Is Voter Fraud Like Littering?:
Empirical and Methodological Considerations

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The dispute over the extent of voter fraud and voter identification is certain to affect to the 2012 elections. But this debate is muddled in a methodological and evidentiary mess, conducted with little or no reliable data. This article examines the methodological issues in studying voter fraud. The basic argument is that arguments about fraud are often made without reference to a methodology dictated by good social science research. In effect, assertions of voter fraud often invoke untestable claims. Second, inference that the few reported instances of fraud are proof of more extensive occurrences is baseless to the extent that parallels are drawn to speeding or littering. The latter do not provide an analogy to voter fraud. Thus, assertions about voter fraud have generally failed to provide serious social science evidence or testable propositions to test claims.

The debate over voter fraud and voter identification is certain to affect the 2012 elections. In 2011, bills in 34 states were introduced calling for photo identification for in-person voting (Weisner and Norden 2011). In 12 states both houses of the legislature passed the bill, and after vetoes, a total of nine states now have photo identification requirements for voting. In 2012 more states will attempt to pass similar legislation. Opponents have fought voter identification bills and the decision by the Justice Department in December 2011, to use the Voting Right Act to refuse preclearance to the South Carolina law guarantee that this decision will wind up in the courts.

But the debate over voter identification laws is muddled in a methodological and evidentiary mess, conducted with little or no reliable data. The three most persistent claims of voter fraud come from the *Wall Street Journal's* John Fund (2004), a report from the Senate Republican Policy Committee in Congress (2005), and the Carter-Baker Report (2005). Schultz (2008a) among others has criticized these reports for their evidentiary and methodological problems and the criticisms will not be repeated here. But as Lorraine Minnite aptly states: there is a "dearth of literature on election fraud" with "no new empirical research published on the subject for almost two decades" (2010, 38-39). Most voter fraud arguments lack good empirical studies (p. 39). Those who contend that it is a serious and significant problem in the United States, such as John Fund, argue that the few instances of fraud are merely the tip of the iceberg; proof of far more extensive and significant fraud affecting our elections (2004, 4-5). Others, such as

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Hans von Spakovsky, former recess appointee to the Federal Election Commission, have also alleged widespread voter fraud, but generally have not systematically produced a comprehensive study on the matter. Given the inability to detect fraud, and its lax prosecution, real evidence of its extent is difficult to grasp. Conversely, Lorraine Minnite and Schultz (2008a and 2008b) argue that the absence of more systematic evidence of fraud is proof that it is not widespread. Both reach their conclusions based upon examination of current studies of voter fraud.

Perhaps the best or most authoritative statement by those who believe voter fraud exists as a problem regarding the empirical debate is by Judge Richard Posner who wrote the majority opinion in Seventh Circuit *Crawford v. Marion County Election Board* (2007). He argues:

> But the absence of prosecutions is explained by the endemic under enforcement of minor criminal laws (minor as they appear to the public and prosecutors, at all events) and by the extreme difficulty of apprehending a voter impersonator. He enters the polling place, gives a name that is not his own, votes, and leaves. If later it is discovered that the name he gave is that of a dead person, no one at the polling place will remember the face of the person who gave that name, and if someone did remember it, what would he do with the information? The impersonator and the person impersonated (if living) might show up at the polls at the same time and a confrontation might ensue that might lead to a citizen arrest or a call to the police who would arrive before the impersonator had fled, and arrest him. A more likely sequence would be for the impersonated person to have voted already when the impersonator arrived and tried to vote in his name. But in either case an arrest would be most unlikely (p. 953).

For Posner, fraud detection is difficult and the costs associated with prosecution are high, thereby yielding minimal incentives to prosecute. The judge concludes: "Without requiring a photo ID, there is little if any chance of preventing this kind of fraud because busy poll workers are unlikely to scrutinize signatures carefully and argue with people who deny having forged someone else's signature" (p. 953).

Posner parallels voter fraud to littering, contending that both are difficult to detect (953). Others, such as Brad Smith, former chairman of the Federal Election Commission, similarly highlights the few reported or prosecuted instances of fraud as perhaps indicative of a more extensive problem (although he does admit that fraud is not extensive). His comments on the Election Law listserv draw a parallel to vehicular moving violations: "[T]he typical speeding ticket or even DWI is usually indicative of numerous other, unreported events of the same nature. But surely that is true of voter fraud as well" (Smith 2010).

What do we really know about voter fraud? Is it like littering and moving violations—a symptom or sign of something more significant—or is it vastly overblown, as scholars such as Minnite and Schultz contend?

This article examines the methodological issues in studying voter fraud. The basic argument is that those who contend that voter fraud is significant (and therefore there is a need for election photo IDs) make their arguments without reference to a methodology dictated by good social science research. In effect, they assert untestable claims about fraud from the point of view of social science research. Second, their inference that the few reported instances of fraud are proof of more extensive occurrences is baseless to the extent that they draw parallels to it based on speeding or littering. The latter do not provide an analogy to voter fraud. Thus, proponents of voter fraud have failed to provide serous social science evidence or testable propositions to support their generalizations.

Yet that may be beside the point in the sense that the debate about voter fraud does not seem to be one that is being settled or resolved along the lines of social science research methodology. The conclusion of this piece is that the debate over voter fraud is really less about facts and data than it is a political narrative. It is less about what is true or false regarding real fraud from a social science perspective and more about a narrative or story that appeals to voters who believe it is true. It is a narrative that pronounces that elections are close or the country is going in the wrong direction because those people—felons, students, and illegal aliens among others—are voting. If only fraud were eliminated then the right people would be elected. The narrative appeals to the unease and discomfort found in a segment of the American public. Voting rights advocates combating new restrictions on franchise have thus far fought the battle as if it were one about truth and facts, when instead they need to develop an alternative narrative if they hope to win this struggle.

Empiricism and Social Science Research

How can one study voter fraud? To answer this, there is a preliminary threshold question. What can one make of Posner's assertion that because it is difficult to detect voter fraud it is hard to gather real evidence of its extent? Whatever the current status of knowledge or evidence about fraud, one thing is certain—this is an empirical question. A hallmark of modern science and social science is that it is empirical and evidence-based (Frankfort-Nachmias and Nachmias 2000, 5-7; Isaak 1985, 8). It requires the formulation of testable propositions subject to rigorous methodological tools and the use of data (Bernstein 1976, 15). This is the core of what the scientific method is (Isaak 28).

But even more specifically, (social) scientific research requires empirical proof to test propositions, and the form of that testing lies in falsification. As Karl Popper pointed out the hallmark of scientific and social scientific research is falsification: "But I shall certainly admit a system as empirical or scientific only if it is capable of being tested by experience. These considerations suggest that not the verifiability but the falsifiability of a system is to be taken as a criterion of demarcation" (Popper 1959, 40).

Demarcation, for Popper, is separating empirical from non-empirical theories (such as metaphysics) (p. 34). What Popper is contending, and modern science has adopted his approach, is that empirical studies are premised not upon the confirmation of propositions but upon falsifying them. Scientific inquiry is inductive: "[It p]asses from singular statements . . .such as accounts of the results of observations or experiments, to universal statements, such as hypotheses or theories" (p. 27). It is generalizing from specific instances to broader propositions. We generalize from a survey sample to a broader population; we generalize from a few lab experiments or clinical trials to broader conclusions about drug efficacy or reaction. The same is true with social science claims; discrete data are aggregated and then generalized to produce claims about the world, whether they be about politics or some other social phenomena.

Propositions incapable of empirical falsification are not scientific. Some types of arguments may be based on logic—such as deduction—while others are held as belief or faith. This is true for example, with statements about God. Determining exactly what counts as evidence of God's existence is contentious, but at least since Immanuel Kant in the late eighteenth century, the general argument has been that it is impossible to make scientific statements about God's existence (Kant 1965, 29). Instead, it is a matter of faith.

The reference to God gets at the question of the difference between "evidence of absence" versus "absence of evidence." This distinction connects back to voter fraud. Is the evidence of absence an indication that voter fraud is not a significant problem, or is the absence of evidence simply a sign, as Posner and others assert, that there is not enough information at hand due to detection problems and therefore we cannot conclude that fraud does not exist?

In some cases, evidence of absence is conclusive. A biopsy may reveal no cancer, indicating a tumor to be benign. An autopsy may demonstrate no bullet holes, therefore indicating that the victim did not die as a result of a gunshot wound. In the nineteenth century, the famous Michaelson-Morley physics experiments of 1887 with light demonstrated that aether does not exist (Singh 2004, 94-97). This failed experiment was critical to providing the support Albert Einstein needed for construction of his special theory of

relativity in 1905. Thus in some cases absence is evidence, but absence is still empirical and the failure to find something constitutes falsification of a claim. This is evidence of absence.

But in some instances absence of evidence is not conclusive. Failure to find evidence of God's existence has been taken not to conclude that a divine being does not exist, but simply for some that we have not yet found evidence of for a supreme being (Seckel 1986). Those who argue that voter fraud exists take the latter—absence of evidence—is not proof that it does not exist. Instead, they offer the absence of evidence as proof of how hard it is to detect voter fraud. However, what can we really infer from an absence of evidence—does voter fraud exist in a far more significant level than thought, or that there really is very little fraud? Minnite asserts that the problem with Posner and many claims about fraud is that it is an effort to prove the negative (Minnite 2010, 156-157). By that, how do we prove the existence of something that we cannot detect?

Testing Voter Fraud Claims

What does all this mean for voter fraud studies? First, the debate has been cast the wrong way. Minnite and Schultz, as noted above, examine voter fraud studies and conclude that the absence of evidence is proof that something does not exist, at least to a large extent. Posner and Fund reach the opposite conclusion? Who is correct?

To resolve the debate it is important to restate claims about voter fraud in terms of testable (falsifiable) claims. The arguments need to be framed in ways that allow it to be tested. One needs to be able to generalize from specific instances of fraud to be able to make broader assertions. Are the few instances that are detected a good sample indicative of a broader population of fraud?

What would be a testable voter fraud claim? As one reads Fund, Smith, Posner, and others who assert its widespread existence, several claims seem to emerge. First, we do not know the extent of fraud since we do not have voter photo ID. This claim recognizes the lack of evidence and asserts the solution is to institute photo ID. Once in place, it would reveal the extent of attempted fraud. However, for those who also contend the fraud exists, once photo ID is instituted, the lack of increase in detected fraud is proof that the additional measure (photo ID) works to prevent fraud. While this may be true, proponents cannot have it both ways. The arguments are a circular logic at best; they both cannot be true at the same time. Moreover, they may not be empirical and testable propositions capable of falsification.

First, think about what would be valid evidence to document fraud. Paul Wyckoff describes a hierarchy of empirical evidence based on its

reliability (2009, 18-19). At the top of the evidence chart are controlled experiments where studies can manipulate critical variables and test them (p. 22-24). At the bottom are case studies and anecdotes where there is almost no ability to test and verify facts and control variables (p. 18-19). A critical issue in evaluating qualities or types of evidence is the ability to generalize from them to reach some larger propositions (p. 18-19). In other words, do the case studies, anecdotes, or experiments serve as good samples that represent the larger population? Generally simple stories or anecdotes are weak evidence because one cannot easily use them to make inferences about broader trends or populations unless other evidence or reasons are offered to support drawing broader conclusions. Additionally, simple stories, unless corroborated, are like hearsay and are unable to within truth tests to ascertain their credibility and reliability.

This is an important point because for the most part the quality of the evidence offered by Fund and others is anecdotal. As Schultz pointed out:

> Fund's *Stealing Elections: How Voter Fraud Threatens Our Democracy* calls for mandatory photo identification to be displayed when voting because of widespread fraud occurring in the United States. Yet what evidence exists that voter fraud is rampant? There is little systematic evidence offered here. *Stealing Elections* draws upon interviews around the country to whip up hysteria that droves of dead people, illegal immigrants, vote brokers, and ex-felons are cheating their ways into the voting booths, stealing elections from honest decent Republicans, and diluting the votes of red, white, and blue Americans. But when smoke of his allegations is cleared there is little fire of voter fraud, at least of the kind he alleges. . . .
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> *Stealing Elections* is rift with these types of unsubstantiated allegations of election fraud, let alone voter fraud, that he claims have actually risen to a level that affects elections. Fund seems only to offer anecdotal evidence that election officials have erred in letting some individuals register when they should not, or that a few persons have tried to vote twice in the same election, such as showing up to the polls to vote after forgetting they voted by absentee ballot (Schultz 2008a, 495-496).

Thus, the first major problem with Fund and arguments regarding voter fraud is the quality of the evidence. It is unsubstantiated and of the lowest quality. Its ability to be examined and then generalizations drawn from it are questionable. Those who believe voter fraud exists and is widespread generally references stories alleging felons, illegal aliens, or others voting or casting multiple votes. The stories quickly make the news but then upon later examination they are rejected as false or fail to secure corroboration. For example, claims of voter fraud in the 2004 Wisconsin presidential contest failed to produce evidence and prosecution (Schultz 2008a, 497).

A second problem with voter fraud arguments from a social science perspective is fashioning allegations into testable empirical propositions.

Again, if good social science is based upon evidence that can be tested and falsified, then a first step is formulating claims about fraud into hypotheses or assertions that can withstand empirical investigation. Given, that, a first claim or hypothesis could be: "Voter fraud is a significant factor affecting the outcomes of elections." How do we test this? The best way of course would be controlled experiments or other empirical techniques where evidence of fraud is gathered and examined. However, there are no real studies that do that, but what little evidence that does fails to support this proposition. Instead, as Minnite and Schultz point out, existing studies actually falsify this claim by revealing very little detected fraud (Minnite 2010, 57; Schultz 2008a, 501). In response, Fund and Posner will argue that the current failure to have voter identification precludes that.

Given that the first proposition cannot be supported with the existing evidence, there is a fallback second claim: "Voter ID will demonstrate the extent of voter fraud." This is a claim capable of being falsified. Empirical testing of this claim would look to instances where voter ID has been instituted to see if more fraud has been detected. Perhaps also one might look to states with ID versus no ID to see if more fraud is detected. However the latter is not a good test because different jurisdictions might have different levels of preexisting fraud and comparing them may be the classic comparing apples to oranges problem.

But "before and after" (institution of photo ID) is a good way to determine levels of fraud within a jurisdiction. It speaks to how much fraud or attempted fraud there is in a jurisdiction by offering new data when it is easier to detect. However, thus far, the evidence does not support this claim—rather—the lack of increased detection of fraud falsifies this assertion. Simply put—institution of new voter photo ID requirements has yet to produce increased evidence of fraud.

Yet there is another claim offered by those who believe voter fraud is rampant to account for the lack of evidence. This would be the assertion that: "Institution of voter ID and lack of increase of fraud is proof that such identification works." However, to test this statement, one needs a baseline of fraud from before the ID was instituted and then look to see if it decreased as a result. Another way to phrase it, there must be some change in the incidence of fraud from before and after the voter ID was instituted to be able to make that claim.

Again, there is no evidence that would allow one to reach the conclusion that voter ID decreases fraud because there was little evidence to support its existence initially. For example, in Indiana, the State conceded in the legal challenge to its photo ID law that it did not have a record of in-person election fraud (*Indiana Democratic Party v. Rokita* 2006, 792). There is no

fraud initially and subsequent implementation of the ID requirements has failed to detect previously hidden fraud.

Have we resolved the problem and demonstrated that voter fraud does not exist? Not really. Those who believe fraud exists still will make the claim that it does. They will contend that the few instances we see are examples of larger populations and more extensive fraud. Is this a hasty generalization or a reasonable inductive conclusion? Is voter fraud similar to littering and moving vehicle violations in that the few instances uncovered are indicative or a larger problem? At this point those who believe voter fraud exists as a serious problem will fall to another argument, invoking analogies. Voter fraud will be paralleled or analogized to speeding or littering.

False Analogies:
Why Voter Fraud is not Like Speeding or Littering

Many claim that the current rate or detection of voter fraud under reports the real or actual existence of voter fraud that exists. To assert this they argue that successful prosecution or detection of voter fraud is similar to police citation of speeding. By that, only a fraction of all speeding actually is detected and cited. The same claim is made about littering. However, this analogy is misplaced.

First, as opposed to concluding that the few instances of voter fraud are proof that the current system of detection works to root out what little fraud there is, the opposite conclusion is reached. Thus, the few instances are proof of broader and more systematic fraud. However, no evidence or proof is offered to support reaching this conclusion as opposed to the claim that there actually is very little fraud. There has to be some basis for reaching the broader claim and not the conclusion that the few reported instances are proof that current systems work to detect and root out fraud. In other words, what is the evidence supporting this generalization or inference? None is really offered to suggest that the sample is indicative of a broader population.

Second, the analogy to vehicular speeding is inapt. Speeding in a car is a continuous 24/7 activity that can occur anytime and anywhere. (The same is true about littering) There is no single detection point or place where people can speed and therefore with the almost infinite amount of cars driving along almost infinite roads, it is virtually impossible to detect all instances of speeding. Thus, the few speed traps that are set up obviously only detect and capture a small spectrum of all speeding. Here, sampling makes sense as a way to infer to a broader population.

However, voting or voter fraud is a discrete activity. It can only occur at a specific point in time or place and in order to commit fraud one has to do it by going through specific point—a voting booth. Thus, all instances of fraud must go through and exit a single detection point. To be successful, in-person fraud requires either a false registration, false signature, and tricking an election judge. The point is that to commit voter fraud one has to get past multiple detection points or check points. One can speed without ever crossing a detection point (speed trap).

The point here is that the analogy of voter fraud to speeding or littering, as Judge Posner asserts, is inapt. One can speed or litter almost anytime or anyplace. This is what makes detection hard. The few instances detected and prosecuted are perhaps only a small sample of a larger pattern of speeding and littering that may exist. In addition, beyond detection and prosecution, other evidence, such as police using radar guns to detect speeders but not issue a ticket, or anecdotal statements from drivers that they speed, may corroborate inferences that it is more prevalent than prosecution may suggest. With littering, proof can be found along roadsides and fields across America—the fact that there are cans, papers, and other refuse there points either to the contests of garbage cans being knocked over or intentional littering.

One can only vote in person in a finite number of places and within a finite time. To vote, especially in person, there are several steps and check-points in place. There is in 42 states voter registration before Election Day. This is one check. For all 50 states, in-person voting requires someone to show up, give a name to an election judge and generally sign a log with which there is a signature match. There may be other requirements too (Scher 2011, 82-90). What this means is that one has to go to a specific place to commit fraud and cross past numerous detection or check points before one can actually submit a fraudulent ballot. One does not simply have to speed past a law enforcement officer to violate a motor vehicle law.

Because of the finite opportunities to commit in-person voter fraud, the analogy to littering and speeding is lacking in foundation. Contrary to Posner and Smith, the analogy is not correct. Moreover, given the critical differences—especially the finite opportunities to commit in-person voter fraud—one has to ask again if the few instances of detected fraud are indication that the system generally works to prevent fraud, or that they are indicative or more extensive illegality? Given the current checks in place, and given any other good evidence to the contrary, it is impossible to conclude that these few instances of fraud are empirically supported or that much more fraud exists. Yes, there may perhaps be a few more instances undetected, but in general their serves to falsify broader claims of more significant fraud.

Conclusion

The best social science research fails to detect in-person voter fraud as a serious problem. Despite this lack of evidence, polling data suggest that 75 percent of the American public support the showing of photo identification at the polls to detect fraud (Rasmussen 2011). The debate over voter fraud should or could be empirical but it is not. If it were empirical, the debate might be resolved by social scientists and methodologies that could test fraud claims. Instead the debate is being framed not by social scientists but by political actors crafting statements that are not empirical and testable hypotheses. Instead, their claims are characterized by conjecture, belief, and arguments that are mythic or anecdotal at best. But real evidence of voter fraud is immaterial to the debate. This is a political issue whose terms of debate are defined not by what can be proven or tested, but instead by ideology and a set of beliefs that cannot be dislodged by logic or data. Thus for those who wish to argue against the need for voter identification their task is not simply empirical but political and one over forming the proper narrative. It is not the purpose of this article to provide this narrative but instead to highlight that the debate over voter fraud is one being fought not in social science research journals but in political debates. The debate over voter fraud thus reveals—with no surprise—that the gap between real politics and policy making and what social science research can tell us is often quite large.

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