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The United States Ranks Third in Election Administration in North America – Much to Learn From Our Neighbors - According to *Election Law Journal*

Larchmont, NY, August 3, 2004— The election fiasco in Florida in November 2000 was not unique; almost every state had similar problems, and the Help America Vote Act (HAVA) of 2002 solves only a few of them. In an assessment of how well the United States administers elections as compared to its neighbors – Mexico and Canada – the upcoming issue of *Election Law Journal* (Volume 3, Number 3) finds that the United States ranks third in almost every category. *Election Law Journal* is a peer-reviewed journal published by **Mary Ann Liebert, Inc.** (<http://www.liebertpub.com/elj>).

Twenty scholars, election administrators, and politicians from Mexico, the United States, and Canada contributed articles to this volume, entitled “Democracy and Elections in North America: What Can We Learn From Our Neighbors?” They analyze and compare the administration of elections and the campaign financing systems in each country. They also delve into specific issues, like redistricting, voter registration and identification, and adjudication of disputes, and propose ways that each country can and should learn from each other.

The volume is the culmination of a year-long research project that included a conference at American University (AU) in Washington, D.C. Symposium Editor **Robert A. Pastor** is Director of two Centers at AU that co-sponsored the Symposium – the Center for North American Studies and the Center for Democracy and Election Management. “Despite the political trauma experienced by the American body politic in the Florida election of 2000, and despite the long national debate on ways to improve the electoral and campaign financing systems,” Pastor writes in his concluding article, “no American leader” even posed, let alone answered the question at the heart of this volume – What Can We Learn From Our Neighbors? This volume shows that there is much to learn – not just by the United States but also by Canada and Mexico. And not only would our democracies improve if we learned the lessons, but our relationships would also become more respectful.

Among the many contributions, John Courtney, Professor at the University of Saskatchewan, examines Canada’s redistricting system, which could solve what Pastor describes as the “gravest threat to accountability” in the U.S. today. George Grayson, Professor at the College of William and Mary, shows how the U.S. could learn from Mexico’s registration system. Three articles propose constitutional changes in each country, and Leonard Shambon explains why the election of 2004 is likely to be as problematic as that of 2000.

Election Law Journal is an authoritative peer-reviewed journal published quarterly in print and online. Co-edited by **Daniel H. Lowenstein** of UCLA Law School and **Richard Hasen** of Loyola Law School, the journal covers the emerging specialty of election law for attorneys, election administrators, political professionals, and legal scholars. It covers election law on the federal, state, and local levels in the U.S. and in 75 countries around the world. A complete table of contents and a free sample issue may be viewed online at www.liebertpub.com/ELJ.

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EDITORIAL

- The Party Line** 395
Daniel H. Lowenstein and Richard L. Hasen
-

SYMPOSIUM

Democracy and Elections in North America: What Can We Learn from Our Neighbors?

**Symposium Editor
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American University
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INTRODUCTION

- The State of Democracy in North America** 396
Robert A. Pastor

WHAT'S RIGHT AND WRONG WITH DEMOCRACY—A PRELIMINARY SURVEY

- What's Right and Wrong with Democracy in Canada** 400
Joe Clark
- What's Right and Wrong with Democracy in Mexico** 402
Jorge Castañeda
- What's Right and Wrong with Democracy in the United States** 404
John Anderson

THE ADMINISTRATION OF ELECTIONS

- The Administration of Canada's Independent, Non-Partisan Approach** 406
Jean-Pierre Kingsley
- Mexico's Search for Credibility** 412
Jacqueline Peschard
- Implementing the Help America Vote Act** 424
Leonard M. Shambon

(continued)

CAMPAIGN FINANCE SYSTEMS

- Regulating Campaign Finance in Canada: Strengths and Weaknesses** 444
Lisa Young
- Financing and Monitoring Political Parties in Mexico: Strengths and Weaknesses** 463
José de Jesús Orozco Henríquez
- Current Regulation and Future Challenges for Campaign Financing in the United States** 474
Donald J. Simon

PROCEDURAL ISSUES—LEARNING FROM EACH OTHER

- Redistricting: What the United States Can Learn from Canada** 488
John C. Courtney
- Instant Runoff Voting: What Mexico (and Others) Could Learn** 501
Robert Richie
- Registering and Identifying Voters: What the United States Can Learn from Mexico** 513
George W. Grayson
- Selecting Candidates: What Mexico Should (and Shouldn't) Learn from the United States** 521
Steve T. Wuchs
- Settling Election Disputes: What the United States Can Learn from Mexico** 530
Todd A. Eisenstadt
- Enforcing Campaign Finance Laws: What Others Can Learn from Canada** 537
Diane R. Davidson

CONSTITUTIONAL REFORMS

- Redefining Electoral Democracy in Canada** 545
Keith Archer
- A Right-to-Vote Amendment for the U.S. Constitution: Confronting America's Structural Democracy Deficit** 559
Jamin Raskin
- The Prohibition on Consecutive Reelection in the Mexican Congress** 574
Jeffrey A. Weldon

CONCLUSION: LESSONS BY, OF, AND FOR NORTH AMERICA'S DEMOCRACIES

- What Canada and Mexico Can Learn from Its Neighbors** 580
Robert A. Pastor, with comments by Joe Clark and Jesus Silva-Herzog
- Improving the U.S. Electoral System: Lessons from Canada and Mexico** 584
Robert A. Pastor

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Introduction: The State of Democracy in North America

ROBERT A. PASTOR

THE MILLENNIUM ARRIVED on the doorsteps of North America in a most unusual way. All three governments—in Mexico, Canada, and the United States—had national elections in 2000, an unusual occurrence in itself. The results were important for the citizens of each country, but our concern in this volume is with the electoral process—not the outcome. As in the past, the Canadian elections were conducted well—a brief campaign, with small contributions—and few people outside the country paid much attention.

The surprise came in the two countries to Canada's south. Thousands of election observers from all over the world declared the elections free and fair in Mexico—but not in the United States. After more than seventy years of one-party, authoritarian rule and chronic electoral fraud, Mexico made a successful transition to a democratic electoral system. In contrast, after two hundred years of competitive democracy, the U.S. electoral system almost broke down in a fit of recrimination and dys-

functional administration that impugned the election's results and embarrassed Americans.

Two important lessons can be drawn from that experience. The first is that one-party systems can become democratic; Mexico did it in twelve years. In 1988, after winning an election widely viewed as fraudulent, President Carlos Salinas began a slow process that culminated with the establishment of a professional, autonomous Federal Election Institute (IFE) under his successor, Ernesto Zedillo. The IFE developed state-of-the-art identification cards and a nation-wide computer-based registration system. It trained thousands of poll-workers, selected randomly from each district, and educated an entire population in the importance of engaging in the process to assure a free election.

Because of a history of election fraud, Mexicans had to work extra hard to establish the credibility of the electoral process for their people. In June 1993, a nation-wide poll by MORI of Mexico showed Mexicans evenly divided on the question of whether the 1994 presidential elections would be clean (34%) or dirty (34%), with the remainder unsure or not saying. A year later, almost half of the population said that they expected fraud. On the eve of the election of 2000, both the Mexican government and Vicente Fox, then the candidate for the opposition National Action Party (PAN), invited me to organize an international observer mission because both expected a very close election and were fearful as to what the other would do. Fox put the issue most clearly: "The IFE (Federal Election Institute) has done a superb job over the last years in establishing its credibility. It has, we believe, narrowed the margin of electoral manipulation to less than 3%, but if the election is that close, we fear that the PRI will

Robert A. Pastor, Vice President of International Affairs and Professor of International Relations at American University (AU), established and directs the two new Centers at AU, which co-sponsored the conference, the Center for Democracy and Election Management and the Center for North American Studies. For seventeen years prior to coming to AU in September 2002, Dr. Pastor was a professor at Emory University and was founder and director of programs at The Carter Center on Latin America and the Caribbean and on election-monitoring and democracy. He is the author of fifteen books, including *Toward a North American Community: Lessons from the Old World for the New* (Institute for International Economics, 2001). He was President Carter's representative on the Carter-Ford Commission on Federal Election Reform and is a member of the National Governing Board of Common Cause.

try to steal it.” The fact that the IFE had persuaded the leader of the opposition of its credibility and competence was a compelling sign that Mexico had traveled a great distance toward democracy in a relatively short time. The fact that Fox’s election was quickly recognized by the IFE and by the President of Mexico was a further indication Mexico had reached its democratic destination. The first lesson, then, is that democracy is possible, even in countries with a long history of electoral manipulation.

The second lesson came from the United States, and it is that complacency with regard to the administration of elections can be dangerous. Americans had begun to look at their elections as a “horse race,” and they became spectators. They forgot that democracy requires constant nurturing, fixing, and engagement. The electoral system was intended to be decentralized and conducted by the states, but over time, the states devolved authority to 13,000 counties and municipalities, which had scarce funds for machines and less for training. Each of those 13,000 units designed their own ballots, chose their own machines, interpreted disputed ballots, counted the votes, decided which votes would be counted, and sent the results, usually very slowly, to the Secretary of State’s office. Secretaries of State were usually partisan leaders, but they were charged with administering elections impartially. What happened in 2000 was unique only in the sense that the outcome of the presidential election was so close; 537 votes out of more than 100 million cast ultimately separated the winner from the loser in a single decisive state, while the loser—Al Gore—actually won the nation-wide popular vote by more than 500,000 votes. When people focused on the vote recount, they were distressed at the chaos and incompetence of the electoral system. Just as Mexico had spent years to make its democracy credible, the United States had spent years allowing its system to deteriorate.

After the U.S. election in 2000, the U.S. Congress and a bipartisan Commission on Election Reform, chaired by former U.S. Presidents Jimmy Carter and Gerald Ford, and staffed by the Miller Center of the University of Virginia and The Century Foundation, undertook extensive evaluations of the election. Based on the

work of the commission and other projects, Congress debated the issues and approved the Help American Vote Act (HAVA) on October 29, 2002, and President Bush signed it into law. Indeed, that was the second major electoral reform in that year—the first being the McCain-Feingold Bipartisan Campaign Finance Reform Act, which banned “soft money” and “sham issue ads.” Both were the products of scandals.

In one hearing, the Commission on Election Reform heard from Jean-Pierre Kingsley, the Chief Electoral Officer of Canada, and from scholars familiar with other countries’ election systems, but, in the end, those who wrote the final report and engaged in the Congressional debate failed to learn from any other country’s experience. This failure is particularly sad given that all three countries of North America entered into an agreement a decade ago—The North American Free Trade Agreement (NAFTA)—that was intended to establish a unique and enduring partnership.

The purpose of this symposium is to correct that omission; indeed, its goal is to identify ways for each North American country to improve its democracy by learning from each other. This issue of the *Election Law Journal* contains papers that were presented at a conference at American University in Washington, D.C. on November 14–15, 2003. That conference was sponsored by American University’s two new centers—on Democracy and Election Management and on North American Studies—as well as by the *Election Law Journal*, Elections Canada, the Electoral Tribunal of Mexico, and the U.S. Agency for International Development (AID).

This symposium has three more specific goals. First, we seek to learn more about the strengths and weaknesses of democracy in each of our three countries. Let us define “democracy” as a system of government whereby the people can choose their leaders in a competitive and free contest at regular intervals, and within which these leaders have effective authority. Genuinely free elections require independent institutions, a free press, civil and political liberties, and choice. Democracy can be more than free and fair elections, but it cannot be less.

Second, we seek to learn the “best practices” from each other with regard to administering

elections and regulating campaign finance, but we go beyond that. John Courtney explains the Canadian system on redistricting so that the United States might learn how to correct one of the most serious flaws in its system. Steve Wuhs describes the ways in which party candidates are selected by primaries in the United States so that Mexico can avoid party elites controlling the process. George Grayson explains Mexico's system for registering and identifying voters, and Todd Eisenstadt examines Mexico's system for settling election disputes with the expectation that there might be something for the United States to learn. Robert Richie sketches "instant runoff voting"—a method that could be of use to Mexico and others. And Diane Davidson focuses on the ways in which Canada enforces its campaign finance laws.

This volume is organized into six parts. In the first part, three politicians, who are also men of ideas from each of the three countries—Joe Clark of Canada, Jorge Castañeda of Mexico, and John Anderson of the United States—offer their evaluations of the strengths and weaknesses of each system. We are fortunate to have in this issue contributions by people who have worked in government and can now reflect on their experiences with pride but also with constructive criticism.

Parts II and III have papers on the administration of elections and campaign financing in all three countries. What is fascinating about all six papers is the thread that connects them. Without realizing it, all three countries have modified the systems by which they administer their elections and regulate the financing of campaigns in response to perceived or actual crises and in directions that are convergent, if not the same. Canada took the lead in establishing a more uniform and impartial system in 1920, but the system only really began to spread its wings in the last two decades. We shall read how Mexico made a rapid transition from a government-controlled system to one in which nonpartisan leaders and a professional electoral service manage elections independently of the government. And finally, the United States, after the 2000 debacle, approved the first law in its history that sought to impose a certain degree of uniformity and minimal standards on elections throughout the country.

In the area of campaign finance, the most serious reforms undertaken by Canada and the United States were approved in 1974 and in the last two years. Mexico's progress is one decade old. All three countries try very hard to regulate and limit contributions for campaigns and parties, to provide some public financing, and to insist on full disclosure of contributions. All three have come to realize how difficult it is to control the flow of money and assure the integrity of government, but all keep trying.

In part IV, six scholars examine electoral procedures that have worked well in one country with the purpose of considering whether they could work in the other countries. The subjects include redistricting, instant runoff voting, registration and identification systems, party nomination procedures, resolving electoral disputes in courts, and enforcing campaign finance laws.

In part V, we look at constitutional changes that the authors believe would make each country's democracy stronger.

Finally, in the conclusion, part VI, Joe Clark, Jesus Silva-Herzog, and I draw conclusions from the other papers and summarize specific ways each country can improve its electoral system. Clark and Silva-Herzog commented at the end of the conference, and I have summarized their views—based on the transcript—and added lessons drawn from other contributions in this issue. In my concluding article, I propose an ideal U.S. system based on what can be learned from Mexico and Canada.

Our third goal for this symposium is to help the citizens of each of the three North American countries to begin to think about each other differently. During the last decade, North America has dismantled trade and investment barriers, and economic and social integration has accelerated. But North America has failed to establish any credible joint institutions, and thus, its leaders and people have not developed a continental consciousness or perspective on transnational issues. In this symposium, we approach these issues by asking what can each learn from the other that would make North America greater than the sum of its parts.

ACKNOWLEDGMENTS

I owe a debt of gratitude to the sponsors mentioned above, the people who wrote the excellent, path-breaking articles in this volume, and the commentators, who included Richard Smolka, Thomas E. Mann, Ellen Weintraub, James Thurber, Thomas Edsall, Juan Williams, and Richard Hasen. I am grateful to many others who assisted in commissioning those papers, organizing the conference, commenting and editing the various manuscripts, and assembling this issue. Let me begin by acknowledging the assistance of Dr. Susan Burgerman, and Dr. David Stemper, Associate Director of the Center for North American Studies, both of whom contributed ideas, help in organizing the conference, and comments on the papers. Next, let me thank Dr. Todd Eisenstadt of American University, who helped conceptualize our conference and provided support through his own grant from AID based on his work and the preceding conference on Mexico's democratic consolidation. The entire project could not have been completed without Ms. Murray Gormly, who is my Executive Assistant, and both of us

were helped in every stage by Helen McClure, Diana Moyer, and Rebecca Cardozo; by interns Tamika Cameron, Jacob Winship, and Lida Bteddani; and by special events coordinator Katherine Kirlin.

Finally, I want to express my gratitude to Richard Hasen and Daniel Lowenstein, the editors of the *Election Law Journal*, for posing the question that ultimately led to this issue—*What can the United States learn from its neighbors to improve its elections and democracy?*—and for helping me to move this issue from an idea to an outstanding symposium. I would also like to thank the Electoral Tribunal of Mexico for translating this symposium into Spanish and circulating it throughout Latin America.

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What Canada and Mexico Can Learn from Its Neighbors

ROBERT A. PASTOR, WITH COMMENTS BY JOE CLARK AND JESÚS SILVA-HERZOG

IN THIS CONCLUDING SECTION, Joe Clark, Canada's former Prime Minister, and Jesús Silva-Herzog, an eminent Mexican diplomat, evaluated the other presentations and drew some lessons for each of their countries. In the next article, I will do the same from the perspective of the United States. However, since Clark and Silva-Herzog commented briefly and focused on a few themes, we have decided to combine them below and to add ideas from other articles in this symposium.

WHAT CANADA CAN LEARN FROM ITS NEIGHBORS

Joe Clark was cautious about extracting lessons from other systems, believing "there is no point speculating about whether to transplant an institution in one country because it has legitimacy in another. Major reforms can only work if they acquire legitimacy in the context of the national situation." He thinks it is debatable how well Canadian institutions ac-

tually work, and dubious as to whether they should be models. But having said that, he agrees with John Courtney that in the case of electoral boundaries, Canada made the critical changes that permitted their nonpartisan Commissions to be effective because "it was clear that the status quo was not acceptable to a significant portion of the population . . . [and there was] real public pressure for the reforms. Reforms won't happen unless the public can see that workable alternatives exist, and unless the individuals and institutions that can confer legitimacy on the reforms are in the process." But he also believes that those who would try to "marginalize or underestimate the role of elected officials" make a serious mistake for two reasons. Elected officials can be more innovative than civil servants, and they are the ones who are accountable to the people.

With regard to campaign financing, Clark is pessimistic: "Big money will always find its way around the rules in any system." But that doesn't mean that public officials should not regulate contributions and expenditures. Quite the contrary, he argues that governments must find a way "to stay ahead of donors looking for loopholes in the system." In this area, Clark believes, "the United States is a house upon the hill, but it's a bawdy house . . . that can infect the citizens of other countries." There is one area even in the "bawdy house," that the U.S. might have something to offer its neighbors. The U.S. campaign finance system requires the immediate and complete disclosure of campaign contributions, and according to Lisa Young, Canada would benefit from such a system. At the current time, contributions are often reported after the election, which is too late for voters to judge.

Joe Clark was Canada's sixteenth Prime Minister. He was first elected to the House of Commons representing Alberta in 1972. Four years later, at age 36, he was elected leader of the Progressive Conservative Party. Three years later, he defeated Pierre Trudeau to become the youngest Prime Minister in Canadian history. He later served as Foreign Minister.

Jesús Silva-Herzog was appointed Ambassador from Mexico to the United States in December 1994 and continued in the post until 1997. In his more than thirty-eight years of distinguished service to the Government of Mexico, Ambassador Silva-Herzog has served as the Ambassador from Mexico to Spain, Minister of Tourism, Minister of Finance and Public Credit, general manager of Banco de Mexico, and general director of the National Institute for Workers Housing Fund.

Still one more area that Canada might usefully learn a lesson from the United States is in the area of the administration of candidate selection by each party. A recent election to choose a Liberal candidate for a seat in Hamilton, Ontario led to serious questions about the fairness of the voting. Canada would do well to learn from the U.S. experience and delegate responsibility for the administration of primary elections to the central electoral authorities.

Keith Archer raises some fundamental, constitutional questions about the Canadian system, and though he does not explicitly draw lessons from Canada's two neighbors, he could have. He proposes that Canada move from a strictly first-past-the-post, constituent-based electoral system to a mixed-member proportional system (MMP). He sees this as an answer to two sets of chronic problems plaguing the Canadian system: the disparity between the percentage of people who vote for a party and the number of seats a party obtains and the degree to which regional-based parties can be overly represented and thereby undermine the national party system. His two concerns are shared by the Canadian people; the question is whether the MMP system would solve these problems.

Mexico has an MMP system in which 300 deputies are elected on a constituent-based system and 200 by proportional representation. To Mexicans, that system has contributed to multi-party deadlock, which has precluded the approval of necessary reforms. While Archer thinks that Canada would be better off with more political parties, many Mexicans seem to believe the opposite. This is another way of saying there are trade-offs with every reform, and there may be techniques that could deal more effectively with some problems than would constitutional changes. For example, in a proportional-representation or an MMP system, one could adjust the percentage of voters that a party needs to win before it gets a seat. If it lowers the threshold, as is the case with Israel, there will be many small parties. If it raises the threshold, the major parties would become stronger.

A second proposal that Archer suggests is to move toward a fixed date for elections rather than to give the incumbent the discretion to se-

lect a date within a five-year mandate. The United States has long experience with a fixed-date system, and what it has discovered is that it encourages endless campaigns, which are expensive, corrupting, and distracting. It is possible too that Mexico might be moving in this direction as well now that democratic politics offer opportunities for candidates to emerge from relative obscurity to the Presidency. Some in the United States, myself included, look with envy at the more civil and brief 36-day election campaign in Canada, which is more likely to work if the date of the election is not fixed.

Clark concluded his comments by suggesting that the two great innovations of Canada—the office of Chief Electoral Officer and the Boundaries Commission—were established because of “public pressure [and because] those who initiated the reforms proceeded by building a constituency. They made a case to the affected populations that it was in their interest to buy into the reform.” These two institutions as well as the process by which they were approved do offer a useful model, particularly for the United States.

WHAT MEXICO CAN LEARN FROM ITS NEIGHBORS

Jesus Silva-Herzog began his comments by reminding the participants how far Mexico had come in a relatively short time. Twenty years ago, he noted, Mexican officials would have avoided a symposium on North American democracy by arguing that “Mexico’s electoral system was a domestic affair and that scrutiny by other states, such as the United States and Canada, constituted intervention and was not permissible.” By a clever anecdote, he acknowledged that such a stance might have been rooted more in the state of Mexico’s polity than its principles. “While I was Ambassador here in Washington,” Silva-Herzog said with a smile, “Americans would tell me that their electoral system was so efficient that two hours after the polls closed, they would know who the winner was. I would reply that even without that technology and modern equipment, in Mexico we knew who the president was going to be before the elections!”

Mexico has changed fundamentally, but that does not mean that its system is perfect, or that it cannot learn from its neighbors. An issue that concerned Silva-Herzog is the low voter turnout, which occurred in the midterm elections in Mexico in 2003. This is a problem shared by Canada and the United States as well. "I don't think that the problem is with our electoral systems," he said. "Something much more important is at fault—political parties have fallen to the lowest degree of credibility among voters. In Mexico, the political parties rank only slightly ahead of the police. . . . What can be done? An important element is the negative messages that the parties in Mexico are sending to the public. This may alienate the general public, and particularly the youth, from the political parties and system."

The second issue he raised is campaign finance. Mexico's problems are different from those of the United States and Canada. In Mexico, public financing is too high, and the formula for allocating funds keeps increasing the level each year. In 2003, a year in which there was no Presidential campaign, the political parties received about \$500 million.

Two corruption scandals in early 2004 may provide a tailwind to secure some political reforms. Political leaders are proposing a reduction in the amount of public money to be given to parties, a shrinking of the duration of presidential campaigns from six to three months; and better regulation and enforcement of contributions from individuals and companies. Silva-Herzog also expressed his concern that campaigns are growing too long: "I am impressed that Canadian campaigns are limited to thirty-six days. As a matter of fact, the 2006 presidential campaign in Mexico has already begun, three years ahead of schedule. And a lot of people are already contributing money to different candidates in what they're calling the 'pre-campaign.'" One of the proposals in Congress would reduce the demand for funds by having IFE purchase time from the media directly.

"Another very pressing issue for Mexico," according to Silva-Herzog, "is the imminent extension of the vote to Mexicans living abroad. Unlike in Canada, where perhaps 10,000 bal-

lots are mailed from abroad, in the case of Mexico several million potential voters are spread throughout the U.S., and they are not just concentrated in California or in Texas. The complications for election administration this poses will present an enormous challenge, one that cannot simply be handled by the consulates." In fact, absentee balloting has always been a source of irregularities in the United States, and so this will pose a particularly delicate problem for Mexico.

There are two other areas in substantial need of reform. Mexico, like Canada, needs to consider delegating responsibility for the primary elections of each of its major parties to the central election authorities. Steve Wuhs shows why that is a crisis waiting to happen. Jeffrey Weldon explains that the decision by Mexico to prohibit consecutive re-election for members of Congress and state legislatures was rooted in the desire by the Mexican official party in the 1930s to secure control from local party bosses. Indeed, that procedural device soon became one of the most effective levers for the President to impose his will on the government.

In a new democratic era, however, Mexicans have come to understand the need to change that provision. If legislators are to gain the experience needed to write laws, and if they are to be accountable to their people, they need to stand for re-election. Of all the constitutional proposals that have been made, most Mexicans agree that this is the most important, but given the stalemate among the three major political parties, it is by no means clear that they will approve of this reform soon.

The pride of Mexico is the establishment of the Federal Election Institute and its professional electoral service. Through careful work, independence, and nonpartisanship, IFE attained the "highest credibility and prestige of any public institution in Mexico. Only the church, the Army, and physicians are more highly rated than IFE," said Silva-Herzog. But in the election for the new Citizen Councilors in November 2003, the two major political parties—the PRI and the PAN—collaborated to exclude representation by the PRD. This was a very unfortunate development. The new Exec-

Improving the U.S. Electoral System: Lessons from Canada and Mexico

ROBERT A. PASTOR

DESPITE THE POLITICAL TRAUMA experienced by the American body politic in the Florida election of 2000, and despite the long national debate on ways to improve the electoral and campaign financing system that followed, no American leader stood up to answer a question, which should now be obvious to any reader of this volume: “What should we learn from our two neighbors?” Indeed, no one even posed the question.

This omission from the debate reflects a debilitating flaw in the United States, an arrogance and disrespect of our neighbors, an unstated belief that we have nothing to learn, and they have nothing to offer. Such a view deprives us of new ideas to improve our democracy, but it also erodes our capacity to lead because if our friends do not think we will listen, they will not collaborate, let alone follow. The competitiveness and strength of American business derive from many sources, but an important one has been openness to new ideas

from abroad. If America’s political leaders do not pay attention to friendly advice about ways to improve our electoral system, then our democracy could wither. If our diplomats fail to take into account the views of our neighbors or allies, we will find ourselves lonely, resented, and sometimes resisted by the rest of the world.

For U.S. citizens, the most disturbing conclusion of this volume is that the U.S. electoral system is unquestionably the weakest in North America. It is very hard for Americans to accept, but the truth is that in the last decade of the 20th century, the Mexican electoral system literally leaped over that of the United States—moving from one that was permeated by fraud to one of the most advanced in the world. Canada’s parliamentary system is quite different from the U.S. presidential system, but it still offers numerous useful ideas that could be adapted and adopted by the United States to address, if not solve, chronic problems.

In this article, I will begin by reviewing the lessons of 2000 and the legislative response, the “Help America Vote Act of 2002.” Then, I will identify the operational objectives that we should seek as we consider reforms of the electoral system. Finally, I will borrow from Canadian and Mexican procedures and institutions those elements that could be helpful to the United States in the following areas: (1) administration of elections; (2) registration and identification of voters; (3) definition of electoral boundaries (redistricting); (4) campaign finance and access to the media; (5) procedures and technologies of voting; (6) civic education; (7) training of poll workers; and (8) constitutional changes.

Robert A. Pastor, Vice President of International Affairs and Professor of International Relations at American University (AU), established and directs the two new Centers at AU, which co-sponsored the conference, the Center for Democracy and Election Management and the Center for North American Studies. For seventeen years prior to coming to AU in September 2002, Dr. Pastor was a professor at Emory University and was founder and director of programs at The Carter Center on Latin America and the Caribbean and on election-monitoring and democracy. He is the author of fifteen books, including *Toward a North American Community: Lessons from the Old World for the New* (Institute for International Economics, 2001). He was former President Jimmy Carter’s representative on the National Commission on Federal Election Reform and is a member of the National Governing Board of Common Cause.

WHAT WENT WRONG IN 2000, AND DID HAVA MAKE IT RIGHT?

America reacted to the Florida fiasco, as Leonard Shambon notes in this symposium, at several different levels. Studies came in the first wave, and no example is more typical of the American problem-solving style than the announcement by the Presidents of MIT and Cal-Tech to undertake a project to solve the electoral problem. The unstated expectation was that there was a technological fix, and America's best technological schools would find it. Although the professors engaged in the study knew little, if anything, about election administration when they began, to their credit, they did a comprehensive analysis. The first thing they learned was that Florida was not unique. The machines in every state lost, or rather failed to count, an average of 2.3 percent of their ballots. Secondly, they found, to their surprise, that using the internet for voting would be a grave mistake, and the most modern electronic voting machines (DRE's or "direct recording electronic" machines) committed, in some cases, more errors than the punch-card machines. Indeed, the two institutes had to swallow hard in acknowledging that the most secure and least error-prone technology was the paper ballot.

The closer one studied the various machines for voting, the more it appeared that the machines were not really the problem. The problem was that there was little, if any, funding for maintaining the old machines or even testing them, and less funding for training pollworkers on how to use them. The far more serious issue was that the U.S. system was dysfunctionally decentralized, fragmented into 13,000 sovereign counties and municipalities, each one designing its own ballots, organizing its own electoral register, and counting its votes in its own way and in some cases failing to decide on a standard beforehand for judging disputed ballots.

In drafting what would become the "Help America Vote Act of 2002 (HAVA)," members of Congress followed the popular reaction to the punch-card machines by authorizing \$650 million to buy and discard them, but they failed to indicate which machines should be selected

to replace them. Instead, they mandated a series of standards that no existing machine can meet, and established an Election Assistance Commission (EAC) to draft guidelines for selecting the best machines. Unfortunately, that Commission only took office in December 2003 and is not funded sufficiently to undertake the studies needed to set the guidelines. Thus, the counties and municipalities are confused as to what they should do. They have been busy defining their plans and trying to implement the two requirements mandated by 2004—rules mandating voter identification for first-time voters who registered by mail and provisional ballots for those whose names were not on the registry of the precinct. Since the many other requirements do not need to be implemented until January 2006, one can expect few changes by the elections of 2004, except that the American people will be watching their elections more closely, and there is likely to be a proliferation of litigation.

In the debate on HAVA, Democrats and Republicans took different sides on two key issues. Democrats wanted to make voting easier while mandating a set of requirements on the states and localities, while Republicans wanted to prevent fraud while insisting that the federal guidelines to the states should not be mandatory. Of course, any international election observer knows that the parties' concerns are simply two sides of the same coin of a free and fair election. In the end, the final law included elements proposed by each side, but the bill did not weave these parts together in a way that assured they would improve the process.

One very positive and important element of HAVA is that it authorized \$3.86 billion—by March 2004, \$2.3 billion had been appropriated—which could be transferred to the states so long as the Election Assistance Commission (EAC) determined that their plans would make them compliant with the standards identified in the bill. One of those standards is a computer-based, statewide registration system. The funding therefore could have a double positive effect: it could encourage the states to retrieve some of their authority over elections from counties and municipalities, and it could compel the states to adopt uniform procedures that would eliminate many of the problems identi-

fied by the studies following the election of 2000. As history has shown, the Federal power of the purse is such that it can enforce equal application of the law and promote a national centralization of functions. Both centralization and uniformity are needed in the U.S. electoral system, but they were a long time in coming. Indeed, HAVA was America's first national law on the administration of elections.

GOALS AND CHALLENGES

Let us, therefore, return to the beginning. What kind of system do we want? Let me offer four sets of goals:

- First, democracy means *genuine choice* for voters because that is the essence of accountability. The system only works if elected officials are held accountable by the voters at periodic intervals, and that can only occur when they face strong opponents. In other words, a democratic system should *promote competition between candidates, not collusion among the parties to preclude choice*. If people feel they don't have a choice, they are likely to protest in one form or another—either by abstaining or attacking the system in some form.
- Second, democracy means that every citizen has an *equal voice* and opportunity to choose leaders. This means that a market-based democracy needs to develop strong filters to keep the concentration of economic power and social status from infecting the political system. The wealthy use their capital to influence politicians, and in modern democracies, they do so by making large campaign contributions. (In the old days, they would simply bribe the politicians, but rules and a free media make this path dangerous and thus exceptional in advanced democracies.)
- Third, the election machinery needs to be uniform, transparent, and effective in capturing the personal preferences of individual voters and aggregating them into a collective decision. This means that *each vote should count, and the winner should be the one with the most votes. It also means that*

the administrators of the election must be impartial and non-partisan and perceived as such by the public.

- And fourth, the political system should create *incentives for participation and an educated citizenry*.

Regrettably, the United States scores poorly on each of the four objectives, but our neighbors offer a wealth of techniques and procedures that can improve our standing. Let us therefore turn to the eight elements that constitute the U.S. electoral system and borrow from each neighbor in order to assemble the model system.

1. The administration of elections

There is much to borrow from our neighbors in the administration of elections. In fact, the United States currently combines the worst of all systems. First, as was noted before, it is decentralized beyond the limits of the sensible. Second, almost all of the officials responsible for administering the elections are partisan and/or part of the government. Americans were surprised to learn that Katharine Harris, the Secretary of State in Florida, and the highest official of the state responsible for the elections, was a very partisan Republican. Florida was not the exception.

The Federal Election Commission (FEC) and the new Election Assistance Commission (EAC) are a step above the partisan, government-based system for administering elections, but they remain deeply flawed institutions because they are bi-partisan. In both cases, the Democratic and Republican parties appoint an equal number of individuals. In the case of the FEC, that has proven a recipe either for stalemate or for collusion against the public interest. The FEC, as Donald Simon demonstrates in his article in this symposium, either divides in half along partisan lines, or all the members decide to protect both parties against full enforcement of the law. The "public interest" is not a criterion for making decisions.

Canada, in 1920, established the position of Chief Electoral Officer (CEO) and since then, no one has questioned that office's nonpartisanship. Mexico's struggle to establish a non-

partisan and professional election administration (IFE) was much more difficult, but its success permitted a smooth transition to democracy in 2000.

Both cases have relevance for the United States. Canada shares with the United States a strong federal system. Elections for Parliament are conducted at the provincial level, but unlike in the U.S., the Canadian CEO can impose uniformity in ballots and rules, and he has consolidated a national registration system. The Canadian CEO reports directly to Parliament; he can draw on a budget independent of executive-proposed appropriations. The CEO appoints a Commissioner of Canada Elections, who alone can prosecute violations of electoral or campaign finance laws, and the Broadcasting Arbitrator, who allocates paid and free broadcasting time.

Mexico also has a federal system, but the central government exerts much more power over the states. It established a fourth branch of government in charge of elections, including IFE and an Electoral Court (TRIFE) that can settle electoral disputes.

What should the United States borrow from these two systems? First, at the national level, the United States should establish a National Election Commission (NEC), and its Director and five-person Board should be nonpartisan. Some people view the idea of a nonpartisan commission in Washington as naïve, but the Chairman of the Federal Reserve Bank is viewed as non-partisan and is typically approved by leaders of both parties. If the U.S. dollar is important enough to be shielded from politics, shouldn't the vote be viewed in the same way? One needs to begin by defining the job correctly. The Director of the National Elections Commission should be a leader, who has demonstrated professionalism and integrity and is viewed as above politics. One could look to a university president or a judge. As for mode of appointment, the leaders of the Senate minority party could propose a list of five such individuals, and the Senate Majority leader would select from that list, or insist on another. The individual would have to be approved by two-thirds vote of the Senate, but it would be better if the person were approved unanimously, as occurred with the current CEO of Canada.

The mandate of the Commission would resemble that of Elections Canada. Testifying before Parliament in September 2003, Jean-Pierre Kingsley said: "As Chief Electoral Officer, it is my duty to be ready for every electoral scenario that might influence the administration of elections."¹ No one in the United States can make such a statement at this time, but the Director of the NEC would have such a role, acting as an ombudsman on behalf of the public's interest in democracy, and as a fire-fighter to anticipate and respond to electoral crises. The NEC would assume all of the responsibilities of the FEC and the EAC. It would monitor campaign finance laws and rules, and would prosecute any violations. It would seek injunctions, question commercials, and encourage the nation to vote and find ways to make the elections more meaningful. It would set guidelines for voting machines and provide funds for conducting elections in exchange for assuring that communities would meet minimum standards for a fair and free election. It would construct a national registration list, which would interface with all the state systems and ensure that each time a voter moved from one state to another, the national list would be modified accordingly.

The same pattern would obtain at the state level. The Secretaries of State (and for New Jersey, the Attorney General) would be stripped of their responsibility to conduct elections in favor of a State Elections Commission that would be nonpartisan and independent.

It would be useful to explore whether an independent electoral court like that in Mexico might be needed. It permits the judges to have greater expertise, but it should only become a viable idea if the body of litigation is of such a critical mass as to require a more permanent court.

2. Registration and identification of voters

In comparison to our neighbors, other advanced democracies and even those in the de-

¹Parliament of Canada, 37th Parliament, 2nd Session, Standing Committee on Procedure and House Affairs, Thursday, September 25, 2003, p. 10.

veloping world, the United States registers one of the lowest percentages of its eligible voters, has one of the weakest, most porous systems for identifying voters, and has one of the two lowest levels of voter participation, particularly among youth. The United States registers 55 percent of eligible voters as compared to more than 95 percent in Canada and Mexico. To assure the accuracy of its national registration list, Mexico audited it 36 times between 1994 and 2000. In contrast, the United States has literally thousands of unconnected registration lists. Most have been inflated by the National Motor Voter Act of 1993 and then subjected to selective and often arbitrary “purging.”

HAVA will eventually establish state-wide computer-based registration lists, and this will be a major step forward. However, of the one-sixth of the population who move each year, one-fourth of them move out of state. The system for transferring registration when a citizen moves out of state is very weak. Moreover, with the population of non-citizens growing rapidly, and with prohibitions on seeking identification of voters, there are few ways to assure that only those eligible will vote once. HAVA requires “provisional balloting”—the right to vote if one’s name is not on the precinct’s list—but some states will not count that vote if the citizen has moved from another county or state. And for the other precincts, the job of validating that the person did not vote elsewhere is time-consuming, expensive, and problematic. Many places therefore leave the counting of provisional ballots to last, or they do not even bother.

There are easier ways to deal with the problems of registration and identification of voters; indeed, every country has a better system than the United States. Mexico invested \$750 million in a state-of-the-art identification card system with a digitized photograph, optical character recognition, a hologram, thumbprint and signature. The Mexican registration list at the national, state, and precinct levels also includes the photo of each voter. The system gave Mexicans confidence in the electoral process, and people have taken such pride in their voter ID that they use it for all forms of identification. Moreover, the system has virtually eliminated voter fraud, an extraordinary achieve-

ment in Mexico. In contrast, between 1996 and 2002, the FEC has listed, according to George Grayson, 323 cases of fraud, ranging from falsifying signatures to requesting multiple absentee ballots to destroying ballots.

One argument against identification cards is that their issuance would be a form of government control or intrusiveness, but abuse of that system would be illegal just as wire-tapping is illegal without a search warrant. One would not consider banning the telephone because it could be abused, or the automobile because of car accidents. Others argue that identification cards are antithetical to a democracy, but more than 100 democracies use identification cards. To implement a fraud-proof card and a better registration system would be expensive, no doubt. Mexico actually spends roughly ten times more per capita to manage its electoral process than the United States,² and while that may be high, it is also a statement as to how little the United States has been willing to invest in its elections, and how valuable fair elections are to Mexicans.

Our goal is to have an electoral system that is both inclusive and resistant to fraud—one in which more citizens will register and vote while assuring that *only citizens* vote and that they do so *only once*. This could be done by providing a secure “Citizenship Card” with a photo and a magnetic strip to every American citizen. An American would only need to register once—at voting age or at naturalization. In the senior year in high school, all students would be required to take a civic education course that included information on how to vote and also how to conduct an election. At the end of the course, students who are citizens would receive the card, which would take effect on their 18th birthday (and for non-citizens, on naturalization). Each time, they moved they would swipe their card in a machine—similar to those that verify credit cards. That machine would connect with the NEC’s national registration list, deleting the name from the previous address, and adding it to the new place of

² Rafael Lopez-Pintor, *Electoral Management Bodies as Institutions of Governance* (New York: United Nations Development Program, 2000), pp. 73–76.

residence. The machine would also give the voter a receipt with the address of the new polling place.

3. Redistricting: the gravest threat to accountability

The essence of democracy is peaceful competition and therefore the most serious challenge facing American democracy is the absence of such competition in contests for Congress and state office. In 1998 and 2000, more than 98 percent of the incumbents of the U.S. House of Representatives who sought re-election were successful. In 2002, only four incumbents lost to non-incumbent challengers—the fewest in history. In 2002, 78 Representatives ran for re-election without any major party competition, up from 8 a decade before. In the Senate, 90 percent of incumbents were re-elected in 2002. The same pattern holds for state offices.

There are four causes—two old and two new—of this erosion of democracy. The oldest cause is reapportionment and redistricting. The Constitution calls for a census each decade and then reapportionment of seats in the House of Representatives in accordance with the new census figures. State legislatures are responsible for re-drawing Congressional and state district lines, and they have always done it in a way that has given an advantage to the majority party in the state. The second long-standing reason for the strength of incumbency is that interest groups have a double incentive to invest in the campaigns of incumbents: contributions give immediate access to often influential leaders, and the odds favor the incumbents. Since Senators and Governors are immune to redistricting, campaign contributions are relatively more influential in these two cases.

The two *new* reasons why competition for the House of Representatives and state legislatures has been evaporating are more stable partisan preferences and advanced computer technology. There is so much information available on personal voting preferences that computer programmers can redraw the electoral boundaries of states such that each party can be virtually assured of winning its districts. The majority

party in the state legislature will obviously try to secure more seats by concentrating voters of the other party in fewer districts (so that they win with 80 percent or more of the vote) and assuring their own party more seats. Some minority party incumbents will accept the new boundaries since they will be assured of re-election. The only people who lose from this bargain are voters, who are denied a choice.

A new and more insidious wrinkle in redistricting was the decision by Colorado and Texas Republicans to redistrict a second time in the decade. The Colorado Supreme Court judged that the second redistricting violated the State Constitution, and the Supreme Court did not reverse that decision. The Texas case is pending, but the precedent of multiple redistricting within a decade remains ominous.

Redistricting has always been partisan. What is new and dangerously corrosive of democracy is sophisticated computer techniques that can draw district lines very precisely. A new approach is essential, or Congress will become unaccountable.

Canada, as John Courtney's essay in this symposium explains, has found a better way, and we need to borrow urgently from it. Beginning in the 1950s in Manitoba and then spreading from province to province, the new Canadian model was formally mandated in 1964 by an Act of Parliament, the "Electoral Boundaries Readjustment Act." Each province has a three-person nonpartisan, independent Electoral Boundary Readjustment Commission that draws the lines, listens to the public and Parliamentary response, and then makes a final decision. The result is that no one questions the independence of the Commission, and Canada has a very competitive system.

In the United States, Iowa has a nonpartisan, civil service-based Commission, and the result allowed competition in 4 of 6 Congressional races in 2002. In drawing the boundaries, the Commission is not permitted to look at data on political preferences of voters. In Iowa's case, however, the Commission does not make the final decision; it sends its recommendation to the State Assembly for approval. Other states like Arizona are experimenting with different forms.

The absence of competition poses a genuine threat to American democracy. The solution to

the problem is simple conceptually, although hard to implement politically. Legislators need to transfer the responsibility for redistricting from themselves to a nonpartisan Commission, selected in much the same way as it is done in Canada or as it has been suggested above for the new National Election Commission. The minority party should propose 5–10 names of distinguished nonpartisan leaders from which the majority would select three. The three-person Redistricting Commission should be given authority to redraw electoral boundaries according to criteria that includes contiguity and community of interest, but explicitly not political preferences of voters.

Are Legislatures at the national and state levels capable of transferring this responsibility? In 1934, after the disastrous, log-rolling Smoot-Hawley Tariff raised tariffs to the highest point in the 20th century and exacerbated the Depression, Congress awoke and transferred authority for reducing tariffs to the Executive Branch. Until then, Congress had raised or lowered tariffs by law; after that, the Executive negotiated a secular decline in tariffs to the point today that they have been eliminated as a barrier to trade. Congress, in brief, changed the process, and the policy improved. That is what State Legislatures need to do to restore democracy and accountability to the U.S. Congress and state legislatures.

4. Campaign finance and access to the media

The struggle to keep the influence of money out of politics is a never-ending one, but there has been progress with the 1974 Federal Election Campaign Act Amendments and the 2002 Bipartisan Campaign Finance Reform Act. While the United States has pioneered the way toward effective and immediate disclosure of contributions and party expenditures, on most other scales, it is far behind its two neighbors. For reasons described above, the FEC is weak and divided when it is not working to undermine the public interest. Borrowing from the Canadian model, the United States should replace the FEC with a nonpartisan Commissioner on Election Finance, working under the auspices of a new National Election Commission. Mexico's IFE had the courage to convict

and fine the two major political parties by \$100 million and \$36 million, respectively. None of its neighbors have ever sent such strong signals.

There are several new ways that the United States could improve its grip on the slippery field of campaign finance. The most fundamental way would be to reduce the demand for money by granting sufficient public access to the media for candidates and parties. Since 75–85 percent of all campaign contributions are used for advertising on television or radio, guaranteed access—combined with a pledge not to secure additional commercials—would reduce the influence of money in politics while lifting the debate.

A second path would be to increase public financing of campaigns, much as Mexico has done. A third would be to adopt the Canadian example of permitting voters a tax credit for campaign contributions. This would encourage citizen involvement. The best approach would be for the Supreme Court to strike down or, at the least, modify *Buckley v. Valeo*,³ which equated free speech with money. The opposite is more nearly the truth. Democracy and political equality require that its institutions place a barrier between free speech and money.

5. Voting technologies and procedures

The act of voting is, at once, the simplest and most dangerous moment for democracy. The choice between alternative candidates seems straightforward, but the medium through which that choice is made can influence, manipulate, or even omit the voter's preference at the level of the individual vote and at the level at which all the votes are aggregated. Before the "Australian secret ballot" was introduced into the U.S. voting systems in the 1880s, the most common method of voting was for voters to use a ballot with the names of the candidates of just one party, and to deposit that into a ballot box. Voters did not make their choices in secret; party leaders knew how they voted when voters selected the ballot, and thus when buying their votes, party leaders could be certain

³ 424 U.S. 1 (1976).

that their money had been spent well. Secondly, the ballots did not have numbers on them so it was difficult to know if the box was stuffed with extra ballots or if ballots were substituted. With the Australian secret ballot, the voters were given the right to mark their choice of candidates in a secret polling booth, introducing uncertainty in the outcome, and that uncertainty combined with choice are the keys to accountability.

In the election of 2000, American voters were reminded that different voting technologies and procedures could affect both the process and the outcome. The famous “butterfly” ballot in Palm Beach County led voters to mistakenly vote for two candidates instead of one, thereby invalidating their vote. The failure on the part of most Florida counties to decide beforehand how to interpret disputed ballots (whether, for example, “pregnant” chads should be counted) also led to the scandalous situation whereby judges decided the standards while they counted the votes.

Five sets of technologies were used in the country during the election of 2000, and the rough percentage of voters using each system was as follows: punch card (35%); optical scan (34%); lever (16%); electronic (14%); and paper ballot (1%).⁴ As subsequent studies demonstrated, each technology—with the exception of the paper ballot—had problems in eliminating over-votes (when a voter selected two candidates for the same position, thus invalidating the choice) and unintentional under-votes (when voters either did not mark their ballots because of the design of the ballot or their marked ballots were not recorded). As electronic technology (touchscreen or push-button) has become more widespread through ATM machines, counties and municipalities have increasingly turned to these machines for voting, and they have a greater capacity to meet many of HAVA requirements (e.g., offering ballots in different languages; providing options for voters with hearing or sight disabilities to vote in secret). With the additional resources available to purchase new machines, many expected a dramatic shift toward DREs, but most districts are waiting to receive clear guidance from the EAC.

The EAC held its first public meeting on

March 23, 2004, and it moved into its permanent office the next month. It held a hearing on electronic machines on May 5, but it is unlikely that it will issue clear guidance soon on the machines that will meet all of HAVA’s requirements. The Director of the National Institute of Standards and Technology (NIST) said it would begin analyses of voting system standards, but that will require interpretations from the EAC of the requirements in HAVA. For example, HAVA requires that voting systems can be audited with a paper trail, but serious questions have been raised by computer specialists and others as to whether the DREs tapes are verifiable. These tapes aggregate the votes, but the numbers cannot be verified. If the EAC decides that an audit trail means that voters should be able to verify their votes before they are registered by the machine, or if it decides that each machine should permit a precise recount, then election administrators have a problem. At this time, no machine has been certified as being able to produce a voter-verified paper record and as having fulfilled all the other requirements mandated by HAVA.

As districts began to purchase DREs, concerns over their vulnerability and security increased. Electronic machines malfunctioned in several elections; computer specialists expressed concern about the ease with which the programs of some DREs could be manipulated. In May 2003, Representative Rush Holt (D-NJ) introduced a “Voter Confidence and Increased Accessibility Act” that would require DREs to offer a paper record of each vote cast. That paper would be put in a ballot box.⁵

A machine with that kind of capacity would represent a significant advance over others and

⁴ U.S. General Accounting Office, *Elections: Statistical Analysis of Factors That Affected Uncounted Votes in the 2000 Presidential Election*, GAO-02-122 (Washington, D.C.: U.S. General Accounting Office), October 2001, p. 7. There is a slight discrepancy between those numbers and the ones reported in an August 2001 survey, reproduced in the National Commission on Federal Election Reform (p. 51). This is still one more example of the difficulty of compiling national data on election administration.

⁵ For a description of the problem and a list of some of the cases of malfunctions, see Doug Chapin, *Election Reform, 2004: What’s Changed, What Hasn’t, and Why* (electionline.org)

would provide needed confidence in the process. At the current time, there are no electronic machines that can verify each vote, and some cannot even verify the total number of votes. The box of verifiable ballots would permit election officials to check to make sure that the DRE had all the votes, and that they were correct. Absent that, no one could be certain. With that capability, voters would gain real confidence in the new machines.

“Provisional balloting” is required at each site in the election of 2004, but there are so many different ways to count these ballots that uniformity is an impossible dream; indeed, many provisional ballots will probably not be counted at all. For example, in New Jersey, the only provisional ballots that will be counted are for those voters who have moved from one residence to another within the same county.⁶ Of course, a provisional ballot would not be needed with a national registration system.

As a result of a Canadian Supreme Court decision on October 31, 2002, there are no longer any prohibitions on the rights of ex-felons, or even those currently incarcerated, to vote. If a similar decision were made in the United States, according to Jamin Raskin’s article, almost 4 million additional citizens could vote.

Rob Richie has made a compelling case for why the United States should adopt “instant runoff” procedures. It is much less expensive than having a second election, and voters registering their preferences could send a signal to the main candidates to treat their rivals with respect if they want to secure the second-preference from their voters. In addition, by having a second vote, citizens could send an additional message to the winning candidate as to which issues are important.

6. Civic education

Both Canada and Mexico engage in a much more concerted education campaign than the United States to help voters understand their choices as well as how to vote. Elections Canada has a nationwide youth simulation of voting at the time of the election and this has proven to be very effective in educating new generations of voters. The League of Women Voters used to do much of this in the United States, and after 2000, they have stepped up

their efforts, but it remains at a much lower level than in past decades. Other non-governmental organizations will hopefully come forward to help in the areas of civic education and election-monitoring, but a National Election Commission could and should play a leading role.

7. Training of poll workers

Poll-workers are a key element in the success of the election, and there is some evidence that the variance in error-rates of machines are correlated with the level of education and training of poll-workers. Most are elderly, have to work 14-hour days, and earn very little. In the state of Pennsylvania, poll-workers are elected, even though they only earn \$100 per day. As a result, they tend to be highly partisan, which is not the best qualification for the job, as we have noted. In the state of Georgia, when I asked what qualifications are considered in selecting polling officials, one senior election official told me: “We’ll take anyone with a pulse.”

Mexico has developed a system that places a high value on conducting elections as a civic responsibility. Election officials are chosen randomly through registration lists in each district and fully trained. The cost of training 861,000 workers (7 for each of the 123,000 polling sites) is about \$6 million. The United States utilizes the same system for locating jurors, and it is widely viewed as a way to instill a sense of civic duty. In the area of elections, such a system has the added advantages of helping citizens learn more about how elections are conducted and how to vote. There are other ways to recruit more citizens, and HAVA includes a section whereby university students could be trained. The central point is that the current system is not working, and we need to find ways to involve more citizens in the process.

8. Constitutional changes

The Electoral College was an innovative mechanism in the 18th century to permit the

⁶ Address by Ramon de la Cruz, Director of Elections, State of New Jersey, at a Conference at the Fels Institute of Government, University of Pennsylvania, March 12, 2004.

people to elect their president while providing a buffer to prevent a truly demagogic leader from taking power. In the 21st century, when an Iraqi Ayatollah understands the need for direct elections in his country, the time has come for the United States to graduate and recognize that the Electoral College is an embarrassing anachronism. Because a constitutional amendment requires three-fourths of the states, and many smaller states will oppose an amendment that would, in effect, reduce their representation, other ways to provide a more direct election should be considered. Nebraska, for example, by state law, divides its electoral college by Congressional districts, meaning that presidential candidates can split the vote in a state. If every state did this, then the presidential candidates would have to campaign in big states—like California or Texas—which are widely expected to swing all their electoral votes in a predictable direction. If the election was not determined by a “winner-take-all” rule, then candidates would campaign for each and every vote. This is not a substitute for direct elections, but it is an approximation.

The most important constitutional amendment that the United States needs at this time is developed by Jamin Raskin: to provide citizens with the right to vote. Unbelievably, the U.S. Constitution does not include such a right. In 1982, however, in the Charter of Rights and Freedoms, Canada finally mandated that right for Canadians.

Finally, the citizens of the capitals of Ottawa and Mexico have the right to elect representatives to Parliament or the National Assembly, but the citizens of Washington, D.C. have no such right. That needs to be corrected. If the other states would not permit Washington, D.C. to become a state, another alternative would be to allow the citizens of the District of Columbia to vote for Congressmen and Senators in either the state of Maryland or of Virginia.

NECESSITY AND FEASIBILITY

Most of these proposals are unlikely to be implemented soon—if at all—but I have chosen not to be inhibited by that constraint. Just because a proposal is not politically feasible today does not mean that the idea should be discarded or dismissed. We need to stretch—not limit—our imaginations in order to refresh our democracy. We need to reshape the electoral system to conform to our ideals and values.

This symposium has documented the sequence of events leading to electoral reform in all three countries during the 20th century. Such reforms only became possible after a crisis or scandal. Then, the forces of reform mobilized for success. For the United States, that might occur as soon as the next election. Few of the reforms mandated by the *Help America Vote Act* will have been implemented by November 2004, and even if they were, they will be inadequate to the task. If only two percentage points separate the two main presidential candidates, that difference is likely to exceed the margin of technical and administrative error. That means that the American people’s right to choose their leaders will be foiled again. Americans will be much less forgiving of their leaders if they make the same mistake a second time.

Because of the last presidential election, the American people are going to be watching more carefully to see that their votes will count and be counted, and they will not be pleased by what they see. At that point, we can begin anew the debate on the best electoral system and the steps we need to deepen our democracy.

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