USA: Will the state-run electoral process work this time?

Since 2000 the federal government has interceded in an unprecedented way in the financing and managing of the vote. What difference will it make in November?

BY *THAD HALL AND TOVA ANDREA WANG*

The 2000 U.S. presidential election was quite confusing for people around the world. The candidate with the most popular votes lost and election officials in several states could not do something as simple as count ballots. The election was finally decided by the Supreme Court, and the controversy left Americans—and the rest of world—wondering how the United States would solve its election problems.

The election controversy sparked interest in election reform in Congress, and there were at least two national election reform projects that made recommendations regarding how to reform the process. These reform projects—and the legislation they spurred—provide the framework for understanding how Americans will vote differently in the November 2, 2004 presidential election compared to 2000.

Is the Electoral College undemocratic?

In 2000, the Democratic candidate Al Gore won the most votes but lost the Presidential election. That was because in the United States, the president is not elected based strictly on the popular vote he receives, but rather is elected by the "Electoral College." Each state has a number of "electors" who are equal in number to the Members of Congress (House and Senate), from the state. Electors then cast votes for president based on whether the candidate received the most votes in their state. As a result, a very sparsely populated state like Wyoming gets at least three electoral votes while California only has 55 electoral votes – even though California has roughly 72 times the population of Wyoming. This formulation dates back to the creation of the constitution, when small states wanted a greater say in how the president was selected, and the Founding Fathers did not want the "uneducated" public to directly elect the President.

Many think that this system has become anachronistic over time, and these critics were temporarily given new life when the tallies of the 2000 election were revealed.

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Numerous bills have been introduced in Congress over the years to reform or abolish the Electoral College. However, none of the major election reform proposals developed after the 2000 election strongly urged changing the Electoral College, in part because doing so would require amending the Constitution — a political non-starter.

Not only can the Electoral College lead to incongruous election results; it also has a tremendous impact on the way candidates conduct campaigns. Typically, candidates seriously campaign and invest resources only in states that are not dominated by one political party. In the 2004 election, it is expected that only 18 of the 50 states will be competitive between the 2 major political parties.

With the electorate still closely divided, it is again possible that in 2004 the candidate who wins the most popular votes will not be the person elected president.

Promised election agencies budgets didn't materialize

Once reforming the Electoral College was taken off the table, most election reform proposals focused on improving the process of registering to vote, voting, and counting votes. In 2002, Congress passed the *Help America Vote Act* (HAVA) to promote the process of reforming elections.

In general, HAVA is intended to encourage states to make certain electoral reforms and to provide them with ample cash to do that. The law promised states almost $4 billion between 2003 and 2005 to improve voter registration, voting systems, poll worker recruitment and training, and voter education. States also are required to meet certain standards regarding voting machines; enact new voter registration and identification procedures; allow a voter whose registration status is questioned to cast a "provisional ballot;" and revamp voter registration procedures.

One of the most extraordinary aspects of HAVA is that it marks the first time the federal government has put any of its own money into managing elections. Until now, election administration was purely a state and local concern. Unfortunately, Congress and the President have not fully funded this law. In 2003, Congress only appropriated $1.5 billion—70% of the original authorization—to implement HAVA. Worse, delays in setting up the new federal Election Assistance Commission, which is charged with distributing these funds to states, has kept more than half of this money from being disbursed. An additional $1 billion that was appropriated in 2004 has not been allocated to the states either. For 2005, the President has proposed spending only $65 million — *ten per cent* of what Congress envisioned.

If you didn't register, you couldn't vote

The United States is relatively unique in the world in that it requires voters to take the initiative to register to vote. Historically, the first time a voter wants to cast a ballot in an election, they must first register with their local election officials, typically, as much as 30 days prior to the election. Because voter rolls have until now been maintained by each individual local government, whenever a voter changes address she or he must re-register to vote. Since one-third of the U.S. population changes addresses in any two-year period, this can become quite onerous.

HAVA addresses this problem by consolidating voter registration at the state level. States will be provided with federal funds to build statewide voter registration databases. The statewide registration databases must be linked to other state databases to ensure that the voter rolls are as accurate as possible. Although HAVA asks that states set up these databases by 2004, most states have taken an available waiver until 2006. In 2004, only 10 states will have a completed their statewide voter registration system. So in most states, voter registration will be just as it was in 2000, with the potential that voters will arrive at the polls on Election Day only to find that they are not registered to vote.

HAVA does help to ameliorate this problem by allowing any voter who shows up at the polls believing he or she is registered, but who is not on the voter rolls, to cast a "provisional ballot." The state determines later if the voter's ballot should be counted.

Finally, HAVA now requires that anyone registering to vote for the first time in a jurisdiction by mail to present some form of identification either when registering or voting. This element of the law has been most controversial, with many civil liberties advocates concerned that certain groups, such as the elderly, minorities and the poor, will not have the requisite documents. Moreover, this requirement may be improperly or discriminatorily implemented by some poll workers.

No paper trail for votes?

Just as the United States is different than many countries in its voter registration processes, it is also different in the way it holds elections. Almost all states hold federal, state, and local elections simultaneously, with voters voting for everything from President of the United States to the local sheriff on the same ballot. Because of this complexity, almost all voters vote on ballots that at least can be counted electronically, so that all races can be counted at once.

In the aftermath of the 2000 election, punch card ballots were considered the prime culprit in putting the election into question. HAVA encouraged states to modernize their voting systems and many jurisdictions went ahead and moved away from paper-based systems and toward electronic and computerized ones. At the same time, because of funding and fraud concerns, many jurisdictions stood pat. In 2004, approximately 32 million voters will still use punch card ballot machines.

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Interestingly, while everyone is now familiar with the problems that can occur counting paper ballots, studies conducted after the 2000 election debacle illustrate other problems with paper ballots. For example, paper ballots are not accessible to blind voters, who must rely on a sighted person to interpret and vote for them. Also, many studies indicate that the votes of minority voters using paper ballots are more likely to go uncounted.

Because of these concerns with paper systems, the estimated proportion of voters using electronic equipment will surge from 13 per cent to 29 per cent. But the move from paper ballots to electronic voting has not been smooth in much of the country. During the 1990s, many companies began to develop and market new electronic voting systems, but many of these systems are not always well-designed. Additionally, a series of mistakes by voting system manufacturers—most notably the Diebold Corporation—over the past two years have seriously undermined the transition to electronic voting.

Many Americans and elected officials have become increasingly alarmed about the possibility that computer-based voting machines can malfunction or be changed by hackers. The concern is that with only an internal vote count on such machines, in a close or questioned election there is no way to independently recount the votes. In the last two years, several studies and a small number of incidents in actual elections have demonstrated that these concerns must be taken seriously.

Many states are now considering requiring all electronic voting systems to have a "voter-verified paper trail." Voters could then review a paper version of their electronic vote, and cast a paper and electronic ballot.

Unfortunately, the limited track record of voter-verified paper trails around the world shows that they can be difficult to implement. When Brazil tested a paper trail system with their national electronic voting system, it resulted in long lines at polling locations. Attaching a printer to voting machines can complicate the voting process by adding all of the problems that printers have—from paper jams to machines running out of paper.

The combination of a large number of voters casting ballots on paper systems and almost 30 per cent of voters casting ballots on electronic equipment that many don't trust will result in any close election coming under intense and highly partisan scrutiny.

Will the US try out different systems?

The 2000 election debacle put great pressure on everyone from the Congress to the local election officials to fix the problems and reform election administration immediately. Unfortunately, it is difficult to know if the right choices have been made. As one journalist has noted states can be "laboratories of experiment." After the 2000 election, it may be beneficial for the new national Election Assistance Commission to fund specific election reform experiments in the states and cities—much as the British are doing today—in order to determine how the 2000 election troubles can be avoided in the future.