

The ballot box wars

16 September 2010 @ 10:27 am

Despite the vast difference in the way elections are run in the United States and Australia, we have one thing in common – persistent allegations that voting fraud is affecting election results. **Peter Browne** and **Brian Costar** look at how the debate is holding back the modernisation of our electoral system



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IN 2004 the American journalist John Fund published a book called *Stealing Elections*, which contained an eye-catching claim. “At least eight of the nineteen hijackers who attacked the World Trade Center and the Pentagon were actually able to register to vote in either Virginia or Florida while they made their deadly preparations for 9/11.” Fund’s allegation touched a nerve in a country still coming to terms with the attacks, and has been [repeated](#) ^[2] again and again by conservative politicians and commentators in the United States. But there is no evidence to suggest that it’s true.

A closer look at his exact words – the hijackers were “able to register” rather than “did register” – suggests that Fund knew his claim wasn’t sustainable. But that single sentence captured vividly, if misleadingly, the point he was trying to make in his book. Essentially, he was arguing that the electoral system in the United States is riddled with opportunities for voter fraud and that the regulations need to be tightened to make it much harder to enrol. The same argument is often heard in Australia around election time, and was part of the thinking behind the Howard government’s controversial 2006 amendments to the Electoral Act, important parts of which have since been struck down by the High Court.

After *Stealing Elections* was published, a New York–based think tank, Demos, commissioned the political scientist Lorraine Minnite to assess the evidence about voter

fraud in the United States. By now, John Fund was telling interviewers that eight of the hijackers not only could but *did* enrol to vote. Minnite found that Fund's claim was based on very shaky foundations. Some of the 9/11 hijackers, it seems, had fraudulently acquired driver's licences in Virginia and Florida. Under a bill signed into law by Bill Clinton, anyone applying for a driver's licence is automatically offered the opportunity to make an application to register as a voter. Therefore, Fund appeared to be saying, the hijackers could vote.

"But being presented with an opportunity to register does not make a person eligible to vote," writes Minnite in her new book, [*The Myth of Voter Fraud*](#) [3]. "To register to vote through a driver's licence agency during the time the hijackers were in the United States, any applicant would have had to affirmatively assert citizenship." In theory, they could have made that assertion; in practice, it's hard to see why they would have bothered. On top of that, an FBI representative told one of Minnite's researchers that the agency's own investigation had established that none of the hijackers were registered. But Fund's pithy sentence had successfully linked two unrelated phenomena – the very real attacks on September 11 and the chimera of voter fraud – in the cause of what Minnite calls "voter fraud politics."

Why would Fund – and the people who have taken up his claim, and others who have long campaigned on the issue in America and elsewhere – want to make it more difficult for people to enrol to vote? In the United States, the answer is pretty clear: the people most likely to be discouraged from voting by more stringent requirements are people who are least likely to support the Republican Party – people on low incomes, for example, and people from non-English-speaking backgrounds. In a country where voting isn't compulsory, tighter rules would mean that even larger numbers of potential voters wouldn't enrol and would never become part of the electoral process.

Then there is a whole class of people who are disenfranchised in the United States. Because of laws in most states preventing convicted felons from voting, an estimated 5.3 million people – including 13 per cent of black males – cannot vote. Four million of them have served their sentence and are back living in the community, but might never be able to vote again because of state laws. With Afro-American voters favouring the Democratic Party at least eight-to-one, these laws have undoubtedly had an impact on the results of many US elections, including presidential elections. Despite reforms in some states, the overall number of Americans deprived of their voting rights in this way continues to rise.

Not only is voting voluntary in the United States, but so too is registering as a voter. This means that no one knows the full number and distribution of eligible adults in each state, which makes the job of drawing up electoral boundaries very imprecise. And that job – "redistricting" as it's called – is almost exclusively in the hands of state legislators and governors who represent political parties and have no qualms about fixing the boundaries to disadvantage their opponents. While a handful of states have bipartisan redistricting panels, none have non-partisan ones.

In most states the top electoral officials are elected representatives of political parties; they are permitted to design ballot papers to benefit their party's candidates and, during and after the vote, they routinely make decisions that affect the results. In each of Florida and Ohio, for example – states crucial to the outcome of the presidential elections in 2000 and 2004 respectively – the top electoral official also served on the Bush–Cheney election committee.

Despite the best efforts of John Fund and other campaigners – including John Ashcroft,

attorney-general in the Bush administration, and the conservative broadcaster Glenn Beck – a five-year investigation initiated by George W. Bush unearthed a remarkably small number of offences, many of which proved to be errors made by people with poor English skills. Pressure on prosecutors to seek jail terms for alleged fraudsters resulted in the jailing of some people, including a woman on probation in Milwaukee, who mistakenly voted when they weren't eligible.

If the inquiry had found “a single case of a conspiracy to affect the outcome of a Congressional election or a statewide election, that would be significant,” Richard L. Hasen from the Loyola Law School [told](#) ^[4] the *New York Times*. “But what we see is isolated, small-scale activities that often have not shown any kind of criminal intent.”

This doesn't mean that there aren't dubious practices affecting the outcomes of elections in the United States. But they are usually perpetrated by political parties, state and county governments, and associated organisations. As well as boundary rigging and other sharp practices, polling booths have in some cases been sited in such a way as to discourage certain classes of voters from casting their vote. In other cases curiously timed roadworks, suspiciously long queues and on-the-spot challenges to individuals' right to vote have acted as strong disincentives.

ALTHOUGH Australia has among the best electoral administration machinery in the world – a national set of laws, free from political interference, run by the highly respected Australian Electoral Commission – we haven't been immune to allegations that our system is vulnerable to fraudsters. But the quality of our system means that the evidence of fraud is even scarcer than it is in the United States. So scarce, in fact, that Curacao Fischer Catt often appears as the chief witness for the prosecution.

Mr Catt's occupation was given as “pest exterminator” on his voter registration form and, as his name suggests, he was indeed a cat. In 1990 his owner successfully enrolled him to vote in the seat of Macquarie, and he even received a letter from the local member welcoming him to the electorate. This prank was in no way an attempt to influence an election outcome. And more importantly, the fact that this new voter wasn't a human was picked up after the welcoming letter was returned to the MP and the Electoral Commission investigated. Yet this case turns up again and again in parliamentary debates, quoted frequently by Coalition MPs in defence of the Howard government's contentious 2006 electoral reforms and, more recently, to justify their opposition to Labor's attempts to increase the proportion of people who are enrolled.

Another, more serious, case of fraud involved not a state or federal election but three attempts to influence Labor Party preselection ballots in Queensland. Only party members who were on the electoral roll for the division could vote in the ballot, so a number of people had fraudulently claimed to be living in Herbert in order to support their preferred candidate. The Electoral Commission staff processing their enrolment forms noted some irregularities and turned the evidence over to the federal police. Prosecutions were eventually made under the Crimes Act.

One of the three accused Labor Party members then alleged that electoral fraud was widespread in Queensland, and an inquiry was held to probe four Labor preselection ballots and one parliamentary by-election. “The information gathered during the inquiry clearly established that the practice of making consensual false enrolments to bolster the chances of specific candidates in preselections was regarded by some party members as a legitimate campaign tactic,” the inquiry concluded. “No evidence, however, was revealed indicating that the tactic had been generally used to influence the outcome of public elections.”

A final case also comes from Queensland. In last year's state election Labor's Steve Kilburn unexpectedly won the seat of Chatsworth, and by only seventy-four votes. The Liberal National Party alleged that some absentee ballots were fraudulent and threatened to challenge the result in the Supreme Court. Claims followed that the dead had voted, that there was widespread multiple voting, that Labor activists had impersonated voters and that the electoral roll could no longer be trusted. Given the intensity of this campaign, it came as a surprise when the barrister representing the unsuccessful candidate opened the case simply by drawing attention to administrative and clerical errors in the voting process. While a few people had "inadvertently" voted twice, he observed, there was "nothing sinister" about it. The judge detected fourteen clerical irregularities but concluded that the Electoral Commission had conducted the election "carefully and competently" – and increased Mr Kilburn's winning margin from seventy-four votes to eighty-five.

And that's about it. When you consider how many voters there are in Australia, and how many elections, the evidence that the system is open to widespread fraud is remarkably thin. In fact, after conducting a detailed study of the integrity of the electoral roll in 2002, the Commonwealth auditor-general [concluded](#) [5] that "overall, the Australian electoral roll is one of high integrity, and that it can be relied on for electoral purposes."

The reason attempts at fraud aren't more common isn't hard to find. In order to rig an election result, a very large number of fraudulent voters would need to be concentrated in the key areas that determine the election result, and the conspirators would need to be able to predict in advance which seats they would be. As the pattern of voting in several states in last month's federal election showed, making that prediction wouldn't necessarily be easy. And yet the electoral fraud argument continues to be used in federal parliament to oppose measures (including later closing of the rolls) designed to make sure that as many eligible people as possible are enrolled to vote.

The next big battle over electoral laws in Australia will be about automatic enrolment. Currently, the Australian Electoral Commission can use the information it receives from various government agencies – Australia Post and Centrelink, for example – to strike people off the roll or to initiate a letter seeking an enrolment or a change of details. It can't use that information, no matter how reliable, to enrol a voter or change details itself. In other words, it's easier for the commission to remove people from the roll than to add them. As a result, an estimated 1.4 million eligible adults were missing from the roll when Australia voted on 21 August.

The NSW parliament (with all-party support) and the Victorian parliament have already passed legislation enabling their state electoral commissions to automatically enrol eligible individuals who come to their attention via information provided by government agencies. The commissions then send out a letter giving the voter the option of disputing or modifying the enrolment. It sounds simple, but the federal Coalition has already said it will oppose any attempt to introduce automatic enrolment federally.

In the current, highly polarised political atmosphere of the United States, it's unlikely that the sweeping electoral reforms needed to modernise that country's electoral system would win bipartisan support. In Australia we have a slightly greater chance that all parties in parliament, together with the independents, can calmly discuss how best to ensure that the maximum number of people vote at future elections. It would be a pity if the reform process didn't get started until the new Senate takes its place next

July. •

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[3] The Myth of Voter Fraud: http://www.cornellpress.cornell.edu/cup_detail.taf?ti_id=5637

[4] told: <http://www.nytimes.com/2007/04/12/washington/12fraud.html>

[5] concluded: http://www.anao.gov.au/search.cfm?cat_id=0&arg=integrity&pageNumber=2

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