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ELECTION LAW AS A SUBJECT—A SUBJECTIVE ACCOUNT

*Daniel H. Lowenstein**

Some time after Rick Hasen asked me to write a short essay on election law as a field of study for the present symposium, the odd fact occurred to me that this would be the third time I have written about the subject of “subjects” in an election law context.

The first time was in an article on the California constitutional provision limiting initiative proposals to a single subject.¹ I argued:

[W]hat constitutes a “subject” is a matter of choice based on considerations of convenience, rather than some objective demarcation of the human mind [A]ny combination of concepts and things may appropriately be regarded as a “subject” so long as there are people who find it expedient to so classify them.²

The second time was in the Introduction to my election law casebook.³ There I argued that election law was late to be recognized as a subject in American universities because it “falls at junctures formed by other subjects,” especially constitutional law in law schools and public law and American politics in political science departments.⁴ Junctures are also peripheries. Nevertheless, I claimed, election law was worth being treated as a subject in itself. For one thing, election law had “become a growing subject in courtrooms, legislative chambers and political headquarters. One consequence [was] increased work for lawyers.”⁵ More generally, the study of

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1. See Daniel H. Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 UCLA L. REV. 936 (1983).

2. *Id.* at 938-39 (emphasis deleted).

3. See DANIEL H. LOWENSTEIN, *ELECTION LAW: CASES AND MATERIALS*, xix, xix-xx (1995).

4. See *id.* at xix.

5. *Id.*

basic democratic institutions seemed to me to be worthwhile, aside from the immediate practicalities of professional preparation.⁶

Certainly, election law is making progress as a law school subject. Around the time I began teaching the subject in the early 1980s, American law reviews could and occasionally did run symposia on subtopics of election law.⁷ Such events have become more common in the '90s.⁸ A more significant indicator of election law's progress as a recognized subject is that symposia on the subject as a whole have begun to appear.⁹ Fifteen or twenty years ago, the idea of a symposium on the subject of "election law as a subject" would have seemed a joke too quirky even for one of my footnotes. That senior and junior scholars of such stellar quality would have both the interest and the background in the field to contribute to a symposium such as the present one could not have been hoped.¹⁰

I have no doubt that all this is to the good. Personally, it is gratifying to think that the articles I spend months writing might be read and forgotten by a few dozen people rather than only by half a dozen.

6. The past few decades have seen the rise to prominence in political science of the "New Institutionalism," an application of game theory that places emphasis on rules and institutions as determinants of political outcomes. New Institutionalists have paid more attention to legislatures and bureaucracies than to elections. The political scientists who have done the most important work on elections in the second half of the twentieth century have tended to be empiricists rather than theorists.

7. See, e.g., *Symposia: Political Action Committees and Campaign Finance*, 22 ARIZ. L. REV. 351 (1980); *Symposium: Gerrymandering and the Courts*, 33 UCLA L. REV. i (1985).

8. See, e.g., *Symposium on the California Initiative Process*, 31 LOY. L.A. L. REV. 1161 (1998); *The Legitimacy of Direct Democracy: Ballot Initiatives and the Law*, 1 N.Y.U. J. LEGIS. & PUB. POL'Y vii (1997); *Symposium: Voting Rights after Shaw v. Reno*, 26 RUTGERS L.J. 517 (1995); *Symposium on Campaign Finance Reform*, 94 COLUM. L. REV. 1126 (1994); *Symposium on Comparative Political Expression and the First Amendment*, 21 CAP. U. L. REV. 381 (1992).

9. See, e.g., *Symposium: Law and the Political Process*, 50 STAN. L. REV. 607 (1998); *Voting Rights and Elections*, 1995 U. CHI. LEGAL F. 1; *Symposium: Regulating the Electoral Process*, 71 TEX. L. REV. 1409 (1993).

10. Furthermore, it would be easy to name an even greater number of excellent election law scholars who are not represented in this symposium. I shall not do so, because I would be sure to forget someone. But if you are reading this, you can rest assured that you are one of the people I am thinking of.

More broadly, the emergence of election law as a subject provides a modest practical benefit to some law students and adds something worthwhile to the intellectual life of law schools and political science departments. Although the present occasion might therefore be a good one for celebration or proselytization, I prefer to raise two questions. Why has election law arisen as an academic field of study during the past two decades? And why does it contain what it contains?

Each of these questions has an obvious answer that has probably already entered the reader's mind. Election law has arisen as an academic field of study because of the rapid growth of the law affecting elections. The key events in that growth were the constitutionalization by the Supreme Court of representation in the early 1960s;¹¹ the enactment of the Voting Rights Act¹² in 1965 and its application by the Supreme Court to systems of representation;¹³ and the enactment of the 1974 amendments to the Federal Election Campaign Act¹⁴ and of comparable legislation in most of the states. The reason election law as a field of study contains what it contains is that elections are significant and highly stylized events in our political system. Pedagogy and scholarship relating to the various legal questions that surround elections are thus naturally unified.

These answers are not only obvious, they also contain a great deal of truth. But not the whole truth. Yes, tremendous growth in election law has occurred in the last four decades, especially with respect to representation, voting rights, rights of parties, and campaign finance regulation. And yes, it is seemingly natural to group areas of law relating to the institution of elections. But election law did not begin with *Baker* in 1962, and the grouping of subjects that we think of as constituting the field is far from inevitable.

Several years ago, when I had begun working in earnest on my election law casebook, I used to tell people that I was working on the first such book ever. Then, one day, browsing around in the UCLA

11. See *Baker v. Carr*, 369 U.S. 186 (1962); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964).

12. 42 U.S.C. §§ 1973 to 1973gg-9.

13. See *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969).

14. 2 U.S.C. §§ 431-55.

law library, I chanced on a hefty, 781-page collection of American election law cases published in 1871.¹⁵

The fact that two casebooks have been published in the last few years after a hiatus that apparently lasted 124 years is an additional indicator of the recent growth of election law as a field of study.¹⁶ In the appendix to this essay, I have listed the chapter titles in the two current casebooks and the subject headings contained in the 1871 volume. Although there are significant differences in coverage between the two current casebooks, it is not surprising that these differences fade when each is compared with the 1871 subjects. To speak loosely and perhaps imprecisely, many of the subjects in the 1871 volume have a nuts and bolts feel to them relative to what we currently regard as the more conceptually interesting subjects contained in the current volumes.

Nuts and bolts questions of the sort raised in the 1871 cases have not disappeared. To the contrary, they have increased in number, because of developments such as the state-provided ballot and the direct primary. For the most part, we do not teach these issues and we do not write about them in law reviews; not because they are not there but because, for various reasons, we do not find them sufficiently interesting.

The 1871 volume demonstrates that it is not true that there was no body of election law to speak of before the 1960s. Nor is it true that the content of our election law courses and election law scholarship is naturally determined by the inclusion of all law relating to elections. Rather, what began to happen in 1962 was that a substantial body of election law arose that could interest contemporary law school professors. There are two variables at work. One, to be sure, is the subject itself. The other is the interests and styles of thinking that prevail in the relevant parts of the university. A hundred years or so ago, the combination of these variables drove election law to the periphery. Over the last twenty years or so, the same combination has caused a small but growing number of us to bring that periphery into the center of our attention.

15. See FREDERICK C. BRIGHTLY, *A COLLECTION OF LEADING CASES IN THE LAW OF ELECTIONS IN THE UNITED STATES* (1871).

16. The second of the recent casebooks to appear is SAMUEL ISSACHAROFF ET AL., *THE LAW OF DEMOCRACY* (1998).

It follows that to explain the rise of election law as a subject and the nature of its content, one must look not only at the fairly obvious story of developments in the object of our attention but also the much more complicated story of shifting interests and styles of thought among legal academics. Since I have neither taste nor training to engage in sociology, I shall eschew generalizations and describe a few of the meandering pathways that led one legal academic—myself—to develop a set of interests that I now combine under the label “election law.”

The story has a prologue.¹⁷ In the academic year 1965-66, I was a second-year law student laboring away as a member of the *Harvard Law Review*. It has been that journal's practice to assign five or six second-year students to write a “Developments” Note, which is a lengthy and comprehensive treatment of a much broader subject than would be possible in a note written by a single student. In 1965-66, with the ink still drying on *Reynolds v. Sims*,¹⁸ the Developments topic, naturally enough, was redistricting.¹⁹ I was not assigned to the Developments team. Although I was not especially enamored of the topic the editors assigned to me,²⁰ I well remember sitting around that winter listening to my classmates jabbering on about redistricting, and thinking that but for the grace of God, I too would have been mired for months in that dry and arcane subject.²¹

The story proper begins some five years later when I went to work as a staff attorney for the newly elected Secretary of State of California, Jerry Brown. Brown made no secret of his plans to run for governor in 1974. He wanted to make a record in office on which he could run, and since the California Secretary of State had very little power over anything, the most promising area for him appeared to be election law reform. Although I was hired for that

17. It also has a moral, as those who persevere to the end will discover. However, I am not claiming that the moral is worth the perseverance.

18. 377 U.S. 533 (1964).

19. See Notes, *Reapportionment*, 79 HARV. L. REV. 1226 (1966).

20. See Note, *Disqualification of Judges for Bias in the Federal Courts*, 79 HARV. L. REV. 1435 (1966).

21. Shakespeare's Gloucester, had he been present and able to foresee the future, probably would have observed that “As flies to wanton boys are we to th' gods.” WILLIAM SHAKESPEARE, *KING LEAR*, act IV, sc. i (Alfred Harbage ed. 1969).

purpose, the subject did not seem much less dry and abstract than it had when I was a law student. My interest, after a couple of years of suing the government as a legal services lawyer, was to see what life was like on the other side of the fence, and also to attach myself to a possibly rising political star.

By and large, my election law work focused on “political reform,” a category I shall turn to in a moment, and easing of voter registration. There were some exceptions, however, and one particularly intense one required me briefly and for the first time to think about redistricting. In 1971, Democrats controlled both houses of the California legislature and the governor was Republican Ronald Reagan. At one point in 1971, it seemed that the two parties would agree on redistricting plans that more or less satisfied all the legislative incumbents. However, a special election to fill a vacant Assembly seat that had previously been held by a Democrat was won by a Republican. The Democrats wanted to keep this as a Democratic seat, whereas the Republicans wanted to alter the district for the benefit of the new incumbent. On this issue the deal fell through and the Democratic leadership, now unable to expect any Republican votes, passed a plan more favorable to the Democrats. Governor Reagan vetoed it.²²

The matter went to the California Supreme Court. The Secretary of State needed the court to determine which districts were to be used in the 1972 election, so that he could carry out certain administrative functions. So far as these functions were concerned, it did not matter what the districts looked like. Brown nevertheless agreed with two Democratic Assembly members²³ that the brief he would file with the court would go beyond a neutral request for districts and

22. This is my story, and I am telling it from memory. For a careful history of redistricting in California over the past three decades, see Morgan Kousser, *Reapportionment Wars: Party, Race, and Redistricting in California, 1971-1992*, in RACE AND REDISTRICTING IN THE 1990S 134 (Bernard Grofman, ed., 1998). For the incident described in the text, see *id.* at 137-38.

23. They were Henry Waxman, then chairman of the Assembly Elections and Reapportionment Committee, and Ken Cory, from Orange County. Democrats elected from Orange County were scarce in those days, and if they did not want to get scarcer, they tended to have an acute interest in redistricting.

set forth a defense of the legislature's plan while arguing against alternative plans being tendered by the Republicans.

I was given eight days to write a brief on a subject about which my previous thinking had been confined to relief that I did not have to think about it.²⁴ The end product was 135 pages long. Many of those pages consisted of a district-by-district defense of the legislature's Assembly, Senate, and Congressional plans, as well as criticism of the Republican proposals.

The only reason I was able to write such a brief at all, much less in such a short time, was that I had the assistance of two legislative staff members, Michael Berman and Carl D'Agostino, who had an encyclopedic knowledge of the state's political geography and of the politics of the 1971 redistricting negotiations. I learned from them not only the well-known but abstract fact that redistricting is an intensely political activity, but also some of the rich and enormously complex reality that underlies that abstraction. It was to be another ten years before I would again be concerned with redistricting, but the foundation of my thinking was laid during those eight days.

During my four years in the Secretary of State's office, our emphasis turned increasingly to "political reform," which to us meant three main areas of regulation: campaign finance, lobbying, and conflict of interest. In 1972, a handful of legislative staffers and private organizations began planning a coalition to support a political reform initiative for the 1974 ballot. The Secretary of State's office was consciously excluded from these efforts, presumably because of a distrust of Brown's ambition or his style, or both. Later that year I learned that the coalition had fallen apart, mainly due to disagreements between its two core groups—the California branch of Common Cause and a now-defunct organization known as the People's Lobby.

I invited representatives of both these groups to a meeting in the Secretary of State's office and urged them to start again, but this time with Brown as a third core member of the coalition.²⁵ This may have

24. See Brief for Edmund G. Brown, Jr., *Legislature v. Reinecke*, 6 Cal. 3d 595, 492 P.2d 385, 99 Cal. Rptr. 481 (1972).

25. Bob Stern, another attorney working for Brown, worked closely with me on this entire project. Of course, all our major actions were cleared with Brown first.

been a bitter pill for the two other groups, but to use parlance that became common around that time, we made them an offer they could not refuse. Our selling point with each group was that we could provide what the other group lacked for a successful initiative effort. The People's Lobby had demonstrated an ability to gather large numbers of signatures, but lacked technical expertise to draft a credible proposal. This would have been a particularly severe problem for the People's Lobby had they gone forward on their own, for they had previously sponsored an effort to recall Governor Reagan, as well as an environmental initiative, both of which failed. A proposal sponsored solely by the People's Lobby would be greeted with skepticism by the press and much of the public. However, we argued to Common Cause, if Brown joined with the People's Lobby to sponsor a political reform initiative, we would be able to provide both the drafting expertise and the credibility that the People's Lobby lacked.

On the other hand, if Common Cause proceeded alone, they would have both technical expertise and credibility. What Common Cause lacked were the expertise and resources for qualifying a measure for the ballot. We pointed out to the People's Lobby that Brown would be capable of raising significant resources for an initiative effort and, in common cause with Common Cause, could almost surely qualify the measure.

The structure of the situation we happily fell into had three key elements: First, neither the People's Lobby nor Common Cause could be confident of succeeding with a political reform initiative on its own. Second, it was likely that either of those organizations, if allied with Brown, could succeed. Third, it would be disastrous for either of these organizations if it was not a prominent part of the leadership for any political reform effort that succeeded in California. Hence, the offer they could not refuse. The coalition was formed.

I shall spare the reader the travails and tergiversations that followed. The measure, drafted over roughly the first half of 1973, contained three major sections: campaign finance disclosure, lobbying regulation, and conflict of interest regulation.²⁶ It was

26. As a result of one of the most abrupt of all the tergiversations, campaign spending limits, applicable only in statewide elections, were added at the last minute. These limits fell in the wake of *Buckley v. Valeo*, 424 U.S. 1 (1976),

approved by the voters as Proposition 9 during the 1974 primary election and thus became the California Political Reform Act of 1974 (the "Act").²⁷

Most of the Act, including the creation of the Fair Political Practices Commission ("FPPC") to administer it, went into effect the day after Jerry Brown was inaugurated as governor in 1975.²⁸ Although I had no desire to be on the FPPC when we were drafting the measure, or even when it was approved, I changed my mind during the months between the election and the effective date.

The main reason for the change was that, during that period, I was besieged with questions from large numbers of people who would be subject to, or affected by, the Act. I was in no position to give authoritative advice, but during the interim these people had nowhere else to go. It became clear to me that the workability of this measure that I had had a hand in foisting on the state would be enhanced by an FPPC chair who was intimately familiar with its provisions and background. In addition, I was attracted by the opportunity to lead a start-up enterprise. For these reasons, and despite a reluctance to continue working with the same substantive issues, I told Brown that I would like to be appointed chairman of the FPPC. He appointed me, and I served a full four-year term. I thus continued to work in election law, as I began, for reasons unrelated to the subject matter itself.

At the end of my term at the FPPC, in 1979, I joined the UCLA law faculty. In the spring semester of my first year, I taught a course entitled "Legislation," in which I attempted to integrate many of the issues surrounding the Political Reform Act. Although the casebook

and never went into effect. *See* *Citizens for Jobs and Energy v. Fair Political Practices Comm'n*, 16 Cal. 3d 671, 547 P.2d 1386, 129 Cal. Rptr. 106 (1976) (striking down the California campaign spending limits).

27. *See* CAL. GOV. CODE §§ 81000-91015 (West 1993). The Act, which is a highly imperfect piece of legislation, has been amended substantially since 1974. All the imperfections were caused by the amendments.

28. *See* CAL. GOV. CODE § 81016. The effective date of the Act was thus delayed from June, when it was enacted, to January. I expected this section to be raised as an issue during the campaign on Proposition 9, because it could fairly be characterized as flagrantly partisan. Yet, I thought the political cost was worth the possibility that Brown, rather than Reagan, would appoint two members of the FPPC, including the chairman. To my surprise, the point was never raised in the campaign.

I used did an excellent job of bringing a political perspective to bear on the issues it covered, it was too far removed from what I wanted to do in the course.²⁹ Therefore, in the fall semester of 1981, I taught for the first time what was later to become my course in election law. But I did not call it that. For many years its name was "Law and the Political Process," because it excluded many areas of election law, such as voting rights, and included issues such as lobbying regulation and conflict of interest.

The course did include some materials on redistricting, and just when I had reached those materials, a funny thing happened. The Democrats still controlled the California legislature, but now the governor was Democrat Jerry Brown, and the Republicans strongly opposed the redistricting plans the Democrats were passing. One morning over breakfast, I learned from the *Los Angeles Times* what the Republican strategy would be. They had decided to circulate referendum petitions against the Democratic redistricting plans. The referendum, much less commonly used than the initiative, is a procedure by which persons objecting to a law passed by the legislature can prevent it from going into effect by getting sufficient signatures on a referendum petition. The law's fate is then determined by a vote of the people at the next statewide election.

The key point, I realized as I continued to eat my breakfast, was that the law would not go into effect until the election.³⁰ But the election for the referendum would be the 1982 primary election, and there would have to be legislative districts in order for the primary to occur. This seemed to me a worthy and timely legal problem to put before my students during my class that afternoon.³¹ After assembling the relevant materials, I decided to seek out the perspective of someone familiar with the situation. I called Michael Berman, to whom I had hardly spoken since he had assisted me on the redistricting brief ten years earlier. When I put the problem to him, his first response was, "Who asked you to call me?"

29. The book was LEGISLATIVE AND ADMINISTRATIVE PROCESSES (Hans A. Linde & George Bunn, eds., 1976). At least one subsequent edition was published, with additional co-editors.

30. See CAL. CONST. art. II, § 10(a).

31. The California Supreme Court's resolution of this dilemma is contained in *Assembly v. Deukmejian*, 30 Cal. 3d 638, 639 P.2d 939, 180 Cal. Rptr. 297 (1982).

After I convinced Berman that I was the only person he knew who would be capable of putting such a question to him out of mere curiosity and without an ulterior motive, he gave an answer demonstrating that he had already thought through the issue several steps further than I had. At the end of the conversation, he asked if it would be compatible with my job at UCLA to do some consulting on the legal issues of redistricting that were surely going to arise. To employ another movie cliché, this was the beginning of a long and beautiful friendship. The California districting litigation that decade lasted until 1989.³² I drew extensively on my experience in that litigation in both teaching and scholarship.³³ Redistricting issues became a larger part of my course, and voting rights and other representational questions soon followed. Eventually, there was no time to include matters such as lobbying and conflict of interest, and I changed the name of the course to "Election Law."

As readers familiar with my published works both know, a somewhat quirky interest that I have picked up is the law of bribery as it applies to political situations. Bribery, as the most paradigmatic form of corruption, is obviously related to some of the issues in campaign finance as well as conflict of interest, but when I began to look at the subject, I found that no legal scholars had studied the conceptual issues underlying it.

I often say that my general lack of practicality is demonstrated by the fact that I first became interested in bribery *after* leaving public office. Actually, that is a slight exaggeration, because I was still serving my final days as chairman of the FPPC when I went for my first extensive interview after having plunged into the law school teaching market. The interview was at the University of Chicago and included a mandatory oral presentation to the law school faculty.

The presentation I prepared was on *Buckley*, and I was about a quarter-hour into it when a questioner posed a hypothetical. I responded that the problem raised by the hypothetical would be better dealt with under the law of bribery than by a campaign finance

32. See *Badham v. Eu*, 488 U.S. 1024 (1989).

33. See, e.g., Daniel H. Lowenstein & Jonathan Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive or Illusory?*, 33 UCLA L. REV. 1 (1985). My co-author, Jonathan Steinberg, was the lead attorney in the litigation on which I worked as a consultant throughout the decade.

regulation. The questioner objected that the transaction in the hypothetical could not be a bribe, because it involved a campaign contribution. I responded that there was no reason why a campaign contribution could not be a bribe if the other elements of bribery were present. Another questioner then jumped in and repeated the objection. I elaborated on my point that I believed a campaign contribution was just as capable of being a bribe as any other gift. Yet another questioner objected that the activity involved was just politics and therefore could not be a bribe. And so on.

After ten or fifteen minutes of this I suggested that no one in the room, myself included, had any detailed knowledge of the law of bribery. We could, if we wished, look up the law and find out whether campaign contributions can be bribes.³⁴ But I suggested, since we appeared to be going around in circles on the conceptual issues involved, I might as well proceed. Nevertheless, the Chicago law faculty kept me on that single question for the entire time of the presentation and on into many of the small group interviews that followed. Whether or not their interviewing technique was well adapted to its ostensible purpose of evaluating a job candidate, the incident certainly impressed itself on my memory.

A few years later, a UCLA law librarian gave me a quick lesson in the then-new electronic database for legal research. After the lesson, I was left alone with the computer to doodle around with whatever struck my fancy. What struck my fancy was the University of Chicago interview, and I typed in something like <“brib!” AND (“politic!” OR “elect!”)>. This search turned up a substantial but manageable number of cases, some of which were completely irrelevant or uninteresting, but others of which posed fascinating problems. When I had some time, I followed this up with some more systematic research, and selected a few of the most perplexing cases I found for distribution to my students in that year’s “Law and the Political Process” course. The result was two of the liveliest and most interesting class discussions I had had to date at UCLA. Bribery and corruption became a recurring portion of my teaching and scholarship.

34. As it happens, I was correct. For documentation, see Daniel Hays Lowenstein, *Political Bribery and the Intermediate Theory of Politics*, 32 UCLA L. REV. 784, 808-09 nn.86-90 and accompanying text (1985).

That will do for a few autobiographical fragments for an essay of this sort. These reminiscences can hardly have been of much interest to most readers. Perhaps there is consolation in the thought that anything less personal I might have written would have been less interesting still.

At any rate, I promised a moral.³⁵ The moral is that to an impressive extent, my interest in election law and the content of the subject as I have perceived it and taught it, has been the result of accident. The opportunity to work for Jerry Brown seemed interesting and came along at a moment when I was looking to change jobs. There was not much else to do at the time other than political reform, so I did political reform. I got my initial exposure to redistricting because of a deal that I had nothing to do with between Brown and a couple of legislators. I was able to play a major role in drafting the California Political Reform Act because of a deal I put together after it fell into my lap. I decided to accept the chairmanship of the FPPC despite and not because of the fact that doing so would require me to continue working on the same subject matter. My initial exposure to the fascinating puzzles of bribery and corruption had frivolous causes.

It has not all been accidental. I admit that at times I have actually engaged in reflective deliberation over what to include in my courses and in my casebook. As I argued at the beginning of this essay, the explanation for the recent rise of election law as a subject is a function of two variables, the legal developments that have actually occurred out there, and the evolving interests and styles of legal academics and political scientists. I am not immune to the first, and would not want to be.

But I am glad that the invitation to participate in this symposium has led me to the realization of how much of my professional interest has been determined by accident. I am skeptical of the style of legal thought that consists of deriving conclusions from general premises. I believe we are born into a rich, messy world and that we can never formulate a manageable set of general premises that will come close to taking account of all the relevant considerations, even in a field as specialized as election law. I believe we muddle through and should

35. *See supra*, note 16.

be satisfied if we end up causing more good than harm. I am glad that to a large extent my professional career has matched my anti-theoretical theoretical views.³⁶

36. Bruce Cain asserted flatly the other day that I was incapable of writing anything with less than 50 footnotes. Once again, I have proven him wrong. Cf. Daniel Hays Lowenstein, *Campaign Contributions and Corruption: Comments on Strauss and Cain*, 1995 U. CHI. LEGAL F. 163, 174-85 (1995) (proving Cain wrong).

APPENDIX

I. Subject headings in Frederick C. Brightly, *A Collection of Leading Cases in the Law of Elections in the United States* (1871)

What Questions May Be Submitted to a Popular Vote
States' Rights to Regulate the Elective Franchise
Constitutional Rights of Electors
Registry Laws
Federal Qualifications
Disfranchisement
Test-oaths
Naturalization
Residence
Payment of Taxes
Validity of a Minority Election
Disqualification for Office
Majority for Disqualified Person
Proof of Qualification
Liability for Rejecting the Vote of a Qualified Elector
Right of Interested Parties to Vote
Place of Voting
Election Districts
Place of Holding Elections
Form of Tickets
Qualification of Election Officers
Election Officers de facto
Privileges of Electors
Proxies
Majorities
Duties of Return Judges or Canvassers
Returns
Effect of Certificate
Requisites of a Petition to Contest an Election
Amendment of Petition
Striking out Specifications

Issue, and Recounting of Votes
Competency of Witnesses
Election Papers
Evidence in Contested Election Cases
Evidence—Rebutting Testimony
Irregularities Will not Vitiating the Poll
Powers of the Courts
Acquisition of Domicil
Purging the Polls
Rejection of Polls
Limitation
Division of Election District
Decision at the Next Term
Discontinuance
Appellate Jurisdiction
Rehearing
Effect of Commission
Failure to Elect
Compensation of Election Officers
Congressional Legislation
Fees of Office Pending a Contest
Influencing Elections
Injunctions
Mandamus to Elect
Organization of Municipal Legislative Bodies
Ouster
Quo Warranto
Term of Office
Vacancy in Office
Elections to Fill Vacancies
Election of Judges
Criminal Prosecutions for Illegal Voting
Requisites of Indictment for Illegal Voting
Indictments Against Election Officers
Wagers upon Elections
Appendix (Cumulative Voting)

II. Chapter titles in Daniel Hays Lowenstein, *Election Law: Cases and Materials* (1995)

1. Introductory Readings
2. The Right to Vote and Its Exercise
3. Voting and Representation
4. Legislative Districting
5. Minority Vote Dilution
6. Ballot Propositions
7. Major Political Parties
8. Third Parties and Independent Candidates
9. Bribery
10. Perspectives on Campaign Finance
11. Contribution and Expenditure Limits
12. Money and Ballot Propositions
13. Targeted Regulations: Corporations, Unions, PACs, Lobbyists
14. Corporations and the "New Corruption"
15. Incumbency
16. Public Financing and Beyond

III. Chapter titles in Samuel Issacharoff, Pamela S. Karlan & Richard H. Pildes, *The Law of Democracy: Legal Structure of the Political Process* (1998)

1. An Introduction to the Selection of Democratic Institutions
2. The Right to Participate
3. The Reapportionment Revolution
4. The Role of Political Parties
5. Preclearance and the Voting Rights Act
6. Majority Rule and Minority Vote Dilution: Constitutional and Legislative Approaches
7. Racial Vote Dilution Under the Voting Rights Act
8. Redistricting and Representation
9. Money and Politics
10. Direct Democracy
11. Alternative Democratic Structures

