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An excerpt from JUST ELECTIONS
By Dennis F. Thompson

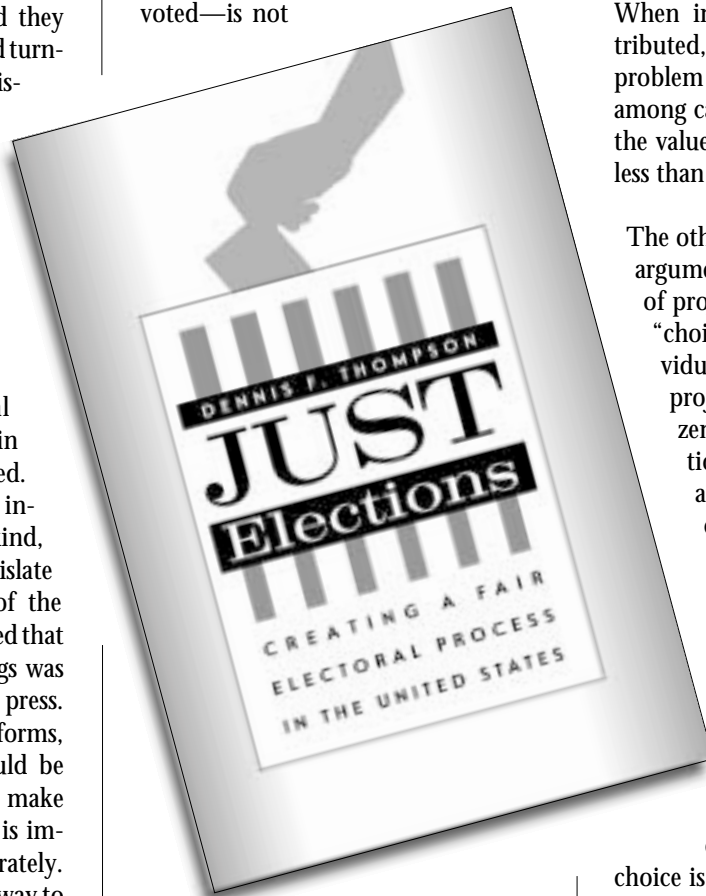
Free Choice: How Voters Decide

In the aftermath of [the 2000] election, much of the criticism centered on the errors the networks made rather than the effects their projections had on turnout. In the House hearings, several network witnesses conceded that they had made errors and needed to change their methods, but said they doubted that projections affected turnout. An outside group, commissioned by CNN to review election night coverage, presented a highly critical assessment, and recommended major reforms. They proposed that the networks cease using exit polls to call elections, stop relying on one source to collect and collate data, and undertake organizational changes to ensure that accuracy in reporting takes priority over speed. Some of the networks seemed inclined to make changes of this kind, but none wanted Congress to legislate in this area. The president of the Associated Press heatedly objected that the act of holding these hearings was itself a threat to freedom of the press. But clearly these and similar reforms, whether legislated or not, would be desirable. If the media are to make projections and report polls, it is important that they do so accurately. Misinforming voters is hardly a way to enhance their free choice.

But potential inaccuracy, even in reports that viewers tend to take as authoritative, cannot be a sufficient reason for denying voters access to information. That kind of justification would permit far too broad an intrusion into free choice. Moreover, this

preoccupation with inaccuracy neglects the more general problem—the potential damage to the democratic process that results from reporting projections even when they are accurate. It is not simply inaccurate projections that we may wish to limit, but any projection that may affect how people vote while the election is in progress....

The simultaneous character of an election—the fact that voters are not supposed to adjust their votes in relation to how others have voted—is not



an arbitrary or merely conventional procedural requirement. It has a normative rationale. If citizens vote at the same time (or have only information they would have if they were voting at the same time), then the value of each citizen's choice is no greater than that of any other citizen. All make their choices

on the basis of the same information, and in this respect each enjoys the same experience. Election projections distort the experience of voting by giving some voters information that other voters lack. Western voters lose their chance to participate in an event that is still in progress rather than one that is already in the history books. Also, to the extent that election projections discourage efforts by parties and candidates to mobilize voters in the western states, some citizens who might have voted do not make a choice at all. When information is unevenly distributed, the election is less just. The problem is not that the competition among candidates is less fair, but that the value of choice for some voters is less than that of others.

The other questionable aspect of the argument for unrestricted reporting of projections is the claim that the "choice must belong to the individual." In a process in which projections are publicized, citizens may choose what information they wish to use, but they are denied some other kinds of choices. They cannot choose how information about their own choices and those of others is used. They do not have a choice of a system that better preserves the simultaneous character of elections, even if they believe that such a system is better for the democratic process. Free choice is not simply a matter of individual decision, but also of institutional structure, which only citizens together can choose....

Limiting information about projections thus can be justified by showing that it enhances the value of electoral choice. It does so by preserving the simultaneous character of elections and the fair distribution of information in

the electoral process. But notice that the scope of this justification is quite circumscribed. It would not permit limiting information about campaign issues, such as reports on foreign policy crises. Such information obviously does not undermine the character of elections in the same way that projections do. On the contrary, it contributes to making citizens better informed.

The justification does not even go very far toward supporting the regulation of election predictions. It would not, for example, support a ban on reports of public opinion polls (as in Canada, seventy-two hours or less before the election), as long as the information is equally available to all voters before the election. A different argument would be required to suppress information of this kind. One such argument might emphasize the detrimental effects of conformity. Projections tempt voters merely to follow the opinions of others and to abdicate personal responsibility for exercising free choice. Another argument would point to the effects on the rhythm of the campaign. The act of voting marks the end of the campaign and provides necessary finality, but publicizing public opinion polls in advance of the election may in effect bring the election to a premature close. Citizens may decide that the outcome is a foregone conclusion when it is not, or when it would not be if the results of polls had not been known.

These broader restrictions merit serious consideration, but even if they are rejected, some significant regulation of projections on election day could still be justified. Even those who think that the government should not prohibit networks from making projections could still urge that they voluntarily adopt a policy of restraint. More generally, we should continue to seek ways to protect the simultaneous character of voting. A law mandating the

closing of the polls at the same time throughout the nation is a prime example of a measure that would promote this goal. Such laws have been often proposed, but never adopted. They usually founder on the difficulty of setting a time convenient for citizens of all states in a nation in which time zones differ as much as six hours. Also, in some forms, uniform poll closings could disproportionately affect turnout of lower status and less educated citizens. Another alternative... would be to declare election day a national holiday, and keep the polls open all day. This proposal would avoid the problem of different time zones, though it would not be without economic cost.

Some limitation on information may improve the quality of individual decision making and public deliberation, but at the same time impede the influence of independent and minor party candidates. In such cases, we confront another conflict between two elements of free choice: the demand for adequate information and the need for an acceptable range of alternatives on the ballot. Television producers, for example, may correctly decide that a political debate is likely to be more informative if limited to the major candidates. The producers might reasonably believe that viewers can better concentrate on the differences between candidates who have a serious chance of winning. Courts have permitted even public television networks to exclude candidates from debates they sponsored, provided that the decision was based not on the content of the candidates' views, but on their lack of "appreciable public interest." If networks were required to invite all candidates, without regard to their electoral chances, they might decide to avoid the "prospect of cacophony" by televising no debates at all. Either way, voters would be less informed.

Yet exclusion could also deprive voters of having the benefit of a wider range of choices on the ballot. A candidate may generate appreciable public interest only after participating in televised debates. Running for governor as a third party candidate in Minnesota in 1998, Jesse Ventura was not considered a serious candidate until he began appearing in three-way televised debates. He went on to win the election. Excluding him from the debates would have not only limited the range of voters' choice, but also denied a plurality of voters the opportunity to choose their preferred candidate....

We cannot specify in general what the right balance between the elements of free choice should be. Not can we stipulate in advance the extent to which information should be limited in order to promote free choice. But the problems we have seen in the use of ballot notations, publicized exit polls, and inclusive TV debates should encourage us to consider institutional changes that would limit the political information we receive. The principle of free choice that we use to assess these changes should not presume that more information is always preferable. Sometimes electoral choice is more valuable if citizens choose to restrict what they know when they vote.

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