

What a better election data system might look like

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A recurring theme in post-*Bush v. Gore* election reform is the need for greater reliance on empirical data to guide reform proposals. Dan Tokaji likened it to the “moneyball” approach popular among baseball general managers, with statistical analysis supplanting conventional wisdom and expert opinion.² Yale Law University professor Heather Gerken wants to create a Democracy Index based on statistical measures to facilitate comparison (and shaming) of states on a variety of administrative measures.³ Meanwhile, professional election administrators at all levels increasingly turn to empirical data to track the performance of election offices and polling places, and a growing research community is conducting empirical studies of voting systems and methods. Operating as a clearinghouse for election data and research is one of the key functions of the U.S. Election Assistance Commission, and the Pew Center on the States has made reliance on election data one of the cornerstones of its Election Initiatives project.

In important ways, the insistence on greater reliance on empirical data is premature. The underlying data collection systems on which a Democracy Index and other grading systems would depend remain--at the local, state and federal levels-- woefully underdeveloped. We lack in elections what we take for granted in fields such as education, health and law enforcement.

Consider provisional ballots. States track the total number of provisional ballots issued and the number of ballots counted, as well as the reasons why provisional ballots were rejected, but few track the reasons for issuing the provisional ballots in the first place. Provisional ballot data are often not available at the precinct level, and gaps appear when counties fail to collect the data or report what they collect. Without this missing information, we don't know as much as we should about why states, counties and precincts vary so much in the numbers of provisional ballots issued. Differences between states can be explained by reference to state laws and procedures, but differences within states and between polling places suggest a possible disparate treatment of voters. Only by obtaining a fine-grained picture of balloting can we be sure that how we administer elections does not discriminate against voters because of partisan affiliation, ethnicity, race, income or education.

The same situation exists in many other areas of election data as well, even in such high-scrutiny topics as overseas civilian and military balloting, where data reporting to the federal government is mandated by federal law.⁴ A close look at the Election Administration and Voting Survey run biennially by the U.S. Election Assistance Commission⁵ reveals gaps and omissions that make it difficult to compare states and counties in the way required by any

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² Dan Tokaji, “The Moneyball Approach to Election Reform,” available at <http://moritzlaw.osu.edu/electionlaw/comments/2005/051018.php>.

³ Heather K. Gerken, *The Democracy Index*, Princeton University Press, 2009.

⁴ HAVA P.L. 107-252.

⁵ Available at <http://www.eac.gov/program-areas/research-resources-and-reports>.

Democracy Index. Turning to state election websites finds some with a wealth of data, but most offer registration totals, vote totals, and little more.

Imagining a better state of affairs is the easy part. A central database, in a user-friendly format, would contain election statistics at the state and county levels, and for many categories we would be able to reach down to the precinct level as well. Everything would be linked to accurate and up-to-date precinct maps, which would allow for comparison to Census demographic data. All of this would be available soon after the end of vote counting, and be made available through the Internet to anybody who wanted it. A researcher could quickly and easily download data on provisional ballots, for example, and see if certain neighborhoods were producing unusually high numbers, or if acceptance rates in one part of the state or one part of a county were high or low compared to state averages.

Augmenting this biennial database of basic statistics would be timely, shorter-term research projects on issues as they arise. On the topic of voter ID, for example, where a major Supreme Court decision has come and gone, we still lack a comprehensive understanding of who lacks photo ID and proof of citizenship.⁶ These research projects would include topics better suited to case studies, such as voter and registration fraud and the impact of attempts to prevent it. Mechanisms would be in place to facilitate these projects, coordinated by the EAC with state and local cooperation.

So what stands in the way of achieving this election data promised land, and how--exactly how--does the United States get from where we are now to the sort of accurate and complete data collection system that would support the empirical analysis so many election reformers advocate? The facts on the ground suggest a few fundamental truths:

It is never going to be easy. Simply reaching common agreement on the meaning of terms is difficult, and state and local election offices typically don't have expansive budgets for data collection efforts. Overworked election offices struggling to keep their voter registration lists updated, poll workers recruited and trained, and votes counted and audited, among other tasks, see data collection as a good thing to do but not of immediate service to voters. The reality, too, is that given the increasing litigation and political controversy over hot-button items such as voter identification, collecting data can simply provide plaintiffs with evidence to pursue lawsuits. The decentralization of America's election system undercuts the collection of data as well. In some states, local autonomy leaves the state elections office at the mercy of county clerks, who may or may not be eager to cooperate or to invest in collecting or reporting data. Even if centrally collected at the state level, the data may be in more than one database: some information may come from a voter history database, while other data must be gleaned from the voter registration database, for example. These databases, in turn, may be run by vendors with different systems or contractual obligations.

Costs and benefits of data collection fall unequally over a range of stakeholders. The burdens of data collection fall disproportionately on state and local election officials, yet the

⁶ Ian Urbina, "Voter ID Battle Shifts to Proof of Citizenship," The New York Times, Politics Section, May 12, 2008. Available at: <http://www.nytimes.com/2008/05/12/us/politics/12vote.html>

benefits are spread over many stakeholders. One of the most common questions asked of the EAC by election officials is how the Election Day Survey can be justified on a cost/benefit basis at the state and local level. The answer is that it probably can't: a state that spends \$50,000 responding to the Election Day Survey may well not be able to reap \$50,000 of benefit. But between federal and state policy makers, the advocacy community, voting rights groups, the media and the general public, the total benefit may well exceed that amount.

Responsibility for spurring better data collection will fall largely on the federal government. No other institution has the resources to offset the imbalance described above, and the leverage to compel state and local election officials to collect and report the range of data needed. Federal leadership could take the form of what Congress did in 2008, when it channeled \$10 million to five states to collect data at the precinct level.⁷ More is needed, and not just to push the boundaries with new and innovative techniques, but to bolster routine data collection. Federal money can ease the administrative burden on state officials, removing a critical barrier to cooperation and correcting the cost/benefit imbalance.

If such investment represents the carrot, the stick is a renewed commitment to enforce the provisions of the NVRA and UOCAVA that compel states to collect and report to the federal government key election data, along with whatever additional provisions for data collection that Congress sees fit to pass. The U.S. Department of Justice has shown some signs of ramping up its enforcement. In 2008, the DOJ filed complaints against Massachusetts, Alabama, and Vermont over their failure to collect and report election data.⁸ Continued enforcement and better coordination with the EAC and other federal agencies will contribute to the further improvement of data collection systems in the states.

Finally, we need to understand that what we are talking about is the creation of an entire data collection system. This system would be integrated horizontally across the 55 states and territories, and vertically between levels of government, and not the extension or reform of a single project or initiative. It begins with processes that allow poll workers to record critical data without impinging on precinct operations and extends up through local election officials to state and federal agencies, and includes the use of new technologies where appropriate.

Better data collection will not automatically cure the ills of the American election system, but it is difficult to imagine a fully functional system without it. Federal support for data collection is a cost-effective way of supporting election reform while preserving the essential division of power between the states and the federal government. In the end, a new and improved system of election data collection will not only support reform efforts, a Democracy Index and other initiatives, but will benefit the only stakeholder that really matters: the American voter.

⁷ United States Elections Assistance Commission, available at: http://www.eac.gov/News/eac-awards-five-states-10-million-to-improve-election-data-collection/base_view

⁸ Press release: "Justice Department Sues Alabama for Failure to Protect Voting Rights of Overseas Citizens," U.S. Department of Justice, Nov. 19, 2008.