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U.S. Federalism and Election Law (Bush v. Gore)[1]

Professor Hans A. Linde addresses the continued importance of individual states' laws in the United States of America. As an example, he shows the intertwining of federal and state laws concerning U.S. presidential elections. Then, Linde gives a detailled analysis of the legal issues arising from the presidential election of 2000 (George W. Bush v. Al Gore) and of the judgments by the Florida and the U.S. Supreme Court.

1 ## I.

My larger theme today is the continued importance of the laws of individual states in American federalism. Foreign observers see the United States as one national government under one Constitution. So do Americans. But in fact, the states maintain the widest lawmaking power. This includes most private law, such as contracts, commercial and corporation law, civil liability, property, family and inheritance law, even private international law, as well as ordinary criminal law; also most social services like education and compensation for injured or unemployed workers. State constitutions guaranteed individual rights long before federal laws, and those guarantees often differ from what the United States Supreme Court decides.

2 National policies in any of these fields are superimposed on state laws, they do not replace state laws. Even when Congress could preempt the state's law entirely, it often pursues national objectives by financial means rather than by national regulation. Law school courses overemphasize regulatory powers, because those are issues that come before the courts and that lawyers are paid to know.

3 By "the courts", I mean mostly the state courts. State courts decide the great mass of all cases other than the enforcement of federal criminal laws and regulations, federal taxes, and federal civil rights laws. This is the basic allocation of authority:

4
1. State courts as well as federal courts apply both state and federal law.
2. Federal courts are bound by the state courts' interpretation of the state's law.
3. Federal law prevails over state law. Private and public lawyers always must consider whether state law is compatible with federal law.
4. All American judges routinely hear and decide constitutional arguments. The U.S. Supreme Court is a regular appellate court, not a specialized court for constitutional questions. State judges cannot refer a federal question to the U.S. Supreme Court outside the normal system of appeals, although many states permit federal courts to refer a question of state law to the state supreme court.
5. The Supreme Court can accept only a small fraction of the cases it is asked to review, which it does if four of the nine justices vote to do so. The decisions of lower state and federal courts usually are final, even if they may be wrong.

5 American federalism may be well known to many European lawyers, but a less familiar

[1] This paper is based on a lecture given on May 22, 2002, at Humboldt-University's Faculty of Law on invitation by Prof. Dr. U. Battis.

example is the central role of state laws in national elections, as illustrated in the presidential election of 2000. This will not be a lecture on political or constitutional theory. Instead, I would like to describe the actual legal issues that faced the lawyers, judges, and politicians fighting over the election of George Bush or Albert Gore as President of the United States. I hope the details will not bore you, be cause the complexity is the point of the story.

6 Legally, we have no national elections, only 50 separate state elections. The dramatic tale of the election in 2000 shows every element I have mentioned. It was decided by a state election in Florida, which was conducted by state and local officials under Florida law, interpreted by Florida courts. It then was reviewed by the Supreme Court for compliance with the federal Constitution and statutes, and has been followed by efforts in the Congress to patch up the practical flaws that the Florida vote had revealed. But this example also reminds us that the Constitution was designed to be a political system before it became a legal system. We shall see how far the political Constitution has changed without changing the governing texts. We also shall see a choice between the legal or the political institutions when a decision must be both speedy and authoritative.

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7 **II.**

You doubtless know the fundamental characteristics of the American system. Unlike parliamentary democracies, the United States as well as the 50 states elect their chief executives separately from their legislatures. All elected officials serve fixed terms, usually two years for the lower house and four years for the Senates and executive officials. There is no way to dissolve a whole legislature and call new elections. For 214 years the United States has carried out its biennial elections, even in th e midst of a civil war over its very existence. There may be special elections if a legislator dies or resigns, but not to replace a President. Instead, there is a fixed line of succession.

8 This system has great stability, but at the cost of frequent conflict between Presidents and a majority in Congress. If the Constitution had provided for election of a President by Congress, the system might have evolved similarly to Europe's, perhaps developing a custom that the President would resign on a loss of confidence and let Congress pick a new President. But the convention rejected election by Congress, as well as direct popular election. Instead, the original Constitution provided, and it st ill provides, for the indirect election of the President and Vice President. Each state is entitled to appoint electors equal to the number of its Representatives plus its two Senators, which lends a little extra weight to the smaller states.

9 Who chooses these electors? That is a matter for each state to decide. The Constitution provides only that each state shall appoint them "in such manner as **the legislature** thereof may direct". Congress had power only to set the time when the electors were to vote throughout the states. In 2000, that date was December 18. The Constitution gives American voters neither a direct nor an indirect vote for President. State legislatures still may simply appoint electors themselves, and the Florida legislature prepared to do that in 2000 if there was no clear winner.

10 Nevertheless, every four years we all expect to vote for President of the United States. Beginning as early as 1800, one state after another chose to put the choice of electors up to the voters, though a legislature can still choose electors itself. The electors have no other function than to meet in their own states, to cast their votes for President and Vice President, and to certify the results to the President of the Senate. If no one has a majority of electors, the choice falls to the members of the House of Representatives, counted not as a majority of individuals but of states.

11 So voters actually choose a set of electors who support their candidate for President. But how would voters do this? First, one must recall that for the first hundred years, elections were conducted without official ballots. Second, the Constitution makes no

provision for political parties. These two facts are related.

12 The architects of the Constitution, particularly James Madison, considered political parties a threat to governing in the public interest. George Washington chose a diverse cabinet that ranged from the arch-federalist Alexander Hamilton to the democratic ideologue Thomas Jefferson. But when Washington's two terms ended, this split led to a struggle between federalists and Jeffersonians for the succession as well as for control of Congress and the state and local governments. In later elections, the par ties would prepare ballots that their supporters could drop into the ballot box. Still, a voter could cast his own ballot for anyone he liked.

13 In the 1880s, the states began to print official ballots, as a way to reduce election fraud and to protect a secret vote. Official ballots made it necessary to define whose names would be included on the ballot, how candidates would be nominated, and also whether to identify them as nominees of their political party. The ballot could list the electors or only the names of the presidential and vice-presidential candidates whom they intend to support.

14 These all are matters for each state to decide. Any elective office, which includes judges and prosecutors as well as election officers, may be a partisan office in one state and nonpartisan in another. But only the introduction of official ballots gave states any basis for making rules for political parties. Otherwise, the parties remain private associations, protected as such by the state constitutions and the federal First Amendment. This continues to give rise to frequent litigation over the validi ty of state laws governing how parties may nominate or support candidates on the ballot.

15 Because all elections are state elections, the political parties are state parties. Their national organizations do not control nominations either for Congress or for the presidency. They raise campaign funds and prepare for the national party conventions, where delegations from all the states used to choose the parties' presidential candidates. Now primary elections in the states settle the choice of candidates, and the conventions are only platforms to publicize the presidential tickets and their pol itical programs.

16 Although there are minor parties as well as many independent voters, the Republicans and the Democrats alternate in control of Congress and the state legislatures, because all states maintain the tradition of single-member districts, which preclude proportional representation. In electing a President, all but two small states assign all of their electoral votes to the candidate who wins the most votes in that state, in order to maintain the state's importance to the candidates. In 1948, candidates who o pposed racial equality won the electors of several Southern states, but not enough to prevent President Truman's reelection. But third and fourth party candidates proved to make a decisive difference in the election of 2000, as we shall see.

17 **III.**

Over time, national developments imposed some changes on state election laws. As early as 1804, it proved necessary to make separate provisions for the election of the President and Vice President, in case no candidate won a majority of electors. Subsequent amendments forbade the states to deny the franchise, first by race or color (1870), then by sex (1920), or by requiring a tax (1964), or setting the voting age above 18 years (1971). The residents of the District of Columbia, which is not a state, needed a constitutional amendment to win the vote in 1961.

18 In the 1876 election, the Democratic nominee, Tilden, won the popular majority, but a special commission awarded all the contested electoral votes, and thereby the election, to the Republican candidate, Hayes, at the cost of abandoning the Republican program of national control over the South. Congress later enacted procedures that were designed to secure faster, more timely resolutions of such contests over which of compet-

ing sets of electors from a state to recognize. These procedures included a deadline for challenges to a state's electors if the state has reached a final determination of its electors under its law as it existed on election day. This is called the "safe harbor" provision. In 1993, Congress enacted a statute requiring states to register voters for federal elections by mail or when obtaining state services like drivers' licenses.

19 The wider constitutional change after the Civil War, however, resulted from the Fourteenth Amendment's command that no state may "deprive any person of life, liberty, or property without due process of law, nor deny to any person...the equal protection of the laws". All of these later amendments gave Congress "power to enforce this article by appropriate legislation". The 14th Amendment's due process and equal protection clauses became the main legal source of judicial review of state laws in all courts, as well as the basis for federal civil rights laws. In 1964, the Supreme Court relied on the equal protection clause to force states to create election districts of equal population, and in 1965 Congress enacted a voting rights act to outlaw other discriminatory state practices.

20 But these amendment authorize Congress only to enforce what the amendments themselves require. This can open splits between judicial and congressional enforcement. In 1959, the Supreme Court rejected a claim that a state law requiring that voters can read English was racially discriminatory. Nonetheless, when the Voting Rights Act later banned all literacy tests, the Supreme Court sustained this ban as a remedial measure against racial bias. In 1970, the Court held that Congress could not extend voting rights to 18-year-olds in state elections. This then was done by constitutional amendment. But amending the federal constitution is very difficult. It requires not only two-thirds votes in both houses but ratification by three-quarters of the state legislatures or state conventions. Except to enforce equality of voters, Congress has few powers directly to legislate for elections in the states, including presidential elections.

21 In principle, then, the conduct of election by state officials is, first, a matter of state administrative law, involving the interpretation of state statutes and, second, perhaps the state constitution; third, possible issues under federal statutes, and finally, under the U. S. Constitution. What happened in 2000's presidential election involved all these legal issues.

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22 **IV.**

A. The election

As the news broadcasts on Tuesday, November 7, 2000, followed the vote count around the nation, two things became clear. Al Gore, the Democrat, had won the majority of popular votes, but the electoral vote would depend on Florida, the fourth largest state. The Florida vote would be close. About 2 a.m. on Wednesday morning, the news networks announced that George W. Bush, the Republican, had won the state's electors. The well-known consumer advocate Ralph Nader had taken more than 90,000 votes; he was the candidate of the new American "Green Party", most of whose voters otherwise would have preferred Gore, an articulate environmentalist, over Bush's positions on oil and on other natural resource policies. Gore telephoned Bush to concede the election. When Bush's lead in Florida shrank to several hundred votes out of 6 million cast, Gore phoned Bush again to withdraw the concession. With the count in doubt, lawyers for both sides prepared for an election contest, without knowing which side would be the challenger. It turned out to be the Democrats.

23 Florida allows local election officials to choose among different forms of ballots that are counted by machines, and counted again if the margin of victory is less than one percent. In one common form of ballot, voters use a black pencil to fill in a line next to their chosen candidate's name. In another form, voters mark their choices by punching out small pieces from the ballot, known as "chads". The election made chads nationally

famous.

24 A number of disappointed groups at once complained about flaws in different Florida ballots. In Palm Beach County, the local election officer had chosen a form of punch-card ballot, known as a "butterfly ballot", in which the choice of spots to punch out ran in a line down the center of the ballot, with the names of the candidates appearing on opposing sides. The relation between the names and the spots apparently caused many typical Gore Democrats to punch the card for the right-wing nationalist candidate Pat Buchanan, an extremely unlikely choice. In other precincts, black Democratic voters complained that faulty directions misled them to cast two votes for Gore and Lieberman, which spoiled their ballot. Another potential issue was the proper postmarking of absentee ballots, many of them from military personnel who were expected to support Bush. What were the legal remedies for such flaws?

25 Florida law allows candidates seven days to "protest" election results before the counties submit their voting results to the Florida Secretary of State, in this case, until November 14, 2000. The law allows the county boards canvassing the vote to authorize a recount of sample precincts, in order to see whether "**an error in the vote tabulation**" might affect the outcome of the election. In that case, the local board must take further action, perhaps including a manual recount. If a recount is not completed within the seven day deadline the Secretary of State "**may**" disregard that county's voting results.

26 On November 9, the Florida Democratic Party requested manual recounts in several counties. Small samples showed an increase in Gore votes, which led some counties to begin complete recounts. But had there been an "error in the vote tabulation"? This began a battle over Florida's election law. The state elections division sent advisory opinions to Palm Beach County and to the Republican Party of Florida, in which the division interpreted "an error in the vote tabulation" to mean that the voting system "fails to count properly marked" ballots. This would not include votes that a voter had not marked properly. The next day, the Florida Attorney General declared that the election division's opinion was wrong, and that a faulty tabulation might also result from the failure of a properly functioning machine to discern a voter's mark on the ballot. The Attorney General's opinion cited court decisions that any ballot should be counted if it is possible to determine the voter's intention.

27 At the same time, the Palm Beach and Volusia County boards asked a trial court to order the Secretary of State to include the results of their recount, even it was completed after November 14. The Secretary of State said that she would disregard belated reports, unless the delay was caused by some natural disaster. The trial court directed her to accept the delayed reports and only then to exercise her discretion whether to include them in the total vote. The county boards and the Democrats appealed this order to the Florida Supreme Court. Meanwhile, the automatic machine recount had reduced Bush's lead to 327 votes, although it rose to 930 votes after the overseas ballots had been counted.

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28 **B. The Florida Supreme Court takes over**

On November 21, the Florida Supreme Court reversed the trial court. It gave the counties a new deadline of November 26 to file amended totals with the state election authorities.

29 To prepare for what follows, I need to summarize how the court explained this result: The opinion began with the lofty principle that "the will of the people" was the "paramount consideration" in election cases. It quoted the opening sentence of the Florida Constitution, that "all political power is inherent in the people". The court rejected the election division's opinion that "errors in tabulation" meant only flaws in the counting machinery and held that it includes any discrepancy between the machine count and the count determined by a manual sampling. It reviewed ambiguities and conflicts in

the statute's uses of "may" and "shall" as well as in the time lines submitting the counties' returns and for potential recounts. This was followed by another recital of the fundamental importance of the right to vote, requiring that election laws be liberally construed to facilitate the vote. The seven-day deadline for submitting all votes was subordinated to that principle. The Florida court concluded that the Secretary of State may ignore amended county returns only in order to allow time for election contests or to comply with the federal election schedule. The decision allowed the counties to submit amended vote counts until November 26. But the large Miami-Dade county canvassing board ended its manual recount with about 9000 ballots left to review, because the count could not be completed by that date. Florida's secretary of state certified that Bush had won the popular vote.

30 How could Bush appeal the Florida' court's decision? The court had interpreted only the Florida statutes and constitution. You will recall the principle that state courts have final authority over the interpretation of state laws. Review in the U. S. Supreme Court is in the Court's discretion, but it requires an issue of federal law. To the surprise of constitutional scholars, Bush's lawyers persuaded the Court to consider two claims.

31 I earlier quoted from the U.S. Constitution the text that each state shall appoint electors in such manner as its **legislature** may direct. The Supreme Court questioned whether the Florida court had interfered with the Florida legislature's statute in the name of extraneous principles drawn from the state constitution. That question, of course, implies a genuine federal issue - whether the state legislature needs to follow the state constitution when it directs the selection of presidential electors.

32 I have also mentioned the federal law, enacted after the Tilden-Hayes election dispute, which offered a state's electors a so-called "safe harbor" if the state settled all election contests under laws as they existed prior to the date fixed for selecting the electors. The Supreme Court noted that the Florida court did not mention this section in its interpretation of the Florida election law. The Court remanded the case to the Florida Supreme Court for clarification of its opinion. The Florida court later restated its opinion, omitting any reference to the state constitution.

33 Meanwhile, Bush filed suit in a federal court to enjoin the recounts. We do not have time to discuss that suit, which occupied the federal judges but proved to be irrelevant.

34 By December 4, the partial recounts had gained Gore about 380 votes. On the same day, a Florida court rejected a Democratic suit to contest the election certificates in three important counties. The Florida Supreme Court reversed that decision on December 8, in part because the trial court had mistakenly treated the case as one of reviewing the board's decision for abuse of discretion rather than as the court's own responsibility. It then ordered the trial court to conduct an immediate partial recount in Miami-Dade County, including any ballots that indicated "the clear intent of the voter" even if the machines had not done so - the so-called undervotes. Again, the Florida court relied only on Florida law, which it interpreted as mandating that "every citizen's vote be counted whenever possible, whether in an election for a local commissioner or an election for President of the United States".

35 This time, three of the seven Florida justices dissented. The Chief Justice objected that undervotes would be judged by unknown or ambiguous standards - this referred to whether the punchcard chads were partially detached, or merely "dimpled" by the stylus, or perhaps a dimple appeared next to the chad - and he warned that prolonging the litigation might propel the state and the country into a constitutional crisis. Moreover, a state-wide recount would be impossible to complete by December12, the date to gain the federal "safe harbor" status for Florida's electors.

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36 **C. The U. S. Supreme Court ends the recounts**

We now come to the decisive event. On the next day, December 9, 2000, at the re-

quest of Bush's lawyers, the U.S. Supreme Court issued an order "staying" - that is to say, delaying - the mandate of the Florida Supreme Court until further order. The recounts stopped, although I do not know that they legally had to stop. With so few days left before the date for the vote of the electors, this amounted to what in sports we call running out the clock.

37 Four of the nine Justices dissented, in an opinion by the senior Justice, John Paul Stevens, who was appointed by President Ford in 1975. He wrote that in stopping the counting of votes, the majority departed from three of the Supreme Court's established principles: (1) To respect the opinion of the state courts on questions of state law, (2) to be cautious in taking jurisdiction of a question largely assigned to another branch of the government (here, to procedures in the two houses of Congress), and (3) not to decide constitutional questions that were not fairly presented to the state court. Most important, continuing the count would do no harm even if the Court eventually held it invalid.

38 Justice Scalia, a member of the majority writing for himself, responded to this third point: "The counting of votes that are of questionable legality does in my view threaten irreparable harm to petitioner [Bush], and to the country, by casting a cloud upon what he claims to be the legitimacy of his election. Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability requires."

39 The majority's order that stopped the recounts in effect decided the election, as the public at once understood. The Supreme Court's divided opinions, three days later, about the legal reasons for these actions were anticlimactic, though important for other elections.

40 We have previously seen one source of federal law that the Supreme Court could consider: the constitutional provision that each state shall appoint electors "in such manner as the legislature therefore shall direct". One issue, therefore, was whether the Florida court's ordered had merely interpreted the statutes for counting ballots or had substituted a different method. But this obviously would mean an inquiry into Florida law. Three justices, politically the most conservative, chose this explanation. For them, the phrase "as the Legislature may direct" required the federal court to follow the words of the state election laws, not their interpretation by the states' courts. They then interpreted the Florida election law to mandate the selection of electors in time to secure the "safe harbor" offered by the federal statute, contrary to the Florida court, which had interpreted its law to give priority to counting the votes of all citizens who had indicated a choice. Some commentators described the case as a battle of Supreme Court legal literalists against the purposive interpretation chosen by the state court.

41 This approach, however, did not gain a majority. Two more votes were needed. The four justices who had dissented from the decisive stay still maintained that the Court was wrong to take this case and to grant the stay. If the Supreme Court allowed the Florida recount to continue, there might in fact have been no issues left to review, or they might have been settled in the subsequent congressional procedures. The dissenters also objected that the Court should not have rejected the state court's interpretation of the state law.

42 The two additional justices that were needed to prevent the recount, Justices Kennedy and O'Connor, fell back on the other possible federal claim - that old standby, the equal protection clause. The three conservatives joined in this use of what usually has been an instrument of liberal judges. The Supreme Court's official opinion in this historic decision was unsigned. It held that the procedures ordered by the state court allowed arbitrary and disparate treatment of Florida voters because it did not direct exactly what marks on the ballots should be counted as indications of the voter's intention. The Court declined to allow further procedures in Florida on grounds that it was too late to meet the "safe harbor" deadline of the Florida statute, again as interpreted by the federal rather than the state supreme court. Florida's secretary of state certified

the election of the Republican electors, which made George W. Bush President of the United States.

43 The Supreme Court's performance was met with a storm of professional as well as political controversy, as could be expected. It has led to publication to thousands of pages of scholarly commentary, attacking or defending the decision. Our brief time today limits my comments to three aspects of the relation between state and federal law.

44 First, what would happen if the Court had declined to intervene and let Florida's recount continue? The recount might not have met the "safe harbor" deadline of December 12, or even December 18, when the electoral votes had to be counted. The new vote count would likely have been contested. If Gore was ahead, the legislature probably would appoint its own set of Republican electors. Congress was required to count the electoral votes on January 6, but the dispute over the competing Florida slate might have dragged on for weeks. Meanwhile, the Senate could settle the election of the Vice President, who then could act as President when the President Clinton's term ended on January 20. Before that date, if the Senate was evenly divided, a tie vote would be broken by Vice President Gore himself, presumably in favor of the Democratic candidate, Senator Lieberman. (At the time of the Tilden-Hayes contest, the new President's term did not begin until March 4.)

45 The danger of an unsettled presidency probably explains why the majority of justices did not defer to the constitutional process in Congress. Recall that Justice Scalia spoke of "clouds on the legitimacy of the election" and the need for "democratic stability". Professor Frank Michelman later described the Court as seizing the role of Machiavelli's Prince, departing from strict legality for the safety of the state. This reason for the Court's intervention has been criticized as unprincipled, and defended as "pragmatic" by a leading pragmatist, Judge and Professor Richard Posner. Whether or not that intervention was wise, American conservatives, who long have criticized courts for "judicial activism", now should look for different words for attacking judges whose decisions they dislike.

46 Second, when the Court chose the equal protection clause to justify its intervention, it created new complications for the states' electoral systems. The right of voters to have their votes counted equally applies to hundreds of elected offices in every state; it does not depend on the importance of the office. The claim is available in close elections for a school board as much as for President. State election officials and courts can now expect new kinds of equal protection claims from disappointed losers. As you have heard, the forms of ballots and the means of counting them differ from county to county or even smaller units. They invite different kinds of mistakes by voters or miscounting by election officials. You will recall that the Florida court directed officials to count every ballot that indicated the voter's choice for President. This broad standard was what the Supreme Court called a denial of equal protection. But it is not easy to phrase a more precise instruction for election officials throughout the state, short of requiring one uniform voting system. One federal court already has followed Bush v. Gore to invalidate an Illinois law that lets counties choose among several voting systems that differ in accuracy.

47 Third, Florida's national fiasco impelled Congress once again to legislate in a traditional area of state law, as did after the even more contested election of 1876. In the typical way, this law will rely on federal funding to improve the states' voting systems for federal offices. In practice, of course, the states use the same systems for all offices. A new federal commission will provide funds to improve existing punchcard machines or to replace them with other types of balloting. But the new law itself imposes some minimum standards, enforceable in court by the Attorney General: States must (1) maintain accurate lists of voters, (2) allow provisional voting rather than turning voters away at the polls, (3) define what counts as a vote for each type of voting equipment.

48 **V.**

What does the legal history of the 2000 election illustrate about American federalism?

49 As a picture of federalism, this story is routine. The states, not the Congress are the primary sources of laws as well as of all elective politics. Congress pursues national policies more by taxing and spending than by displacing state law with federal law. State legislatures, in turn, also make civil law only selectively, since without statutes state judges will continue to make common law decision.

50 As an illustration of federal judicial review of state acts, however, the story of the 2000 election is quite exceptional.

51 (1) Ordinarily, a state legislature is bound by its state constitution. But this time, at least three justices would tell state legislators that they may ignore the state constitution when deciding on the manner of appointing presidential electors.

52 (2) A state court's interpretation of the state's law ordinarily is binding in the federal courts. In this case, the Supreme Court held that the Florida court had misinterpreted Florida law when it ordered the recount. How did the court's order misinterpret the Florida law? Because it did not meet a deadline of a federal law - the so-called "safe harbor" date for selecting electors - which everyone agrees is not mandatory. That is extraordinary reasoning for the Supreme Court.

53 (3) Usually, lawyers and courts can manage the complex interactions between two sets of laws and two sets of courts, although at a substantial cost in money and time - sometimes several years. Responsible lawyers consider issues of state law as well as constitutional arguments that may affect its application. But the exceptionally short time for deciding a presidential election was too short for the quality of performance that the dual system demands of the state's officials, the lawyers, and the co urts.

54 Finally, Bush v. Gore marked a change in the political constitution, when it replaced the political process of settling the election dispute in the Congress with a decision by a badly split Supreme Court, in the name of assuring the stability of the Presidency.

55 Will this lead to future judicial decision of similarly close presidential elections? The Bush administration's controversial domestic agenda kept alive public debate about the President's political legitimacy as well as about the Supreme Court's that put him in office. But this changed within nine months. The attacks on New York and Washington ended the debate about the election of the national executive, in the public and in the Congress.

56 In consequence, these unforeseen events may also transmute the Supreme Court's dubious venture into a farsighted historic precedent.

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57 **Appendix**

Good sources for reading about the 2000 election

58 E.J. Dionne & Wm. Kristol, *Bush v. Gore, the Court Cases and the Commentary,* Brookings Institution 2001

59 Richard Posner, *Breaking the Deadlock*, Princeton Univ. Press 2001, ISBN 0-691-09073-4

60 Albert Greene, *Understanding the 2000 Election*, New York Univ. Press 2001, ISBN 0-8147-3148-1

61 Florida State Univ. Law Review, Vol 29, No. 2 (2001)

62 68 Chicago Law Review (Summer 2001)

Zitierempfehlung: Hans A. Linde, HFR 2002, S. 56 ff.