



SÉRIE AMÉRICAINE ÉLECTIONS 2020

The 2020 US presidential election results will have multiple impacts worldwide. Its outcome will be largely commented during the upcoming weeks. As one of the most prominent French think tanks, Terra Nova has gathered a wide range of experts to provide different analysis on the election's consequences for the United States, and its foreign policy. They do not reflect a collective position, but stand as distinct views and opinions for the French audience on the evolution of the American society and political system after the election. This "American Series" is available on our website www.tnova.fr

"AMERICAN EXCEPTIONALISM" AND THE 2020 ELECTION

November 17th 2020 | By Adam Przeworski, Professor of political science at the New York University

The United States has a long tradition of claiming that it is an exceptional country. It is.

It is the only presidential system in the world in which elections are indirect. Because the numbers of the electors who cast the votes for the president are not proportionate to the population of particular states, someone can be elected with a minority of popular vote. In recent times, this occurred in 2000 and by a large margin in 2016.

It is the only country in the world in which the rules of national elections vary across subnational jurisdictions. Some states allow early voting, some do not. Some allow voting by mail and send ballots to all registered voters, some allow it but require voters to request ballots, some do not allow it except under specified conditions. Some states allow votes to be counted when they are cast, others only as of the date of the election. Different states require counting to be ended by different dates. The list goes on and on.

It is the only country I know in which the rules determining who won the election are indecisive and unclear. These rules were set in the Constitution of 1789 and amended by the 12th Amendment in 1804.

They turned out to be insufficiently clear to determine the winner of the election in 1876 and the decision was not made according to any pre-established rules. To refine them, the Congress passed a new law in 1887 and since then several modifications have been introduced in the United States Code of Law. Yet the rules remain incomplete, self-contradictory, and opaque. According to the 12th Amendment, state legislatures can choose the electors in any manner they wish and yet the current law requires the list of electors to be certified by governors of each state. As a result, the states may end up sending to the Congress multiple slates of electors and the House of Representatives and the Senate may disagree which of these slates are valid. If everything else fails, the winner is to be decided by the newly elected House, with each state having one vote. To be valid, its decision requires a quorum and current rules do not specify what should happen when there is no quorum or if there is a tie. Additional details are either not specified or not clear.

Finally, it is the only country I know in which winners of elections are proclaimed by private organizations. Ever since 1848 the winner was announced by the Associated Press, a cooperative of newspapers and broadcasters. In recent years private television networks tried to beat the AP by first calling outcomes of elections. These announcements precede the official declaration of the result by several weeks. The traditional sequence of events has been that the private media would forecast the winner, the announced loser would make a concession declaration, and the candidate designated as the winner would be recognized as the "President-Elect," until he would assume office on January 20 of the following year.

Perhaps surprisingly, this system has worked with only few major glitches during 220 years. Since 1800 there were twenty-two instances in which the incumbent party lost a presidential election and the winner peacefully assumed office. The first defeat of an incumbent government occurred in 1800 and although the country was brought to the brink of a civil war, Thomas Jefferson peacefully assumed office. A profound crisis erupted in 1876 but it was peacefully resolved by a compromise. The second emerged in 2000, when the outcome hinged on determining whether holes in a few hundred of voting cards could be read to detect voters' intentions and the Supreme Court, appointed in part by the father of the eventual winner, usurped the prerogative of deciding. Yet the candidate designated by the Court as the loser respected the verdict and conceded before the winner would be officially declared by the Congress.

Why would a system not based on clear rules work successfully over such a long history ? Whoever is designated as the loser, whether informally or officially, may accept this verdict or try to resist. Resistance may entail violence as well as economic and social costs. Moreover, as long as losing is only temporary, the current loser can look forward to winning in the future. Democrats were chagrined in 2000 but hoped to win in 2004 ; they were even more dismayed in 2004 but looked toward 2008, and won. Republicans suffered in 2012 but hoped for 2016, and they won. Hence, the current loser must weigh the burden of suffering a temporary defeat against engaging in costly, potentially violent, resistance. In turn, to avoid provoking the loser, the winner may not want to adopt policies that would be intolerable for the loser and not foreclose the possibility that the current loser could win in the future. Regulating conflicts by elections is then what game-theorists refer to as an equilibrium: accepting defeats and not abusing victories is self-enforcing. Violence and other costs of conflicts are avoided by the mere fact that the political forces expect to take turns. This equilibrium, based on purely strategic considerations, becomes ritualized as the norm even in the absence of clear rules. And when it is repeated, it becomes a habit, a routine that we learn to take for granted. Indeed, I once calculated that if a country had experienced a few peaceful transfers of power between parties, it is almost certain that it would continue to do so. For the United States, with its history of past alternations in office, the probability that the system would break down is 1 in 1.6 million elections.

This mechanism of peacefully resolving conflicts by elections works if something is at stake in elections but not too much is at stake. The question about elections for the competing parties and candidates is not only whether they would lose but what they would lose. When the stakes for the followers of the competing parties or personal costs for those in government are too high, the incumbent may try to keep power and the opposition to grab power even at the cost of violence.

It is by now a truism that the United States is a deeply polarized society. But thinking about polarization one needs to distinguish two of its aspects : one is how far apart are different groups on some particular issues - abortion, immigration, taxation - and the second is how they perceive those with whom they disagree and what they are willing to do to them. I find the second aspect more foreboding. What is new in the United States is not so much disagreement on particular issues but the hostility among different groups. This hostility deeply permeates the society, penetrates even into families. One telling piece of anecdotal evidence is that three years ago the traditional Thanksgiving dinner, an occasion when many Americans unite with their families, lasted on average half-hour less if family members originated from Congressional districts controlled by different parties.

Hence, when the President refers to his opponents as "enemies of the nation" and "traitors to the country," he is appealing to passionately held sentiments of his supporters. The stakes in this election are large for both sides : people are deeply divided, different divisions align people along partisan loyalties, and animosity between them is high. Many people interviewed by the media, on both sides of the partisan divide, referred to this election as "the most important" in their lives. But important elections are dangerous, and some of Trump's supporters are organized into armed militias.

Moreover, defeat in the election is dangerous personally for Trump and his acolytes. Financial documents revealed by several newspapers suggest that Trump may have committed several acts that are subject to criminal prosecution, mainly falsifying his assets in sworn statements when he sought various loans. Even though Trump wanted to "lock up" Hillary Clinton in 2016 and repeatedly suggested that Biden should have been prosecuted, it is unlikely that Biden would want to pursue criminal prosecution against the outgoing president. But some state prosecutors may insist on continuing their criminal investigations. Moreover, the same documents indicate that Trump is deeply in debt, no one knows exactly to whom, so he may face financial difficulties once he is out of office. Finally, many of Trump's current and former officials are subject to criminal investigations while others will find it difficult to find lucrative jobs outside politics. Hence, personal stakes are also exceptionally high.

No wonder then that this election broke all the traditional norms and all the habitual expectations. Hearing the military being asked whether they see a role for themselves in the election, seeing police unions declare their partisan preferences, speculating how the Secret Service will decide whom to protect as the President on January 20 and whether the FBI will extend security clearance to Biden fill one with incredulity that this could be happening in the United States. All expectations are shattered. This is just a different world. I have spent a good part of my life in Latin America and the whiff of the current situation is ominously familiar.

Thus far there has been no private violence, election procedures have been scrupulously observed, and legal proceedings initiated by the Republicans are failing in courts. I do believe that Trump will declare victory, declare himself to be a leader of a movement and a candidate for 2024, and leave office peacefully to pursue his economic interests. But what makes me pessimistic about the United States is that it is hard to imagine that the profound divisions within the society would be healed by the outcome of this or any election.