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## Direct Democracy: Actually Democratic? An Evaluation of Initiatives Based on the Fundamental Principles of Democracy

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**Direct Democracy: Actually Democratic?**  
An Evaluation of Initiatives Based on the Fundamental Principles of  
Democracy



Darcey Julia Goelz  
Political Science Honors Thesis  
May 30, 2006

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## INTRODUCTION

Direct democracy in the form of the initiative is seen by many as a panacea for all that ails democracy.<sup>1</sup> Frustrated with the give and take of the deliberative process inherent in legislatures, liberal and conservatives alike have resorted to direct pleas to the people. Initiatives are not a neutral or benign influence on the quality of democracy in the United States. The results of initiatives can be significant, indeed momentous, with particular issues for individual states.

Direct democracy has been touted as creating government that is more democratic than the current representative democracy and is often assumed to be more consistent with the principles of popular government. Many contend that the initiative process is “the latest and fullest development of popular government.”<sup>2</sup> One writer went so far as to say that because of its extensive use of the initiative, Oregon was “the most complete democracy in the world.”<sup>3</sup> Other writers assert that initiatives have “proved themselves to be the basic solution to the problem of establishing genuine democracy in large scale communities.”<sup>4</sup> If the initiative process does hold to the principles of democracy then such praise is acceptable, but if, in fact, the initiative process does not meet the principles of democracy, then the purpose of direct democracy must be questioned.

In order to assess the value of direct democracy, this paper will address whether the initiative process promotes democracy. It would appear that an idea such as direct democracy automatically implies that it is democratic, but this would be a false

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<sup>1</sup> Magleby, David. *Direct Legislation: Voting on Ballot Propositions in the United States*. Baltimore: The Johns Hopkins University Press, 1984. p. 7

<sup>2</sup> Ellis, Richard J. *Democratic Delusions: The Initiative Process in America*. Lawrence: University Press of Kansas, 2002. p. 27

<sup>3</sup> *Ibid*, p. 33

<sup>4</sup> Ranney, Austin and Willmoore Kendall. *Democracy and the American Party System*. New York: Harcourt, Brace and Company, 1956. p. 80

assumption. The label of democracy will not immediately produce a “democracy” as defined in this paper. Although the initiative process may produce greater citizen participation, and that very question will be debated below, this does not necessarily imply a more democratic institution than representative government. There are many interpretations of the term democracy and much confusion over its uses and meanings, but this paper hopes to shed light on what a democracy actually is by proposing a model of democracy to evaluate the initiative process. This model will establish the fundamental components of democracy, but will not assert that the ideal democracy arises out of any particular form of democracy, whether representative or direct. The value of the initiative process will be assessed using only this model of democracy and no other; from here on, when the word ‘democracy’ is used by itself, not in conjunction with the word ‘direct’, it is denoting the model as it is presented in this paper. In order for this question to be relevant though, one must assume that a goal of this country is to be as democratic as possible. If this is not a goal, then there would be no need to understand the relation of the initiative process to democracy. The underlying assumption of this paper is that if a particular process (i.e. initiative) advances governance towards the ideal democracy it will be regarded as valuable.

The following pages will provide an overview of the history and use of the initiative process, discuss the central facets of the debate about direct democracy, present a model of democracy, and then analyze direct democracy based on this model. The ultimate goal will be to determine whether aspects of the initiative process promote or hinder democracy in the United States.

## CONCEPTIONS OF DIRECT DEMOCRACY

There are at least two different concepts of direct democracy. There is the direct democracy of the Ancient Greeks where inclusive suffrage was accomplished (if one discounts the fact that women and slaves were not considered to be citizens). They had no representatives, besides the agenda-setting council. Instead, every citizen was involved in government and the decision-making process.<sup>5</sup> Of course, this was achieved in only a few small cities with a few thousand men voting and within a hundred years each of these democracies “collapsed into tyranny or chaos- frequently both.”<sup>6</sup>

This is not the type of direct democracy that Americans know. The second concept of direct democracy is that which exists in the United States and it is accomplished through the use of such devices as initiative, referendum, and recall. Instead of the people participating in every aspect of government, they elect representatives to make decisions in the best interests of all. Direct democracy allows citizens, through initiatives, to raise issues which the legislature may be ignoring and put them before voters, in the form of statutes or constitutional amendments. Popular or legislative referendums allow voters to review legislative or judicial action which is perceived to conflict with the will of the majority. Through the recall process they can also vote officials out of office that they feel may not be doing their jobs properly. Direct democracy could be defined very vaguely as ‘government by the people,’ but this paper is using a more specific definition where the tools of direct democracy are the initiative, referendum, and recall.

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<sup>5</sup> Ibid, p. 6

<sup>6</sup> Zakaria, Fareed. *The Future of Freedom*. New York and London: W.W. Norton & Company, 2004. p. 255

Direct democracy in the colonies existed before the establishment of the United States. The New England town meetings are often used as an example of direct democracy, but they are not relevant to this paper because they flourished in such small, homogenous societies that they bear little relevance to modern society. On a larger scale, each state ratified its constitution with a legislative referendum. In fact, "By the 1850's it had become accepted practice for admission to the Union that state constitutions first be approved by the people."<sup>7</sup> At that point in time, however, these rare legislative referendums were the only opportunity for citizens to have direct input into government.

#### MOVEMENTS FOR DIRECT DEMOCRACY

The first real attempt to bring the tools of direct democracy to citizens was a farmer/worker protest. In 1880's, the Populists sought to challenge the power that corporate business held over governmental regulation. Their platform was driven by economic interests, challenging the entrenched influence of railroads, banks, and industry.<sup>8</sup> Unfortunately for their cause, their movement was unsuccessful because of the power of the entities that they confronted and attempted to regulate.

Subsequently, the Progressive movement adopted the same cause, but with different theoretical underpinnings spurring their efforts. The Progressive movement was a middle-class and intellectual affair and it was "bent on cleaning up governmental corruption."<sup>9</sup> Progressives came to the conclusion that representative democracy was on its way to being neither representative nor democratic, because legislators were being controlled by big money interests instead of the people. Direct democracy, it was

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<sup>7</sup> Cronin, Thomas E. *Direct Democracy: The politics of Initiative, Referendum, and Recall*. Cambridge: Harvard University Press, 1989. p. 41

<sup>8</sup> Broder, David S. *Democracy Derailed*. San Diego: Harcourt, Inc., 2000. p. 26

<sup>9</sup> Ibid



advocated, would circumvent partisan legislatures and mitigate the corrupting influences that operated those legislatures, all the while improving the quality of public life.<sup>10</sup> They successfully introduced the initiative and referendum processes to South Dakota in 1898.

Interest in direct democracy waned after the end of the Progressive Era in the 1920s, but was revived during the protests of the 1960s. At that time, a number of new states adopted the devices of direct democracy. The new interest in initiative use resulted from a combination of the decline of political parties, the rise of single-interest groups, and an increase in the public's dissatisfaction with the legislature and government in general.<sup>11</sup>

Since its adoption, the initiative process has resulted in profound, and for the most part, beneficial changes to the political landscape, likely inspiring non-initiative states to adopt similar laws. Policies such as women's suffrage, child labor laws, and the establishment of an eight-hour work day were quickly adopted by many of those states that allowed citizens to make laws directly.<sup>12</sup>

#### FOUNDING FATHERS AND REPRESENTATIVE DEMOCRACY

When they wrote the Constitution of the United States in 1787, the founding fathers deliberately set up a system of representative democracy with many checks and balances. But since the country's inception, the difference between a republic and a democracy has had little public debate. The founding fathers had worried that any form of direct democracy would result in oppressive and tyrannical majority rule where the

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<sup>10</sup> Donovan, Todd and Shaun Bowler. "An Overview of Direct Democracy in the American States," from *Citizens as Legislators*, eds. Shaun Bowler, Todd Donovan, and Caroline Tolbert (Columbus: Ohio State University Press, 1998), p. 2

<sup>11</sup> Banducci, Susan A. "Direct Legislation: When its it Used and When Does it Pass?," from *Citizens as Legislators*, eds. Shaun Bowler, Todd Donovan, and Caroline Tolbert (Columbus: Ohio State University Press, 1998), p. 109

<sup>12</sup> Donovan, Todd and Shaun Bowler. "An Overview of Direct Democracy in the American States." p. 4

rights of minorities would be suppressed. The founding fathers “sought to minimize the impact of momentary or transitory majorities” using the institutions of representative government.<sup>13</sup> On the other hand Thomas Jefferson, among others, was a strong advocate of legislative referendum for the adoption of constitutions and any constitutional amendments.<sup>14</sup>

Some of the founding fathers’ concerns about direct democracy appear to be coming true. It seems that initiative advocates believe that statutes created by the people through initiative are more sacred than statutes adopted by legislatures. When any modification of a statute arising from an initiative is proposed, proponents protest that the politicians are subverting the will of the people. But the voice of the people should not be so untouchable and final. The people are not demagogues and although a majority of the voters that voted for a measure may have approved of the legislation that does not mean the legislation is necessarily well-written, effective, or wise. There can be unintended consequences that need to be corrected or even intended results that are inconsistent with traditional concepts of individual rights. As Grove Johnson once said, “The voice of the people is not the voice of God, for the voice of the people sent Jesus to the cross.”<sup>15</sup> Many of the founding fathers would likely have agreed with this statement.

#### WHERE DIRECT DEMOCRACY IS FOUND

Presently, twenty four states allow the use of initiatives in some form and twenty four states have popular referendum. Each of these states has some variation of the initiative process. Of the states that have an initiative process, six of them do not allow

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<sup>13</sup> Magleby, p. 30

<sup>14</sup> Initiative and Referendum Institute. “What is Initiative and Referendum?” *I&R Factsheet*. No. 1. Can be accessed through <http://www.iandrinstitute.org/Quick%20Fact-Handouts.htm>

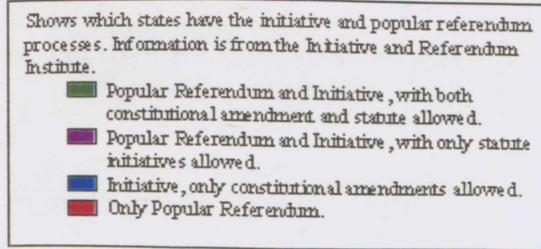
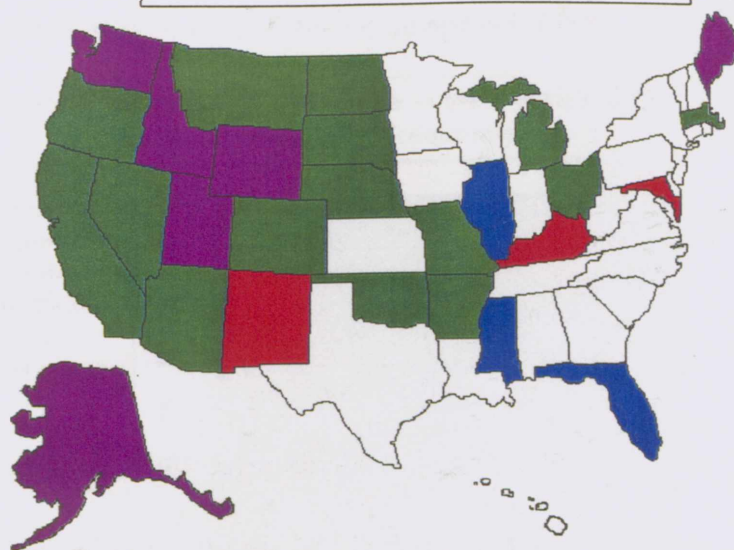
<sup>15</sup> Tygiel, Jules. “SPECIAL ELECTION; Democracy’s evil twin; You want to bring California government back to its senses? Get rid of the initiatives.” *Los Angeles Times*. Los Angeles, CA: Oct. 30, 2005, p. M.1

constitutional amendments to be made through initiative and three others do not allow statutory initiatives. Altogether, there are fifteen states that allow both constitutional amendments and statutory initiatives. Many of them have direct initiative amendments and statutes, which are placed directly on the ballot after being proposed by the people. Others have some form of indirect initiative amendments and statutes, which requires that proposals by the people must first be submitted to the legislature during their regular session. These indirect initiatives allow the legislature either to pass the initiative with some minor changes or may allow the legislature to submit its own version of the initiative to the people for a vote.

All states, with the exception of Delaware, require legislative referendum when the legislature or other government agency seeks to make a constitutional amendment.<sup>16</sup>

The initiative process is available in Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. Of those, Florida, Illinois, and Mississippi do not allow popular

Figure 1: Map of the United States Denoting the Presence of Direct Democracy Processes.



<sup>16</sup> Initiative and Referendum Institute. "Which States Have the Initiative and Referendum Processes?" *I&R Factsheet*. No. 3. Can be accessed through <http://www.iandrinstute.org/Quick%20Fact-Handouts.htm>

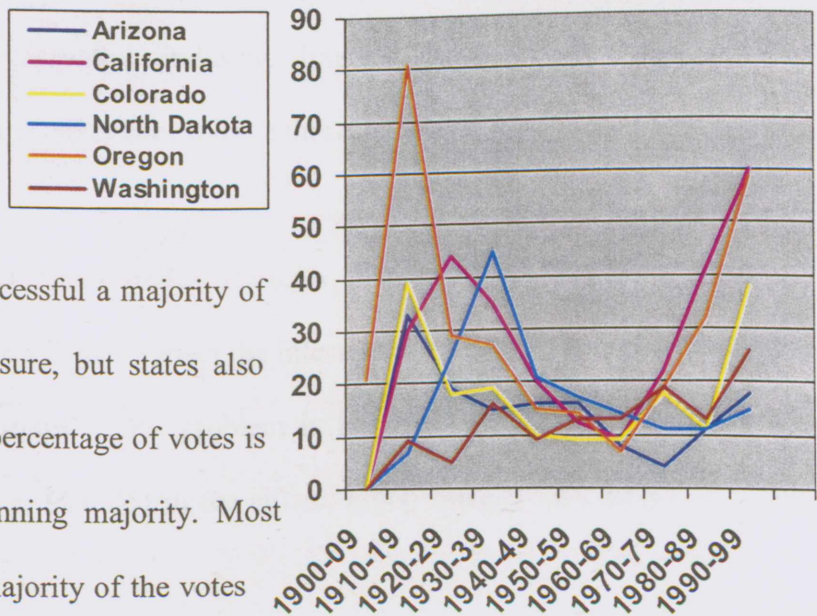
referendum. Three states do not have the initiative process but do allow popular referendum; these include Kentucky, Maryland, and New Mexico. The substantial list of those states with initiative or referendum processes evidences the fact that the direct democracy movement is primarily a phenomenon of the Western United States.

Each of these states has slightly different requirements for successfully qualifying a proposition (i.e. an initiative) for the ballot. These necessarily include a requirement for the number of signatures that need to be collected through the circulation of petitions. Such thresholds are required in order to keep frivolous or special interest legislation off the ballot. The thresholds range from state to state, but are always a percentage of the total votes cast, or total votes cast for a particular office, in the preceding election. The median signature requirement is eight percent of those who cast a vote for governor in the previous election, but the spectrum ranges from two percent of the voting-age population

(North Dakota) to fifteen percent of the votes for governor in the preceding election (Wyoming).<sup>17</sup>

In order for an initiative to be considered successful a majority of voters must approve the measure, but states also have different rules for what percentage of votes is necessary to constitute a winning majority. Most states require only a simple majority of the votes

**Figure 2: Initiative Use by Decade In the 6 States that Use the Process Most Frequently**



<sup>17</sup> Magleby, p. 41



cast in favor of the initiative, but some states require a certain percentage of the votes cast at the election or require a majority of votes cast for governor, and still others require a majority of all the votes cast in the election to be in favor of a proposition.<sup>18</sup>

The use of initiatives in each state has varied. Some states use the initiative very infrequently and others use it on a very regular basis. In fact, out of the 24 states that have the initiative process, 60% of all initiative activity has taken place in just six states – Arizona, California, Colorado, North Dakota, Oregon and Washington.<sup>19</sup>

### THE DEBATE

The debate over the fairness, efficacy, and overall desirability of direct democracy has raged for many years and has attracted impassioned opponents and proponents. As the usage of initiatives increases across the country, the debate has continued to develop. There are numerous and compelling arguments on both sides of the discussion. This paper will briefly discuss the issues surrounding the initiative process. These arguments center around responsive government, responsible governance, judicial independence, the professionalization of the initiative industry, interest group involvement, citizen participation, issues of voter competence, and the threat to civil rights.

#### Responsive Government

Elizabeth Gerber, in *The Populist Paradox*, demonstrated that laws resulting directly from direct legislation largely reflect the interests of citizen groups, as opposed to what she calls economic groups.<sup>20</sup> One problem in her work is that the categories are slightly blurred. For instance, included in the citizen group category are single, wealthy

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<sup>18</sup> Ibid, p. 38-39

<sup>19</sup> The Initiative and Referendum Institute. "Initiative Use, 1904-2005." University of Southern California. Can be accessed through <http://www.iandrinstitute.org/Usage.htm>

<sup>20</sup> Gerber, Elisabeth. *Populist Paradox*. Princeton: Princeton University Press, 1999. p. 120

donors. There is always that possibility that these donors are motivated by economic purposes, or a mix of economic and citizen interest through the pursuit of their own individual benefit.

Gerber, in the same study, concluded that there are indirect policy consequences of direct democracy, namely influence on the state legislative process by affecting the policy agenda and outcomes. She points out that interest groups can put pressure on the legislature using the threat of proposing initiatives. The legislature will pass a law that is closer to the median voter's preference in order to avoid an initiative proposal. Through detailed analysis, Gerber arrived at the conclusion that "policies in initiative states more closely reflect voter preferences than do policies in non-initiative states."<sup>21</sup> Her analysis in this regard was focused on abortion and death penalty policies.

There is vigorous debate among political scientists about the reflection of public preference on policies in initiative and non-initiative states. Gerber showed that "parental consent laws passed by legislatures in initiative states more closely reflect their states' median voter's preference than parental consent laws passed in states that prohibit initiatives."<sup>22</sup> Her point was to demonstrate that direct democracy causes public preference to be more accurately reflected in legislative action. A critique of this conclusion is that,

"A close look at the abortion estimates reveals that initiative states were more likely to have parental consent requirements when the voters were strongly in favor of them, but also when the voters were not generally supportive. The simplest explanation seems to be that direct legislation shifted the power to

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<sup>21</sup> Ibid, p. 136

<sup>22</sup> Gerber, Elisabeth. "Legislative Response to the Threat of Popular Initiatives." *American Journal of Political Science*. Vol. 40, No. 1, February 1996. p. 99

groups that favored parental consent laws, not that it promoted median voter outcomes.”<sup>23</sup>

In another issue area, a study performed by John Camobreco indicated that “the presence of the initiative does not enhance the link between preferences and fiscal policy.”<sup>24</sup> Interestingly, although initiative states have lower spending per capita than non-initiative states, the burden of spending is often transferred from state to local governments and shifted from tax revenue to charges and user fees.<sup>25</sup> Overall, much of the research suggests that the initiative process is not associated with more responsive state policy.<sup>26</sup>

Opponents of direct democracy question whether voting on ballot initiatives allows the people to voice their opinion and have greater control over the policies of the state. They complain that initiatives only allow voters to vote on the specific question in front of them. Voters are not permitted to vote on alternative measures or make changes to the wording. Voters can only approve, reject, or abstain altogether when they enter the voting booth. This does not necessarily allow for a true reflection of public opinion. “A majority of voters may have voted one way or the other, but that does not mean that they all feel the same way about the proposition.”<sup>27</sup> The outcome of direct legislation should reflect the majority will, but this may not be true in practice.”<sup>28</sup>

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<sup>23</sup> Matsusaka, John. “Elisabeth R. Gerber, The Populist Paradox: interest group influence and the promise of direct legislation.” *Public Choice*. September 2000, Vol. 104. p. 396

<sup>24</sup> Camobreco, John F. “Preferences, Fiscal Policies, and the Initiative Process.” *The Journal of Politics*, Vol. 60, No. 3, August 1998. p. 819

<sup>25</sup> *Ibid*, p. 822

<sup>26</sup> Lascher Jr., Edward L., Michael G. Hagen, and Steven A. Rochlin. “Gun Behind the Door? Ballot Initiatives, State Policies and Public Opinion.” *The Journal of Politics*, Vol. 58, No. 3, August 1996. p. 769

<sup>27</sup> Magleby, p. 183

<sup>28</sup> *Ibid*, p. 187

## Responsible Government

The studies of how reflective state policy is of public opinion address specific and often controversial issues, but public preferences may be best served by the initiative process through the changes that are made to the procedures of government. One of the apparent benefits of the initiative process is the effect it has on governance procedures and legislative operation. It appears that these are systematically different in initiative states than in non-initiative states.<sup>29</sup> It is likely that the procedures of the initiative states are different because citizens are able to pass governance policies that legislators would simply not address. Issues such as term limits, tax and expenditure limits, and supermajority requirements are all controversial issues and would likely end in stalemate or deadlock in the legislature, if they were discussed at all. Voters seem to prefer governance policies because such policies give “the public more control over their elected officials and the operation of government.”<sup>30</sup> Such policies aim to increase accountability and constrain the way the public sector can operate and, ultimately, they change the very processes of representative government.<sup>31</sup> Direct democracy also forces action on issues other than governance policies which would otherwise never be seriously considered by the legislature. “Highly salient, divisive issues that might never emerge from a legislature, such as prohibition, term limits, tort reform, and language laws, can reach the ballot by initiative.”<sup>32</sup>

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<sup>29</sup> Bowler, Shaun, Todd Donovan, and Caroline Tolbert, editors. *Citizens as Legislators*. Columbus: Ohio State University Press, 1998. p. 169

<sup>30</sup> Tolbert, Caroline. “Changing Rules for State Legislatures,” from *Citizens as Legislators*, eds. Shaun Bowler, Todd Donovan, and Caroline Tolbert (Columbus: Ohio State University Press, 1998), p. 173

<sup>31</sup> *Ibid*, p 187

<sup>32</sup> Bowler, Shaun and Todd Donovan. *Demanding Choices*. Ann Arbor: The University of Michigan Press, 1998. p. 5



On the other hand, by being responsive to popular will and the often accompanying anti-tax sentiment, direct democracy creates an environment conducive to the fiscally irresponsible use of debt.<sup>33</sup> This, some authors argue, is not a result of voter irresponsibility; instead, the problem lies in the fact that “direct democracy provides no comparable, readily used mechanism for aggregating preferences about the numerous decisions and tradeoffs that must be made...” with regards to fiscal policy.<sup>34</sup> For example, in 1944, Oregon voters awarded themselves monthly annuities for all citizens, a move which would have crippled the operation of state government. They wanted to express their desire for help in retirement, but were unable to understand the effects that the choice on one initiative would have had on every other governmental action. With initiatives, voters are asked whether they want one thing and in a separate initiative they are asked if they want another that runs slightly counter to the first. Voters may desire each of these things, but are unable to express their preferences properly when the issues are discussed separately. It is, therefore, not surprising that initiative states have less progressive taxation, which is ironic considering the historic roots of initiatives.<sup>35</sup>

In contrast to the responsibility that the initiative process may or may not impose on government, the legislative process provides for debate and deliberation of alternatives, compromise, and eventual consensus or agreement.<sup>36</sup> That is not to say that it is always used wisely, but the process does allow for deliberation and sober second thought. Clearly a legislature would never do what the voters in California and Idaho did

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<sup>33</sup> Donovan, Todd and Shaun Bowler. “Responsive or Responsible Government?,” from *Citizens as Legislators*, eds. Shaun Bowler, Todd Donovan, and Caroline Tolbert (Columbus: Ohio State University Press, 1998), p. 263

<sup>34</sup> Ibid, p. 258

<sup>35</sup> Donovan, Todd and Shaun Bowler. “Responsive or Responsible Government?” p. 259

<sup>36</sup> Magleby, p. 29

when they voted themselves pensions from the state treasury in 1948 and 1942 respectively.<sup>37</sup>

### Pressure on the Judicial System

Initiatives place unexpected pressure on the judicial system. As a result of confusing language or inflammatory issues, initiatives are frequently challenged in court. Opponents of initiatives seek redress in the judiciary because there is no other forum or mechanism available. It is obvious that initiatives are an “all-or-nothing” proposition: they fail or succeed based on what is passed. There is no opportunity to correct the ill-conceived phrase or modify an unexpected consequence. The deliberative process of legislatures, with its inherent attributes of deliberation, investigation, and compromise, is absent with initiatives. In final analysis, the courts have become the only relatively effective barrier against violation of constitutional provisions and infringement of minority rights.

The dynamic that this creates eliminates the protection that the founding fathers afforded American citizens through the separation of powers and a system of checks and balances. It imposes a duty on the court to become legislative authorities. Lacking precedent, judges are forced into judicial activism in order to resolve constitutional conflicts that initiatives may pose. There is often an assumption that laws created through initiative are sacred, since they were voted in by the people. “The people have spoken” is a mantra that many proponents of direct democracy utter, as if somehow such a law was more just and wise than other laws. This, of course, creates a challenge for elected judges because they are often forced to reject “the voice of the people” and thus jeopardize their

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<sup>37</sup> Linde, Hans A. “Guaranteeing a Republican Form of Government: Who is Responsible for Republican Government?” *University of Colorado Law Review*. Fall 1994, 65 U. Colo. L. Rev. 709

jobs. This places the judiciary “in the midst of a highly charged political contest....in one sense the judiciary is merely being called upon to perform its ordinary constitutional task, but when courts review actions taken directly by the public, rather than by their elected representatives...” they are put in a position of challenging the very voters who elect them to their positions.<sup>38</sup> It takes unusual courage to risk ones livelihood to reject laws that are popular but unlawful.

The judiciary, more than any other branch of government, by training, experience, and custom are constrained to resist the immediate pressure of public opinion. Proponents of direct democracy often herald the safety net of the judiciary in order to rationalize the use of initiatives. To justify initiative use by claiming that any unconstitutional legislation will not actually be made law because the courts will not allow it is ironic. The initiative process, by reputed to be the most direct expression of public preference, has created a political system that is fundamentally reliant on the most undemocratic branch of government for its validation.<sup>39</sup> The judiciary is often considered to be the most undemocratic branch because it is the institution most insulated from popular preferences.

### Professionalization

The initiative process has historically been perceived to be a tool of the ordinary citizen. The “amateur” nature of its roots is one facet of direct democracy that proponents of initiatives celebrate. Today, stunningly sophisticated professionals have appropriated the common mans soapbox in the area of campaigns. This development is seen by many as undermining the initiative process as a key democratic institution. Instead of the

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<sup>38</sup> Lazos Vargas, Sylvia. “Judicial Review of Initiatives and Referendums in Which Majorities Vote on Minorities’ Democratic Citizenship.” *Ohio State Law Journal*. 1999 60 Ohio St. L.J. 399

<sup>39</sup> Ellis 2002, p. 147

quality of the idea reflected in the outcome, the fate of initiatives is more and more in the hands of big money and special interests.<sup>40</sup>

Interestingly, the 'initiative industry' has been in existence for many decades.<sup>41</sup> From the beginning, the business has increasingly grown larger and expanded its grip on the process to include all aspects of a campaign. As it has matured, the political marketing industry has developed greater specialization; separate firms provide consulting, polling data, media relations, and signature compilation.<sup>42</sup> Paid signature gathering allows groups to qualify an initiative for the ballot without requiring hundreds of volunteers. Signature gatherers are paid around 25-35 cents for each signature, but the price per signature rises, as with all of the other services offered by initiative industry firms, as the date for completion approaches.<sup>43</sup> It is not unheard of for a group to pay \$2.50 per signature when it comes down to the last few days for qualifying an initiative.<sup>44</sup>

The increase in professionalism in campaigning is not equally spread. One critique of professional initiative campaigners is the fact that they drive the cost of qualifying and campaigning for an initiative to exorbitant amounts. This is suspected to reduce the ability of average citizens to participate in the initiative process. Special interest groups and well funded industries resort to professional organizers more frequently and earlier than citizen based efforts. It has been found that the "...involvement of professional campaign advice [comes] at a later stage for grassroots groups. Consultants in California are generally retained at an earlier period by trade and

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<sup>40</sup> McCuan, David and et al. "California's Political Warriors," from *Citizens as Legislators*, eds. Shaun Bowler, Todd Donovan, and Caroline Tolbert (Columbus: Ohio State University Press, 1998), p. 56

<sup>41</sup> Broder, p. 55

<sup>42</sup> McCuan, p. 60

<sup>43</sup> McCuan, p. 64

<sup>44</sup> Broder, p. 63

interest groups as compared to the practices of more amateur-based organizations.”<sup>45</sup>

Another critique is that they are more able to manipulate public opinion in favor of very narrow interests. Campaign professionals argue, however, that their job is largely technical.<sup>46</sup> In the end, professionalism of initiative campaigns will remain a fact of life and we can only hope the resilience of the process as a tool of the citizens will prevail.

### Interest Group Involvement

There can be little debate that the initiative campaign industry has proliferated to such a degree that the cost to shepherd an initiative through to the ballot and to see it subsequently passed into law is excessive. One would expect that the ability of grassroots organizations to play the initiative game would be diminished by the increasingly large financial demands and that wealthy, narrow interests would be the ones able to successfully navigate the initiative industry and manipulate the general public. This conclusion, however, does not seem to have the support of many political researchers. “Gerber concludes that fears of the initiative process being dominated by narrow economic interests are exaggerated. The deep pockets of business groups are effective in blocking measures, but do not confer the power to change the status quo.”<sup>47</sup>

Although narrow interest groups do not seem anymore likely to successfully pass an initiative than other players, this does not mean that money is irrelevant. Even broad-based, citizen groups have to find sources of funds. Magleby suggested that “spending on propositions frequently exceeds spending in contests for governor or U.S. Senator.”<sup>48</sup>

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<sup>45</sup> McCuan, p. 69

<sup>46</sup> Ibid, p. 66

<sup>47</sup> Matsusaka 2000, p. 395

<sup>48</sup> Magleby, p. 6

While it appears narrow interest groups do not dominate the initiative scene anymore than previously seen and less than expected, it still seems undeniable that direct democracy advantages elites with the not inconsiderable benefit of an additional point of access.<sup>49</sup> The most cost efficient and effective strategy to achieve their legislative goals remains the ability to influence legislators, but wealthy elites will not hesitate to reap real gains from the initiative process. A direct appeal to voters is often the only avenue to a vigorous debate of issues that are legislative taboos and where substantial advertising budgets allow their message prominence. Measures such as abortion, homosexual rights, term limits, English language laws, and public official pay are all issues that find fertile ground in the initiative process.

### Citizen Involvement

A nationwide study showed that two-thirds of American adults believed that citizens should be able to vote directly on some laws and three-quarters thought that voters are able to cast informed votes in issue elections. Even more impressive, many “who were not registered to vote said they would probably vote if they were able to do so on a few proposed state and national laws on election day.”<sup>50</sup> Some authors believe that although citizens would participate in theory, in reality when the process is available to them they do not actually become involved. Having the opportunity to participate is attractive to citizens, but when Election Day rolls around not many make the effort. The failure of the average citizen to be involved and interested in direct legislation results in having “...only groups or interests with issues to push will use the process. Often these groups will be at the extremes of the political spectrum, proposing ideas unacceptable to

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<sup>49</sup> Donovan, Todd and Shaun Bowler. “Responsive or Responsible Government?” p. 258

<sup>50</sup> Cronin, p. 4

most voters.”<sup>51</sup> Voters not only neglect to go to the polls, those that do go often choose to not vote on all ballot propositions and instead vote only on a few specific issue or candidate elections. This decision to vote on some measures but not others is referred to as voter ‘dropoff’ or ‘falloff.’ Five to fifteen percent falloff is common in state issue elections, but with some controversial or highly visible issues there is actually voter turn-on, meaning that there were more votes placed on the initiative questions than for candidate races.<sup>52</sup>

Research by Mark Smith has shown that direct democracy “...may encourage the development of dispositions and skills that make for better citizens” through findings that indicate that states that heavily use initiatives have citizens “...with an increased capacity over the long term to correctly answer factual questions about politics.”<sup>53</sup> Proponents of direct democracy and citizen involvement argue that as citizen participation increases, their interest in politics and thus the time and effort they put into educating themselves about issues and government operation will also increase. Direct participation will provide citizens with a heightened political consciousness and knowledge.<sup>54</sup> It is believed that only through direct participation can citizens acquire the abilities to more effectively and actively participate. In effect, practice makes perfect.

This goal is hindered because the likelihood of full participation in voting on propositions decreases as education level falls.<sup>55</sup> This has a direct effect on initiatives where voter pamphlets are a primary source of information because the level of education

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<sup>51</sup> Magleby, p. 29

<sup>52</sup> Cronin, p. 67

<sup>53</sup> Smith, Mark A. “Ballot Initiatives and the Democratic Citizen.” *The Journal of Politics*, Vol. 64, No. 3, August 2002. p. 892

<sup>54</sup> Ranney, p. 80

<sup>55</sup> Magleby, p 104

that is required to understand voting pamphlets often ranges from two years of college to two years of graduate school.<sup>56</sup> The likelihood of voting on ballot propositions is also affected by income even after accounting for the correlation with education.<sup>57</sup> Less educated and poor voters are less likely to benefit from the availability of direct democracy. They, along with African Americans, are much less likely to participate in the voting process.<sup>58</sup> “Citizens may favor the concept of direct legislation, but when it is put into practice, the result is nonparticipation on the propositions and greater alienation in the electorate.”<sup>59</sup>

The reason that these groups have a harder time participating in direct democracy is the effort required of and the cost incurred by the voters. Time is the principal price of voting. One has to take the time to register to vote, to find information about who is running or what the issues are, and then to analyze the effects of a yes or no vote and what the effect will be on the individual voter, not to mention the time to actually go to the polls and vote.<sup>60</sup> The fact is these disenfranchised groups simply do not have much time to spare from the demands of every day life. The opportunity costs of voting are far greater and more difficult to bear for less-educated, low-income voters than for financially stable, highly educated voters. Furthermore, even if these disenfranchised voters do make the attempt to participate, they often become more alienated by the fact that they cannot understand the wording or comprehend the meaning of technical or

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<sup>56</sup> Fountaine, Cynthia. “Lousy Lawmaking: Questioning the Desirability and Constitutionality of Legislating By Initiative.” *Southern California Law Review*. 1998. 61 S. Cal. L. Rev. 733. p. 3

<sup>57</sup> Magleby, p. 105

<sup>58</sup> *Ibid*, p. 104

<sup>59</sup> *Ibid*, p. 29

<sup>60</sup> Cronin, p. 66



incomprehensible ballot propositions, which in turn often results in confusion and inaccurate indication of preference.<sup>61</sup>

### Voter Competence

Some proponents of the initiative process claim that there is an inconsistency in the arguments against direct democracy. They argue that if voters can be expected to vote for their representatives in candidate elections, how can opponents of the initiative claim that they are suddenly ill-informed or incompetent to make other decisions on the ballot? This apparent contradiction seems best resolved by a quote from Derrick A. Bell, Jr., who states that, “we vote politicians into office, not into law.”<sup>62</sup> The law is much more permanent than office holding.

“The institutions of direct democracy rest upon the basic assumption that voters have the capacity to reason when making decision about ballot propositions.”<sup>63</sup> Voters’ competence for voting on initiative measures has, thus, become a central focus of the debate about initiatives. It has been found that average voters lack conceptualization skills, which means that they are unable to think about politics in the abstract.<sup>64</sup> To add to the problem, voters often lack factual knowledge, especially on initiatives. There is a high cost to acquiring knowledge and so, with candidate races, voters use information shortcuts such as party affiliation or candidate personality to direct their choices. “Voting on propositions is distinct from most other kinds of voting because it requires decision making without the simplifying devices of party label and candidate appeal.”<sup>65</sup> With initiatives, these shortcuts are unavailable and voters have to seek other sources of

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<sup>61</sup> Magleby, p. 111-116

<sup>62</sup> Ibid, p. 185

<sup>63</sup> Bowler, Shaun and Todd Donovan. *Demanding Choices*. 1998. p. 3

<sup>64</sup> Ibid, p. 21

<sup>65</sup> Magleby, p. 4

information. Often they search out the opinions of friends, family, political parties, and coworkers.<sup>66</sup> Other shortcuts include analyzing personal gain or loss from the passage of an initiative, using elite cues, and using the refuge of voting 'no' when faced with uncertainty of how something will change the status quo.<sup>67</sup> Usually such information is derived from watching television. It has been found that "ill-informed voters using information cues reduced their errors in voting from a hypothetical base of 'fully informed voting' by 50 percent."<sup>68</sup> This is because a single cue can tell a voter a lot about how a decision will affect them.

John Matsusaka has challenged the perception that there is a difference between legislators and average citizens in their ability to make policy. At an earlier point in history the leaders who controlled government had more education, better access to information, and were better equipped to understand the needs of large bodies of people, but this does not presently seem to be the case. The confluence of rising education and falling information costs is "dramatically reducing the knowledge advantage that elected officials once had over ordinary citizens...Now many ordinary citizens feel competent to make policy decisions themselves and no longer believe that elected officials are smarter, wiser, or better-informed."<sup>69</sup> Of course, many do not measure the value of initiatives by voter competence; they see the real threat to democracy resulting instead from the obvious lack of deliberation by voters and the lack of compromise inherent in the initiative process that would normally occur in the legislative process.

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<sup>66</sup> Bowler, Shaun and Todd Donovan. *Demanding Choices*. 1998. p. 37

<sup>67</sup> *Ibid*, p. 39

<sup>68</sup> *Ibid*, p. 32

<sup>69</sup> Matsusaka, John G. "The Eclipse of Legislatures: Direct Democracy in the 21<sup>st</sup> Century." *Public Choice*. Springer Netherlands: July 2005, Vol. 124. p. 163

On the other hand, “Some of the observed faults of the initiative process are perhaps a product of rules affecting how it is used today, not of any inherent flaw in the mass public.”<sup>70</sup> Indeed, successful ballot measures are most likely determined by voters’ ideological predispositions, as opposed to sophisticated marketing techniques.<sup>71</sup> The result is that the outcomes of elections will usually “make sense” and inconsistent outcomes will not occur on a regular basis.<sup>72</sup>

### Civil Rights

Too often, initiatives appear in front of voters that seek to “restrict the services provided or rights accorded to relatively unpopular groups.”<sup>73</sup> Civil rights initiatives involve racial, ethnic, and language minorities, gay men and lesbians, and people with AIDS that are given equal protection under the laws and have the right to live free from discrimination in employment, housing, education, and public accommodation.<sup>74</sup> Unfortunately, the electorate often has an ingrained propensity to respond intolerantly when faced with questions about a minority group.<sup>75</sup> Research performed by Barbara S. Gamble shows that “citizen initiatives that restrict civil rights experience extraordinary electoral success”.<sup>76</sup> Gamble considered issue areas such as housing and public accommodations for racial minorities, school desegregation, gay rights, English language laws, and AIDS policies. She found that while voters approved only a third of all

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<sup>70</sup> Donovan, Todd and Shaun Bowler. “Responsive or Responsible Government?” p. 272

<sup>71</sup> Banducci, Susan. “Searching for Ideological Consistency in Direct Legislation Voting,” from *Citizens as Legislators*, eds. Shaun Bowler, Todd Donovan, and Caroline Tolbert (Columbus: Ohio State University Press, 1998), p. 137

<sup>72</sup> *Ibid*, p. 147

<sup>73</sup> Wenzel, James, Todd Donovan, and Shaun Bowler. “Direct Democracy and Minorities: Changing Attitudes about Minorities Targeted by Initiatives,” from *Citizens as Legislators*, eds. Shawn Bowler, Todd Donovan, and Caroline Tolbert (Columbus: Ohio State University Press, 1998), p. 229

<sup>74</sup> Gamble, Barbara. “Putting Civil Rights to a Popular Vote.” *American Journal of Political Science*. Vol. 41, No. 1, January 1997. p. 252

<sup>75</sup> Wenzel, p. 230

<sup>76</sup> Gamble, p. 245

initiatives and popular referenda, they approved over three-quarters of initiatives that sought to restrict the rights of minorities.<sup>77</sup> Legislation that infringes on the rights of minorities is more likely to be adopted in states that have diverse racially or ethnically composed populations. This appears to be caused by the perceived “threat” that large minority populations impose on dominant white populations.<sup>78</sup>

Unfortunately, the threat that the initiative process poses for minority groups does not hinge on whether an oppressive initiative passes or not. As initiatives that negatively affect minorities are brought to the public’s attention, there is a stigmatizing effect on the relevant minority groups. Direct democracy advocates claim that the use of these institutions can stimulate political interest and education. The negative consequence of such stimulation occurs when the majority’s attention is drawn to the minority group—whether or not the legislation passes, the minority group is brought into the limelight in a negative manner, opening the door for criticism and scrutiny. Prior to the attention caused by an initiative, opinions about minority groups are relatively malleable as a result of relatively little information on the targeted minority group. Being at the center of an initiative campaign destroys anonymity, creates notoriety, and produces a highly salient issue with ‘sides’ where none previously existed. Editorials, news coverage, and other media sources begin to focus on the group targeted and the positions that elites are taking on the policy.<sup>79</sup> This creates changes in “mass attitudes and opinions about those minority groups targeted by citizen’s initiatives.”<sup>80</sup> The results of research done by Wenzel, Donovan, and Bowler suggests that as a vehicle for the transformation of citizen

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<sup>77</sup> Ibid, p. 254

<sup>78</sup> Wenzel, p. 230

<sup>79</sup> Wenzel, p. 234

<sup>80</sup> Ibid, p. 229

preferences into policy, “direct democracy might operate to the detriment of the toleration of political outgroups.”<sup>81</sup>

### In Closing

From what has been presented thus far, it is clear there are substantial arguments for both proponents and opponents of the initiative process. The information presented here on the debate between proponents and opponents on the value of the initiative process, although substantial, does not convey all of the issues. There are many more that could not fit into one paper. Without covering all of the issues, this section hopefully provided the reader with some insight about the initiative process and the advantages and disadvantages of its use. Some of the aspects of the debate will be discussed again in relation to their promotion of democracy, but for now the model of democracy that this paper uses to evaluate those aspects will be explained.

### MODEL OF DEMOCRACY

There are many ideas about what democracy means. The term democracy “began to appear in the works of ancient Greeks in the fifth century BC. The original meaning of democracy was ‘rule by (or authority in) the people’.”<sup>82</sup> This idea was adapted to larger, modern societies by not requiring direct, face-to-face assembly. John Locke, for example, argued that a government was a democracy as long as the power of government ultimately resided in all of the people and decisions were made by representatives responsible to the majority.<sup>83</sup> Many governments purport to be democratic, but such claims should be viewed with skepticism. Instead, each claim should be placed on a scale, with the ideal democracy at one end and democracies in name only at the other

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<sup>81</sup> Ibid, p. 245

<sup>82</sup> Ranney, p. 6

<sup>83</sup> Ibid, p. 9

end. Societies are democratic in so far as they are successful in fitting criteria that places them near the former. This paper attempts to describe what the ideal democracy requires. There are many characteristics that democratic theorists and social scientists in general claim are requisite conditions for democracy, but not all of these are necessarily required of democracy or even unique thereto. Austin Ranney and Willmoore Kendall address the tenets of democracy in their book *Democracy and the American Party System*. Ranney theorizes that there exist four principles that form the ideal model of democracy. He derives these four principles from the minimum characteristics that democratic thinkers insist must occur for a government to be called a democracy. These minimum characteristics are

“(1) Those who hold office in it must stand ready, *in some sense*, to do whatever the people want them to do, and to refrain from doing anything the people oppose; (2) each member of the ‘community’ for which it acts should have, *in some sense*, as good a chance as his fellows to participate in the community’s decision making- no better and no worse; and (3) it must operate in terms of an understanding that when the enfranchised members of the community disagree as to what ought to be done, the last word lies, *in some sense*, with the larger number and never the smaller.”<sup>84</sup>

The four fundamental principles of democracy that develop from these characteristics are popular sovereignty, political equality, popular consultation, and majority rule. Each will be addressed presently.

### Popular Sovereignty

Popular sovereignty occurs when the ultimate supreme power of the state resides in government created by and subject to the will of the people.<sup>85</sup> Lord Bryce sums up quite well the relation of democracy and popular sovereignty:

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<sup>84</sup> Ibid, p. 23 (Author’s italics)

<sup>85</sup> Ibid, p. 23-27

“The word Democracy has been used ever since the time of Herodotus to denote that form of government in which the ruling power of a state is legally vested, not in any particular class or classes, but in the members of the community as a whole.”<sup>86</sup>

Ranney notes that popular sovereignty is possible “only if the members’ desire to continue to live together as a community is at least as strong as their desire to satisfy their separate and antagonistic interests.”<sup>87</sup> Popular sovereignty is necessary for democracy because the feature that separates democracy from a monarchy or aristocracy is the fact that the ultimate power of government resides in all of the citizens instead of with a single person or small class of people.

### Political Equality

Political equality does not simply arise from equality of votes. True equality can only arise out of equality of access and participation. Each member has to be given the same opportunity to participate and count as one in the total decision-making process. Such participation is not resolved by simply implementing a one man, one vote system, for this does not make citizens political equals. The essence of the decision-making process lies in the opportunity to assess and choose between alternatives. In order to make a genuine choice there must be alternatives equally available to each participant, for which they are able to seek out information. The participants must also have the full freedom to choose among these alternatives.<sup>88</sup>

### Popular Consultation

Ranney maintains that popular consultation, where government should do what the people desire it to do and should not do what they do not want done, requires three

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<sup>86</sup> Ibid, p. 23-24

<sup>87</sup> Ibid, p. 26

<sup>88</sup> Ibid, p. 27

attributes. First, there must be a genuine popular will on public policy matters. Second, the representatives must be aware of what that will is and what it requires. Finally, once the representatives have discovered the nature of the popular will they must translate it into action.<sup>89</sup> A democracy “puts faith not only in the people but also in their ability to select representatives” and adequately express their viewpoints.<sup>90</sup>

### Majority Rule

Majority rule is the best choice for any model of democracy because if it is not implemented minority rule will prevail by default. In a democracy, a small group of individuals cannot be allowed to impose its will over all others. Minority rule is contrary to the other principles of democracy, particularly political equality. Popular sovereignty, political equality, and popular consultation are bedrock requirements of a democracy and majority rule is the only form of rule that accommodates their viability.

Ranney stresses that majority rule must be absolute, but this is where the model proposed herein differs significantly from his model. Absolute majority rule imposes a burden on the minority that is unacceptable. Democratic government is more than popular elections; it “involves the retention of fundamental rights and liberties.”<sup>91</sup> “A majority infringement on natural rights is illegitimate and ought to be prohibited.”<sup>92</sup> The idea of majority rule does not mean that majorities are always right or that there is any necessary connection between the fact that a majority supports a policy and the ‘rightness’ of that policy.<sup>93</sup>

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<sup>89</sup> Ibid, p. 28

<sup>90</sup> Cronin, p. 9

<sup>91</sup> Magleby, p. 30

<sup>92</sup> Thorson, Thomas Landon. “Epilogue on Absolute Majority Rule.” *Journal of Politics*. Vol. 23, No. 3, August 1961. p. 558

<sup>93</sup> Ibid



Some believe “that in a true democracy, majorities...will restrain themselves from violating human rights.”<sup>94</sup> Absolute majority rule, however, is not imbued with a guarantee that the majority will not violate traditional notions of individual freedom, fair play, and substantial justice. There are also no guarantees that the majority will not violate the principles of political equality and popular sovereignty, an example being the denial of suffrage to a minority.<sup>95</sup> Thorson explains the illegitimacy of minority and majority rule:

“Minority rule in terms of the strict application of the principles of political equality and popular sovereignty is illegitimate with respect to all decisions. Majority rule is illegitimate in terms of the principles only when a majority violates them.”<sup>96</sup>

Majority rule cannot be justified by the principles of popular sovereignty and political equality if it violates them. The suggestion then is that no formal institutional limitations will be placed on the power of the majority in all decisions except those which deny basic rights, such as denying suffrage or free expression. Decisions such as those must be limited by an agreement of the governed that there exist certain inalienable rights that not even a popular majority has the right to take from anyone. Thus, limited majority rule, as opposed to absolute majority rule, is acceptable for this model of democracy. The majority will be limited by the inability to remove basic, agreed upon rights from any citizen.

### Participation

One elemental feature of democracy is participation. Participation pervades Ranney’s model and is an underlying facet of each of his four main principles, but the

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<sup>94</sup> Ranney, p. 36-37

<sup>95</sup> Thorson, p. 561

<sup>96</sup> Ibid, p. 562

model presented here features participation as important in its own right and essential to the existence of any democracy. Without participation by the populace, a government will be an unsuccessful democracy. Rousseau and G.D.H. Cole take their idea of participatory democracy into all sectors of life, especially economics, and claim that a representative system is not sufficient for true democracy.<sup>97</sup> They would want every citizen to actively participate, as was the goal in Ancient Greece and with the New England town meetings. The model proposed here will only go so far as to claim that participation is necessary in a democracy. "Participation develops and fosters the very qualities necessary for it; the more individuals participate, the better able they become to do so."<sup>98</sup> Representative democracy is sufficient to allow citizen participation in government.

Benjamin Barber, in his book *Strong Democracy*, supports the idea of participation as being a fundamental requisite of a democracy. Only with participation can strong democracy occur. Barber would like to see citizens "who are united less by homogeneous interests than by civic education and who are made capable of common purpose and mutual action by virtue of their civic altruism or their good nature."<sup>99</sup> Barber is, in fact, advocating a type of democracy that is separate and distinct from other types of democracy, for example representative democracy, but his understanding of the importance of participation to democratic government and to the citizens of that government is nonetheless useful for an understanding of the basic principles of any democracy. Expecting enlightened, altruistic participation by even a significant minority

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<sup>97</sup> Pateman, Carol. *Participation and Democratic Theory*. New York: Cambridge University Press, 1970. p. 42-43

<sup>98</sup> Ibid, p. 43

<sup>99</sup> Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age*. Berkeley: University of California Press, 1984. p. 117

may be unrealistic; however a self-interested, educated participation may be all that is required.

## ANALYSIS

Now that a model of democracy has been proposed and explained, the debate over direct democracy can be evaluated in terms of the initiative process' usefulness to democracy. Practically every aspect of the debate could be used to question the role that direct democracy plays in a quest towards the ideal democracy, but only three will be evaluated in this paper. The issues of minority rights, citizen involvement, and public preference will be used to evaluate whether the initiative process promotes democracy in this country.

### Minority Rights

Based on the earlier discussion of minority rights, it can be understood that the initiative process provides an opportunity for majority tyranny over minorities. The lack of deliberation and the motivation of self-interest that drives many voters to the voting booth can dismantle many of the protections that government affords everyone.

“Our representative government, with its admittedly imperfect filtering mechanism, seeks to protect the rights of minorities against the will of majorities. Minorities suffer when direct democracy circumvents that system. Not only do they lose at the polls, the very act of putting civil rights to a popular vote increases divisions that separate us as a people. Instead of fortifying our nation, direct legislation only weakens us.”<sup>100</sup>

Although majority rule is a central component of the model of democracy posited above, absolute majority rule cannot prevail. It poses a danger to the inherent rights of individuals, especially to minority groups. “Popular elections on fundamental rights may

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<sup>100</sup> Gamble, p. 262

run counter to democratic principles.”<sup>101</sup> The point is that citizens in the political majority should not use direct democracy to put the rights of political minorities to a popular vote. There are certain, fundamental rights that these minority groups must be guaranteed without the approval of the majority because a hallmark of this model is the tolerance and protection of such rights.

In fact, if certain rights are violated then the foundations of democracy are also violated. Violations of rights such as freedom of speech and expression, freedom of religion and belief, due process and equal protection under the law, and freedom to organize, speak out, dissent, and participate fully in the public life, would interfere with popular sovereignty, political equality and political consultation. If minority groups, or any individual for that matter, are not given, for example, equal protection under the law or the freedom of belief, they are restricted from being political equals with the majority. When such rights are limited the group affected is unable to participate in society to the fullest extent possible. Not only are they denied rights that affect their ability to participate, they may well be reluctant to participate simply because the majority has expressed its negative beliefs about the group. Such views likely harm the minority’s opinions of themselves and certainly reduce their inclination to be involved with such a constituency. By restricting the rights of a group, the majority is in effect removing the minority’s power of popular consultation. If minorities are denied political equality they are denied their voice in the political consulting requirement of Ranney’s model. Without the power derived from equality and consultation, minority groups will conclude that they have been denied popular sovereignty. Instead, they will perceive that the power of government resides in the majority, which is insensitive to their aspirations and needs.

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<sup>101</sup> Magleby, p. 30

This is especially true with regards to permanent minorities, those whose minority status does not change.

It is vital to consider the effects that direct democracy has on minority rights when evaluating the contribution the initiative process provides this country in terms of democracy. Unfortunately, it seems that the initiative process inhibits democracy when evaluated from the perspective on minority rights. This aspect of direct democracy conflicts with the understanding of majority rule as it pertains to the model of democracy used in this research.

### Citizen Involvement

If the initiative process provides for more citizen involvement then the central components of democracy, namely popular consultation and participation, are met. “The new instruments of democracy were seen by some reformers as providing a dramatic opportunity for a new type of popular consultation.”<sup>102</sup> If citizen involvement is increased, then democracy as it is understood in this paper is promoted. This promotion of democracy, however, may not be as beneficial in reality as it seems theoretically. Although the public is consulted through the initiative process, it does not seem that they are consulted to the highest degree possible. The current system of voting alienates the less educated, poor voters. In theory, the initiative would promote citizen participation and thus civic education. Reality may indicate that certain groups of voters may be more alienated by the initiative process, but the question of whether the process encourages democracy would have to be yes because of the potential for citizen involvement that such direct democracy creates if properly conducted. Fortunately, the initiative process does promote greater participation in general.

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<sup>102</sup> Magleby, p. 23

Although it has been shown that the involvement of every voter is very difficult and likely impossible, that fact is no different for direct democracy than it is for representative democracy. Ideal models of democracy often do not factor in that there will never be one hundred percent citizen participation regardless of the method of government used. The fact that direct democracy provides the opportunity, whether it is taken or not, for political consultation on a deeper level than voting in candidate elections is a benefit that cannot be overlooked. If an initiative passes, that can be understood as another expression of the public's viewpoint on an issue.

### Public Preference

It does not appear that direct democracy makes government more responsive to public preference in many issue areas, such as fiscal policy. An important contribution that the initiative process brings to public preference is in the area of governance policy. By redefining the operation of government and allowing citizens to take more control over what they allow government to do, popular consultation is significantly improved. Although citizen involvement may not include the entire populace, allowing citizens to vote on issues allows them to express their views and relay their opinions to their representatives. Even if a ballot measure fails, the information that is relayed to leaders and neighbors alike is just as valuable as if it had passed. Failure of an initiative still reveals, in some way or another, where people stand on an issue. It is popular consultation, with the people expressing their dissatisfaction with an initiative's topic or wording.

## CONCLUSION

One cannot state categorically that any given representative process transmits the voice of the people more fully than would a plebiscite. But for any outcome that can claim popular consent, the process used to reach that outcome must be evaluated. This paper has attempted to do just that. Given that no process is perfect and given further that different processes are imperfect in different ways, it will rarely be possible to answer this question with great confidence. As a result, popular debate over particular direct democratic outcomes should focus on their constitutionality, propriety, and wisdom, rather than on their purported status as reflections of a popular voice. Merely counting heads in the form of a single-issue majority vote may illustrate what the most people voting want, but does not explain what the people want most.

The debate about whether the initiative process is an appropriate vehicle for democratic policy making continues to war on and it will likely persist for as long as the initiative, referendum, and recall are available to the American public. This paper has not sought to resolve the conflicts that exist over the questions of the benefits and consequences of direct democracy; it has only made an attempt to evaluate whether direct democracy is consistent with a model of ideal democracy. From all this it seems clear that people are no angels and initiatives have the potential to bring out the worst in them. Although the question of minority rights will continue to arise, it seems to be the case that the initiative process could be limited in certain ways in order to make violations of civil rights impossible. Citizens should be encouraged to be involved in government and to become educated on civic matters, but the involvement of some cannot come at the expense of others. The benefit that the plebiscite offers the model democracy, in the area

of better popular consultation, weighs heavily in favor of its continued viability and improvement. It is not pretty, but it is not yet broken either. Bereft of the makeup, fancy gowns, and ginger ale of representative democracy, direct appeals to the people provide a cathartic opportunity to gauge communal beliefs that might otherwise fester unanswered.

Although no in-depth comparison of representative and direct democracy occurred in this paper, the claim of initiative advocates that direct democracy is more democratic rings true, however crudely. Popular consultation and participation are invigorated when citizens are given opportunities for more involvement. Increased involvement in and awareness of the institutions of government allows citizens to feel more deeply associated with popular sovereignty; to feel that the ultimate power of government does in fact reside in them.

The initiative process is not perfect. Its contribution to democracy would be much improved by some key alterations. One necessary change is to make certain rights ineligible for initiative consideration. This would protect minority groups and the judicial system from undeserved scrutiny and pressure. Another recommendation worthy of consideration is to make it more difficult to create constitutional amendments through initiative, while leaving the ordinary laws open for direct citizen modification. This could perhaps be accomplished by requiring constitutional amendments to be successful in two different election separated by a period of time. Perhaps the most important and daunting improvement needed in the initiative process is an increase in voter involvement. Whenever less than a majority of voters participate in an initiative election this cherished institution becomes just a crude form of representative democracy. One relatively easy fix is to attack the confusion of voters would be to require that the wording of all eligible



petitions be redrafted by the professional bill writers employed by the legislature. Providing incentives for voting may increase voter turnout and provide those disenfranchised groups with a reason to vote. In this way, public preference may be more completely realized and the populace will be able to gain more of a political consciousness.

In some ways, direct democracy is not so different from representative democracy. In any election where less than a majority of registered voters vote, legislation is produced through a sort of crude representative democracy. Those who do turn out to vote are representing all of those who do not. Representative democracy has all the bells and whistles. Although citizens often complain about it, the process is smooth and appealing and someone else can always be blamed. With direct democracy, citizens can only blame themselves. It may not be pretty, but it works; in the process of working, hopefully the public becomes more knowledgeable and civic minded.

This paper meant to discover whether direct democracy contributes to the democracy model, and it is clear that the answer is in the affirmative. Even taking into account all of the negative aspects of direct democracy and the havoc that it has the potential to create, the initiative process provides those states that allow direct citizen involvement with a more democratic government.

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