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ROCK, PAPER, SCISSORS

On the morning of November 2, 1859—Election Day—George Kyle left his house with a bundle of ballots tucked under his arm. Kyle was a Democrat. As he neared the polls in Baltimore's heavily Republican Fifteenth Ward, he encountered in the gathering crowd a ruffian who tried to snatch from him that sheaf of ballots. Kyle dodged and wheeled. He heard a cry: his brother, just behind him, had been whacked in the head. Next, someone clobbered Kyle. Kyle drew a knife. He didn't have a chance to use it. "I felt a pistol put to my head," he said. It fired, "tearing the skin from the side of my face." He fell. He must have dropped his knife. Maybe he lost hold of his ballots, too. When he rose, he drew his own pistol, hidden in his pocket. He spied his brother lying in the street. Someone else fired a shot, hitting Kyle in the arm. A man carrying a musket rushed at him. Another threw a brick, knocking him off his feet. George Kyle picked himself up and ran. He never did cast his vote. Neither did his brother, who died of his wounds. (Although, to be sure, so paltry a thing as death didn't stop everyone; more than a few dead and buried Baltimoreans voted in that election, if not early and often, at least oftener than any corpse ought.) Not surprisingly, the Democratic candidate for Congress, William Harrison, lost

to the Republican, Henry Winter Davis. Three months later, when the House of Representatives convened hearings into the election, whose result Harrison contested, Davis's victory was upheld on the grounds that any "man of ordinary courage" could have made his way to the polls.¹

"Are you not a man in the full vigor of manhood and strength?" a member of the House Committee on Elections asked another Harrison supporter who, like Kyle, went to the polls but turned back without voting (and who happened to stand six-foot-five and weigh more than two hundred pounds).² The hearings established a precedent. "To vacate an election," an election law textbook subsequently advised, "it must clearly appear that there was such a display of force as ought to have intimidated men of ordinary firmness."³

What was at stake, in the House Committee on Elections, was whether men like George Kyle, men who planned to vote for Harrison but failed, were too easily daunted. What wasn't at stake—because it was neither illegal nor unusual but, instead, necessary—was that Kyle carried with him to the polls a bundle of ballots. Kyle wasn't a poll worker. He was a voter. (A notably well-armed one. But still.) He didn't expect to get a ballot at the polls, from a precinct official. Nowhere in the United States in 1859 did election officials provide ballots. Kyle, like everyone else, brought his own. The ballots he carried, preprinted "party tickets," endorsed the slate of Democratic candidates, headed by Harrison. Voters didn't need to fill those ballots out. They just had to be able to get them—either from a partisan, at the polls, or at home, by cutting them out of the newspaper—and to cross the throngs to reach a solitary platform placed against the outside wall of a building (voters weren't allowed inside), climb that platform, and pass a bundle of ballots, one per office, through a single, high window and into the hands of an election judge. This, all things considered, was no mean feat, and not only in Baltimore. Between 1828

and 1861, eighty-nine Americans were killed at the polls on Election Day.⁴

The reform that ended this unsettling state of affairs was imported from Australia and not achieved in the United States until the 1890s. The American adoption of the “Australian ballot”—with its radical provision that governments should provide ballots—was hard fought.⁵ It changed everything. It lies, if well hidden, behind every argument made about how we ought to vote now, from the promotion of paperless voting to the more recent backlash, favoring a paper trail. And it is also, like every other American election reform, a patch upon a patch.

The United States was founded as an experiment, a staggeringly brilliant experiment, in eighteenth-century republicanism, in which it was understood that only the wealthiest and best-educated men would vote—the only people who could be counted on to vote with the public good, and not private interest, in mind—and that they would do so publicly. What went on in Baltimore’s Fifteenth Ward on November 2, 1859, was something altogether different. And how Americans vote in the twenty-first century looks, from an eighteenth-century point of view, even stranger. Just about every citizen over the age of eighteen and not in prison will be eligible to vote.⁶ We won’t be clobbered, stabbed, and shot. We will not have to bring our own ballots. But we will want to vote very, very quickly. We will insist that how we vote should be secret. The Founders didn’t plan for this. No one planned for it. There is no plan. It’s patches all the way down.

Americans used to vote with their voices—*viva voce*—or with their hands or, literally, with their feet. Yea or nay. Speak up. Raise your hand. All in favor of Jones, stand on this side of Town Hall; if you support Smith, line up over there. Every

town, county, and colony, and later, every state, determined its own method of voting (although nearly everyone agreed that Election Day ought to involve plenty of stumping and a prodigious amount of drinking). In the colonies, as in the mother country, casting a vote only very rarely required paper and pen.⁷ The word “ballot” comes from the Italian *ballota*, or ball, and in the 1600s, a ballot usually was a ball, or at least something ball-ish, like a pea or a pebble, or, not uncommonly, a bullet. Colonial Pennsylvanians voted by tossing beans into a hat.⁸ Everyone knew how everyone else voted.⁹ Paper voting, when it started, wasn’t meant to conceal anyone’s vote; it was just easier than counting beans. Our forebears considered casting a “secret ballot” cowardly, underhanded, and despicable; as one South Carolinian put it, voting secretly would “destroy that noble generous openness that is characteristic of an Englishman.”¹⁰

The first recorded colonial use of paper voting comes from Salem, Massachusetts: in 1629, church members elected their pastor by writing his name down on slivers of parchment. In 1634, John Winthrop, the first governor of Massachusetts, was elected “by paper”; thirteen years later, a Bay Colony law dictated voting “by wrighting the names of the persons Elected.”¹¹ Outside of Massachusetts, which had an unusually high literacy rate, this would have been entirely impractical. Only very slowly did voting by paper grow common enough that the word “ballot” came to mean not a ball but a piece of paper. Well after American Independence, most elections remained the stuff of corn and beans and hands and feet.¹²

The Constitution, drafted in 1787, left the conduct of elections up to the states: “The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations.” Further than this limited federal oversight the framers would not go.

And even this needed Madison's insistence, during the Constitutional Convention, that "it was impossible to foresee all the abuses" that states might make of unimpeded power over the conduct of elections.¹³

The Constitution makes no provision for how Americans should vote not only because the men who wrote it wanted to leave such matters (mostly) to the states, but also because, as only Madison glimpsed, they could not possibly have foreseen how unwieldy elections would very soon become. With the exception of Benjamin Franklin, who anticipated Malthus, the nation's founders could scarcely have imagined that the population of the United States, less than four million in 1790, would increase tenfold by 1870. Nor did they prophesy the party system. Above all, they could not have fathomed universal suffrage, which entirely defied eighteenth-century political philosophy. The framers expected only a tiny minority to vote, and these men didn't elect George Washington; they voted only for delegates to the Electoral College, an institution established to further restrain the popular will. (The original proposal, at the Constitutional Convention, was for the president to be elected by Congress, called, in the debates, the "national legislature." A motion "to strike out 'National Legislature' & insert 'citizens of U.S.'" was defeated, twelve states to one. That the people, even given limited suffrage, would elect the president directly was almost inconceivable. The election of the president by Congress, however, violated the separation of powers. The Electoral College, proposed after the defeat of the motion for direct election, was an ill-begotten compromise.)¹⁴

The states, left to their own, adopted electoral methods best described as higgledy-piggledy. The constitutions of five the original states mentioned voting by ballot.¹⁵ "An opinion hath long prevailed among diverse good people of this state," wrote the framers of New York's 1777 constitution, "that voting at elections by ballot would tend more to preserve the liberty and

freedom of the people than voting *viva voce*"; they proposed a "fair experiment" with the paper ballot.¹⁶ In 1799, Maryland became the first state to require paper voting in all statewide elections. The Twelfth Amendment, ratified in 1804, mandated that members of the Electoral College "vote by ballot." By no means, however, did paper voting become universal. The citizens of Kentucky voted *viva voce* until 1891.

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

Meanwhile, the eighteenth century's brilliant experiment in republicanism gave way to the unruly exuberance of nineteenth-century democracy. Of the twenty-four states in the union by 1825, seventeen held annual elections for state legislators. There was, in other words, a great deal of voting. And more and more voters. New states entering the union adopted constitutions without any property qualifications for voting, putting pressure on older states to eliminate those restrictions. The electorate doubled, and then tripled. And still it kept growing. As suffrage expanded—by the time Andrew Jackson was elected president in 1828, nearly all white men could vote—scrap-voting had become more or less a travesty, not least because the newest members of the electorate, poor men and immigrants, were the least likely to know how to write.¹⁷

In stepped political parties, whose rise to power was made possible by the rise of the paper ballot. Party leaders began to

print ballots, usually in newspapers—early American newspapers were brazenly partisan—either on long strips, listing an entire slate, or on pages meant to be cut to pieces, one for each candidate, like the bundle of ballots George Kyle tucked under his arm on Election Day in 1859. These ballots came to be called “party tickets,” because they looked like train tickets (and which is why, when we talk about someone who votes a single-party slate, we say that he “votes the party ticket”). The printing on ballots of party symbols (like the Free Soilers’ man-pushing-a-plow) meant that voters not only didn’t need to know how to write; they didn’t need to know how to read, either.¹⁸

At first, party tickets looked to be illegal. In 1829, a Boston man named David Henshaw tried to cast as his ballot a sheet of paper on which were printed the names of fifty-five candidates, his party’s entire slate. Election officials refused to accept his ballot. Henshaw sued, arguing that he had been disenfranchised. When the case was heard before the state’s Supreme Court, the decision turned on whether casting a printed ballot violated a clause in the state’s 1789 constitution, requiring a written one. The Massachusetts constitution, only three decades old, had already been outpaced by the times. “It probably did not occur to the framers of the constitution,” the Court observed, in a landmark ruling in Henshaw’s favor, “that many of the town might become so populous as to make it convenient to use printed votes.”¹⁹

The ticket system made voting easier, but only at the cost of limiting voters’ choices. It also consolidated the power of the major parties while, curiously, promoting insurgency, too: party malcontents could print their own ballots, promoting their own slate of candidates; “knife” a candidate by stacking up a pile of tickets and then slicing out someone’s name from the whole stack at once; or distribute “pasters,” strips of paper with the name of a candidate not on the party ticket, to be

pastored over his opponent’s name. (Polls were stocked with vats of paste.)²⁰

Party tickets led to massive fraud, corruption, and intimidation. A candidate had to pay party leaders a hefty sum to ensure that his name would appear on the ticket and to cover the costs of printing tickets and buying votes. (One estimate put the price of a congressional seat in New York City at over \$200,000.)²¹ It became more and more important to make sure all that soap was paying off. Ballots grew bigger, and more colorful, so brightly colored that there was no way a voter could hide his vote.

But wanting to hide that vote now began to seem, to reformers in both England and America, eminently reasonable. In 1831, the Scottish Benthamite, James Mill, argued for a secret ballot to curb the influence of landlords upon their tenants and factory owners upon their workers, in the wake of the expansion of the suffrage in Britain.²² The next year, the state of Maine became the first to require that all ballots be printed in the same color, to protect voters, like George Kyle, trying to cast minority ballots in a polling place besieged by rowdy members of the majority, including paid “shoulder strikers,” thugs “accomplished in the arts of scuffling and ballot-stuffing.”²³ It didn’t do much good. In 1851, a Massachusetts legislature dominated by Free Soilers and Democrats mandated the use of uniform envelopes, to be supplied by the secretary of state. That didn’t do much good, either. “To say that the citizen shall vote with a sealed bag, or not at all,” critics argued, “is an act of despotism.” What honest man was ashamed of his vote? The secret ballot, insisted the Virginian John Randolph in 1847, “would make any nation a nation of scoundrels, if it did not find them so.” In 1853, when the Massachusetts legislature changed hands, the new majority made envelopes optional, having accepted the argument of Rufus Choate that it was its duty to give every citizen the right “to vote as his fathers, did, with an open ballot.”²⁴

By the time the House Committee on Elections investigated the contested 1859 Baltimore congressional election, bullying and fisticuffs at the polls were to be expected, and endured. (Women were disenfranchised until the passage of the Nineteenth Amendment in 1920, although, as nineteenth-century suffragettes were wont to argue, maybe, if women had been allowed to vote earlier, there would have been rather more decorum at the polls.) "Were the voters of the 11th ward men of ordinary courage?" a committee member asked a frustrated voter who had only this answer: "Men of ordinary courage, extraordinary courage, and some with no courage at all."²⁵

Meanwhile, on the other side of the world, someone came up with a startling idea. What if the government were to provide not just envelopes, but ballots, too?

The exact origins of the idea are somewhat murky. The first Australian ballot law, written by a jurist named Henry Samuel Chapman, was passed in Victoria in March 1856 (a similar law, authored by Francis S. Dutton, was passed in New South Wales the following month, and whether Chapman or Dutton is more justifiably dubbed "Father of the Ballot" remains, in some quarters, a matter strenuously debated). Victoria's Electoral Act of 1856 detailed, quite minutely, the conduct of elections, ordering that no campaigning could take place within a certain distance of the polls and requiring that election officials print ballots and erect a booth or hire rooms, to be divided into compartments where voters could mark those ballots secretly.²⁶

This, of course, is exactly how we vote in the United States today. Not that there hasn't been tinkering: New South Wales gets the undisputed acclaim for introducing, in 1877, the placement of an empty square next to a candidate's name, requiring voters to indicate their selections by marking an X in the box.

(Chapman's law required crossing out the names of everyone you *didn't* want to vote for.)²⁷ Then there's a deuced clever scam called the Tasmanian Dodge (for which, yes, Tasmania gets full credit): get your hands on a blank ballot, fill it out, and then pay someone to cast it while smuggling out another blank. A good Tasmanian dodger could vote as many times as he liked, without ever casting a ballot. (The dodge was eventually defeated by numbering ballots.)²⁸

When the Australian ballot was propounded in Britain, James Mills's son, John Stuart Mill, emerged as its most articulate opponent. The younger Mill first took up the subject in 1859, just a few months before George Kyle's brother died in Baltimore. Voting, Mill insisted, is not a right but a trust: if it were a right, who could blame a voter for selling it? Every man's vote must be public for the same reason that votes on the floor of the legislature are public. If a congressman or a member of Parliament could hide his vote, would we not expect him to vote badly, in his own interest and not in ours? A secret vote is, by definition, a selfish vote. Only when a man votes "under the eye and criticism of the public" does he put public interest above his own.²⁹

Mill's argument, while widely debated, met with a perplexing reply: even if voting is a public trust (which not all of Mill's opponents granted), voters need to exercise it privately to exercise it well because the electorate, unlike the legislature, consists of men of unequal rank. The powerless will always be prevailed upon by the powerful; only secrecy can protect them from undue influence. Parliament adopted the Australian ballot in 1872.³⁰

The most zealous American champion of the Australian ballot, Henry George, sailed to Australia in 1852, when he was thirteen, as a foremast boy. He washed up in San Francisco

in 1858; three years later he married an Australian. He first advocated the Australian ballot in December 1871, just months after the *New York Times* began publishing its investigation into the gross corruption of elections in New York City under the party boss, William Marcy Tweed. (In 1868, a presidential election year, Tweed's amply rewarded "repeaters" cast more than 50,000 illegal votes.)³¹ Without the Australian ballot, George wrote, "we might almost think soberly of the propriety of putting up our offices at auction."³²

George had a point. In San Francisco, party bosses handed out "quarter eagles," coins worth \$2.50; in Connecticut, where 16 percent of the electorate could be bought, votes cost between two and twenty bucks. In Indiana, tens of thousands of men sold their suffrages for no more than a sandwich, a swill, and a fiver.³³ If people were so poor and desperate they'd sell their votes for lunch, well, maybe letting everyone vote just couldn't work. Maybe the Founders were right. But George, while granting, in an 1883 essay, that elections had become a national scandal, resisted the conclusion "that democracy is therefore condemned or that universal suffrage must be abandoned."³⁴ The next year, a New York lawyer named William Ivins published in *Harper's* a scathing indictment of machine politics: "Our elections are not elections in any true sense of the word," Ivins declared. "When we vote we simply register our choice as between two or three men who have already been elected by a machinery unknown to the law."³⁵

In 1886, Henry George ran for mayor of New York. He lost. But the party he created, the United Labor Party, became the first national party to demand the Australian ballot.³⁶ Two years later, the Kentucky state legislature attempted the reform in Louisville. After the voting that year, an observer wrote to the *Nation*: "The election last Tuesday was the first municipal election I have ever known which was not bought outright."³⁷

In 1888, Massachusetts became the first state to legislate the Australian ballot. (Its law served as the model for all that followed.) That success put pressure on David Hill, the Democratic governor of New York, who had vetoed an Australian ballot bill three times, arguing that its restriction on campaigning at the polls violated freedom of speech.³⁸ Hill's veto was only broken in 1890 after fourteen men carried to the floor of the New York legislature a petition weighing half a ton.³⁹ But Massachusetts and New York proved the only states to deliberate at length over the Australian ballot. Elsewhere, state legislatures swiftly yielded to their example, and to the argument made in national magazines and especially by the *Nation*.⁴⁰ In the presidential election of 1896, nine out of ten American voters cast secret, government-printed ballots.⁴¹ William McKinley won, with 271 electoral votes. William Jennings Bryan lost, with 176. The death toll? Zero.

On Election Day, I usually walk around the corner to vote in the basement gymnasium of a neighborhood elementary school, beneath a canopy of basketball hoops. At a table just inside the gym, a precinct volunteer hands me a piece of white paper about the size and weight of a file folder. I enter a booth built of aluminum poles, tug shut behind me a red-white-and-blue curtain, and, with a black marker tied by a string to a tabletop, I mark my ballot, awed, as always, by the gravity of the moment, democracy's sacrament, consecrated with pen and paper.

Except for the basketball hoops, much about how I usually vote was laid out in An Act to Provide for Printing and Distributing Ballots, passed in Massachusetts in 1888.⁴² Does it work? With the American adoption of the Australian ballot, many kinds of corruption, violence, and intimidation simply ended, which is why reports of peaceful elections in

Massachusetts and New York proved so persuasive across the country. George Kyle, for one, would have been relieved not to have to walk to the polls with that bundle of ballots tucked under his arm, and, between the clouting, the gunfire, and the ruffians wielding muskets and bricks, my ordinary courage would surely not have taken me even half as close to the polls as his did. Still, the Australian ballot didn't accomplish what Henry George hoped it would: it can scarcely be said to have removed money from elections. Money found other ways in. And it did not, in every case, guarantee free elections. In the South, the Australian ballot, by opening the door to literacy tests, proved crucial to the disenfranchisement of black men, who had been granted suffrage in 1870 by the Fifteenth Amendment. As a Democratic campaign song sung in Arkansas in 1893 put it:

The Australian ballot works like a charm
It makes them think and scratch
And when a Negro gets a ballot
He has certainly met his match.⁴³

Arguably, the Australian ballot also shifted the American conversation about voting from a fundamental debate about democracy to the instrumental and profit-driven advocacy of technology; it launched a kind of voting machine arms race. Machines for casting and counting votes date to the 1880s; the first punch card machine patent was granted in 1888; the next year marked the debut of the Acme Counting Ballot Box; the mechanical curtain-and-lever machine dates from 1899. (Voting machines, like printed ballots, were initially challenged on the grounds that they were unconstitutional.)⁴⁴ With the important exception of the Voting Rights Act of 1965, outlawing literacy tests, the twentieth century's election reforms have mostly had to do with managing machines, machines that can break, machines that can be made to fail.⁴⁵

That all Americans can all vote is a consequence of nineteenth-century politics. How our votes are counted is, generally, a product of twentieth- and twenty-first-century technology. Both are patched on to eighteenth-century political philosophy. About the only time the patch is noticeable is when people think about the Electoral College, which is so glaringly a throwback to an earlier and outdated set of assumptions about the relationship between the people and their rulers that it's hard not to notice it. A patch, even a patch upon a patch, isn't necessarily bad. Times change. If the Founders had written more about elections, we might still be voting with corn and beans. But it's probably worth remembering that we vote in defiance of eighteenth-century republicanism, and not in its spirit, and that voting in our kitchens, on the family computer, would remove from the act of casting a ballot its very last vestiges of civic occasion and public office. The United States adopted the Australian ballot to solve problems created by the sudden and dramatic expansion of the electorate in a time of vast economic inequality and very low literacy. For all the good that it did, that reform swept away the notion, however utopian, of voting as a public trust; the staging, at the polls, of heated political debates; and the marking of Election Day as a boisterous public holiday celebrating our vital political culture. The voting booth was a brilliant invention. What happens to the American electorate inside that tiny, curtained space is a bit like what happens when Clark Kent enters a telephone booth, takes off his glasses, and puts on his tights: we, mere citizens, become We the People. We choose our rulers, and, even more elementally, we grant them the right to rule us. With the stroke of a pen, we offer our consent to be governed; we constitute the nation. But, sometimes, it's a little cramped in there.