The Way We Vote

The Local Dimension of American Suffrage

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Mediated Popular Sovereignty: Local Suffrage Practices and American Self-Rule

> We confront anomalies within our beliefs, within our practices, and most important in the relationships between the two. And our goal is always to make the broader web of beliefs and practices as coherent as we can.
>
> Don Herzog (1989)

> I'm on them to register when they come in for dog tags and dump stickers.
>
> Barbara Swann, town clerk, Monterey, Massachusetts (2003)

> I don't think there was anything wrong with those machines. But if it gives the voters more confidence, then it's the change we're going to make.
>
> Kathy Dent, election supervisor, Sarasota County, Florida, explaining the county's move away from touch-screen voting machines (2008)

Between the disc jockey's tables and the food tent, Gadsden County election supervisor Shirley Green Knight set up her new optical-scan voting machine at a Sawdust town party one late-spring evening in 2004. One of Florida's poorest counties and its only majority-black county, Gadsden had the highest rate of disqualified ballots in the presidential election of 2000. Knight, who took on the job of election supervisor in 2001, spent a good deal of time in 2004 showcasing the new voting technology at churches, carnivals, school classrooms, and other gatherings. Knight's message was, "Your vote will count this time, so please come out." The DJ took the microphone between songs to remind partygoers to register.[1]

Far to the north of Sawdust, the clerk of a predominantly white, prosperous town in the Massachusetts Berkshires told a similar tale. Asked by a

skeptical visitor about the wisdom of having registration and elections run by officials in each tiny town—in Massachusetts, towns and cities rather than counties choose election machinery and supervise voting—Monterey town clerk Barbara Swann responded that she and her peers took great pride in high rates of registration and turnout. Like Shirley Green Knight, Swann actively encouraged political participation. "I'm on them to register when they come in for dog tags and dump stickers," she said.[2]

These stories capture both the peril and the promise of the distinctive, decentralized American way of voting. The reason Shirley Green Knight was making the rounds is that many Gadsden County voters felt they were effectively disenfranchised in 2000 by a badly designed ballot, too few polling places, and other factors, some of which were directly under county control. Such problems are not exclusively or necessarily linked to local authority. But a centralized, standardized system of election administration would be unlikely to permit such inconsistencies and inadequacies. Meanwhile, in addition to a robust civic culture of voter engagement, the Massachusetts town has enough money and a sufficiently small population to continue using hand-counted paper ballots—the method that results in the lowest percentage of "lost" votes, according to at least one estimate.[3] These contrasts suggest that local administration of elections has the potential to *compromise* American popular sovereignty.

But there is another side to the story, for both Knight and Swann are public officials who work hard to recruit people to register and vote, and who are eager to ensure that votes are easily cast and accurately counted. Each official feels intensely her duty and obligation to facilitate voting by her neighbors—that is, her constituents. This immediacy, close connection, and linkage of the political and social realms would be difficult to achieve under full federal or even state administration. These factors suggest that the local dimension of suffrage actually *enhances* the exercise of self-rule in the United States.

Casting a ballot remains the central activity of American civic membership and the most direct tool by which we exercise authority over the state, and how we do it has profound implications for popular sovereignty. In the years since *Bush v. Gore*, authors like Thad Hall and Michael Alvarez, Paul Gronke, John Mark Hansen, Spencer Overton, Roy Saltman, Steven Schier, and Dennis Thompson have touched on the theoretical connections between localized voting practices and self-rule. Important empirical questions remained almost entirely unexplored until quite recently: in 2006, scholars working with the CalTech/MIT Voting Technology Project observed that despite reams of research on trust in government, virtually nothing had been published on citizens' trust in the electoral process itself.[4] Today, a growing

empirical literature is closely examining the connection between election administration and popular sovereignty, exploring how to "make voting work."[5]

The phrase "popular sovereignty" is often treated as a "God word," one observant scholar recently noted, as if its meaning were "immediately clear and descriptive of an unqualified good."[6] In fact, it has always been one of the central contested concepts in American political thought. But a defining attribute of American popular self-rule has not been fully understood, for very little of the massive literature in political science, history, and law exploring popular sovereignty engages with suffrage practices. And even the best analyses of the theoretical premises behind electoral structures, such as the work of Arend Lijphart and Richard Katz, pay very little attention to election administration.[7]

As we have seen, even as the national state expanded in sheer size, power, and wealth—and repeatedly regulated the voting process—voting supervision remained largely in local hands. As a historical matter, then, the American exercise of national electoral self-rule has always had a local texture, mediated by small institutions and varying practices. This chapter turns from the developmental and historical questions—what has *caused* localism—toward an inquiry into the *consequences* of localism in national suffrage. At its core is a normative question prompted by that history and implicit in a good deal of popular and academic literature today: do our distinctive, locally varying voting practices obstruct the exercise of popular sovereignty in the United States?

This is a complex question, and my answer is not Panglossian, for in different ways localism alternately diminishes and improves our ability to govern ourselves through elections. Meanwhile, empirical research is necessary for resolving important aspects of the question, and scholars are just now beginning to explore them directly. (I describe some of this research later in the chapter.) But I argue that on balance, and contrary to what seems to be the current conventional wisdom, the decentralized American way of voting enhances and facilitates our exercise of meaningful popular sovereignty. To draw on the frame set up by Don Herzog in the quotation that opens this chapter, in this area our beliefs and our practices are not so anomalous, and are in fact much more coherent than they may appear.

The first section of the chapter offers what I think is an improved description of the problem itself. A lot of contemporary debate over election administration treats the matter of popular sovereignty as if it were a simple binary question: this or that voting procedure is either good or bad for democratic self-rule. But electoral popular sovereignty has two important aspects, complementary but not identical, and it helps to separate them. The *instrumental* component of popular sovereignty focuses on outcomes: whether an election in fact accurately translates voter preferences. The *constitutive* side of popular sovereignty deals with beliefs: whether citizens sense that voting is meaningful, worthwhile, and fair. A particular localized practice may either enhance or diminish popular sovereignty, on one or both dimensions.

The second section of the chapter makes what might be called the "weak" argument for decentralized election administration. This claim argues that a certain amount of locally patterned variation in voter registration and in the casting and counting of ballots fits coherently within our federalized electoral structure. The reason for this is simple, if counterintuitive: uniformity is actually not a central value of American elections, even national elections. Our intense disputes over how to apply the principle of equality to suffrage—together with the de facto nationalization of important aspects of the right to vote in judicial rulings and statutes—have helped obscure this fact. Even if we achieved the "technical perfection" that political scientist Stephen Ansolabehere calls for in casting and counting votes, constitutionally mandated structures such as the composition of the Senate and the Electoral College, as well as extra-constitutional devices such as the primary system and the drawing of congressional districts by state legislatures, would still leave American voters expressing their will through mediating structures that weight everyone's votes quite differently.[8] These structural features serve as a useful reminder that geographic places have always been essential to the theory and practice of representation in the United States. In sum, the weaker claim is that decentralization and local variation may well "interfere" with a certain vision of uniform, direct, plebiscitary national self-rule—but that in fact, almost everything about our electoral structure does so too. All told, decentralized election administration fits comfortably within what is now commonly called the Madisonian conception of American popular sovereignty.

The third section articulates the case for localism. Not only are locally varying suffrage practices consistent with other nonuniform electoral structures, but they have important redeeming characteristics for American popular sovereignty, on both the instrumental and constitutive dimensions. Drawing on a range of theoretical and empirical sources, I describe how local administration can improve citizens' sense of efficacy and ownership in the democratic process, provide opportunities for experimentation and innovation, place obstacles in the way of some corrupting influences, and increase turnout. The local dimension of American voting becomes much more intelligible and defensible, and much less a scandalous accident of history, when incorporated into the family of ideas built around popular sovereignty and the state.

The answers to these questions are certainly not black-and-white, however, and so I close the chapter on a cautionary note. The layered, even fragmented system of rules governing our democratic rituals clearly has been partly created by the renowned American fear of centralization, and that fear may inhibit the American citizenry's ability to act together as a united people.

The Instrumental and Constitutive Components of Popular Sovereignty

Election administration "may at first blush seem dull," Steven Schier writes, but it helps determine the stability and accountability of our government—and can also "indirectly affect governmental deliberation by influencing who is elected to direct the government's course."[9] At the same time, elections are "institutions for generating social capital," in the words of one study, and trust in the voting process is essential to a democracy.[10] People who are confident that the electoral process works are more likely to think other political institutions work well too, and to feel attached to the political and social order. Elections, writes G. Bingham Powell, "should not only provide symbolic reassurance, but also genuinely serve as instruments of democracy."[11]

As Powell's words suggest, an election must do two things. In the 1992 write-in-vote case *Burdick v. Takushi*, the Supreme Court said that the first and most fundamental task of an election is to pick a winner.[12] This is the instrumental aspect of voting: the citizenry's ability to choose their leaders, acting both individually and collectively, and so "direct the government's course," as Schier puts it. But despite *Burdick*, a successful election must also give voters the sense that they've participated in a fair and effective process and "provide symbolic reassurance"—the constitutive element of voting. The local dimension of American suffrage shapes and defines both aspects of popular sovereignty in the United States. Separating these concepts helps add a measure of precision to a question that can be abstract and amorphous. These ideas are key to a simple framework I propose for examining the relationship between voting practices and popular sovereignty (Table 1).

The instrumental component of voting is essential. A democracy "require[s] functioning institutions that are designed to, and really do, secure a government responsive to public interest and opinion."[13] When a person is made more likely to register, to travel to the polls (or mail in a ballot), to vote his or her intentions on a clear and intelligible slate, and to have that vote accurately counted (and, if necessary, recounted), the instrumental side

Table 1.

Popular Sovereignty and Suffrage Practices: A Simple Framework

	Instrumental (Outcomes)	*Constitutive (Experiential)*
Enhance	Practices that increase registration or turnout, help record preferences more accurately, and improve likelihood of a vote's being accurately counted	Practices that increase voters' sense of efficacy and civic engagement, regardless of whether favored candidates win or lose; give voters a valid sense of ownership of the electoral process; add depth to civic ritual; and advance perceived legitimacy of the system
Diminish	Practices that make registration and voting more difficult or decrease accuracy of ballot tabulation, particularly in any systematic fashion	Practices that increase voters' feelings of powerlessness, distance voters from sense of ownership of the electoral process, feed voters'sense that the state is incompetent or corrupt, and weaken legitimacy

of popular sovereignty is enhanced. Conversely, when any step in the serial voting process is made more difficult—or obstructed, either purposefully or accidentally—popular sovereignty is diminished. The ultimate demonstration of any variable's effect on the instrumental side of popular sovereignty is a showing that the factor in question can affect election outcomes. Evidence that local variation helped decide the presidential race in Florida in 2000 is a major reason why election administration has captured the attention of behaviorally oriented political scientists, journalists, and legislators around the country.

But the constitutive, or experiential, element of popular sovereignty is no less important. People do not vote merely to direct policy; indeed, rational-choice theory says only a fool would think any large election enabled him to do so. We vote to participate, to join in a symbolic ritual, and to affirm and express our membership in the polity. Voting is "not exclusively a matter of exercising a choice but is also an activity which helps sustain the feeling that the system is legitimate."[14] Judge Learned Hand may have captured it best: "I know how illusory would be the belief that my vote determined anything; but

nevertheless when I go to the polls I have a satisfaction in the sense that we are all engaged in a common venture."[15]

A concern with the effects of voting not on policy but on citizens themselves runs through the work of normative political theorists from John Stuart Mill to Carole Pateman.[16] Election practices that foster and sustain a sense of efficacy, fair play, and participation in that "common venture" enhance this constitutive aspect of popular sovereignty. But structures, rules, and actions that diminish voters' belief that an election is fair and uncorrupted—that their vote matters, or at the very least is as likely to matter as anyone else's—undermine popular sovereignty as surely as practices that skew outcomes.

I will discuss empirical work exploring these questions in the American context later, but let me note here one piece of research in comparative politics that illustrates the point particularly well. Examining eight emerging democracies in sub-Saharan Africa, Jørgen Elklit and Andrew Reynolds found that both the perceived independence of the electoral commission and the quality of election administration had real effects on voters' sense of efficacy and their belief in governmental legitimacy. Voters' electoral experiences, they concluded, "have a direct bearing on how the sense of political efficacy develops in individual citizens" and on the "development of democratic legitimacy."[17] Thus the directly instrumental component of elections is only part of what determines whether we respect them: regardless of whether one's preferred candidates win or lose, voting practices can enhance or diminish voters' belief in the legitimacy of their government.

Because it rests ultimately on perceptions, this constitutive side of popular sovereignty can be a slippery and troublesome thing. For example, in one of the quotations that opens this chapter, a county election supervisor says that although she believes the county's touch-screen machines worked well, the county was getting rid of them because "it gives the voters more confidence."[18] A more consequential illustration of this problem comes from the Supreme Court's short opinion in the 2006 case *Purcell v. Gonzales*. That ruling allowed Arizona to put its new voter-identification requirements in place for the 2006 election, pending a full trial on the question of whether the statute violated federal law and the U.S. Constitution.[19] *Purcell* is important here because of the Court's commentary on the dangers posed by voter fraud—the ostensible target of Arizona's ID requirement. Though the Court professed to take no opinion on the merits of new anti-fraud measures, it reasoned that voter fraud "drives honest citizens out of the democratic process and breeds distrust of our government." Moreover, the Court worried that voters "who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised."[20]

What jumps out is the Court's emphasis on the possibility that some voters might "feel" disenfranchised because they "fear" fraud—and the tribunal's apparent willingness to balance such subjective speculations against the interests of voters who might be *literally* disenfranchised by onerous voter-identification requirements.[21] The Court's "feel" and "fear" approach in *Purcell* has been roundly criticized, and I will have more to say about voter-identification laws in Chapter Five. I raise the case here because the Court's casual use of the phrase "feel disenfranchised" highlights the need for scholars, advocates, practitioners, and judges to clarify which aspect of popular sovereignty—the instrumental or constitutive—they believe is or would be enhanced or diminished by a given voting practice. The Court was not identifying people whose votes might actually be rejected, wrongly weighted, or inaccurately tallied—the instrumental and more traditional sense of "disenfranchised." Instead, the Court implicitly said that the constitutive dimension of popular sovereignty is so important that diminished *confidence* in our electoral processes can properly be called "disenfranchisement." That conclusion raises serious questions as a legal matter, particularly to the extent that it justifies making voting more difficult and more costly for many eligible voters. But the *Purcell* Court was right to acknowledge directly the importance of the constitutive aspect of popular sovereignty: "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy."[22]

Madisonian Popular Sovereignty: Integrity, Federalism, and Geography in American Self-Rule

The Court's reference to "integrity" in *Purcell* was no accident. Few terms have been more prominent in recent debates over election administration, and many contemporary accounts set localism in suffrage practices against our commitment to integrity and equality in elections. At least since about 1965, voting has been understood not as a privilege but as a right, and a right that we insist must be distributed evenly among political equals. Variations in voting practices, this logic says—cloggy punch-card machines in one county, high-accuracy optical-scan devices in another, and so on—violate those principles and impair our exercise of popular sovereignty.

Equality and integrity are essential goals. My concern is that we are reflexively defining these terms using an overly simple metric. "Integrity," for example, suggests cleanliness; that is what we worry about when we talk about voter-impersonation fraud, errors in vote tabulation, partisan distortions, and voter intimidation. But "integrity" also denotes "the quality or state

of being complete or undivided."[23] And that kind of wholeness or unity, that lack of division, is simply not a primary value or characteristic of the American electoral process writ large. Notwithstanding our equipopulous legislative districts, emphasis on the Equal Protection Clause in voting-rights cases, and underlying belief that we have a majoritarian political system, American elections do not establish anything like meaningful mathematical equality among voters. Even if voting practices became dramatically more homogenized than they are today—say, with the adaptation of a single voting technology and a common ballot in presidential elections, or even the creation of a national voter roll—many profound differences in the weight of individual votes in national elections would endure. Though this point is somewhat counterintuitive, the examples are well-known features of our electoral system, and it is important to spend some time looking at them here.

Some are mandated by the Constitution itself. The U.S. Senate, as Robert Dahl and Sandy Levinson have recently pointed out, is almost certainly the world's worst-apportioned legislative body.[24] Levinson observes that about 5 million people live in the seven smallest states; they enjoy representation by fourteen senators. The seven largest states total a population of around 124 million; they too have fourteen senators.[25] A resident of New York (population approximately 19,306,000) who moves across Lake Champlain into my home state of Vermont (population approximately 624,000) is handed a much more powerful vote in U.S. Senate elections: the voter's new state has *one-thirtieth* the population, but the same number of senators.

The presidential Electoral College reproduces the inequities of the Senate, because no matter what their population, all states get two votes derived from their two senators. Meanwhile, the common practice of delivering Electoral College votes in winner-take-all fashion leaves voters in most states casting ballots likely to have no direct bearing on the overall outcome, since the winner of their state's contest is a foregone conclusion. By contrast, voters in the dozen or so "battleground states" not only get to cast meaningful votes but also enjoy campaigns devoted to their needs and interests.[26] Voters in these states exert far more influence over presidential selection than their peers. In addition, the Electoral College allows the ultimate affront to the instrumental component of majoritarian self-rule: victories by presidential candidates receiving less than a majority of votes nationwide, and even by those defeated in the popular vote.[27]

Even the House of Representatives does not feature quite the level of mathematical equality we might assume. In part because the size of the House has been fixed for over a century, there are serious population deviations between districts across states. Wyoming, with about 515,000 people, and Montana, with 944,000, currently each have one representative.[28] And of course the half-million citizens of Washington, D.C., remain "represented" in Congress only by a House "delegate" who cannot actually cast consequential votes. Though living within the contiguous United States, D.C. residents are like their U.S. citizen counterparts in Guam, the U.S. Virgin Islands, Puerto Rico, the Northern Marianas, and American Samoa in that they lack any meaningful national right to vote.[29]

Less formal than the Constitution but still extremely durable, various other rules and practices of the American political order also result in differently weighted votes. Several fall well outside the category of "election administration" and are very unlikely to change any time soon. Among the most important are variations caused by the vagaries of our two-party system. A full accounting of the ways in which the two-party system facilitates and obstructs self-rule in the United States is outside the purview of this book. But parties contribute powerfully to the nonuniform nature of the American electoral process, as illustrated by the relatively long primary process in the run-up to the 2008 presidential election. First, voters in the early-primary states generally effect a crucial narrowing of the presidential field, a fact that increasingly irks voters and politicians in other states. And because their votes are so influential, most residents of Iowa and New Hampshire have multiple opportunities to meet each of the candidates before the primary. As the 2008 Democratic primary wore on, however, it became clear that states voting *later* exerted even more influence. In addition, as the campaign moved across the country, Americans were treated to an almost-infinite array of electoral devices: a caucus here, a primary there, a hybrid in Texas; closed primaries in some states, open primaries in others; delegates allotted winner-take-all on the Republican side, proportionally on the Democratic side; and so on.

U.S. congressional elections also feature deep nonuniformities effectively created by the parties. In most states, the state legislature designs U.S. congressional districts. There are commonalities in the rules and norms regarding how those districts should be drawn: for example, "communities of interest" may be recognized, existing town and county boundaries should be maintained, and districts should be as contiguous and compact as possible. But in practice, political parties dominate district-construction in most states, and they tend to try to draw the lines in a way that will guarantee victory by a given party in a given district. That means the instrumental weight of a person's vote—how likely it is to determine the outcome—rests heavily on where that person lives. Voters in some states (Republicans in Massachusetts, for example, at least recently) have virtually no chance of supporting a winning representative for their favored party in the U.S. House, because the op-

posing party runs the statehouse and draws the districts. (A winner-take-all Electoral College process in the state also means that the votes of those Massachusetts Republicans will have no direct impact on the presidential election.) Meanwhile, citizens in states where nonpartisan commissions draw the lines are likely to vote in much closer elections, because such nonpartisan bodies tend to aim for competitive margins. Whether one thinks this system is good or bad, it clearly results in voters in different states (and different districts within states) exerting varying amounts of power in U.S. House elections. Another example of parties' contribution to variation in U.S. elections concerns eligibility for seventeen-year-olds in primary elections. In most of the United States, a person must be eighteen years old to vote in any election, but in nine states, the major parties and state law together allow seventeen-year-olds to vote in primaries, as long as their eighteenth birthday will arrive before the general election.[30]

This brings us to election timing. Perhaps nothing illustrates the absence of uniformity in American suffrage today more powerfully than the shift toward early and absentee voting since 1980. "Without great fanfare," John Fortier writes, "our nation is steadily moving away from voting on election day." Fortier estimates that in 1980, just one voter in twenty cast an absentee or early ballot;[31] in 2004, about one in five did so. These calculations require reporting and analysis of data from localities as well as states, but it appears that in 2008 about 30 percent of Americans voted before election day. "A revolution has taken place," says one advocate. "The concept of Election Day is history. Now it's just the final day to vote."[32] (Federal courts have held that early, absentee, and all-mail voting do not violate national statutes setting the Tuesday after the first Monday in November as "the day of election." As the Ninth Circuit put it in a 2001 ruling, election day marks the "consummation" of the voting process rather than its entirety.)[33] Early voting allows in-person balloting, under the supervision and with the assistance of elections officials, in an official polling place; absentee ballots are usually mailed in, though they are sometimes delivered in person. Both early and absentee voting are increasingly popular, and state rules vary dramatically: for the 2008 election, thirty-two states allowed no-excuse, pre–Election Day, in-person voting in one form or another, while fourteen states and the District of Columbia required an excuse and four states did not allow early or in-person absentee voting.[34] From the perspective of popular sovereignty and the practice of suffrage, there are good and bad things about early and absentee voting, and I will comment on them further later in this chapter. I raise the topic here simply to note the deep differences in Americans' electoral experiences created by our abandonment of electoral simultaneity.

This list certainly is not exhaustive. Also varying by state are restrictions on the voting rights of people with felony convictions; ballot-access thresholds for candidates; standards for counting write-in votes (if they are legal at all); and name-order rules for balloting.[35] Each can shape both the instrumental and constitutive aspects of popular sovereignty. And none faces the prospect of national homogenization any time soon.

In part, all this variation emerges from the longstanding American commitment to geographically based representation. In both theory and practice, representation in Anglo-American thought has always been "overtly territorial," and electoral structures in the United States are still built around places.[36] Rosemary Zagarri has argued that Americans turned away from geographic theories of representation in favor of demographic representation by the middle of the nineteenth century.[37] To be sure, Americans now agree that politicians should represent "people, not trees or acres," as the Court said in *Reynolds v. Sims*.[38] But reports of our abandonment of geography should not be overstated. Partisanship, interest, and race now coexist uneasily in American theories of representation, but geographical entities have never yielded their fundamental position: those other variables play a role in *how* congressional districts are drawn, for example, rather than replacing place-based districts with an alternative system. Indeed, Sandy Levinson points out that in the United States "*all* elected officials within the national government, including representatives, senators, and even the president, owe their elections to their appeal to specific localities."[39] Writing about the construction of political districts, James A. Gardner identifies "a normative commitment to localness" in American theories of representation and observes that "to represent voters by territory is to organize the electorate according to bonds of local community and interest."[40]

Tacitly and sometimes explicitly, we accept the tradeoffs federalism creates. Those local bonds—what Levinson calls "the dispersion of loyalties and identities attached to federalism"—can certainly have negative as well as positive effects on popular sovereignty.[41] As Gimpel and Schuknecht write in *Patchwork Nation*, "The decentralization of power inherent in federalism acts against unity, making the political system a barrier to homogeneity."[42] A loss of unity, a diminishment of the ability to act together toward our shared goals and against our common problems, is a serious price to pay. But in the American political tradition, the paradoxical idea that a divided people can actually govern itself more effectively than a united one is familiar.

It is a fair summary of the Madisonian theory of democratic popular sovereignty to say that as long as the "the people" can act, it's perfectly acceptable and even desirable that it not be easy for them to act *together*.[43] Americans un-

derstand sovereignty not as unitary and total but as "divided and distributed to several levels of government."[44] Thus checks, filters, and limits are key to Madisonian theory, and a Madisonian understanding of popular sovereignty differs from a Populistic one, as Robert Dahl demonstrated more than fifty years ago.[45] Upholding the National Voter Registration Act against California's challenge in 1995, the Ninth Circuit said approvingly that by setting up a federal system, "the Framers split the atom of sovereignty."[46] (Daniel T. Rodgers writes of post-Revolutionary democratic thought that the majority's power was to be "carefully broken up," "divided in two," "buffered," made "indirect," "federalized," and, finally, "dismembered."[47]) Despite considerable differences between our assumptions about popular sovereignty and suffrage and those of the founders, in many ways their ideas still hold sway, as shown by the many introductory texts in U.S. government that offer Madisonian theory to explain federalism, the separation of powers, interest groups, and the legislative process.

Richard Katz has said that having "multiple sites and times for elections" is consistent with Madisonian democracy.[48] Because the founders took locally varying voting rules for granted, documentary evidence is scant, but I would go a step further and say that a decentralized system of election administration is *part of* the Madisonian conception of popular sovereignty. In addition to a comment by Madison himself, the words of nationalists such as Alexander Hamilton and Joseph Story suggest that the early architects of the distinctive structure of American popular self-rule understood local control of suffrage practices to be part of that system. Speaking in the Constitutional Convention during an argument over the House of Representatives, Madison worried most about manipulation of election procedures by *state* governments. His greatest concern appears to have been self-interested manipulation of election results by variations in the "mode":

> The policy of referring the appointment of the House of Representatives to the people and not to the Legislatures of the States, supposes that the result will be somewhat influenced by the mode. . . . The Legislatures of the States ought not to have the uncontrouled right of regulating the times places & manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot or viva voce, should assemble at this place or that place; should be divided into districts or all meet at one place . . . these & many other points would depend on the Legislatures and might materially affect the appointments."[49]

Here Madison states bluntly that the manner (voice or ballot), balloting location, and basic representational structure (districts or at-large representation) employed in elections can all influence results. Yet Madison does not draw from this premise the conclusion that practices should be standardized. His concern is to restrain potential "abuses" by state governments, and his tactical goal seems to have been to place in the national government "a controuling power" over elections, particularly "in the last resort," as Hamilton would later put it in *Federalist* 59.[50] Madison appears to assume that thoroughly decentralized electoral regimes are satisfactory: it is the manipulation of such systems that worries him, not their normal operation. Certainly, Madison did not argue that the national government should write a national electoral law—let alone actually administer elections. He simply wanted an insurance policy written into the Constitution.[51]

That's what Article I, section 4, essentially does. Advocating ratification and defending the Elections Clause in *Federalist* 59, archnationalist Alexander Hamilton explicitly endorsed decentralized election administration. The Constitution was correct, he wrote, to assign "the regulation of elections for the federal government in the first instance to the local administrations; which in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory."[52] (By "local administrations," Hamilton was probably referring to state governments as well as smaller units.) Only in crisis, Hamilton argued, would it be necessary for the national government to step in and guarantee that state governments did not debase the national representative process.[53]

For his part, Joseph Story wrote in 1833 that the Elections Clause encountered little opposition in the Convention, and indeed not even much attention.[54] Story's interpretation tracks Hamilton's closely (though without citation), placing discretionary power over elections not with *either* the state legislatures or national government but primarily with the former and ultimately with the latter.[55] Story did not believe that Congress would be able to draft "an election law, which would be applicable . . . and convenient for all the states."[56] Finally, recall that some opponents of ratification had denounced the Elections Clause: they wanted *more* decentralization of authority, not less, as they viewed even the possibility of congressional intervention in election practices as a dangerous usurpation.[57]

The founders understood the fact of local variation in election procedures and administration, and made no attempt to subject voting processes to routine national control. This should come as no surprise, for in the American constitutional order, popular power is exercised through the filters and channels of a federal system that enables voters to direct policy only in mediated,

indirect ways. Uniformity is not a central value of that system; as a result, voters' power varies considerably and will continue to do so even as voting practices are standardized. Representational structures are shaped by the Constitution, by partisanship, and, in some cases, by race. But a commitment to geographic places remains the essential premise of American electoral institutions. Of course, beyond election law, important public policies in the United States also vary considerably from one state to the next. These include matters of the greatest importance, such as health care policies, educational funding and standards, family law, and criminal law. An election-administration system characterized by local control and local variation fits coherently within this structure.

The Case for Localism

Readers critical of the electoral structures featured in the previous section have probably found it to be a pretty thin defense of localism today. The fact that *other* archaic electoral structures violate modern understandings of egalitarian majoritarian self-rule, they might argue, does not mean that *this* electoral structure is worthy.[58] Beyond its historical compatibility with geographically based understandings of representation and American theories of divided, mediated popular sovereignty, what is the case for decentralized election administration?

As Dennis Thompson writes, "spatial variation" in election procedures (ballot design, technology, and recount standards) may "frustrate electoral justice" if such variation systematically makes some voters more powerful than others. But Thompson also argues that local administration of national elections can have salutary effects, because it "is likely to give citizens more control over the electoral process, encourage political participation, increase partisan competitiveness, and enable districts to experiment with different procedures."[59] I share that conclusion, drawing on an array of historical and contemporary sources to identify four ways decentralized election administration can enhance, rather than diminish, the exercise of popular sovereignty. First, local administration offers voters a greater sense of engagement and ownership in the political process and can provide a more meaningful voting experience. Second, it fosters experimentation and innovation. Third, it places obstacles in the path of systemic corruption, whether accidental or purposeful. Finally, it has the strong potential to increase voter turnout.

"The Strength of Free Nations": The Constitutive Power of Local Election Administration

By broadly distributing responsibility and bringing voters into contact with local government, decentralized election administration increases voters' ownership of the political process. Embedding voting in local settings can also enhance the communal, ritual, and symbolic elements of casting a ballot. Where Madison's tacit approval of local variation emphasized the instrumental aspect of popular sovereignty (that is, election results), the work of Alexis de Tocqueville feeds this more constitutive case for localism in American electoral self-rule.

Tocqueville understood administrative decentralization as "one of the glories of the American political system," writes Stephen Macedo. Decentralization, Tocqueville believed, was "a way of placing governmental decisions within the reach of ordinary people, 'so that the maximum number of people have some concern with public affairs.' "[60] Local government was the main object of Tocqueville's affection, and an admiring study of local authority begins his assessment of "the form of government established in America on the principle of the sovereignty of the people." As a political entity, he writes, the township "is so perfectly natural" that it "seems to come directly from the hand of God."[61] Municipal institutions "constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty."[62] The township is where power, sovereignty, and "the people" define themselves, where citizens are trained in both the "practice" and the "spirit" of liberty and order, learning both rights and duties.[63] The participatory habits built into local government provide civic benefits well beyond the township itself, disseminating a "bracing vitality to civil society as a whole," as Robert Gannett summarized Tocqueville.[64]

Politics in the New World have come a long way since 1830. But important modern works as diverse as Robert Bellah and colleagues' *Habits of the Heart* (1986), Robert Putnam's *Bowling Alone* (2000), and Anthony Lukas's *Common Ground* (1985) demonstrate Tocqueville's influence. And Tocqueville's concern for active citizenship is certainly timely today, since modern citizens have fewer and fewer opportunities to experience collective public activity of any kind. As sociologist Gianfranco Poggi writes, voting now "constitutes practically the only regular expression . . . of active citizenship."[65] Matthew A. Crenson and Benjamin Ginsberg make this same point in *Downsizing Democracy*, describing a "general political demobilization [in] the past several

decades," which has "reduced the government's reliance on the active and collective cooperation of the people."[66]

Local administration of our national elections has stood against that demobilization, contributing to the vitality of civil society in two ways. First, localism multiplies the number of citizens who actually do the work of running elections. One of the themes of *Downsizing Democracy* is the declining number of "citizen administrators," as policies designed to run government more efficiently and smoothly diminish the space in which citizenship operates.[67] Working at the polling place—either as a regular employee of a town, county, or city or as a special, one-time volunteer or for-pay elections worker—offers Americans an opportunity to exercise an important, responsible role in our central act of self-rule. This is one message of Michael Schudson's *The Good Citizen*, which opens with an account of his own volunteer work at a California polling place.[68] Schudson brought his kids along for part of the day; he considered the work to be part of their political education. Dozens of voters thanked him, and many were "proud of their neighbor for volunteering."[69] Currently, about two million Americans work at the polls in a typical federal election, many of them volunteering or working for relatively little money.[70] Of course, a national election-administration bureaucracy would certainly still require a great deal of help at election time. But as local authority increases, the work of these citizen administrators—the army of clerks, recorders, managers, and one-day workers—deepens in importance. As Spencer Overton puts it, "Americans who register others to vote, work at community polling places, or see their neighbors performing these and other tasks gain a deeper sense of self-government. By providing hands-on democracy training, local control facilitates engagement among citizens. Complete federalization of elections, cutting out local input, would only make citizens even more detached from government."[71] Practices that allow local governments to register voters, choose polling places and ballot types, and count votes do sacrifice uniformity and may even threaten equality. But they also recognize the individual responsibility and capacity for choice of democratic citizens.[72]

A second salutary effect comes from the experience of in-person voting in local institutions. Many contemporary commentators laud the neighborly character of American elections as their finest feature. On Election Day 2004, economist and *New York Times* columnist Paul Krugman—not normally given to sentimentality—wrote, "I always get a little choked up when I go to the local school to cast my vote. The humbleness of the surroundings only emphasizes the majesty of the process: this is democracy."[73] Journalist David M. Shribman lamented that since he is always working on election day, he misses "the best part of politics," which is the "shared, community experience" of going to "my neighborhood polling place."[74] Political scientist Paul Gronke calls "going to the polling place and casting a ballot" our "most essential act of public participation," and Dennis Thompson emphasizes the "public affirmation" involved in the process of "walking to the polling station and standing in line with one's neighbors."[75] Analyzing the costs and benefits of continued localism in the wake of the Help America Vote Act (HAVA), Brian Kim writes, "There is something solemn and meaningful about citizens going to their local precinct, waiting in line with others, and casting a ballot for President of the United States or the local school superintendent."[76]

These responses are not mere nostalgia. When a democratic citizen chooses her national representatives standing in a local institution such as a school, firehouse, church, or business, after conversing with her neighbors and the town or county officials who perhaps helped her register to vote, may have selected (and paid for) the voting technology she will use, and now instruct her on how to mark her ticket (which they will ultimately bear responsibility for counting), she exercises electoral popular sovereignty and also builds civic community in a meaningful way.

Like others, John Mark Hansen is eloquently ambivalent about the relationship between localism and American popular sovereignty. On the one hand, as participation is increasingly privatized—by absentee and all-mail balloting, for example—Hansen worries that "the fabric of mutual engagement that supports self-government begins to unravel." Hansen laments the erosion of "the experiential connection between voting and place," because a citizen comes to understand other people and democracy itself by shared participation in democracy's rituals. "A placeless politics undermines the sense of common democratic purpose," he argues. On the other hand, participation detached from place "is also liberated from the parochialism of place" and is not necessarily worse for democracy.[77]

Some fascinating and important academic work has begun to explore these questions empirically. For example, Michael Alvarez and his coauthors found that voters' confidence that their ballot would be accurately counted varied according to what technology they used, among other factors. Yet they emphasize that further research is needed to better understand the interaction between voters' electoral confidence (or lack thereof) and their broader sense of civic duty—as well as the likelihood that they will keep voting.[78] Lonna Rae Atkeson and Kyle Saunders, meanwhile, surveyed voters after the 2006 midterm election and found that "local context matters a great deal in structuring voter confidence."[79] And Thad Hall and his colleagues have found that several locally varying factors, such as method of voting and the quality of voters' interactions with poll workers, affect voters' perceptions of the fair-

ness of the voting process.[80] Notably, two recent studies conclude that the perceived quality of election administration "has a significant and independent effect on voter behavior and affect," as Robert Stein and his coauthors stated in a 2008 article. That is, voters who rated their polling place and its staffers highly were more likely to feel good about the voting technology they used and the likelihood of their ballot being accurately counted—regardless of whether they had just voted on a touch-screen system or a paper ballot.[81]

Local administration of national elections can be an engine of citizenship and deepen our exercise of popular sovereignty. My conclusion is that the gains to citizenship formation and participatory efficacy resulting from localism are worth the risks, particularly as those risks are minimized by further investments in election administration. But some careful observers disagree. Decentralized election administration presents numerous "managerial complexities," as Alvarez and Hall have explained, particularly the "principal-agent problems" created by the need for temporary election workers.[82] Ultimately the answer lies in how effectively local staff do the work, how well volunteers are trained, how well the technology functions, and how voters' particular experiences color their judgments.

"Great Diversity of Provision": Innovation and Experimentation

Concluding a survey of American voting practices in 1889, anthropologist James H. Blodgett wrote that "great diversity of provision will continue in different parts of the United States upon the leading features of representation and the conduct of elections, as no uniform legislation is practicable. . . . The inevitable diversity will serve to keep on trial a great variety of plans that find local favor, and may help toward a better solution of the problems of representative government."[83] Contemporary elections have only strengthened the experimentation argument for decentralization. Because of their experience and their proximity to voters in other settings, local authorities are well positioned to help address some of the problems vexing American elections, by proposing and testing novel ways of inducing voters to register and turn out to vote, disseminating election information, training poll workers, keeping records and collaborating with other officials (in their own state and elsewhere) in the interest of avoiding fraud, and, of course, trying new voting technology. We have little consensus on best practices in these areas, and allowing localities to serve as small laboratories of electoral democracy makes a great deal of sense—not least because when voters get upset, local governments are likely to feel the brunt of their anger and to be more responsive than federal authorities.[84]

Variation can also help identify problems when specific practices or technologies fail. This was part of the story in Florida's 13th Congressional District in the 2006 election, when the electronic voting machines used in Sarasota County did not record any choice for congressional representative from about eighteen thousand voters—most likely because of obtuse ballot design rather than machine malfunction. Because *other* balloting technologies were used elsewhere in the district, elections officials had a baseline for comparison and could see how odd it was that so many Sarasota County voters did not vote for that office. (In February 2008, a U.S. House task force ended its investigation into the matter, concluding that the voters had probably accidentally or purposefully failed to vote for representative and the machines had not malfunctioned.)[85]

As a 2004 study concluded, "it would ill serve us to adopt one uniform [voting] system for the whole country," because diverse ways of voting "encourages experimentation with new technologies and thereby improvements over time."[86] This is not a hypothetical point. After the election of 2000, touch-screen voting devices were regarded as a superior technology, best able to provide clear choices to voters, low error rates, accessibility, and fast results. Through HAVA, the federal government helped pay for touch-screen voting machines as replacements for older technology in many areas of the country, and about 40 percent of Americans used such machines in 2006. But with catastrophic events like that in Florida's 13th District supporting doubts about touch-screen machines—particularly their lack of a "paper trail"—Congress now wants optical-scan card-stock ballots to be used and is working with states and localities (and advocates for the disabled) to move in that direction.[87]

The experimentation point comes with two caveats. The first is that in order for localities to provide the kinds of "natural experiments" that can help move American democracy forward, they must publish more data about their election practices. This trend toward openness is already well under way as policy makers and academics take greater interest in election administration and in some instances work closely with local officials to develop and study new practices, and it should continue.[88]

The second caveat is that here too there will be difficult tradeoffs. On the one hand, in-person precinct voting on a common election day could well be seen as best harnessing the citizenship-building, efficacy-enhancing power of localism. It also facilitates the turnout-boosting work of parties, interest

groups, and civic-minded individuals. But given room to experiment, localities may well choose to move away from that shared physical ritual in the interest of pursuing other sovereignty-enhancing goals. Early voting, which expanded dramatically in the 2008 election season, is a case in point. States such as Florida allow local supervisors considerable discretion in setting up early-voting and satellite voting sites, and Florida's election supervisors have been so impressed with early voting's capacity to boost turnout and ease congestion at the polls that they proposed getting rid of election day altogether, scrapping precincts, and moving to a system of dramatically enlarged, or "super," voting sites.[89] These large voting places would also have the potential to allow for better-trained poll workers and better machinery—thereby serving both the instrumental and constitutive purposes of elections, particularly if more voters participated and were more satisfied.[90] To be sure, not all localities have had similar experiences. When Cascade County, Montana, considered consolidating polling places in 2006, the county clerk found that her constituents "want to keep their own neighborhood polling place."[91] But the trend toward convenience for individual voters, and away from election-day precinct voting, seems strong, particularly in some large states. Indeed, Florida and Texas now offer "curbside" satellite voting facilities, where you can vote without leaving your car: truly an image to chill the Tocquevillian heart.[92]

Early and absentee voting hold the potential to improve electoral popular sovereignty if they can increase turnout, give voters more time to consider their choices, and diminish election-day mishaps at overburdened precincts. But, in fact, the empirical evidence of greater turnout is still thin, and absentee voting is quite vulnerable to fraud.[93] Moreover, by abandoning the civic ritual of a shared election day, early, absentee, and all-mail voting can detract from voters' experiences of self-rule in real ways. Absentee voting is "voting alone," Paul Gronke observes, and it erodes our sense of community rather than building it.[94] Perhaps most serious, abandoning electoral simultaneity threatens popular sovereignty because it means that voters will not be making choices with the same information.[95] This is not an abstract concern. It is easy to imagine a dramatic event that could change many people's minds just days before an election—the uncovering of personal or political scandal, victory or defeat in a battlefield abroad, a terrorist attack at home, a stock market collapse. With millions of early and absentee votes already cast, an election in such circumstances could lead to a weak and ineffective government without majority support, or even to instability.

"Diffusion of Power": Local Administration as an Obstacle to Systematic Bias

Writing fifty years ago in one of the first modern works of comparative electoral studies, W. J. M. Mackenzie praised the British system under which many "autonomous local authorities" controlled elections. The setup was in some ways "peculiar and archaic," he acknowledged, but at the same time its "diffusion of power among different authorities" offered a safeguard against corruption:

> Responsibility for managing British elections is scattered. . . . It is both a weakness and an advantage of such a system that very few people understand fully how it works: it is an undoubted advantage that any attempt at improper action by an official somewhere in the system would be challenged at once by some other official independent of him. . . . This is not a matter in which it is desirable to seek administrative tidiness at all costs.[96]

Mackenzie is a bit naive here, even on his own terms—officials of the same party, for example, might well not challenge each other. And as an Englishman, he appears to be rooting for the "home" model. But his basic insight about the redeeming effects of "untidy" administration remains valid.

During the debate over HAVA in 2002, Congressman Bob Ney said Congress wanted to preserve dispersed responsibility for election administration in order to make it "impossible for a single centrally controlled authority to dictate how elections will be run and thereby be able to control the outcome."[97] As we have seen, Madison had also worried about the possibility that whoever controlled "the mode" could also dictate "the result." More recently, Federal District Judge Donald M. Middlebrooks made the point well in one case from the 2000 election. Rejecting George W. Bush's challenge to Florida's various hand counts, Middlebrooks called "electoral procedures and tabulations" a "traditional state province." Discussing the use of different ballot types, the judge praised even greater decentralization: "Rather than a sign of weakness or constitutional injury, some solace can be taken in the fact that no one centralized body or person can control the tabulation of an entire statewide or national election. For the more county boards and individuals involved in the electoral regulation process, the less likely it becomes that corruption, bias, or error can influence the ultimate result of an election."[98]

Judge Middlebrooks's final line is important. Mackenzie, Ney, and Madison all focused on how local variation can help prevent purposeful, self-interested manipulation. Middlebrooks reminds us that diverse practices and

a national election effectively composed of small units can also help prevent *accidental* systematic corruption, such as might be caused by a misleading ballot or defective voting machine, for example. A decentralized system places a natural limit on the damage done by such mistakes—and can also help identify them.

In a fascinating 2006 paper, a trio of researchers at Stanford University concluded that *where* people vote can influence *how* they vote. Studying Arizona's 2000 general election, they found that people voting in schools were more likely to support an increase in the state sales tax devoted to education than those casting ballots in other types of polling place.[99] A similar thing may have happened in 2004, when several Iowa churches opposed to a riverboat-gambling initiative won the right to erect satellite voting stations in their houses of worship. (Iowa law allows people who collect one hundred signatures to demand an early satellite voting station at a location of their choice, as long as it meets basic accessibility requirements.) The initiative lost.[100] We do not know whether those early church-cast ballots were decisive, but it is likely that those advocating the placement of voting facilities in churches believed the setting would not only facilitate voting by their allies but also help sway undecided voters against gambling. Outside Houston, Texas, the sponsors of a special community-college bond election in May 2006 tried to put *all* the polling stations on community college campuses, so that students and employees could vote easily. The U.S. Department of Justice caught wind of that idea, and the election was postponed.[101]

Though it can be a bit unsettling to think that polling locations influence votes, the finding is consistent with what we know about the shortcuts and particular types of rationality that help some voters make decisions. Most important, what the Stanford study and the Houston community-college bond election illustrate is the need for polling-place variation. Bring on the small precincts, with their delis, laundromats, armories, and libraries along with the familiar schools, firehouses, town halls and churches. The problem to avoid is systematic polling-place bias, and the best way to accomplish that goal is with diverse polling places.

Local Administration and Voter Turnout

One of the most intriguing research projects to explore local voting practices involved election-day "poll parties" during various elections in 2005 and 2006. These events were staged by a most unlikely group of party hosts—political scientists—along with community-action groups in a dozen precincts around the country. Even in low-salience elections, these festivals

increased turnout appreciably, and at a lower cost than other methods, such as direct-mail campaigns or phone banks. As Elizabeth Addonizio and her coauthors observe, festivals can "provide social approbation for and from those who perform their civic duty," and so it stands to reason that they help increase turnout.[102]

In fact, we have a good deal of historical and contemporary evidence that experiencing social approbation and communal connections not only increases voters' satisfaction with the electoral process but also helps induce us to vote in the first place. This is one of the strongest arguments for in-person voting in local settings, and it can claim support from recent empirical work. For example, an intriguing recent study directed by Alan Gerber, Donald Green, and Christopher Larimer sent voters mailings encouraging them to vote, then later checked to see which recipients voted in a subsequent election. Some voters merely received statements about the virtues of voting, but others got letters including information derived from public records about whether they and their neighbors had voted in recent elections. Exploiting social norms and "making public acts more public," Gerber and his colleagues found that substantially higher turnout resulted from these social-pressure letters. In fact, this was the only group of letter-receivers whose turnout rates increased appreciably.[103] Economist Patricia Funk's study of the Swiss response to the advent of postal voting reached a similar conclusion. Like the United States, Switzerland has a federal system, and the Swiss cantons adopted postal voting at different times. That enabled Funk to study how voting by mail affected turnout. Though it makes voting far easier, she discovered that the availability of postal voting *reduced* turnout, and she found a simple explanation: the Swiss had voted in part because they wanted the social benefits of being *seen* voting.[104]

In a marvelous descriptive passage, Richard Bensel writes that turnout in U.S. elections has declined "as participation in the social ritual of voting becomes increasingly irrelevant to the social standing of individuals": "There is no longer anyone at the polls to watch citizens vote; the crowds are gone, leaving behind only very small numbers of gentle-spirited people to mark down names as voters quietly, almost surreptitiously, trickle in to the polls."[105] Contemporary behavioral scholarship, meanwhile, offers a good deal of evidence that our political participation responds to the expectations of those around us.[106] We are more likely to vote if we know that people we respect in our communities are voting, and particularly if we *see* them voting. And while scholarship on this point is still developing, multiple recent studies conclude that Americans are more likely to vote when polling places are close to their residence or workplace.[107]

A second way decentralized voting can increase turnout is if local officials literally recruit voters. If the local government officials with whom citizens have the most contact—when we pay taxes, deal with property records, apply for permits, attend public functions, and so on—actively strive to increase the number of eligible residents registered to vote, the result may be increased participation, with the added benefit of a greater connection between citizens and the officials who run their elections. I began this chapter with anecdotal evidence that this type of recruitment does occur at least occasionally, with Shirley Green Knight at the Sawdust town picnic and Barbara Swann urging Monterey residents to register when they come in for "dog tags and dump stickers." But further empirical study is needed. We do not know how frequently such activity happens or how much of a difference it makes. Moreover, we should harness the power of friendly competition, further publicizing registration and turnout rates by locality, as well as "best practices" taken by local officials to induce people to vote—and to make the act of voting more celebratory.

Conclusion

"At the heart of American politics," writes James Morone, "lies a dread and a yearning." The dread is of centralized public power, particularly in the national government. Acting in part from that fear, we have constructed governing institutions that are "weak and fragmented, designed to prevent action more easily than to produce it." Paradoxically, Americans simultaneously yearn for a more effective democracy, one in which the people can function as "a single, united, political entity."[108] In this analysis Morone follows Tocqueville, who argued that the reason American government lacked a strong centralized hierarchy was that Americans exuded "dread of the consolidation of power in the hands of the Union."[109] Explaining the absence of national administration, Tocqueville wrote that "in America centralization is by no means popular, and there is no surer means of courting the majority than by inveighing against the encroachments of the central power."

That dread has survived. One author calls Tocqueville's remark about courting the majority by attacking centralization "a passage one might find in a memo from a political consultant today."[110] Indeed, former senator Alan Cranston illustrated just this sentiment in 2004 when he opposed a national identification card, calling it "a primary tool of totalitarian governments to restrict the freedom of their citizens."[111] Such distrust is surely one reason the United States lacks a nationwide voter roll, election-administration bureaucracy, and strong standards governing the electoral process.

I have argued that on balance, decentralization and local variation enhance rather than diminish the instrumental and constitutive aspects of American popular sovereignty. I want to temper that conclusion, however, by acknowledging that the survival of local control over American national elections may be a manifestation of Morone's paradox. *If* inconsistent, obscure registration procedures prevent citizens from participating; *if* problems with ballot design, counting machines, and poll-worker support keep would-be voters from having their voices heard; and, most seriously, *if* such problems systematically skew or obstruct the will of the electorate, then local control limits the exercise of popular sovereignty and compromises the American people's ability to act together and govern ourselves well.

Ronald Hayduk writes in *Gatekeepers to the Franchise* that "election administration is not a neutral, ministerial process but a system that is highly susceptible to politicization and manipulation."[112] Together with vigilance against partisanship in election administration, local variation can be part of a good defense against such manipulation. But a certain level of error and a certain amount of discretion in election administration are both unavoidable. Where institutions exercise that discretion with as much public support as possible, and where mistakes are on a relatively small scale and are clearly understood, the legitimacy of elections will be strengthened.[113] In addition to fitting comfortably within Madisonian theory and federal structures, decentralization's redeeming features provide ample reason to keep many surviving elements of local control in place. Locally varying suffrage practices can improve citizens' sense of democratic efficacy, foster experimentation and innovation, obstruct corruption and systematic error, and increase turnout. But each of these points contains important empirical dimensions deserving further study.

Richard Pildes has written that democracy is like the "Banquo's ghost" of American constitutionalism, floating insistently over numerous principal issues but only rarely appearing at center stage itself.[114] The same is true of voting practices, which until very recently were only fleetingly integrated into analyses of American popular sovereignty. I have tried here to use the concept of popular sovereignty to better understand election administration. In closing, I would note that the arrow points in the other direction as well. To a degree that the literature on democratic self-rule has not adequately grasped, thinking about *how* we vote teaches us a great deal about the mediated, locally textured nature of American popular sovereignty.