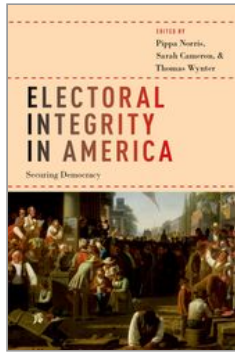


University Press Scholarship Online
Oxford Scholarship Online



Electoral Integrity in America: Securing Democracy

Pippa Norris, Sarah Cameron, and Thomas Wynter

Print publication date: 2018

Print ISBN-13: 9780190934163

Published to Oxford Scholarship Online: November 2018

DOI: 10.1093/oso/9780190934163.001.0001

America in Comparative Perspective

Chad Vickery

Heather Szilagyi

DOI:10.1093/oso/9780190934163.003.0010

Abstract and Keywords

Chapter 10 highlights a confluence of factors in the United States that produce a high percentage of wasted votes and a system of governance that largely fails to reflect the will of the majority of voters, widely considered a cornerstone of democracy. This study judges the fundamental integrity of key elements of the electoral process in the United States by applying the same standards used to evaluate developing democracies around the world. Several acute challenges to the U.S. electoral process are identified: boundary delimitation for the House of Representatives, the role of the Electoral College in presidential contests, processes of voter registration, and the decentralized administrative framework. The chapter concludes that despite obvious vulnerabilities, the United States is resistant to acknowledging these problems, to reform its electoral process in line with international standards, or to learn from the comparative experience of other countries that have strengthened their elections over time.

Keywords: electoral integrity, U.S. elections, comparative elections, electoral standards

International technical assistance providers and election observers assess developing democracies across a range of dimensions spanning the electoral cycle, but more established democracies are rarely scrutinized by practitioners in the same manner. This chapter evaluates the fundamental integrity of key elements of the electoral process in the United States by holding them to the same standards routinely applied to developing democracies around the world. Taking this international perspective, we highlight a confluence of factors in the United States that produce many wasted votes (those cast for either a losing candidate or in excess of those required by a winning candidate) and a system of governance that largely fails to reflect the will of a majority of voters.

Exploring this topic is important because the United States has traditionally benefited from a high level of trust in the electoral process, but this trust is eroding (see Norris, Cameron, and Wynter, this volume). This chapter highlights areas where international and American election practitioners differ in their perspective on the integrity of the U.S. electoral process, generating a *blind spot* (Stephanopoulos 2013b, 769). American practitioners do not recognize the myriad ways in which the U.S. electoral process deviates widely from what the international community would be willing to accept in developing democracies. This phenomenon could help to explain, in part, the limited reform initiatives undertaken at the federal level to date and raises doubts about the prospect for such efforts in the future.

Gallup polls discussed in Norris, Cameron, and Wynter (this volume) have shown that the American people have traditionally had considerable trust in outcomes generated by the U.S. electoral process, suggesting that this blind spot may not be limited to election practitioners. For example, in the immediate aftermath of the 2016 presidential race, in which Hillary Clinton won the popular vote but lost the election, Gallup polls report that 84% of voters in the United States considered Donald Trump to be the legitimate president, including 76% of Clinton voters. According to Gallup, these results are similar to those following the hotly contested 2000 election that ended in a protracted Supreme Court battle (Jones 2016). Given **(p.176)** the highly controversial circumstances surrounding each of these elections, it is

reasonable to conclude that these numbers reflect more diffuse trust in the process that extends beyond any one election or candidate preference.

Increasingly, however, trust in American democracy is being challenged by candidates, parties, and outcomes that do not reflect democratic norms. Gallup has also documented diminishing public confidence in the honesty of elections in the United States in general; while 52% of Americans surveyed expressed confidence in honest elections in 2006, the percentage had declined to 30% when Gallup asked the question in 2016 (Norris, Cameron, and Wynter, this volume; McCarthy and Clifton 2016). Vulnerabilities we will discuss in this chapter are already undermining U.S. democracy, and perceptions of integrity can have real-world implications (Norris 2014). We conclude that if the electoral process in the United States is not reformed in line with international standards, public perceptions of electoral integrity may continue to decline, with serious implications for the sustainability of American democracy.

Methods and evidence

Our research draws on scholarly literature, legal frameworks, U.S. case law, discussions with international election experts, and expert survey findings to identify and analyze the most critical vulnerabilities to the U.S. system through the integrity framework routinely applied to democracies around the world. We employ key features of the International Foundation for Electoral Systems (IFES) Electoral Integrity Assessment (EIA) methodology to evaluate the electoral process in the United States. The EIA methodology is a rigorous tool used to analyze 18 key areas of the electoral process for vulnerabilities to systemic manipulation, malpractice, and fraud. These distinct vulnerability types are defined as follows:

Systemic manipulation is defined as the use of domestic legal provisions and/or electoral rules and procedures that run counter to widely accepted democratic principles and international standards and that purposefully distort the will of voters.

Malpractice refers to the breach by a professional of his or her relevant duty of care, resulting from carelessness or neglect.

Fraud is defined as the deliberate wrongdoing by election officials or other electoral stakeholders, which distorts the individual or collective will of the voters. (Vickery and Shein 2012)

Vulnerabilities are also considered in light of their substantive impact on the electoral process. Impact is assessed differently depending on the vulnerability type, specifically whether the element of intent is present. Malpractice is assessed in terms of *probable* impact: the likely impact on the next election if the vulnerability is **(p.177)** not addressed. Systemic manipulation and fraud, which, unlike malpractice, require intentionality, are assessed in terms of *potential* impact: the possible impact on the next election if the vulnerability (however small) is exploited.

A holistic electoral cycle approach to assessing these vulnerabilities emphasizes that each aspect of the process is intertwined with the others, and vulnerabilities in disparate areas can compound to have a far-reaching impact. IFES has applied the EIA methodology to elections in Afghanistan, the Republic of Georgia, Pakistan, Sri Lanka, Myanmar, and The Gambia. This type of assessment could prove valuable in more established democracies as well, as processes can change over time and no election is without flaws.

We have found—anecdotally—that election practitioners in the United States have come to accept as normal, or even beneficial, what international experts would consider to be glaring deficiencies in the American electoral system. To explore this theory empirically, we conducted an online survey of experts to assess attitudes about different aspects of the electoral process in the United States. Surveys were distributed via email and conducted online from May 9 to June 14, 2017. The questionnaire consisted of a series of factual statements about the U.S. electoral process, and respondents were asked whether the scenario had a positive or negative impact on the credibility of elections in the United States.

There were two target groups of respondents for the survey: international election experts and election practitioners in the United States. We developed the sample of potential respondents by relying on an extensive network of election experts, and their referrals, from IFES's work providing technical assistance and engaging in electoral processes

around the world. Drawing on our networks allowed us to leverage IFES's connections with others working in the field of elections and generated a diverse sample. We relied only upon a preexisting network of electoral experts in an effort to ensure that respondents met necessary criteria. U.S. election practitioners included in the sample were individuals who currently or previously played a direct role in administering the electoral process, including secretaries of state, directors of elections, and employees of state or county election boards. International experts were specifically selected on the basis of comparative experience in election administration and limited specific knowledge of the U.S. system. For example, experience observing international elections or providing technical assistance to a variety of electoral processes qualified individuals for inclusion in this group of potential respondents.

The survey was sent to 80 experts (32 international and 48 American), with 32 taking the survey (15 international and 17 American), for a completion rate of 40%.¹ As noted this chapter will seek to evaluate the integrity of the U.S. electoral process in a manner commensurate with the standards used to assess elections around the world. Survey findings supplement technical findings from the application of IFES's EIA methodology though it should be noted that as they draw **(p. 178)** upon a nonprobability sample with a limited number of responses, these results can be considered indicative and exploratory rather than representative.

We focus on several key areas of the electoral cycle that observers and academics have regularly noted pose acute challenges to the U.S. electoral process: (1) the process of boundary delimitation for congressional districts, (2) the role of the Electoral College in electing the executive, (3) voter registration processes and requirements, and (4) the framework for administering elections. The choice of these topics was reached after a careful review of election observation reports as well as quantitative electoral integrity measures from the Electoral Integrity Project's Perceptions of Electoral Integrity (PEI) data set and in-depth discussions with U.S. election experts. The selected categories were highlighted as overall areas of concern by observer reports and election experts, generally received low scores across the 50 states on the PEI Index, and were determined by our analysis to provide the highest vulnerability to the integrity of the electoral

process. The research did not examine positive aspects of election administration in the United States that have been identified by observer reports and other sources.

We evaluate these key stages of the electoral process in the United States by applying comparative international standards and good practice, including vulnerabilities to distinct categories of systemic manipulation, malpractice, and fraud. It should be noted that we do not present complete integrity assessments of each of the 50 U.S. states, which would be required to fully understand the country's electoral integrity profile. The concluding section provides a holistic perspective on the overall impact on the electoral process, emphasizing linkages between categories that compound vulnerabilities and exacerbate impacts.

Boundary delimitation

In a democracy, the electoral system defines the rules of the game for political competition. At its core, the electoral system “translates the votes cast . . . into seats won by parties and candidates,” (Reynolds and Reilly 2002, 5). While there is no clear consensus or international standard to direct a country's selection of electoral system, “there is an increasing recognition of the importance of issues that are affected by electoral systems, such as the fair representation of all citizens, the equality of women and men, the rights of minorities, special considerations for the disabled, and so on” (Reynolds and Reilly 2002, 14).

The United States has a bicameral legislature composed of an upper house (Senate) and a lower house (House of Representatives). Each state elects two members to the Senate through a statewide popular vote. Members of the House of Representatives are elected from single-member districts, with 435 seats apportioned among the states on the basis of population. Reapportionment of these seats between states, as well as boundary redistricting within states, occurs **(p.179)** every 10 years after a national census. As described below, an upper house whose membership is not contingent on district population is in line with common international practice. This section will therefore focus on integrity issues surrounding the House of Representatives and not discuss possible issues related to the election of senators.

As discussed by Magleby et al. (this volume), the integrity of a majoritarian electoral system is fundamentally tied to the fairness of the boundary delimitation process, known as “redistricting” in the United States. If constituent boundaries are drawn in a way that gives one party or group an unfair advantage over its rivals, the integrity of the process is undermined. Districts that are deliberately drawn to skew demographics to the advantage of one political party or community over others can drastically affect electoral outcomes and the composition of the legislature, disenfranchising individual voters and stymying community representation in government (Handley 2007). However, no single formula exists for demarcating boundaries across all country contexts in a manner commensurate with guaranteeing fair elections and securing optimum representation. For example, in majoritarian electoral systems, any map will leave some votes wasted. According to the definition put forward by the University of Chicago Law School paper articulating the efficiency gap standard, “A vote is wasted if it is cast (1) for a losing candidate, or (2) for a winning candidate but in excess of what she needed to prevail” (Stephanopoulos and McGhee 2015, 831).

Boundary delimitation practices can, either intentionally or unintentionally, significantly increase the number of wasted votes for one party or community to the point where the election may no longer be considered fair or inclusive, or where election outcomes are not considered representative. Two practices commonly used to achieve this effect are “packing” (consolidating supporters or members of one group into a small number of districts) and “cracking” (breaking up supporters or members of one group into many districts so that they do not have a majority in any district) (Levitt 2010).

Given the variety of delimitation practices around the world, few international standards have been proposed for preventing such outcomes and ensuring fair boundaries. However, there is growing evidence that the use of bipartisan or neutral commissions to draw districting maps leads to more competitive elections (Stephanopoulos 2013a). In addition, it is generally accepted that the boundary delimitation process should be transparent and accessible to the public (Handley 2007, 60). However, in our survey, international expert and

U.S. election practitioner survey respondents had somewhat divergent views on the credibility of districting bodies.

Beyond the principle of one-person, one-vote,² no U.S. federal laws exist to specifically regulate partisan districting, or gerrymandering. This leaves enormous power to the states to determine their own district lines, a job often left to partisan state legislatures, and a wide variety of redistricting practices are used to ultimately **(p.180)** determine constituencies for the U.S. House of Representatives. To provide a high-level snapshot, congressional boundaries are drawn by state legislatures in 37 states (six of these have either advisory or backup commissions), by independent commissions in four states (Arizona, California, Idaho, and Washington), and by politician-led commissions in two states (Hawaii and New Jersey). The remaining seven states currently have one congressional district each and therefore do not require districting commissions (Dews 2017).

As evidenced by the U.S. Supreme Court's inability to date to articulate a manageable standard by which to evaluate gerrymandering, untangling the impact of the process on the electoral map can be complicated. Much of this analysis begins with an examination of partisan bias. A recent report from the Brennan Center for Justice uses three popular quantitative methods to test "extreme partisan bias" on the 2012, 2014, and 2016 electoral maps. While coming to a series of ancillary conclusions, the report's macro-level findings have significant implications for the integrity of the electoral process in the United States: "In the 26 states that account for 85% of congressional districts, Republicans derive a net benefit of at least 16-17 congressional seats in the current Congress from partisan bias" (Royden and Li 2017, 1). These results were among the most conservative of the research findings; an efficiency gap analysis found that Republicans gained a net 26-37 extra seats in the 2012 elections, 4-19 seats in 2014, and 17-29 seats in 2016 (Royden and Li 2017; Stephanopoulos and McGhee 2015). The results suggest that seats won due to partisan bias could have been responsible for Republican majorities in 2012 and 2016 (Royden and Li 2017; see Table 10.1).

Table 10.1 Proportionality in North Carolina and Maryland

	Vote Share		Seat Share		Ratio		Vote-Seat Gap (%)
	% Rep	% Dem	% Rep	% Dem	Rep	Dem	
North Carolina	57	43	77	23	1.35	0.53	20%
Maryland	37	63	11	89	0.29	1.41	26%

Note: This table displays the disparity between seat and vote shares for elections to the U.S. House of Representatives in North Carolina and Maryland in 2016. The gap in North Carolina favored Republicans, while the gap in Maryland benefited Democrats. Votes for a candidate other than a Republican or Democrat were excluded from this analysis.

Source: Data on vote and seat shares from the *New York Times* 2017a, 2017b.

It is important to note that intentional gerrymandering is reinforced by the tendency of likeminded partisans to live near each other, a phenomenon coined “the big sort” (Bishop 2008). Americans with liberal political leanings tend to live in larger population centers, while conservatives tend to live in less densely **(p.181)** populated areas. As a result, single-member districts based in part on geography and maintaining communities of interest naturally reflect this partisan divide. Recent reports suggest that this geopolitical polarization at every level, from county to regional, continues to trend upward (Florida 2016). Intentional gerrymandering can exacerbate the effects of this process (Royden and Li 2017), though how much it does so is debated (Dews 2017).

However, Brennan Center research devoted to uncovering the effect of gerrymandering (discussed above) makes the point that the states with the worst partisan bias actually “tend to have fairly even statewide distributions of partisans. . . . It is, in short, almost certainly no coincidence that the worst degrees of partisan bias are observed (with the exception of Texas) in closely contested and hard fought battleground states” (Royden and Li 2017, 14). This finding calls into question the notion that partisan bias in districting is largely due to “the big sort.” Regardless of the precise impact of gerrymandering on the distribution of seats in the House of Representatives, reform is clearly needed from the perspective of international standards.

Contrary to the case of *partisan* distribution, both the United States and the international community have developed clear principles governing considerations of *population* distribution in the delimitation process. The Venice Commission of the Council of Europe’s *Code of Good Practice in Electoral Matters* dictates that the distribution of single-member districts in the lower house should ensure “equal voting power,” which requires that population be considered in boundary delimitation (2003, 17).³ The “maximum admissible departure from the distribution . . . should seldom exceed 10% and never 15%” for population-based electoral constituencies (2003, 17).

As described above, the U.S. Congress is a bicameral legislature. The Senate comprises 100 members, two of which are elected from each state. The U.S. Constitution stipulates that each state is represented by two senators regardless of population, resulting in significant population variation in

constituency size. However, this approach to allocating seats in the upper house of a bicameral legislature is common in parliamentary systems and in line with accepted international practice.

Members of the House of Representatives are elected in single-member district contests, and the 435 seats are distributed among the states on the basis of population. In *Reynolds v. Sims* (1964), the U.S. Supreme Court held that federal congressional districts *within states* must be of “substantially equal” size to ensure the principle of one-person, one-vote articulated in Article 1, §2 of the Constitution. However, as the Apportionment Act of 1911 establishes 435 as the total number of members in the lower house (with each state granted at least one), the size of the House of Representatives has not expanded in more than a century despite the increasing population of the United States. Accordingly, significant variation in congressional district sizes *between* states persists. For example, based on 2010 census data, the **(p.182)** average district size of the House of Representatives in Montana is 88% larger than the average district size in Rhode Island (Burnett 2011). This malapportionment in the lower house is clearly a violation of international good practice, as described by the Venice Commission. As population growth is largest in some of the most populous states (U.S. Census Bureau 2016), the impact of malapportionment on the integrity of the electoral process will continue to grow, absent legislative or judicial intervention.

Considering the various aspects of the delimitation process discussed above, the key electoral integrity vulnerabilities to legislative elections in the United States relate to *systemic manipulation*. Partisan districting, or gerrymandering, of state legislative districts is the most serious vulnerability to systemic manipulation in this category. This finding is supported by the Electoral Integrity Project’s PEI expert survey, which found gerrymandering to be consistently the most problematic aspect of U.S. voting since data collection began in 2012 (Norris et al. 2017). Out of 164 countries, only Malaysia and Singapore scored lower than the United States in this category in the most recent release of PEI data (Norris, Wynter, and Cameron 2018a).

The significant malapportionment of single-member district sizes between states is also a clear violation of international standards and, as it is ensured by statute, a significant vulnerability to systemic manipulation. IFES has regularly cited the malapportionment of single-member districts as a vulnerability when conducting integrity assessments around the world. While a substantial majority of international survey respondents viewed the disparity in district sizes between states as contributing to the credibility of the electoral process “somewhat” or “very” negatively, only a small number of U.S. election practitioners agreed with the “somewhat negative” characterization, and none had a “very negative” outlook. Instead, a vast majority of these practitioners viewed the process as having a “neutral” impact on credibility.

While adjusting the size of the House of Representatives to mitigate the effects of malapportionment may seem like an extreme step, developed democracies have regularly engaged in even more significant electoral system reform. For example, New Zealand shifted from a first-past-the-post system to a mixed-member proportional system in 1993 after dissatisfaction with multiple rounds of elections in which the results led to major discrepancies between the ratio of votes to seats for political parties (Harris 2000). After significant public pressure to reform an electoral system seen as contributing to corruption and one-party rule, Japan moved to a parallel electoral system as a way to appease both small and large political parties (Cox 2005). Overall, the combined effects of gerrymandering and the malapportionment of House legislative districts present a high vulnerability to systemic manipulation with a high potential impact on electoral integrity.

(p.183) The Electoral College

The Electoral College is shorthand for the process by which the executive of the United States is indirectly elected. Popular elections for the presidency are conducted in the states (and the District of Columbia), each of which is assigned a number of “electoral votes” equal to its total number of representatives in Congress. Nationwide, 538 electoral votes are contested, of which 270 are needed to win the presidency. With the exception of Nebraska and Maine, states award their electoral votes to candidates on a winner-take-all basis.

The Electoral College was intentionally designed to be an electoral system as close to direct election as possible without fully handing that power over to the people (Feerick 1968). This process enables a scenario by which a presidential candidate could win a plurality of the popular vote but lose the presidency through the Electoral College, as has happened five times in American history and twice in the five presidential elections since 2000. In fact, according to analysis by National Public Radio, it is theoretically possible to be elected president of the United States with less than 30% of the nationwide vote (Kurtzleben 2016).

As shown in Figure 10.1, international experts with comparative experience in elections had an overwhelmingly negative reaction to the statement “It is possible for a candidate to win the presidency through the Electoral College without **(p.184)** winning the national popular vote of all American citizens.” A substantial minority of American election practitioners, however, responded in kind. A majority of that group rated the practice as neutral, and still some respondents found the fact to have a “somewhat” or “very” positive impact on credibility.

Election results are not official until electors cast their ballots at state conventions following Election Day. While some states have instituted rules binding electors to vote for the winner of the popular vote in their respective state, the U.S. Constitution is designed to allow

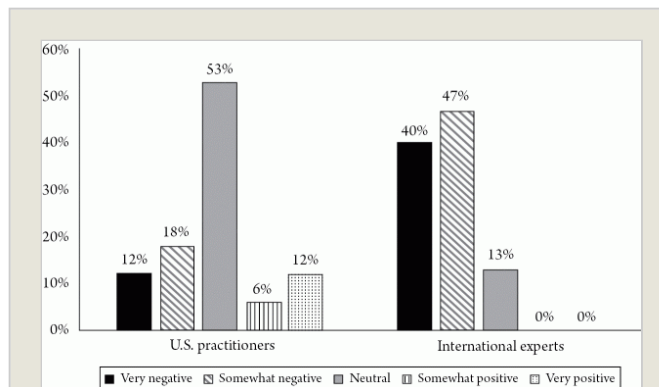


Figure 10.1 Approval of Winning the Presidency without the Popular Vote.

Note: Respondents were presented with background information about the American electoral system and asked to rate how the following statement impacts the credibility of the U.S. electoral process: “It is possible for a candidate to win the

electors to vote for any candidate; they should be influenced by but not bound to the state's popular vote.

In practice, so-called

faithless electors are rare and have never altered the outcome of a presidential election (Agrawal 2016).

presidency through the Electoral College without winning the national popular vote of all American citizens." N = 17 U.S. practitioners; N = 15 international experts.

Source: IFES online survey of election experts.

Key integrity vulnerabilities related to elections for the executive pertain to *systemic manipulation*. The ability to lose the popular vote and be elected president is a structural feature of the American electoral system that presents a clear vulnerability with respect to the internationally recognized principle of ensuring representative government. As electoral votes are predicated on the number of members of Congress awarded to each state, this phenomenon is partially a product of malapportionment in the assignment of seats in the House of Representatives that give smaller states an outsized voice in the selection of the president. Additionally, equality of representation among the states in the Senate ensures that small states have added influence in the selection of the president (in addition to enhanced representation in the upper house). Devising a system for choosing the executive was a hotly debated topic of the Constitutional Convention of 1787, and the unique method of an Electoral College was settled upon as a means to "bring the election as close to the people as possible, except for direct election itself" (Feerick 1968, 254). While the Electoral College was created under unique circumstances and influenced by a set of competing interests among the country's founders, it is clear from a comparative perspective that at this point in the evolution of American democracy, a system that enables the candidate with fewer votes to win the presidency undermines the overall integrity of the electoral process.

Regardless of whether victorious presidential candidates lose the popular vote in the future, the presence of this vulnerability has a high *potential* impact on the integrity of the electoral process. Additionally, this phenomenon is likely to

continue occurring, or even accelerate in frequency, as demographic changes grant an increasingly outsized voice to less populous states through the Electoral College. Just as the United States has reformed other aspects of its electoral process (through the 14th and 19th Amendments to the Constitution) to increase participation and to ensure that the electoral system is representative of the electorate, it could consider reforming the Electoral College to meet current international standards and reflect the will of a majority of voters.

A constitutional amendment would theoretically be required to abolish the Electoral College, but some groups are actively proposing workarounds that would ensure the president was elected by a nationwide popular vote without eliminating **(p. 185)** the institution of the Electoral College. Unfortunately, reform efforts, and in particular a push for a constitutional amendment, have historically failed to gain traction due to the lack of political will to reform the process—even following significant flashpoints like the 2000 presidential election. As Princeton University political historian Julian Zelizer (2016) explains, “The power of small states within the Senate combined with the fact that voters don’t tend to elevate this issue to the same urgent status of other issues has usually left proposals for an amendment to die on the vine.”

Finally, the ability of electors to vote for a candidate who did not receive the popular vote in their state represents a clear vulnerability to systemic manipulation. This power is embedded in the Constitution as a means of guarding against the direct election of the president, and as such an elector casting an electoral vote against the will of the people would be a legitimate application of his or her mandate. The rarity of electors exercising this capacity in practice—even in controversial elections—means that the vulnerability to this particular concern is low, but if it were to be exploited in a meaningful way, the potential impact on electoral integrity would be high.

Voter registration

Article 21 of the *Universal Declaration of Human Rights* states that everyone has the right to take part in government, access public services in his or her country on an equal basis, and vote in elections by way of universal and equal suffrage. As discussed in the chapters in this volume by Pallister and by Bergman, Tran, and Yates, voter registration can serve as either a bridge or a barrier to upholding the principle of universal and equal suffrage. A country's legal and administrative adoption of inclusive voter registration practices can lower rates of political marginalization and enhance electoral integrity. When legal barriers and administrative decisions effectively disenfranchise or further marginalize parts of the population, however, electoral integrity is diminished.

For voter registration to be fair and inclusive, potential voters must be aware of the registration process and have reasonable opportunities and relatively easy access to complete it (ACE Electoral Knowledge Network 2013, 12–15). Maintaining the integrity of an election requires a balance between ensuring that only registered voters may legally vote and preventing ineligible voters from registering. The registration process should also provide mechanisms to transparently remove noneligible persons from the voter registry. To ensure an accurate voter list, a continuous list of voters must be regularly maintained after its initial creation. Since voter registration is not usually compulsory, the election management authority needs to obtain changes in voter information—for example, changes of address or eligibility to vote. If voters are not required by law to notify the election management authority when they move, the voter list may quickly lose currency (ACE Electoral Knowledge Network 2013, 103–106).

(p.186) As is the case with most aspects of election administration in the United States, the process for registering to vote varies by state. Voter registration is active (the responsibility to register rests with the voter) with minimal federal oversight, though federal law does set basic standards under the National Voter Registration Act and Help America Vote Act. The Help America Vote Act instructs states to maintain updated and accurate voter registration databases, and the National Voter Registration Act establishes some standards to guard against the removal of eligible voters from

voter rolls. However, variation in state practices and procedures for record keeping and a lack of centralization of voter information creates opportunities for administrative errors. The absence of a central, independent electoral management body (EMB) with the mandate and resources needed to maintain and protect a centralized registry presents additional challenges for maintaining accurate voter registries for federal elections. Vulnerabilities stemming from the lack of a central EMB will be described in detail in the next section.

The Pew Research Center (2012), a nonpartisan think tank, published a comprehensive report on voter registration in the United States. Concluding that the voter registration process was not up to date with modern technology and a mobile society, the study found that approximately one in eight registrations (about 24 million) were either invalid or “significantly inaccurate.” Pew describes the paper-based, manual entry of voter registration data in most states as creating a vulnerability to malpractice. Pew research also revealed more than 1.8 million dead individuals on voter lists and 12.7 million outdated records. In total, Pew found that there were issues, in terms of accuracy or validity, with 13% of voter registration records nationally (approximately 24 million). In reaction to claims of fraud tied to inaccurate voter registration data, the Presidential Advisory Commission on Election Integrity was formed by executive order in 2017. The Commission was seen as partisan by many stakeholders, and its requests to access voter registration from states were denied. The White House (2018) cited issues with obtaining this data when President Trump disbanded the Commission in January 2018, passing the matter over to the Department of Homeland Security.

As voters can legally move and register in a new state without notifying officials in their previous state of residence, the Pew Research Center (2012) found that more than 2.75 million individuals were registered in more than one state. Citing a survey from the Cooperative Congressional Election Study, the report notes that around one in four voters in 2008 believed that voter registration records were updated automatically when they moved, although in reality this is rarely the case (Pew Research Center 2012, 7). Over half of voters did not know that voter registration information could be revised at state departments of motor vehicles. Despite the deceased and outdated registrations clogging the rolls, Pew researchers also

estimated that 51 million eligible citizens remained unregistered, accounting for nearly a quarter of the eligible population in 2012.

While the decentralized nature of voter registration in the United States presents a unique set of challenges, there are examples of mature democracies implementing **(p.187)** voter registration reform that provide a useful comparison. For example, Canada passed legislation in 1996 that shifted the system of voter registration from one of individual enumerators going door to door to register voters, to an automated national register that would eventually incorporate new information from numerous federal departments. While the previous system was not perceived to be inaccurate, the legislature came to a consensus that a national registry would eliminate duplicate registration efforts between different levels of government and lead to cost savings (Black 2003). The Canadian electoral management body, Elections Canada (2004), claims the National Register of Electors has consistently exceeded the cost-saving expectations originally estimated at 30 million Canadian dollars per election (ACE Electoral Knowledge Network 2012); however, attempts to increase the accuracy of the list are still ongoing.

Vulnerabilities to inaccurate and outdated registries have contributed to the impetus for perhaps the most controversial component of voter registration in the United States: voter identification (see Bergman, Tran, and Yates, this volume). This is an issue that clearly separated international experts and U.S. election practitioners and also generated polarizing responses within the U.S. practitioner group. As shown in Figure 10.2, a vast majority of international respondents indicated that requiring voters to present photo identification positively contributes to the credibility of the electoral process. Possibly reflecting partisan division over the issue, roughly equal numbers of U.S. election practitioners were on each side of the positive/negative divide.

It is crucial to emphasize that while requiring some type of identification is in line with international best practices to prevent voter fraud, equal access to qualifying identification must accompany this requirement. As explained in the foreword to a Brennan

Center report

on the subject, “The problem is not requiring voter ID, per (p. 188) se—the problem is requiring ID that many voters simply do not have” (Waldman 2012). Both groups of survey respondents were generally agreed that cases in which the nearest office issuing voter identification is inaccessible or maintains limited business hours contributes negatively to the credibility of the electoral process. The Brennan Center report also highlighted financial barriers to obtaining the documents required for identification. For example, birth certificates can cost from \$8 to \$25, and marriage licenses can cost between \$8 and \$20 (Gaskins and Iyer 2012). From a comparative perspective, access to identification rather than a legal requirement is the most significant impediment to the integrity of voter registration in the United States.

Much debate in the United States has also focused on whether such discrimination is intentional. Courts have ruled that voter identification laws were implemented with the intent to discriminate in several cases, generally against African American voters. In striking down a North Carolina voter ID law, a federal court found that the provisions “target African

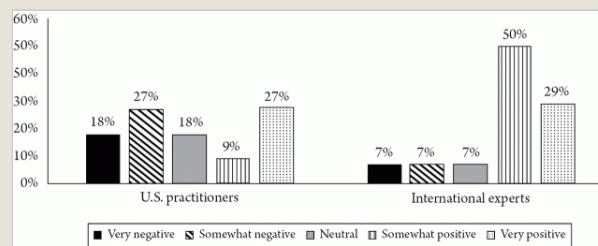


Figure 10.2 State Photo Identification Laws.

Note: Respondents were asked to rate how the following statement impacts the credibility of the U.S. electoral process: “The state legislature passed a law requiring state residents to present a photo identification in order to vote.” N = 11 U.S. practitioners; N = 14 international experts.

Source: IFES online survey of election experts.

Americans with almost surgical precision” (Ingraham 2016). Such obvious evidence of discriminatory intent is uncommon, and many controversial state laws remain on the books. Similar allegations of intentional discrimination have been made in response to a variety of changes to state election law or administration, including restrictions on early voting.

We evaluate voter registration in the United States to be susceptible to all three vulnerability types. First, the decentralized and, in many instances, partisan collection and maintenance of voter registration data for federal elections makes the U.S. voter registration system (or systems) uniquely vulnerable to *systemic manipulation*. Some states are working to improve the quality of voter registration data and their collection practices. A significant number of U.S. states, however, have implemented policies restricting access to the franchise through what many stakeholders believe are overly complex or burdensome registration practices. These policies are generally implemented with the stated goal of preventing fraud, despite an absence of evidence of the widespread nature of this phenomenon (Levitt 2014). Such allegations of voter fraud are also used to cast doubt on and raise questions about the credibility of the overall electoral process (Sweeney, Vickery, and Ellena 2016). Adding to this controversy, courts have found discriminatory intent underlying several policy changes, including in North Carolina, Texas, and Wisconsin. These attempts to disenfranchise voters clearly violate international standards and present a high vulnerability to systemic manipulation.

Further, a reliance on paper-based registration and the manual entry of voter information by election officials creates multiple opportunities for *malpractice*. Most voter registration processes in the United States do not utilize modern technology, predictably contributing to the incorrect entry of voter information and the outdated nature of American voter lists described above. Without a centralized voter register or electoral management body (described in the following section), this problem is compounded by the lack of coordination among states to identify duplicate registrations and between government agencies within states to streamline **(p.189)** voter information. The onus is on individuals to accurately maintain their voter registration, though

understanding of and access to the process is somewhat limited, as described by the Pew Research Center (2012).

With respect to *fraud* vulnerabilities, the decentralized voter registration process often enables a single voter to register in multiple states without detection. Coupled with the lack of federal voter identification requirements (though some states have implemented strict regulations), this renders the process vulnerable to multiple voting. However, the Pew research suggests that multiple registrations are an accidental byproduct of a mobile population and a lack of coordination between states (which keep independent voter lists), countering the idea that multiple registrations are part of a coordinated attempt to undermine voter registries. If this vulnerability were to be exploited on a massive scale, the impact on electoral integrity would be quite high. Exploiting this system in a meaningful way, however, would require an enormous coordinated effort, and numerous studies that have examined the prevalence of multiple types of voter fraud in the United States, including impersonation and noncitizen/nonresident voting, have concluded that such fraud is incredibly rare (Brennan Center for Justice 2017b). Based on the existing evidence, this type of voter fraud is extremely unlikely to determine electoral outcomes in future.

The administrative framework

“Electoral management body,” or EMB, is the commonly accepted term for the institution responsible for the management and administration of elections. International good practice generally prefers a national EMB to ensure that every voter has equal access to the franchise. A national or federal EMB also mitigates vulnerabilities to the politicization of certain areas of the electoral process, including voter registration. While noting that decentralized election administration can have some benefits in terms of transparency and inclusiveness, the ACE Electoral Knowledge Network emphasizes some downsides of this model:

“Devolving electoral powers and responsibilities to local authorities without appropriate oversight may make it more difficult to maintain electoral consistency, service, quality and—ultimately—the freedom and fairness of elections. The United States is a good example of this difficulty” (Catt et al. 2014, 17).

As Arceneaux (this volume) explains, the absence of a federal EMB and the administration of elections for the same federal offices entirely by states, with minimal guidance provided by federal regulations, is highly unusual when viewed in cross-national comparison. While a vast majority of international experts found this practice to have “very” or “somewhat” negative impact on electoral credibility, only a fairly small percentage of U.S. practitioners agreed. In fact, a majority of this latter group answered that the practice had a “very” or “somewhat” positive impact.

(p.190) EMBs around the world take on a variety of institutional structures, but the Venice Commission outlines that the body should always be impartial and enjoy functional independence from the government to ensure the proper conduct of elections, or at a minimum eliminate serious suspicions of irregularity. Public confidence in the fairness of the electoral process and the accuracy of electoral results depends in large measure on both the actual and the perceived impartiality of the EMB.⁴

While some representation of political party members in EMBs is relatively common, they should not form the whole of the institution or entirely control the management of elections. The structure of election administration in the United States varies between states, and it is often highly politicized. For example, secretaries of state, who are elected officials and generally belong to a major political party, serve as the chief election official in 24 states. Chief election officials of states and counties may also stand as candidates in elections that they themselves are administering (OSCE 2016). International experts and American election administrators have strikingly different views on the partisan administration of elections. As highlighted in Figure 10.3, responding to the statement “Secretaries of state, elected statewide officials who generally belong to a major political party, serve as the chief election official in some states,” all of the international experts surveyed said it had a “very” or “somewhat” negative impact on the credibility of the electoral process. Fewer than half of American practitioners shared these views, with the majority of respondents giving this factor a “neutral” or “somewhat positive” ranking.

Politicized election management is not a problem unique to the United States, but the disparity in how U.S. practitioners and international experts view the **(p.191)** problem raises doubts about the supply of political will needed for reform. Concern about political

party influence over local and state elections led Mexico to pass legislation in 2014 that centralized control over state and local elections in a new national election management body (McNally 2014). Additionally, while the Swedish central EMB was previously incorporated within the national tax agency, it became an independent agency in 2001 after election officials raised concerns that “electoral matters required a separate budget, a specific administrative system as well as an advanced IT/data support system” (Lemon 2005).

In addition to partisan influence, the decentralization of election administration in the United States creates further vulnerabilities to electoral integrity stemming from inconsistent procedures and a lack of oversight. These vulnerabilities include challenges to maintaining up-to-date and accurate voter registration information, as described in the previous section. Additionally, states and local jurisdictions do not use uniform or consistent voting machines or voting technology. A majority of U.S. election practitioners responded that this practice had a “neutral” impact on the credibility of

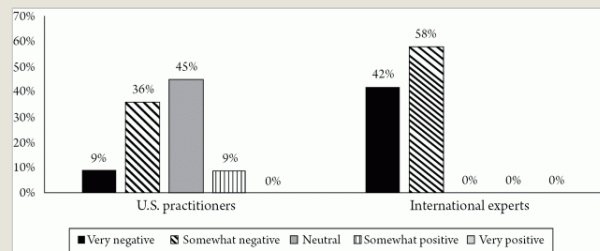


Figure 10.3 Partisan Administration of Elections.

Notes: Respondents were asked to rate how the following statement impacts the credibility of the U.S. electoral process: “Secretaries of state, elected statewide officials who generally belong to a major political party, serve as the chief election official in some states.” N = 11 U.S. practitioners; N = 12 international experts.

Source: IFES online survey of election experts.

the electoral process, with support for options surrounding this middle-ground split almost evenly. However, a vast majority of international experts felt that this practice had a “very negative” or “somewhat negative” impact on the credibility of the process.

Some have argued that differences in voting machines and procedures between states serve as a safeguard against hacking and external interference (Edwards and Wilson 2016). However, this decentralization makes it much more difficult to ensure that local officials across 3,000 counties in the United States are able to properly secure their election equipment. This view also underestimates vulnerabilities to hacking and interference presented by a decentralized approach to election administration, especially when interference with the vote in a small number of key areas could swing an election. The technical challenges of election equipment technology used in the United States were explained by University of Michigan computer science professor J. Alex Halderman to the Senate Intelligence Committee (Halpern 2017):

A small number of election technology vendors and support contractors service the systems used by many local governments. Attackers could target one or a few of these companies and spread malicious code to election equipment that serves millions of voters. . . . Before every election, voting machines need to be programmed with the design of the ballot, the races, and candidates. This programming is created on a desktop computer called an election management system, or EMS, and then transferred to voting machines using USB sticks or memory cards. These systems are generally run by county IT personnel or by private contractors. Unfortunately, election management systems are not adequately protected, and they are not always properly isolated from the Internet. Attackers who compromise **(p.192)** an election management system can spread vote-stealing malware to large numbers of machines.

Further, approximately 15 states use Direct Recording Equipment voting machines that do not provide a voter-verified paper trail. A lack of paper records makes it impossible to conduct a meaningful audit of the votes cast in

these states, some of which, including Pennsylvania, are hotly contested battleground states (Halpern 2017).

In addition, new voting technologies have not been updated in many states due to a lack of federal, state, and local resources. Both groups of survey respondents had concerns about this phenomenon, but a plurality of U.S. respondents rated it “neutral” compared to a substantial majority of international respondents who rated the statement as having a “very negative” impact on the credibility of the electoral process. The Brennan Center for Justice (2017e) characterizes the problem in this way: “While nearly all of today’s voting machines go through a federal certification and testing program, many jurisdictions purchased voting machines before this process was in place. Older machines can have serious security flaws, including hacking vulnerabilities, which would be unacceptable by today’s standards.” Experts agree that the expected lifespan is 10 to 20 years (and most likely closer to 10) for voting machines purchased since 2000. Forty-three states (and in most, a majority of the districts within them) used some machines that were at least 10 years old in 2016. Machines were at least 15 years old in 14 states. Additionally, “nearly every state is using some machines that are no longer manufactured and many election officials struggle to find replacement parts” (Norden and Famighetti 2015).

The partisan administration of elections in the United States, including the notion that a chief election official may administer an election in which he is also a candidate, runs counter to international good practice and introduces vulnerabilities to *systemic manipulation*. Explicit partisan control over the electoral process, including the fundamental areas of voter registration and voting procedures, at best gives the appearance of impropriety and at worst could enable a manipulation of the rules of the game for either partisan or personal advantage. The potential impact of such manipulation on the integrity of a given electoral process would be high.

There are also significant vulnerabilities to *fraud* in the institutional framework for elections in the United States, most notably with respect to the technological infrastructure for casting and counting ballots. Researchers have found serious security flaws in the obsolescent technologies used in many jurisdictions, and the decentralized nature of the

electoral process creates significant apertures for manipulation through hacking or other interference. These security vulnerabilities were on display at a July 2017 computer security conference when hackers broke into U.S. voting machines in less than two hours (Darrow 2017). Recent reporting has also highlighted the extent to which hackers were able to successfully interfere with election technology during the 2016 election, including “at least one successful attempt to alter voter information, and the theft of thousands of voter records that **(p.193)** contain private information like partial Social Security numbers” (Calabresi 2017a). As election outcomes can hinge on the results from a handful of counties or states, it is possible for isolated efforts to manipulate voting machines to have an outsized impact on the integrity of the electoral process.

Conclusions and discussion

Our research draws on scholarly literature, legal frameworks, U.S. case law, discussions with international election experts, and survey findings to identify and analyze the most critical vulnerabilities to the U.S. system through the integrity framework IFES routinely applies to democracies around the world. Each discrete issue discussed in this chapter has already been hotly debated and studied in detail by others. After applying IFES's established integrity assessment methodology in six countries, however, we have found that what is most useful from a technical perspective is not only the intricacies of the specific vulnerabilities identified in our reports but how each country's holistic vulnerability profile affects the integrity of the overall electoral process and the credibility of the election results. Identifying linkages among the areas examined here provides insight into a subset of the structural integrity issues plaguing the U.S. electoral system, but a full analysis of each of the 50 states and District of Columbia would be required to obtain a complete picture of the American electoral process.

Our assessment finds that the electoral process for federal offices is beset by entrenched, systemic deficiencies that undermine the credibility of the results and make the system particularly vulnerable to manipulation. These deficiencies include vulnerabilities that would be considered *systemic manipulation*, such as gerrymandering, malapportionment, the institution of the Electoral College, and restrictions on voter eligibility; *fraud*, including the potential for multiple voting due to decentralized voter registration; and *malpractice*, exemplified by different standards for maintaining voter registration data.

The interplay among these vulnerabilities exacerbates the impact of each one on the integrity of the American electoral process and undermines the ideas of majority rule and representative democracy. The forces of gerrymandering, malapportionment in the House of Representatives, and the structure of the Electoral College in particular produce a system that encourages a significant number of wasted votes and representative bodies that do not accurately reflect the demographic makeup of the country. Just one example

suggests that by the year 2040, 70 senators will represent only 30% of the American population (Seib 2017).

Vulnerabilities in the voter registration system that, in effect, erode the fundamental right to vote—such as burdensome and potentially discriminatory requirements and mistakes stemming from outdated and poorly understood registration practices—further deepen the impact of these structural forces. In **(p.194)** particular, the franchise is threatened among populations already more likely to be underrepresented in the political system due to the impacts of gerrymandering and malapportionment. These problems are made all the more difficult to solve by disparate methods of election administration across state lines and a general lack of resources devoted to the electoral process. Combined with an aging voting system and the other challenges highlighted throughout this chapter, the integrity of the U.S. electoral process is increasingly under threat. Again, this illustrates why a holistic examination of electoral integrity is important, as a vulnerability in one part of the process can prove much more serious when the dots are connected to other identified vulnerabilities. In totality, the threat to the electoral process in the United States is much greater than might otherwise be assumed through an examination of issues in isolation.

As noted previously, vulnerabilities to fraud, malpractice, and systemic manipulation exist in every electoral system. Regardless of whether these vulnerabilities materially alter the results of an election, it is critical to emphasize that the belief or perception that they are widespread can deflate public confidence in the election process and outcomes. The U.S. has traditionally benefited from a great deal of trust in the process and widespread acceptance of election results, despite very real vulnerabilities and, in some instances, a failure to meet the international standards by which developing democracies are judged. Emerging evidence suggests this trust in the integrity of elections has deteriorated (McCarthy and Clifton 2016). Before the 2016 election, the ultimately victorious presidential candidate made public, preemptive allegations of fraud and a “rigged system” (Pramuk 2016), likely to set the groundwork for challenging the results in the event of defeat. Despite this candidate’s victory, claims of voter fraud have achieved great prominence in public

discourse, distracting from the many other vulnerabilities in the electoral process that receive significantly less attention and represent a much more serious threat when considered holistically.

No democracy is perfect, and we should not be surprised that the United States faces many of the same challenges as a range of democracies around the world. A crucial challenge facing the U.S. system in particular, however, is the lack of awareness and acceptance of the severity of the system's vulnerabilities or a resistance to democratic reform that is an accepted, ongoing process in other democracies. Despite the persistent argument that the United States is too uniquely structured to benefit from comparative examples, this chapter has presented specific cases of developed democracies, including those with a federal structure, introducing reforms in response to identified challenges or vulnerabilities. As emphasized by the survey data, the election practitioners in the United States largely do not acknowledge vulnerabilities within the electoral process. Our survey data supports the conclusion that is evident from looking at both history and the current political environment: the United States is extremely resistant to reforming its electoral process to reflect international **(p.195)** standards or to learning from the comparative experience of other countries that have strengthened their electoral systems over time.

Without addressing this blind spot, it will likely be impossible to consider—let alone implement—the serious reform initiatives that are needed to ensure American elections are resilient to new challenges. As they are increasingly shown to have a tangible impact on the electoral process and the quality of representative government, the structural deficiencies we have discussed could also serve to erode the American public's traditional faith in the system. Both actual threats to integrity and perceived threats to credibility of elections have implications for the sustainability and survival of American democracy. The United States has the resources and technical capacity to remedy these ills; what it lacks is the awareness and political will to do so.

Acknowledgments

The authors gratefully acknowledge Magnus Ohman and Madeline Waddell for their research and writing support, as well as Matthew Emery and Rakesh Sharma for their assistance with survey design and implementation. We are also grateful to Erica Shein, Katherine Ellena, and Staffan Darnolf for their thoughtful guidance and review of this chapter.

Notes

(1.) Full survey data available upon request. Some respondent dropout occurred during the course of the survey, and as a result, the number of respondents is lower for some questions.

(2.) *Reynolds v. Sims* (1964): “The Equal Protection Clause requires substantially equal legislative representation for all citizens in a State regardless of where they reside.”

(3.) Factors including the number of registered voters and number of resident nationals may also be considered as proxies for establishing equal voting power.

(4.) This language is drawn from IFES electoral integrity assessment language used to establish and describe international standards and best practices in this area of the electoral process.

Notes:

(1.) Full survey data available upon request. Some respondent dropout occurred during the course of the survey, and as a result, the number of respondents is lower for some questions.

(2.) *Reynolds v. Sims* (1964): “The Equal Protection Clause requires substantially equal legislative representation for all citizens in a State regardless of where they reside.”

(3.) Factors including the number of registered voters and number of resident nationals may also be considered as proxies for establishing equal voting power.

(4.) This language is drawn from IFES electoral integrity assessment language used to establish and describe international standards and best practices in this area of the electoral process.

