

**Dysfunctional Decentralization: Electoral System Performance in Theory and  
Practice**

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## **Author Bio Statement**

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## **Abstract**

The U.S. electoral system is characterized by dysfunctional decentralization. While organizational improvements have been made since 2000, in the context of weak technical capacity and jurisdictional fragmentation, voter registration and technology problems continue to restrict turnout and impede balloting. Groups such as the Carter-Baker Commission (2005) have recommended practical solutions and traditional public administration theories have been applied to describe the loss of democratic legitimacy caused by this system. Electoral system recommendations have been problem-specific and descriptive. There is still no dynamic, theory-driven set of policy recommendations for this vital public function. Given this theoretical gap, fiscal federalist theory should be applied as an explanatory framework as it focuses on elections as an intergovernmental problem requiring a diverse set of financial tools, institutional incentives, and regulatory norms to balance the efficiency and responsiveness of the electoral system.

# **Dysfunctional Decentralization: Electoral System Performance in Theory and Practice**

## **Introduction**

The process of organizing and managing elections has been improving since the multiple fiascos of the 2000 presidential elections. However, as evidenced by the 2008 presidential election, there are still management and administration problems (*The Washington Post*, 2008). Some of these problems have lingered since previous elections and relate to voter registration and voting technology issues. Several studies and various approaches have been used to examine these problems, focusing on the technical aspects that lead to voting technology and voter registration problems. However, the intergovernmental aspects of these problems have not been analyzed through a theoretical perspective that could suggest possible avenues for improvement. Hence, a more rigorous theory is needed to guide reforms.

Many election management observers have noted the dysfunctions of an ultra-decentralized system (Pastor, 2005; IDEA, 2006) and argue logically for more centralization and regulation to increase effectiveness. The current system was developed from the bottom-up from thousands of local cultures that resist major changes and unfunded mandates. This system accommodates federal, state and local level roles in the management of elections. However, state and local responsibilities in the management of elections vary from state to state with differing degrees of

(de)centralization. Evidence from the conduct of election in the U.S., particularly from problems relating to voter registration list maintenance, voting technology and ballot design problems that became evident during the 2000 presidential elections, should lead to a reconsideration of the way elections are managed and the way responsibilities are assigned.

Decentralization often provides more responsive service delivery for diverse local needs and it facilitates institutional innovation. But it has its drawbacks. Policy-makers often find it hard to assign functions to subnational governments and maintain uniformity of norms and procedures across jurisdictions. The result is often a qualitative difference in the provision of public services from jurisdiction to jurisdiction. To exemplify this in the context of electoral administration, and in the context of the controversial 2000 U.S. presidential elections, it is possible to argue that the quality of the electoral experience in Palm Beach County, where outdated punch-card voting machines were used, was a case where a public service—the administration of elections—was provided at a lower quality (due to voting machine and ballot design problems) than in other counties and states during that election, where such problems were not observed. The well-meaning supervisor of elections attempted to design a ballot that the elderly population could read. In the process, she created the infamous “butterfly ballot” that instead confused many of them. The result was that as many as 2,000 Al Gore supporters voted by mistake for Pat Buchanan. Ballot design is a responsibility that is generally assigned at the local level due to the differences in local races (state law imposes certain requirements for local officials to meet, but ballot designs often differ from county to county in the same state). Lack of uniformly enforceable design standards led to systematic voting errors that cost Al Gore the election (Wand et.al.,2001:795). Consequently, decentralization in the context of election management can have

profoundly undemocratic consequences that may disenfranchise voters and undermine public confidence and the legitimacy of the electoral system.

Intergovernmental program design and implementation is always an institutional balancing act and designers must always face strong local preferences for exceptions to general norms. Fiscal federalist theory (FFT) can be used to identify systemic imbalances, where local autonomy should be overridden by normative centralization. It can point to an optimal level of decentralization in the context of election management using important elements of election administration—voter registration lists and voting technology—for which problems have been consistently been reported during elections.

## **Background and Context**

The administration of elections in the U.S. is highly decentralized. States regulate the various stages of the elections process and have traditionally covered the costs associated with these activities. Subject to federal constraints deriving from the Voting Rights Act of 1965 (VRA), the National Voter Registration Act of 1993 (NVRA), and the 2002 Help America Vote Act (HAVA), states and localities have full authority to structure their election systems. The VRA outlaws discriminatory state practices such as poll taxes and literacy tests that disenfranchised African Americans. It subjects electoral changes made by states and localities with a history of discrimination to a Department of Justice approval process. It also mandates that jurisdictions provide ballots in languages other than English when a certain percentage of the population has a

different primary language. The NVRA requires state governments to make the voter registration process more accessible by providing uniform registration procedures at drivers' license registration centers, disability centers, schools, libraries, and allowing mail-in voter registration. HAVA provided the first federal funding for elections and with it additional federal requirements, including a minimum voter identification standard for first-time voters, specifications for voting technology, the creation of statewide voter registration databases, and implementation of provisional balloting.

Although HAVA sought to encourage states to assume responsibility for elections, counties and smaller jurisdictions still retain significant responsibility for the administration of federal, state, county, and special elections. States differ in terms of how much (and what) power is delegated to counties and municipalities in the administration of elections. For example, a number of states allow local officials to determine what type of voting equipment will be used in their jurisdiction. Also, some states delegate the training of poll workers entirely to localities while others either retain control of the training or collaborate with localities.

The challenges of managing elections within this loose intergovernmental framework are substantial. On the one hand, decentralization and devolution of election authority to local (county and municipal) election officials allows greater flexibility. Local officials can tailor these procedures to meet the demands of their communities. Also, local level clerks are responsible for a smaller number of voters which in turn can make it easier to recruit poll workers and ensure that registration lists are accurate. On the other hand, local authorities have limited resources (time and personnel). With substantial authority vested at the local level and differing election procedure, it can become difficult to ensure consistency in election operations across the state or even within a single county. Within this decentralized election administration system, often the

lines of authority (and hence accountability) are not so clear. In short, local officials must serve multiple masters and optimize the competing values of: fraud detection, transparency maintenance, equal access, and results accuracy. Under these conditions, effective election management is nearly impossible to achieve for a mostly semi-retired volunteer workforce that comes together periodically for election days. This raises a very legitimate concern: is there a better way to organize the conduct of elections?

## **Previous Applications of Theory to Election Administration Problems**

In public administration, “theory” is a term used with “incredible looseness” (Wamsley and Zald, 1973:1) We agree with them that a useful PA theory should (a) specify significant variables and (b) indicate their probable relationships for testing. In addition, a useful theory should be refutable by using these variables and testing their relationships. The frameworks applied to election management do not really meet these more stringent criteria. The theoretical frameworks applied so far to the study of election administration are: (1) diffusion of policy innovations, (2) principal-agent theory, (3) the “tools of government” approach, (4) management theory, (5) implementation theory, and (6) network theory. While all of these frameworks have shed light on important issues, their application has been limited or has not suggested solutions to the important question of election administration design in the U.S: what is the optimal level of decentralization?

Several studies for instance, apply diffusion of policy innovation as a theoretical framework (Palazzolo and Liefer 2004; Palazzolo and Ceaser 2005; Liebschutz and Palazzolo 2005; Krutz 2005; MacManus 2005; McLean 2005). This research focuses largely on the factors that are significant for diffusing electoral reform innovations. But the causes and consequences of diffusing innovation have not been explained by this theory or framework.

Other scholars have applied principal-agent theory to election administration (Alvarez and Hall 2006; Kimball and Kropf 2006; Kimball, Kropf and Battles 2006). In this theory, poll workers are the “street level bureaucrats” in elections with all the implications this has for the electoral process (e.g., Alvarez and Hall 2006; Barreto et al. 2004; Hall, Monson, and Patterson 2006; Lipsky 1980; Prottas 1979). Research using this framework focuses on the principal-agent problems created by polling place voting—adverse selection (or not knowing if the right person was hired for the job), and poll worker shirking—for local election officials (Alvarez and Hall 2006). In addition, this research thrust focuses on the implications of (non)partisanship in election administration (Kimball and Kropf 2006; Kimball, Kropf and Battles 2006). Kimball and Kropf (2006) found that there is considerable variation in the methods used to choose state and local election officials; that party affiliation affects the quality of ballot designs in a statistically significant way; and that nonpartisan or bipartisan election administration tends to produce the best-designed ballots. Kimball, Kropf and Battles (2006) reached similar conclusions in their empirical study of the impact of state and local election officials on provisional voting in the 2004 presidential election. They found conditional partisan effects in the casting and counting of provisional ballots: ballots were more likely to be cast and counted in heavily partisan jurisdictions administered by an election authority of the same party. While

useful in analyzing some dynamics and problems in election administration, principal agent theory is restricted to analysis and prescription of solutions to accountability problems.

Another perspective is the “tools of government” approach (Salamon, 2002). The premise is that the “tools” chosen can significantly impact the outcome of policies and programs and can rely on differing degrees of power and roles among the actors involved in the implementation of policies. Using this approach, Montjoy and Chapin (2005) examined the tools available to the U.S. Elections Assistance Commission, created by HAVA, and hypothesized that they might have a long-term contribution in their capacity to create and disseminate information. The tools approach sheds light into issues pertaining to choice of the right tools to achieve implementation of programs as well as the limits imposed on implementing agencies by the tools they have at their disposal. This approach is quite useful, but has been applied only to one case. That case assumed the status quo in terms of the future of powers between the intergovernmental actors involved in the conduct of elections. In other words, it tends to be a static approach.

Attempts to describe and explain election administration problems logically lead to the application of traditional management theory. Gulick’s (1937) seven core functions have been long-used to analyze the strengths and weaknesses of management systems, functions and activities: (1) planning, (2) organizing (design of formal structures), (3) staffing (including capacity-building), (4) directing (including leadership decision-making embodied in orders and instructions to staff and line personnel and ensuring compliance), (5) coordinating, (6) reporting (including fiscal and physical performance), and (7) budgeting (including control and evaluation) or in short—POSDCORB. Current prescriptions for improvements in the management of elections echo those derivable from the seven POSDCORB functions. The traditional systems-

function approach of POSDCORB would easily translate into recommendations for strengthening standard operating procedures and chain of custody controls to prevent election fraud in all stages of the election process (Alvarez and Hall, 2008). Montjoy applies PODSCORB to Clerk Doyle's efforts to develop Election Day Voting Centers (EDVC) s in Larimer County (CO) (2008:795). Doyle made staffing changes and reduced the number of polling places as a way to reduce cost and increase efficiency (Doyle, 2008: 800; Montjoy, 2008:796). While POSDCORB is useful in suggesting solutions in these cases, where management within an organizational structure must be improved, it is formalistic and oblivious of the need to shape the organizational environment (i.e. the larger intergovernmental context). Guidance is also missing as to which function explains most of the election management problem. In this sense, it expertise-reliant and almost athoretic, similar to the "identify problem-pose solution" approach of the Carter-Baker Commission (2005) and other study groups.

Other studies have applied network theory. Here, searching logically for organizational information networks, researchers find that a national election administration network began with promulgation of the 1965 Voting Rights Act (Montjoy 2008) when election administrators began to exchange information for implementation of the Act. At the local election official level, exchanges occurred in the context of meetings of organizations such as the National Association of Counties; the National Association of County Recorders, Election Officials and Clerks; and the International Association of Clerks, Recorders, Election Officials and Treasurers. State officials, in turn, exchanged information in the context of meetings of organizations such as the National Governors Association and the National Association of Secretaries of State. Federal government involvement consisted of production and dissemination of information initially through the Office of Federal elections within the General Accounting Office, then by the

Federal Election Commission and finally by the Election Assistance Commission (EAC). The establishment of election administration networks was accompanied by the establishment of professional organizations, professionalization requirements and collaborations before the passage of HAVA (Hale and Slaton 2008). While the analysis of the development of networks in election administration is useful, criteria for definition of networks is relatively loose. This means that the network concept can exclude important actors and interest groups and pose problems for predicting collective action (such as the feasibility of integrating groups for joint election administration). While election administrators have been sharing information through networks since the promulgation of the VRA, this did not prevent the fiascos during the 2000 presidential elections or the problems that occurred thereafter. Finding that networks exist and function in multiple ways in a highly decentralized system where local election administrators are weary of state and federal influence over the conduct of elections, which in many cases has been primarily a local level affair, has only so much theoretical rigor to offer.

Finally, implementation theory targets the final stage of the policy process in an effort to identify constraints to actual performance, i.e. the institutional and structural constraints to execution of laws, regulations, programs, and projects. It is a useful framework to pinpoint shared-authority gray areas where orders are confused, responsibilities stove-piped, and overall results weakened. But there are two problems with the application of this theory here. First, there is no one election management law or program to be implemented. Rather, 50 states plan and implement periodic elections through thousands of precincts and local governments. Where there is one law and one set of norms, e.g/ HAVA's voting technology objectives, the theory is useful in focusing attention on official support for the Act and the effect of that support on electoral reform (Montjoy and Silva, 2008). But for overall systemic design and execution, the problem is that

norms, ballots, and registration systems vary widely. Election management norms either do not exist or are implemented poorly in many locales. In others, the variability of norms themselves impede effective action, e.g. on felon voting rights. Election management normally requires intergovernmental implementation—local volunteers, some state norms, federal, state and local financing. The theory does well to describe and explain general constraints that need to be removed to avoid re-cycling mistakes to the next election. It is better at explaining sub-problems (e.g. voting technology) and offering practical solutions. But even here, conclusions such as “more clearly understood objectives have greater potential to be implemented” (Edwards, 1980; Mazmanian and Sabatier, 1989) could likely have been reached without the theory, i.e. by trial and error or common sense. Second, implementation experience often points back to planning and design issues of financing, capacity and regulatory structures. These problems were likely known in the formulation or planning stages of policy-making. Needed is a theory that describe these electoral administration design problems and explain how they affect election administration in an intergovernmental context.

Given one of the defining characteristics of the conduct of election in the U.S. —devolution of authority to lower tier governments or decentralization—how can FFT be applied to improve descriptive and explanatory power? What solutions can FFT suggest to the major problems that have plagued election administration since 2000?

## **Elections and the Theory and Practice of Fiscal Federalism**

Elections occur within a U.S. federal system characterized by wide diversity of fiscal capacity and a lack of regulatory uniformity, spanning from activities such as ballot design to voting technology. As a shared intergovernmental function (Wise 2001:135) administered by state and local units, election management is an issue of federalist theory and practice. Elections are technically a state responsibility, but controls and results are the product of thousands of local government choices.

FFT is typically used to assign roles and responsibilities to tiers of government based on optimal devolution of authority and efficiency. The theory is used to justify fiscal decentralization programs and local fiscal autonomy efforts—but also to centralize functions that are fragmented and over-decentralized. An important operating premise of FFT is that governmental expenditure functions should be assigned by constitutions and laws to the tier(s) of government in a federal system that can deliver them most effectively or competently. There are two major tenets of FFT.

First, FFT holds that services should *correspond* to benefit areas and minimize uncontrolled or uncompensated spillovers (Oates, 1972; Bahl and Vogt, 1975). This suggests that where the use of a particular service is limited to the boundaries of a particular jurisdiction, then the provision of the service should be allocated to a level of government whose boundaries are defined by the spatial benefit boundaries associated with that good or service. When applied to election administration, this principle of correspondence suggests that the management of elections (the service) in a given jurisdiction should be the responsibility of the level of government which gets voted for by that jurisdiction and which exercises effective governance over it (the benefit area). This should allow, in principle, the volume of services to correspond to the needs of particular jurisdictions or districts. However, people in any given jurisdiction do not vote for only the

elected offices of that jurisdiction. Ballots contain races for a variety of county-level offices, state representatives, governors, secretaries of state, U.S. representatives, and the president and vice-president of the U.S. Though election administration is primarily a local service, the benefit area cannot be confined to those localities as the choices made in Fairfax County, Virginia, for example, will impact not only those residing in that county, but also those residing in the other Virginia counties and in states beyond Virginia. Local and state elections produce multiple legitimacy benefits that spill over from locality to state to nation. This means that structurally and almost by definition in a federal system election management arrangements are not consistent with the principle of correspondence. It creates major challenges for election administration design by presupposing that intergovernmental tensions will persist between operational decentralization and normative centralization—a healthy conflict in democratic societies.

Second, FFT holds that, in addition to horizontal correspondence with beneficiary areas, responsibilities should be assigned vertically to the lowest level of government that can deliver the service competently (Mikesell 2007:543). *Subsidiarity* takes account of the powerful cultural and political forces that want to own particular functions, such as elections, and broadens efficiency criteria to include responsiveness to local needs. It represents a “bottom-up approach in that it always empowers the respective lowest competent level” (Beer-Toth, 2009:77). For election administration to be delivered effectively, FFT would recommend regulation at one or more levels to ensure the reliability and integrity of the electoral process as well as the voters’ confidence that their ballots will be counted accurately. The 2000 presidential election process and results demonstrate the problems that can occur both at the state and local levels where competence and effectiveness requirements are ignored in assigning functional responsibility for election management.

In that the competence and effectiveness problem in election administration is widespread at state and local levels, FFT would point to systemic imbalances that require financial, technical capacity and management solutions. Most state chief election officers (CEO), for instance, are popularly elected on a partisan basis: 34 states follow this model, with 31 states electing a secretary of state as their chief election officers, two electing the lieutenant governor to the job, and New Jersey designating the elected attorney general as the CEO. In another five states, the chief election officer is partisan but appointed. The obvious problem with these models is partisanship in the management of elections. During the 2000 presidential campaign, the Florida Secretary of State and chief election official, Katherine Harris served also as honorary co-chair for George W. Bush's campaign. As is known, Harris was accused by critics as acting in a partisan manner during the Florida recount. This was not an isolated case of a Chief Election Official engaging or endorsing a candidate despite the obvious conflict of interest. More recently, the Secretaries of State of Indiana, Arizona and Rhode Island (who are also the chief election officials of these states) openly endorsed their preferred presidential candidates in the 2008 presidential elections. In 11 states and the District of Columbia responsibility for running elections is delegated to a variety of forms of statewide boards and commissions, either on a nonpartisan or bipartisan basis. On the other hand, vesting authority at the local level also led to significant problems during the 2000 elections. The experience of the infamous "butterfly ballot" of Palm Beach County, was noted above. Responsibility for design of ballots is generally assigned to the local level. State law imposes certain requirements for local officials to meet, but ballot designs often differ from county to county in the same state. Further, differences vary on what is considered a valid ballot from county to county. The lack of a consistent and uniform standard created major problems during the 2000 recount process. Failure to remedy inefficient

delivery practices and ineffective exercise of decentralized authority can have profoundly undemocratic consequences. Persistence of this kind of weak system disenfranchises voters and undermines public confidence in the legitimacy of the electoral system.

Thus, optimal correspondence (efficient alignment of services with district beneficiaries) and *subsidiarity* (the lowest competent tier of government for responsive service) are the twin normative objectives of FFT. We suggest here that in most cases, the two objectives trade off, i.e. more efficiency tends to mean more centralization and less responsiveness. Putting the two principles together, assignments of authority to deliver services should correspond to the benefit area, and the provider/regulator should be the lowest *effective* level of government that can deliver the service to district beneficiaries. Disequilibrium can occur in two ways of relevance to election management. First, excessive jurisdictional fragmentation of electoral districts ignores potential institutional scale economies. This low level of efficiency and correspondence is associated in theory and practice with excessive subsidiarity or ultra-decentralization of authority (see Figure 1). In large federal systems, such as the US, this almost ensures wide variation in resources and technical capacity to manage elections. The solution to such problems (here design of voter registration systems and diffusion of voter technology and access to elections) lie in re-balancing the system. FFT would recommend consolidation of organizational management structures via inter-jurisdictional MOUs (joint delivery), integrated IT systems and/or elevation of authority to a higher tier of government. From an efficiency perspective, to minimize district spillovers and maximize scale economies, it is essential to reform territorial structures either by re-drawing boundaries or indirectly through the use of virtual systems such as IT. Second, to preserve and optimize local fiscal autonomy in the context of widespread local disparities in tax base and budgetary financing capacities (effectively local fiscal incapacity), and to ensure

responsiveness to intense local demands for system variations, FFT focuses on the need for properly designed fiscal transfers (e.g. block grants with performance norms and incentives). Well-designed transfer systems can be effective in preventing loss of local autonomy and control by the central government (Beer-Toth, 2009: 53).

## **Electoral System Performance Problems**

The 2000 presidential election was plagued by voter registration list purges, inadequate ballot design, obsolete voting machines, inconsistent recount procedures, partisan election administrators, and voter intimidation. In the 2004 presidential elections, administrative problems persisted. Long lines were an issue during early and election-day voting in several states, electronic machine glitches called some results into doubt and differing procedures for provisional ballot counting across state and sometimes county lines would likely have triggered post-election chaos if the margin of victory been narrower (electionline.org 2004). In the 2006 mid-term elections, voters in several states experienced difficulties at the polls due to equipment delays, long lines, ballot shortages or other issues (electionline.org 2006). During the 2008 elections, voter registration troubles were the most frequently reported voter problem as unprocessed or mishandled registration applications kept some eligible voters off the rolls (electionline.org 2008). Electronic machines, by most accounts, adequately met the challenges of the election, but it should be noted that in 2008, after investigations into the security and reliability of voting equipment, several states went back to using paper ballots.

Currently then, the most frequent election day problems are voter registration and voting technology. These are also the areas where decentralized management of elections is quite apparent and problematic. Using FFT to analyze this dysfunctional decentralization, in voter registration and voting technology, we will propose solutions that could help overcome these problems.

### **(1) Voter Registration Databases**

One of the provisions of HAVA was that states establish a “single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level” by January 2006 (HAVA, 2002). This requirement was necessary in order to integrate voter registration lists that in some states had been previously maintained at the local level. The variability of local competence raised concerns about the extent to which lists were accurate in reflecting population movements and whether they had eliminated duplicate registration.

HAVA did not provide specifics about the architecture of these databases. Consequently, several possible alternatives emerged. Some states built top-down databases, where the state maintained records that could be accessed in real time. Others chose bottom-up databases, where local authorities kept records and periodically uploaded the data into a central system. Yet others built hybrid systems, with some counties using the state system and the rest maintaining their own databases. The EAC, however, expressed a preference for the top-down structure of voter

registration lists, since other formats might perpetuate the problems that a single statewide voter registration list sought to eliminate in the first place.

However, having a statewide voter registration system is necessary but not sufficient. To ensure the quality and accuracy of voter lists, it is also necessary to perform matching and cross-checking of data with other state databases as well as to use transparent procedures to purge old registrants from the lists. Here too, states have followed different paths and progress on voting list maintenance has been mixed. As of 2007, surveys showed that 4 states (Georgia, Kentucky, Oklahoma, and South Carolina) did not match or plan to match information from new voter registration forms to Department of Motor Vehicles (DMV) or Social Security databases before placing the voter on the registration lists, which will clearly affect their accuracy (CDEM 2008). The remaining states used diverse approaches to maintain the accuracy of voter records and different criteria to determine whether information on a voter registration application matched information in another government database, such as Social Security and the DMV. If no match could be found, 25 states would still list voters in the pollbooks and describe them as “registered,” “provisional” or “pending”. Voters in these states are notified (via a notation in the roll) that identification or an affidavit are required for them to complete the registration process or to cast a regular ballot. The exception to this is Oregon, which lists such voters as fully registered. In addition, removal of voters from the rolls is done in disparate ways across jurisdictions within states and without transparency of standards and schedules (CDEM 2008).

## **(2) Voting Technology**

Voting technology has been one of the areas of greatest change since the controversial 2000 presidential election. The highly politicized and arbitrary nature of the Florida vote recount in 2000 generated massive support for replacement of voting machines. HAVA included funding for states to replace outdated lever and punch cards machines with direct recording electronic (DRE) and optical scan machines. The electronic voting machines were perceived as the perfect solution as they would offer accessibility for people with disabilities, prevent over-voting and eliminate the subjectivity of paper-based balloting (electionline.org 2008). Since then, punch card and lever voting machines have been almost completely scrapped and the main systems in use are optical scan and DREs.

However, since then, significant concerns have been raised about the security and reliability of electronic voting systems, based on instances of weak security controls, system design flaws, inadequate system version control, inadequate security testing, incorrect system configuration, poor security management, and vague or incomplete standards (GAO, 2005). In one recent case, voting machine manufacturer by Premier Election Solutions acknowledged that software used in 34 states could cause votes to not be counted (Flaherty 2008).

Concerns for the security and accuracy of election results prompted California Secretary of State Debra Bowen to commission in 2007 an independent, top-to-bottom review of voting technology. Following the review, Bowen strictly limited the use of direct recording electronic voting machines, and imposed significant security and auditing requirements on systems used in California elections. More recently, after top-ranking state officials – the governor or secretary of state – raised concerns about the security and accuracy of DRE systems in five states (California, Colorado, Florida, New Mexico, and Ohio), they decided to scrap the DRE voting equipment and return to paper-based balloting (electionline.org 2008).

With decentralization also being a feature of the selection of voting technology across the U.S., the authority to decide what voting equipment to purchase varies from state to state. In some cases (such as Georgia, Louisiana, North Dakota) it is the responsibility of the state, in others (such as Alabama, Virginia, Colorado) it is a county level responsibility (National Association of Secretaries of State 2005). The rationale for this is that in some jurisdictions, certain types of voting equipment might be more appropriate than others. However, using different types of voting equipment across a state can lead to equal protection (14<sup>th</sup> Amendment) problems arising from the use of less accurate technology in some jurisdictions (Tokaji 2004). Intergovernmental voting systems standards and testing processes are not integrated. For example, when a problem is detected with software in one state or county, that information rarely is shared with other states or counties using the exact same technology (Ansolabehere 2006). Hence, centralization of testing and distribution of information (to increase competence) could increase operational efficiency and prevent voting problems (Ansolabehere 2006).

HAVA also mandated that the EAC accredit voting system testing laboratories and certify voting equipment—the first time that the federal government has offered these services to the states. However, state participation in EAC’s certification program is purely voluntary (about 10 states require the use of federally certified voting machines). Voting system guidelines are meant to provide norms and specification standards against which voting systems can be tested to determine if the systems provide all of the basic functionality, accessibility and security capabilities required of these systems. But these are also voluntary. In addition, the process was quite delayed and the first certification came about only recently—in February 2009. Again, if some states do not use the federal certification program, this might also raise equal protection concerns.

## **Application of Fiscal Federalist Theory**

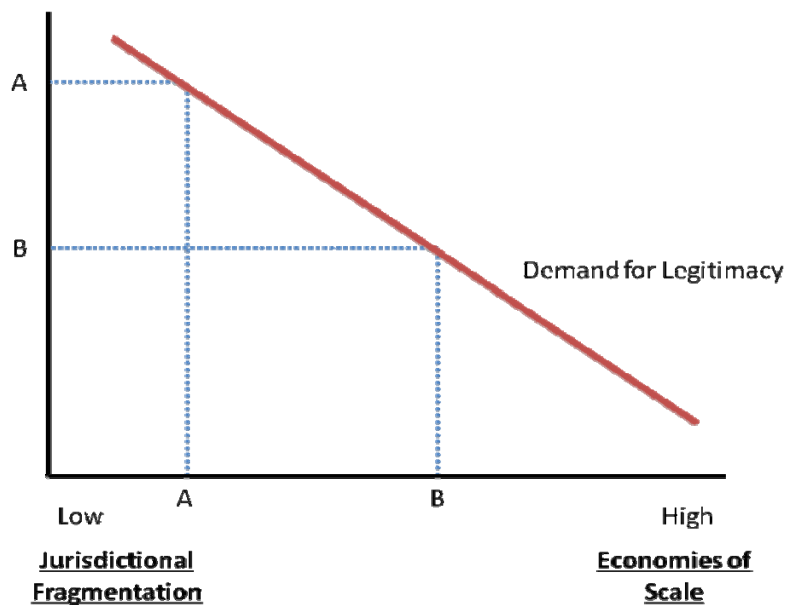
The current highly decentralized election administration system permits wide variation in electoral practice and performance across the 13,000 local jurisdictions and 50 states. While in general, these may be problems of: strengthening POSDCORB functions; improving compliance incentives and clarifying agent responsibilities to strengthen chains of custody; improving implementation; increasing the flow of information and/or developing wider networks, more explanatory precision is required.

To explain voter registration database and voting technology problems, FFT points to intergovernmental roles and responsibilities. The high level of decentralization (subsidiarity) leads to local (county or state-level) efficiency problems and reduced confidence in the performance of the electoral system which spills over jurisdictional areas. In the context of an area A-A situation in Figure 1, these problems produce low electoral legitimacy. To clarify this, suppose election administration is like an interstate highway or public good that several adjacent states need to maintain. If every state provides a sufficient level of maintenance to its portion of the highway, the quality of the highway remains constant overall. However, if one state fails to maintain the quality of its portion of the highway, it is not only the drivers within that state that are affected, but both in-state and out-of state-users. They all experience reduced access and mobility. Similarly, if the quality of the electoral experience in one state or county is weak and raises concerns about its integrity, these concerns spill over and affect the confidence in the electoral process throughout the country, not just within that particular state or county. This

suggests a high degree of boundary spillovers and loss of system legitimacy. FFT postulates that there should be a rough balance between the two variables in a federal democratic system (area B-B in Figure 1).

Devolution of decision and norm-making responsibilities potentially increases responsiveness and local autonomy. However, since local cultural practices can work against universal political values, such as access and equality, it is necessary to balance responsiveness with efficient institutions that correspond with beneficiary needs (to minimize externalities). This can be done by such methods as: widening district boundaries (via inter-district MOUs, legal consolidation, or even functionally via IT systems), elevating decision authority to higher tier governments (centralization of power) and through the use of fiscal transfers or norm-based grants to compensate subnational governments for respect of minimum election standards that would be set by legislatures. Implementation of these kinds of solutions should move election management to equilibrium from A-A to B-B in Figure 1.

Figure 1 - **Election System Design Problems: Voter Registration & Technology**



FFT allows definition of voting registration and technology problems as an issue of imbalanced subsidiarity and correspondence. The provision of election services should correspond with defined benefit areas. Clearly, the entity responsible for the conduct of elections should also exercise authority correspondent to the benefit area. The existence of negative electoral spillovers (affecting overall legitimacy) from voting registration and technology problems suggest that authority and financing should be elevated to the state or federal government. Conversely, assignment of excessive responsibilities to lower jurisdictional levels without authority and financing leads to ineffective service delivery at that level. As noted, permitting counties to select their own voting equipment has raised an equal protection issue—some votes are worth more than others. The working premise of FFT is that more efficiencies (uniformities, economies of scale) typically trade-off with responsiveness. Excessive diffusion of competence via devolution of authority (decentralization of operations and regulatory norms) leads often to low diseconomies of scale and unequal performance of election systems. One can examine the ranges of known problems, such as voter registration and technology, and estimate the electoral performance implications of these extremes (Figure 1). For instance, where there is high correspondence/low subsidiarity or extreme differences in range, FFT application would suggest that the problem should be flagged for review and that functions and processes should be rebalanced accordingly. FFT demonstrates that for particular governmental functions such as this to perform well—electoral democracy and electoral decentralization may not be synonymous.

FFT is more rigorous than competing theories in that it sets out criteria for its own refutation. Should excessive devolution lead to greater economies of scale, for example, FFT would be

refuted in other than its own terms (a theoretical strength and application weakness). Further applications of FFT to other election management problems should yield theory-based recommendations for improvement. In short, FFT's strengths are that, unlike the competing theories, it specifies the core variables and their probable relationships for testing (Wamsley and Zald, 1973) and, as noted, it is refutable in other than its own terms (Popper, 1963). Moreover, its propositions point to distinctly intergovernmental problems and solutions for functions such as election management.

## **Limits of Fiscal Federal Theory**

Nevertheless, there are limits to the power of FFT. It cannot pick out which problem is most important or identify highest from lowest priority. Indicators of electoral performance attributable to centralization/decentralization and high/low correspondence need to be developed further. In addition, FFT may over-predict. Dafflon argues that FFT applies to uniform federal systems with separate tiers of activities. In Switzerland, for example, presidential elections are separate from local elections. By contrast, US elections combine multi-tier governmental offices. For this reason, he believes that FFT would not fit the U.S. system (2008). As applied to European elections, FFT describes an imbalanced institutional context (high correspondence/high efficiency) not countered by high demand for subsidiarity and local supervision of elections. This is true in Switzerland where powerful localism is countered by an even more powerful respect for central authority, common norms and regulations. The fact that

the “Swiss never saw a regulation they didn’t like” at least produces national minimum performance standards that apply to election administration in every canton. For cultural reasons, recommendations for jurisdictional consolidation and increased efficiency in the US would be unacceptable. More innovative mechanisms such as IT, MOUs and performance-based transfers must be utilized to achieve legitimacy through electoral efficiency for voters. FFT does point to use of innovative transfers, incentive-based regulations and increased management capacity in a context of powerful local cultural forces.

## **Conclusions**

Despite theory weaknesses, FFT offers useful insights into the implications of systemic design imbalances facing election management as an intergovernmental program or service. Excessive subsidiarity or decentralization of management, regulation and financing can be dysfunctional for election management where aggregation of administrative units is needed to achieve legitimate election results. Conversely, greater correspondence for efficiency is likely to lead to centralization of norms, financing and management and diminished responsiveness. In practice, management systems can be improved and economies obtained for voters by using such options as IT, jurisdictional consolidation and shifts of decision authority to only one higher level of government. The political trade-off premise of FFT points to the need to experiment with virtually centralist solutions in order to avoid decreasing local autonomy. Otherwise, from a policy perspective, benefit disparities at the local and national level lead to minimum standards

and spillover mitigating transfers. Given the highly partisan nature of state level election administration, federally-directed minimum criteria may be needed, beyond which states are free to tailor their respective ballots.

FFT describes the complexities of this intergovernmental service in more detail than competing theories and can at least be partly refuted or falsified by reference to other than its own variables. Use of its twin variables gets to the unique intergovernmental forces that make these problems what they are. Use of FFT avoids the atheoretic either-or (central regulation-local deregulation) approach of otherwise solid efforts such as the Carter-Baker Commission. As noted, that panel of judgmental experts recommended more central regulation for the major problems and more decentralization and local autonomy where local political pressures demanded responsiveness. It left open the more difficult why and how questions. By contrast, consistent with FFT, Larimer County (CO) increased correspondence by centralizing decision-making to the county level and strengthening responsiveness to voters by unifying registration norms and increasing access to polling places via integrated IT. FFT is not the only theory around. The two election management problems reviewed here point to weaknesses that can be partially described and explained by at least six other theories. As indicated in our review of them they are useful but cannot be refuted easily in other than their own terms, e.g. the wrong networks cause networking problems. We believe that with improvements in election monitoring that produce more systematic data on the multiple problems encountered by officials and voters (e.g. comparative cost data on elections and systematic analysis of poll-book entries), more precise hypotheses can be proposed and tested with rigorous theories such as FFT.

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