

Annals of Democracy

Rock, Paper, Scissors

How we used to vote.

by Jill Lepore

New Yorker October 13, 2008



On the morning of November 2, 1859—Election Day—George Kyle, a merchant with the Baltimore firm of Dinsmore & Kyle, left his house with a bundle of ballots tucked under his arm. Kyle was a Democrat. As he neared the polls in the city’s Fifteenth Ward, which was heavily dominated by the American Party, a ruffian tried to snatch his ballots. Kyle dodged and

wheeled, and heard a cry: his brother, just behind him, had been struck. Next, someone clobbered Kyle, who drew a knife, but didn't have a chance to use it. "I felt a pistol put to my head," he said. Grazed by a bullet, he fell. When he rose, he drew his own pistol, hidden in his pocket. He spied his brother lying in the street. Someone else fired a shot, hitting Kyle in the arm. A man carrying a musket rushed at him. Another threw a brick, knocking him off his feet. George Kyle picked himself up and ran. He never did cast his vote. Nor did his brother, who died of his wounds. The Democratic candidate for Congress, William Harrison, lost to the American Party's Henry Winter Davis. Three months later, when the House of Representatives convened hearings into the election, whose result Harrison contested, Davis's victory was upheld on the ground that any "man of ordinary courage" could have made his way to the polls.

Voting in America, it's fair to say, used to be different. "Are you not a man in the full vigor of manhood and strength?" a member of the House Committee on Elections asked another Harrison supporter who, like Kyle, went to the polls but turned back without voting (and who happened to stand six feet and weigh more than two hundred pounds). The hearings established a precedent. "To vacate an election," an election-law textbook subsequently advised, "it must clearly appear that there was such a display of force as ought to have intimidated men of ordinary firmness."

What was at stake, in the House Committee on Elections, was whether men like George Kyle were too easily daunted. What wasn't at stake was that Kyle, an ordinary voter, carried with him to the polls a bundle of ballots. Nowhere in the United States in 1859 did election officials provide ballots. Kyle, like everyone else, brought his own. The ballots he carried, preprinted "party tickets," endorsed the slate of Democratic candidates, headed by Harrison. Voters got their ballots either from a partisan, at the polls, or at home, by cutting them out of the newspaper. Then they had to cross through the throngs to climb a platform placed against the wall of a building (voters weren't allowed inside) and pass their ballots through a window and into the hands of an election judge. This was no mean feat, and not only in Baltimore. In the middle decades of the nineteenth century, eighty-nine Americans were killed at the polls during Election Day riots.



“Relax—it’s only the caped Approval Seeker.”

The reform that ended this unsettling state of affairs was imported from Australia, and was not achieved in the United States until the eighties. The American adoption of the “Australian ballot”—and the radical idea that governments should provide ballots—was hard fought. It lies, if long forgotten, behind every argument about how we ought to vote now, from the 2002 Help America Vote Act’s promotion of paperless voting to the more recent backlash, favoring a paper trail. And it is also, like every other American election reform, a patch upon a patch.

The United States was founded as an experiment in eighteenth-century republicanism, in which it was understood that only men with property would vote, and publicly, since they were the only people who could be trusted to vote with the commonweal, and not private gain, in mind. What went on in 1859 was something altogether different: voting was still public, but all white men could vote, and nearly seventy per cent of them managed to do so in the congressional elections that year, pistols and fisticuffs notwithstanding. From an eighteenth-century point of view, how we vote now looks even stranger. Casting a ballot remains the defining act of American citizenship. But, especially since the election of 2000, with its precariously hanging chad, many people worry that voting in America is a shambles and even a sham, that the machinery of our democracy is broken, crippled by confusing, illegible, and deceptive ballots; vote-counting devices

either rickety and outdated or new, gimmicky, and untested but, in any case, unreliable and by no means tamperproof; and a near total absence of national standards and federal oversight. In this fall's Presidential election, every citizen who is eighteen or older—except, in some states, prisoners and felons—will be eligible to vote. Somewhat more than half of us will turn up. We won't be clobbered, stabbed, or shot. We will not have to bring our own ballots. We will insist that how we vote be secret. The founders didn't plan for this. No one planned for it. There is no plan. It's patches all the way down.

Americans used to vote with their voices—*viva voce*—or with their hands or with their feet. Yea or nay. Raise your hand. All in favor of Jones, stand on this side of the town common; if you support Smith, line up over there. In the colonies, as in the mother country, casting a vote rarely required paper and pen. The word “ballot” comes from the Italian *ballotta*, or little ball, and a ballot often was a ball, or at least something ballish, like a pea or a pebble, or, not uncommonly, a bullet. Colonial Pennsylvanians commonly voted by tossing beans into a hat. Paper voting wasn't meant to conceal anyone's vote; it was just easier than counting beans. Our forebears considered casting a “secret ballot” cowardly, underhanded, and despicable; as one South Carolinian put it, voting secretly would “destroy that noble generous openness that is characteristick of an Englishman.”

In 1634, the governor of Massachusetts was elected “by papers” for the first time; thirteen years later, a Bay Colony law dictated voting “by wrighting the names of the persons Elected.” But, outside learned, literate New England, this would have been entirely impractical. Only very slowly did voting by paper grow common enough that the word “ballot” came to mean not a ball but a piece of paper. Well after American independence, elections remained widely the stuff of corn and beans and hands and feet.

The Constitution, drafted in 1787, left the conduct of elections up to the states: “The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations.”

Further than this limited federal oversight the framers would not go. And even this needed James Madison's insistence, during the Constitutional Convention, that “it was impossible to foresee all the abuses” that states might make of unimpeded power over the conduct of elections.

With the exception of Benjamin Franklin, who anticipated Malthus, the nation's founders could scarcely have imagined that the population of the United States, less than four million in 1790, would increase tenfold by 1870. Nor did they prophesy the party system. Above all, they could not

have fathomed universal suffrage. In the first Presidential election, only six per cent of Americans were eligible to vote. And these men didn't elect George Washington; they voted only for delegates to the Electoral College, an institution established to further restrain the popular will. (The original proposal, at the Constitutional Convention, was for the President to be elected by Congress, called, in the debates, the "national legislature." A motion "to strike out 'National Legislature' & insert 'citizens of U.S.'" was defeated, with only Franklin's Pennsylvania dissenting. It was all but inconceivable that the people, even given limited suffrage, would elect the President directly. The election of the President by Congress, however, violated the separation of powers. The Electoral College, proposed after the defeat of the motion for direct election, was an illbegotten compromise.) The states, left to their own devices, adopted electoral methods best described as higgledy-piggledy, except that everyone agreed that Election Day ought to be a public holiday, involving plenty of stumping, debating, and parading. Some of the original state constitutions make mention of voting by ballot; some don't. The framers of New York's 1777 constitution, wondering whether "voting at elections by ballot would tend more to preserve the liberty and equal freedom of the people than voting *viva voce*," proposed a "fair experiment" with paper. In 1802, Ohio required voting by ballot in "all elections." By no means, however, did paper voting become universal. The citizens of Kentucky voted *viva voce* until 1891.

Early paper voting was, to say the least, a hassle. You had to bring your own ballot, a scrap of paper. You had to (a) remember and (b) know how to spell the name of every candidate and office. If "John Jones" was standing for election, and you wrote "Jon Jones," your vote could be thrown out. (If you doubt how difficult this is, try it. I disenfranchise myself at "Comptroller.") Shrewd partisans began bringing prewritten ballots to the polls, and handing them out with a coin or two. Doling out cash—the money came to be called "soap"—wasn't illegal; it was getting out the vote.

The eighteenth century's experiment in republicanism gradually gave way to the unruly exuberance of nineteenth-century democracy. New states entering the union adopted constitutions without any property qualifications for voting, putting pressure on older states to eliminate those restrictions. As suffrage expanded—by the time Andrew Jackson was elected President, in 1828, nearly all white men could vote—scrap voting had become a travesty, not least because the newest members of the electorate, poor men and immigrants, were the least likely to know how to write.

Political parties, whose rise to power was made possible by the rise of the paper ballot, stepped in. Party leaders began to print ballots, often in

newspapers: either long strips, listing an entire slate, or pages meant to be cut in pieces, one for each candidate. At first, this looked to be illegal. In 1829, a Boston man named David Henshaw tried to cast as his ballot a sheet of paper on which were printed the names of fifty-five candidates. Election officials refused to accept it. Henshaw sued, arguing that he had been disenfranchised. When the case was heard before the state's Supreme Court, the decision turned on whether casting a printed ballot violated a clause in the state's 1780 constitution, requiring a written one. "It probably did not occur to the framers of the constitution," the Court observed, in a landmark ruling in Henshaw's favor, "that many of the towns might become so populous as to make it convenient to use printed votes." The Massachusetts constitution, only fifty years old, had already been outpaced by the times. Printed ballots came to be called "party tickets," because they looked like train tickets (which is why, when we talk about someone who votes a single-party slate, we say that he "votes the party ticket"). The printing on ballots of a party symbol, like the Free Soilers' man-pushing-a-plow, meant that voters didn't need to know how to write, or even to read. Not surprisingly, the ticket system consolidated the power of the major parties. Curiously, it promoted insurgency, too: party malcontents could "bolt," or print their own ballots, listing an alternate slate of candidates; they could "knife" a candidate by stacking up a pile of tickets and slicing out his name; and they could distribute "pasters," strips of paper printed with the name of a candidate not on the party ticket, to be pasted over that of his opponent. (For this, polls were stocked with vats of paste.)

Undeniably, party tickets led to massive fraud and intimidation. A candidate had to pay party leaders a hefty sum to put his name on the ballot and to cover the costs of printing tickets, buying votes, and hiring thugs, called "shoulder-strikers," to tussle with voters. To make sure all that soap was paying off, ballots grew bigger, and more colorful, so bright-colored that even "vest-pocket voters"—men who went to the polls with their ballots crammed into their pockets—could barely hide their votes.

But wanting to hide those votes began to seem eminently reasonable to reformers both in the United States and in Britain, where suffrage had also been expanding. In 1830, the Scottish Benthamite James Mill argued for a secret ballot in order to curb the influence of landlords upon their tenants and factory owners upon their workers. The next year, Maine required that all ballots be printed on the same color paper, to protect voters trying to cast minority ballots in a polling place besieged by rowdy members of the majority. It didn't do much good. What honest man was ashamed of his vote? The secret ballot, the Virginian John Randolph insisted, "would make

any nation a nation of scoundrels, if it did not find them so.” In 1851, a Massachusetts legislature dominated by Free Soilers and Democrats mandated the use of envelopes, to be supplied by the Secretary of State. That didn’t do much good, either. “To say that the citizen shall vote with a sealed bag, or not at all,” critics argued, “is an act of despotism.” In 1853, when the Massachusetts legislature changed hands, the new majority made envelopes optional, having accepted the argument that it was its duty to give every citizen the right “to vote as his fathers did, with an open ballot.” By the time the House Committee on Elections investigated the contested 1859 Baltimore congressional election, jostling and brawling at the polls were to be expected and endured. (Women were not enfranchised until the passage of the Nineteenth Amendment, in 1920, although, as suffragettes argued, maybe if women had been allowed to vote earlier, Election Day would have been marked by more decorum.) “Were the voters of the 11th ward men of ordinary courage?” a committee member asked a Baltimorean who had only this honest answer: “Men of ordinary courage, extraordinary courage, and some with no courage at all.”

Meanwhile, on the other side of the world, someone came up with a startling idea. What if governments were to provide the ballots?

The precise origins of this idea are somewhat murky. An electoral law, with ballot clauses written by a jurist named Henry Samuel Chapman, was passed in Victoria, Australia, in March of 1856. (A similar law, championed by Francis S. Dutton, was passed in South Australia the following month, and whether Chapman or Dutton or someone else is more justifiably dubbed the Father of the Ballot has been a matter strenuously debated.) Victoria’s Electoral Act of 1856 minutely detailed the conduct of elections, requiring that election officials print ballots and erect a booth or hire rooms, to be divided into compartments where voters could mark those ballots secretly, and barring anyone else from entering the polling place.

This, of course, is exactly how we vote in the United States today. Not that there hasn’t been tinkering: in 1877, Western Australia introduced the placement of an empty square next to a candidate’s name, requiring voters to indicate their selections by marking an “X” in the box. (Chapman’s law required crossing out the names of everyone you *didn’t* want to vote for.)

Then there was a clever scam called the Tasmanian Dodge: get your hands on a blank ballot, fill it out, and pay someone to cast it while smuggling out another blank, and you can vote as many times as you like without ever casting a ballot. (The dodge was eventually defeated by numbering or stamping the ballots, a system in place, in one form or another, in every American precinct today.)

When the Australian ballot was propounded in Britain, James Mill's son, John Stuart Mill, became its most articulate opponent. The younger Mill first took up the subject in 1859, just months before George Kyle's brother died in Baltimore. Voting, Mill insisted, is not a right but a trust: if it were a right, who could blame a voter for selling it? Every man's vote must be public for the same reason that votes on the floor of the legislature are public. If a congressman or a Member of Parliament could conceal his vote, would we not expect him to vote badly, in his own interest and not in ours? A secret vote is, by definition, a selfish vote. Only if a man votes "under the eye and criticism of the public" will he put public interest above his own.

Mill's argument was widely debated, but met with a practical-minded reply: even if voting is a public trust (which not all of Mill's opponents granted), voters need to exercise it privately to exercise it well, because the electorate, unlike the legislature, consists of men of unequal rank. The powerless will always be prevailed upon by the powerful; only secrecy can protect them from bribery and bullying. The British Parliament adopted the Australian ballot in 1872.

The most zealous American champion of the Australian ballot, Henry George, sailed to Australia in 1855, when he was fifteen, as a foremast boy. He arrived at San Francisco in 1858; three years later he married an Australian. He first advocated the Australian ballot in December, 1871, a few months after the *New York Times* began publishing its investigation into the gross corruption of elections in New York City under the party boss, William Magear Tweed. (In 1868, a Presidential-election year, Tweed's amply rewarded "repeaters" cast more than fifty thousand illegal votes.) Without the Australian ballot, George wrote, "we might almost think soberly of the propriety of putting up our offices at auction."

George had a point. In San Francisco, party bosses handed out "quarter eagles," coins worth \$2.50. In Indiana, tens of thousands of men sold their suffrages for no more than a sandwich, a swig, and a fiver. In an 1878 essay in *The North American Review*, the eminent historian Francis Parkman declared universal suffrage a failure: when a man "cares not a farthing for the general good, and will sell his vote for a dollar," Parkman insisted, "his vote becomes a public pest." Five years later, George, writing in the same magazine, granted that elections had become a national scandal, but rejected Parkman's conclusion "that democracy is therefore condemned, or that universal suffrage must be abandoned."

In 1886, George ran for mayor of New York. He lost, but the United Labor Party, which nominated him, became the first national party to demand the Australian ballot. Two years later, in Kentucky, a state still voting viva voce,

the legislature attempted the reform in Louisville. After the voting that year, an observer wrote to *The Nation*, “The election last Tuesday was the first municipal election I have ever known which was not bought outright.” In 1888, Massachusetts passed the nation’s first statewide Australian-ballot law. (It served as the model for nearly all that followed.) That success put pressure on David Hill, the Democratic governor of New York, who vetoed an Australian-ballot bill three times, even after fourteen men carried to the floor of the New York legislature a petition weighing half a ton. (One of his arguments was that its restriction on campaigning at the polls violated freedom of speech.) But New York, which finally adopted the reform in 1890, proved the only state to deliberate at such length. Elsewhere, state legislatures swiftly adopted the reform, persuaded, no doubt, of the need to clean up elections but also, in some places, eager to solve the “problem” of the expansion of the suffrage by restricting it.

A government-printed ballot that voters had, even minimally, to read made it much harder for immigrants, former slaves, and the uneducated poor to vote. Some precincts formally imposed and selectively administered literacy tests; others resorted to ranker chicanery. (In 1894, one Virginian congressional district printed its ballots in Gothic letters.) In the South, where black men had been granted suffrage in 1870, by the Fifteenth Amendment, it was fear of the black Republican majority that led many former Confederate states to adopt the reform in the first place. As a Democratic campaign song heard in Arkansas in 1892 put it:

The Australian ballot works like a charm,
It makes them think and scratch,
And when a Negro gets a ballot
He has certainly got his match.

The year after Arkansas passed its Australian-ballot law, the percentage of black men who managed to vote dropped from seventy-one to thirty-eight. By 1896, Americans in thirty-nine out of forty-five states cast secret, government-printed ballots. The turnout, nationwide? Eighty per cent, which was about what it had been since the eighteen-thirties. It has been falling, more or less steadily, ever since.

On Election Day this November, I’ll walk around the corner to vote in the basement gymnasium of a neighborhood elementary school, beneath a pair of basketball hoops. At a table just inside the gym, a precinct volunteer will hand me a piece of white paper about the size and weight of a file folder. I’ll

enter a booth built on a frame of aluminum poles, tug shut behind me a red-white-and-blue striped curtain, and, with a black marker tied to a string, I'll mark my ballot, awed, as always, by the gravity, the sovereignty, of the moment. With the stroke of a pen, we, mere citizens, become We the People. Except for the basketball hoops, much about how I'll vote this November, about how most Americans will vote, was laid out in an Act to Provide for Printing and Distributing Ballots, passed in Massachusetts, my home state, in 1888. Henry George wanted all men to vote *better*; Francis Parkman believed that only the "best men" should vote. The Australian ballot did some of what both men wanted. It can scarcely be said to have removed money from elections (money has found plenty of other ways in), but it did provide an elegant solution to problems created by the sudden and dramatic expansion of the electorate in a time of vast economic inequality. It brought voting indoors, contained it in compartments, and made it safer, quieter, more orderly, more like an assembly line. Many kinds of corruption, violence, and intimidation ended. George Kyle, for one, would have been relieved not to have to walk to the polls with that bundle of ballots tucked under his arm.

But the reform's success was vexed. Beyond effectively restricting suffrage (at least before the passage of the Voting Rights Act of 1965, outlawing literacy tests), the Australian ballot dampened popular enthusiasm for voting by prohibiting the staging, at the polls, of heated political debates and ending the celebration of Election Day as a boisterous public holiday. (This year, an unusually high turnout is expected, but high, by our standards, would be more than sixty per cent. And if four out of ten of the nation's eligible voters fail to turn up at the polls it won't be for lack of ordinary courage.) It also contributed to the erosion of the notion of voting as a public trust. And, crucially, it shifted the American conversation about voting from a fundamental debate about democracy to the profit-driven advocacy of technology. Machines for casting and counting votes date to the eighteenth-century; the first punch-card-machine patent was granted in January of 1889; the first mechanical-lever voting machine was patented the following November, and debuted in 1892. (Like printed ballots, machine-cast ballots were, at first, challenged on the ground that they were unconstitutional.) Machines, of course, can break. Machines can be made to fail. The 2002 Help America Vote Act provided more than three billion dollars in federal funds for the purchase of electronic voting machines. In the 2004 Presidential elections, many voters waited in line for hours, only to be confronted with machines that proved difficult to use and may have switched or deleted their votes. In 2005, security experts at BlackBoxVoting.org, a

watchdog group, swapped out the actual vote count in a Diebold AccuVote touch-screen machine for a set of fake results in less than four minutes, using nothing more than a memory card. (Diebold Election Systems changed its name to Premier Election Solutions, Inc.) Computer scientists and computer-security experts have called for a return to paper voting. Tens of thousands of electronic voting machines, purchased since 2002, have been thrown out. (Earlier this year, Florida sent thirty thousand touch-screen machines to a recycler.) This November, nearly sixty per cent of American voters are expected to cast their votes on paper ballots.

To the extent that Americans today see how we vote as a problem, we tend to think it needs a technological fix, of one sort or another, whether it's better, faster, more secure machines, a return to the paper ballot, or maybe even Internet voting, which would strip from the act of casting a ballot its very last vestiges of civic occasion and public office. But the problem, if there is a problem, is historical, too. That we grant our rulers the right to govern us is the genius of eighteenth-century republicanism. That we all can vote is a consequence of nineteenth-century politics. That we vote secretly is the Gilded Age's answer to universal manhood suffrage. How our votes are counted is, generally, a product of twentieth-century technology. (My precinct uses an optical scanner invented in the nineteen-sixties.) It really is patches all the way down. In places—like the Electoral College—the patchwork gets pretty shoddy.

Still, a patch, even a patch upon a patch, isn't necessarily bad. Times change. If the founders had written more about elections and less about a well-regulated militia, we'd have better gun-control laws, but we might still be voting with corn and beans, clamoring on the town common. Corn and beans we can do without. More hue and cry, though, we could maybe use. Sometimes, inside that tiny booth, behind that red-white-and-blue curtain, it's just a little too quiet. ♦