

Chapter 2

DATA-DRIVEN REFORM: GENERATING A NEW CONVERSATION ABOUT ELECTION ADMINISTRATION

As Chapter 1 makes clear, election reform debates take place in a world without data. The absence of data systematically handicaps reform efforts from start to finish. It makes it harder to identify where there is a problem and figure out a sensible solution. Reformers lack the evidence they need to make a convincing case to voters and policymakers, and they lose the bureaucratic allies they need to get something done. In a world without data, debates about election reform usually depend on atmospherics and anecdote, and they sometimes descend into overheated rhetoric and mutual recriminations. Whether one is focused on grass-roots reform or elite-level politicking, the absence of good performance data is a significant barrier to reform.

The Democracy Index would provide a much-needed corrective to debates about election reform. It would give us hard statistics on bottom-line results and allow us to compare policy inputs and performance outputs across jurisdictions. It would make it easier to identify problems, make them visible, and find a solution. Comparative data would not just give reformers the evidence they need to make the case for change, but would allow them to speak in the cadence of corporate executives rather than starry-eyed idealists. The Index might even provide an unexpected boon to election administrators, offering them a sword in their efforts to fight internally for much-needed resources and a shield against the sometimes overheated claims levied against them by outside groups. At each stage of the reform process – from figuring out what reform is needed to getting change passed – the Democracy Index would help smooth the path for change.

The New Face of Environmental Reform

If you want to know why data matters to reform, take a look at what has been going on in the environmental movement lately. Think of the word “environmentalist,” the first image that springs to mind may be your college roommate who recycled everything or baby boomers shod in Birkenstocks doing a signature drive to save the polar bear. Dan Esty, a professor of environmental law and policy at Yale, is nothing like the stereotype. Clad in a well-tailored suit, porting the latest in cell phone technology, he speaks in the clipped sentences of a corporate executive. It is easy to imagine him in his first job as a trade lawyer for a top-flight Washington law firm. Though Esty is more than capable of talking

idealistically about why environmental reform matters, he usually sounds more like a McKinsey consultant than a Sierra Club member. His arguments are punctuated by phrases you won't hear at an Earth Day celebration: performance goals, data-driven analysis, action items, benchmarking, leveraging, and competition. In an area dominated by starry-eyed idealists, Esty's style is that of a hard-headed corporate executive.¹

Esty's style is also what makes him so effective. He's the rare environmentalist who has the ear of big business. That is because Esty has always had one foot in the world of reform and the other in the world of business. When Esty was a young lawyer, he divided his time between pro bono environmental clients and paying trade clients. He quickly noticed that the two groups were always talking past one another. His first book was devoted to casting environmental claims in terms that trade policymakers could understand.²

In working on that project, Esty began to realize that environmentalists have a problem. If you want to improve the environment, business matters. But business people are exceedingly skeptical of environmentalists. It isn't just a question of language. Business people often worry that environmentalists haven't come to grips with the costly trade-offs associated with reform, and they get irritated by what Esty calls reformers' "holier-than-thou-ness." Esty also believes that environmentalists had as much to learn from business people as business people do from environmentalists. Routine business practices like data-driven analysis and benchmarking were simply "not the ethos of the environmental culture."³

Esty's vision of data-driven reform crystallized when he attended the 1998 meeting of the World Economic Forum in Davos. There he was struck by the success of the Forum's Global Competitiveness Index, which ranks countries based on their potential for economic growth.⁴ It was clear that the ranking mattered a great deal to the business and governmental leaders gathered there. Esty could also trace its effects on economic policies throughout the world.

Esty worried that the Global Competitiveness Index captured only part of the story. It did not provide similar comparative data on countries' environmental performance. That meant that nation-states were competing fiercely to move up the rankings on the financial side but feeling no pressure to do so on the environmental side. Esty's mantra is that "what matters gets measured,"⁵ and environmental performance wasn't being measured.

Esty and a group of environmentalists at the conference came up with a plan to rank nations based on their environmental performance. With the support of a philanthropist and academic centers at Columbia and Yale, they pulled together publicly available environmental data to create what has become the Environmental Performance Index.⁶ The EPI ranks 133 countries along 16 performance indicators. It allows us to make detailed comparisons of the progress nation-states have made in promoting human health and protecting the eco-system.

The EPI has affected environmental debates across the globe. Consider what occurred in Belgium after the first version of the Environmental Performance Index (then called the Environmental Sustainability Index) was released. Belgian environmentalists had long tried to persuade legislators that the country's environmental practices were subpar. It's not hard to imagine why. Without any concrete, comparative information on performance, all environmentalists in Belgium could do was exhort the government to do more or engage policymakers in complex policy discussions well beyond the grasp of most citizens. These debates about policy inputs (funding levels, regulatory choices) had gotten nowhere.

When the EPI showed that Belgium fell well below its European counterparts on the ranking system -- placing the country roughly in the same range as Cameroon, Mozambique, and Albania⁷ -- the conversation changed. The story made headlines in the country's major newspapers, and reformers suddenly had a rather large stick to beat legislators into doing something. Government officials could go on and on about the merits of its policies and what Belgium had done to promote reform. But they could not dispute the bottom line: Belgium was not keeping up with its peers along a wide range of performance measures. The EPI precipitated a sizeable political crisis in Belgium, and the result was genuine reform.

Or take the example of South Korea. It ranks 42nd on the 2006 EPI.⁸ Eager to improve its standing, South Korea has assembled a team of 30 people -- at a cost of roughly \$5 million a year -- to figure out how to do better. By way of comparison, Esty's team is composed of 10 people and spends about \$1 million each year to put the ranking together.⁹

The aggregate numbers measuring the EPI's influence are equally impressive. There have been one million hits on the EPI website. More than sixty governments have consulted with the EPI team about improving their environmental policies. And the push toward quantification appears to be taking root among environmentalists, as others have tried to find sensible, easily communicated measures of environmental performance. Some environmentalists, for instance, have challenged individuals and

businesses to improve their “carbon footprint,” which measures energy consumption in units of carbon dioxide.¹⁰

The EPI is clearly a “here to there” strategy. It does not mandate a particular policy or set any regulatory baselines. Instead, it helps change the conversation about environmental reform, creating incentives for policymakers to do the right thing. The result is that, at least in some places, environmental reform has taken root.

Esty is quite clear about why the EPI has helped environmental reform get more traction. To begin, it packages environmental concerns in the language of business, providing policymakers and voters hard data and comparative benchmarks to assess their nation’s performance. Esty notes that when the EPI was first created, people were “shocked that you could put hard numbers to environmental performance.”¹¹

According to Esty, the numbers matter. They allow reformers to distill a wide-ranging set of concerns into something accessible to – and noticed by – the press and top-level governing officials. Reports by environmental reform groups get relatively little press. The EPI regularly makes headlines. Most environmental reformers spend their time lobbying legislators or cajoling bureaucrats. Esty’s group meets regularly with prime ministers and presidents.

Data also helps reformers and policymakers pinpoint problems and identify where they can do better. As Esty notes, it is a commonplace among corporate executives that “accounting gives context for choice.”¹² Environmental accounting serves a similar purpose. The conventional model for environmental reform, Esty says, is “guru-based decisionmaking,”¹³ which relies on movement heroes to articulate a reform platform. Such an approach succeeded in the early days of the environmental movement. During the initial stages of reform, Esty argues that there was a lot of “low hanging fruit”; virtually any proposal represented an improvement on the status quo. But regulatory choices are harder today than they were 25 years ago, says Esty, and the demand that governments “do better, do more” is no longer enough to convince policymakers.¹⁴ What reformers need now is careful regulatory proposals based on rigorous empirical analysis.

Hard, comparative data has also given environmentalists a better sense of the drivers of performance. There has been a long debate among environmentalists as to what matters most for environmental performance: money? strong regulations? enforcement? capacity building? Everyone had an intuition, but it was hard to figure out whose intuitions were correct. The EPI has moved us one step closer to an answer by providing data that can be used to figure out what correlates with strong environmental

performance. The conventional wisdom among environmental reformers had always been that money matters; people thought that rich countries always do a better job of protecting the environment than poor ones. Because the EPI keeps track not just of performance “outputs” (ozone measures, child mortality rates, air quality assessments) but policy “inputs” (economic wealth, good governance), Esty and his team can test the conventional wisdom. Regression analysis suggests that the conventional wisdom is only partially right. Rich countries generally do better than poor countries on the EPI. But there is a good deal of variation within both groups, and that variation seems to be driven largely by good governance factors, like strong environmental regulations, protections against corruption, and public debate over environmental issues. To be sure, we are far from having a definitive answer about what drives environmental reform (and the question itself is too complex to measure with absolute confidence). Nonetheless, the Environmental Performance Index has at least helped reformers get a preliminary read on these issues.

Election Administration: A World Without Data

Although Esty is quick to point out how much more data is needed in the environmental arena, environmentalists are positively awash in data compared to their counterparts in the elections arena. It is shocking how little information we have about the way our election system functions. We know more about the companies in which we invest, the performance of our local baseball team, even our dishwashers, than we do about how our election system is working. The institutions that administer our election system – the lynchpin of any democracy – do not give us the basic information we need to evaluate whether the system is working. What little data that exists is often undependable, unverifiable, and too inconsistent to allow for comparisons across jurisdictions. The dearth of data handicaps those interested in reform in virtually every part of the process.

The absence of data

Consider a few remarkable facts. We do not know how many people *cast a ballot* during our last presidential election because about twenty percent of states do not report this information; they disclose only how many ballots were successfully counted.¹⁵ Other crucial information – like how long voters stood in line, how many poll workers showed up in each polling place, what percentage of voting machines broke down on election day -- is similarly not recorded by most states and localities. If we have any information on these questions, it is usually because an entrepreneurial political scientist was able to obtain funding to study the issue in a handful of jurisdictions.

Our data problems are so basic that in October 2004, the Cal Tech/MIT Voting Technology Project, composed of some of the most highly respected political scientists in the country, issued a plea for all states and localities to collect data on such rudimentary questions as the number of registered voters, the number of ballots cast, and the number of absentee, early, or provisional ballots included in the official count.¹⁶ The data is so weak that it is hard even to evaluate how much things have improved since the 2000 election. As Charles Stewart of MIT has observed, “for all the attention focused on the problem [of election administration] since November 2000 and all the money thrown at improving voting in the United States, it is impossible to demonstrate anything but the most basic improvements in voting, nationwide, using systematic data.”¹⁷

Moreover, the states and localities that do keep data often define even the most basic terms differently. As Professors Thad Hall of the University of Utah and Dan Tokaji of Ohio State have explained, states do not even have “a common definition regarding what constitutes an early or absentee ballot.”¹⁸ For example, even the states that do report residual vote rates seem to record that number inconsistently.¹⁹ For this reason, in category after category, cross-state comparisons cannot be trusted because the states do not adhere to the same definitions or protocols for gathering information.

Even states that keep rudimentary data on election performance fail to record much of the information that is crucial to figuring out where problems exist and identifying an appropriate solution. For instance, even those jurisdictions that keep information on how many ballots were cast but not counted generally cannot tell us *why* these ballot weren’t counted. The same holds true for the registration process. As the Carter-Baker Commission found, “we still do not know how many people are unable to vote because their name is missing from the registration list or their identification was rejected at the polls. We also have no idea about the level of fraud or the accuracy and completeness of voter registration lists.”²⁰

If you need further evidence of the woeful state of the data, you need look no farther than the latest survey of state practices by the Election Assistance Commission,²¹ the federal agency charged with helping states improve the way that federal elections are administered.²² In submitting three reports to Congress in 2007,²³ the EAC asked states for information on such important topics as voter registration, turnout, balloting, voting machines, and poll workers. A striking number of states simply did not report that basic information.

To get a sense of just how poor a job the states did in disclosing

election information to the EAC, take a look at the following ranking.²⁴ It evaluates the states based on whether they disclosed information in the 13 categories used by the EAC.²⁵ States were graded solely on the basis of reporting, with no judgment made as to the validity of the underlying data. A state that reported 100% of its data in a given category was awarded a “1.” A state that reported all of the data requested for only half of its jurisdictions would receive a “.5” in that category.²⁶ So, too, a state that reported half of the data requested for all of its jurisdictions would receive a “.5” in that category as well. The ranking was derived by totaling the state’s scores in each category and then averaging them. The percentage listed next to each state indicates what percentage of the EAC’s requests were met by the state on a category by category basis.

[Insert table here].*

The ranking is certainly not perfect. For instance, localities that reported a “0” in a given category (rather than leaving it blank) were counted as properly reporting their data even when it was difficult to believe that the “0” represents an accurate report.²⁷ Further, because the jurisdiction count was unavailable for overvote and undervote reporting below the state level, this category was excluded from the ranking. One might also quibble with the categories included in the ranking, as they vary in their importance. While there are good justifications for requesting each piece of information,²⁸ some parts of the survey are more important than others for evaluating how well a system is performing. The ranking weights disclosures based on the categories designated by the EAC (giving equal weight to each category), not on the basis of their relative importance. Needless to say, a differently weighted system might result in a different ranking.²⁹

Despite these limitations (which I discuss in greater detail in Chapters 4 and 6), the ranking at least gives us a rough sense of how poorly the states are doing in collecting data that the Election Assistance Commission decided it needed to fulfill its congressional mandate. For example, the ranking reveals that only 13 states were able to report more than three quarters of the information requested of them, and over half the state reported less than sixty percent of the survey items. If you dig down into the survey, you will see that the average response rate for each survey item ranged from 54% to 65%, and only 15 of the 92 survey items contain complete or nearly complete data from the states.³⁰

* Please note that Hawaii contains five legally defined counties. One of them, Kalawao, contains approximately 147 people and is a designated leper colony in a state of quarantine. Most of the instances in which one of Hawaii’s five counties failed to report requested data involved Kalawao. If that county is dropped from the calculations, Hawaii’s score increases to 67.4%, which moves it from 29th on the ranking up to 23rd.

The ranking also suggests a remarkable level of variation in state reporting practices. Delaware and Montana had a nearly perfect reporting rate, but the lowest ranked states – Massachusetts, Wisconsin, New Hampshire, and Alabama – disclosed less than one quarter of the information the EAC requested of them. It is also hard to identify any obvious explanations for the states' disparate reporting practices. Wealthy states like Connecticut, Massachusetts, and New Hampshire ranked very low on the ranking. Several states that tout themselves as “good governance” states – Vermont, Massachusetts, and Wisconsin – fall very low on the ranking, whereas a few states that have recently experienced election fiascos (Ohio, Florida) rank quite high. With the exception of the exceptionally poor performance by New England, there also does not seem to be any clear regional pattern to the disclosure rate. Southern states, for instance, can be found at the top (Georgia) and bottom (Alabama) of the ranking.

If you dig deeper into the data, the problems multiply.³¹ For instance, Massachusetts reported that only 7.1 percent of its population participated in the 2006 election, well below any realistic turnout assessment. Fourteen states indicated that they received “0” ballots from overseas military voters, a claim that is extremely hard to believe. Similarly, if we were to take the state's reporting at face value, then states required between zero and 18,627 poll workers to show up for work on election day. Five states claimed that it requires fewer than five poll workers to staff the entire state! One state mysteriously claimed that only 300 poll workers are required by the state, that 17,532 served, and yet that it had 32 understaffed polling places. Finally, despite the Carter-Baker Commission's estimate that we were missing one quarter of the poll workers needed to staff our election system in 2004³² and legions of reports from election administrators about their struggles in poll worker recruiting, only one state – Ohio -- reported that the number of poll workers who showed up was less than the number of poll workers it required. Perhaps the other 49 states managed to eliminate recruitment challenges in just two years, but I suspect it is actually Ohio that should be commended here.

Worse still, what we see in the EAC report is actually a good deal better than what the states initially reported. In many instances, the state reporting was woefully inadequate. Sometimes states did not even bother to fill in information. Others reported data that was obviously wrong on its face. EAC staffers and consultants spent countless hours tracking down officials about their disclosures and trying to get the data into shape. Even after all that effort, many states still failed to report all the data requested, and it would be hard to draw state-by-state comparisons in many categories due to inconsistencies in reporting practices.

A comparative view

To place these data-collection problems in perspective, it is worth considering how many public and private organizations have come to rely on data-driven policymaking. My colleague Ian Ayres, argues that “supercrunchers” now use data-driven analysis to improve sports teams, predict the future price of plane tickets or the quality of a new wine vintage, diagnose disease, assess the likelihood that a parolee will commit another crime, choose which passenger will be bumped off an airline flight, evaluate loan risks, and inform car dealers how far they can push a customer on price.³³

Take Wal-Mart, for instance. Wal-Mart’s database is gigantic; only the federal government keeps more data.³⁴ The company depends on data-driven analysis to increase sales. To give you a sense of how fine-grained Walmart’s analysis is, consider a few examples. Wal-Mart’s data revealed that bananas are the grocery item that customers most often purchase. The company therefore made sure that bananas were available not just in the produce aisle, but near the cereal. Wal-Mart’s data is so precise that the company knew that strawberry Pop-Tarts sell at seven times their usual rate before a hurricane. Unsurprisingly, the company stocks not just extra flash lights, but boxes of Pop-Tarts in advance of a hurricane.³⁵ Wal-Mart has similarly used data on customer satisfaction to identify where it could improve, leading it to create faster check-out processes and cleaner stores.³⁶ Walmart may represent an extreme example, but data-crunching and benchmarking are routine practices in Fortune 500 companies.

After all, would you invest in a company that kept as little performance data as state and local election systems collect? Imagine a corporation that didn’t keep information about how many people it employed, how many customers it had, or what percentage of its business came from internet or phone sales. (Many states and localities cannot provide you comparable information on how many poll workers showed up on election day, how many people were registered to vote or cast a ballot during the last election, or what share of the ballots that were actually counted came from absentee or early voters.) Imagine a company that didn’t bother to keep information that would help it figure out what customers liked about its products or why customers went elsewhere to make their purchases. (Election administrators don’t survey voters about their voting experiences or even keep track of how many voters tried to register and cast a ballot but failed.) Imagine a company that never sent testers to evaluate whether it was easy to navigate its stores or purchase its products, or one that failed to conduct regular audits of its accounting books. (Election administrators don’t deploy testers to evaluate the registration and balloting process, and many fail to conduct adequate post-

election audits.) Imagine that the corporation never engaged in the routine business practice of benchmarking – comparing its performance against other companies to identify areas where it could do better. (Benchmarking rarely occurs in the elections context.)

My guess is that you wouldn't invest a dime in the company I just described. So why are you willing to entrust the nation's most precious noncommodity – the vote -- to an election system like ours?

Lest you think that data matters only to the private sector, many government agencies at the state³⁷ and federal levels³⁸ routinely rely on data-driven analysis to improve their performance.³⁹ One of the most well-known programs is called CitiStat. It was first used in Baltimore with considerable success.⁴⁰ The city's mayor met regularly with department heads to create performance targets and assess progress toward them using data generated and collected by the city. For instance, the mayor established a goal that every pothole would be fixed within 48 hours of someone reporting it. The city then used its "CitiTrack" data-collection system to evaluate its progress toward that goal.⁴¹ Data-driven analysis has been used in a variety of public institutions, ranging from police departments⁴² to housing agencies,⁴³ from transportation agencies⁴⁴ to education departments.⁴⁵

You don't have to be a supercruncher or a teched-up government agency to care about performance data. Think of something much simpler: buying a dishwasher. If you want to figure out the right dishwasher to purchase, Consumer Reports will provide you with extensive comparative information about performance, price, and repair histories. Election officials, however, cannot give you comparable information about how well the state's registration system or ballot counting process is working. Voting machines, of course, have received the greatest scrutiny. As a result of the work of private actors, we have at least some information about their reliability and performance,⁴⁶ though even here the data falls short.⁴⁷ In other areas, though, we have almost nothing to go on. Think about the new statewide databases mandated by HAVA. We have no way of knowing how well those systems are working. For instance, we don't know whether voter information has been inputted correctly, how often the systems freeze up, or whether the systems will be able to handle high voter turnout. Needless to say, this information would be extremely useful to know before the 2008 presidential election.

Election Reform in a World Without Data

A number of election administrators have complained vehemently about being asked for data on election performance. Some of these complaints are spot-on. Many local officials have such limited resources

that it is hard to carry out their basic duties, let alone collect the data, a problem I take up in Chapter 6. Election officials are also often confronted with a barrage of disparate requests from different sources – political scientists, reform groups, and the Election Assistance Commission. A good deal of anger has been directed at the EAC survey, which was far from ideal in terms of design and administration.

While election administrators are right to complain about the data-collection process thus far, they are wrong to question the need to collect the data in the first place. As Ohio’s Secretary of State, Jennifer Bruner, emphasizes, “the best way that you can manage is to measure.”⁴⁸ Indeed, if we walk through each stage of the reform process – identifying the problem, making the problem visible, choosing the solution, lobbying for change, and building alliances – we can identify a myriad of ways in which the kind of data the Democracy Index would provide could help smooth the path for change.⁴⁹

Identifying the problem

The absence of good data poses the most basic of dilemmas for those who care about reform: it is hard to figure out whether and where problems exist in a world without information. Election experts can name you a bunch of symptoms they see routinely; even the haphazard information available now reveals this much. But if you were to identify a specific election system and ask whether the problem existed there, experts might not be able to answer your question. Problems are hard to pinpoint in a world without data.

For example, we would presumably think it was a problem if a large number of people tried to cast a ballot in the last presidential but failed to do so. It might be a sign that registration systems aren’t functioning properly, that poll workers are doing a bad job, that ballots are designed poorly, or that machines are not working well. Yet, as noted above, about twenty percent of states cannot even tell you how many people cast a ballot that wasn’t counted, let alone how many people were turned away before they even had a chance to fill out a ballot.

Similarly, think about some of the other reporting gaps revealed in the EAC survey. Only about 40% of jurisdictions reported how many polling places did not have the required number of poll workers. It is very hard to evaluate whether poll worker recruiting efforts have been successful without access to this basic input. Similarly, we know from the EAC survey that at least 900,000 ballots were requested by voters protected by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). But the states’ own self-reporting suggests that only about 333,000 ballots were cast or counted. This information could lead to quite

different conclusions about whether there is a problem. Perhaps the process is so difficult that it deters overseas voters from returning their ballots. Or perhaps the balloting is so complex that the ballots of overseas get disqualified at a high rate. Or perhaps there isn't a problem at all; the states just aren't keeping good data. Whatever the explanation, we should be disturbed that we cannot figure out whether the states are fulfilling their congressionally mandated mission. As the EAC itself noted in its report, the quality of information is so low that it is "impossible to sufficiently monitor compliance with [statutory] mandates."⁵⁰

Even when we can document a potential problem, it is hard to figure out where that problem looms largest. Given how many problems seem to exist, we need to be able to target our reform efforts. Without good data, any effort to prioritize reform resources will be based on a good deal of guess work. Unfortunately, as Thad Hall and Daniel Tokaji have pointed out, "it is often difficult to tell where the most serious problems lie . . . due to the notoriously poor quality information on how elections are actually being run."⁵¹

So how do we identify problems in a world without data? Unfortunately, there is often not much more than intuition and anecdote to go on. As Dan Tokaji, an professor at Ohio State's law school, astutely points out, "efforts at election reform have been based on an intuition-based approach . . . [that] places too much weight on seat-of-the-pants assessments of what makes for good elections."⁵²

It is not surprising that Tokaji is acutely aware of the shortcomings of our data-collection practices. He's a baseball nut. When Tokaji isn't teaching election law, he's traveling around the country in his quest to see a baseball game in every stadium in the country. Don't even try to talk to him about the Red Sox. Legend has it that he threatened to toss his roommate, a Mets fan, out the window during the heartbreaking 1986 World Series.

Baseball, of course, is an American institution where numbers have always mattered. As sportswriter Roger Angell notes, "every player in every game is subjected to a cold and ceaseless accounting; no ball is thrown and no base is gained without an instant responding judgment – ball or strike, hit or error, yea or nay – and an ensuing statistic."⁵³ Supercrunchers have played an increasingly important role in the sport, as Michael Lewis documents in *Moneyball: The Art of Winning an Unfair Game*.⁵⁴ There Lewis describes the success of the Oakland A's, whose management drastically improved the team's performance by hiring based on hard, comparative data instead of the gut-level judgments of baseball scouts.

Drawing on Lewis's book, Tokaji argues that we need to take a "moneyball" approach to election reform.⁵⁵ He writes that arguments for election reform have too often been based on the same approach as "the old-time scouts in Lewis's book, . . . neglecting serious empirical research into what works and doesn't work in the real world."⁵⁶ Tokaji argues in favor of "hard data and rigorous analysis" in place of "the anecdotal approach that has too often dominated election reform conversations."⁵⁷

A Democracy Index fits neatly with Tokaji's a moneyball approach. Rather than focusing on the necessarily atmospheric judgments of reformers and academics about what problems exist, the Index provides concrete, comparative data on bottom-line results. It would allow us to figure out not just what is happening in a given state or locality, but how the results there compare to similarly situated states and localities across the country. It would allow us to compare policy inputs and performance outputs. The Democracy Index would, in short, give us the same diagnostic tool used routinely by corporations and an increasing number of government agencies to figure out what's working and what's not.

Making the problem visible

Even when it is possible for experts to identify a problem, the absence of hard, comparative data make it difficult to make that problem visible to voters and policymakers. As noted in Chapter 1, while lost ballots, registration problems, and machinery breakdowns occur routinely, they become visible to voters and top policymakers only when an election is so close that those problems threaten to affect an election's outcome. Because such crises occur episodically, voters and policymakers have only a haphazard sense of how well our elections are run, and they have no comparative data that would tell them which states' systems work and which don't. That means that even reform-minded election officials have very little reason to invest in election administration. Deferred maintenance – the core problem in election administration – is the usual consequence of a problem that voters cannot see.

Matt Damschroder -- Director of the Franklin County Board of Elections in Columbus, Ohio -- is all too familiar with the problem of invisibility. Ohio's elections are run by bipartisan boards at the county level. Damschroder is one of the three Republicans appointed to the Franklin board, with Democrats occupying the other three seats. Ohio cedes a great deal of power to its local administrators. Its commitment to local control has its upsides and downsides, in Damschroder's view. While it means that he and his colleagues exercise a good deal of discretion over how elections are run, it also means that localities generally "get neither guidance nor resources from the state."⁵⁸

Damschroder finds it equally hard to get support and resources for election administration at the local level. Emphatically agreeing that election problems are largely invisible, he notes that “people don’t view funding elections as a priority, and “throw resources” at reform only “after a crisis.”⁵⁹

Damschroder is also well aware of the problem with selective visibility – what happens when an election crisis occurs and election administrators get thrust into the national spotlight. In 2004, Franklin County had only a fraction of the machines it needed to deal with the extraordinarily high turnout it experienced during the presidential election. As a result, Franklin County voters, particularly racial minorities, experienced significant problems in trying to cast their ballots. People reported waiting in line to vote for as long as 5 or 6 hours to vote. Allegations flew that Franklin County had deliberately failed to put enough voting machines in its polling places. People also accused the Board of allocating the small number of machines it did have in a discriminatory fashion, putting fewer in precincts dominated by racial minorities and Democrats in order to deter them from voting.

These accusations eventually subsided in the mainstream media. That is in part because Damschroder had made a name for himself as a straight shooter. He was well known for “criticiz[ing] and sometimes def[y]ing” the policies of fellow Republican Kenneth Blackwell because they would “hinder voter registration.”⁶⁰ These accusations have also been tamped down because Franklin County’s Board of Elections was bipartisan and William Anthony, a Democratic member and then-chair of the board, was prominently quoted as saying “I am a black man. Why would I sit there and disenfranchise voters in my own community? . . . I’ve fought my whole life for people’s right to vote.”⁶¹ Nonetheless, there remains a highly vocal group of people who use the phrase “Franklin County” is an epithet and view Matt Damschroder as the Karl Rove of election administration. Even less critical Monday morning quarterbacks think that the Franklin elections board could have done a good deal better, particularly in distributing the machines it did possess among its polling places

Though I will return to these accusations at the end of this chapter, I offer this highly controversial example quite deliberately. Many people are convinced that something nefarious occurred in Franklin County, and certainly no one can rule out the possibility that some members of the Franklin elections board were trying to suppress the Kerry vote. At the very least, there is good evidence that Franklin County made a serious mistake in allocating voting machines based on registration data from April rather than registration numbers from the late summer/early fall. Had the April numbers accurately reflected who turned out on election day,

voting machines would have been distributed evenly across racial groups in Franklin County. But because of a significant uptick in the number of racial minorities who registered just before the election, Franklin County's reliance on the earlier data had a disparate effect on racial minorities, whose polling places were allocated fewer machines-per-voter than polling places located in predominantly white neighborhoods.⁶²

The reason to use the Franklin County example is to show that the problems we saw in Franklin County could occur almost anywhere a turnout tsunami takes place. Indeed, one could as easily tell a story about Franklin County that suggests that the root cause of the problems was not partisan mischief, but deferred maintenance – the same problem we see across the country. My point is not to weigh in on one side or the other about the ongoing debate over Franklin County. Instead, I simply want to suggest that in a world without data, a disaster like that experienced in Franklin County could happen just about anywhere.

So let me retell the Franklin County story as a story about deferred maintenance, setting it in a generic “Typical County, USA.” Everyone agrees that the primary problem in Franklin County was that it didn't have enough machines to handle the many voters who turned out on election day in 2004. Imagine that the Typical County elections board, recognizing that a turnout tsunami was approaching, had gone to its county commission and requested money for more machines.[†] It is not hard to see why the Typical County commissioners would deny the election board's request for new machines for reasons that had nothing to do with partisan bias.

Imagine, for instance, you were a Typical County commissioner evaluating the proposal to buy new machines. First put on your policymaker's hat. Administrators of every sort are always asking you for more resources, so you have become inured to such requests and, in any case, must prioritize. And there's nothing the election board can show you that convinces you that elections should be your top priority. As Damschroder observes, an election administrator who is not armed with sufficient data is “too easily dismissed” because “he comes in as a partisan or bureaucrat,”⁶³ someone acting out of self-interest rather than professional concerns. Here, for instance, the board can't say for sure

[†] Damschroder believes that the elections board did seek additional funding before he joined it in 2004, only to have that request denied. While it is true that in 2003 and 2004, the elections board received only about half of the funding it requested, <http://www.franklincountyohio.gov/commissioners/budget> (last visited November 1, 2007), those figures do not indicate whether the purchase of new machines was part of the budgeting request, and I have been unable to verify independently whether money for new machines was included in these requests. In the wake of 2004, people on both sides of this issue are quoted in various news reports, but none of those reports refers to underlying documentation.

whether the failure to buy more machines will be a problem. And crises like Florida don't occur *that* often. Nor can the board show you anything concrete to suggest that you, as a commissioner, are neglecting your duties. Even if you have access to budget numbers from other counties like yours, there's no comparative evidence suggesting that your election system is better or worse than any other election system. Moreover, there hasn't been a crisis suggesting a problem. Without comparative data, the board just can't make that good a case for additional funding.

When you put on your politician's hat, the case for denying the election board's funding request becomes even more powerful. Even if a problem does exist, it is certainly not visible to voters. Voters know almost nothing about how well the system is run, whether it is working, or how it compares to other systems. Nor do you think that voters are that likely to get energized about this issue; certainly election reform groups have never managed to get voters to coalesce. Meanwhile, voters *are* clamoring for more funding to fix the problems they can see. Is it any wonder that a commissioner would rather deny an election board request than cut funds to Children's Services or the Sheriff's Office?[‡] Imagine how denying funds to kids or cops would look to voters during your re-election campaign. Even if there is an election crisis, you can always blame the elections board for its failure to present enough evidence to justify additional funding.

Now imagine that the Typical County elections board possessed the kind of data that Dan Esty has put in the hands of the people who administer environmental agencies. If a Democracy Index existed, board members wouldn't just be able to give you information about policy inputs – how much money comparable jurisdictions invest in their election system or how many machines-per-voter is the national norm. They would also have information about performance outputs – whether your county had longer lines or more poll worker problems than other jurisdictions. Imagine, for instance, that the elections board could point to a ranking system showing that Typical County was the worst performing county in the state or one of the worst performing localities in the nation. As a county commissioner, you might think twice about the board's request for more machines. You might worry more about a crisis because the data suggests the county is more vulnerable than other jurisdictions. And if you cast an eye toward the next time you run for office, your worries might increase. How, after all, will you explain to your constituents your decision to disregard the evidence in front of you and gamble that the election would be problem-free? Voters may not grasp the nuances of elections policy, but they do know that a county ranked last in the state needs fixing.

[‡] These two agencies did receive full funding in the two years leading up to the presidential election.

For all of these reasons, it is a mistake to assume that the problems Franklin County experienced can only occur when partisanship runs amuck. It is just as easy – arguably even easier -- to imagine those problems resulting from deferred maintenance, an issue that plagues much of the system. It might be more comforting to imagine the Franklin Counties of the world as outliers. But can you really say that you'd do anything different from the commissioner of Typical County, USA? When a problem is invisible, the all but inexorable logic of policymaking and politicking pushes toward underfunding and neglect. We need the kind of data provided by the Democracy Index to reframe this discussion.

Choosing a solution

Data is important not just because it makes election problems visible, but because it helps us figure out how to solve problems once they've been identified. Given the many other priorities for local funding, local officials need to make hard-headed choices about which reforms we ought to pursue. They need smart, targeted proposals for fixing the system. Whether one is seeking discrete fixes for specific problems or trying to identify the ultimate drivers of performance, only comparative data on policy inputs and performance outputs can help identify those solutions.

Identifying discrete solutions. Consider one simple example of why data matters. People who study election administration often worry about the problem of lost votes -- the number of people who try to cast a ballot but fail to do so. A rough proxy for assessing this problem is called the residual vote rate – the difference between the number of ballots cast and the number of ballots counted. The calculation is usually based on votes for the presidential race, as most voters want to cast a ballot for that contest. Even in a well-run system, we would expect there to be some drop-off; not everyone who casts a ballot wants to do so for the presidential race. But high residual rates can be caused by things we would expect election officials to correct -- poor machines, bad ballot design, or tabulation errors.

The problem is that we often don't have the necessary data to identify the source of the problem, let alone its solution. After all, as noted above, about twenty percent of states do not keep track of the data we need to calculate something as basic as the residual vote rate. Even those localities that can tell you how many people cast a ballot that wasn't counted often cannot tell you *why* the vote wasn't counted. Needless to say, if you don't know why ballots weren't counted, it's awfully hard to figure out whether there's a problem that can be fixed.

Conny McCormack, who recently stepped down as the County

Clerk/Registrar of Los Angeles County, has been better situated than most election officials to identify cost-effective strategies for reducing the number of lost ballots. The reason is simple: L.A. County keeps better data than most states and localities. Her staff routinely tracks not just how many ballots were cast but not counted, but *why* their ballots weren't counted. For absentee ballots, for instance, McCormack can tell you how many ballots weren't counted because they arrived after the deadline, how many lacked a necessary signature, and how many were returned as undeliverable. Though this may seem like extremely basic information, many jurisdictions do not keep it.

Because L.A. County keeps this data, McCormack was able to make sensible judgments about likely targets for reform. For instance, early on in her tenure, McCormack and her staff realized that a large number of absentee ballots weren't counted because they arrived after the deadline. Taking a look at the packets sent to voters, McCormack realized that the deadline was announced only inside the packet. She and her staff then redesigned the envelope so that it informed voters in red letters when the ballot had to be received. By placing this information in a more prominent place for voters, L.A. County was able to reduce the number of absentee ballots that were disqualified on timing grounds. Good data thus helped L.A. County identify a simple, cost-effective strategy for improving its system.

Though the L.A. County example is important, Dan Tokaji's "moneyball approach" requires something more than a bunch of individual jurisdictions collecting data on their own performance. We also need to compare that data across jurisdictions so that we can benchmark. Benchmarking, of course, is a routine practice in the business world, as corporations constantly compare their performance with that of their competitors to identify best practices and figure out where they can improve.

At present, the best benchmarking studies available have been conducted by political scientists who have managed to wangle enough money and research assistants to gather the necessary data. But those studies are inherently limited. They tend to be small-scale and focus on narrow questions. More importantly, they cannot provide grounds for drawing conclusions across widely varying jurisdictions. Election practice is too complex and too varied to be captured by studying a small sample. As several leading scholars of election administration explain, an election system is like an "ecosystem. . . . [C]hanges in any one part of the system are likely to affect other areas, sometimes profoundly."⁶⁴ When ecosystems vary as much as they do in the elections context, large-scale, cross-jurisdictional studies are essential.

Put differently, election reformers and policymakers today function a lot like doctors did in the old days. Based on limited information they have about the symptoms of the problem (lots of ballots are discarded, lines seem long in some polling places), they try to identify the underlying disease (is the source of the problem badly trained poll workers? malfunctioning machinery?). Like the doctors of yore, election reformers and administrators may even try one fix, followed by another, hoping that their educated guesses turn out to be correct. The problem is that their educated guesses are still just that . . . guesses.

Even when advocates and administrators come up with a good guess as to a solution, they cannot figure out how much improvement it will bring or how its effects would compare to other, less costly solutions. In today's environment of tight budgets and limited resources, this lack of precision undermines the case for change.

What reformers and election administrators need is what modern medicine provides: large-scale, comparative studies that tell us what works and what doesn't in treating a problem. The Democracy Index is a first step in that direction. It would provide comparative data regarding both policy inputs (registration practices, balloting rules, training programs) and performance outputs (data on discarded ballots, the length of lines, and voter complaints). Without the kind of data generated by the Democracy Index, we cannot run the type of large, cross-jurisdictional studies that would be necessary to generate a consensus about what constitute best practices.

Identifying the drivers of performance. The dearth of data not only makes it harder for us to cure specific ailments in our election system; it also makes it hard to figure out how to inoculate a voting system against future disease. Put yourselves in the shoes of a reformer or an election administrator and you can see why comparative data is so crucial. While you are certainly interested in specific fixes for discrete problems, you would also like to create a robust system capable of self-correction so that future problems can be avoided in advance rather than corrected after they arise. Your goal is to identify not just individual reforms, but the basic drivers of performance.

If you want to identify the drivers of performance, absolute numbers matter to you, but comparative numbers are far more useful. After all, if you can't even identify who is performing well, it is hard to figure out precisely what drives good performance. Without comparative data on performance, we cannot know whether, for instance, well-funded systems tend to falter less often, or whether the key to creating a system that is capable of early self-correction is centralization, better training, or nonpartisan administration.⁶⁵

* * * *

In sum, whether we are talking about discrete policy solutions or the drivers of performance, too much of the discussion takes place in a world without data. The Democracy Index would help address this problem by giving us the same tools that doctors, businessmen, and now environmentalists possess: comparative information on bottom-line results. It would enable reformers and election administrators to figure out not only which jurisdictions run the best systems overall, but which ones do best within individual categories (which localities have the fewest complaints about poll workers, what states have the shortest lines). Not only would the Index give us a rough sense of which jurisdictions had the best performance records, but any administrator could compare her own jurisdiction's policies to the most highly ranked localities and see which ones would be easiest to adopt.

The Democracy Index is especially intriguing because it would help turn one of the biggest obstacles to reform – local control – into an advantage. Academics will always tell you that one of the benefits of decentralization is that it allows states and localities to function as “laboratories of democracy,”⁶⁶ with different jurisdictions deploying different solutions to the same problem. There is little point to having laboratories of democracy if no one reports the results of each experiment. We simply cannot take advantage of local experimentation without the type of data that the Democracy Index would provide.

Selling the solution

In addition to making problems visible and helping identify sensible solutions, data matters to those making the case for reform. The politics of election reform look a lot like the politics of environmental reform before people like Dan Esty arrived on the scene. Like environmentalists, election reformers get tagged as starry-eyed idealists. As with environmental debates, people often have trouble following the arguments for reform, which toggle between high principles and arcane detail. As with environmentalists during the early days, the mantra of election reformers is often “do better, do more,” and reform programs are often based on best guesses, not data and benchmarking. As with the environmental movement, reform is cast in these terms because “do better, do more” and best guesses are often all reformers have to go on. And like their green counterparts, election reformers occasionally indulge in a bit of what Esty calls “holier-than-thou-ness” when talking about reform. It's hard to blame them. Reformers probably are holier than thou . . . or at least holier than I am. They do a very hard job for very little money.

Spencer Overton, professor of law at George Washington University, could be election reform's counterparts to Dan Esty.⁶⁷ Overton draws his idealism from a civil-rights background and is capable of talking about the right to vote in stirring terms. But with his Harvard Law degree and polished style, it's as easy to imagine him relating to corporate executives as to public interest lawyers. Like Esty, Overton has often served as a translator for the reform community. His first book, for instance, recast complex and sometimes arcane election law questions in terms that everyday people can understand.⁶⁸ In Overton's words, the goal of the book is to show "the relationship between the technical details of election administration and big questions of power."⁶⁹

Unlike Esty, however, Overton fights the good fight in a world without data. A few years ago, Overton served as a member of the Carter-Baker Commission on Election Reform, which generated great controversy by endorsing a voter identification requirement. Voter i.d. has been a significant source of contention in election circles, with conservative commentators insisting that requiring identification at the polls deters fraud and liberal commentators countering that the requirement is a disguised effort to suppress (largely Democratic) votes. The rhetoric on both sides of the issue has gotten heated, with one side talking about "stolen" elections and the other side equating identification requirements to vote suppression tactics of the past.

When Overton dissented from the Carter-Baker Commission's voter i.d. decision, he did so in a particularly interesting way. Most advocates contesting voter i.d. laws have simply invoked civil-rights rhetoric. Overton called upon that tradition, but he mainly focused on what Dan Tokaji would term the "moneyball" question. Overton tried to amass as much data as he could in order to engage in a rigorous cost-benefit analysis of the policy.

The problem for Overton was that the data was haphazard and inconsistent. As he began to try to assess the empirics, he discovered that "no systematic, empirical study of the magnitude of voter fraud has been conducted at either the national level or in any state to date."⁷⁰ Nor were there any good studies on the effect voter identification has on voter behavior. In lieu of such studies, Overton tried to pull together some basic numbers on how many voters do not possess the requisite i.d. and how many fraudulent votes have been cast that might have been prevented by an i.d. requirement. Taking a page from the conservatives' handbook, Overton then offered a cold-blooded cost-benefit analysis. He argued that it was a mistake to endorse voter i.d. when the Commission could not show that it "would exclude even one fraudulent vote for every 1000 eligible voters excluded."⁷¹

Though Overton was ready to embrace a moneyball approach and deploy the type of cost-benefit arguments that liberals have typically eschewed, he was handicapped in his efforts because there was so little data on either side of this debate. As Overton correctly observed, the Carter-Baker Commission was basing its decision on the only evidence that existed: anecdote. Overton argued that anecdotal evidence led the Commission to overestimate both the problem of fraud and the likelihood that an identification requirement would solve it.⁷²

Overton did not spare his allies criticism, either. He challenged voter i.d. opponents because they “regularly recite talking points about threats to voter participation by the poor and minorities, but often fail to quantify this assertion.”⁷³ Although he was able to amass a significant amount of data about the number of voters who do not currently possess a photo i.d., that data, standing alone, could not tell us how many voters wouldn’t vote were an i.d. requirement enacted. On the one hand, as Overton observed, his numbers might lead one to overestimate the effect of an identification requirement. For example, as Overton notes, voters who don’t possess i.d. may “have lower participation rates,” so that an identification requirement may not have a significant effect on turnout.⁷⁴ Moreover, people who do not currently possess an i.d. might try to get one rather than sit out an election.⁷⁵ On the other hand, Overton’s numbers may underestimate the effect of an identification requirement. For instance, even people who possess i.d. might be deterred from voting because of the hassle involved in bringing it to the polls.⁷⁶

The kind of data that Overton was looking for has begun to trickle in as political scientists have started to study these issues on a small-scale. But at the time the crucial decision was being made by the Carter-Baker Commission, the state of the data on voter i.d. was like the state of the data on most issues: sketchy. Overton’s frustration about the debate remains palpable: “I’m an academic,” he says. I believe in facts. I believe in reality.”⁷⁷ A debate without good facts, says Overton, is likely to end up with the wrong answer.⁷⁸

As Overton’s experience makes clear, the absence of data is a significant problem for those engaged in reform debates. Reform debates occur at two levels. Sometimes, reformers and election administrators speak at the 30,000-foot level, invoking grand generalities about democracy and the right to vote. At other times, reformers and administrators debate the microscopic details of individual policies, discussing technical minutiae that almost no one can follow. The problem in both cases is the same – voters have no means of judging who is right. Voters are in the same position as that dog in a Far Side cartoon – subjected to a stream of incomprehensible detail interrupted by occasionally comprehensible references to the right to vote.

The atmospherics of election reform do little to help the cause. Voters' only strategy for resolving these debates is to decide whom they trust, but neither side is likely to engender widespread confidence among voters. On one side you have elected politicians and embattled bureaucrats, whose pleas that they are doing the best they can are as likely to elicit cynicism as sympathy from the electorate. On the other side of the debate are election-reform advocates, who are often branded with the same stereotypes attached to other reformers: idealistic, liberal, even a bit zany. In private, election reformers are about as cynical as anyone can get about politics, but in public they sound a more idealistic note. It's a bit like watching a cherubic camp counselor sing kumbaya around the camp fire and then swear like a sailor when the kids are gone. Or perhaps, as Leo Lerman said of Truman Capote, they are "so worldly as to be naïve."

Moreover, because reformers are always asking the state to "do more" or "do better," they can be dismissed as unrealistic or naïve about the costs of reform. Even if reformers start to get any traction in these debates, there is a good chance that the political party in power, fiercely protective of its privileges, will label them as partisan zealots or sore losers. Take a look at the fights that recently took place over redistricting reform in Ohio and California. Rightly or wrongly, those were precisely the type of accusations levied against those trying to prevent legislators from drawing their own districts.⁷⁹

Election reform debates don't look much better when they are viewed from the vantage of top-level policymakers – the people who make the rules and hold the purse strings. Although policymakers are likely to be more sophisticated about evaluating the evidence than voters are, there is not much evidence to evaluate. Like voters, officials in leadership positions have little more than atmospherics and anecdotes to go on. Like voters, those officials may be reluctant to trust either administrators, on the one hand, or reformers, on the other. Policymakers see plenty of untrustworthy arguments coming from administrators who aren't doing their job properly. And they grow pretty tired of the insistent drum beat for change emanating from the reform community. Like voters, top-level policymakers need a tie breaker, some yardstick to judge the debate taking place between administrators and reformers.

The Democracy Index could help change the debate over reform. In place of anecdote and idealism, it would offer cold, hard statistics about locality's election performance. Rather than relying on abstract invocations of the right to vote or bogging down voters or policymakers in the technical details of election administration, reformers could let the numbers speak for themselves.

Think about the ways in which good performance data could change the nature of the reform debate. To begin, we might expect to see a rhetorical shift in these debates. People branded as starry-eyed idealists would have the data they need to speak in the pragmatic cadence of corporate executives. Reformers could continue to call on democratic ideals. But they would also be able to ground those claims with information on bottom-line results. The Democracy Index would thus expand the reformers' vocabulary, enabling them to speak more concretely about tradeoffs and second-best solutions and to appeal to traditionally conservative ideas like accountability and competition.

The Democracy Index might change not just the rhetoric of reform debates, but their substance. In a world without data, reformers focus on policy inputs – which tabulating machine is “better,” whether the state has invested “enough” money in training poll workers, or whether the registration process could be “easier.” Election administrators respond in a similar vein, talking about dollars spent and people hired. In a world without data, it is completely understandable that both sides focus on policy inputs; they are the only means we have for assessing the system. But in addition to the problem noted above – it's hard to know which inputs matter in a world without data – debates about policy inputs are exceedingly hard for most people to follow. No one comes into the world with a strong intuition about whether DRE machines are superior to optical scan machines, whether money should be focused on poll workers or vote-tabulating machines, or how to maintain a registration database.

Information about election outputs shifts the focus of these debates to the issues that voters and policymakers not only understand, but value: bottom-line results. People who aren't enmeshed in election administration don't care which type of machine is closest to the ideal. They care about cost-effective strategies for reducing lines and preventing ballots from being discarded and producing accurate counts. Rather than bogging voters and top policymakers down in technical details about how the ideal system would be run – details even election junkies rarely grasp – comparative data about performance gives voters and high-level decisionmakers information about things they can evaluate: how many registration problems occurred, how long were the lines, how many ballots were discarded. In place of debates about which tabulating machine is “better” or atmospheric claims that the state hasn't invested “enough” money in training poll workers or could do a “better” job of registering voters, we would know the results of each state's choices.

Voters and top policymakers may be reluctant to hold election officials accountable based on the necessarily atmospheric judgments of the reform community. They need hard numbers and comparative data on state and local performance. When voters and policymakers have access

to those numbers, election administrators can talk all they want about what they have done. But they cannot get around the stark reality of the data the Democracy Index would provide: Is the system working or not? And why is the state next door doing so much better?

Consider, for example, the success that election reformers have had with the Election Incident Reporting System (EIRS),⁸⁰ a web-based system that had allowed voter protection groups and individuals to report problems they've encountered in the last few elections. As Charles Stewart of MIT explains, the results of the EIRS are "suggestive at best"⁸¹ because they depend on people reporting problems rather than random sampling, the gold standard of social science research. Nonetheless, the EIRS database has become an important tool for reformers.⁸² That is because the data is available at the state and county level, allowing reformers to tell state legislators and local council members that problems exist in *their* neighborhoods. Presenting concrete, quantifiable evidence of a problem has helped reformers get traction with policymakers who have otherwise been unmoved by reformers' idealistic pleas.

If the EIRS has helped reformers make headway in reform debates despite all of its flaws, imagine what a better, more rigorous dataset like the Democracy Index might do to smooth the path for reform. It would offer cold, hard numbers in place of atmospherics and anecdotes. It would provide bottom-line results in place of subjective judgments. In a world in which voters and top policymakers have a hard time figuring out whom to trust, a Democracy Index gives them something else to rely on: data.

Building alliances

Good data may also create an environment that is more receptive to election reform by helping reformers and election administrators build much-needed alliances. Some of the most effective lobbyists for change are people working inside the system, the bureaucrats and policymakers Dan Esty would term "leverage" points.⁸³ Moreover, no solution to the problems I've described can be imposed top-down. It is essential that reformers have "buy in" from election administrators at every level if they want their ideas to be properly implemented. Unfortunately, in a world without data, insiders sympathetic to change lack the tools they need to push for it, and ongoing fights between administrators and reformers are slowly eroding the number of allies reformers have on the inside.

Arming existing allies. At the most basic level, comparative data is useful because it gives administrators already sympathetic to the cause of reform the information they need to make the case for change. Counterintuitively, even bad news can be helpful to election administrators. As any public interest lawyer will tell you, there is often

an unholy alliance between the lawyers suing an institution and the bureaucrats who are the target of the suit. Bureaucrats, oddly enough, sometimes welcome law suits because they force legislators to give them more resources and support.

Low rankings can similarly be a disguised gift for bureaucrats. For instance, Lynn Olson of Quality Counts, a system that grades states based on their educational policies, has found that state policymakers use the rankings as leverage. A bad ranking provides a justification for getting more resources; a good resource helps them protect a policy that is under attack.⁸⁴ Philip Joyce -- a long-time leader in the Government Performance Project, which grades state government's management practices -- has had a similar experience. For instance, he notes that after Alabama received a lackluster "C-" from the GPP, state administrators invited several people involved in the project to speak at a conference and used the report to build support for the governor's reform plans.⁸⁵ Ranking systems have even served a useful purpose in the elections context. For instance, Kentucky Secretary of State Trey Grayson used a ranking that showed Kentucky lagging behind on campaign finance reform to get a new law passed.⁸⁶

Generating more alliances. The Democracy Index might do more than help sympathetic bureaucrats lobby for reform from the inside; it might also generate *more* allies of reform within the system. There has been a long and not-so-merry war between election reformers and administrators. One often hears the word "poisonous" used to describe relations between the reform community and election administrators. Needless to say, tense relations between reformers and administrators are a real obstacle to reform. As Edward Hailes of the Advancement Project observes, it is much better for reformers "to get inside election administrator's heads than in their faces."⁸⁷

While reformers and administrators in other arenas don't always get along, relations seem particularly strained in the elections context, a problem traceable at least in part to the absence of data. The lack of data makes it possible for one side to be obdurate and the other to engage in occasional histrionics. It's like watching the policymaking version of *The Odd Couple*.

Election administrators play Oscar Madison's role. Election administrators preside over a messy, chaotic system. In a world without data, it is easier for an administrator to deny that a problem exists than buckle down to fix it. As with all of us, change seems like a pain, and the people needling them to change seem like a bigger pain. Surely we can forgive election administrators' bristling at the "holier-than-thou-ness" sometimes displayed by reformers. Election administrators are the one

group that does a harder job and makes less money than reformers. The temptation to shut out reformers instead of turning to them for help is significant in a world where no one has good data to pinpoint a problem. It's no wonder that election administrators sometimes come off as grumpy, gruff, and cynical.

Reformers, in turn, play the role of the histrionic Felix Unger (minus the suit). The absence of data may lead reformers to up the rhetorical ante in reform debates. Without concrete data on performance, it is very hard to get policymakers' attention, something that sometimes leads reformers to overstate the problem or present their solution as if it were a "silver bullet" when it will probably improve the system only modestly.⁸⁸ Good data also makes it easier to make extravagant claims. For instance, fearing that any concession will license election administrators to ignore real problems (the old worry about "giving 'em an inch"), reformers often speak as if even a single discarded ballot or a single voter deterred is one too many. The truth is that there are trade-offs involved in designing any election system, something that comparative performance data should reveal. Guaranteeing a precise ballot count may delay election results. Making it easy for members of one group to cast a ballot may make it harder for those in another. An easier registration system may make the balloting process more chaotic. Moreover, as with every reform project, there is always a point of diminishing returns. Sometimes localities *ought* to be investing in cops and teachers rather than spending large amounts of money to make marginal improvements to their voting systems. In a world without data, the risk is that election reformers appear unduly fastidious and reinforce election administrators' sense that reformers' demands are excessive and their claims are oversold.

Election administrators and reformers should not be playing to these stereotypes. They are serious people doing serious work, and they both need each other to do their job. Good data ought to help both groups escape from their role. It will provide reformers the evidence they need to make the case for reform and make it harder for election administrators to deny they have a problem. But data will also create an incentive for reformers to choose their fights wisely by giving election administrators grounds for pushing back when a costly reform seems unlikely to produce sufficient results. Data thus provides a disciplining device that ought to make reform arguments better on both sides.

A second, more serious problem that occurs in a world without data is that election administrators are too easily demonized in debates over reform. Doug Chapin terms election administrators "grenade catchers,"⁸⁹ and rightly so. They are on the receiving end of a lot of criticism about the way elections are run. When a crisis occurs, people unaware of the problems associated with deferred maintenance too easily

blame the administrators for incompetence or, worse, partisanship. When an administrator takes a position that is contrary to the commitments of an energized reform group, allegations of bad faith tend to fly. There's little an administrator can say in response to these accusations, as she lacks any means to establish her professional credentials or competence. We are quickly back to the "am not/are too" debate that no one can referee.

Things have deteriorated in the wake of the 2000 and 2004 controversies over the presidential elections. An outspoken subset of the reform community has begun to treat election administrators "as if they were co-conspirators to hand elections over to the Republican party,"⁹⁰ says David Becker, a former member of the Justice Department and the director of the People for the American Way's Democracy Campaign. If election administrators were capable of even a fraction of the machinations attributed to them on some websites, they would make Karl Rove look like a rank amateur.

Demonization is too easy in a world without data. Because voters learn about problems only when there is a crisis, they lack a comparative baseline for assessing what's going on, and it's not that hard to leap to the conclusion that the problem was deliberately engineered. After all, most voters operate in a virtual black box – they know there's a crisis, they don't see other places experiencing the same problem, and they may even be aware of the partisan affiliation of the person in charge. It is all too easy to connect the dots. As Matt Damschroder observes, any appointment system in which one "get[s] to have a position because of one's partisan affiliation" will create the impression that the "office is being run in a partisan manner."⁹¹

Here again, the introduction of reliable, comparative data on performance might help cool off the debates in which election administrators find themselves mired. In a world without data, the public lacks any metric for assessing claims of abuse, and voters will have no way of knowing that the problems they see in a crisis exist in many parts of the country. A comparative view should help voters sort deliberate partisan shenanigans from the usual ailments that afflict most jurisdictions -- a lack of professional expertise, poorly trained poll workers, too few resources. There is a rule often invoked by computer programmers called "Hanlon's razor" which says that one should never attribute something to malice that can be adequately explained by stupidity. The counterpart to that rule in the election arena is that we should be cautious attributing to partisanship that which has been caused by deferred maintenance.

The Democracy Index would serve as both a sword and shield in these fights. On the one hand, in those instances when the source of the problem is partisanship, rather than incompetence or neglect, the

Democracy Index would help reformers establish why an administrator's decision was an outlier or contrary to the best practices. On the other hand, the Democracy Index should also provide a bit of cover for those administrators doing a good job. A ranking system that showed that the locality ran one of the best election systems in the country would go far to defend against unfair accusations. Even a ranking system that showed that the jurisdiction in question was at the bottom of the list might be useful, as voters would see that a number of other jurisdictions suffered from the same problems. It would be easier to understand that the problems is caused by deferred maintenance, not malice.

It is a commonplace that no one wants to be evaluated, and one might expect election administrators to resist a data-driven approach. But election administrators already come under a lot of unwanted scrutiny, and some measurement devices are better than others. Think about two of the people I've talked about in this chapter: Conny McCormack of L.A. County and Franklin County's Matt Damschroder. Both have been excoriated at some point by reform groups (McCormack for her defense of punch-card and, later, touch-screen voting systems⁹²; Damschroder for the debacle that took place in Franklin County during the 2006 election⁹³). Both also enjoy a fair amount of respect from experts and other election administrators. For instance, Tom Mann, the head of the Brookings Institute, recently praised L.A. County as one of the best-run systems in the country because of McCormack's "extraordinarily competent leadership."⁹⁴ And Damschroder was elected President of the Ohio Association of Election Officials.⁹⁵ Regardless whether you think McCormack and Damschroder are villains or heroes, it is awfully hard to know for sure if you are correct in a world without data. The Democracy Index would at least help the conversation start at the right place.

Can we and should we measure democratic performance?

While I have outlined a number of reasons to think that data-driven analysis would do much to further the cause of reform, there are still costs to adopting a data-driven approach. While the benefits outweigh the costs in my view, it is important to acknowledge them.

Is democratic performance measurable? A skeptic might be suspicious of a data-driven approach because he thinks that election performance can't be measured. Most of the arguments against measuring institutional performance – debates over the widespread use of CitiStat by government agencies, the U.S. News and World Report rankings, No Child Left Behind – boil down to some variant of this claim. People argue, with some justification, that quantitative measures can't possibly capture how well a school educates its students or whether the government is doing a good job providing social services.

The main thrust of this argument is that gauging institutional performance requires us to make value judgments, and no data set can make those judgments for us. Data-driven analysis may be a natural tool for the business arena, according to this argument, because the goal is clear: businesses are supposed to make money. Government agencies and educational institutions, in contrast, are supposed to carry out a variety of tasks that necessarily require more complex normative assessments.

It is plainly true that judging election performance requires us to make value-laden decisions about what matters and why. As I explain in Chapter 5, the designers of the Index should be quite clear what judgments they are making and the reasons for those decisions

The fact that evaluating election performance requires us to make some value judgments should not, however, lead us to give up entirely on the possibility of using quantitative data to measure election performance. Some government activities lend themselves more easily to measurement, and some metrics are less contestable than others.

A properly designed Democracy Index ought to fall on the more comfortable side of this sliding scale. It would not depend on atmospheric judgments about which practices are “better,” but instead focuses on bottom-line results that are, for the most part, possible to capture in a statistic: how long were the lines? how many ballots got discarded? how often did the machines break down? how many people complained about their poll workers? Moreover, the Democracy Index would focus on common-sense issues that matter to most voters, not issues that have generated intense controversy, like campaign finance or felon disenfranchisement. While politicians are often divided over election practices because of their potential partisan effects, there is good reason to think that voters can agree about what they want: a process that makes it easy to register, cast a ballot, and have that ballot counted fairly and accurately. There are devils in those details, as I will explore in Chapter 5. But the basic metrics should be the subject of a reasonable amount of consensus.

Teaching to the test. A skeptic might also worry that even if we can measure election performance, we shouldn’t. The basic worry is that data-driven policymaking leads people to focus on the wrong thing. Dan Esty argues that “what matters gets measured,” but there is a real danger that the reverse is true –what’s measured might become all that matters. Data-driven analysis creates a risk that people will neglect important issues that can’t be captured in a statistic.⁹⁶

The concern that election administrator’s will “teach to the test” is

a weighty one. In order to figure out whether teaching to the test is a problem, we need to know whether it's a good test and what kind of teaching takes place when there's no test. Given the many problems created by a world without data, there is surely good reason to want more information on how our election system functions. The harder question is whether it's possible to design a good test. As I explain in Chapter 5, it should be possible to create a Democracy Index that is comprehensive enough that states and localities won't be tempted to neglect a core duty. To be sure, if the Index works, it will surely reorient state and local priorities, perhaps causing them to neglect concerns that the Index doesn't measure. Whether you think that cost is significant enough to eschew data-driven analysis altogether depends on whether you think that most of the basic components of election administration can be captured in a statistic. Given the nuts-and-bolts nature of the endeavor and the many strategies available for measuring performance, there is good reason to think that the benefits here outweigh the costs. Teaching to the test in this context seems better than having no test at all.

One also might worry that data-driven analysis is inconsistent with the civil-rights roots of election reform. It would, of course, be a mistake to shift *all* discussion of election performance to the turf of "moneyball politics"; doing so would obscure the stakes of these debates. There are important civil-rights issues that cannot be captured in a statistic but are nonetheless important. But there is no reason to think that data-driven factual analysis will crowd out such issues. To the contrary, as Spencer Overton's efforts suggest, data-driven factual analysis can often aid the cause of civil rights. The Democracy Index ought to supplement the reformer's vocabulary without preventing reformers from focusing on the issues they've always emphasized.

Finally, even if the skeptic is right to worry about the push toward data-driven analysis, that push will occur whether or not a Democracy Index is created. Jonah Goldman of the National Campaign for Fair Elections notes that reformers have been trying to "cobble together" good data "with duct tape" for a long time.⁹⁷ Similarly, People for the American Way's David Becker notes that opponents of reform are doing their best to "fill in" the gaps in the data.⁹⁸ Both agree that it is better to have a credible, comprehensive set of metrics than the unreliable data that is currently being deployed.

* * * * *

Election reform debates take place in a world without data. We lack the basic information on policy inputs and performance outputs to make sensible, informed judgments about what problems exist and how best to solve them. At every stage of the reform process – from

identifying the problem to selling the solution to implementing the new policy – the absence of comparative performance data handicaps efforts at reform.

A Democracy Index will not solve all of these problems. But it should help. Good data helps us identify problems with precision and convince policymakers to address them. Good data should help us figure out not just how to solve discrete policy problems, but how to create an election system that is sufficiently robust to avoid problems in the future. Finally, the introduction of some cold, hard facts into debates over reform ought to help cool the debates between administrators and reformers, something that is essential not only for passing reform, but getting it properly implemented. Even if the Democracy Index goes only some of the way in mitigating existing obstacles to reform, it smooths at least some of the bumps of the road that reformers must travel.

¹ The facts in this section were drawn from a series of interviews I conducted with Esty as well as his writings. Direct quotations from those interviews and his writing are cited individually.

² Daniel Esty, *Greening the Gatt: Trade, Environment and the Future* (1994).

³ Interview with Dan Esty, October 24, 2007.

⁴ <http://www.weforum.org/en/initiatives/gcp/Global%20Competitiveness%20Report/index.htm>

⁵ Dan Esty, Building a Democracy Index Conference, Columbus, Ohio, September 29, 2007.

⁶ The ranking and information on its constructions is available at <http://www.yale.edu/epi/>.

⁷ See http://sedac.ciesin.columbia.edu/es/esi/rank_01.html.

⁸ <http://www.yale.edu/epi/>

⁹ Dan Esty, Building a Democracy Index Conference, Columbus, Ohio, September 29, 2007.

¹⁰ <http://www.carbonfootprint.com/>

¹¹ Interview with Dan Esty, October 24, 2007.

¹² Interview with Dan Esty, October 24, 2007.

¹³ Interview with Dan Esty, October 24, 2007.

¹⁴ Interview with Dan Esty, October 24, 2007.

¹⁵ Thad Hall & Daniel Tokaji, Money for Data: Funding the Oldest Unfunded Mandate (June 5, 2007), <http://moritzlaw.osu.edu/blogs/tokaji/2007/06/money-for-data-funding-oldest-unfunded.html>.

¹⁶ Cal Tech/MIT Voting Technology Project, Insuring the Integrity of the Election Process: Recommendations for Consistent and Complete Reporting of Election Data, October 2004.

¹⁷ Charles Stewart, III, Residual Voting in the 2004 Election, CalTech/MIT Voting Technology Project, VTP Working Paper No. 25, at 35 (Feb. 2005).

¹⁸ Thad Hall & Daniel Tokaji, Money for Data: Funding the Oldest Unfunded Mandate (June 5, 2007), <http://moritzlaw.osu.edu/blogs/tokaji/2007/06/money-for-data-funding-oldest-unfunded.html>.

¹⁹ See Stewart, *supra* note __, at 21.

²⁰ The Commission on Federal Election Reform, Building Confidence in U.S. Elections 57 (2005).

²¹ Election Assistance Commission, 2006 Election Administration and Voting Survey, <http://www.eac.gov/News/press/clearinghouse/2006-election-administration-and-voting-survey>.

²² 42 U.S.C. § 15322.

²³ The three reports that the EAC published on election administration are the 2006 Election Administration and Voting Survey, the 2005-2006 National Voter Registration Act Survey, and the 2006 Uniformed and Overseas Citizen Voting Act, all available here <http://www.eac.gov/clearinghouse/reports-and-surveys/>.

²⁴ Many thanks to Peter Miller for his work in creating this ranking and to the folks at the Pew Center on the States and electionline.org for suggesting the idea in the first place. For a full view of the scoring prior to aggregation, see democracyindex.com.

²⁵ These included (1) the numbers of active and inactive voters, (2) the number of voters registered on election day (for the states that allow for election day registration), (3) the manner and location voters were registered, (4) the number of registrations rejected and the reasons for the rejection, (5) the number of registrations removed and reasons for the removal, (6) the number of ballots cast and counted, (7) reasons for rejecting provisional ballots, (8) the reasons for rejecting domestic absentee ballots, (9) the number of undervotes and overvotes, (10) information regarding the number of precincts and polling places, poll worker information, and information regarding the accessibility of polling places for people with disabilities; (11) the numbers of ballots cast and counted from those voters covered by UOCAVA (overseas voters, domestic military voters, and overseas civilian voters), (12) the number of absentee ballots sent and received under UOCAVA, (13) the number of UOCAVA ballots that were rejected. These categories correspond to the data categories in each report. I outline the reasons for asking for each category of data in Appendix 1. As noted in the text, because the jurisdiction count was unavailable for overvote and undervote reporting below the state level, this category was excluded from the ranking.

²⁶ For a state like Alaska, which reports only at the state level, the state was treated as a single jurisdiction.

²⁷ For instance, as noted in the text, several states reported that there were “0” votes were cast by overseas military voters.

²⁸ See Appendix 1.

²⁹ Alabama, for instance, tended to have high reporting rates for some portions of each survey but quite low reporting rates for others, resulting in a very low overall ranking. Similarly, Vermont provided complete or near-complete data for basic questions (like how many provisional ballots or absentee ballots were rejected) but failed to report data on the reasons why these ballots were rejected. While the latter information is important for reasons I outline below, Vermont at least had good data on the primary questions.

³⁰ For the full table, see democracyindex.com.

³¹ The information in this and the next paragraph was provided by Peter Miller, who played a significant role in pulling the EAC study together.

³² Carter-Baker Commission, *supra* note __, at 54.

³³ Ian Ayres, *Supercrunchers: Why Thinking by the Numbers is the New Way to Be Smart* (2007).

³⁴ Emily Nelson, Retailing: Why Wal-Mart Sings, ‘Yes, We Have Bananas!’, *WALL ST. J.*, Oct. 6, 1998, at B1.

³⁵ Constance L. Hays, What Wal-Marts Knows About Customers’ Habits, *New York Times* (Nov. 14, 2005).

³⁶ *Priority is Clear: Improve the Shopping Experience*, 23 MMR, Dec. 11, 2006, at 53.

³⁷ See, e.g., Julia Melkers & Katherine Willoughby, *Staying the Course: The Use of Performance Measurements in State Governments* (IBM Center for Business and Government 2004).

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- ³⁸ For a survey, see Harry P. Hatry et al., *How Federal Programs Use Outcome Information: Opportunities for Federal Managers* (IBM Center for Business and Government 2003).
- ³⁹ For a useful sampling of these programs, see Daniel C. Esty & Reece Rushing, *Governing by Numbers: The Promise of Data-Driven Policymaking in the Information Age* (2007).
- ⁴⁰ For a comprehensive but perhaps unduly cheerful analysis of CitiStat, see Robert D. Behn, What All Mayors Would Like to Know about Baltimore's CitiStat Performance Strategy" (IBM Center for Business and Government 2007).
- ⁴¹ *Id.* at 9.
- ⁴² See, e.g., Paul O'Connell, Using Performance Data for Accountability: The New York City Police Department's ComptStat Model of Police Management (IBM Center for Business and Government 2001).
- ⁴³ Hatry et al., *supra* note ___, at 37-43.
- ⁴⁴ *Id.* at 57-58.
- ⁴⁵ *Id.* at 21-30.
- ⁴⁶ See, e.g., Brennan Center, The Machinery of Democracy: Voting System Security, Accessibility, Usability, and Cost (2006).
- ⁴⁷ Charles Stewart III, Measuring the Improvement (Or Lack of Improvement) in Voting Since 2000 in the U.S., CalTech/MIT Voting Technology Project, VTP Working Paper #36 (August 2005), at 23 ("the best data we have to track how the use of voting machines is evolving is still imprecise and incomplete").
- ⁴⁸ Interview with Jennifer Bruner, January 28, 2008.
- ⁴⁹ For an excellent survey of these and other arguments, see Esty & Rushing, *supra* note ___.
⁵⁰ Election Assistance Commission, UOCAVA Survey Report Findings 27 (2007).
- ⁵¹ Thad Hall & Daniel Tokaji, Money for Data: Funding the Oldest Unfunded Mandate (Tues, June 5), Equal Vote Blog, <http://moritzlaw.osu.edu/blogs/tokaji/2007/06/money-for-data-funding-oldest-unfunded.html>
- ⁵² Daniel Tokaji, The Moneyball Approach to Election Reform, Election Law @ Moritz – Weekly Comment (Oct. 18, 2005), <http://moritzlaw.osu.edu/electionlaw/comments/2005/051018.php>
- ⁵³ Roger Angell, *Once More Around the Park: A Baseball Reader* 4 (1991).
- ⁵⁴ Michael Lewis, Moneyball: The Art of Winning an Unfair Game.
- ⁵⁵ Tokaji, *supra* note ___.
⁵⁶ *Id.*
⁵⁷ *Id.*
- ⁵⁸ Interview with Matthew Damschroder, October 29, 2007.
- ⁵⁹ Interview with Matthew Damschroder, October 29, 2007.
- ⁶⁰ Doug Caruso, Vendor's donation questioned, *The Columbus Dispatch* (July 16, 1005).
- ⁶¹ See, e.g., Farhad Manjoo, Was the 2004 election stolen? No. <http://www.salon.com/news/feature/2006/06/03/kennedy/> (making this argument and quoting William Anthony); see also Editorial, "Sound and Fury," *Columbus Dispatch* (quoting William Anthony).
- ⁶² As one expert investigation explains, the county based its allocation decisions on "information about the size of the active electorate that was available . . . at the end of April, 2004." Walter R. Mebane, Jr., Voting Machine Allocation in Franklin County, Ohio, 2004: Response to the U.S. Department of Justice Letter of June 29, 2005, at 14 (unpublished paper, on file with author). Contrary to accusations levied against the Franklin Board, those allocations did not reveal a bias against any racial group. *Id.* The problem is that the Franklin Board "ignored information during the late summer and fall that should have showed them that the November electorate would be substantially larger," particularly in polling places with a high number of minority voters. *Id.* at 13.
- ⁶³ Interview with Matthew Damschroder, October 29, 2007.

⁶⁴ Steven Huefner et al., *From Registration TO Recounts: The Election Ecosystems of Five Midwestern States* v (2007).

⁶⁵ Some initial answers to these questions have been offered by a group of scholars based on an in-depth, qualitative study of five election systems in the Midwest. Huefner et al., *supra* note _____. This important study should be immensely useful in trying to figure out how to generate answers to these questions on a larger scale once better data becomes available.

⁶⁶ *New State Ice. Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). Scholars of “democratic experimentalism” have explored the practical and theoretical dimensions of benchmarking in the governance context. *See, e.g.*, Joshua Cohen & Charles Sabel, “Directly-Deliberative Polyarchy,” 3 *Eur. L. J.* 313 (1997); Michael Dorf & Charles F. Sabel, “A Constitution of Democratic Experimentalism,” 98 *Colum. L. Rev.* 267 (1988)..

⁶⁷ What follows below is drawn from Overton’s published dissent to the Carter-Baker Commission, <http://www.carterbakerdissent.com/dissent.php>; an article he wrote on the controversy, “Voter Identification,” 105 *Mich. L. Rev.* 631 (2007), and two phone interviews conducted. Direct quotes are attributed to the specific source in each instance.

⁶⁸ Spencer Overton, *Stealing Democracy: The New Politics of Voter Suppression* (2006).

⁶⁹ Interview with Spencer Overton, November 15, 2007.

⁷⁰ Overton, *Voter I.D.*, *supra* note ____, at 634.

⁷¹ <http://www.carterbakerdissent.com/dissent.php>

⁷² Overton, *Voter I.D.*, *supra* note ____, at 636.

⁷³ Overton, *Voter I.D.*, *supra* note ____, at 635.

⁷⁴ *Id.* at 660.

⁷⁵ *Id.* at page 661.

⁷⁶ *Id.*

⁷⁷ Interview with Spencer Overton, November 15, 2007.

⁷⁸ *Id.*

⁷⁹ In Ohio, for instance, critics of the initiative repeatedly branded it as a Democratic power grab. *See, e.g.*, Opinion, “Case Against Issue 4 Takes a Hit,” *Dayton Daily News*, Nov. 3, 2005, at A14 (“From the beginning of the debate about Issue 4, critics have portrayed it as a Democratic effort to take power from Republicans.”); Kevin O’Brien, “Reform Ohio Now? No, no, and no,” *Cleveland Plain Dealer*, Oct. 19, 2005, at B11 (“[i]t’s easy to see why Republicans don’t want to see Ohio change the rules that govern political fund-raising, legislative district mapping, elections supervision and political fund-raising. They hold all of the high cards at the moment. . . . It’s just as easy to see why the Democrats are dying to change the rules. They’re so short of high cards, they’ve practically been dealt out of the game”).

⁸⁰ http://eirs.cs.net:8080/EIRS_WEB/User/findHome.do.

⁸¹ Stewart, *supra* note ____, at 16.

⁸² Interview with Jonah Goldman, January 4, 2008.

⁸³ Interview with Dan Esty.

⁸⁴ Presentation of Lynn Olson, Designing a Democracy Index Conference, September 28, 2007.

⁸⁵ Interview with Philip Joyce, September 19, 2007.

⁸⁶ Interview with Trey Greyson, January 9, 2007.

⁸⁷ Pew Journalists Forum, December 10, 2007.

⁸⁸ As Bruce Cain observes:

[T]he real effects of reform are usually smaller in every direct . . . mainly because of their intermingling with other factors that work in the opposite direction. . . . Because reform is usually made in a politically charged setting, the claims and counter-claims of opposing sides are often exaggerated and simplistic. Campaign finance reformers, for example, often imply that a proposed change will lessen corruption or lower election costs. Redistricting changes promise neutral and fair procedures, or higher levels of competition.

New voting technology was supposed to end voter confusion and restore confidence in the election process. . . . In fact, the claims on both sides rarely live up to the hype. Bruce E. Cain, Reform Studies: Political Science on the Firing Line,” 15 PS 635, 637 (2007).

⁸⁹ Pew Journalist Forum, Dec 10.

⁹⁰ Interview with David Becker, January 8, 2008.

⁹¹ Interview with Matthew Damschroder, October 29, 2007.

⁹² Andrew Gumbel, Connic McCormack [sic], Third Degree, Los Angeles City Beat, <http://www.lacitybeat.com/article.php?id=942&IssueNum=51>; Andrew Gumbel, Conny’s Final Ballot, Los Angeles City Beat, <http://www.lacitybeat.com/article.php?id=6118&IssueNum=222>,

⁹³ See, e.g., Robert F. Kennedy, Jr., “Was the 2004 Election Stolen,” *Rolling Stone Magazine* (June 1, 2006).

⁹⁴ Thomas Mann, Pew Journalists Forum, Dec. 10, 2007, Washington DC.

⁹⁵ Mark Niquette, “Franklin County elections chief to lead statewide group, *Columbus Dispatch* (Mar. 13, 2007).

⁹⁶ For a useful analysis of this problem, see Esty & Rushing, *supra* note ___, at 38.

⁹⁷ Interview with Jonah Goldman, January 4, 2007.

⁹⁸ Interview with David Becker. January 8, 2007.