

The US Administration of Elections: Decentralized to the Point of Being Dysfunctional

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Although the United States is the oldest constitutional republic in the world, and one in which elections have been held since the English first settled in the early 17th century, it does not have a national organization for conducting elections. Indeed, the first law to govern the administration of elections was passed by the US Congress in 2002, more than 200 years after the approval of the US constitution. The administration of elections is more decentralized in the United States than in any other country in the world. Thirteen thousand separate entities at the local level are mainly responsible for the conduct of elections. The 50 states are theoretically responsible for the supervision of the elections, but few have more authority than the localities. The federal level of government is the least involved in elections.

Historical Background

The US constitution of 1787 established an Electoral College to serve as an intermediary between the voters and the final choice for president and vice-president. That was a progressive innovation for the 18th century but is an anachronism in the 21st.

The constitution says very little about the administration of elections except to suggest that the states have responsibility for determining the procedures for choosing electors for the Electoral College. Over time, the individual states devolved responsibility for the administration of elections to the local level because most elections were for local offices, and national elections occurred at the same time. Counties and municipalities have registered voters, designed the ballot papers, purchased the voting machines and trained polling officials. Few states had a budget to help the local election authorities, and thus they had little power over the conduct of elections.

The only election conducted at national level in the USA is that run by the Electoral College, in which the electors designated by the candidates and chosen by the voters of each state then choose the president. Although Americans vote for four national offices (president, vice-president, senator and member of Congress), these and all other elections are technically the responsibility of the states. In reality, however, they are conducted by 13,000 counties and municipalities, and the election authorities at that level are selected and replaced in many different ways. Most officials are appointed by mayors, who are themselves elected at the local

level; others are appointed by political party officials; some are civil servants. This explains the wide range of administrative and technical procedures.

Until the end of the 19th century, the principal means of voting was a ballot paper given by the political parties to individual voters. This procedure lent itself to vote-buying, and in the 1880s states gradually adopted the 'Australian' secret ballot, which identified all the candidates on a single page, giving voters the opportunity to select the one they supported in privacy.

Although some reforms of the campaign finance system were implemented during the Progressive Era at the beginning of the 20th century, elections and politics remained heavily influenced by money. State laws regulate campaign finance at the state and local elections, but at the federal level the first major reform came in the form of the Campaign Finance Act of 1974 after the Watergate scandal.

In the presidential election of 2000, the losing candidate, Albert Gore, won the popular vote but lost in the state of Florida by 537 votes, which meant that he lost the election. A dispute over the recount was ultimately decided by a single vote in the Supreme Court. Many private and public organizations sought to learn from that experience, and as a result, Congress passed its first federal law on election administration, the Help America Vote Act of 2002 (HAVA).

The Legislative Framework

The statutory requirements for most elections are defined by laws passed by each of the 50 states. HAVA is the only national law addressing the issue of electoral administration (except for civil rights laws and procedures to ensure that African-Americans and other minorities are not disenfranchised). That law sets national standards and requirements for voting, but makes most of them conditional on whether the states decide to accept funding from the Election Assistance Commission (EAC), established by the same law. By the distribution of funds and the requirement that states develop and publish plans for meeting the national standards and establishing state-wide computer-based registration lists, the new law aims to help the states retrieve authority over the conduct of elections and to exercise it in a way that will permit some uniformity at the national level. The states were mandated to be in full compliance with the law by 1 January 2006, but there were many laggards. It is clear that the law did not provide for sufficient uniformity or give the EAC sufficient strength to ensure that all states would assure the voting rights of citizens. A Commission on Federal Election Reform, chaired by Jimmy Carter and James A. Baker, and organized by the American University's Center for Democracy and Election Management, offered 87 recommendations to address the remaining problems in its report, published on 19 September 2005.

Institutional Structure

The EAC was established in Title II of HAVA (Public Law no. 107-252). It is composed of four members, two nominated by Republicans in Congress and two by Democrats. (The Federal Election Commission (FEC) is similarly constituted, but its responsibilities relate only to the supervision of the campaign finance laws.)

The EAC is not an electoral management body but primarily a mechanism for transferring funds from the federal to the state governments to invest in new voting equipment and state-wide registration lists. The institutional structures responsible for administering elections

remain at the state and local level. In most states, the secretary of state is technically responsible for the conduct of elections, but the county and city election boards are the EMBs; they actually conduct the elections. Secretaries of state are elected and tend to be individuals who aspire to higher political office. State and local officials are usually appointed by political party officials, although some are civil servants or are appointed by local elected officials.

The Powers and Functions of the EAC, Secretaries of State and Local Officials

The purpose of the EAC is to serve as an information clearing house, to oversee the testing, certification, de-certification and re-certification of voting system hardware and software, and to provide election assistance and publish voluntary guidance. Any EAC action requires the approval of three members, but its regulatory powers are sharply limited. It cannot, for example, 'issue any rule, promulgate any regulation, or take another action' imposing a requirement on any state or locality.

Thirteen thousand individual counties and municipalities continue to manage virtually every stage of the electoral process. Over time, as HAVA is implemented, it is hoped that the federal government will have more power to impose uniform rules throughout all 50 states, but currently the law is not strong enough to give it that power.

Funding and Accountability

Until HAVA was passed, the federal government did not spend any money on elections, and the states spent very little. Virtually all funding was at the local level.

With the passage of HAVA, the federal government transferred nearly 3 billion US dollars (USD) between 2003 and 2005 to the states to purchase new machines and implement state-wide plans, including for computer-based, state-wide registration lists. Unfortunately, the EAC, which transferred the funding for machines to the states, is a weak institution, receiving for example less than 2 million USD to manage its office in its first year of operation, 2004.

The EAC (like the FEC) is accountable to the Congress, the executive branch and the courts. The local authorities are accountable to their communities and, secondarily, to the state officials and the courts.

The Professionalism of Electoral Officers

For much of US history, election officials' posts were viewed as patronage jobs to be handed out by the party in power. To a great extent, this has not changed. At the local level, there are great difficulties hiring temporary workers, and as a result most are quite old and have great difficulty working through a long and stressful day. For the presidential election in 2000, approximately 100 million people voted in 200,000 polling districts. This required 1.4 million election workers, most with little training, supervised by 20,000 election administrators. Wide variations in electoral professionalism are thus inevitable.

The Strengths and Weaknesses of the US Electoral Administration

Both the strength and the weakness of the US electoral administration system stem from its decentralized nature. It allows for great autonomy but no uniformity. Most Americans have focused on the result rather than the process, but close elections compel a re-focus on the process. Over time, if it is to respond to the many complaints, the federal government will need to insist on a much higher degree of uniformity of rules, and the states will need to retrieve authority from the local areas, starting with the registration list and the voter identification cards.