Electoral Adequacy
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ABSTRACT. This Essay considers the function of election law, as an academic field, in strengthening democratic institutions and improving democratic accountability. In undertaking this inquiry, this Essay advocates an interdisciplinary research program oriented around the concept of electoral adequacy. Electoral adequacy’s premise is that states are obligated to provide a minimal set of entitlements, or a baseline level of election services, to all voters.

Electoral adequacy seeks to unite institutional political theory, empirical research on election systems, and strategic political thinking, with the goal of improving the electoral process. It is centered on three policy components: adequate funding, competent management, and democratic structures. Finding success in these policy areas would mitigate many specific election-administration disputes.

INTRODUCTION

As American democracy staggers further into the twenty-first century, the peculiarities and vulnerabilities of our democratic arrangements are conspicuous. The profoundly undemocratic Electoral College threatens the legitimacy of our presidential elections.1 Election administration—the array of administrative rules and decisions impacting elections—is now a disconcertingly partisan arena.2 The U.S. Supreme Court, in its current composition, routinely impedes

1. See Trevor Potter & Charles Fried, Opinion, The Electoral College Isn’t Supposed to Work This Way, N.Y. TIMES (Jan. 6, 2021), https://www.nytimes.com/2021/01/06/opinion/electoral-college.html [https://perma.cc/F5RW-ZJJQ] (“[T]he Electoral College is a fragile institution, with the potential for inflicting great damage on the country when norms are broken.”); Katherine Shaw, “A Mystifying and Distorting Factor”: The Electoral College and American Democracy, 120 MICH. L. REV. 1285, 1296 (2022) (reviewing Jesse Wegman, LET THE PEOPLE PICK THE PRESIDENT: THE CASE FOR ABOLISHING THE ELECTORAL COLLEGE (2020)) (“In many ways, the Electoral College system is the worst of all possible worlds.”).

2. See Alexandra Berzon, In Races to Run Elections, Candidates Are Backed by Key 2020 Deniers, N.Y. TIMES (June 5, 2022), https://www.nytimes.com/2022/06/05/us/politics/america-first-
political equality.\textsuperscript{3} Congress, despite possessing ample authority over elections,\textsuperscript{4} failed to pass either of two pieces of major election-reform legislation recently under consideration.\textsuperscript{5} Alarmism, despondency, and anger figure prominently in the commentary.\textsuperscript{6}

Given these dynamics, it is worth considering the function of election law, as an academic field, in strengthening democratic institutions and improving democratic accountability. How can those of us working in the field, situated on our own “independent intellectual terrain,”\textsuperscript{7} aid in mounting an effective defense against “antidemocracy”?\textsuperscript{8} In facing this challenge, this Essay advocates an interdisciplinary research program oriented around the concept of electoral adequacy. Electoral adequacy’s premise is that states are obligated to provide a minimal set of entitlements, or a “baseline level of election services,” to all voters.\textsuperscript{9}
Elsewhere, I have described electoral adequacy as encompassing three components: the right to adequate funding, the right to competent management, and the right to democratic structures. In this Essay, I consider what a research program built around electoral adequacy might entail. In short, I endorse uniting “institutional political theory,” empirical research on election systems, and strategic political thinking.

What are the benefits of this approach? A research program built around electoral adequacy can help identify practical reforms that effectively balance competing values and governance priorities. It can, for instance, establish where financial resources are most needed, the relative effectiveness of election systems, and whether constituents are afforded meaningful opportunities to engage election administrators. These findings can, in turn, inform state legislatures when drafting election legislation, secretaries of state, attorneys general, county recorders, and other election administrators when making administrative choices, and, potentially, judges when resolving voting-related and election-administration cases.

Electoral adequacy also accounts for political reality regarding the likelihood for reform. In 2020, Democratic Party control of the White House and Congress understandably shifted attention to the prospect of federal voting-rights legislation. With that legislation moribund, though, and the near certainty that the Democratic Party will soon lose control of the House of Representatives, administration of the election abides by genuine (and not pretextual) requirements of accuracy, efficacy, transparency, and trustworthiness). Electoral adequacy is focused on improving the quality and responsiveness of election administration and ensuring voting access. As such, it defers any discussion of vote aggregation, including the recurrent distortions caused by partisan and racial gerrymandering. Those concerns are also at the heart of our democratic dysfunction and should not be neglected, and other scholars have proposed quantitative benchmarks as a means of establishing what is adequate in the gerrymandering context. See, e.g., Nicholas O. Stephanopoulos & Eric M. McGhee, Partisan Gerrymandering and the Efficiency Gap, 82 U. CHI. L. REV. 831, 885–91 (2015) (proposing and defending a numerical threshold to distinguish acceptable from unacceptable partisan gerrymanders).

12. Toby S. James has likewise outlined the benefits of combining institutional theory and empirical analysis. See Toby S. James, COMPARATIVE ELECTORAL MANAGEMENT 33–58 (2020) (exploring theoretical and empirical measures of electoral management). His work is not, however, directly focused on the United States.
13. See, e.g., Sellers & Weinstein-Tull, supra note 10, at 1171–77 (discussing how electoral adequacy might be incorporated into voting-rights doctrines, specifically through the use of consent decrees).
continued focus on Congress as a site of broad-based reform is illogical.\textsuperscript{14} At the same time, prodemocracy reformers confront potent antidemocratic forces in a plurality of states.\textsuperscript{15} While there may be democratic promise in underexamined state constitutional provisions,\textsuperscript{16} at present, in many jurisdictions, significant reliance on state constitutions to achieve comprehensive election reform would be misplaced.\textsuperscript{17} Thus, reform efforts that reflexively seek only to enlarge or expand

\textsuperscript{14} The merits of federal voting-rights legislation were disputed among experts even when such legislation was still viable. Compare Guy-Uriel Charles & Lawrence Lessig, The Democrats Are Walking Right into a Trap on Voting Rights, SLATE (May 24, 2021, 2:19 PM), https://slate.com/news-and-politics/2021/05/democrats-joe-manchin-voting-rights-trap.html [https://perma.cc/P8DQ-L624] (“H.R. 1 is the only opportunity for this Congress to secure to all Americans an equal freedom to vote while minimizing the risks of partisan gerrymandering and the continued and overwhelming influence of big money in politics.”), with Edward B. Foley, Opinion, Democrats Have a Chance to Expand Voter Access. But They’re Focusing on the Wrong Bill, WASH. POST (Mar. 29, 2021, 1:59 PM), https://www.washingtonpost.com/opinions/2021/03/29/democrats-have-chance-expand-voter-access-theyre-focusing-wrong-bill [https://perma.cc/H4PP-UKBC] (“The unwieldy menu of mandates known as H.R. 1 is not the electoral reform legislation that Congress should enact. Among other problems, the bill represents an intrusive and unnecessary federal overreach into state management of elections.”).


\textsuperscript{16} See, e.g., Jessica Bulman-Pozen & Miriam Seifert, The Democracy Principle in State Constitutions, 119 MICH. L. REV. 859, 861 (2021) (“State constitutions furnish powerful resources for addressing antidemocratic behavior. These constitutions ‘will not save’ us either. But they do provide a stronger foundation for protecting democracy than their federal counterpart.”); Joshua A. Douglas, The Right to Vote Under State Constitutions, 67 VAND. L. REV. 89, 120 (2014) (“There is a simple reason to analyze state constitutions’ explicit safeguards of voting rights faithfully and independently from federal jurisprudence: the right to vote is the most fundamental and important right that we have. It therefore deserves the strongest protection possible.”).

democratic opportunities, absent other considerations, should be reassessed. Reform advocates, often faced with inevitable resource limitations, should instead prioritize initiatives that attenuate zero-sum partisan and ideological divisions.

Rather than pursuing election reform with a maximalist orientation, there may be theoretical, policy, and political benefits to an alternate approach structured around adequacy. By way of example, consider Ned Foley’s assertion, while critiquing H.R. 1, the For the People Act, that providing both two weeks of early voting and no-excuse vote-by-mail is redundant. In one sense, this assertion seems unnecessarily conciliatory, contrary to the democratic goal of increased political participation. Yet, in fact, the veracity of Foley’s assertion depends on several factors, which we can only determine through: some degree of democratic theorizing in “the midrange of political deliberation, between the abstract concepts of philosophers and the concrete proposals of politicians;” empirical research on early voting and no-excuse vote-by-mail; and consideration of what is both administratively and politically feasible. Some of these factors might appear to be secondary to the simple importance of securing the vote, but they are in fact inseparable from that aspiration. Furthermore, these factors will point in different directions from jurisdiction to jurisdiction; given the decentralization of our elections, the tradeoffs between them are necessarily idiosyncratic. The purpose of this type of analysis, then, is to encourage holistic thinking about election law—theory, policy, politics—in defense of our proposed interventions.

election cases.”). Second, some state legislatures have moved to limit state courts’ power to regulate elections. See Patrick Berry, In Assaults on Democracy, State Lawmakers Target Courts, BRENNA N CTR. FOR JUST. (Dec. 14, 2021), https://www.brennancenter.org/our-work/analysis-opinion/assaults-democracy-state-lawmakers-target-courts [https://perma.cc/UEX8-AXHG]. Finally, the litigation track record under state constitutions is mixed. See, e.g., Dale E. Ho, Election Day Registration and the Limits of Litigation, 129 YALE L.J.F. 185, 199-201 (2019). Electoral adequacy seeks evidence-based, bipartisan solutions intended to mitigate these impediments.

18. Foley, supra note 14 (“The bill would require states to adopt both in-person early voting and ‘no excuse’ vote-by-mail. But both approaches are not necessary to assure that voters have an adequate opportunity to cast a ballot. Either would suffice.”).


One final preliminary note: the word adequacy connotes minimalism; it suggests the surrender of grand principle and perhaps a poverty of imagination. It might be read to betray a concessionary outlook that underestimates the democratic challenges at hand, or a dispositional commitment to what Martin Luther King, Jr. called “the tranquilizing drug of gradualism.” Such a reading would misapprehend the research program outlined below. While realism and pragmatism are, in my estimation, necessary aspects of any reform effort, electoral adequacy is not rooted in resignation. Rather, it entails context-specific, granular inquiries intended to facilitate the construction of robust, well-functioning election systems. Finding success, as is true in any complex institution, requires both commitment and vision. But as an initial step, we need to understand the landscape. Electoral adequacy is, in short, fully compatible with creative thinking.

In fact, creative thinking is imperative. If democracy is, as John Dewey described it, a “mode of associated living,” our associations are under severe strain. Trust in electoral institutions is waning. Voting inequality persists. Election administrators are under threat. Racial divisions, and especially “white identity-based political calculations,” continue to befall our politics in

23. See Sellers & Weinstein-Tull, supra note 10, at 1177 (“Creating a robust right to vote requires thinking about our elections systems in more experiential ways.”).
24. JOHN DEWEY, DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION 101 (1916).
25. See Richard H. Pildes, Election Law in an Age of Distrust, 74 STAN. L. REV. ONLINE 100, 102 (2022) (“No institutional safe harbors exist any longer that generate widespread confidence that votes will be fairly tallied, free of partisan manipulation.”).
26. See Michael Barber & John B. Holbein, 400 Million Voting Records Show Profound Racial and Geographic Disparities in Voter Turnout in the United States, 17 PLoS ONE art. no e0268134, at 6 (2022) (“Voter turnout is highly segregated by race, politics, and age in the United States; minorities, young people, and democrats are much more likely to live in turnout deserts.”).
27. See Richard L. Hasen, Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States, 135 HARV. L. REV. F. 265, 265–66 (2022) (“Threats of violence and intimidation have led to unprecedented attrition among election administrators, and some exiting officials are being replaced by those who may not have allegiance to the integrity of the election system.”).
myriad ways. Fortifying American democracy in the face of these and related crosscurrents requires identifying and prioritizing what is most prudent in the current environment. So, while no research program can remedy blatant race-based or partisan electoral discrimination—both troublingly common—that does not relieve aspiring reformers of the task of striving for creative, yet achievable, solutions.

This Essay proceeds as follows. Part I defines electoral adequacy and situates it within a collection of complementary reform projects. After describing these projects, it explains why electoral adequacy is timely. Part II provides two examples of how electoral adequacy can aid in reform efforts. Part III concludes with a brief comment on electoral adequacy and rights.

I. ELECTORAL ADEQUACY AND ITS PRECURSORS

A. Defining Electoral Adequacy

Electoral adequacy obligates states to provide a minimal set of entitlements to all voters. As a touchstone for reform, it relies on an analytical framework uniting theory, policy, and politics. The policy dimension of the framework encompasses three subsidiary components—adequate funding, competent management, and democratic structures—and is the core of the framework. These three policy components arise from an understanding that the right to vote is both unacceptably fragile and impersonal. Accordingly, improvement along the policy dimension would remedy many of the most salient election-
administration challenges. It is also the part of the framework for which collaboration between scholars, election administrators, and community stakeholders is most likely. So, while theorizing about both electoral institutions and political strategizing is essential, the policy dimension is the central node of the framework.

With respect to the first policy component, adequate funding, we know very little. We do know that election administration is chronically underfunded, despite widespread acknowledgment of the need for more resources. Such resources are essential not only for conventional purposes—such as training and paying poll workers, printing and mailing ballots, and updating voter-registration databases—but also for responding to heightened security needs. Therefore, to achieve electoral adequacy, scholars and policy makers must identify existing election expenditures and, more significantly, uncover how resource limitations impact the voting experience.

The second policy component of electoral adequacy, competent management, involves “the organizations, networks, resources, micro anthropological working practices and instruments involved in implementing elections.” This admittedly expansive sphere implicates a host of public and private actors, often with relationships that are difficult to evaluate systematically. The task is made even more difficult given the central role of local governments in managing elections. Fortunately, political science and public administration provide models

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33. See Sellers & Michalski, supra note 9, at 1082; Mary Jo McGowan, JoEllen V. Pope, Martha E. Kropf & Zachary Mohr, Guns or Butter . . . or Elections? Understanding Intertemporal and Distributive Dimensions of Policy Choice Through the Examination of Budgetary Tradeoffs at the Local Level, PUB. BUDGETING & FIN. 3, 17 (2021) (“[E]lections administration may be chronically underfunded, with the possible exception of general election years that just happen to coincide with good economic conditions.”).


36. JAMES, supra note 12, at 5 (emphasis omitted).

37. See HALE & BROWN, supra note 20, at 45 (referring to “the contemporary public management environment, which is dominated by networked arrangements of organizations within and across the public and private sectors and supported by growing professionalism”).

38. See Richard Briffault, Election Law Localism and Democracy, 100 N.C. L. REV. 1421, 1423 (2022) (“As the actions of local election officials in the 2020 election—and the backlash to those actions in many states in 2021—illustrate, local election offices play an essential role in making democracy work.”).
for engaging these complex networks. For instance, one such “model of network innovation” outlines various stages of election-administration professionalism and discusses how different election-administration innovations spread across jurisdictions. Other models evaluate the “multifaceted approach to building capacity in local election administration.” These and similar models might aid efforts to improve election administration and establish baselines for competent management.

Democratic structures, the third policy component of electoral adequacy, are “internal governance structures that clarify the roles of state and local officials in administering elections” and include the “[r]epresentation of disempowered communities within the election administration sphere.” Thus, poll workers, law-enforcement officials, election observers, communication specialists, election auditors, elected officials, and countless others involved with administering elections should reflect the communities they serve. In addition, citizens, non-profits, and community groups should have options for providing feedback to election administrators. In these ways, democratic structures promote accountability and function as a safeguard against election-administration manipulation.

Note that the focus of each of the three policy components is on institutions, not individuals. While individualist, rights-oriented perspectives are a common feature of election-law scholarship, such perspectives reveal little about the complexity of election systems and processes. Note also that these components fall

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39. See HALE & BROWN, supra note 20, at 45.
40. See id. at 55-64.
42. Sellers & Weinstein-Tull, supra note 10, at 1167.
43. Id.
45. See THOMPSON, supra note 11, at 62 (“Methodologically, even while recognizing that individuals are the fundamental moral subjects in democratic theory, we should assess equal respect, and locate any justifications for unequal treatment, in the context of institutions.”); Richard H. Pildes, Romanticizing Democracy, Political Fragmentation, and the Decline of American Government, 124 YALE L.J. 804, 807 (2014) (“[R]ights-oriented approaches typically pay less attention to the structural or systemic consequences—the effects on the organization of political power—of concretely institutionalizing these abstract ideals in specific settings.”).
within a midrange of generality; finding success in these policy dimensions would mitigate many specific election-administration disputes. In other words, adequate funding, competent management, and democratic structures would go a long way towards producing administrative outcomes that are just. Of course, until such success is realized, specific election-administration disputes will remain. In the meanwhile, then, efforts should be made to define the line between adequacy and inadequacy in the context of each specific dispute. In sum, this Essay proposes retail electoral adequacy based on systematized research in the short term (e.g., how long is too long to wait in line at a polling place?), with the goal of wholesale electoral adequacy in the long term.

B. Electoral Adequacy’s Precursors

A research program built around electoral adequacy draws inspiration from several earlier scholarly projects. While electoral adequacy’s express focus on adequate funding, competent management, and democratic structures is unique, the notion that theory, policy (through quantitative research), and politics should inform our pursuits is indebted to prior prominent accounts.

The closest analogue is found in what Heather K. Gerken and Michael S. Kang, writing in 2011, labeled the “institutional turn” in election-law scholarship. This line of scholarship, which emerged around 2009 and to which Gerken was a central contributor, endorsed “[shifting] our attention away from the courts toward a new set of private and public institutions, away from big reform proposals toward the more modest institutional tweaks that will

46. It would also confer considerable legitimacy on elections. See, e.g., James A. Gardner, Democratic Legitimacy Under Conditions of Severely Depressed Voter Turnout, U. CHI. L. REV. ONLINE (June 26, 2020), https://lawreviewblog.uchicago.edu/2020/06/26/pandemic-gardner [https://perma.cc/FKQ4-YGUC] (“The substantive electoral legitimacy of an election thus requires that it employ methods and procedures reasonably calculated to permit the accurate identification of those individuals [whom the people wish to appoint]. The procedural electoral legitimacy of an election, in contrast, requires only that it be conducted faithfully pursuant to authoritatively established procedures, whatever they may be.”).

47. Adequate funding, competent management, and democratic structures would also mitigate theoretical and political disagreements.

48. See infra Section II.A.


make bigger and better reform possible in the long run.”51 Indeed, some of the ideas in this Essay (e.g., the systematic collection of quantitative data and attention to the competency and professionalization of election administrators) are reprised suggestions from the institutional turn.52

In highlighting election administration as a distinct topic of study, this line of scholarship distinguished election rules (the traditional focus) from the institutional features of electoral administrative bodies.53 It pressed for institutional novelties to improve local election performance.54 And it sought “avenue[s] for second-best deliberative opportunities.”55 Like electoral adequacy, these proposals were characterized by both their pragmatism and skepticism about the feasibility of large-scale reform. For example, Ned Foley, another key contributor to the genre,56 expressly advocated for “optimality” (as opposed to “perfection”) as a lodestar for election-law reform.57 In a representative article, he made

51 Gerken & Kang, supra note 49, at 98.
52 See GERKEN, supra note 50, at 43 (“It is remarkable that we spend so much time arguing about which direction election reform should take when we don’t even have the data we need to map where we are now.”); id. at 86 (“But the long-term health of any system depends on administrators policing themselves based on shared professional norms. Indeed, professional norms may ultimately be more important to a well-run system than pressures from the outside.”).
53 See, e.g., Daniel P. Tokaji, The Future of Election Reform: From Rules to Institutions, 28 YALE L. & POL’Y REV. 125, 127 (2009) (“In the next phase of election reform, the focus should shift from rules to institutions—and, correspondingly, from the dueling values of access and integrity toward the twin problems of decentralization and partisanship.”).
54 See, e.g., Christopher S. Elmendorf, Representation Reinforcement Through Advisory Commissions: The Case of Election Law, 80 N.Y.U. L. REV. 1366, 1371 (2005) (advocating for “permanent advisory commission[s]”).
55 Dawood, supra note 11, at 417.
the case for quantifying an “electoral error rate”\textsuperscript{58} that “would be a powerful measure of how well, or poorly, a state’s voting system performed its basic function of accurately aggregating the electoral preferences of the eligible citizens endeavoring to participate in democratic decisions.”\textsuperscript{59} Foley’s express engagement with theory,\textsuperscript{60} policy,\textsuperscript{61} and politics\textsuperscript{62} anticipated the scholarly frame this Essay suggests.\textsuperscript{63}

In its specific approach to theory, electoral adequacy is in service to Bruce Cain’s groundbreaking and deeply realist book, \textit{Democracy More or Less}.\textsuperscript{64} Cain premised the argument for his “coherent blended design”\textsuperscript{65} not on an idealized or uniform set of reforms, but on pragmatism and urgency. In his words, “[T]he goal of a more coherent blending of different reforms is more feasible than consistency. It allows reformers to pick and choose their fights more carefully.”\textsuperscript{66} “Rather than fix what is not seriously broken but might seem inconsistent with populist principles,”\textsuperscript{67} Cain concluded, “it is better to focus on features that violate basic democratic goals and good governance.”\textsuperscript{68} In other words, with respect to election administration, it is better to prioritize electoral adequacy.

But beyond offering a scholarly paradigm shift, election-law institutionalism spotlighted the need for more functional election-related data.\textsuperscript{69} This realization

\begin{itemize}
  \item \textsuperscript{59} Id.
  \item \textsuperscript{60} Id.
  \item \textsuperscript{61} See id at 356 (“[T]he disenfranchisement of an eligible citizen who attempts to vote violates that citizen’s basic right to participate in democratic government.”).
  \item \textsuperscript{62} See id. at 358 (proposing “a threshold Electoral Error Rate of one hundred per million votes counted” as an “attainable goal worth striving for”); see also Foley, supra note 56, at 212 (encouraging the development of “state-of-the-art” voting infrastructure” through “collaboration among computer scientists, other systems engineers, and political scientists, lawyers, and other policy-oriented professionals”).
  \item \textsuperscript{63} See Foley, supra note 58, at 376-79 (proposing bipartisan special elections courts).
  \item \textsuperscript{64} Rick Pildes’s influential 2014 article, \textit{Romanticizing Democracy, Political Fragmentation, and the Decline of American Government}, is another important precursor of electoral adequacy. The article critiques a romanticized view of American exceptionalism, chronicles a broad range of history and social-science literature, and defends specific policy proposals. See generally Pildes, supra note 45.
  \item \textsuperscript{65} Id. at 6.
  \item \textsuperscript{66} Id. at 215.
  \item \textsuperscript{67} Id.
  \item \textsuperscript{68} Id.
engendered valuable compilations that pushed the research agenda forward. At the same time, though, new issues emerged that occupied much of the election-law field’s bandwidth. For example, the Supreme Court’s decision in *Citizens United v. Federal Election Commission* and its progeny initiated a deluge of scholarship on the nature of corruption and the shifting campaign-finance landscape. The Court’s momentous *Shelby County v. Holder* decision likewise centered attention on both the plethora of voting laws enacted in its wake and potential legislative and doctrinal responses. And the Court’s unexpected resuscitation of racial-gerrymandering doctrine in *Alabama Legislative Black Caucus v. Alabama* sparked a rash of commentary on the implications for Democrats and minority voters.

So, while it would be plainly inaccurate to say that the institutional turn had run its course by 2020, it is probably fair to say it was deprioritized. And of course, the nefariousness of President Trump, Rudy Giuliani, John Eastman, and a significant portion of the Republican Party has, as of late, compelled lawyers,

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70. See, e.g., Barry C. Burden & Charles Stewart III, *Introduction to the Measure of American Elections*, in *The Measure of American Elections* 1, 9 (Barry C. Burden & Charles Stewart III eds., 2014) (“This volume begins the process of assessing how elections are conducted in America by identifying a manageable set of candidate indicators, subjecting them to scrutiny, and examining them for what they tell us about elections in America.”).


72. E.g., SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir. 2010).


judges, and scholars to engage with previously obscure topics, including the so-called “independent state legislature theory” ⁸¹ and the Electoral Count Act. ⁸² What, then, recommends a research program built around electoral adequacy at this moment in time?

C. Electoral Adequacy's Timeliness

There are three principal justifications for the timeliness of electoral adequacy: remaining open questions, improved data, and synergy with other reform efforts.

First, and despite earlier endeavors, so much about the performance and fairness of our election systems remains unknown. ⁸³ Questions ranging from the utility of various voter-registration processes, to the relative virtues of rival voting machines, to the security of various post-election ballot-counting practices, persist. As noted above, only now are we starting to systematically evaluate how election expenditures affect election administration. ⁸⁴ Simply stated, improving our election systems requires, as a first step, better understanding their current functionality, which, again, entails theoretical, policy, and political considerations.

Second, and most crucially, we now have more reliable data than ever to evaluate election performance. For example, while the biennial election-administration data provided in the Election Administration and Voting Survey has its


⁸³ Foley, supra note 56, at 217 (“No other field of inquiry would settle for the underdeveloped and internally inconsistent standards for performance evaluation that our voting process has.”).

⁸⁴ See supra Section I.A; see also Zachary Mohr, JoEllen V. Pope, Martha E. Kropf & Mary Jo Shepherd, Strategic Spending: Does Politics Influence Election Administration Expenditures?, 63 AM. J. POL. SCI. 427 (2019) (examining partisan effects on election spending and calling for further research into the effect of such spending on election administration).
limitations,\textsuperscript{85} it is far more comprehensive now than was true in the early 2000s.\textsuperscript{86} The Election Performance Index compiled by the MIT Election Data and Science Lab similarly offers a wealth of data for scholars to mine. The U.S. Census Bureau, of course, continues to provide indispensable data through, for example, its Current Population Survey’s November Voting and Registration Supplement, carried out after every national election.\textsuperscript{87} Other organizations, such as the Center for Election Innovation & Research, conduct routine surveys on voter-registration database security.\textsuperscript{88} In addition, data collected by private vendors like Data Trust and Catalist has enabled novel research designs.\textsuperscript{89} Data alone will not answer democracy’s fundamental questions. Yet, presently available data greatly expands our ability to comprehensively assess election performance, straightforwardly negotiate trade-offs, and convincingly defend best practices. While data limitations may have narrowed the scope of prior research, today, the abundance of election-related data should be exploited.

A third and final justification for electoral adequacy is its confluence with current reform efforts in nonprofit and broader academic communities. For example, electoral adequacy comports with the Bipartisan Policy Center’s suggestion that “states must have flexibility to implement minimum standards in ways that meet the unique needs of their voters.”\textsuperscript{90} There are also calls for “[m]ore pragmatic and evidence-based approaches to improving elections in the short term”\textsuperscript{91} that accord with this Essay’s proposals for systematized data collection. And in the long term, electoral adequacy intersects with sophisticated advances


\textsuperscript{86} Burden & Stewart, supra note 70, at 13-14.


\textsuperscript{91} Persily & Stewart, supra note 34.
in “election science.”92 As stated by leaders in that field, “[i]mproving the technology and administration of U.S. elections is a critical research priority but is not an activity that any single academic discipline can tackle alone.”93 Election-law scholars can meaningfully contribute to these endeavors, and electoral adequacy offers a practical framework for doing so.

Election reform is far from easy. As Cain aptly summarized:

Figuring out the optimal trade-offs between [different approaches to political reform] is no simple matter. It is complex politically (somebody’s ox will be gored with any change), empirically (how do we know whether things are working as we hoped they would), and in terms of fundamental values (people may view the trade-offs between different democratic values in various ways).94

Electoral adequacy provides a research program for negotiating this complexity. To demonstrate this, the next Part outlines how this program might be applied to two election-reform issues.

II. OPERATIONALIZING ELECTORAL ADEQUACY

This Part examines two election-reform issues — one extensively studied, one severely understudied — as a means of illustrating the benefits of a research program built around electoral adequacy. The first, extensively studied issue, is polling-place wait times. The second, severely understudied issue, is voting rights for the disabled.

A. Polling-Place Wait Times

Researchers have devoted significant attention to the issue of polling-place wait times.95 The amount of time voters have to wait at polling sites is understood to affect, among other things, voter-turnout rates and levels of voter...
Models applying so-called “queuing theory” to polling places have existed since 1980. More recently, the Presidential Commission on Election Administration identified long lines at polling places as a key area for reform. The Commission set a target of having no voter wait for more than thirty minutes at any polling site. With that target in mind, one team of researchers found that “the application of simple line-management techniques can produce significant benefits for voters.” The idea of a simple fix should be tempered, however, by another study’s finding that “minorities are three times as likely to wait longer than 30 minutes and six times as likely to wait more than 60 minutes.” This finding comports with the established view that “the more voters in a precinct who are non-white, the longer the wait times.” What, then, can the concept of electoral adequacy contribute to this already well-studied issue?

Recall electoral adequacy’s emphasis on merging institutional theory, policy, and politics. Regarding theory, electoral adequacy would conceptualize polling places as quintessential sites of democratic inclusion and as institutions with

97. See Floyd H. Grant III, Reducing Voter Waiting Time, 10 INTERFACES 19, 20–24 (1980).
expressive value to their communities.\textsuperscript{103} It would explicate the “civic alienation”\textsuperscript{104} that results when voters experience long wait times, especially due to threats or intimidation. It would explore the concept of justice and our expectation that “a baseline attribute of responsible government is the capacity to accommodate its own public’s desire to participate in its foundational constituent moment.”\textsuperscript{105} Specifics aside, institutional theory should inform a determination of what constitutes an unacceptably long wait time.

The policy dimension of electoral adequacy (and its subsidiary components: electoral adequacy, competent management, and democratic structures) generates countless questions. Are lengthy wait times—which are often caused by too few voting machines and poll workers—related to inadequate funding?\textsuperscript{106} How should the “time tax”\textsuperscript{107} of waiting in a long line be quantified? What relationships exist between the increased volume of mail voting,\textsuperscript{108} the trend in several states of polling-place closures,\textsuperscript{109} and wait times? Do poll-worker trainings and certifications, or community input into preferred polling-place locations, produce shorter wait times?

Finally, efforts to reduce polling-place wait times may find bipartisan political support. Consider, for example, that eighty-eight electoral jurisdictions, representing election administrators from both political parties, chose to provide polling-place line data as part of a national study.\textsuperscript{110} Their participation evidences some general level of commitment to reform.

\textsuperscript{103} THOMPSON, supra note 11, at 22-23 (“[E]lections and electoral procedures also express the policy’s attitude toward its citizens. The electoral process can be not only individually but also institutionally expressive.”).

\textsuperscript{104} Id. at 19.

\textsuperscript{105} Justin Levitt, “Fixing That”: Lines at the Polling Place, 28 J.L. & POL. 465, 469-70 (2013).

\textsuperscript{106} See Charles Stewart III & Stephen Ansolabehere, Waiting to Vote, 14 ELECTION L.J. 47, 52 (2015) (“The fact that there is only a tiny number of empirical studies that examine correlations between the capacity of individual polling places, on the one hand, and voter experience, on the other, suggests the difficulty in knowing precisely what it would take, in terms of the expenditure of dollars for additional equipment or the redistribution of existing equipment, to mitigate the problems that do exist.”).

\textsuperscript{107} See Elora Mukherjee, Abolishing the Time Tax on Voting, 85 NOTRE DAME L. REV. 177, 180 (2009) (“Like the poll tax, the time tax burdens a citizen’s fundamental right to vote. It is a government policy or practice that forces one citizen to pay more in time to vote compared with her neighbor across town, across the state, across state lines, or even across the street.”).


\textsuperscript{110} Fortier et al., supra note 100, at 16.
Legal scholars could build useful research agendas around these dimensions. For example, legal scholars are well suited to evaluate the rules and regulations governing polling places,\(^\text{111}\) voters’ relative eligibility for voting by mail,\(^\text{112}\) and the scope of election administrators’ discretionary authority.\(^\text{113}\) In collaboration with scholars from other fields, legal academics can develop fruitful research questions and, to continue with this Section’s example, gain greater insight into how these rules and regulations affect wait times.

These are just preliminary thoughts about electoral adequacy’s promise as applied to polling-place wait times. What should be apparent, though, is how traditional legal scholarship emphasizing rights and structure overlooks many crucially important election-performance issues that electoral adequacy would foreground.\(^\text{114}\)

B. Voting Rights for the Disabled

Unlike polling-place wait times, voting rights for the disabled are severely understudied. What is known, though, is that voters with disabilities—cognitive, visual, physical, and more—comprise approximately one-sixth of the eligible electorate.\(^\text{115}\) Voters with disabilities have consistently lower voter-turnout rates.\(^\text{116}\) Those who do vote often encounter difficulties. For example, one survey following the 2012 elections found that “almost one-third (30.1%) of voters with disabilities reported one or more difficulties in voting, compared to about one-twelfth (8.4%) of voters without disabilities.”\(^\text{117}\) Furthermore, as the population


\(^{113}\) See, e.g., Briffault, supra note 38.

\(^{114}\) See Sellers & Weinstein-Tull, supra note 10, at 1130-31 (describing how questions about rights and structure predominate within the field).


\(^{116}\) See Syed et al., supra note 115, at 64.

grows older, more voters will have accessibility needs.118 As Rabia Belt observed, "An estimated thirty to thirty-five percent of all voters in the next twenty-five years will need some form of accommodation. Every person is vulnerable to falling into this category, and nearly one in five of us will before we die."119 Given these looming challenges, how might the concept of electoral adequacy be applied in this context? Theoretically, electoral adequacy might inspire new modes of thinking about the obligations that election administrators have to their communities. For example, voter-accessibility questions seem inseparable from larger theoretical questions about whether a universalist or civil-rights disability frame is preferable.120 A host of other issues, including the need to make information pertaining to the voting process widely accessible,121 the implications of ballot design, and the need to expand voting opportunities,122 might be reconsidered once viewed through a disability lens.

As for policy, the relevant questions are legion and, again, underexamined. What are, and are likely to be, the relationships between election funding and voter access, particularly as the number of disabled voters increases?123 Does the professionalization of election administration improve disabled voters’ perceived ease of voting?124 Do disability advocates have meaningful options to voice their concerns to election administrators?

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118. Doug Lewis, Parties and Politics: The Evolution of Election Administration, in THE FUTURE OF ELECTION ADMINISTRATION, supra note 35, at 31, 44 (observing that as the population ages, “more voters will have mobility issues, more will have sight or limited vision problems, more will have difficulty standing in lines waiting to vote, more will have some cognitive difficulties, and a higher percentage will have hearing difficulties”).


121. As mandated under the Americans with Disabilities Act. See Syed et al., supra note 116, at 68.


123. See Lewis, supra note 117, at 44 (“[T]he cost of serving voters will increase to cover the variety of methods of voting and equipment and personnel to serve a vastly increased segment of voters with accessibility needs.”).

Politically, existing research suggests that expanding and improving voting opportunities for the disabled does not advantage either major political party over the other. At the same time, improving voting access for the disabled necessarily entails improving voting access for the underprivileged. This would seem, then, to be a promising area for reform.

Legal scholarship on voting rights for the disabled is sparse. A research agenda built around electoral adequacy would correct this shortcoming by focusing attention on how, practically, to ensure voting equality for disabled voters. As one example, there is much to explore in how the law might compel adequate funding, competent management, and democratic structures to mitigate or remedy the continued informational disparities we see among the disabled.

The discussion here of polling-place wait times and voting rights for the disabled is illustrative; any number of examples might have been used to highlight the promise of electoral adequacy as a research program. Ultimately, the hope is that this and related programs will facilitate the construction of homeostatic election systems that both stabilize and strengthen our democracy.

III. ELECTORAL ADEQUACY AND RIGHTS

To this point, I have assiduously avoided discussing the relationship between electoral adequacy and rights. In this Part, I briefly comment on electoral adequacy’s relationship to traditional conceptions of rights.

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125. See Ruth Igielnik, A Political Profile of Disabled Americans, PEW RSCH. CTR. (Sept. 22, 2016), https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans [https://perma.cc/QX4Y-LACM] (“Rather than have one distinct partisan profile, Americans with disabilities look similar to those without disabilities both in terms of party affiliation and their distribution across the ideological spectrum.”).

126. See Belt, supra note 119, at 1496 (“When we look at the statistics, we see that people with disabilities tend to be among the most disempowered of Americans: they are more likely to be black or brown, elderly, female, unemployed, and poor.”).


Rights are invaluable insofar as they establish a language through which interests (and grievances) can be vindicated.\textsuperscript{129} That is, they provide the means by which claims for justice and equality are recognized by the state.\textsuperscript{130} In these ways, they signify the country’s constitutional principles and, more broadly, normative commitments to citizens. Because the right to vote is a fundamental right, we think of voting as a sacrosanct activity, one that the state is bound to promote and respect. That said, the parameters of the right to vote have been subject to constant contestation, and regulation of the right has always been fraught.\textsuperscript{131} The right to vote, as currently conceived, protects against only limited forms of injustice and some methods of exclusion. Consequently, possessing the right to vote does not secure meaningful participation in the electoral process. This observation is not meant in a public-choice theory “voting is irrational” way,\textsuperscript{132} or a “why voting is different” way.\textsuperscript{133} It is simply to say that possessing the right to vote does not, on its own, ensure the means of exercising the right. Electoral adequacy accounts for this incongruity by providing a framework for supplementing the predominant understanding of the right to vote—one that aims to secure the right through affirmative government action.

A useful way to think about the limits of traditional rights-based approaches to electoral reform is provided by the “capabilities approach” developed by Amartya Sen and Martha C. Nussbaum.\textsuperscript{134} That approach, initially designed to address conceptual shortcomings in measuring international-development outcomes, directs attention beyond the consideration of rights in the abstract to an

\textsuperscript{129} See Richard H. Fallon, The Nature of Constitutional Rights: The Invention and Logic of Strict Judicial Scrutiny 68 (2019) ("In constitutional law as in moral theory, rights are constructs, designed to reflect and protect interests that are equally if not more fundamental.").

\textsuperscript{130} See Owen M. Fiss, The Supreme Court, 1978 Term—Foreword: The Forms of Justice, 93 HARV. L. REV. 1, 2 (1979) ("Adjudication is the social process by which judges give meaning to our public values.").


\textsuperscript{132} For the classic formulation of this claim, see Anthony Downs, An Economic Theory of Democracy 274 (1957), which states,

When voting is costly, its costs may outweigh its returns, so abstention can be rational even for citizens with party preferences. In fact, the returns from voting are usually so low that even small costs may cause many voters to abstain; hence tiny variations in cost can sharply redistribute political power.

\textsuperscript{133} See generally Pamela S. Karlan & Daryl J. Levinson, Why Voting Is Different, 84 CALIF. L. REV. 1201 (1996) (identifying and analyzing how voting is different from the rest of equal-protection law).

\textsuperscript{134} See Amartya Sen, Capability and Well-Being, in The Quality of Life 30, 30-53 (Martha C. Nussbaum & Amartya Sen eds., 1993) (outlining and defending the capabilities approach).
assessment of individuals’ actual capacity to improve their quality of life. “Capabilities,” Nussbaum states, “are very closely linked to rights, but the language of capabilities gives important precision and supplementation to the language of rights.”  

Electoral adequacy similarly interrogates and seeks to facilitate individuals’ abilities to fulfill their political entitlements. In highlighting the importance of adequate funding, competent management, and democratic structures, the framework “gives us a benchmark in thinking about what it is really to secure [the right to vote] to someone.” This benchmark can then provide clarity on how voting rights remain significantly compromised and might be strengthened. In sum, by focusing attention on electoral adequacy’s policy components (i.e., electoral capabilities), we will be better positioned to navigate the divide between what the right to vote, as traditionally defined, secures, and what truly inclusive election systems require.

The question remains, though, as to how these electoral capabilities can be realized. Ideally, election officials and election administrators will come to see the virtues of electoral adequacy and respond accordingly. Election administrators are, in general, as interested and invested as scholars in gathering more information about election performance and in improving election systems. In other instances, though, electoral adequacy will need to be compelled and, crucially, courts “must take a more active hand in how they require states and local governments to comply with various statutes” and constitutional provisions.

Regrettably, as of late, federal election-law doctrine has proven inhospitable to voting-rights and election-reform claims. Therefore, the most viable strategy for implementing electoral adequacy is likely through novel interpretations of state constitutional provisions pertaining to voting and elections. As Miriam Seifert, in describing state constitutional litigation, notes, “Unlike the federal constitution, state constitutions, through their often extensive text, expressly and repeatedly embrace popular sovereignty, majority rule, and popular


137. See Sellers & Weinstein-Tull, supra note 10, at 1157-77; Nussbaum, Poverty and Human Functioning, supra note 135, at 74 (”To secure a capability to a citizen it is not enough to create a sphere of noninterference: the public conception must design the material and institutional environment so that it provides the requisite affirmative support for all the relevant capabilities.”).

equality.” These provisions, and the principles they reflect, align with the goals of electoral adequacy. That said, as noted above, state constitutions are unlikely to be interpreted to require comprehensive overhauls of election systems. But that is not what electoral adequacy seeks. Instead, it seeks targeted reforms based on data and deliberation. Election officials, election administrators, and judges committed to democratic improvement should welcome its findings.

CONCLUSION

In many ways, election law has always been a highly interdisciplinary field. Rigorous study of American democracy essentially demands engagement with democratic theory, constitutional law, history, and the social sciences. Legal scholarship has proven to be a necessary part of the inquiry. Yet, there has never been a coordinated, sustained, and interdisciplinary research program designed to improve election systems. Electoral adequacy is animated by the belief that the potential benefits of such a program are considerable. It offers a timely framework for uniting theory, policy, and politics, with the ultimate and perennial goal of improving the electoral process.

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140. See supra note 17 and accompanying text.
141. See Pamela S. Karlan, Answering Questions, Questioning Answers, and the Roles of Empiricism in the Law of Democracy, 65 Stan. L. Rev. 1269, 1278 (2013) (“Legal scholars both identify questions in the law of democracy that need empirical answers and question how those answers fit into a broader understanding of the law of democracy.”); James A. Gardner, Stop Me Before I Quantify Again: The Role of Political Science in the Study of Election Law, 32 Loy. L.A. L. Rev. 1141, 1160 (1999) (“Law supplies the norms and thus defines the parameters of the scientific analysis; political science then investigates the manifestation of these norms in political phenomena. Each discipline’s strength matches exactly the other’s weakness, creating a useful partnership.”).
142. See Alexander Keyssar, Overview: Election Reform, in Race, Reform, and Regulation of the Electoral Process: Recurring Puzzles in American Democracy, supra note 49, at 178 (“Despite a welcome increase in interdisciplinary projects, legal academics still tend to focus on court decisions; empirical political scientists gravitate toward issues that can be quantified; psychologists lean toward experiments. As a result, most scholarly work still tends to be fairly narrow, cast in disciplinary molds.”).