

American Democracy Is in Extremis



by Conrad Black

The 900-pound gorilla lurking in every voting place in America as we enter the last month before the midterm elections is the fact that the national political media are continuing to repeat, almost in unison, that any possible dispute over the legitimacy and authenticity of the 2020 presidential election result has been resolved.

The evidence for this claim has been the failure of the many actions undertaken by Rudolph Giuliani on behalf of then President Donald Trump, and Sidney Powell acting independently but in the same interest, which made exaggerated claims and sought unrealistic remedies from the courts. The national political media were approximately 95 percent hostile to Trump according to independent media surveys by Pew Research and the Harvard Shorenstein Center on Media, Politics, and Public

Policy. They reckoned that by debunking the Giuliani-Powell efforts, they would discredit all concerns about the authenticity of the election result.

There were 19 actions challenging the constitutionality of the voting and vote counting changes, supposedly to facilitate voting in the pandemic, particularly in the swing states of Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. Most important was the action of the attorney general of Texas against those states, and he was joined in his complaint by 18 other state attorneys general, directly to the U.S. Supreme Court as the forum for inter-state lawsuits. This action alleged violation of the constitutional obligation of all states to ensure through their state legislatures, and not the executive or judiciary in those states, that presidential elections are fairly conducted within their jurisdictions. None of these cases was heard on its merits, a fact which received almost no publicity. Process objections were raised: lateness, wrong courts—everything was shuffled off until the clock ran out.

The pattern of judicial refusal to hear these cases was so uniform, and so speciously pretextual, that it evinces an absolute reluctance throughout the judicial branch of government to contemplate so controversial a measure as a reversal of the apparent result of a presidential election. This reluctance is understandable, as such an intervention would have led to a widespread demand, including likely by a majority in both houses of Congress in 2021, for radical revisions to the composition and prerogatives of the courts.

The supreme courts of Florida and the United States, with some dissent in both cases, effectively confirmed the apparent result of the only previous presidential election that was referred to the courts: that of 2000, which George W. Bush won by one electoral vote over Al Gore when Bush was deemed to have carried the state of Florida by 537 votes out of nearly 6 million cast.

In 1800 (Jefferson, Burr, Adams) and in 1824 (Jackson, John Quincy Adams), the House of Representatives elected the president where there had been no majority in the Electoral College. And in 1876 (Hayes-Tilden), a special commission decided the result on a partisan basis, which was graciously accepted by Tilden in exchange for certain promises by his opponent, which Hayes honored. In 1960, there were many extremely close states and the result was unclear, but Vice President Richard Nixon declined to challenge the result despite President Dwight Eisenhower urging him to do so, because he believed that such a challenge would be damaging to the United States at the height of the Cold War, and President John F. Kennedy was elected.

In all those previous elections, when the apparently losing candidate challenged the process, there was some consideration of the merits of the case. The effect of the 2020 abstention is to give the decision to the apparent winner no matter what level of skullduggery may have been reached in producing the ostensible result.

In 2020, there were allegedly millions of so-called harvested ballots, where it could not be verified that the ballot was actually exercised by an identifiable voter, and a shift of just 50,000 votes in Pennsylvania and any two of Arizona, Georgia, and Wisconsin would have flipped the Electoral College to Trump. No one knows who would have won an election whose fairness could be established. There is nothing to be done about it now, but the many close races in the midterms and the polls all show that approximately half the voters think the 2020 election was stolen. Trump doesn't help himself with implausible claims that he really won the popular vote or absurd demands for a new election.

[Last week here](#) I described this as an "airtight sacred oath of secrecy" by the "entire American national political media ... that 2020 was an unquestionably fair presidential election ... an astounding and possibly unprecedented act of mass denial of

the obvious.” An official of one of the major Internet political comment aggregators wrote me that “When millions of people simply close their eyes and turn off their minds, they become nothing more than sheep.”

Half of the public doesn't buy it, so they are not sheep. But the refusal of the national political media to acknowledge that this controversy exists at all inflames current political discourse and makes an attempted insurrection on Jan. 6, 2021, seem half-believable, when it was really just hooliganism hiding behind the understandable peaceful annoyance of Trump's followers.

Such a refusal ensures an escalation in the fury of the Trump camp, and an unjustified state of self-righteous complacency on the part of Trump opponents, who have no idea that he has a legitimate complaint. If a presidential election result is the third rail the courts won't touch, all interested parties will have to litigate promptly to change what they think are improper changes in voting and vote counting rules. This was Trump's mistake. The courts will still prevent a presidential election from being stolen, even if they won't reverse one that has been stolen.

The United States is approaching the guardrails on each side of coherent political conduct. On the opposite side to the courts' refusal to challenge an apparent presidential election result is some restraint toward frivolous and vexatious litigious persecution of a political opponent. No realistic person could be optimistic about where the intoxicating habit to criminalize policy differences will end. (It will probably start again in the new Republican congress, and not without some provocation.) If the unmitigated nonsense that led to the invasion of Trump's house in Palm Beach leads to a spurious indictment, those responsible will be bringing down upon the country and its political and legal institutions a degree of deserved disrepute with no precedent since the Civil War.

It's particularly distressing to see William Barr purport to perceive possible crimes at Mar-a-Lago—he who claimed to be riding to the rescue of legality as attorney general when he saw that the FBI and Justice Department had illegally conducted espionage against the Trump campaign and transition team, and gave us the snail's pace fiasco of the Durham investigation. (At least the Durham investigation exists, unlike the previous attorney general, Jeff Session's fictitious investigation of the same subject by John Huber of Utah.)

If the courts won't touch crooked presidential elections and the winners will scurrilously prosecute "defeated" candidates, American democracy is in extremis. And if the media will not present the issues even slightly impartially, they have ceased to be of any utility to society and have already forfeited the right to be called a free press.

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