind of government-issued ID to cast ballots. All in all, I'm not sure that this election was a whole lot better across the board, even though it did not have outcome effects like those in the 2000 election or allegations of irregularities as in Ohio in 2004.

David Brady

President Clinton had a commission on electronic voting, of which I happened to be a member. The upshot of the commission was that Democrats wanted a nationally uniform voting method that would eliminate butterfly ballots and machines that make mistakes.

A genuine generational change is occurring, and we should be trying to track that change in our surveys.

MIT scientists were working pretty hard on a sort of ATM machine that would meet the need. In exchange for this, Republicans wanted to cleanse the voting rolls, to purge every district's rolls of people who no longer voted there. The Democrats would not agree to this.

Neither side would give an inch, so nothing came of the commission.

Pamela Karlan

Each party sees the major threat to the integrity of American elections differently. The Republicans fear fraud, votes being cast by people who should not be voting. Democrats fear exclusion, people who should be allowed to vote not being able to do so. The two parties look at exactly the same problems and see them completely differently. That is why the Help America Vote Act turned out to be such a mess; it gave a little bit on participation and a little bit on fraud but did not actually solve either set of problems from the point of view of either political party.

Question

Are electronic, touch-screen voting machines still a concern?

Pamela Karlan

That problem has gone away in part because many states have decertified electronic voting machines and have gone back to optical scan, which leaves more of an audit trail. If necessary, you can hand-count the physical ballots; you can look at them and see what happened. Some countries do a much better job with electronic voting machines than the United States does. Brazil has one that you can put in a canoe and paddle up the Amazon; it provides a three-way audit trail. Still, people are worried about electronic voting. David Dill here at Stanford has spent a lot of time over the last couple of years investigating whether the integrity of electronic machines can be guaranteed. Canada has a wonderful system for presidential elections: they use paper ballots. The paper ballot is a great way to go if you can do it (Canada's ballots are uniform across the provinces and do not include four hundred offices and thirty propositions), because you get absolute reliability and absolute audit trails, and everybody can see exactly how the votes were cast.

Question

Do any data suggest that money was an important part of the reason why the Democrats – who greatly outspent Republicans at the national level – won in 2008?

David Brady

I would not look at just one election, so the short answer is no. If you look at the role of money over time, however, you first need to divide it by the consumer price index. If you do that, you find that spending on presidential elections has remained pretty flat, with no huge increases. Second, so long as twice

We have reasonable data on presidential campaign funding back to 1896, and, despite quite a few Democratic presidents since then, 2008 was the first year that a Democratic presidential candidate out-raised his Republican opponent.

as much money is being spent on advertising for lipstick as on presidential elections, I won't be worried about money in politics. For candidates to be successful, they have to reach a threshold. They have to have x amount of money, because otherwise no Democrat would ever have been elected president. We have reasonable data on presidential campaign funding back to 1896, and, despite quite a few Democratic presidents since then, 2008 was the first year that a Democratic presidential candidate out-raised his Republican opponent. Yes, Obama's huge pool of money allowed him to run ads in Indiana, forcing McCain to respond, and to run ads in Montana, forcing McCain to spend time doing things he did not want to do to make sure that the states that should have been red stayed that way. McCain was hurt by not having as much money as Obama,



John L. Hennessy, Pamela S. Karlan, and David Brady

because he was forced to reallocate his resources. But the difference in funding was not determinative. That is why I believe the political economy models of elections are so important. In any close election, you can always attribute the election to anything. In 1960 Jack Kennedy got a haircut; it made

Age, education, and income level are the best predictors of whether somebody is going to vote.

him look older and that accounted for his victory. In some sense the claim is true, but if you don't have a baseline for what the election would be like, then it's just talk. The economic models are important because they tell us, everything else being equal, what we should expect. The 2008 election was not a surprise to the models. The models predicted it well.

Pamela Karlan

One place where money does make an important difference is in who votes. That is, the correlation between people's income and their political participation is very high. Age, education, and income level are the best predictors of whether somebody is going to vote. This is why, for example, we have tremendous support for Social Security and Medicaid but have virtually nothing in the way of early childhood education funding. Little kids and poor people don't vote, but rich people and people with high levels of education do. Thus, the interactive effect of money and politics is best seen not in which party's candidates win, but in which policies and programs the government implements at the end of the day. ■

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