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An Expert Explains: Looking back and ahead in the US elections — polls, courts, transition

US Election Results 2020: As counting proceeds slowly in key battlegrounds, the Election is on razor's edge. What happens if the race ends up being adjudicated by the US Supreme Court? And how might the transition unfold if Joe Biden ultimately wins?

Written by **Amitabh Mattoo** |

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In this Nov. 3, 2020, file photo, two women, wearing protective masks due to the COVID-19 virus outbreak, cast their ballots at a polling station at Windham, N.H. High School. (AP)

US Election Results 2020: As counting proceeds slowly in key battlegrounds, the Election is on razor's edge. What happens if the race ends up being adjudicated by the US Supreme Court? And how might the transition unfold if Joe Biden ultimately wins? An Expert Explains:

Opinion surveys had predicted a clear victory for Biden, but the result still hangs in balance. Why did they get it wrong?

While forecasting surveys have become more sophisticated, using cutting-edge modelling techniques, they seem to have failed to accurately predict US Presidential election outcomes, particularly in terms of the number of seats in the Electoral College. At best, they provide a general sense of the trend, which doesn't just require statistical modelling but often also good political instincts and intuition. Whether it is Bihar or the United States, you need to be able to sense the hawa by talking to voters — be it at the neighbourhood deli or at Chaurasia Pan House. In these Covid times, this, of course, is easier said than done!

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Take the most popular and well thought of American pollster, Nate Silver of FiveThirtyEight. Silver, a statistician by training, gained fame by developing PECOTA (Player Empirical Comparison and Optimisation Test Algorithm) to compare the performance of baseball players. He subsequently made some stunningly accurate predictions in state and national elections before 2016, where he, like many others, floundered by predicting a Hillary Clinton victory.

This time, FiveThirtyEight said it had improved its model through a three-step process — by first collecting, analysing, and adjusting polls; then complementing polls with “fundamentals” such as demographic and economic data; and finally, “accounting for uncertainty, and simulating the election thousands of times”. But see what happened!

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Silver gave Trump a 10 per cent chance of winning. They were “roughly the same odds that it’s raining in downtown Los Angeles”, he said. “And it does rain there. (Downtown L.A. has about 36 rainy days per year, or about a 1-in-10 shot of a rainy day.)” But those were clearly not the odds that we were confronted with — and while you may not be able to substitute LA with Cherrapunji, the chances of Trump winning seem to be clearly more than 10 per cent.

Silver wasn’t alone; all surveys seen as independent and nonpartisan got the results very badly wrong. The only ones that seemed to have predicted Trump would do well were the Rasmussen Reports and Trafalgar Group, both of which have a distinctly Republican bias.

I began conducting polls on India’s foreign policy and nuclear weapons about 25 years ago (India and the Bomb: Public Opinion and Nuclear Options, David Cortright and Amitabh Mattoo (eds), University of Notre Dame Press, 1996). And the fundamental limitations of all surveys still remain the same.

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How purple states have swung in the past

First is the mystery of the untruthful respondent — euphemistically called the “shy” voter. We know this happens even in family situations — like some teenagers who never admit to smoking. Social norms and the fear of inviting social disapproval often deter people from publicly identifying with certain individuals and causes. The classic example from India is where few Brahmins would publicly admit to believing in the hierarchy of the caste system. There is a belief that a significant number of Trump voters, given the Manichean responses that the President triggers, do not want to tell pollsters they would vote Republican.

Second is of the conundrum of the leading question. Take an example from my own surveys:

On nuclear weapons and India, in 1995, if you asked respondents, “Do you know that atomic weapons destroyed Hiroshima and Nagasaki, including large sections of the civilian population? Would you still want India to acquire nuclear weapons?”, only a third of respondents answered in the affirmative. But if you framed the question differently — “Do you know India faces threats from nuclear China and nuclear Pakistan? Shouldn’t India acquire nuclear weapons under these circumstances?” — nearly 75 per cent said India should go nuclear.

In the United States, many pollsters have become much more nuanced to ensure that an obvious bias is not reflected in the wording of the question. But most pollsters now aggregate polls conducted by other agencies, whose quality and integrity can be questionable.

Finally, of course, is the sample of the survey, which may be different from the turnout. While such sampling errors are usually taken care of, Democrats may participate in polling surveys, but may still not be mobilised strongly enough by Biden and [Kamala Harris](#) to vote. This “apathy” has often been seen (by theorists of democracy like Robert Dahl) as a stronger indicator of the resilience of the democratic system, but it can episodically demonstrate the dangerous consequences for democracy itself.

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A close election could result in litigation over voting and ballot-counting procedures in battleground states.

Some say the result could be delayed by days or even weeks. How will this affect the current administration — and the transition, were Biden to ultimately win?

Much will, of course, depend on how soon the election is conceded, or it becomes clear who has the support of 270 or more members of the Electoral College. If Trump eventually emerges as the victor, the transition to a second term should formally be seamless, but the triumphalism and volatile personality of the incumbent could provoke some civil unrest.

If the election continues to remain in dispute or if Biden wins, the transition period will be fraught with consequences.

The scholar Rebecca Lissner wrote in *The Atlantic*: “[A] brazen refusal by the president to leave office is surely a nightmare scenario. But even if President Donald Trump were to lose and accept the results on November 3 or soon thereafter, he could nevertheless wreak significant damage during the period between the election and the inauguration of Joe Biden — endangering the incoming administration, at best, and actively sabotaging it, at worst.”

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Popular vote vs Electoral College

In 1933, the 20th Amendment to the US Constitution moved the transition from the earlier date of March 4 to January 20. The Presidential Transition Act of 1963 lays down a detailed procedure, which should normally facilitate a smooth transition of power. But these are not normal times, and Trump often establishes, and plays by, his own rules. Consider this: President Trump will remain the commander-in-chief of the US armed forces and will retain control of US nuclear weapons until January 20, at the very least. During this period, given the size and scale of American power, the US and the rest of the world will live with great uncertainty — and state and non-state actors, including in India's neighbourhood, may be tempted to act adventurously.

Historically, of course, transitions have often meant breaks in communication, especially between adversarial Democratic and Republican regimes. One example often given is of the 1961 Bay of Pigs fiasco — the CIA-led attempt to overthrow Fidel Castro in Cuba — that could have been avoided if there had been better communication between the Eisenhower and (incoming) Kennedy administrations. Again, there is evidence to suggest President Jimmy Carter’s team did not inform Ronald Reagan of Israel’s decision to strike the Osirak nuclear reactor in Iraq in 1981.

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A superb Brookings Institution study by James Steinburg and Kurt Campbell has provided a series of examples of how difficult transitions can be, including Bill Clinton’s “struggle to manage the Somalia deployment”, and the EP-3 crises that “occurred at the outset of George W Bush’s first term when an American plane may have intruded into Chinese air space and collided with a Chinese fighter plane”.

Even as many Americans are looking for a New Deal which could add a new socially and economically more inclusive chapter in American history — like the one witnessed after the Great Depression under the leadership of President Franklin D Roosevelt — a “hostile” and unpredictable Trump, were he to lose, could be even more dangerous for America and the world, at least in the short term.

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What happens if the Supreme Court is involved to settle an electoral dispute about delayed votes or postal ballots, as Trump has threatened?

In 57 presidential elections, the Supreme Court has been directly involved in only the 2000 contest between George W Bush and Al Gore. Bush led Gore by a narrow margin in Florida when the votes were first counted. Finally the Supreme Court ruled that using “different vote-count standards within Florida violated the 14th Amendment’s Equal Protection Clause and that a vote-recount couldn’t be completed by a December 12 deadline”. [📞 Express Explained is now on Telegram](#)

Other than this, there is the solitary instance of Supreme Court justices sitting on a commission along with Congresspersons in 1876 to decide on the contest between

Rutherford B Hayes and Samuel Tilden.

With the confirmation of Amy Coney Barrett, the Supreme Court has a clear majority of conservative judges. Until the death of Justice Ruth Bader Ginsburg there were four liberal justices and four conservative justices, with Chief Justice John Roberts a moderately conservative justice who agreed with the liberal justices in certain decisions. This has now changed. While this does not necessarily imply that the court will “take sides”, Trump’s claims of electoral fraud may indeed receive a sympathetic hearing.

(Research assistance: Pooja Arora)

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