

Don't Blame the Butterfly Ballot: Voter Confusion in Presidential Politics

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As the aftermath of the 2000 presidential election captured the nation's attention, political pundits, campaign operatives, legal scholars, and the courts battled over questions of voter confusion and how to divine voter intent. But voter confusion goes much deeper than hanging chads, dimples, and butterfly ballots: voter confusion occurred long before voters reached the polls. Indeed, most votes were decided based on misunderstood and distorted information, largely arising from the misleading nature of televised debates.

The ideal of the American deliberative democracy calls upon the people to engage in an open dialogue in order to nurture and strengthen the democratic principles that define America. Reality, however, disappoints these ideals. The American people are neither as fully informed nor as well engaged as legal and political theorists desire. Many voters see televised debates as the best, and at times, the only, opportunity to learn about the candidates' positions and to be informed, substantively, about issues. People expect (in large part because they are told to do so) that televised debates are a nearly perfect source of substantive information. But the modern reality is that debates are a mix of substance and tactics, and most dangerously, tactics cloaked as substance. As a result, across the country individuals cast votes based on misinformation, brought about not only by the butterfly ballot, but also by what appears on the television screen.

Year 2000 Democratic Party Presidential Primary Debates

The last election cycle featured dozens of debates, any series of which could illustrate so much about the way the process works. Several particular examples from the televised presidential primary debates between Bill Bradley and Al Gore, with which I am particularly familiar, speak volumes about both the competition between Bradley and Gore, and more importantly, about the nature of the American political dialogue. While people may expect or hope that the debates will illuminate the candidates' opinions on the important issues of the day, tactics, often cloaked in issues clothing, dominate.

The two men met in televised appearances nine times over the primary season. These debates—each with a different format, panel of questioners, range of questions, and feel—put the two candidates under the spotlight in direct head-to-head confrontation. Bradley needed both to improve his name recognition and

to make inroads against the sitting vice president, while Gore had to find a way of defining himself to the Democratic party faithful and to a nation that already had some impression of him from his seven years as vice president. Neither is a fiery orator, and both are widely respected for their mastery of policy. Nobody knew exactly what to expect. Many wondered whether the debates would show much difference between the two. The following examples reveal that what the people saw was not what it seemed to be.

The Handshake

Bill Bradley had taken the early policy lead on the issue of campaign finance reform, proposing a comprehensive campaign finance overhaul plan in the summer of 1999. Al Gore was vulnerable on this issue, infamous for his indiscretion in attending a fundraiser at a Buddhist temple in California. In addition, he had been blasted repeatedly for making questionable fundraising calls from his office, defending himself (not very successfully) by reference to “no controlling legal authority.”

Gore had to work carefully to avoid falling on the issue and came out with a tactical response, cloaked in issues clothing. On December 19, 1999, Bradley and Gore had a joint appearance debate on NBC’s “Meet the Press.” Seeking to seize (or recapture) the issue, Gore proposed to eliminate television advertisements, in exchange for an agreement to two debates per week. Gore knew that, nationally, his name recognition was very high, and Bradley’s was low. In order to win, Bradley had to advertise nationally to pick up his own name recognition. Both candidates and their staffs knew: Bradley not advertising was certain to guarantee a Gore victory. The exchange went as follows:

Gore But, here’s my proposal. Let’s debate twice a week from now until the nomination is decided and just go face to face about the issues, and get rid of all these television and radio commercials. Why not do that?

Bradley You know something? For ten months that I was running for president, you ignored me. You pretended I didn’t exist. Suddenly I started to do better, and you want a debate every day. It’s ridiculous. We’re having debates. We had a debate the other night in New Hampshire, we’re on “Meet the Press” today, we’re gonna be in Iowa and New Hampshire the first week in January. The point is, Al, and I don’t know if you get this, but a political campaign is not just a performance for people. Which is what this is. But it is, rather, a dialogue—

Gore [interrupting] That’s not what I’m doing.

Bradley—a dialogue with people, Al. It’s a dialogue with people, where you listen to their stories, where you listen to what they have to say about their country’s future, where you seek to engage them and convince them that the direction that you want to take the country is the right way to go. That’s what—

Gore [interrupting] Look, we could call this, we could call this the “Meet the Press Agreement.” We could have two debates every single week, and get rid of all of the television and radio commercials. I’m willing to do it right now, if you’ll shake on it. [Gore extended his hand toward Bradley.]

Bradley Al, that's good, I like that hand, but the answer is "no." I mean—why should I agree now? I'm not someone who's interested in tactics, Al.

Gore [interrupting] Debates are tactics? It's how we discuss issues.

Bradley It's the direction this country's taking. The direction the country goes.

Tim Russert (moderator) Let me go back to campaign finance reform, because Mr. Vice President—

Bradley [interrupting] That was a very interesting ploy on "Meet the Press."

Gore Look, I'm ready to agree right now—

Bradley [interrupting]—"shake my hand." That's nothing but a ploy.

Gore I just mean, if we debate twice a week, the American people are gonna find out a lot more about what we believe and what we're proposing—look, this is a serious proposition, Tim. I'm ready to agree right here. These thirty-second commercials are part of what's wrong with American politics. You have these l'il attack ads, you have these l'il fuzzy images.

When Gore extended his hand, Bradley looked at it with a combination of contempt, dismay, and amusement. As the *Washington Post* observed: "As Bradley correctly noted, Gore had no interest in debating him early last year when the vice president was far ahead in the polls. But Bradley was surging in part on his appeal as a reformer. The vice president's gambit was an example of what one Gore aide called 'political jujitsu'—using an opponent's strength against him." (1) While Bradley and those inside his campaign saw this as a ploy, the public image was different, much to Gore's advantage. The campaign finance reform issue had been largely recast so that the tag line could be: Bradley declines Gore campaign reform offer.

People-as-Props

Al Gore used people as props to punctuate the debates that had live studio audiences. (Ronald Reagan is often credited for using this tactic to great effect in major addresses, although not in the campaign context.) The person used as a prop would illustrate some point of Gore's record or set up an attack on Bradley. It created dramatic moments and personalized the issues—putting real faces on real problems. While it may have seemed contrived to many (inside the Bradley campaign, contrived was probably the most kind word used), it could be very successful. The January 8 *Des Moines Register* debate provided the best example of this tactic. As a matter of background, in 1993 massive floods devastated much of the Midwest, leaving farmland and farmers ruined, in Iowa and elsewhere. Congress responded with a flood-relief bill and federal funds to help alleviate the problems. Then-Senator Bradley voted against an amendment sponsored by Iowa Democrat Tom Harkin to increase the amount of federal dollars in the bill targeted for farmers. The amendment passed and Bradley supported and voted for the overall package, including the extra funds from the Harkin amendment. In other words, Bradley at first opposed, then later supported these funds. Al Gore raised the subject at the January 8 debate, as follows:

Gore [looking out toward the audience] Let me introduce a friend of mine to you. Chris Peterson is here. Could you stand up, Chris? [Peterson stands] Chris is a farmer with 400 acres...Back in 1993, 300 of his 400 acres were flooded out. I joined with Tom Harkin to get the extra billion dollars of disaster relief to help Chris and the others who were flooded out.

Moderator And your question?

Gore [turning to Bradley] Why did you vote against the disaster relief for Chris Peterson when he and thousands of other farmers here in Iowa needed it after those '93 floods?

Despite (or as a result of) omitting key facts, Gore had stung Bradley by putting a personal face on the policy issue. This was probably Bradley's worst performance in debate, and it hurt the campaign. As Kathleen Hall Jamieson of the Annenberg Public Policy Center of the University of Pennsylvania observed: "Iowans who watched the debate or heard or read about it were much more likely than other Iowans to say that Gore, and not Bradley, had done more for the American farmer when he was a senator. The message that Bradley was insensitive to Iowa's farmers drove down Bradley's share of Democrats' and Independents' vote intentions still more." (2) It certainly caused plenty of heartburn within the Bradley campaign, particularly because of an internal belief that Gore had distorted the record. But perhaps the truth was more complex: Gore mixed tactics and substance powerfully, and to almost all observers Gore won the debate handily.

Showtime at the Apollo

The February 21, 2000, debate at the Apollo Theater in Harlem provides one final example for consideration. At that point in the campaign, while Bradley had already experienced a significant rise in his candidacy, it had not been enough, and the handwriting was on the wall. Inside the campaign, the debate raged on as to the best way to make progress against Gore—something major was needed. Bradley agreed he had to attack Gore on a race-related question—the main focus of the Apollo Theater debate.

Several times as a member of the House of Representatives, Al Gore voted against the position of traditional civil rights and prominent black political organizations, to support tax-exempt status for racially discriminatory schools. Bradley was briefed extensively on the exact votes, to prepare him for an attack on Gore. This would be a tactical move cloaked in substance. In pointing out these votes, the question Bradley was to put to the Apollo audience was which Al Gore was present: the one who voted the "wrong" way as a member of Congress, or the one who claimed he was a friend of the black community. Thus, while Gore's stance on the substantive discrimination policy issue would be in play, tactically the move would highlight Gore's inconsistent record and credibility. At the end of an answer to a question on education and technology from the audience, Bradley saw his opportunity:

Bradley I think it is important to note that in 1980, '81, and 1979, there was an issue before the Congress that related to whether the—whether the government would provide tax-exempt status to schools that racially discriminated. Al Gore supported those measures, and I'd like to know today why?

Moderator Mr. Vice President?

Gore [Quick answer on other points.] As for this false charge...look, you have misrepresented that vote entirely, Senator Bradley. That was not about affirmative action, that was about quotas. It was 337 members of the Congress voted against that. You voted for the—for the—the same way on final passage. Now, let me—let me talk about a more recent vote, not twenty years ago. In 1995 you were the only Democratic senator to vote against affirmative action to help expand the number of African American-owned broadcasting outlets, radio stations, and TV stations. Why did you—why were you the only Democratic senator on the Finance Committee to vote against that?

Bradley Given Al's answer, I kind of expected his answer on his vote to preserve tax-exempt status for schools like Bob Jones that racially discriminate, so I have brought today a copy of all five of those votes. I've also brought today my statement in opposition, the Congressional Black Caucus' statement in opposition, and Trent Lott's statement in support saying that this would go to Bob Jones University. I'd like to give to each member of the panel and, Bernie at the break, but I'd like you to have it now, Al. [Bradley walked over to Gore and offered a set of papers with the relevant information, but Gore declined to accept.]

Bradley, mixing tactics and substance, put the question straight to Gore, scoring some points and gaining some audience approval, but Gore responded quickly and effectively, calling the accusation false. Despite the presence of the evidence, Gore denied its existence. Furthermore, he counter-attacked, challenging Bradley on a separate vote on an unrelated issue of importance to the black community. Gore's tactics worked well, as he was greeted with strong applause inside the Apollo for his comeback. The truth was seemingly meaningless at the moment, as the two almost called each other names, and the audience loved it. It was hard political engagement with little need for truth. Thus, the Apollo Theater debate combined a Bradley tactical attack clothed in substance, which was repelled by a false answer, then tossed aside by a Gore response of more tactics cloaked in substance.

Informed Decisions Matter

While televised debates may be good theater, they are not necessarily good democracy. That debates are often more about tactics than substance does not mean that the debates are worthless. To the contrary, fully and properly understood, they are invaluable. But the voting public needs a better opportunity to hear the candidates address important issues, and they should understand what they are really seeing and hearing on television.

The American form of government relies upon an informed citizenry to work. If the people are making uninformed choices in selecting their representatives to the national government, one of the central premises of the deliberative democracy fails.

Many powerful scholarly works stress meaningful citizen participation, characterized by deliberation, as essential to our republic. The University of Chicago's Cass Sunstein, one of the leading proponents of the "deliberative democracy" movement, has posited: "The republican commitment to universalism amounts to a belief in the possibility of mediating different approaches to politics, or different conceptions of public good, through discussion and dialogue." (3) Further, as Frank Michelman of Harvard has written, "Deliberative politics connotes an argumentative interchange among persons who recognize each other as equal in authority and entitlement to respect, jointly directed by them towards arriving at a reasonable answer to some question of public ordering...an answer that all can accept as a good-faith determination of what is to be done when some social choice is demanded by the circumstances. As I mean to use the term here, deliberation names neither a method of reasoning, nor a 'form of cognition', nor a 'faculty of the mind'; instead, it refers to a certain attitude toward social cooperation, namely, that of openness to persuasion by reasons referring to the claims of others as well as one's own. The deliberative medium is a good faith exchange of views—including participants' reports of their own understandings of their respective vital interests—in which all participants remain open to the possibility of persuasion by others and in which a vote, if any vote is taken, represents a pooling of judgments." (4)

While deliberation is central, a deliberative process is not a good unto itself; critically, it should also result in better outcomes. Through public dialogue, ideas can be well tested and refined to reach the best possible outcome. And in fact, the system withers with untested assumptions and complete agreement of thought on all issues. As YLS Professor Paul Kahn has observed, "Constitutional republican politics is, then, a paradigmatic case of the link between psychological and political order: It is a political form in which deliberation can become the basis for effective political choice." (5) YLS Professor Owen Fiss adds, "Democracy not only vests the choice of government officials in the citizens, it also presupposes that the citizens' choices will be informed. Only then are the people engaged in legitimate self-governance." (6) Modern scholarship thus reinforces the importance of voter information and participation, the centrality of which extends well beyond the particular problems of the Year 2000 general election. (7)

Moving Forward

These examples from the televised debates illustrate a disconnect between theory and reality in American government and politics. What can be done? The government can aggressively combat the problems underlying the voter

confusion that undercuts informed citizen participation and provide people with more access to undistorted information, so that they can make the kind of informed decisions that our system demands. The government, within Constitutional bounds, should take greater control of the election process, starting with money.

The government should finance discussions about the issues, with conditions and benefits. Public financing provides great benefits to individual candidates, while also allowing the government to set conditions and extract voluntary concessions to promote more informative campaigns. Conditions on receipt of public funding must promote greater access to information and achieve greater transparency. Some specific measures include:

a) free air time on television, cable and radio. Such air time should come in significant blocks (five minutes, for example, and specifically not in the 10- 15- and 30-second ad format). If broadcasters and cable providers did not voluntarily comply, the FCC would be charged with conditioning licenses on the provision of air time;

b) more and/or issue-specific debates, with a format that allows more time to answer questions. Debates must become (once again) a meaningful opportunity for the exchange of information. (We must better resolve questions of the proper parties to participate in these debates as well.)

c) Internet access, which may require the candidates to post position papers; and
d) a franking privilege for candidates. This element would allow for candidates to have equal use of the U.S. Postal Service for limited mailings to voters.

The specific policies listed here form only a partial list of suggestions; the superseding goal is to allow for (and encourage) voters to have clear and direct access to more and a wider variety of information, particularly substantive issues information.

Final Thoughts

In order for our deliberative democracy to work, the people need a wide array of undistorted inputs to process. At present, the televised debates between presidential candidates are not the substantive events that they are billed as, that the people expect, and that they appear to (and should) be. By overestimating the substance and by underestimating the tactics in the televised debates, the people are misinformed. Armed with a better understanding of the true nature and limitations of the available information, combined with more meaningful access to substantive information, the voter can make fully informed decisions about the candidates. Without better information, in the end, our democratic ideal cannot be achieved. But with change, the American political dialogue can flourish.

Notes

- (1) John F. Harris, "'Ploy' Appears to Work; Gore's Offer to Give up TV Ads Puts Bradley on the Spot," *Wash. Post.*, Jan. 7, 2000, at A4.
- (2) Kathleen Hall Jamieson, et al., "The 2000 Nominating Campaign: Endorsements, Attacks, and Debates," Annenberg Pub. Pol'y Ctr. of the Univ. of Penn. 14 (2000) available at <http://www.appcpenn.org/political/campaign2000/ead.pdf>
- (3) Cass R. Sunstein, "The Republican Civil Tradition: Beyond the Republican Revival," 97 *Yale L.J.* 1539, 1554 (1988) (citations omitted).
- (4) Frank Michelman, "Conceptions of Democracy in American Constitutional Argument: The Case of Pornography Regulation," 56 *Tenn. L.R.* 291, 293 (1989).
- (5) Paul W. Kahn, "Reason and Will in the Origins of American Constitutionalism," 98 *Yale L.J.* 449, 461 (1989) (citing *The Federalist* No. 1 (Alexander Hamilton)).
- (6) Owen M. Fiss, "Money and Politics," 97 *Colum. L.R.* 2470, 2479 (1997).
- (7) In addition, The Supreme Court has held: "We have recognized repeatedly that 'debate on the qualifications of candidates [is] integral to the operation of the system of government established by our Constitution.'" *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989), citing *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982); *Carey v. Brown*, 447 U.S. 455, 467 (1980); and *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964).