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BY MATTHEW STEVENSON

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## The Lost Art of the Steal



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What's the matter with Donald Trump and the Republican Party that they are making such a hash of stealing an election? Why are they making such a mockery of our finest political tradition? Have they no sense of history?

In 2000, even the hopelessly inept George W. Bush (*"Is our children learning?"*) figured out how, after 18,000 residents in Palm Beach county mistakenly cast their votes for Patrick Buchanan, the Supreme Court could deny an accurate recount of the errantly dimpled chads (*"for the sake of our democracy..."*) and grant him the presidency, as if part of an inheritance. In 1960, John F. Kennedy decided that to win the presidency he would need, among his vote counters, Chicago Mayor Richard M. Daley (*"vote early and vote often..."*) and Texas Senator Lyndon Baines Johnson (running as JFK's vice-president).

In Cook County Chicago in 1960, Kennedy got almost 400,000 more votes than did the Democratic candidate in 1956, who was the former popular governor of Illinois, Adlai E. Stevenson II. Yes, I know: hard to imagine. Kennedy won Illinois in 1960 by a margin of 8,858 votes.

In Texas, Kennedy won by 46,266 votes. As JFK's father liked to joke, imagining a telegram to his son: "Dear Jack: Don't buy a single vote more than necessary. I'll be damned if I'm going to pay for a landslide." Presumably 46,266 was in line with LBJ's budget.

And then there was the time, in the 1876, when 101% of the residents in South Carolina voted in the presidential election. In 2020 is Trump even trying?

### **Democracy in Action**

In American history counting votes, honestly anyway, often has had little to do with who becomes president.

George Washington won the first two elections with 100% of the votes cast, and after that, the story of American presidential elections is one long account of sleights of hand, at least around the ballot box.

In 1800, Thomas Jefferson needed a deal in Congress to be elected president, as happened in 1824 with John Quincy Adams (who defeated Andrew Johnson, thanks to the support of Henry Clay).

Rutherford B. Hayes, Benjamin Harrison, and George W. Bush are among those presidents who lost the popular vote but won in the Electoral College, at times through backroom dealings.

Woodrow Wilson, Bill Clinton, and Abraham Lincoln all became president thanks to the presence in their races of third and even fourth party candidates.

When electoral fraud hasn't worked to detour the results of an election, assassination and illness have done their part to ensure that the United States retains the best democracy that money can buy.

John Tyler, Millard Fillmore, Andrew Johnson, Chester Arthur, Teddy Roosevelt, Harry Truman, Lyndon Johnson and Gerald Ford all became president after non-electoral events.

In these great games, Trump, whining at the bar in Pennsylvania and Wisconsin, looks like an apprentice.

### **When Voter Suppression Paid Off**

In the 2020 election Trump adopted a strategy that pinned all of his comeback hopes on post-electoral lawsuits winding up in the Supreme Court, where presumably Brett and Amy would do him a solid.

In 2000, that ploy only worked as the election came down to the winner of one state, Florida, where the vote differential was less than 1,000.

Trump also put his reelection faith in the great game of voter suppression (purging the rolls in places such as Florida and Georgia), but it just made people angry.

The last time voter suppression paid off in a presidential election was in 1888 (Grover Cleveland vs. Benjamin Harrison). In that contest both sides employed what were called "repeaters" (people who voted more than once in the same district) and "floaters" (they cast their second, third, or fourth votes elsewhere).

President Cleveland won the popular vote in 1888, but lost in the electoral college, largely because Harrison won in New York state.

How did Harrison, an Indianapolis lawyer, win New York, Cleveland's home state? Harrison's agents cleverly threatened Tammany Hall supporters with jail sentences if they were to cast "doubtful" votes, which "suppressed" the Democratic turnout.

The pious Harrison (his nickname was "The Human Iceberg") said after the election: "Providence has given us this victory," to which one of his political operatives quipped, "Providence hadn't a damn thing to do with it."

### **I Gave at the Office**

Money, or more precisely the lack thereof, is another reason why Trump has been unable to steal the 2020 election, as at the moment the golfing-obsessed Trump is looking financially tapped out.

Coming into the home stretch of the election, the Biden campaign brought in \$952 million while Trump raised \$612 million, a gap that not even Deutsche Bank could bridge.

That cash differential not only edged Trump off the airways in several swing states (notably Michigan), but after the election it has forced Trump to implement his steal-it-on-the-cheap strategy.

In Wisconsin, for example, Trump is only recounting the votes in two counties (Milwaukee and Dane, for which the cost is \$3 million) instead of recounting the entire state (for which the price tag was \$7.9 million, paid up front, a bit like ransom money).

Part of the reason Trump lagged behind Biden in fund raising, I am sure, is because he can't open his mouth without telling people that "I am really, really rich..." Who during a recession wants to send \$250 to a candidate who says he's worth billions?

### **Trump Applies for Legal Aid**

Trump's lack of liquidity, however, may explain his refusal to concede, as in the meantime he can bleed his base for more donations.

In theory the money now being raised is to be used for challenging the election results ("*This is a case where they're trying to steal an election... They're trying to rig an election, and we can't let that happen...*"), but in reality, if you read the fine print of the pleadings, the new money can be used to re-float the otherwise sinking *Good Ship Trump*.

Now that Trump has lost the election, the Republican Party wants nothing to do with picking up his padded expenses (all those jets for Eric and Don Jr., and expense money for Kimberly Guilfoyle and Lara Trump), especially for what it views as a lost cause.

Maybe if the electoral margin had come down to one state that was close (say, Georgia), Mitch McConnell and the Republicans might have stumped up per-diem vouchers to pay for some recount lawyers.

But as Trump needs to turn at least three states (if not more), the costly recount game isn't worth the candle (at least not to Mitch), which explains why Trump is relying on The Legal

Aid Society (Rudolph Giuliani, Esq., representing its indigent client) to press his long-shot cases.

### **The White Shoes Walk**

Nominally the reason that many large law firms (Porter Wright among them) withdrew from Trump's recount and certification claims is because they were getting pushback from their clients and partners, and because (this was unstated) they were worried about getting disbarred for advancing arguments they knew to be false.

A more logical reason for these law firm withdrawals might be that Trump is refusing to pay them, probably because he has no money.

When Porter Wright dropped Trump as a client in Pennsylvania, it left the file with a Federalist Society lawyer Linda Kerns. About a week later she was fired or quit so that Trump could pin his reelection prospects on Marc A. Scaringi, Esq., a Harrisburg "business and corporate" lawyer who "represents for-profit, non-profit and not-for-profit businesses and their principals, owners, directors and officers."

In working for Trump, Solicitor Scaringi (who is also a conservative morning talk show host) would seem to be drawing on his not-for-profit experience.

Since without Pennsylvania Trump cannot hope to overturn the 2020 election, you do wonder why he's betting on a morning talk-show lawyer who handles divorce cases. (I guess maybe Rudy's his ventriloquist.)

No sooner did Scaringi take the Trump mandate than he was writing to his Twitter followers that, actually, the Pennsylvania cases were hopeless (as, I am sure, are his prospects of getting paid for his time in court).

At least when George W. Bush needed to steal an election in Florida, he had the good sense to retain presidential chamberlain and super lawyer James Baker. (Vice-President Al Gore countered with Warren Christopher, who approached the Florida recount knife fight as if it were an academic symposium.)

### **The Postman Always Votes Twice**

You do wonder which very stable genius in the Trump universe (I have some ideas) came up with the strategy of contesting mail-in ballots—especially after election day—to somehow secure Trump reelection.

Not only did the rantings about mail-in ballots discourage Trump voters from voting remotely, but it forced them, during a deadly spike in a pandemic, to vote in person, which not everyone wanted to do.

Who knew that the greatest suppression of Republican voters would come from Republicans?

### **Ruthefraud B. Hayes**

When it comes to stealing a presidential election, what works best is power and money, generally distributed, and having something to trade for off-balance sheet votes.

In the election of 1896, in which William McKinley defeated William Jennings Bryan, power broker Mark Hanna, flush with cash from corporate trusts (who feared Bryan and his silver platform), judiciously bought votes in a number of swing states, most of which went for McKinley, who otherwise (a bit like Harrison) would have thought that providence had delivered his victory.

In 1876, another contested election, it was Republican control of the Congress that allowed Rutherford B. Hayes (aka “His Fraudulency”) to defeat the New York governor Samuel Tilden, who had won the popular vote by several hundred thousand.

When it came time to send electoral votes to be counted in Washington, Republican governors in a number of southern states (then under federal military occupation) sent electors for Hayes, even from states where Tilden had won, resulting in the same kind of deadlock that today is Trump’s only hope for stealing the 2020 election.

It’s the scenario in which Republican legislatures go rogue and send in Trump electors, even though Biden will have won the popular vote in those states. And then it’s Vice-President Pence who would preside over the resolution of the deadlock.

In 1876, power brokers in Congress decided the election. Hayes was made the president in exchange for agreeing to the end of Reconstruction in the South, which allowed the Democratic majority there to impose segregation over the states of the former confederacy.

### **Trumpff unter allen**

In 2020, what does Trump have to offer Georgia, Pennsylvania, Nevada, and Arizona in order to overrule the popular vote in those states and send electors for Trump to Washington?

The answer is: not much. For one thing, for all his spin, Trump doesn’t “do deals.” He runs scams, in which he alone is the winner.

Actually, the Republicans in Pennsylvania might be happier with the current results, in which, after getting rid of Trump, they get a conservative Supreme Court, a Republican majority in the Senate, and a corporatist, pro-fracking president who grew up in Scranton.

The so-called Compromise of 1877 worked because each side had something that the other wanted (Republicans wanted the presidency and the Democrats wanted the South), but in 2020 all Trump has to trade is bluster and unpaid legal bills, and nobody seems to want either.

*This essay is part of a periodic series on the 2020 presidential election. Some earlier pieces can be found [here](#).*

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*Matthew Stevenson is the author of many books, including [Reading the Rails](#) and [Appalachia Spring](#). His most recent book, published this summer, is [The Revolution as a Dinner Party](#), about China throughout its turbulent twentieth century.*