

# **RED VERSUS BLUE: POLITICAL INSTABILITY IN AMERICA**

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## **I. An Unrecognized Danger**

In November 1992, Hugh Sidey described the nighttime scene outside the White House moments after George H. W. Bush conceded victory in the presidential election to William Jefferson Clinton. Sidey's portrait of the nation's capitol that night for **Time Magazine** exudes a certainty that whatever the outcome of the election, the political transition will be peaceful, complete and fully accepted.

On election night when Bush had conceded to Clinton, the White House in its weary sadness had dimmed and paused for a few hours, and one could loiter on Pennsylvania Avenue and marvel anew at the magic in this old system of ours. No tanks guarded the White House gates. No troops cordoned the streets. The greatest political power on the face of the earth had been taken from one man and given to another, and it was done with only the ruffle of an autumn breeze around the big house that George Washington built. (Sidey, 11/16/1992 **Time**, quoted in Tom Wicker, **George Herbert Walker Bush**. New York: Viking, 2004).

Today, the image of stability Sidey described is dissolving. When Albert Gore conceded the presidential election to Bush's son, George W. Bush, in December 2000, anger seethed in the streets of Washington, DC and cities throughout the nation. Disgust with the US Supreme Court for stopping the

vote recount in Florida then ruling by fiat that Bush had won the election generated clenched fists and cries of fraud. Four years later, on election night in November 2004, there was no solace for the once-again aggrieved. Allegations of faulty voting machines in Ohio gave many the impression that the United States could no longer hold a presidential election the outcome of which could gain the unqualified acceptance of winner and loser.

This should not be disregarded. Much rides on the political stability of the United States. The United States still functions frequently as the world's policeperson; its currency is still the world's common standard of exchange; the predictability of its foreign policy is crucial to peace. But should there be significant instability in the transition of the presidency, then the world can no longer count on its policeperson; investors could not rely on international capital and product markets; other powers would be uncertain as to whether or not they should act militarily in crises that are regional or world-wide. Many crucial things would be different – and all would be worse.

Unfortunately, political stability in the American presidential election process can no longer be taken for granted. In the opening chapter of the 1992 edition of the League of Women Voter's guide, **Choosing the President**, the League asserts that our political system is strong and our president is "the most powerful elected official in the world," in part because the leaders of other countries "must give considerable attention to the possibility of overthrow, whereas presidents of the United States rest secure in the knowledge that their power is based on consent" (p. 1). However, the last two presidential elections are evidence of a danger of coming political instability in America. Indeed, we have an angry, vocal opposition to the current President who argues that the President was not actually elected in 2000, and in 2004 relied on deception to remain president. Could a conflict break out for the right to sit in the White House? Most Americans are certain that there is no such danger; that any scenario of civil conflict over the Presidency is far-fetched; but they may be wrong.

In both 2000 and 2004, our country teetered on the edge of instability, possibly even violence. A month after the Supreme Court affirmed Bush the winner of the 2000 election, Bush rode in a limousine through Washington, DC to 1600 Pennsylvania Avenue for his inauguration, and, it was not a victory parade. "At times it seemed as if there were more protestors than well-wishers along the route," **Time** reported. "An egg hit Bush's limo as it

reached Pennsylvania Avenue” (Nancy Gibbs, 1/29/2001 **Time**, p. 28, photo, p. 32). Four years later, fiery protests came in response to the news that Bush prevailed in the 2004 election. Feelings that the result of the 2004 election was tainted evoked the kind of military imagery that Sidey could not find in Washington, DC in 1992. Sidey, mentions scuffles between police and protesters, and former President Bush’s thank you to injured NYPD Detective William Sample. ( 9/13/2004 **Time**).

As we look at the current political scene, a long period of uncertainty over the actual winner of a presidential election is not out of the question; nor dramatic civil conflict. The processes by which Bush became president in 2000, and retained office after the election of 2004, have convinced many that he is in power as the result of dishonesty. One recalls Stalin’s comment on elections – “It doesn’t matter who votes,” he observed. “It matters who counts the votes.” In our imaginations we might fast forward to election night, November, 2008: if there is another election controversy, the Supreme Court may not be accepted as impartial adjudicator of the official result. Neither the President nor the Congress has created a new and universally acceptable alternative or a set of procedures to deal with a future election controversy that threatens to get out of hand.

This article anticipates the danger and proposes actions to defuse it.

## **II. Descent into Chaos**

Suppose that a presidential election is disputed and there is no clear means of resolution – neither candidate will concede; both claim the presidency. Supporters of each candidate pour into the streets. Demonstrations threaten to turn violent; police are called out. What will the police response be? One thing is certain: police response to turmoil in our country is unpredictable. It will likely differ by state and locality based on political leadership – in the cities the police are generally at the behest of Democratic mayors; but the state police are generally at the behest of Republican governors. Democratic mayors are unlikely to employ city police to break up protests by Democrats. Republican majors are likely to employ state police to break up protests by Democrats. Will mayors try to use city police to prevent state police from breaking up protests by Democrats? Will Republican governors try to take over city police from Democratic mayors to use police to control Democratic demonstrations?

How will the national guards be used by governors, some of which after all are Republicans, some Democrats?

These questions are not entirely academic. Such conflicts among the political forces in city and states have occurred before in America. During the sit-down strikes of the 1930s, when union members seized the property of private corporations, corporate leaders called on mayors and governors to use the police or national guard to oust the strikers. In the most dramatic case, Governor Murphy of Michigan refused such a request from the auto companies saying that he would not be the governor who caused the death of working people. Faced with the unwillingness of public officials to enforce the law, the companies agreed to negotiate with the United Auto Workers (see, e.g., John L. Lewis as told to Saul Alinsky, in **John L. Lewis: An Unauthorized Biography**. New York: G. P. Putnam, 1949.).

If the controversy were to continue to escalate in one area of the country; or if it spread to many areas of the country, then there might well be a necessity for our military to be called upon to restore calm. But what would happen if the President, whose authority is questioned, were to order the military to intervene against protestors. Most Americans presume that there is a unitary chain of command from the President to the top military officials and down the ranks, so that such a command would likely be obeyed. But there is not; not any longer.

Even with the major defense establishment reforms following the Goldwater-Nichols Act of 1986, there is no unified non-political chain of military command in US. Instead, the chain of command fragments just below the level of the Secretary of Defense (that is, just below the last political link in the chain). Faced with orders to put down demonstrations against the existing government, there are nine commands which must decide independently how to act, and it is not at all unlikely that they will act differently from one another. The probable outcome is chaos, and even open conflict. Moreover, since certain commands are in the midst of major international operations, this complicates pressure on these commanders to respond to a presidential directive to control domestic political turmoil over an election result. For example, one of the nine commands is CENTCOM, at MacDill AFB in Florida, whose Commander, General John Abazaid, is leading our anti-terrorism initiatives in Afghanistan and Iraq.

More violent protest could have occurred in 2000 or in 2004 had the Democratic candidates not conceded the elections. In the minds of millions of Americans, Albert Gore and John Kerry did not lose the elections, but did concede them. It was their concessions that provided whatever legitimacy the Republicans have to the White House for many Americans. Instead, had Al Gore demanded the Presidency and President Bill Clinton backed him, saying that the Supreme Court had no role in the election process -- or had rendered a corrupt verdict -- and had Clinton then handed the office to Gore, not Bush, what would have been the outcome? We were very close to this. Would the Republicans, citing the Supreme Court verdict, have tried to seize the Presidency? Would President Clinton have ordered military commands to have prevented it? And if he had, what would each command have done?

Perhaps all Americans are fortunate that the Democratic presidential candidates preferred to be gracious losers rather than to attempt to gain the presidency. Certainly Bill Clinton wouldn't have accepted defeat so easily. "You are going to win this thing," Clinton told Gore in a phone call just after the vice president rescinded his concession on election night. But Clinton's philosophy about how to win posed a dramatic contrast to Gore's. "I would never have conceded to Bush"—this was only the first of the many ways Clinton told people around him that he would have fought the recount differently. Whereas Gore regarded the battle as primarily legal, Clinton saw it as political—and fierce. Gore wanted no demonstrators in the streets; Clinton wanted lots of them. (Jeffrey Toobin, **Too Close to Call**, pp.193-194.)

Why the Democratic Party nominates candidates for the Presidency with so little fire in their bellies to possess the presidency is an interesting question, but one for another place. In our next election, the candidates, Democrat and Republican, might not be so accommodating. What if the Democratic candidates had been made of sterner stuff, and refused to concede disputed elections in 2000 or 2004? What would have happened? How close did America come to a Constitutional crisis over these elections? Could there have been a prolonged period of dispute; could there have been violence? Is the vaunted stability of American democracy more apparent than real? Could a civil conflict be about to burst into flames at an upcoming election?

We should accept that these are realistic questions. Recent elections have shown our country to be very closely divided in a manner we now refer

to as Red and Blue – each president wins by small margins. Further, the state-run election process -- really, fifty processes -- is notoriously unreliable. The potential for a close election which is not conceded by either of the candidates is very high. The result could be disastrous.

## **II. Deep Roots in Our History**

The notion that there might be another open political conflict in America is difficult for most of us to accept. It's useful to recall, therefore, that our country has already experienced a major civil conflict, and that there are uncomfortable parallels between that period of our history and the current situation. Our country has already demonstrated its propensity to break apart into violent conflict about issues that are largely moral in nature. The American Civil War was one of the greatest conflicts of the period. During the four years of the conflict (1861-1865) some 600,000 people, mostly men, became casualties. America's population is now ten times what it was in the mid-nineteenth century, so that comparable losses today would involve 6 million.

Prior to the American Civil War our country's politics had become increasingly polarized. There were deep divisions about morality which seemed to permit no compromise – at the core of this conflict was the controversy over slavery. Religion played a very important role in the politics of the time, with both sides convinced they were right on the key issues. The country was very divided politically. Abraham Lincoln won the presidency with about 40% of the vote. Politics at the time had become very partisan. In fact, some historians today believe that the war was avoidable except for the exaggerations employed by the presidential candidates in the election of 1860 as they sought to attain office. The nation's military split in two, some officers remaining with the Union forces, others joining the states that left the Union. Neither side expected that a war would result from the political controversy, which is not unlike today when most of us think fighting can't happen and even if it did, an overt conflict would be short. Instead the Civil War was a long and difficult war which profoundly changed the nation in the process. Finally, and perhaps most importantly, the division of the country along regional lines that was the heart of the Civil War continues to show up in the political division of the nation today. The fault lines that gave us a Civil War 150 almost years ago remain in our body politic and it should not be a total surprise if they generated overt conflict again.

Even when there is not overt war, past election controversies that have shaken national confidence and called into question the political stability of the United States. Indeed, our concern about the election of 2008, and future American elections, is grounded in past elections in our history that divided and nearly destroyed our nation.

One such election was that of 1876. Ironically, William Rehnquist, the current Chief Justice of the Supreme Court, and one of seven justices who ruled Bush the winner of the 2000 presidential election, penned one of the best historical accounts, **Centennial Crisis: The Disputed Election of 1876**. (New York: Alfred A. Knopf, 2004) To add to the irony, the election of 1876 was not decided by the Supreme Court. Instead, Congress created an Electoral Commission with seven members of the House of Representatives, seven Senators and five sitting Justices of the Supreme Court. The Electoral Commission reached its reported decision at 4:00 in the morning of March 2, 1877, three days before the presidential inauguration of March 5, 1877, choosing Republican Rutherford B. Hayes as the next president of the United States. Rehnquist, after reading newspaper accounts and the historical record of the result of the election of 1876, writes that “[t]he Electoral Commission’s decisions were roundly denounced by the Democrats and heartily praised by the Republicans,” something that was also to happen to his own decision about a contested presidential election one hundred and twenty-three years later (Rehnquist, p. 180). As Democratic Presidential candidate Samuel Tilden mulled whether to continue to fight for the presidency, Rehnquist describes the national mood at that time regarding President Hayes: “Half the country regarded his presidency as illegitimate, and his opponents referred to him as ‘Rutherfraud’” (Rehnquist, p. 201). In the end, Tilden did not claim he had the right to be president, and did not recreate a power struggle, Rehnquist surmises that in the event of a disputed election, like the elections of 1876 and 2000, “there is no means of resolving it that will satisfy both sides” (Rehnquist, p. 6).

After the election of 1960, claims of fraud dogged president-elect John F. Kennedy and were considered by his opponent, Vice President Richard M. Nixon. The election was so close that a change in one major state would have altered the outcome nationally. One allegation was that JFK’s Vice Presidential candidate, Lyndon Johnson, arranged for the election authorities in his home state of Texas to certify a flawed election process that made Kennedy, and not Republican candidate Richard Nixon, the winner. Nixon

heard claims that Chicago Mayor Richard Daley rigged the voting machines to ensure Kennedy would pick up the electoral votes in Illinois he needed to triumph over Nixon. These claims were given a certain veracity in the 1970s when Kennedy confidant and **Washington Post** editor Ben Bradlee wrote in his book, **Conversations with Kennedy** what Kennedy repeated to him about Daley's assurance to Kennedy on election night in 1960: "Mr. President, with a little bit of luck and the help of a few close friends, you're going to carry Illinois." Bradlee then wrote, "Later, when Nixon was being urged to contest the 1960 election, I often wondered about that statement." (Bradlee quoted in Christopher Matthews, **Kennedy & Nixon: The Rivalry that Shaped PostWar America**. New York: Simon & Schuster, 1996, p. 178). One of Mayor Daley's voters for Kennedy was a deceased man, Ed Myles, "whose ballot," as one political pundit quipped, "was cast in the Fourth Ward, Thirty-first Precinct" part of Mayor Daley's loyal "cemetery vote" in 1960 (Matthews, p. 178).

About the 1960 election Nixon wrote,

I had been through some pretty tough campaigns in the past, but compared to the others, going into the 1960 campaign was like moving from the minor to the major leagues. I had an efficient, well-financed and highly motivated organization. But we faced an organization that had equal dedication and unlimited money, that was led by the most *ruthless* group of political operatives ever mobilized for a presidential campaign. (Nixon, **RN; The Memoirs of Richard Nixon, Volume 1**. New York: Grossett & Dunlap, 1978, p. 225, quoted in Matthews, pp. 182-183)

Finally, in 2000, though Gore chose to concede the election to Bush, it is likely that he was urged to another course by then-President Clinton. Clinton and Gore spoke by phone the night before Gore gave his final concession speech, while Clinton was in Northern Ireland working on peace talks. Neither man has divulged what was said in the conversation, but Clinton's feelings on the matter are clear. Upon receiving word of the December 4, 2000 injunction by the US Supreme Court to stop the vote count in Florida, Clinton reportedly said, "The Supreme Court – Gore ought to attack those bastards" (Clinton to Chief of Staff John Podesta, quoted in Jeffrey Toobin, **Too Close to Call**. New York: Random House, 2001). When Clinton was in Chicago in January 2001 making one final tour of the country before the end of his term, he electrified the crowd gathered outside

a hotel ballroom with contempt for the process that gave Bush the presidency. “I thank Bill Daley (Mayor Daley’s son) for being a superb Secretary of Commerce and a brilliant campaign manager. What I told them upstairs was, Bill Daley ran the first presidential campaign in history that was so clearly winning, a court had to stop the vote in order to change the outcome” (1/9/2005 speech, Clinton Presidential Papers.) It is likely that Clinton’s advice from Northern Ireland was to urge Al Gore to ignore the Supreme Court decision and seize the Presidency. Clinton probably offered to employ the authority of the Presidency in Gore’s behalf. It was Gore’s decision to concede that spared the United States a Constitutional crisis unparalleled since the Civil War began in 1861.

This is hardly a record of presidential elections that gives us a secure sense of stability. Instead, it is a record that suggests we are living in a political system that is fragile, and, as the elections of 2000 and 2004 demonstrate, is getting more so. We have indeed had past election controversies, but, the election of 2004 returned the controversial candidate back into office. That is unusual. For example, if we look back at the election of 1824, supporters of Andrew Jackson who complained that John Quincy Adams made a corrupt bargain to win the presidency that year were vindicated when Jackson became president four years later. However, fears of mob violence from Jackson supporters nearly came to pass when the winner chosen by Congress, John Quincy Adams, selected Henry Clay as his Secretary of State. Jackson’s supporters claimed that Clay asked Clay’s supporters and presidential electors throw their votes to Quincy Adams, votes that secured Quincy Adams’s victory. Those who claim that Bush made a sinister bargain to win the State of Florida and the 2000 election, then watched Bush prevail again in 2004, have four more years to grind their political axes.

Consider, for example, that in the upcoming election in 2008, roles will have been reversed from 2000. Instead of a Democrat in the White House with a contested election, there is likely to be a Republican in the White House with a contested election. Suppose that the President’s brother Jeb, the current Governor of Florida, is the Republican candidate. Suppose that when a stalemate occurs over the election results, and the Democrat does not concede, President Bush steps in to take actions intended to give the White House to his brother (or a Republican-dominated Supreme Court makes such a decision and the President moves to enforce it). Might not the indignation

of the Democrats likely spill over into the streets and if opposed by police or military force turn to violence?

#### **IV. Civil Conflict – A Scenario**

- Step 1        There is a hard-fought Presidential race.
- Step 2        A very close outcome ensues.
- Step 3        Uncertainty over the result emerges with both sides claiming victory and both sides charging the other with fraud.
- Step 4        Neither candidate concedes.
- Step 5        The Supreme Court is again drawn into the fray and issues a decision that the loser refuses to accept.
- Step 6        Demonstrations break out.
- Step 7        There is violence as police in some areas try to disperse demonstrators. In the highly charged political atmosphere, local and state officials are unable to restore order. Neither candidate concedes.
- Step 8        The President orders the military to establish order so that the inauguration of his Party's candidate can proceed.
- Step 9        The candidate of the non-incumbent party calls on the military to ignore the President's order.
- Step 10       Each of nine commanders of the nation's military commands must decide for himself or herself whether or not to intervene in the election dispute. The nine military commands divide on whether or not to carry out the President's order. Some decide to intervene; some decide not to. Violence breaks out where the military attempt to enforce the order; and violence threatens between the commands themselves.

What happens then?

#### **V. How to fix the problem.**

We have identified the key steps in a scenario that we do not consider far-fetched. If it were to occur, the result could be disastrous. What are the

possible alternatives if a crisis occurs in the outcome of a Presidential election?

Congress could take on the responsibility of fashioning a solution. That happened in 1876, when the Congress created the Electoral Commission to decide whether Hayes or Tilden would be president.

Another solution could rely on the fact that the Speaker of the House of Representatives and the Secretary of State are third and fourth in the chain of command after the American President and Vice President. Is it possible that Congress could vote to elevate these two officers to the executive branch while the election results are contested, especially if they are contested beyond inauguration day, in January 2009?

Congress also might create a new federal agency to handle a problem of the type we envision. The August 2001 report of the National Commission on Election Reform headed by former Presidents Carter and Ford, urged that we create a new federal agency, an Election Administration Commission, to develop uniform standards and equipment for elections in the states and also oversee that these standards are implemented (National Commission on Federal Election Reform, **To Assure Pride and Confidence in the Electoral Process**. Arlington, VA: Miller Center of Public Affairs, August 2001). They recommended that the Attorney General and the Department of Justice continue to be the enforcement arm for election fraud. Such a Commission could be given the responsibility of either resolving or establishing a means to resolve the sort of stalemate we foresee.

Another reform might be to alter the chain of command in the military to again have a unity chain that runs from the President through the Secretary of Defense to the head of the Joint Chiefs of Staff to the nine commands, so that the first level of action in the military is one person and not nine. That would make that person a king-maker, in our scenario, but reduce dramatically the chance of differing decisions by the commands and so the chance of violent chaos.

We need to think seriously about these possibilities since the past has shown that American presidential elections can be close and one or the other candidate may not readily accept defeat and bow out gracefully the next time.